

SB 704 STAFF MEASURE SUMMARY

Carrier: Sen. Wagner

**Senate Committee On Judiciary and Ballot Measure 110
Implementation**

Action Date: 03/25/21

Action: Do pass.

Vote: 4-3-0-0

Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski

Nays: 3 - Heard, Linthicum, Thatcher

Fiscal: No fiscal impact

Revenue: No revenue impact

Prepared By: Leslie Wu, Counsel

Meeting Dates: 3/4, 3/25

WHAT THE MEASURE DOES:

Provides that discovery of a victim’s actual or perceived gender, gender identity, gender expression or sexual orientation does not constitute a reasonable explanation for extreme emotional disturbance for purposes of asserting an affirmative defense to murder in the second degree. Provides that a person is not justified in using physical force upon other person if the person would not have used physical force but for discovery of the other person’s actual or perceived gender, gender identity, gender expression or sexual orientation.

ISSUES DISCUSSED:

- Gender identity motivated violence
- Affirmative defenses
- Application of extreme emotional disturbance defense
- Provisions of measure

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Under ORS 163.135 it is an affirmative defense to murder in the second degree that the homicide was committed under the influence of extreme emotional disturbance if the disturbance is not the result of the person’s own intentional, knowing, reckless or criminally negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the explanation for the disturbance must be determined from the standpoint of an ordinary person in the actor’s situation under the circumstances that the actor reasonably believed them to be. However, extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, the lesser included offense of manslaughter in the first degree or any other crime.

ORS 161.209 outlines circumstances under which a person is justified in using physical force upon another in defense of themselves or others. A person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

Senate Bill 704 prohibits a person from asserting a claim of self defense or extreme emotional disturbance based on the discovery of the victim’s actual or perceived gender, gender identity, or gender expression.