

House Bill 2146

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Human Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies certain provisions of law relating to crime of prostitution to exclude child sex trafficking victims.

A BILL FOR AN ACT

1
2 Relating to child sex trafficking victims; amending ORS 12.117, 131.125, 167.007, 167.017 and
3 419B.005.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 167.007 is amended to read:

6 167.007. (1) A person commits the crime of prostitution if the person engages in, or offers or
7 agrees to engage in, sexual conduct or sexual contact in return for a fee.

8 (2) Prostitution is a Class A misdemeanor.

9 (3) It is an affirmative defense to prosecution under this section that the defendant, at the time
10 of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266
11 (1)(b) or (c).

12 (4) **A person who is under 18 years of age at the time of committing an act that, if**
13 **committed by an adult, would constitute a crime under this section is immune from prose-**
14 **cution under this section and cannot be found to be within the jurisdiction of the juvenile**
15 **court under ORS 419C.005 for committing the act.**

16 **SECTION 2.** ORS 12.117 is amended to read:

17 12.117. (1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that con-
18 stitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse that oc-
19 curs while the person is under 18 years of age must be commenced before the person attains 40
20 years of age, or if the person has not discovered the causal connection between the injury and the
21 child abuse, nor in the exercise of reasonable care should have discovered the causal connection
22 between the injury and the child abuse, not more than five years from the date the person discovers
23 or in the exercise of reasonable care should have discovered the causal connection between the
24 child abuse and the injury, whichever period is longer.

25 (2) As used in subsection (1) of this section, "child abuse" means any of the following:

26 (a) Intentional conduct by an adult that results in:

27 (A) Any physical injury to a child; or

28 (B) Any mental injury to a child which results in observable and substantial impairment of the
29 child's mental or psychological ability to function caused by cruelty to the child, with due regard
30 to the culture of the child;

31 (b) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 tration and incest, as those acts are *[defined]* **described** in ORS chapter 163;

2 (c) Sexual abuse, as *[defined]* **described** in ORS chapter 163, when the victim is a child; or

3 (d) Sexual exploitation of a child, including but not limited to:

4 (A) Conduct constituting violation of ORS 163.435 and any other conduct which allows, employs,
5 authorizes, permits, induces or encourages a child to engage in the performing for people to observe
6 or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts
7 sexual conduct or contact; and

8 (B) Allowing, permitting, encouraging or hiring a child to engage in *[prostitution]*, **or offer or**
9 **agree to engage in, sexual conduct or sexual contact, as those terms are defined in ORS**
10 **167.002, in return for a fee** or commercial sexual solicitation, as *[defined in ORS chapter 167]* **de-**
11 **scribed in ORS 167.008.**

12 (3) Nothing in this section creates a new cause of action or enlarges any existing cause of
13 action.

14 **SECTION 3.** ORS 131.125 is amended to read:

15 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
16 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
17 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
18 solicitation to commit aggravated murder or murder, or the death of the person killed.

19 (2) A prosecution for any of the following felonies may be commenced within 12 years after the
20 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
21 before the victim attains 30 years of age:

22 (a) Rape in the first degree under ORS 163.375.

23 (b) Sodomy in the first degree under ORS 163.405.

24 (c) Unlawful sexual penetration in the first degree under ORS 163.411.

25 (d) Sexual abuse in the first degree under ORS 163.427.

26 (3) A prosecution for any of the following felonies may be commenced within six years after the
27 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
28 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
29 enforcement agency or the Department of Human Services, whichever occurs first:

30 (a) Strangulation under ORS 163.187 (4).

31 (b) Criminal mistreatment in the first degree under ORS 163.205.

32 (c) Rape in the third degree under ORS 163.355.

33 (d) Rape in the second degree under ORS 163.365.

34 (e) Sodomy in the third degree under ORS 163.385.

35 (f) Sodomy in the second degree under ORS 163.395.

36 (g) Unlawful sexual penetration in the second degree under ORS 163.408.

37 (h) Sexual abuse in the second degree under ORS 163.425.

38 (i) Using a child in a display of sexual conduct under ORS 163.670.

39 (j) Encouraging child sexual abuse in the first degree under ORS 163.684.

40 (k) Incest under ORS 163.525.

41 (L) Promoting prostitution under ORS 167.012.

42 (m) Compelling prostitution under ORS 167.017.

43 (n) Luring a minor under ORS 167.057.

44 (4) A prosecution for any of the following misdemeanors may be commenced within four years
45 after the commission of the crime or, if the victim at the time of the crime was under 18 years of

1 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
 2 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 3 (a) Strangulation under ORS 163.187 (3).
- 4 (b) Sexual abuse in the third degree under ORS 163.415.
- 5 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 6 (d) Displaying obscene materials to minors under ORS 167.080.

