

House Bill 3014

Sponsored by Representative BONHAM

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 crime of assault in the first degree to include intentionally or knowingly causing permanent physical injury to another person. Requires mandatory minimum sentence of 300 months' imprisonment upon conviction.

A BILL FOR AN ACT

1
2 Relating to assault in the first degree; creating new provisions; and amending ORS 137.700, 161.015
3 and 163.185.

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

5 **SECTION 1.** ORS 137.700 is amended to read:

6 137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
7 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
8 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
9 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-
10 fense was committed on or after January 1, 2008, the court shall impose, and the person shall serve,
11 at least the entire term of imprisonment listed in subsection (2) of this section. The person is not,
12 during the service of the term of imprisonment, eligible for release on post-prison supervision or any
13 form of temporary leave from custody. The person is not eligible for any reduction in, or based on,
14 the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The
15 court may impose a greater sentence if otherwise permitted by law, but may not impose a lower
16 sentence than the sentence specified in subsection (2) of this section.

17 (2) The offenses to which subsection (1) of this section applies and the applicable mandatory
18 minimum sentences are:

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21 (a)(A) Murder, as defined in
22 ORS 163.115.300 months
23 (B) Attempt or conspiracy
24 to commit aggravated
25 murder, as defined
26 in ORS 163.095.120 months
27 (C) Attempt or conspiracy
28 to commit murder, as
29 defined in ORS 163.115.90 months
30 (D) Manslaughter in the
31 first degree, as defined

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 in ORS 163.118.....120 months
- 2 (E) Manslaughter in the
- 3 second degree, as defined
- 4 in ORS 163.125.....75 months
- 5 (F) Assault in the first
- 6 degree, as defined in
- 7 ORS 163.185
- 8 **(1)(a), (b), (c) or (e)**.....90 months
- 9 (G) Assault in the second
- 10 degree, as defined in
- 11 ORS 163.175.....70 months
- 12 (H) Except as provided in
- 13 paragraph (b)(G) of
- 14 this subsection,
- 15 kidnapping in the first
- 16 degree, as defined
- 17 in ORS 163.235.....90 months
- 18 (I) Kidnapping in the second
- 19 degree, as defined in
- 20 ORS 163.225.....70 months
- 21 (J) Rape in the first degree,
- 22 as defined in ORS 163.375
- 23 **(1)(a), (c) or (d)**.....100 months
- 24 (K) Rape in the second degree,
- 25 as defined in ORS 163.365.....75 months
- 26 (L) Sodomy in the first degree,
- 27 as defined in ORS 163.405
- 28 **(1)(a), (c) or (d)**.....100 months
- 29 (M) Sodomy in the second
- 30 degree, as defined in
- 31 ORS 163.395.....75 months
- 32 (N) Unlawful sexual penetration
- 33 in the first degree, as
- 34 defined in ORS 163.411
- 35 **(1)(a) or (c)**.....100 months
- 36 (O) Unlawful sexual penetration
- 37 in the second degree, as
- 38 defined in ORS 163.408.....75 months
- 39 (P) Sexual abuse in the first
- 40 degree, as defined in
- 41 ORS 163.427.....75 months
- 42 (Q) Robbery in the first degree,
- 43 as defined in ORS 164.415.....90 months
- 44 (R) Robbery in the second
- 45 degree, as defined in

- 1 ORS 164.40570 months
- 2 (b)(A) Arson in the first degree,
- 3 as defined in ORS 164.325,
- 4 when the offense represented
- 5 a threat of serious
- 6 physical injury.90 months
- 7 (B) Using a child in a display
- 8 of sexually explicit
- 9 conduct, as defined in
- 10 ORS 163.67070 months
- 11 (C) Compelling prostitution,
- 12 as defined in ORS 167.017.....70 months
- 13 (D) Rape in the first degree,
- 14 as defined in
- 15 ORS 163.375 (1)(b).300 months
- 16 (E) Sodomy in the first degree,
- 17 as defined in
- 18 ORS 163.405 (1)(b).300 months
- 19 (F) Unlawful sexual penetration
- 20 in the first degree, as
- 21 defined in
- 22 ORS 163.411 (1)(b).300 months
- 23 (G) Kidnapping in the first
- 24 degree, as defined in
- 25 ORS 163.235, when the
- 26 offense is committed in
- 27 furtherance of the commission
- 28 or attempted commission of an
- 29 offense listed in subparagraph
- 30 (D), (E) or (F) of
- 31 this paragraph.....300 months
- 32 (H) **Assault in the first**
- 33 **degree, as defined in**
- 34 **ORS 163.185 (1)(d).....300 months**
- 35 (c) Aggravated vehicular
- 36 homicide, as defined in
- 37 ORS 163.149240 months

