

Senate Bill 754

Sponsored by Senator METSGER, Representative WESTLUND; Senator MINNIS

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**.

Expands murder to include deaths caused by person fleeing or attempting to elude police officer or, under some circumstances, by person driving while under influence of intoxicants. Expands assault in first and second degrees to include injuries caused by person fleeing or attempting to elude police officer or, under some circumstances, by person driving while under influence of intoxicants.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 163.115, 163.175 and 163.185.

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

4 **SECTION 1.** ORS 163.115 is amended to read:

5 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:
6

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

9 (b) When it is committed by a person, acting either alone or with one or more persons, who
10 commits or attempts to commit any of the following crimes and in the course of and in furtherance
11 of the crime the person is committing or attempting to commit, or during the immediate flight
12 therefrom, the person, or another participant if there be any, causes the death of a person other
13 than one of the participants:

14 (A) Arson in the first degree as defined in ORS 164.325;

15 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

16 (C) Burglary in the first degree as defined in ORS 164.225;

17 (D) Escape in the first degree as defined in ORS 162.165;

18 (E) Kidnapping in the second degree as defined in ORS 163.225;

19 (F) Kidnapping in the first degree as defined in ORS 163.235;

20 (G) Robbery in the first degree as defined in ORS 164.415;

21 (H) Any felony sexual offense in the first degree defined in this chapter;

22 (I) Compelling prostitution as defined in ORS 167.017; [*or*]

23 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
24 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
25 14 years of age; or

26 **(K) Fleeing or attempting to elude a police officer as defined in ORS 811.540;**

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

30 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-

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 tim or another child under 14 years of age or a dependent person; or

2 (B) The person causes the death by neglect or maltreatment; or

3 **(d) When it is committed by a person who is driving while under the influence of**
4 **intoxicants and who previously:**

5 **(A) Has been convicted of driving while under the influence of intoxicants;**

6 **(B) Has been charged with driving while under the influence of intoxicants and is either**
7 **in diversion or has completed diversion under ORS 813.200 to 813.270; or**

8 **(C) Has been charged with driving while under the influence of intoxicants and has failed**
9 **to appear on the charge.**

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

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

14 (a) Was not the only participant in the underlying crime;

15 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
16 or aid in the commission thereof;

17 (c) Was not armed with a dangerous or deadly weapon;

18 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
19 or deadly weapon; and

20 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
21 duct likely to result in death.

22 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
23 the child or dependent person was under care or treatment solely by spiritual means pursuant to the
24 religious beliefs or practices of the child or person or the parent or guardian of the child or person.

25 (5)(a) A person convicted of murder, who was at least 15 years of age at the time of committing
26 the murder, shall be punished by imprisonment for life.

27 (b) When a defendant is convicted of murder under this section, the court shall order that the
28 defendant shall be confined for a minimum of 25 years without possibility of parole, release to
29 post-prison supervision, release on work release or any form of temporary leave or employment at
30 a forest or work camp.

31 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
32 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
33 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
34 within a reasonable period of time. The sole issue shall be whether or not the prisoner is likely to
35 be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the man-
36 ner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:

37 (A) The prisoner shall have the burden of proving by a preponderance of the evidence the like-
38 lihood of rehabilitation within a reasonable period of time; and

39 (B) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an
40 attorney, to be represented by legal counsel, appointed by the board, at board expense.

41 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
42 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement
43 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
44 vision or work release, it shall enter an order to that effect and the order shall convert the terms
45 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-

1 prison supervision or work release and may set a release date. Otherwise, the board shall deny the
 2 relief sought in the petition.

3 (e) Not less than two years after the denial of the relief sought in a petition under paragraph
 4 (c) of this subsection, the prisoner may petition again for a change in the terms of confinement.
 5 Further petitions for a change may be filed at intervals of not less than two years thereafter.

6 (6) As used in this section:

7 (a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another
 8 person. "Assault" does not include the causing of physical injury in a motor vehicle accident that
 9 occurs by reason of the reckless conduct of a defendant.

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

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

15 (d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a
 16 separate objective apart from any other purpose.

17 **SECTION 2.** ORS 163.175 is amended to read:

18 163.175. (1) A person commits the crime of assault in the second degree if the person:

19 (a) Intentionally or knowingly causes serious physical injury to another; *[or]*

20 (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dan-
 21 gerous weapon; *[or]*

22 (c) Recklessly causes serious physical injury to another by means of a deadly or dangerous
 23 weapon under circumstances manifesting extreme indifference to the value of human life;

24 **(d) Causes physical injury to another while in the course of or in furtherance of fleeing**
 25 **or attempting to elude a police officer as defined in ORS 811.540; or**

26 **(e) Causes physical injury to another while driving while under the influence of**
 27 **intoxicants and previously has been:**

28 **(A) Convicted of driving while under the influence of intoxicants;**

29 **(B) Charged with driving while under the influence of intoxicants and is either in diver-**
 30 **sion or has completed diversion under ORS 813.200 to 813.270; or**

31 **(C) Charged with driving while under the influence of intoxicants and has failed to appear**
 32 **on the charge.**

33 (2) Assault in the second degree is a Class B felony.

34 **SECTION 3.** ORS 163.185 is amended to read:

35 163.185. (1) A person commits the crime of assault in the first degree if the person:

36 (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous
 37 weapon;

38 **(b) Causes serious physical injury to another while in the course of or in furtherance of**
 39 **fleeing or attempting to elude a police officer as defined in ORS 811.540; or**

40 **(c) Causes serious physical injury to another while driving while under the influence of**
 41 **intoxicants and previously has been:**

42 **(A) Convicted of driving while under the influence of intoxicants;**

43 **(B) Charged with driving while under the influence of intoxicants and is either in diver-**
 44 **sion or has completed diversion under ORS 813.200 to 813.270; or**

45 **(C) Charged with driving while under the influence of intoxicants and has failed to appear**

1 **on the charge.**

2 (2) Assault in the first degree is a Class A felony.

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