7 (5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child
 8 engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section,
 9 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
 10 described in subsection (3)(L) and (m) of this section, the victim is the child whose [*acts of*
 11 *prostitution are*] **sexual conduct or sexual contact** is promoted or compelled.

12 (6) A prosecution for arson in any degree may be commenced within six years after the com-
 13 mission of the crime.

14 (7) A prosecution for any of the following felonies may be commenced within six years after the
 15 commission of the crime if the victim at the time of the crime was 65 years of age or older:

- 16 (a) Theft in the first degree under ORS 164.055.
- 17 (b) Aggravated theft in the first degree under ORS 164.057.
- 18 (c) Extortion under ORS 164.075.
- 19 (d) Robbery in the third degree under ORS 164.395.
- 20 (e) Robbery in the second degree under ORS 164.405.
- 21 (f) Robbery in the first degree under ORS 164.415.
- 22 (g) Forgery in the first degree under ORS 165.013.
- 23 (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).
- 24 (i) Identity theft under ORS 165.800.

25 (8) Except as provided in subsection (9) of this section or as otherwise expressly provided by
 26 law, prosecutions for other offenses must be commenced within the following periods of limitations
 27 after their commission:

- 28 (a) For any other felony, three years.
- 29 (b) For any misdemeanor, two years.
- 30 (c) For a violation, six months.

31 (9) If the period prescribed in subsection (8) of this section has expired, a prosecution never-
 32 theless may be commenced as follows:

33 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
 34 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
 35 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
 36 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
 37 three years;

38 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
 39 may be commenced at any time while the defendant is in public office or employment or within two
 40 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
 41 more than three years; or

42 (c) If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution
 43 may be commenced within one year after discovery of the offense by the person aggrieved by the
 44 offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a
 45 law enforcement agency, but in no case shall the period of limitation otherwise applicable be ex-

1 tended by more than three years.

2 (10) Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after
 3 the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic
 4 acid) sample comparisons, a prosecution for:

5 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
 6 degree or sexual abuse in the first degree may be commenced at any time after the commission of
 7 the crime.

8 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in
 9 the second degree may be commenced within 25 years after the commission of the crime.

10 (11) Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in sub-
 11 section (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the
 12 prosecution must be commenced within two years of the DNA-based identification of the defendant.

13 (12)(a) Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corrob-
 14 orating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual
 15 penetration in the first degree or sexual abuse in the first degree, after the period described in
 16 subsection (2) of this section, the prosecution may be commenced at any time after the commission
 17 of the crime.

18 (b) The corroborating evidence described in paragraph (a) of this subsection must consist of one
 19 of the following:

20 (A) Physical evidence other than a DNA sample, including but not limited to audio, video or
 21 other electronic recordings, text messages, guest book logs, telephone recordings and photographs.

22 (B) A confession, made by the defendant, to the crime the victim reported.

23 (C) An oral statement, made by the victim to another person in temporal proximity to the com-
 24 mission of the crime, corroborating the victim's report of the crime to a law enforcement agency.

25 (D) A written statement, created by the victim in temporal proximity to the commission of the
 26 crime and subsequently delivered to another person or to a law enforcement agency, corroborating
 27 the victim's report of the crime to a law enforcement agency.

28 (E) A report made by a different victim to a law enforcement agency, made either before or after
 29 the victim's report, alleging that the defendant committed another crime of the same or similar
 30 character such that the two crimes could be charged in the same charging instrument under ORS
 31 132.560.

32 (13)(a) A prosecuting attorney commencing a prosecution pursuant to subsection (12) of this
 33 section shall present any evidence reasonably tending to negate the guilt of the defendant to the
 34 grand jury considering the indictment for the offense.

35 (b) The failure to present evidence reasonably tending to negate guilt as required by paragraph
 36 (a) of this subsection does not affect the validity of an indictment or prosecution.

37 **SECTION 4.** ORS 167.017 is amended to read:

38 167.017. (1) A person commits the crime of compelling prostitution if the person knowingly:

39 (a) Uses force or intimidation to compel another to engage in prostitution or attempted
 40 prostitution;

41 (b) Induces or causes a person under 18 years of age to engage in [*prostitution*], **or offer or**
 42 **agree to engage in, sexual conduct or sexual contact in return for a fee;**

43 (c) Aids or facilitates [*the commission of prostitution or attempted prostitution by*] a person under
 44 18 years of age **in engaging in, or offering or agreeing to engage in, sexual conduct or sexual**
 45 **contact in return for a fee;** or

1 (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

2 (2) Compelling prostitution is a Class B felony.

