

A-Engrossed
House Bill 3336

Ordered by the House May 11
Including House Amendments dated May 11

Sponsored by Representative GELSER; Representatives BARKER, BARNHART, BONAMICI, BUCKLEY, CANNON, GREENLICK, HOLVEY, HUNT, KOTEK, MERKLEY, NATHANSON, NOLAN, READ, ROBLAN, ROSENBAUM, TOMEI, WITT

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.

[Establishes that person is not subject to death penalty if determination is made that person has mental retardation. Provides procedure for such determination. Authorizes state to appeal from order finding defendant to have mental retardation.]

Establishes Task Force on Mental Retardation in Capital Cases. Requires Governor to appoint members of task force from among specified organizations. Instructs task force to study specific issues related to mental retardation in capital cases and to report findings and recommendations for legislation to Legislative Assembly and appropriate interim committee by October 1, 2008.

Sunsets task force on January 2, 2009.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to death penalty; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds that:**

5 (1) **The United States Supreme Court has clarified that states may not impose or carry**
6 **out a death penalty on certain defendants who are mentally retarded.**

7 (2) **The United States Supreme Court has provided little guidance for states on the defi-**
8 **inition of mental retardation or the procedures to be followed in determining whether a par-**
9 **ticular defendant is mentally retarded so as to preclude imposition of or carrying out the**
10 **death penalty.**

11 **SECTION 2. (1) There is created the Task Force on Mental Retardation in Capital Cases**
12 **consisting of four members appointed by the Governor as follows:**

13 (a) **One member from the Oregon District Attorneys Association;**

14 (b) **One member from the Oregon Criminal Defense Lawyers Association;**

15 (c) **One member from the Oregon Advocacy Center; and**

16 (d) **One member, who shall serve as the chairperson, from the Department of Justice.**

17 (2) **The task force shall study issues surrounding the determination of whether a criminal**
18 **defendant in a capital case is a person with mental retardation. The study shall include, but**
19 **is not limited to, the following issues:**

20 (a) **An applicable definition of mental retardation;**

21 (b) **Whether the determination of mental retardation should be made by a judge or a jury**
22 **and at what stage of the proceeding this determination should be made;**

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 (c) The standard of proof and which party should bear the burden of persuading the de-
2 cision maker;

3 (d) The number and type of expert evaluations of the defendant that may assist the de-
4 cision maker in making the determination of whether the defendant is a person with mental
5 retardation, and who may choose those experts;

6 (e) The role of privacy laws and evidentiary privileges in the determination of mental
7 retardation; and

8 (f) Who may raise the issue of mental retardation, when the issue may be raised and
9 procedures to address the issue when it is raised after the defendant has been sentenced.

10 (3) A majority of the members of the task force constitutes a quorum for the transaction
11 of business.

12 (4) Official action by the task force requires the approval of a majority of members of
13 the task force.

14 (5) If there is a vacancy for any cause, the Governor shall make an appointment to be-
15 come effective immediately.

16 (6) The task force shall meet at times and places specified by the call of the chairperson
17 or of a majority of the members of the task force.

18 (7) The task force may adopt rules necessary for the operation of the task force.

19 (8) No later than October 1, 2008, the task force shall prepare a report that includes
20 recommendations for legislation and provide the report to:

21 (a) The interim committee related to the judiciary; and

22 (b) The Legislative Assembly in accordance with ORS 192.245.

23 (9) The Department of Justice shall provide staff support to the task force.

24 (10) Members of the task force are not entitled to compensation, but may be reimbursed
25 for actual and necessary travel and other expense incurred by them in the performance of
26 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
27 penses shall be paid out of funds appropriated to the Department of Justice for that purpose.

28 (11) All agencies of state government, as that term is defined in ORS 174.111, are directed
29 to assist the task force in the performance of its duties and, to the extent permitted by laws
30 relating to confidentiality, to furnish such information and advice as the members of the
31 task force consider necessary to perform their duties.

32 **SECTION 3.** Section 2 of this 2007 Act is repealed on January 2, 2009.

33 **SECTION 4.** This 2007 Act being necessary for the immediate preservation of the public
34 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
35 on its passage.

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