

# Senate Bill 836

Sponsored by Senator STARR

## 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**.

Provides defense to manslaughter in second degree, criminal nonsupport and criminal mistreatment in first and second degrees if child or dependent person resides with parent or guardian and is under care or treatment solely by spiritual means.

## A BILL FOR AN ACT

1  
2 Relating to spiritual treatment; creating new provisions; and amending ORS 163.125, 163.206 and  
3 163.555.

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

5 **SECTION 1.** ORS 163.125 is amended to read:

6 163.125. (1) Criminal homicide constitutes manslaughter in the second degree when:

7 (a) It is committed recklessly;

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

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

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

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

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

15 **(3) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section**  
16 **that the child or dependent person was residing with a parent or guardian and was under**  
17 **care or treatment solely by spiritual means pursuant to the religious beliefs or practices of**  
18 **the child or person or the parent or guardian of the child or person.**

19 **SECTION 2.** ORS 163.555 is amended to read:

20 163.555. (1) A person commits the crime of criminal nonsupport if, being the parent, lawful  
21 guardian or other person lawfully charged with the support of a child under 18 years of age, born  
22 in or out of wedlock, the person knowingly fails to provide support for such child.

23 (2) It is no defense to a prosecution under this section that either parent has contracted a sub-  
24 sequent marriage, that issue has been born of a subsequent marriage, that the defendant is the  
25 parent of issue born of a prior marriage or that the child is being supported by another person or  
26 agency.

27 (3) It is an affirmative defense to a prosecution under this section:

28 (a) That the defendant has a lawful excuse for failing to provide child support.

29 **(b) For failing to provide necessary and proper medical attention, that the child was re-**  
30 **siding with a parent or lawful guardian and was under care or treatment solely by spiritual**  
31 **means pursuant to the religious beliefs or practices of the child or the parent or guardian**

**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 **of the child.**

2 (4) If the defendant intends to rely on *[the]* **an** affirmative defense created in subsection (3) of  
3 this section, the defendant must give the district attorney written notice of the intent to do so at  
4 least 30 days prior to trial. The notice must describe the nature of the lawful excuse upon which  
5 the defendant proposes to rely. If the defendant fails to file notice as required by this subsection,  
6 the defendant may not introduce evidence of a lawful excuse unless the court finds there was just  
7 cause for the defendant's failure to file the notice within the required time.

8 (5) Criminal nonsupport is a Class C felony.

9 **SECTION 3.** ORS 163.206 is amended to read:

10 163.206. ORS 163.200 and 163.205 do not apply:

11 (1) To a person acting pursuant to a court order, an advance directive or a power of attorney  
12 for health care pursuant to ORS 127.505 to 127.660;

13 (2) To a person withholding or withdrawing life-sustaining procedures or artificially adminis-  
14 tered nutrition and hydration pursuant to ORS 127.505 to 127.660;

15 (3) When a competent person refuses food, physical care or medical care;

16 (4) To a person who provides an elderly person or a dependent person who is at least *[15]* **18**  
17 years of age **and resides with a parent or guardian** with spiritual treatment through prayer from  
18 a duly accredited practitioner of spiritual treatment as provided in ORS 124.095, in lieu of medical  
19 treatment, in accordance with the tenets and practices of a recognized church or religious denomi-  
20 nation of which the elderly or dependent person is a member or an adherent; or

21 (5) To a duly accredited practitioner of spiritual treatment as provided in ORS 124.095.

22 **SECTION 4. The amendments to ORS 163.125, 163.206 and 163.555 by sections 1 to 3 of this**  
23 **2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.**

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