3 (3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to
4 prove that the defendant knew the other person was under 18 years of age and it is no defense that
5 the defendant did not know the person's age or that the defendant reasonably believed the person
6 to be older than 18 years of age.

7 **SECTION 5.** ORS 419B.005 is amended to read:

8 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

9 (1)(a) "Abuse" means:

10 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
11 which has been caused by other than accidental means, including any injury which appears to be
12 at variance with the explanation given of the injury.

13 (B) Any mental injury to a child, which shall include only observable and substantial impairment
14 of the child's mental or psychological ability to function caused by cruelty to the child, with due
15 regard to the culture of the child.

16 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
17 tration and incest, as those acts are described in ORS chapter 163.

18 (D) Sexual abuse, as described in ORS chapter 163.

19 (E) Sexual exploitation, including but not limited to:

20 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
21 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
22 in the performing for people to observe or the photographing, filming, tape recording or other ex-
23 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
24 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
25 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
26 which is designed to serve educational or other legitimate purposes; and

27 (ii) Allowing, permitting, encouraging or hiring a child to engage in [*prostitution as described in*
28 *ORS 167.007*], **or offer or agree to engage in, sexual conduct or sexual contact, as those terms**
29 **are defined in ORS 167.002, in return for a fee** or a commercial sex act as defined in ORS 163.266,
30 to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solic-
31 itation as described in ORS 167.008.

32 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
33 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
34 welfare of the child.

35 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
36 to the child's health or welfare.

37 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

38 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
39 methamphetamines are being manufactured.

40 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
41 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
42 stantial risk of harm to the child's health or safety.

43 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
44 conditions described in paragraph (a) of this subsection.

45 (2) "Child" means an unmarried person who:

- 1 (a) Is under 18 years of age; or
- 2 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
- 3 agency as that term is defined in ORS 418.205.
- 4 (3) "Higher education institution" means:
- 5 (a) A community college as defined in ORS 341.005;
- 6 (b) A public university listed in ORS 352.002;
- 7 (c) The Oregon Health and Science University; and
- 8 (d) A private institution of higher education located in Oregon.
- 9 (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged
- 10 to have experienced abuse.
- 11 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.
- 12 (5) "Law enforcement agency" means:
- 13 (a) A city or municipal police department.
- 14 (b) A county sheriff's office.
- 15 (c) The Oregon State Police.
- 16 (d) A police department established by a university under ORS 352.121 or 353.125.
- 17 (e) A county juvenile department.
- 18 (6) "Public or private official" means:
- 19 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 20 including any intern or resident.
- 21 (b) Dentist.
- 22 (c) School employee, including an employee of a higher education institution.
- 23 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 24 or employee of an in-home health service.
- 25 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 26 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
- 27 Youth Authority, a local health department, a community mental health program, a community de-
- 28 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
- 29 is defined in ORS 418.205 or an alcohol and drug treatment program.
- 30 (f) Peace officer.
- 31 (g) Psychologist.
- 32 (h) Member of the clergy.
- 33 (i) Regulated social worker.
- 34 (j) Optometrist.
- 35 (k) Chiropractor.
- 36 (L) Certified provider of foster care, or an employee thereof.
- 37 (m) Attorney.
- 38 (n) Licensed professional counselor.
- 39 (o) Licensed marriage and family therapist.
- 40 (p) Firefighter or emergency medical services provider.
- 41 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 42 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 43 (s) Member of the Legislative Assembly.
- 44 (t) Physical, speech or occupational therapist.
- 45 (u) Audiologist.

- 1 (v) Speech-language pathologist.
 - 2 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
3 gations or discipline by the commission.
 - 4 (x) Pharmacist.
 - 5 (y) An operator of a preschool recorded program under ORS 329A.255.
 - 6 (z) An operator of a school-age recorded program under ORS 329A.257.
 - 7 (aa) Employee of a private agency or organization facilitating the provision of respite services,
8 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
9 109.056.
 - 10 (bb) Employee of a public or private organization providing child-related services or activities:
11 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
12 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
13 vision or auspices of religious, public or private educational systems or community service organ-
14 izations; and
15 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
16 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
17 ficking.
 - 18 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
19 if compensated and if the athlete is a child.
 - 20 (dd) Personal support worker, as defined in ORS 410.600.
 - 21 (ee) Home care worker, as defined in ORS 410.600.
 - 22 (ff) Animal control officer, as defined in ORS 609.500.
 - 23 (gg) Member of a school district board or public charter school governing body.
 - 24 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a
25 service identified in an individualized written service plan of a child with a developmental disability.
26
-