

House Bill 2802

Sponsored by Representative NELSON

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 criminal homicide to include causing death of unborn child. Provides exceptions for lawful abortions and acts committed by pregnant woman.

Creates crime of assault of unborn child. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

A BILL FOR AN ACT

1
2 Relating to establishing unborn child as legal victim of crime that results in harm to unborn child;
3 creating new provisions; and amending ORS 163.005, 163.095, 163.115, 163.118, 163.125 and
4 163.145.

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

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

7 163.005. (1) **As used in this section:**

8 (a) **"Criminal homicide" is murder, manslaughter or criminally negligent homicide.**

9 (b) **"Human being" means:**

10 (A) **A person who has been born and was alive at the time of the criminal act; and**

11 (B) **An unborn child.**

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

14 [(1)] (2) **A person commits criminal homicide if, without justification or excuse, the person in-**
15 **tentionally, knowingly, recklessly or with criminal negligence causes the death of another human**
16 **being.**

17 [(2)] *"Criminal homicide" is murder, manslaughter or criminally negligent homicide.*]

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

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

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

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

26 (4) **In a prosecution for a criminal homicide involving the death of an unborn child, it is**
27 **no defense that the defendant did not know or could not reasonably have known that the**
28 **woman was pregnant.**

29 **SECTION 2.** ORS 163.095 is amended to read:

30 163.095. (1) **As used in ORS 163.105 and this section, "aggravated murder" means murder as**

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 defined in ORS 163.115 which is committed under, or accompanied by, any of the following circum-
 2 stances:

3 [(1)](a) The defendant committed the murder pursuant to an agreement that the defendant re-
 4 ceive money or other thing of value for committing the murder.

5 (b) The defendant solicited another to commit the murder and paid or agreed to pay the person
 6 money or other thing of value for committing the murder.

7 (c) The defendant committed murder after having been convicted previously in any jurisdiction
 8 of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115
 9 or manslaughter in the first degree as defined in ORS 163.118.

10 (d) There was more than one murder victim in the same criminal episode as defined in ORS
 11 131.505.

12 (e) The homicide occurred in the course of or as a result of intentional maiming or torture of
 13 the victim.

14 (f) The victim of the intentional homicide was a [person] **human being** under the age of 14
 15 years.

16 [(2)](a) (g) The victim was one of the following and the murder was related to the performance
 17 of the victim's official duties in the justice system:

18 (A) A police officer as defined in ORS 181.610;

19 (B) A correctional, parole and probation officer or other person charged with the duty of cus-
 20 tody, control or supervision of convicted persons;

21 (C) A member of the Oregon State Police;

22 (D) A judicial officer as defined in ORS 1.210;

23 (E) A juror or witness in a criminal proceeding;

24 (F) An employee or officer of a court of justice; or

25 (G) A member of the State Board of Parole and Post-Prison Supervision.

26 [(b)] (h) The defendant was confined in a state, county or municipal penal or correctional facil-
 27 ity or was otherwise in custody when the murder occurred.

28 [(c)] (i) The defendant committed murder by means of an explosive as defined in ORS 164.055.

29 [(d)] (j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally commit-
 30 ted the homicide under the circumstances set forth in ORS 163.115 (1)(b).

31 [(e)] (k) The murder was committed in an effort to conceal the commission of a crime, or to
 32 conceal the identity of the perpetrator of a crime.

33 [(f)] (L) The murder was committed after the defendant had escaped from a state, county or
 34 municipal penal or correctional facility and before the defendant had been returned to the custody
 35 of the facility.

36 (2) **As used in this section, "human being" has the meaning given that term in ORS**
 37 **163.005.**

38 **SECTION 3.** ORS 163.115 is amended to read:

39 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-
 40 der:

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

43 (b) When it is committed by a person, acting either alone or with one or more persons, who
 44 commits or attempts to commit any of the following crimes and in the course of and in furtherance
 45 of the crime the person is committing or attempting to commit, or during the immediate flight

1 therefrom, the person, or another participant if there be any, causes the death of a [*person*] **human**
 2 **being** other than one of the participants:

- 3 (A) Arson in the first degree as defined in ORS 164.325;
- 4 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;
- 5 (C) Burglary in the first degree as defined in ORS 164.225;
- 6 (D) Escape in the first degree as defined in ORS 162.165;
- 7 (E) Kidnapping in the second degree as defined in ORS 163.225;
- 8 (F) Kidnapping in the first degree as defined in ORS 163.235;
- 9 (G) Robbery in the first degree as defined in ORS 164.415;
- 10 (H) Any felony sexual offense in the first degree defined in this chapter;
- 11 (I) Compelling prostitution as defined in ORS 167.017; or

12 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is a **human being**
 13 under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and
 14 the victim is a **human being** under 14 years of age; or

15 (c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to
 16 the value of human life, causes the death of a [*child*] **human being** under 14 years of age or a de-
 17 pendent person, as defined in ORS 163.205, and:

- 18 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
 19 tim or another [*child*] **human being** under 14 years of age or a dependent person; or
- 20 (B) The person causes the death by neglect or maltreatment.

