

House Bill 3369

Sponsored by Representative HELFRICH; Representatives BOICE, HIEB, JAVADI, MANNIX, OSBORNE

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**.

Creates aggravated version of certain sex offenses. Increases crime classification when person, in order to facilitate commission of offense, knowingly causes other person to ingest controlled substance without other person's consent.

Punishes aggravated version of sexual abuse in the third degree by maximum of 5 years' imprisonment, \$125,000 fine, or both.

Punishes aggravated version of rape in the third degree, sodomy in the third degree and sexual abuse in the second degree by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Punishes aggravated version of rape in the second degree, sodomy in the second degree, unlawful sexual penetration in the second degree and sexual abuse in the first degree by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sex crimes involving controlled substances; creating new provisions; amending ORS
3 131.125, 163.355, 163.365, 163.385, 163.395, 163.408, 163.415, 163.425, 163.427 and 163A.140; and
4 declaring an emergency.

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

6 **SECTION 1.** ORS 163.355 is amended to read:

7 163.355. (1) A person commits the crime of rape in the third degree if the person has sexual
8 intercourse with another person under 16 years of age.

9 (2)(a) **Except as provided in paragraph (b) of this subsection**, rape in the third degree is a
10 Class C felony.

11 (b) **Rape in the third degree is a Class B felony if the person, in order to facilitate the**
12 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**
13 **stance as defined in ORS 475.005 without the other person's consent.**

14 **SECTION 2.** ORS 163.365 is amended to read:

15 163.365. (1) A person who has sexual intercourse with another person commits the crime of rape
16 in the second degree if the other person is under 14 years of age.

17 (2)(a) **Except as provided in paragraph (b) of this subsection**, rape in the second degree is
18 a Class B felony.

19 (b) **Rape in the second degree is a Class A felony if the person, in order to facilitate the**
20 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**
21 **stance as defined in ORS 475.005 without the other person's consent.**

22 **SECTION 3.** ORS 163.385 is amended to read:

23 163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in
24 oral or anal sexual intercourse with another person under 16 years of age or causes that person to
25 engage in oral or anal sexual intercourse.

26 (2)(a) **Except as provided in paragraph (b) of this subsection**, sodomy in the third degree is

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 a Class C felony.

2 **(b) Sodomy in the third degree is a Class B felony if the person, in order to facilitate the**
3 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**
4 **stance as defined in ORS 475.005 without the other person's consent.**

5 **SECTION 4.** ORS 163.395 is amended to read:

6 163.395. (1) A person who engages in oral or anal sexual intercourse with another person or
7 causes another to engage in oral or anal sexual intercourse commits the crime of sodomy in the
8 second degree if the victim is under 14 years of age.

9 **(2)(a) Except as provided in paragraph (b) of this subsection,** sodomy in the second degree
10 is a Class B felony.

11 **(b) Sodomy in the second degree is a Class A felony if the person, in order to facilitate**
12 **the commission of the offense, knowingly causes the other person to ingest a controlled**
13 **substance as defined in ORS 475.005 without the other person's consent.**

14 **SECTION 5.** ORS 163.408 is amended to read:

15 163.408. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful
16 sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another
17 with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

18 **(2)(a) Except as provided in paragraph (b) of this subsection,** unlawful sexual penetration
19 in the second degree is a Class B felony.

20 **(b) Unlawful sexual penetration in the second degree is a Class A felony if the person, in**
21 **order to facilitate the commission of the offense, knowingly causes the other person to**
22 **ingest a controlled substance as defined in ORS 475.005 without the other person's consent.**

23 **SECTION 6.** ORS 163.415 is amended to read:

24 163.415. (1) A person commits the crime of sexual abuse in the third degree if:

25 (a) The person subjects another person to sexual contact and:

26 (A) The victim does not consent to the sexual contact; or

27 (B) The victim is incapable of consent by reason of being under 18 years of age; or

28 (b) For the purpose of arousing or gratifying the sexual desire of the person or another person,
29 the person intentionally propels any dangerous substance at a victim without the consent of the
30 victim.

