

House Bill 3805

Sponsored by Representatives EDWARDS, LEVY B, OWENS; Representatives MANNIX, RESCHKE, Senator WEBER

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 murder in the second degree to include causing the death of an unborn child. (Flesch Readability Score: 70.1).

Expands the crime of murder in the second degree to include intentionally or knowingly engaging in unlawful conduct that causes the death of an unborn child.

A BILL FOR AN ACT

1
2 Relating to homicide; amending ORS 163.005 and 163.115.

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

4 **SECTION 1.** ORS 163.005 is amended to read:

5 163.005. (1) A person commits criminal homicide if[,]

6 (a) Without justification or excuse, the person intentionally, knowingly, recklessly or with
7 criminal negligence causes the death of another human being; **or**

8 (b) **The person intentionally or knowingly engages in unlawful conduct that causes the**
9 **death of an unborn child.**

10 (2) **As used in this section:**

11 (a) "Criminal homicide" is murder, manslaughter, criminally negligent homicide or aggravated
12 vehicular homicide.

13 [(3)] (b) "Human being" means a person who has been born and was alive at the time of the
14 criminal act.

15 (c) **"Unborn child" means a member of the species Homo sapiens at any stage of devel-**
16 **opment while carried in the womb.**

17 (3) **A person does not commit criminal homicide if the death is of an unborn child and**
18 **occurs:**

19 (a) **During a lawful abortion performed with the pregnant woman's consent to the**
20 **abortion or with the consent of a person authorized to act on the pregnant woman's behalf;**
21 **or**

22 (b) **As the result of acts committed by the pregnant woman.**

23 **SECTION 2.** ORS 163.115 is amended to read:

24 163.115. (1) Except as provided in ORS 163.095, 163.118 and 163.125, criminal homicide consti-
25 tutes murder in the second degree:

26 (a) When it is committed intentionally, except that it is an affirmative defense that, at the time
27 of the homicide, the defendant was under the influence of an extreme emotional disturbance;

28 (b) When it is committed by a person, acting either alone or with one or more persons, who
29 commits or attempts to commit any of the following crimes and in the course of and in furtherance

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 of the crime the person is committing or attempting to commit, or during the immediate flight
 2 therefrom, the person, or another participant if there be any, causes the death of a person other
 3 than one of the participants:

- 4 (A) Arson in the first degree as defined in ORS 164.325;
- 5 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;
- 6 (C) Burglary in the first degree as defined in ORS 164.225;
- 7 (D) Escape in the first degree as defined in ORS 162.165;
- 8 (E) Kidnapping in the second degree as defined in ORS 163.225;
- 9 (F) Kidnapping in the first degree as defined in ORS 163.235;
- 10 (G) Robbery in the first degree as defined in ORS 164.415;
- 11 (H) Any felony sexual offense in the first degree defined in this chapter;
- 12 (I) Compelling prostitution as defined in ORS 167.017; or
- 13 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
 14 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
 15 14 years of age; [or]

16 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
 17 the value of human life, causes the death of a child under 14 years of age or a dependent person,
 18 as defined in ORS 163.205, and:

19 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
 20 tim or another child under 14 years of age or a dependent person; or

21 (B) The person causes the death by neglect or maltreatment[.]; or

22 **(d) When a person intentionally or knowingly engages in unlawful conduct that causes**
 23 **the death of an unborn child.**

24 (2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
 25 need not allege specific incidents of assault or torture.

26 (3)(a) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that
 27 the defendant:

28 [(a)] (A) Was not the only participant in the underlying crime;

29 [(b)] (B) Did not commit the homicidal act or in any way solicit, request, command, importune,
 30 cause or aid in the commission thereof;

31 [(c)] (C) Was not armed with a dangerous or deadly weapon;

32 [(d)] (D) Had no reasonable ground to believe that any other participant was armed with a
 33 dangerous or deadly weapon; and

34 [(e)] (E) Had no reasonable ground to believe that any other participant intended to engage in
 35 conduct likely to result in death.

36 [(4)] (b) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section
 37 that the victim was a dependent person who was at least 18 years of age and was under care or
 38 treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent
 39 person or the guardian of the dependent person.

40 **(4) It is not a defense to a charge of violating subsection (1)(d) of this section that the**
 41 **defendant did not know or could not reasonably have known that the woman was pregnant.**

42 (5) Except as otherwise provided in ORS 144.397 and 163.155:

43 (a) A person convicted of murder in the second degree, who was at least 15 years of age at the
 44 time of committing the murder, shall be punished by imprisonment for life.

45 (b) When a defendant is convicted of murder in the second degree under this section, the court

1 shall order that the defendant shall be confined for a minimum of 25 years without possibility of
 2 parole, release to post-prison supervision, release on work release or any form of temporary leave
 3 or employment at a forest or work camp.

4 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
 5 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
 6 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
 7 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
 8 tated within a reasonable period of time. At the hearing the prisoner has:

9 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
 10 within a reasonable period of time;

11 (B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented
 12 by legal counsel, appointed by the board, at board expense; and

13 (C) The right to a subpoena upon a showing of the general relevance and reasonable scope of
 14 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by
 15 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

16 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board mem-
 17 bers or, if the chairperson requires all voting members to participate, a unanimous vote of all voting
 18 members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's
 19 confinement should be changed to life imprisonment with the possibility of parole, release to post-
 20 prison supervision or work release, it shall enter an order to that effect and the order shall convert
 21 the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release
 22 to post-prison supervision or work release and may set a release date. Otherwise, the board shall
 23 deny the relief sought in the petition.

24 (e) If the board denies the relief sought in the petition, the board shall determine the date of the
 25 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
 26 144.285.

27 (f) The board's final order shall be accompanied by findings of fact and conclusions of law. The
 28 findings of fact shall consist of a concise statement of the underlying facts supporting the findings
 29 as to each contested issue of fact and as to each ultimate fact required to support the board's order.

30 (6) As used in this section:

31 (a) "Assault" means the intentional, knowing or reckless causation of physical injury to another
 32 person. "Assault" does not include the causation of physical injury in a motor vehicle accident that
 33 occurs by reason of the reckless conduct of a defendant.

34 (b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure
 35 to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 36 welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to
 37 replace or affect the duty or standard of care required under ORS chapter 677.

38 (c) "Pattern or practice" means one or more previous episodes.

39 (d) "Torture" means the intentional infliction of intense physical pain upon an unwilling victim
 40 as a separate objective apart from any other purpose.

41 (e) **"Unborn child" has the meaning given that term in ORS 163.005.**

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