

# Senate Bill 704

Sponsored by Senators WAGNER, LIEBER, PROZANSKI, RILEY, Representatives NOSSE, POWER, SOLLMAN, WILDE; Senators DEMBROW, MANNING JR (at the request of Basic Rights Oregon)

## 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 that discovery of victim's actual or perceived gender, gender identity, gender expression or sexual orientation does not constitute reasonable explanation for extreme emotional disturbance for purposes of affirmative defense to murder in the second degree.

Provides that person is not justified in using physical force upon other person if person would not have used physical force but for discovery of other person's actual or perceived gender, gender identity, gender expression or sexual orientation.

## A BILL FOR AN ACT

1  
2 Relating to prohibiting defenses based on certain characteristics of the victim; creating new pro-  
3 visions; and amending ORS 161.215 and 163.135.

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

5 **SECTION 1.** ORS 163.135 is amended to read:

6 163.135. (1) It is an affirmative defense to murder in the second degree for purposes of ORS  
7 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance  
8 if the disturbance is not the result of the person's own intentional, knowing, reckless or criminally  
9 negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the  
10 explanation for the disturbance must be determined from the standpoint of an ordinary person in the  
11 actor's situation under the circumstances that the actor reasonably believed them to be. Extreme  
12 emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction  
13 of, manslaughter in the first degree or any other crime.

14 (2)(a) The defendant may not introduce in the defendant's case in chief expert testimony re-  
15 garding extreme emotional disturbance under this section unless the defendant gives notice of the  
16 defendant's intent to do so.

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

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

24 [(5)] (3) After the defendant files notice as provided in **subsection (2)** of this section, the state  
25 may have at least one psychiatrist or licensed psychologist of its selection examine the defendant  
26 in the same manner and subject to the same provisions as provided in ORS 161.315.

27 (4) **The discovery of, knowledge about or potential disclosure of the victim's actual or**  
28 **perceived gender, gender identity, gender expression or sexual orientation, including but not**

**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 **limited to circumstances in which the victim made a romantic or sexual advance that was**  
2 **unwanted but did not involve force toward the defendant, does not constitute a reasonable**  
3 **explanation for an extreme emotional disturbance under this section.**

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

6 **SECTION 2.** ORS 161.215 is amended to read:

7 161.215. (1) Notwithstanding ORS 161.209, a person is not justified in using physical force upon  
8 another person if:

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

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

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

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

19 **(2) As used in this section, “gender identity” has the meaning given that term in ORS**  
20 **166.155.**

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

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