

SAPO DEFINITIONS

FAMILY OR HOUSEHOLD MEMBER

A person petitioning for a SAPO cannot be a “Family or Household member” with Respondent.
Family or Household member ---**ORS 107.705**

FAMILY OR HOUSEHOLD MEMBERS:

- a) Spouses
- b) Former Spouses
- c) Adult persons related by blood or marriage
- d) Persons who are cohabiting or who have cohabited with each other
- e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.701 (FAPA).
- f) Unmarried parents of a child

Interfere, Intimidate, Menace, and Molest are also defined in ORS 107.705

SEXUAL ABUSE

In order to qualify, there has to be at least one incident of Sexual abuse. Sexual abuse means Sexual Contact.

Sexual Contact = ORS 163.305

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

SEXUAL OR INTIMATE PARTS is not defined in the statutes. However, it has been defined in case law.

“Sexual and Intimate Parts as a Matter of Law” (UCrJI No. 1601): Male and female genitals are sexual parts as a matter of law. The female breasts are intimate parts as a matter of law. (*State v. Woodley*, 306 Or 458, 760 P2d 884 (1988) (nonconsensual touching of the area between the breasts and of the thigh area of an adult female); *State v. Turner*, 33 Or App 157, 575 P2d 1007 (1978)).

“Intimacy Test” (UCrJI No. 1602): A body part is intimate if the person touched regarded it as intimate and either the defendant knew that the person touched regarded it as intimate, or any reasonable person would know the part is intimate.

(LACK OF) CONSENT

For the incident of sexual contact to qualify, it had to have occurred with someone who either does not consent OR with a person who is incapable of consenting to sexual act under **ORS 163.315**.

INCAPACITY TO CONSENT: ORS 163.315

- (1) A person is considered incapable of consenting to a sexual act if the person is:
- a) Under 18 years of age;
 - b) Mentally defective;
 - c) Mentally incapacitated; or
 - d) Physically helpless
- (2) **A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.**

DEFINITIONS: Mentally defective, Mentally incapacitated, or Physically helpless

ORS 163.305

- (3) *Mentally defective* means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.
- a. *Mental Disease or Defect (ORS 161.295)*: (2) As used in chapter 743, Oregon Laws 1971, the terms “mental disease or defect” do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder.

ADULT PSYCHIATRIC SECURITY REVIEW BOARD DEFINITIONS (859-010-0005)

“Mental disease” is defined as any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (**DSM IV**) of the American Psychiatric Association.

“Mental defect” is defined as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (**DSM IV**) of the American Psychiatric Association.

ORS 163.305

- (4) *Mentally incapacitated* means that a person is *rendered* incapable of appraising or controlling the conduct of the person at the time of the alleged offense.
- (5) *Physically helpless* means that a person is unconscious or for any other reason or physically unable to communicate unwillingness to an act.