LEGISLATIVE FISCAL OFFICE

Fiscal Impact Assessment

Bill No. 143 2692

71.2

This office has reviewed the proposed legislation and determined that it has <u>NO fiscal impact</u>.

1981 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Prepared by the Executive Department and the Legislative Fiscal Office

MEASURE NUMBER: HB 2692 STATUS: Original SUBJECT: Shifts the burden of proof from the prosecution to the defense on question of extreme emotional disturbance in murder cases GOVERNMENT UNIT AFFECTED: Courts and Department of Human Resources Corrections Division BUDGET AND MANAGEMENT ANALYST: Linda Getchell 5-15-81 LEGISLATIVE FISCAL ANALYST: Kay Hutchison & Vickie Gates 5-15-81

EFFECT ON EXPENDITURES: indeterminate

EFFECT ON REVENUES: none

ORGANIZATIONAL IMPACT: none

EFFECT ON POSITIONS: none

COMMENTS:

The State Court Administrator's Office indicates that the measure as amended will have a negligible fiscal impact. The Corrections Division estimates that the impact on admissions will be negligible in the near future, but may be significant in the long-range.

This proposal is not anticipated in the Governor's Recommended Budget.

1981 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Prepared by the Executive Department and the Legislative Fiscal Office

MEASURE NUMBER: HB 2692
 STATUS: Original
 SUBJECT: Makes extreme emotional disturbance an affirmative defense to a charge of murder.
 GOVERNMENT UNIT AFFECTED: Courts and Department of Human Resources Corrections Division
 BUDGET AND MANAGEMENT ANALYST: Linda Getchell 5-15-81
 LEGISLATIVE FISCAL ANALYST: Kay Hutchison & Steve Forrey 5-15-81

EFFECT ON EXPENDITURES: indeterminate

EFFECT ON REVENUES: none

ORGANIZATIONAL IMPACT: none

EFFECT ON POSITIONS: none

COMMENTS:

The State Court Administrator's office estimates that passage of this measure could increase case processing costs for the court system. The Corrections Division estimates that the impact on admissions will be negligible in the near future, but may be significant in the long-range.

This proposal is not anticipated in the Governor's Recommended Budget.

OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session

A-Engrossed

House Bill 2692

Ordered by the Speaker May 26 (Including Amendments by House May 26)

Sponsored by COMMITTEE ON JUDICIARY (at the request of Department of Justice)

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.

Makes extreme emotional disturbance an affirmative defense to a charge of murder.

A BILL FOR AN ACT

Relating to criminal homicide; amending ORS 163.115 and 163.118.

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

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Section 1. ORS 163.115 is amended to read:

163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder when:

(a) It is committed intentionally except that it is an affirmative defense that, at the time of the homicide, the

7 **defendant was under the influence of an extreme emotional disturbance;** [by a person who is not under the 8 influence of an extreme emotional disturbance;]

9 (b) It is committed by a person, acting either alone or with one or more persons, who commits or attempts 10 to commit arson in the first degree, burglary in the first degree, escape in the first degree, kidnapping in the first 11 degree, rape in the first degree, robbery in any degree or sodomy in the first degree and in the course of and in 12 furtherance of the crime [*he*] the person is committing or attempting to commit, or the immediate flight 13 therefrom, [*he*] the person, or another participant if there be any, causes the death of a person other than one of 14 the participants; or

(c) It is committed by a person, acting either alone or with one or more persons, who places or discharges a
 destructive device or bomb or who commits or attempts to commit aircraft piracy.

17 (2) For the purposes of paragraph (a) of subsection (1) of this section, a homicide which would otherwise 18 be murder is committed under the influence of extreme emotional disturbance when such disturbance is not the 19 result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance 20 there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be 21 determined from the standpoint of an ordinary person in the actor's situation under the circumstances as the 22 actor reasonably believes them to be. Extreme emotional disturbance shall not constitute a defense to a 23 prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

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

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

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

A-Eng. HB 2692

[2]

1	(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in
2	the commission thereof; and
3	(c) Was not armed with a dangerous or deadly weapon; and
4	(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly
5	weapon; and
6	(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to
7	result in death.
8	(4) It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding,
9	without the use of duress or deception, another person to commit suicide. Nothing contained in this subsection
10	shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime.
11	(5) Except when a sentence of death is imposed pursuant to ORS 163.116, a person convicted of murder
12	shall be punished by imprisonment for life and shall be required to serve not less than 25 years before becoming
13	eligible for parole.
14	Section 2. ORS 163.118 is amended to read:
15	163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:
16	(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human
17	life; or
18	(b) It is committed intentionally under circumstances [not constituting murder] which do not constitute
19	murder because the actor is under the influence of extreme emotional disturbance, as defined in ORS 163.115. The
20	fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating
21	circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution.
22	(2) Manslaughter in the first degree is a Class A felony.

House Bill 2692

Sponsored by COMMITTEE ON JUDICIARY (at the request of Department of Justice)

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.

