

# House Bill 2669

Sponsored by COMMITTEE ON JUDICIARY

## 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**.

Creates procedure for defendant charged with aggravated murder to assert that defendant is person with mental retardation and may not be sentenced to death.

## A BILL FOR AN ACT

1  
2 Relating to the death penalty; creating new provisions; and amending ORS 137.463, 138.060, 138.530  
3 and 163.150.

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

5 **SECTION 1. (1) A person with mental retardation is not eligible for the death penalty.**

6 **(2) A defendant who intends to assert that the defendant is not eligible for the death**  
7 **penalty because the defendant is a person with mental retardation shall file notice with the**  
8 **court of that intention at least 90 days before trial, or if the defendant has pleaded guilty,**  
9 **at least 90 days before the sentencing proceeding described in ORS 163.150, unless the court**  
10 **allows a later filing date for good cause. Upon the filing of the notice:**

11 **(a) The state has the right to obtain an independent medical, psychiatric or psychological**  
12 **examination of the defendant; and**

13 **(b) The defendant waives any claim of confidentiality or privilege applicable to medical,**  
14 **psychiatric, psychological, correctional, educational, employment, military or other records**  
15 **that are relevant to the determination of whether the defendant is a person with mental**  
16 **retardation and that were in existence on the date the offense is alleged to have been com-**  
17 **mitted. The waiver described in this paragraph applies only to a sentencing proceeding con-**  
18 **ducted under ORS 163.150, a death warrant hearing described in ORS 137.463, a**  
19 **post-conviction relief hearing conducted under ORS 138.510 to 135.680 and any hearing on an**  
20 **application for a writ of habeas corpus.**

21 **(3)(a) Any medical, psychiatric or psychological examination of the defendant under this**  
22 **section must be conducted by a person with significant experience in examining persons with**  
23 **mental retardation and must be recorded. The recording must contain both audio and video.**

24 **(b) The provisions of ORS 135.805 to 135.873 apply to material and information pertaining**  
25 **to the issue of mental retardation. The obligations to disclose imposed by this paragraph**  
26 **shall be performed as soon as practicable following the filing of the notice described in sub-**  
27 **section (2) of this section.**

28 **(4) If a defendant files the notice described in subsection (2) of this section, the court**  
29 **shall hold a hearing to determine if the defendant is eligible for the death penalty under this**  
30 **section. The hearing must be held prior to the selection of a jury. At the hearing, the de-**  
31 **fendant bears the burden of proving, by a preponderance of the evidence, that the defendant**

**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 is not eligible for the death penalty under this section. At the conclusion of the hearing, the  
 2 court shall enter an order finding that the defendant, if convicted of aggravated murder:

3 (a) Is eligible for the death penalty under this section; or

4 (b) Is not eligible for the death penalty under this section.

5 (5) As used in this section:

6 (a) "Classes of adaptive functioning" means the following skill areas:

7 (A) Communication.

8 (B) Self-care.

9 (C) Home living.

10 (D) Social and interpersonal.

11 (E) Use of community resources.

12 (F) Self-direction.

13 (G) Functional academic.

14 (H) Work.

15 (I) Leisure activities.

16 (J) Health.

17 (K) Safety.

18 (b) "Mental retardation" means significantly subaverage intellectual functioning existing  
 19 concurrently with substantial impairment in at least two classes of adaptive functioning,  
 20 that originates before a person reaches 18 years of age.

21 (c) "Significantly subaverage intellectual functioning" means an intelligence quotient that  
 22 is at least two standard deviations below the mean on a standardized intelligence test.

23 **SECTION 2.** ORS 163.150 is amended to read:

24 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-  
 25 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing  
 26 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described  
 27 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in  
 28 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial  
 29 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,  
 30 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the  
 31 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing  
 32 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.  
 33 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate  
 34 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall  
 35 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented  
 36 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-  
 37 pact evidence relating to the personal characteristics of the victim or the impact of the crime on  
 38 the victim's family, [and] any aggravating or mitigating evidence relevant to the issue in paragraph  
 39 [(b)(D)] (b)(E) of this subsection **and, if the court has entered an order under section 1 (4)(a)**  
 40 **of this 2009 Act, any evidence relevant to whether the defendant is a person with mental**  
 41 **retardation.**[;] However, neither the state nor the defendant shall be allowed to introduce  
 42 [repetitive] evidence that has previously been offered and received during the trial on the issue of  
 43 guilt. The court shall instruct the jury that all evidence previously offered and received may be  
 44 considered for purposes of the sentencing [hearing] **proceeding.** This paragraph shall not be con-  
 45 strued to authorize the introduction of any evidence secured in violation of the Constitution of the

1 United States or of the State of Oregon. The state and the defendant or the counsel of the defendant  
 2 shall be permitted to present arguments for or against a sentence of death and for or against a  
 3 sentence of life imprisonment with or without the possibility of release or parole.