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

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

- 25 (a) Was not the only participant in the underlying crime;
- 26 (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause
 27 or aid in the commission thereof;
- 28 (c) Was not armed with a dangerous or deadly weapon;
- 29 (d) Had no reasonable ground to believe that any other participant was armed with a dangerous
 30 or deadly weapon; and
- 31 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
 32 duct likely to result in death.

33 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
 34 the [*child or dependent person*] **victim** was under care or treatment solely by spiritual means pur-
 35 suant to the religious beliefs or practices of the [*child or person*] **victim** or the parent or guardian
 36 of the [*child or person*] **victim**.

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

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

43 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
 44 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
 45 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated

1 within a reasonable period of time. The sole issue shall be whether or not the prisoner is likely to
 2 be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the man-
 3 ner prescribed for a contested case hearing under ORS chapter 183 except that:

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

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

8 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
 9 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner’s confinement
 10 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
 11 vision or work release, it shall enter an order to that effect and the order shall convert the terms
 12 of the prisoner’s confinement to life imprisonment with the possibility of parole, release to post-
 13 prison supervision or work release and may set a release date. Otherwise, the board shall deny the
 14 relief sought in the petition.

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

18 (6) As used in this section:

19 (a) “Assault” means to intentionally, knowingly or recklessly cause physical injury to another
 20 person. “Assault” does not include the causing of physical injury in a motor vehicle accident that
 21 occurs by reason of the reckless conduct of a defendant.

22 (b) **“Human being” has the meaning given that term in ORS 163.005.**

23 [(b)] (c) “Neglect or maltreatment” means a violation of ORS 163.535, 163.545 or 163.547 or a
 24 failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the
 25 health or welfare of a [child] **human being** under 14 years of age or a dependent person. This par-
 26 agraph is not intended to replace or affect the duty or standard of care required under ORS chapter
 27 677.

28 [(c)] (d) “Pattern or practice” means one or more previous episodes.

29 [(d)] (e) “Torture” means to intentionally inflict intense physical pain upon an unwilling victim
 30 as a separate objective apart from any other purpose.

31 **SECTION 4.** ORS 163.118 is amended to read:

32 163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

33 (a) It is committed recklessly under circumstances manifesting extreme indifference to the value
 34 of human life;

35 (b) It is committed intentionally by a defendant under the influence of extreme emotional dis-
 36 turbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the
 37 homicide that would otherwise be murder to manslaughter in the first degree and need not be proved
 38 in any prosecution; or

39 (c) A person recklessly causes the death of a [child] **human being** under 14 years of age or a
 40 dependent person, as defined in ORS 163.205, and:

41 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
 42 tim or another [child] **human being** under 14 years of age or a dependent person; or

43 (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.

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

45 (3) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that

1 the *[child or dependent person]* **victim** was under care or treatment solely by spiritual means pur-
2 suant to the religious beliefs or practices of the *[child or person]* **victim** or the parent or guardian
3 of the *[child or person]* **victim**.

4 (4) **As used in this section, “human being” has the meaning given that term in ORS**
5 **163.005.**

6 **SECTION 5.** ORS 163.125 is amended to read:

7 163.125. (1) Criminal homicide constitutes manslaughter in the second degree when:

8 (a) It is committed recklessly;

9 (b) A person intentionally causes or aids another person to commit suicide; or

10 (c) A person, with criminal negligence, causes the death of a *[child]* **human being** under 14
11 years of age or a dependent person, as defined in ORS 163.205, and:

12 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-
13 tim or another *[child]* **human being** under 14 years of age or a dependent person; or

14 (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.

15 (2) Manslaughter in the second degree is a Class B felony.

16 (3) **As used in this section, “human being” has the meaning given that term in ORS**
17 **163.005.**

18 **SECTION 6.** ORS 163.145 is amended to read:

19 163.145. (1) *[A person commits the crime of]* **Criminal homicide constitutes** criminally negligent
20 homicide when[,] **it is committed** with criminal negligence[, *the person causes the death of another*
21 *person*].

22 (2) Criminally negligent homicide is a Class B felony.

23 **SECTION 7.** **Section 8 of this 2007 Act is added to and made a part of ORS 163.160 to**
24 **163.208.**

25 **SECTION 8.** (1) **A person commits the crime of assault of an unborn child if the person**
26 **knowingly causes physical injury to the mother of an unborn child without the mother’s**
27 **consent and by causing physical injury to the mother:**

28 (a) **Causes serious physical injury to the unborn child; or**

29 (b) **Causes the unborn child to be born prior to 37 weeks’ gestation and the child weighs**
30 **2,500 grams or less at the time of birth.**

31 (2) **Assault of an unborn child is a class B felony.**

32 (3) **In a prosecution under this section, it is no defense that the defendant did not know**
33 **or could not reasonably have known that the woman was pregnant.**

34 (4) **As used in this section, “unborn child” has the meaning given that term in ORS**
35 **163.005.**

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