

House Bill 2721

Sponsored by Representatives TOMEI, HUNT, GREENLICK; Representatives BARKER, DOHERTY, FREDERICK, GELSER, HARKER, READ (Presession filed.)

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**.

Eliminates reliance on spiritual treatment as defense to certain crimes in which victim is under 18 years of age. Modifies effect of reliance on spiritual treatment in determining whether youth is subject to juvenile court's dependency jurisdiction.

A BILL FOR AN ACT

1
2 Relating to spiritual treatment; creating new provisions; and amending ORS 137.712, 163.115, 163.118,
3 163.206 and 419B.100.

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

5 **SECTION 1.** ORS 163.115 is amended to read:

6 163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes mur-
7 der:

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

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

15 (A) Arson in the first degree as defined in ORS 164.325;

16 (B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

17 (C) Burglary in the first degree as defined in ORS 164.225;

18 (D) Escape in the first degree as defined in ORS 162.165;

19 (E) Kidnapping in the second degree as defined in ORS 163.225;

20 (F) Kidnapping in the first degree as defined in ORS 163.235;

21 (G) Robbery in the first degree as defined in ORS 164.415;

22 (H) Any felony sexual offense in the first degree defined in this chapter;

23 (I) Compelling prostitution as defined in ORS 167.017; or

24 (J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of
25 age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under
26 14 years of age; or

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

30 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-

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 tim or another child under 14 years of age or a dependent person; or

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

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

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

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

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

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

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

13 (e) Had no reasonable ground to believe that any other participant intended to engage in con-
14 duct likely to result in death.

15 (4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that
16 the [*child or*] **victim was a dependent person who was at least 18 years of age and** was under care
17 or treatment solely by spiritual means pursuant to the religious beliefs or practices of the [*child*
18 *or*] **dependent** person or the [*parent or*] guardian of the [*child or*] **dependent** person.

19 (5)(a) Except as otherwise provided in ORS 163.155, a person convicted of murder, who was at
20 least 15 years of age at the time of committing the murder, shall be punished by imprisonment for
21 life.

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

26 (c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
27 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
28 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
29 within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabili-
30 tated within a reasonable period of time. At the hearing the prisoner has:

31 (A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
32 within a reasonable period of time;

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

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

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

45 (e) If the board denies the relief sought in the petition, the board shall determine the date of the

1 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
 2 144.285.

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

6 (6) As used in this section:

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

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

14 (c) “Pattern or practice” means one or more previous episodes.

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

17 **SECTION 2.** ORS 163.118 is amended to read:

18 163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

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

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

25 (c) A person recklessly causes the death of a child under 14 years of age or a dependent person,
 26 as defined in ORS 163.205, and:

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

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

30 (d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle
 31 while under the influence of intoxicants in violation of ORS 813.010 and:

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

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

37 (ii) The victim’s serious physical injury in the previous conviction was caused by the person
 38 driving a motor vehicle.

39 (2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

40 (a) Assault in the first degree under ORS 163.185;

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

42 (c) Assault in the third degree under ORS 163.165.

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

44 (4) It is an affirmative defense to a charge of violating:

45 (a) Subsection (1)(c)(B) of this section that the [*child or*] **victim was a dependent person who**

1 **was at least 18 years of age and** was under care or treatment solely by spiritual means pursuant
 2 to the religious beliefs or practices of the [*child or*] **dependent** person or the [*parent or*] guardian
 3 of the [*child or*] **dependent** person.

4 (b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of
 5 intoxicants at the time of the conduct that resulted in the previous conviction.

6 **SECTION 3.** ORS 137.712 is amended to read:

7 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
 8 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
 9 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
 10 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
 11 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
 12 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
 13 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
 14 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
 15 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
 16 of this section and finds that a substantial and compelling reason under the rules of the Oregon
 17 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
 18 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
 19 any other statute.

20 (b) In order to make a dispositional departure under this section, the court must make the fol-
 21 lowing additional findings on the record:

22 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this
 23 subsection;

24 (B) A sentence of probation will be more effective than a prison term in reducing the risk of
 25 offender recidivism; and

26 (C) A sentence of probation will better serve to protect society.