4 (b) Upon the conclusion of the presentation of the evidence, the court shall submit the following  
 5 issues to the jury:

6 **(A) If the court has entered an order under section 1 (4)(a) of this 2009 Act, whether the**  
 7 **defendant is eligible for the death penalty under section 1 of this 2009 Act;**

8 [(A)] **(B)** Whether the conduct of the defendant that caused the death of the deceased was  
 9 committed deliberately and with the reasonable expectation that death of the deceased or another  
 10 would result;

11 [(B)] **(C)** Whether there is a probability that the defendant would commit criminal acts of vi-  
 12 olence that would constitute a continuing threat to society;

13 [(C)] **(D)** If raised by the evidence, whether the conduct of the defendant in killing the deceased  
 14 was unreasonable in response to the provocation, if any, by the deceased; and

15 [(D)] **(E)** Whether the defendant should receive a death sentence.

16 (c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph  
 17 (b)(B) to (E) of this subsection, any mitigating circumstances offered in evidence, including but not  
 18 limited to the defendant’s age, the extent and severity of the defendant’s prior criminal conduct and  
 19 the extent of the mental and emotional pressure under which the defendant was acting at the time  
 20 the offense was committed.

21 (B) The court shall instruct the jury to answer the question in paragraph [(b)(D)] **(b)(E)** of this  
 22 subsection “no” if, after considering any aggravating evidence and any mitigating evidence con-  
 23 cerning any aspect of the defendant’s character or background, or any circumstances of the offense  
 24 and any victim impact evidence as described in paragraph (a) of this subsection, one or more of the  
 25 jurors believe that the defendant should not receive a death sentence.

26 **(d)(A) The defendant must prove the issue submitted under paragraph (b)(A) of this sub-**  
 27 **section by a preponderance of the evidence.**

28 **(B)** The state must prove each issue submitted under paragraph [(b)(A) to (C)] **(b)(B) to (D)** of  
 29 this subsection beyond a reasonable doubt[, and].

30 **(C)** The jury shall return a special verdict of “yes” or “no” on each issue considered.

31 (e) The court shall charge the jury that it may not answer any issue “yes,” under paragraph (b)  
 32 of this subsection unless it agrees unanimously.

33 (f) If the jury returns an affirmative finding on each issue considered under paragraph (b) of this  
 34 subsection, the trial judge shall sentence the defendant to death.

35 (2)(a) Upon the conclusion of the presentation of the evidence[, *the court shall also instruct the*  
 36 *jury that*]:

37 **(A) If the court has entered an order under section 1 (4)(a) of this 2009 Act, the court**  
 38 **shall instruct the jury that if the jury reaches a negative finding on the issue considered**  
 39 **under subsection (1)(b)(A) of this section, the jury may not consider the issues described in**  
 40 **subsection (1)(b)(B) to (E).**

41 **(B) The court shall instruct the jury that** if [*it*] **the jury** reaches a negative finding on any  
 42 issue under subsection (1)(b) of this section, the trial court shall sentence the defendant to life  
 43 imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), unless  
 44 10 or more members of the jury further find that there are sufficient mitigating circumstances to  
 45 warrant life imprisonment, in which case the trial court shall sentence the defendant to life

1 imprisonment as described in ORS 163.105 (1)(c).

2 (b) If the jury returns a negative finding on any issue under subsection (1)(b) of this section and  
3 further finds that there are sufficient mitigating circumstances to warrant life imprisonment, the  
4 trial court shall sentence the defendant to life imprisonment in the custody of the Department of  
5 Corrections as provided in ORS 163.105 (1)(c).

6 (3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies,  
7 **an order has been entered under section 1 (4)(b) of this 2009 Act** or the state advises the court  
8 on the record that the state declines to present evidence for purposes of sentencing the defendant  
9 to death, the court:

10 (A) [*Shall*] **May** not conduct a sentencing proceeding as described in subsection (1) of this sec-  
11 tion, and a sentence of death [*shall*] **may** not be ordered.

