

Enrolled
House Bill 3505

Sponsored by Representative BARKER, Senator STARR; Representatives BAILEY, BARTON, BENTZ, BERGER, BEYER, BRUUN, BUCKLEY, CAMERON, CLEM, COWAN, C EDWARDS, D EDWARDS, ESQUIVEL, FREEMAN, GARRARD, GARRETT, GELSER, GILLIAM, HANNA, HOLVEY, HUNT, JENSON, KAHL, KENNEMER, KRIEGER, MATTHEWS, MAURER, NATHANSON, NOLAN, OLSON, READ, RICHARDSON, RILEY, ROBLAN, SCHAUFLE, SHIELDS, G SMITH, J SMITH, SPRENGER, STIEGLER, THATCHER, THOMPSON, VANORMAN, WEIDNER, WHISNANT, WINGARD, Senators BOQUIST, DEVLIN, HASS, SCHRADER, VERGER, WHITSETT, WINTERS (at the request of Chris Popp in memory of John Stephen Popp and Heather Snively)

CHAPTER

AN ACT

Relating to crime; creating new provisions; and amending ORS 163.115, 163.160 and 163.185.

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

SECTION 1. ORS 163.115 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5)(a) **Except as otherwise provided in section 1a of this 2009 Act**, a person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

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

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether [*or not*] the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; [*and*]

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

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

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

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

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

(6) As used in this section:

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

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

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

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

SECTION 1a. (1) When a defendant, who was at least 15 years of age at the time of committing the murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in subsection (4) of this section or to life imprisonment as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modified by this section.

(2) Following the presentation of evidence and argument under subsection (1) of this section, the court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section, unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole as described in subsection (5) of this section. If 10 or more members of the jury do not find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section. If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment as described in subsection (5) of this section.

(3) Nothing in this section precludes the court from sentencing the defendant to life imprisonment, as described in subsection (5) of this section, or life imprisonment without the possibility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) A sentence of life imprisonment without the possibility of release or parole under this section may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant be confined for a minimum of 30 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(6) At any time after completion of the minimum period of confinement pursuant to subsection (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable

period of time. The sole issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS chapter 183, except that:

(a) The prisoner has the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

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

(c) The prisoner has the right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the board pursuant to rules adopted by the board.

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

(8) Not less than two years after the denial of the relief sought in a petition under this section, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

SECTION 2. ORS 163.185 is amended to read:

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

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

(b) Intentionally or knowingly causes serious physical injury to a child under six years of age;

(c) **Violates ORS 163.175 knowing that the victim is pregnant;** or

[(c)] (d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection [(1)(c)(B)] (1)(d)(B) of this section apply are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125;

(c) Criminally negligent homicide under ORS 163.145;

(d) Assault in the first degree under this section;

(e) Assault in the second degree under ORS 163.175; or

(f) Assault in the third degree under ORS 163.165.

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

(4) It is an affirmative defense to a prosecution under subsection [(1)(c)(B)] (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

SECTION 3. ORS 163.160 is amended to read:

163.160. (1) A person commits the crime of assault in the fourth degree if the person:

(a) Intentionally, knowingly or recklessly causes physical injury to another; or

(b) With criminal negligence causes physical injury to another by means of a deadly weapon.

(2) Assault in the fourth degree is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:

(a) The person has previously been convicted of assaulting the same victim;

(b) The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined in ORS 135.230; [or]

(c) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; or

(d) The person commits the assault knowing that the victim is pregnant.

(4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

SECTION 4. Section 1a of this 2009 Act and the amendments to ORS 163.115, 163.160 and 163.185 by sections 1, 2 and 3 of this 2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.

Passed by House June 24, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 25, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State