

HOUSE AMENDMENTS TO HOUSE BILL 3505

By COMMITTEE ON RULES

June 23

- 1 On page 1 of the printed bill, line 2, delete “163.095” and insert “163.115”.
- 2 Delete lines 4 through 28.
- 3 On page 2, delete lines 1 through 11 and insert:
- 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
- 6 murder:
- 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 “(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference
- 27 to the value of human life, causes the death of a child under 14 years of age or a dependent person,
- 28 as defined in ORS 163.205, and:
- 29 “(A) The person has previously engaged in a pattern or practice of assault or torture of the
- 30 victim or another child under 14 years of age or a dependent person; or
- 31 “(B) The person causes the death by neglect or maltreatment.
- 32 “(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section
- 33 need not allege specific incidents of assault or torture.
- 34 “(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the
- 35 defendant:

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

2 “(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause

3 or aid in the commission thereof;

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

5 “(d) Had no reasonable ground to believe that any other participant was armed with a danger-

6 ous or deadly weapon; and

7 “(e) Had no reasonable ground to believe that any other participant intended to engage in con-

8 duct likely to result in death.

9 “(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that

10 the child or dependent person was under care or treatment solely by spiritual means pursuant to the

11 religious beliefs or practices of the child or person or the parent or guardian of the child or person.

12 “(5)(a) **Except as otherwise provided in section 1a of this 2009 Act**, a person convicted of

13 murder, who was at least 15 years of age at the time of committing the murder, shall be punished

14 by imprisonment for life.

15 “(b) When a defendant is convicted of murder under this section, the court shall order that the

16 defendant shall be confined for a minimum of 25 years without possibility of parole, release to

17 post-prison supervision, release on work release or any form of temporary leave or employment at

18 a forest or work camp.

19 “(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)

20 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a

21 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated

22 within a reasonable period of time. The sole issue is whether [*or not*] the prisoner is likely to be

23 rehabilitated within a reasonable period of time. At the hearing the prisoner has:

24 “(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation

25 within a reasonable period of time; [*and*]

26 “(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be repres-

27 ented by legal counsel, appointed by the board, at board expense; and

28 “(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of

29 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by

30 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

31 “(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,

32 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner’s confinement

33 should be changed to life imprisonment with the possibility of parole, release to post-prison super-

34 vision or work release, it shall enter an order to that effect and the order shall convert the terms

35 of the prisoner’s confinement to life imprisonment with the possibility of parole, release to post-

36 prison supervision or work release and may set a release date. Otherwise, the board shall deny the

37 relief sought in the petition.

38 “(e) The board’s final order shall be accompanied by findings of fact and conclusions of law. The

39 findings of fact shall consist of a concise statement of the underlying facts supporting the findings

40 as to each contested issue of fact and as to each ultimate fact required to support the board’s order.

41 “(f) Not less than two years after the denial of the relief sought in a petition under paragraph

42 (c) of this subsection, the prisoner may petition again for a change in the terms of confinement.

43 Further petitions for a change may be filed at intervals of not less than two years thereafter.

44 “(6) As used in this section:

45 “(a) ‘Assault’ means to intentionally, knowingly or recklessly cause physical injury to another

1 person. 'Assault' does not include the causing of physical injury in a motor vehicle accident that
2 occurs by reason of the reckless conduct of a defendant.

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

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

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

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

21 **"(2) Following the presentation of evidence and argument under subsection (1) of this**
22 **section, the court shall instruct the jury that the trial court shall sentence the defendant**
23 **to life imprisonment without the possibility of release or parole as described in subsection**
24 **(4) of this section, unless after considering all of the evidence submitted, 10 or more mem-**
25 **bers of the jury find there are sufficient mitigating circumstances to warrant life**
26 **imprisonment with the possibility of release or parole as described in subsection (5) of this**
27 **section. If 10 or more members of the jury do not find there are sufficient mitigating cir-**
28 **cumstances to warrant life imprisonment with the possibility of release or parole, the trial**
29 **court shall sentence the defendant to life imprisonment without the possibility of release or**
30 **parole as described in subsection (4) of this section. If 10 or more members of the jury find**
31 **there are sufficient mitigating circumstances to warrant life imprisonment with the possi-**
32 **bility of release or parole, the trial court shall sentence the defendant to life imprisonment**
33 **as described in subsection (5) of this section.**

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

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

45 **"(5) If the defendant is sentenced to life imprisonment, the court shall order that the**

1 defendant be confined for a minimum of 30 years without possibility of parole, release to
2 post-prison supervision, release on work release or any form of temporary leave or employ-
3 ment at a forest or work camp.

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

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

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

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

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

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

27 On page 3, delete lines 10 and 11 and insert:

28 “SECTION 4. Section 1a of this 2009 Act and the amendments to ORS 163.115, 163.160 and
29 163.185 by sections 1, 2 and 3 of this 2009 Act apply to conduct occurring on or after the ef-
30 fective date of this 2009 Act.”.

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