

Enrolled Senate Bill 704

Sponsored by Senators WAGNER, LIEBER, PROZANSKI, RILEY, Representatives NOSSE, POWER, SOLLMAN, WILDE; Senators DEMBROW, FREDERICK, GELSER, JAMA, MANNING JR, Representatives ALONSO LEON, CAMPOS, DEXTER, GOMBERG, GRAYBER, HUDSON, KÓTEK, KROPF, MARSH, PRUSAK, REARDON, REYNOLDS, SALINAS, VALDERRAMA, WILLIAMS (at the request of Basic Rights Oregon)

CHAPTER

AN ACT

Relating to prohibiting defenses based on certain characteristics of the victim; creating new provisions; and amending ORS 161.215 and 163.135.

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

SECTION 1. ORS 163.135 is amended to read:

163.135. (1) It is an affirmative defense to murder in the second degree for purposes of ORS 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance if the disturbance is not the result of the person’s own intentional, knowing, reckless or criminally negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the explanation for the disturbance must be determined from the standpoint of an ordinary person in the actor’s situation under the circumstances that the actor reasonably believed them to be. Extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(2)(a) The defendant may not introduce in the defendant’s case in chief expert testimony regarding extreme emotional disturbance under this section unless the defendant gives notice of the defendant’s intent to do so.

[3] (b) The notice required must be in writing and must be filed at the time the defendant pleads not guilty. The defendant may file the notice at any time after the defendant pleads but before trial if the court determines that there was just cause for failure to file the notice at the time of the defendant’s plea.

[4] (c) If the defendant fails to file notice, the defendant may not introduce evidence for the purpose of proving extreme emotional disturbance under ORS 163.115 unless the court, in its discretion, determines that there was just cause for failure to file notice.

[5] (3) After the defendant files notice as provided in **subsection (2) of this section**, the state may have at least one psychiatrist or licensed psychologist of its selection examine the defendant in the same manner and subject to the same provisions as provided in ORS 161.315.

(4) The discovery of, knowledge about or potential disclosure of the victim’s actual or perceived gender, gender identity, gender expression or sexual orientation, including but not limited to circumstances in which the victim made a romantic or sexual advance that was unwanted but did not involve force toward the defendant, does not constitute a reasonable explanation for an extreme emotional disturbance under this section.

(5) As used in this section, “gender identity” has the meaning given that term in ORS 166.155.

SECTION 2. ORS 161.215 is amended to read:

161.215. (1) Notwithstanding ORS 161.209, a person is not justified in using physical force upon another person if:

[(1)] (a) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person[; or].

[(2)] (b) The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force[; or].

[(3)] (c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

(d) **The person would not have used physical force but for the discovery of the other person’s actual or perceived gender, gender identity, gender expression or sexual orientation.**

(2) As used in this section, “gender identity” has the meaning given that term in ORS 166.155.

SECTION 3. The amendments to ORS 161.215 and 163.135 by sections 1 and 2 of this 2021 Act apply to conduct occurring on or after the effective date of this 2021 Act.

Passed by Senate April 14, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 13, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State