

# Senate Bill 304

Sponsored by Senator RILEY (at the request of Dave Pooser) (Pre-session 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**.

Provides that discovery of victim's actual or perceived gender, gender identity, gender expression or sexual orientation does not constitute reasonable explanation for extreme emotional disturbance for purposes of affirmative defense to murder in the second degree.

## A BILL FOR AN ACT

1  
2 Relating to prohibiting defenses based on certain characteristics of the victim; creating new pro-  
3 visions; and amending ORS 163.135.

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

5 **SECTION 1.** ORS 163.135 is amended to read:

6 163.135. (1) It is an affirmative defense to murder in the second degree for purposes of ORS  
7 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance  
8 if the disturbance is not the result of the person's own intentional, knowing, reckless or criminally  
9 negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the  
10 explanation for the disturbance must be determined from the standpoint of an ordinary person in the  
11 actor's situation under the circumstances that the actor reasonably believed them to be. Extreme  
12 emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction  
13 of, manslaughter in the first degree or any other crime.

14 (2)(a) The defendant may not introduce in the defendant's case in chief expert testimony re-  
15 garding extreme emotional disturbance under this section unless the defendant gives notice of the  
16 defendant's intent to do so.

17 [(3)] (b) The notice required must be in writing and must be filed at the time the defendant  
18 pleads not guilty. The defendant may file the notice at any time after the defendant pleads but be-  
19 fore trial if the court determines that there was just cause for failure to file the notice at the time  
20 of the defendant's plea.

21 [(4)] (c) If the defendant fails to file notice, the defendant may not introduce evidence for the  
22 purpose of proving extreme emotional disturbance under ORS 163.115 unless the court, in its dis-  
23 cretion, determines that there was just cause for failure to file notice.

24 [(5)] (3) After the defendant files notice as provided in **subsection (2)** of this section, the state  
25 may have at least one psychiatrist or licensed psychologist of its selection examine the defendant  
26 in the same manner and subject to the same provisions as provided in ORS 161.315.

27 (4) **The discovery of, knowledge about or potential disclosure of the victim's actual or**  
28 **perceived gender, gender identity, expression or sexual orientation, including but not limited**  
29 **to circumstances in which the victim made a romantic or sexual advance that was unwanted**  
30 **but did not involve force toward the defendant, does not constitute a reasonable explanation**  
31 **for an extreme emotional disturbance under this section.**

**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       (5) As used in this section, “gender identity” has the meaning given that term in ORS  
2       166.155.

3       SECTION 2. The amendments to ORS 163.135 by section 1 of this 2021 Act apply to con-  
4       duct occurring on or after the effective date of this 2021 Act.

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