27 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on
 28 the record by a preponderance of the evidence:

29 (a) If the conviction is for manslaughter in the second degree:

30 (A) **That the victim was a dependent person as defined in ORS 163.205 who was at least**
 31 **18 years of age;**

32 [(A)] (B) That the defendant is the mother or father of the victim;

33 [(B)] (C) That the death of the victim was the result of an injury or illness that was not caused
 34 by the defendant;

35 [(C)] (D) That the defendant treated the injury or illness solely by spiritual treatment in ac-
 36 cordance with the religious beliefs or practices of the defendant and based on a good faith belief
 37 that spiritual treatment would bring about the victim's recovery from the injury or illness;

38 [(D)] (E) That no other person previously under the defendant's care has died or sustained sig-
 39 nificant physical injury as a result of or despite the use of spiritual treatment, regardless of whether
 40 the spiritual treatment was used alone or in conjunction with medical care; and

41 [(E)] (F) That the defendant does not have a previous conviction for a crime listed in subsection
 42 (4) of this section or for criminal mistreatment in the second degree.

43 (b) If the conviction is for assault in the second degree:

44 (A) That the victim was not physically injured by means of a deadly weapon;

45 (B) That the victim did not suffer a significant physical injury; and

1 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)
2 of this section.

3 (c) If the conviction is for kidnapping in the second degree:

4 (A) That the victim was at least 12 years of age at the time the crime was committed; and

5 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
6 of this section.

7 (d) If the conviction is for robbery in the second degree:

8 (A) That the victim did not suffer a significant physical injury;

9 (B) That, if the defendant represented by words or conduct that the defendant was armed with
10 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
11 nificant physical injury;

12 (C) That, if the defendant represented by words or conduct that the defendant was armed with
13 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
14 injury; and

15 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
16 of this section.

17 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
18 abuse in the first degree:

19 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the
20 offense;

21 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
22 this section;

23 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
24 court for an act that would have been a felony sexual offense if the act had been committed by an
25 adult;

26 (D) That the defendant was no more than five years older than the victim at the time of the
27 offense;

28 (E) That the offense did not involve sexual contact with any minor other than the victim; and

29 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
30 under 18 years of age at the time of the offense.

31 (f) If the conviction is for unlawful sexual penetration in the second degree:

32 (A) That the victim was 12 years of age or older at the time of the offense;

33 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
34 this section;

35 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
36 court for an act that would have been a felony sexual offense if the act had been committed by an
37 adult;

38 (D) That the defendant was no more than five years older than the victim at the time of the
39 offense;

40 (E) That the offense did not involve sexual contact with any minor other than the victim;

41 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
42 under 18 years of age at the time of the offense; and

43 (G) That the object used to commit the unlawful sexual penetration was the hand or any part
44 thereof of the defendant.

45 (3) In making the findings required by subsections (1) and (2) of this section, the court may

1 consider any evidence presented at trial and may receive and consider any additional relevant in-
 2 formation offered by either party at sentencing.

3 (4) The crimes to which subsection [(2)(a)(E)] **(2)(a)(F)**, (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of
 4 this section refer are:

- 5 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);
- 6 (b) Escape in the first degree, as defined in ORS 162.165;
- 7 (c) Aggravated murder, as defined in ORS 163.095;
- 8 (d) Criminally negligent homicide, as defined in ORS 163.145;
- 9 (e) Assault in the third degree, as defined in ORS 163.165;
- 10 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
- 11 (g) Rape in the third degree, as defined in ORS 163.355;
- 12 (h) Sodomy in the third degree, as defined in ORS 163.385;
- 13 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
- 14 (j) Stalking, as defined in ORS 163.732;
- 15 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 16 felony under the rules of the Oregon Criminal Justice Commission;
- 17 (L) Arson in the first degree, as defined in ORS 164.325;
- 18 (m) Robbery in the third degree, as defined in ORS 164.395;
- 19 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 20 (o) Promoting prostitution, as defined in ORS 167.012; and
- 21 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 22 of this subsection.

23 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
 24 violates a condition of probation by committing a new crime, the court shall revoke the probation
 25 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
 26 tice Commission.