12 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-  
13 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105  
14 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to  
15 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.  
16 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the  
17 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding, ev-  
18 idence may be presented as to any matter that the court deems relevant to sentence, including, but  
19 not limited to, victim impact evidence relating to the personal characteristics of the victim or the  
20 impact of the crime on the victim's family.

21 (b) Following the presentation of evidence and argument under paragraph (a) of this subsection,  
22 the court shall instruct the jury that the trial court shall sentence the defendant to life  
23 imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless  
24 after considering all of the evidence submitted, 10 or more members of the jury find there are suf-  
25 ficient mitigating circumstances to warrant life imprisonment with the possibility of parole as de-  
26 scribed in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating  
27 circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sen-  
28 tence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

29 (c) Nothing in this subsection [*shall preclude*] **precludes** the court from sentencing the defendant  
30 to life imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility  
31 of release or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or  
32 stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all  
33 rights to a jury sentencing proceeding.

34 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant  
35 who has been sentenced to life imprisonment without possibility of release or parole will instead be  
36 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS  
37 163.105 [(2)] (1)(c), the defendant shall be confined for a minimum of 30 years without possibility of  
38 parole, release on work release or any form of temporary leave or employment at a forest or work  
39 camp. Subsection (2) of this section [*shall apply*] **applies** only to trials commencing on or after July  
40 19, 1989.

41 (5) Notwithstanding subsection (1)(a) of this section, if the trial court grants a mistrial during  
42 the sentencing proceeding, the trial court, at the election of the state, shall either:

43 (a) Sentence the defendant to **life** imprisonment [*for life*] in the custody of the Department of  
44 Corrections as provided in ORS 163.105 (1)(c); or

45 (b) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding

1 to determine if the defendant should be sentenced to:

2 (A) Death;

3 (B) **Life** imprisonment [*for life*] without the possibility of release or parole as provided in ORS  
4 163.105 (1)(b); or

5 (C) **Life** imprisonment [*for life*] in the custody of the Department of Corrections as provided in  
6 ORS 163.105 (1)(c).

7 **SECTION 3.** ORS 137.463 is amended to read:

8 137.463. (1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy  
9 of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall  
10 deliver the defendant within 20 days from the date the judgment is entered to the correctional in-  
11 stitution designated by the Director of the Department of Corrections pending the determination of  
12 the automatic and direct review by the Supreme Court under ORS 138.012.

13 (2) If the Supreme Court affirms the sentence of death, a death warrant hearing shall take place  
14 in the court in which the judgment was rendered within 30 days after the effective date of the ap-  
15 pellate judgment or, upon motion of the state, on a later date. The following apply to a death war-  
16 rant hearing under this subsection:

17 (a) The defendant must be present; and

18 (b) The defendant may be represented by counsel. If the defendant was represented by appointed  
19 counsel on automatic and direct review, that counsel's appointment continues for purposes of the  
20 death warrant hearing and any related matters. If that counsel is unavailable, the court shall ap-  
21 point counsel pursuant to the procedure in ORS 135.050 and 135.055.

22 (3)(a) If the defendant indicates the wish to waive the right to counsel for the purpose of the  
23 death warrant hearing, the court shall inquire of the defendant on the record to ensure that the  
24 waiver is competent, knowing and voluntary.

25 (b) If the court finds that the waiver is competent, knowing and voluntary, the court shall dis-  
26 charge counsel.

27 (c) If the court finds on the record that the waiver of the right to counsel granted by this sec-  
28 tion is not competent, knowing or voluntary, the court shall continue the appointment of counsel.

29 (d) Notwithstanding the fact that the court finds on the record that the defendant competently,  
30 knowingly and voluntarily waives the right to counsel, the court may continue the appointment of  
31 counsel as advisor only for the purposes of the death warrant hearing.

32 (4) At the death warrant hearing, the court:

33 (a) After appropriate inquiry **in accordance with subsection (5) of this section**, shall make  
34 [*findings*] **a finding** on the record whether [*the defendant suffers from a mental condition that prevents*  
35 *the defendant from comprehending the reasons for the death sentence or its implication. The defendant*  
36 *has the burden of proving by a preponderance of the evidence that the defendant suffers from a mental*  
37 *condition that prevents the defendant from comprehending the reasons for the death sentence or its*  
38 *implication.*] **any condition or circumstance exists that would render the execution of the de-**  
39 **fendant's sentence of death unconstitutionally cruel and unusual.**

40 (b) Shall advise the defendant that the defendant is entitled to counsel in any post-conviction  
41 proceeding and that counsel will be appointed if the defendant is financially eligible for appointed  
42 counsel at state expense.

