

A-Engrossed
House Bill 3505

Ordered by the House June 23
Including House Amendments dated June 23

Sponsored by Representative BARKER, Senator STARR; Representatives BARTON, MATTHEWS, MAURER, NATHANSON, OLSON, RICHARDSON, SCHAUFLEER, WEIDNER, Senators BOQUIST, HASS, SCHRADER, VERGER, WHITSETT (at the request of Chris Popp in memory of John Stephen Popp and Heather Snively)

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.

[Classifies crime of murder as aggravated murder if defendant knows victim is pregnant.]

Classifies crime of assault in second degree as assault in first degree if defendant knows victim is pregnant.

Punishes crime of assault in fourth degree as Class C felony if defendant knows victim is pregnant.

Requires defendant who is convicted of murdering pregnant victim, who is at least 15 years of age at time of committing murder and who knew that victim was pregnant to be sentenced to either life imprisonment without possibility of release or parole or life imprisonment. Creates procedure by which sentence is determined. Specifies terms of each sentence.

Applies to conduct occurring on or after effective date of Act.

A BILL FOR 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

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 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
2 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
3 14 years of age; or

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

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

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

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

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

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

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

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

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

44 (d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
45 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement

1 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
2 vision or work release, it shall enter an order to that effect and the order shall convert the terms
3 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-
4 prison supervision or work release and may set a release date. Otherwise, the board shall deny the
5 relief sought in the petition.

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

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

12 (6) As used in this section:

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

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

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

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

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

34 **(2) Following the presentation of evidence and argument under subsection (1) of this**
35 **section, the court shall instruct the jury that the trial court shall sentence the defendant**
36 **to life imprisonment without the possibility of release or parole as described in subsection**
37 **(4) of this section, unless after considering all of the evidence submitted, 10 or more mem-**
38 **bers of the jury find there are sufficient mitigating circumstances to warrant life**
39 **imprisonment with the possibility of release or parole as described in subsection (5) of this**
40 **section. If 10 or more members of the jury do not find there are sufficient mitigating cir-**
41 **cumstances to warrant life imprisonment with the possibility of release or parole, the trial**
42 **court shall sentence the defendant to life imprisonment without the possibility of release or**
43 **parole as described in subsection (4) of this section. If 10 or more members of the jury find**
44 **there are sufficient mitigating circumstances to warrant life imprisonment with the possi-**
45 **bility of release or parole, the trial court shall sentence the defendant to life imprisonment**

1 as described in subsection (5) of this section.

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

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

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

17 (6) At any time after completion of the minimum period of confinement pursuant to
18 subsection (5) of this section, the board, upon the petition of a prisoner so confined, shall
19 hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable
20 period of time. The sole issue shall be whether the prisoner is likely to be rehabilitated within
21 a reasonable period of time. The proceeding shall be conducted in the manner prescribed for
22 a contested case hearing under ORS chapter 183, except that:

23 (a) The prisoner has the burden of proving by a preponderance of the evidence the like-
24 lihood of rehabilitation within a reasonable period of time;

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

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

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

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

40 **SECTION 2.** ORS 163.185 is amended to read:

41 163.185. (1) A person commits the crime of assault in the first degree if the person:

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

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

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

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

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

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

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

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

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

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

13 (c) Criminally negligent homicide under ORS 163.145;

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

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

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

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

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

21 **SECTION 3.** ORS 163.160 is amended to read:

22 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

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

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

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

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

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

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

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

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

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

38 **SECTION 4. Section 1a of this 2009 Act and the amendments to ORS 163.115, 163.160 and**
39 **163.185 by sections 1, 2 and 3 of this 2009 Act apply to conduct occurring on or after the ef-**
40 **fective date of this 2009 Act.**