

## HB 2328 A STAFF MEASURE SUMMARY

### Joint Committee On Ways and Means

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**Prepared By:** Emily Coates, Fiscal Analyst

**Meeting Dates:** 5/25, 5/31

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#### **WHAT THE MEASURE DOES:**

Modifies the definition of “oral and sexual intercourse” for purposes of sex crimes and expands the crime of using a child in a display of sexually explicit conduct to include when a person knowingly records in a visual recording a child participating or engaging in sexually explicit conduct. Defines “object” under ORS 163.408 to include any body part of the actor when a person commits the crime of unlawful sexual penetration. The measure is effective January 1, 2024 for crimes on or after the effective date.

#### **ISSUES DISCUSSED:**

Fiscal impact of the measure.

#### **EFFECT OF AMENDMENT:**

No amendment.

#### **BACKGROUND:**

Under ORS 163.305 oral or anal sexual intercourse means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another. Contact between the mouth or anus of the accused person and the mouth or anus of the victim is not encompassed by the current definition.

A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording. A recent Court of Appeals decision, *State v. Cazee*, held that statute does not encompass a person’s act of creating a visual recording of sexually explicit conduct of a child without evidence of the person employing, authorizing, permitting, compelling, or inducing the involved child to participate or engage in said sexually explicit conduct.

Current Oregon statutes criminalizing unlawful sexual penetration require the State to establish beyond a reasonable doubt that the object used to penetrate the victim was something other than the penis or mouth of the accused person. If a victim is unable to identify the object that was used for penetration as an object, a mouth, or a penis, the state cannot establish the elements required under any current Oregon statutes criminalizing penetration (rape, sodomy, unlawful sexual penetration).

House Bill 2328 is an omnibus bill that would amend multiple Oregon criminal statutes relating to unlawful sexual conduct. If passed the measure would amend the definition of oral or anal sexual intercourse to include contact between the mouth or anus of the accused and the mouth or anus of the victim; expand the crime of using a child in a display of sexually explicit conduct to include knowingly creating a visual recording of sexually explicit conduct involving a child; and finally, it would modify the crime of unlawful sexual penetration to include penetration with a body part and remove requirement that the state establish what object was used for penetration.