Makes extreme emotional disturbance an affirmative defense to a charge of murder.

A BILL FOR AN ACT

Relating to criminal homicide; amending ORS 163.115.

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

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163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder when:

(a) It is committed intentionally by a person who is not under the influence of an extreme emotional disturbance;

(b) It is committed by a person, acting either alone or with one or more persons, who commits or attempts 8 to commit arson in the first degree, burglary in the first degree, escape in the first degree, kidnapping in the first 9 degree, rape in the first degree, robbery in any degree or sodomy in the first degree and in the course of and in 10 furtherance of the crime [he] the person is committing or attempting to commit, or the immediate flight 11 therefrom, [he] the person, or another participant if there be any, causes the death of a person other than one of 12 13 the participants; or

(c) It is committed by a person, acting either alone or with one or more persons, who places or discharges a 14 destructive device or bomb or who commits or attempts to commit aircraft piracy. 15

(2) For the purposes of paragraph (a) of subsection (1) of this section, a homicide which would otherwise 16 17 be murder is committed under the influence of extreme emotional disturbance when such disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance 18 there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be 19 determined from the standpoint of an ordinary person in the actor's situation under the circumstances as the 20 actor reasonably believes them to be. Extreme emotional disturbance is an affirmative defense. 21

(3) It is an affirmative defense to a charge of violating paragraph (b) or (c) of subsection (1) of this section 22 that the defendant: 23

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

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in 25 26 the commission thereof; and

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

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly 28 29 weapon; and

NOTE:

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Matter in **bold** face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

HB 2692

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(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

3 (4) It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding,
without the use of duress or deception, another person to commit suicide. Nothing contained in this subsection
shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime.

6 (5) Except when a sentence of death is imposed pursuant to ORS 163.116, a person convicted of murder
7 shall be punished by imprisonment for life and shall be required to serve not less than 25 years before becoming
8 eligible for parole.

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House Bill 2692

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Sponsored by COMMITTEE ON JUDICIARY (at the request of Department of Justice)

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 and introduced.

Makes extreme emotional disturbance an affirmative defense to a charge of murder.

A BILL FOR AN ACT

2 Relating to criminal homicide; amending ORS 163.115. and 163.118

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

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Section 1. ORS 163.115 is amended to read:

163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder when:

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8 (b) It is committed by a person, acting either alone or with one or more persons, who commits or attempts 9 to commit arson in the first degree, burglary in the first degree, escape in the first degree, kidnapping in the first 10 degree, rape in the first degree, robbery in any degree or sodomy in the first degree and in the course of and in 11 furtherance of the crime [*he*] the person is committing or attempting to commit, or the immediate flight 12 therefrom, [*he*] the person, or another participant if there be any, causes the death of a person other than one of 13 the participants; or

(c) It is committed by a person, acting either alone or with one or more persons, who places or discharges a
 destructive device or bomb or who commits or attempts to commit aircraft piracy.

(2) For the purposes of paragraph (a) of subsection (1) of this section, a homicide which would otherwise be murder is committed under the influence of extreme emotional disturbance when such disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be determined from the standpoint of an ordinary person in the actor's situation under the circumstances as the actor reasonably believes them to be. Extreme emotional disturbance is an affirmative defense.

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

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

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

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

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

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

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	Sponsored by COMMITTEE ON JUDICIARY (at the request of Department of Justice)	1. 1.
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1	2 therefrom, [<i>he</i>] the person, or another participant if there be any, causes the death of a person other than one of	
1	3 the participants; or	
14	4 (c) It is committed by a person, acting either alone or with one or more persons, who places or discharges a	
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NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

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(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

3 (4) It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding,
4 without the use of duress or deception, another person to commit suicide. Nothing contained in this subsection
5 shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime.

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7 shall be punished by imprisonment for life and shall be required to serve not less than 25 years before becoming
8 eligible for parole.

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(5) Except when a sentence of death is imposed pursuant to ORS 163.116, a person convicted of murder
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Section 2. ORS 163.118 is amended to read:

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

 $o_{j}^{\prime}(a)$ It is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) It is committed intentionally under circumstances [not constituting murder] which do not constitute murder because the actor is under the influence of extreme emotional disturbance, as defined in ORS 163.115. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution.

(1) (2) Manslaughter in the first degree is a Class A felony.

OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session

HOUSE AMENDMENTS TO HOUSE BILL 2692

By COMMITTEE ON JUDICIARY

May 26

On page 1 of the printed bill, line 2, after "163.115" insert "and 163.118". 1 In line 6, after "intentionally" delete the rest of the line and insert "except that it is an affirmative defense 2 that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;". 3 Delete line 7. 4 In line 21, after the first period delete the rest of the line and insert "Extreme emotional disturbance shall 5 not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or 6 7 any other crime.". On page 2, after line 8, insert: 8 "Section 2. ORS 163.118 is amended to read: 9 "163.118. (1) Criminal homicide constitutes manslaughter in the first degree when: 10 "(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of 11 human life; or 12 "(b) It is committed intentionally under circumstances [not constituting murder] which do not constitute 13 murder because the actor is under the influence of extreme emotional disturbance, as defined in ORS 163.115. The 14 fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating 15 circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution. 16 "(2) Manslaughter in the first degree is a Class A felony.". 17

HOUSE OF REPRESENTATIVES

61st Legislative Assembly <u>STAFF MEASURE ANALYSIS</u>

Measure: HB 2692 as amended Committee: Judiciary Hearing Dates: May 5, May 14, and May 19, 1981 Explanation Prepared by: Stephen L. Griffith, Legal Councel

Function of Measure:

Under current law, in a murder case, the burden of proof is on the prosecution to prove beyond a reasonable doubt that the accused was <u>not</u> under an extreme emotional disturbance. Proof of a negative proposition is difficult. Proof of this negative proposition is especially difficult, because in a criminal case the state cannot inquire into the defendant's state of mind either before or during trial unless the defendant chooses to take the stand. The state must instead rely on circumstantial evidence to prove state of mind.

The bill shifts the burden of proof on the question of extreme emotional disturbance to the defendant. To reduce a proven intentional homicide from murder to manslaughter in the first degree, the accused must show by a preponderance of the evidence that the accused <u>was</u> under an extreme emotional disturbance at the time of the act.

The proposal in the bill was adopted and withstood constitutional attack in New York State, which has a similar statute. <u>Patterson v. New York</u>, 432 US 197 (1977). The bill was amended intentionally to conform Oregon law as closely as possible to that of New York.

VOTING: Aye - Bugas, Courtney, Lombard, Rutherford, Smith No - Cohen, Hendriksen, Mason Excused - Springer

BILL CARRIER: Rep. Courtney

HOUSE COMMITTEE REPORT

Mr. Speaker:

to whom was referred <u>HB 2692</u> having Your Committee on Judiciary had the same under consideration, respectfully reports it back with the recommendation that it: [] Do pass. [X] Do pass with ______ House amendments () and be printed engrossed. [] Be adopted. [] Be adopted with ______ House amendments () and be printed engrossed. [] Be referred to: () Ways and Means by prior reference. _____ ()

> See Attached Amendments: HB 2692 Amendments Judiciary Committee (1-page) • •

	FOR INFORMATION ONLY	-NOT PART OF COMMITTEE REPORT	
Vo	ting no: Cohen, Hendriksen, Mason		
Vo	ting aye: Bugas, Courtney, Lombard, Rut	herford, Smith	
Ex	cused: Springer	Pag	
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-	2 copies if no amendments	1 84 1110	Chairman
Submit:		Tom Mason	
	7 copies if to be printed engrossed	Rep. Courtney	will lead
Rotain	lcopy for committee file	floor discussion on this measure.	

HB 2692

AMENDMENTS

Judiciary Committee

On page 1 of the printed bill, line 2, after "163.115" insert "and 163.118".

In line 6, after "intentionally" delete the rest of the line and insert "except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;".

Delete line 7.

In line 21, after the first period delete the rest of the line and insert "Extreme emotional disturbance shall not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.".

On page 2, line 8, insert:

"Section 2. ORS 163.118 is amended to read:

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

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

"(b) It is committed intentionally under circumstances [not constituting murder] which do not constitute murder because the actor is under the influence of extreme emotional disturbance, as defined in ORS 163.115. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution.

"(2) Manslaughter in the first degree is a Class A felony.".

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MEASURE SUMMARY

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Makes extreme emptional disturbance an affirmative defense.

A BILL FOR AN ACT

Relating to criminal homicide; amending ORS 163.115. Be It Enacted by the People of the State of Oregon:

ORS 163.115 is amended to read:

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163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder when:

(a) It is committed intentionally by a person who is not under the influence of an extreme emotional disturbance;

(b) It is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit arson in the first degree, burglary in the first degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree or sodomy in the first degree and in the course of and in furtherance of the crime [he] <u>the person</u> is committing or attempting to commit, or the immediate flight therefrom, he <u>arshe</u>, or another participant if there be any, causes the death of a person other than one of the participants; or

(c) It is committed by a person, acting either alone or with one or more persons, who places or discharges a destructive device or bomb or who commits or attempts to commit aircraft piracy.

(2) For the purposes of paragraph (a) of subsection (1) of this section, a homicide which would otherwise be murder is committed under the influence of extreme emotional disturbance when such disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be determined from the standpoint of an ordinary person in the actor's situation under the circumstances as the actor reasonably believes them to be. Extreme emotional disturbance is an affirmative defense.

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

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

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

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

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

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime.

(5) Except when a sentence of death is imposed pursuant to

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ORS 163.116, a person convicted of murder shall be punished by imprisonment for life and shall be required to serve not less than 25 years before becoming eligible for parole.

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BILL		MBER			
Title: Relating to cri	minal homicide; amending	ORS 163.115.			
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Burrows	Markham		Groener		
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