43 (c) Shall determine whether the defendant intends to pursue any challenges to the sentence or  
44 conviction. If the defendant states on the record that the defendant does not intend to challenge the  
45 sentence or conviction, the court after advising the defendant of the consequences shall make a

1 finding on the record whether the defendant competently, knowingly and voluntarily waives the  
 2 right to pursue:

- 3 (A) A petition for certiorari to the United States Supreme Court;
- 4 (B) Post-conviction relief under ORS 138.510 to 138.680; and
- 5 (C) Federal habeas corpus review under 28 U.S.C. 2254.

6 **(5)(a) A defendant who intends to assert that a condition or circumstance exists that**  
 7 **would render the execution of the defendant’s sentence of death unconstitutionally cruel and**  
 8 **unusual shall file a notice with the court of that intention at least 14 days before the**  
 9 **scheduled death warrant hearing. Notwithstanding the failure of the defendant to file the**  
 10 **notice, on motion of the state or the court’s own motion, the court may order an inquiry into**  
 11 **whether a condition or circumstance exists that would render the execution of the defend-**  
 12 **ant’s sentence of death unconstitutionally cruel and unusual if there is a substantial reason**  
 13 **to believe that the condition or circumstance exists.**

14 **(b) Notwithstanding paragraph (a) of this subsection, if a court or a jury has previously**  
 15 **found that the condition or circumstance at issue does not exist or does not render the ex-**  
 16 **ecution of the defendant’s sentence of death unconstitutionally cruel and unusual, the court**  
 17 **may not inquire as to the existence of the condition or circumstance unless the court finds**  
 18 **by clear and convincing evidence that a material change in the condition or circumstance**  
 19 **has occurred since the previous finding became final.**

20 **(c) In an inquiry conducted under this subsection:**

21 **(A) The state and the defendant each have the right to obtain an independent medical,**  
 22 **psychiatric or psychological examination of the defendant for purposes of the hearing;**

23 **(B) Section 1 (2)(b) and (3) of this 2009 Act apply; and**

24 **(C) The defendant has the burden of proving by a preponderance of the evidence that the**  
 25 **condition or circumstance exists.**

26 *[(5) Following the death warrant hearing, a death warrant, signed by the trial judge of the court*  
 27 *in which the judgment was rendered and attested by the clerk of that court, shall be drawn and de-*  
 28 *livered to the superintendent of the correctional institution designated by the Director of the Department*  
 29 *of Corrections. The death warrant shall specify a day on which the sentence of death is to be executed*  
 30 *and shall authorize and command the superintendent to execute the judgment of the court. The trial*  
 31 *court shall specify the date of execution of the sentence, taking into consideration the needs of the De-*  
 32 *partment of Corrections. The trial court shall specify a date not less than 90 days nor more than 120*  
 33 *days following the effective date of the appellate judgment.]*

34 *[(6)(a) Notwithstanding any other provision in this section, if the court finds that the defendant*  
 35 *suffers from a mental condition that prevents the defendant from comprehending the reasons for the*  
 36 *sentence of death or its implications]*

37 **(6)(a) If the court finds that a condition or circumstance exists that would render the**  
 38 **execution of the defendant’s sentence of death unconstitutionally cruel and unusual, the court**  
 39 **may not issue a death warrant until such time as the court, after appropriate inquiries, finds that**  
 40 **the [defendant is able to comprehend the reasons for the sentence of death and its implications.]**

41 *[(b)(A) If the court does not issue a death warrant because it finds that the defendant suffers from*  
 42 *a mental condition that prevents the defendant from comprehending the reasons for the sentence of*  
 43 *death or its implications,] condition or circumstance no longer exists.* The court shall conduct  
 44 subsequent hearings on the issue on motion of the district attorney or the defendant’s counsel or  
 45 on the court’s own motion, upon a showing *[that there is substantial reason to believe that the de-*

1 *defendant's*] **by clear and convincing evidence that there has been a material change in the**  
 2 **condition or circumstance** *[has changed]*.

3 [(B)] **(b)** The court may hold a hearing under this *[paragraph]* **subsection** no more frequently  
 4 than once every six months.