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40 **SECTION 2.** ORS 163.185 is amended to read:

- 41 163.185. (1) A person commits the crime of assault in the first degree if the person:
- 42 (a) Intentionally causes serious physical injury to another **person** by means of a deadly or
- 43 dangerous weapon;
- 44 (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;
- 45 (c) Violates ORS 163.175 knowing that the victim is pregnant; [or]

1 **(d) Intentionally or knowingly causes permanent physical injury to another person; or**
2 [(d)] (e) Intentionally, knowingly or recklessly causes serious physical injury to another **person**
3 while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:
4 (A) The person has at least three previous convictions for driving while under the influence of
5 intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior
6 to the date of the current offense; or
7 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of
8 this section, or their statutory counterparts in any jurisdiction; and
9 (ii) The victim’s death or serious physical injury in the previous conviction was caused by the
10 person driving a motor vehicle.
11 (2) The previous convictions to which subsection [(1)(d)(B)] **(1)(e)(B)** of this section apply are:
12 (a) Manslaughter in the first degree under ORS 163.118;
13 (b) Manslaughter in the second degree under ORS 163.125;
14 (c) Criminally negligent homicide under ORS 163.145;
15 (d) Assault in the first degree under this section;
16 (e) Assault in the second degree under ORS 163.175; or
17 (f) Assault in the third degree under ORS 163.165.
18 (3) Assault in the first degree is a Class A felony.
19 (4) It is an affirmative defense to a prosecution under subsection [(1)(d)(B)] **(1)(e)(B)** of this
20 section that the defendant was not under the influence of intoxicants at the time of the conduct that
21 resulted in the previous conviction.
22 **SECTION 3.** ORS 161.015 is amended to read:
23 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires
24 otherwise:
25 (1) “Dangerous weapon” means any weapon, device, instrument, material or substance [*which*]
26 **that** under the circumstances in which it is used, attempted to be used or threatened to be used, is
27 readily capable of causing death or serious physical injury.
28 (2) “Deadly weapon” means any instrument, article or substance specifically designed for and
29 presently capable of causing death or serious physical injury.
30 (3) “Deadly physical force” means physical force that under the circumstances in which it is
31 used is readily capable of causing death or serious physical injury.
32 (4) “Peace officer” means:
33 (a) A member of the Oregon State Police;
34 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS
35 133.005, or a police officer commissioned by a university under ORS 352.121 or 353.125;
36 (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator
37 of a district attorney’s office;
38 (d) A humane special agent as defined in ORS 181A.345;
39 (e) A regulatory specialist exercising authority described in ORS 471.775 (2);
40 (f) An authorized tribal police officer as defined in ORS 181A.680; and
41 (g) Any other person designated by law as a peace officer.
42 **(5) “Permanent physical injury” means physical injury that:**
43 **(a) Permanently and significantly impairs a person’s cognitive functioning; or**
44 **(b) Permanently impairs a person’s ability to walk, breathe, eat or move the person’s**
45 **limbs.**

1 [(5)] (6) "Person" means a human being and, where appropriate, a public or private corporation,
2 an unincorporated association, a partnership, a government or a governmental instrumentality.

3 [(6)] (7) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear
4 gas or mace.

5 [(7)] (8) "Physical injury" means impairment of physical condition or substantial pain.

6 [(8)] (9) "Serious physical injury" means physical injury [which] **that** creates a substantial risk
7 of death or [which] **that** causes serious and protracted disfigurement, protracted impairment of
8 health or protracted loss or impairment of the function of any bodily organ.

9 [(9)] (10) "Possess" means to have physical possession or otherwise to exercise dominion or
10 control over property.

11 [(10)] (11) "Public place" means a place to which the general public has access and includes,
12 but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not consti-
13 tuting rooms or apartments designed for actual residence, and highways, streets, schools, places of
14 amusement, parks, playgrounds and premises used in connection with public passenger transporta-
15 tion.

16 **SECTION 4. (1) The amendments to ORS 137.700 and 163.185 by sections 1 and 2 of this**
17 **2019 Act apply to crimes committed on or after the effective date of this 2019 Act.**

18 **(2) The amendments to ORS 137.700 by section 1 of this 2019 Act apply only to a person**
19 **who was at least 18 years of age at the time the person committed the offense described in**
20 **ORS 163.185 (1)(d).**