31 **(2)(a) Except as provided in paragraph (b) of this subsection,** sexual abuse in the third de-
32 gree is a Class A misdemeanor.

33 **(b) Sexual abuse in the third degree is a Class C felony if the person, in order to facilitate**
34 **the commission of the offense, knowingly causes the other person to ingest a controlled**
35 **substance as defined in ORS 475.005 without the other person's consent.**

36 (3) As used in this section, "dangerous substance" means blood, urine, semen or feces.

37 **SECTION 7.** ORS 163.425 is amended to read:

38 163.425. (1) A person commits the crime of sexual abuse in the second degree when:

39 (a) The person subjects another person to sexual intercourse, oral or anal sexual intercourse
40 or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other
41 than the penis or mouth of the actor and the victim does not consent thereto; or

42 (b)(A) The person violates ORS 163.415 (1)(a)(B);

43 (B) The person is 21 years of age or older; and

44 (C) At any time before the commission of the offense, the person was the victim's coach or
45 teacher, as those terms are defined in ORS 163.426.

1 (2)(a) **Except as provided in paragraph (b) of this subsection**, sexual abuse in the second
 2 degree is a Class C felony.

3 (b) **Sexual abuse in the second degree is a Class B felony if the person, in order to facil-**
 4 **itate the commission of the offense, knowingly causes the other person to ingest a controlled**
 5 **substance as defined in ORS 475.005 without the other person's consent.**

6 **SECTION 8.** ORS 163.427 is amended to read:

7 163.427. (1) A person commits the crime of sexual abuse in the first degree when that person:

8 (a) Subjects another person to sexual contact and:

9 (A) The victim is less than 14 years of age;

10 (B) The victim is subjected to forcible compulsion by the actor; or

11 (C) The victim is incapable of consent by reason of being mentally incapacitated, physically
 12 helpless or incapable of appraising the nature of the victim's conduct; or

13 (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or
 14 sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

15 (2)(a) **Except as provided in paragraph (b) of this subsection**, sexual abuse in the first degree
 16 is a Class B felony.

17 (b) **Sexual abuse in the first degree is a Class A felony if the person, in order to facilitate**
 18 **the commission of the offense, knowingly causes the other person to ingest a controlled**
 19 **substance as defined in ORS 475.005 without the other person's consent.**

20 **SECTION 9.** ORS 131.125 is amended to read:

21 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 22 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 23 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 24 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (h) **Sexual abuse in the third degree under ORS 163.415 (2)(b).**

44 [(h)] (i) Sexual abuse in the second degree under ORS 163.425.

45 [(i)] (j) Using a child in a display of sexual conduct under ORS 163.670.

1 [(j)] **(k)** Encouraging child sexual abuse in the first degree under ORS 163.684.

2 [(k)] **(L)** Incest under ORS 163.525.

3 [(L)] **(m)** Promoting prostitution under ORS 167.012.

4 [(m)] **(n)** Compelling prostitution under ORS 167.017.

5 [(n)] **(o)** Luring a minor under ORS 167.057.

6 (4) A prosecution for any of the following misdemeanors may be commenced within four years
7 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
8 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
9 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

10 (a) Strangulation under ORS 163.187 (3).

11 (b) Sexual abuse in the third degree under ORS 163.415 **(2)(a)**.

12 (c) Exhibiting an obscene performance to a minor under ORS 167.075.

13 (d) Displaying obscene materials to minors under ORS 167.080.

14 (5) In the case of crimes described in subsection [(3)(i)] **(3)(j)** of this section, the victim is the
15 child engaged in sexual conduct. In the case of the crime described in subsection [(3)(k)] **(3)(L)** of
16 this section, the victim is the party to the incest other than the party being prosecuted. In the case
17 of crimes described in subsection [(3)(L)] **(3)(m)** and [(m)] **(n)** of this section, the victim is the child
18 whose acts of prostitution are promoted or compelled.

