

HOUSE AMENDMENTS TO HOUSE BILL 2828

By COMMITTEE ON JUDICIARY

June 6

1 In line 2 of the printed bill, after “intoxicants” insert “; amending ORS 163.095, 163.115 and
2 163.185”.

3 Delete lines 4 through 12 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; **or**

32 “**(d) By intoxicated driver when it is committed with criminal negligence by a person**
33 **while the person is operating a vehicle under the influence of intoxicants as described in ORS**
34 **813.010 and the person has been convicted of driving while under the influence of intoxicants**
35 **in violation of ORS 813.010 or its statutory counterpart in another jurisdiction:**

1 **“(A) At least three times previously; or**

2 **“(B) At least one time previously and, as a result of that act, caused the death of, or**
3 **serious physical injury to, another person.**

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

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

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

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

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

12 “(d) Had no reasonable ground to believe that any other participant was armed with a danger-
13 ous or deadly weapon; and

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

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

19 “(5)(a) A person convicted of murder, who was at least 15 years of age at the time of committing
20 the murder, shall be punished by imprisonment for life.

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

25 “(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b)
26 of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a
27 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
28 within a reasonable period of time. The sole issue shall be whether or not the prisoner is likely to
29 be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the man-
30 ner prescribed for a contested case hearing under ORS chapter 183 except that:

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

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

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

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

45 “(6) As used in this section:

1 “(a) ‘Assault’ means to intentionally, knowingly or recklessly cause physical injury to another
2 person. ‘Assault’ does not include the causing of physical injury in a motor vehicle accident that
3 occurs by reason of the reckless conduct of a defendant.

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

8 “(c) ‘Pattern or practice’ means one or more previous episodes.

9 “(d) ‘Torture’ means to intentionally inflict intense physical pain upon an unwilling victim as a
10 separate objective apart from any other purpose.

11 “**SECTION 2.** ORS 163.185 is amended to read:

12 “163.185. (1) A person commits the crime of assault in the first degree if the person:

13 “(a) Intentionally causes serious physical injury to another by means of a deadly or dangerous
14 weapon; or

15 “(b) **With criminal negligence violates ORS 163.175 (1)(a) or (c) while the person is oper-**
16 **ating a vehicle under the influence of intoxicants as described in ORS 813.010 and the person**
17 **has been convicted of driving while under the influence of intoxicants in violation of ORS**
18 **813.010 or its statutory counterpart in another jurisdiction:**

19 “(A) **At least three times previously; or**

20 “(B) **At least one time previously and, as a result of that act, caused the death of, or**
21 **serious physical injury to, another person.**

22 “(2) Assault in the first degree is a Class A felony.

23 “**SECTION 3.** ORS 163.095 is amended to read:

24 “163.095. As used in ORS 163.105 and this section, ‘aggravated murder’ means murder as defined
25 in ORS 163.115, **except for murder as defined in ORS 163.115 (1)(d)**, which is committed under,
26 or accompanied by, any of the following circumstances:

27 “(1)(a) The defendant committed the murder pursuant to an agreement that the defendant re-
28 ceive money or other thing of value for committing the murder.

29 “(b) The defendant solicited another to commit the murder and paid or agreed to pay the person
30 money or other thing of value for committing the murder.

31 “(c) The defendant committed murder after having been convicted previously in any jurisdiction
32 of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115,
33 **except for murder as defined in ORS 163.115 (1)(d)**, or manslaughter in the first degree as defined
34 in ORS 163.118.

35 “(d) There was more than one murder victim in the same criminal episode as defined in ORS
36 131.505.

37 “(e) The homicide occurred in the course of or as a result of intentional maiming or torture of
38 the victim.

39 “(f) The victim of the intentional homicide was a person under the age of 14 years.

40 “(2)(a) The victim was one of the following and the murder was related to the performance of
41 the victim’s official duties in the justice system:

42 “(A) A police officer as defined in ORS 181.610;

43 “(B) A correctional, parole or probation officer or other person charged with the duty of cus-
44 tody, control or supervision of convicted persons;

45 “(C) A member of the Oregon State Police;

1 “(D) A judicial officer as defined in ORS 1.210;
2 “(E) A juror or witness in a criminal proceeding;
3 “(F) An employee or officer of a court of justice; or
4 “(G) A member of the State Board of Parole and Post-Prison Supervision.
5 “(b) The defendant was confined in a state, county or municipal penal or correctional facility
6 or was otherwise in custody when the murder occurred.
7 “(c) The defendant committed murder by means of an explosive as defined in ORS 164.055.
8 “(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed
9 the homicide under the circumstances set forth in ORS 163.115 (1)(b).
10 “(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal
11 the identity of the perpetrator of a crime.
12 “(f) The murder was committed after the defendant had escaped from a state, county or munic-
13 ipal penal or correctional facility and before the defendant had been returned to the custody of the
14 facility.”.
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