



**TO: Rep. Jason Kropf, Chair
Rep. Willy Chotzen, Vice-Chair
Rep. Kim Wallan, Vice-Chair
Members of the House Committee on Judiciary**

FR: Oregon District Attorney's Association

RE: HB 2974 - Support

February 24, 2025

Thank you for the opportunity to testify in support of HB 2974.

HB 2974 is designed to close the “lewd” loop-hole in the law that presently protects those who create, distribute, and possess child sex abuse material (CSAM). At present, someone could create, distribute, and possess nude images of children to arouse sexual desire, but be immune from prosecution because the images were not sufficiently focused on the child’s genitalia. HB 2974 will allow the State to hold these individuals accountable for the harm they cause to children.

HB 2974 will also enhance the crime seriousness score of Invasion of Personal Privacy in the First Degree if the victim is a child and the defendant is more than three years older than them. This enhancement recognizes the increased harm when the victim is a child.

Below is further analysis of HB 2974:

- 1. Closing the “lewd” loop-hole will hold those who create, possess, and distribute nude images of children to arouse sexual desire accountable for the harm they cause to those children and our communities.**

Presently, the law considers only what’s in the image or video to determine whether that image or video is “lewd”—the context of the situation, text sent along with the recording, and all other information is not to be considered to determine whether creation, distribution, or possession of the image is unlawful. Where this standard has caused problems is when offenders send images of nude children along with text of graphic descriptions of sex acts or other such things that clearly evidence the sexual intent of the viewer. Often times, those cases cannot be prosecuted because the image itself is not sufficiently focused on the genitalia

of the child—without that focus, the image is not considered “lewd” under the law, regardless of the context in which the image is created, distributed, or possessed.

As a result, people trading images nude children for the purpose of arousing their own sexual desire are essentially immune from prosecution. HB 2974 will hold those people accountable for their actions just as all other creators, distributors, and possessors of CSAM are held accountable.

2. HB 2974 passes constitutional muster and protects the First Amendment rights of Oregonians.

The First Amendment prohibits states from criminalizing the mere creation, distribution, or possession of nude images of children unless a number of other factors apply. However, HB 2974 punishes not merely creating, distributing, or possessing, rather it punishes when someone takes one of those actions *with the intent to arouse sexual desire*. Adding that intent element makes this bill constitutional.

The law frequently criminalizes speech when combined with a particular intent—Menacing, Stalking, Perjury, Tampering with a Witness, and Online Sexual Corruption, are common examples. The best example is Possession of Materials Depicting Sexually Explicit Conduct of a Child (ORS 163.688-689). Unquestionably, some of the materials captured under those statutes (e.g. animated or AI generated images) are protected by the First Amendment, but because the possession of the images is coupled with an intent element¹, it passes constitutional muster.

3. The enhancement in the crime seriousness score for Invasion of Personal Privacy in the First Degree when the victim is a minor will better reflect the harm to the child and our community.

Invasion of Personal Privacy in the First Degree criminalizes the recording of another person nude, without the consent of that person, and when that person has a reasonable expectation of privacy—e.g., videotaping someone showering. At present, the law treats the recording of adults and children the same under this statute. The enhancement the crime seriousness score from a 6 to an 8 recognizes the increased harm to the victim and the community when the victim is a minor and the defendant is more than three years older than the victim.

¹ (1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the second degree if the person:

(a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and

(b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct. ORS 163.888.

Enhancing the CS score to an 8 will mean that instead of mandatorily sentencing most of these offenders to probation, the courts instead will have the power to impose prison sentence or probation based on the arguments and agreement of the parties, provided the defendant does not have multiple prior felony convictions.

House Bill 2974

Sponsored by Representative HARTMAN (Presession filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes the meaning of a term and enhances a sentence for some crimes involving children. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 77.8).
Modifies the meaning of "sexually explicit conduct" for certain crimes involving children.
Directs the Oregon Criminal Justice Commission to classify invasion of personal privacy in the first degree as a crime category 8 on the sentencing guidelines grid when the victim is a minor.
Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to crimes involving children; creating new provisions; amending ORS 163.701; and pre-
3 scribing an effective date.

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

5 **SECTION 1. Section 2 of this 2025 Act is added to and made a part of ORS 163.665 to**
6 **163.693.**

7 **SECTION 2. Notwithstanding ORS 163.665, as used in ~~ORS 163.670~~, 163.684, 163.686 and**
8 **163.687, "sexually explicit conduct" includes the exhibition or display of ~~the sexual or other~~**
9 **~~intimate parts of a child~~ *the uncovered genitals, pubic area, buttocks or female nipples of a child* when the child is being observed or recorded for the specific intent**
10 **of arousing the sexual desire of the observer or recorder, regardless of whether the child**
11 **knows that the child is being observed or recorded.**

12 **SECTION 3. ORS 163.701 is amended to read:**

13 163.701. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of per-
14 sonal privacy in the first degree if:

15 (a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other
16 visual recording of another person in a state of nudity without the consent of the other person; and

17 (B) At the time the visual recording is made or recorded the person being recorded is in a place
18 and circumstances where the person has a reasonable expectation of personal privacy; or

19 (b) The person violates ORS 163.700 and, at the time of the offense, has a prior conviction for:

20 (A) Invasion of personal privacy in any degree, public indecency, private indecency or a sex
21 crime as defined in ORS 163A.005; or

22 (B) The statutory counterpart of an offense described in subparagraph (A) of this paragraph in
23 another jurisdiction.

24 (2)(a) Invasion of personal privacy in the first degree is a Class C felony.

25 (b) The Oregon Criminal Justice Commission shall classify invasion of personal privacy in the
26 first degree as:

27 (A) Crime category 6 of the sentencing guidelines grid of the commission.

28 (B) **Crime category 8 of the sentencing guidelines grid of the commission, if the person**

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 **whose privacy is invaded is under 18 years of age.** and the offender is more than 3 years older than the person whose
2 **privacy is being invaded.**

3 (3) The court may designate invasion of personal privacy in the first degree as a sex crime under
4 ORS 163A.005 if the court finds that the circumstances of the offense require the defendant to reg-
5 ister and report as a sex offender for the safety of the community.

6 **SECTION 4. Section 2 of this 2025 Act and the amendments to ORS 163.701 by section 3**
7 **of this 2025 Act apply to conduct occurring on or after the effective date of this 2025 Act.**

8 **SECTION 5. This 2025 Act takes effect on the 91st day after the date on which the 2025**
9 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**