27 (6) As used in this section:

28 (a) “Conviction” includes, but is not limited to:

29 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
 30 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 31 that brought the person within the jurisdiction of the juvenile court. “Conviction” does not include
 32 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
 33 defense set forth in ORS 419C.522.

34 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
 35 stitute a crime listed in subsection (4) of this section.

36 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the
 37 current crime provided that the prior conviction is based on a crime committed in a separate crim-
 38 inal episode. “Previous conviction” does not include a conviction for a Class C felony, including an
 39 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
 40 entered within the 10-year period immediately preceding the date on which the current crime was
 41 committed.

42 (c) “Significant physical injury” means a physical injury that:

- 43 (A) Creates a risk of death that is not a remote risk;
- 44 (B) Causes a serious and temporary disfigurement;
- 45 (C) Causes a protracted disfigurement; or

1 (D) Causes a prolonged impairment of health or the function of any bodily organ.

2 **SECTION 4.** ORS 163.206 is amended to read:

3 163.206. ORS 163.200 and 163.205 do not apply:

4 (1) To a person acting pursuant to a court order, an advance directive or a power of attorney
5 for health care pursuant to ORS 127.505 to 127.660 or a POLST, as defined in ORS 127.663;

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

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

9 (4) To a person who provides an elderly person or a dependent person who is at least [15] 18
10 years of age with spiritual treatment through prayer from a duly accredited practitioner of spiritual
11 treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets
12 and practices of a recognized church or religious denomination of which the elderly or dependent
13 person is a member or an adherent; or

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

15 **SECTION 5.** ORS 419B.100 is amended to read:

16 419B.100. (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the
17 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18
18 years of age and:

19 (a) Who is beyond the control of the person's parents, guardian or other person having custody
20 of the person;

21 (b) Whose behavior is such as to endanger the welfare of the person or of others;

22 (c) Whose condition or circumstances are such as to endanger the welfare of the person or of
23 others;

24 (d) Who is dependent for care and support on a public or private child-caring agency that needs
25 the services of the court in planning for the best interest of the person;

26 (e) Whose parents or any other person or persons having custody of the person have:

27 (A) Abandoned the person;

28 (B) Failed to provide the person with the care or education required by law;

29 (C) Subjected the person to cruelty, depravity or unexplained physical injury; or

30 (D) Failed to provide the person with the care, guidance and protection necessary for the
31 physical, mental or emotional well-being of the person;

32 (f) Who has run away from the home of the person;

33 (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or

34 (h) Who is subject to an order entered under ORS 419C.411 (7)(a).

35 (2) The court shall have jurisdiction under subsection (1) of this section even though the child
36 is receiving adequate care from the person having physical custody of the child.

37 *[(3) The practice of a parent who chooses for the parent or the child of the parent treatment by*
38 *prayer or spiritual means alone may not be construed as a failure to provide physical care within the*
39 *meaning of this chapter, but does not prevent a court of competent jurisdiction from exercising that*
40 *jurisdiction under subsection (1)(c) of this section.]*

41 *[(4)]* (3) The provisions of subsection (1) of this section do not prevent a court of competent ju-
42 risdiction from entertaining a civil action or suit involving a child.

43 *[(5)]* (4) The court does not have further jurisdiction as provided in subsection (1) of this section
44 after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

45 *[(6)(a)]* (5)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding in-

1 involving an Indian child who resides or is domiciled within the reservation of the tribe, except where
2 the jurisdiction is otherwise vested in the state by existing federal law.

3 (b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the ju-
4 venile court, absent good cause to the contrary and absent objection by either parent, shall transfer
5 a proceeding for the foster care placement of, or termination of parental rights to, an Indian child
6 not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the
7 tribe.

8 (c) The juvenile court shall give full faith and credit to the public acts, records and judicial
9 proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent
10 that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings
11 of any other entity.

12 **SECTION 6. The amendments to ORS 137.712, 163.115, 163.118, 163.206 and 419B.100 by**
13 **sections 1 to 5 of this 2011 Act apply to conduct occurring on or after the effective date of**
14 **this 2011 Act.**

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