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

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

23 (a) Theft in the first degree under ORS 164.055.

24 (b) Aggravated theft in the first degree under ORS 164.057.

25 (c) Extortion under ORS 164.075.

26 (d) Robbery in the third degree under ORS 164.395.

27 (e) Robbery in the second degree under ORS 164.405.

28 (f) Robbery in the first degree under ORS 164.415.

29 (g) Forgery in the first degree under ORS 165.013.

30 (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).

31 (i) Identity theft under ORS 165.800.

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

35 (a) For any other felony, three years.

36 (b) For any misdemeanor, two years.

37 (c) For a violation, six months.

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

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

45 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution

1 may be commenced at any time while the defendant is in public office or employment or within two
 2 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
 3 more than three years; or

4 (c) If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution
 5 may be commenced within one year after discovery of the offense by the person aggrieved by the
 6 offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a
 7 law enforcement agency, but in no case shall the period of limitation otherwise applicable be ex-
 8 tended by more than three years.

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

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

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

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

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

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

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

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

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

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

35 (E) A report made by a different victim to a law enforcement agency, made either before or after
 36 the victim's report, alleging that the defendant committed another crime of the same or similar
 37 character such that the two crimes could be charged in the same charging instrument under ORS
 38 132.560.

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

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

44 **SECTION 10.** ORS 163A.140 is amended to read:

45 163A.140. A person otherwise required to report under ORS 163A.010, 163A.015, 163A.020 or

1 163A.025 is not required to report, and if currently reporting is no longer required to report, if:

2 (1)(a) The person has been convicted of:

3 (A) Rape in the third degree as defined in ORS 163.355 (2)(a);

4 (B) Sodomy in the third degree as defined in ORS 163.385 (2)(a);

5 (C) Sexual abuse in the third degree as defined in ORS 163.415 (2)(a);

6 (D) Sexual abuse in the second degree as defined in ORS 163.425 (2)(a);

7 (E) Contributing to the sexual delinquency of a minor as defined in ORS 163.435;

8 (F) Sexual misconduct as defined in ORS 163.445; or

9 (G) An attempt to commit an offense listed in subparagraphs (A) to (F) of this paragraph;

10 (b) The person has been found guilty except for insanity of an offense listed in paragraph (a) of
11 this subsection;

12 (c) The person has been found to be within the jurisdiction of the juvenile court for having
13 committed an act that if committed by an adult would constitute an offense listed in paragraph
14 (a)(A), (B) or (D) of this subsection; or

15 (d) The person is paroled to this state under ORS 144.610 after being convicted in another
16 United States court of a crime that would constitute an offense listed in paragraph (a) of this sub-
17 section;

18 (2)(a) The person is less than five years older than the victim;

19 (b) The victim's lack of consent was due solely to incapacity to consent by reason of being less
20 than a specified age;

21 (c) The victim was at least 14 years of age at the time of the offense or act;

22 (d) Except for the convictions or findings described in subsection (1) of this section, the person
23 has not been convicted of, found guilty except for insanity of, or found to be within the jurisdiction
24 of the juvenile court based on, a sex crime or an offense, in another United States court, for conduct
25 that if committed in this state would constitute a sex crime; and

26 (e) Each conviction or finding described in subsection (1) of this section involved the same vic-
27 tim; and

28 (3) The court enters an order relieving the person of the requirement to report under ORS
29 163A.145 or 163A.150.

30 **SECTION 11. The amendments to ORS 131.125, 163.355, 163.365, 163.385, 163.395, 163.408,**
31 **163.415, 163.425, 163.427 and 163A.140 by sections 1 to 10 of this 2023 Act apply to crimes al-**
32 **leged to have been committed on or after the effective date of this 2023 Act.**

33 **SECTION 12. This 2023 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
35 **on its passage.**

36