5 [(C)] **(c)** The state and the defendant may obtain an independent medical, psychiatric or psy-  
 6 chological examination of the defendant in connection with a hearing under this *[paragraph]* **sub-**  
 7 **section.**

8 [(D)] **(d)** In a hearing under this *[paragraph]* **subsection**, the defendant has the burden of prov-  
 9 ing by a preponderance of the evidence that *[the defendant continues to suffer from a mental condition*  
 10 *that prevents the defendant from comprehending the reasons for the sentence of death or its*  
 11 *implications]* **a condition or circumstance exists that renders the execution of the defendant's**  
 12 **sentence of death unconstitutionally cruel and unusual.**

13 **(e) Section 1 (3) of this 2009 Act applies to a hearing under this subsection.**

14 **(7) Except as provided in subsection (6) of this section, following the death warrant**  
 15 **hearing, a death warrant, signed by the trial judge of the court in which the judgment was**  
 16 **rendered and attested by the clerk of that court, shall be drawn and delivered to the super-**  
 17 **intendent of the correctional institution designated by the Director of the Department of**  
 18 **Corrections. The death warrant shall specify a day on which the sentence of death is to be**  
 19 **executed and shall authorize and command the superintendent to execute the judgment of**  
 20 **the court. The trial court shall specify the date of execution of the sentence, taking into**  
 21 **consideration the needs of the Department of Corrections. The trial court shall specify a date**  
 22 **not less than 90 days nor more than 120 days following the effective date of the appellate**  
 23 **judgment.**

24 [(7)] **(8)** If for any reason a sentence of death is not executed on the date appointed in the death  
 25 warrant, and the sentence of death remains in force and is not stayed under ORS 138.686 or other-  
 26 wise by a court of competent jurisdiction, the court that issued the initial death warrant, on motion  
 27 of the state and without further hearing, shall issue a new death warrant specifying a new date on  
 28 which the sentence is to be executed. The court shall specify a date for execution of the sentence,  
 29 taking into consideration the needs of the Department of Corrections. The court shall specify a date  
 30 not more than 20 days after the date on which the state's motion was filed.

31 [(8)] **(9)** No appeal may be taken from an order issued pursuant to this section.

32 **SECTION 4.** ORS 138.060 is amended to read:

33 138.060. (1) The state may take an appeal from the circuit court to the Court of Appeals from:

- 34 (a) An order made prior to trial dismissing or setting aside the accusatory instrument;
- 35 (b) An order arresting the judgment;
- 36 (c) An order made prior to trial suppressing evidence;
- 37 (d) An order made prior to trial for the return or restoration of things seized;
- 38 (e) A judgment of conviction based on the sentence as provided in ORS 138.222;
- 39 (f) An order in a probation revocation hearing finding that a defendant who was sentenced to
- 40 probation under ORS 137.712 has not violated a condition of probation by committing a new crime;
- 41 (g) An order made after a guilty finding dismissing or setting aside the accusatory instrument;
- 42 (h) An order granting a new trial; or
- 43 (i) An order dismissing an accusatory instrument under ORS 136.130.

44 (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal from an or-  
 45 der listed in *[paragraph (a) or (b) of]* this subsection, the state shall take the appeal from the circuit

1 court to the Supreme Court if the defendant is charged with murder or aggravated murder. The or-  
 2 ders to which this subsection applies are:

3 (a) An order made prior to trial suppressing evidence; *[and]*

4 (b) An order made prior to trial dismissing or setting aside the accusatory instrument; **and**

5 **(c) An order made prior to trial entered under section 1 (4)(b) of this 2009 Act finding the**  
 6 **defendant is not eligible for the death penalty. An appeal under this paragraph does not**  
 7 **constitute delay attributable to the state under ORS 135.747 or 135.750.**

8 (3) In an appeal by the state under subsection (2) of this section, the Supreme Court shall issue  
 9 its decision no later than one year after the date of oral argument or, if the appeal is not orally  
 10 argued, the date that the State Court Administrator delivers the briefs to the Supreme Court for  
 11 decision. Failure of the Supreme Court to issue a decision within one year is not a ground for dis-  
 12 missal of the appeal.

13 **SECTION 5.** ORS 138.530 is amended to read:

14 138.530. (1) Post-conviction relief pursuant to ORS 138.510 to 138.680 shall be granted by the  
 15 court when one or more of the following grounds is established by the petitioner:

16 (a) A substantial denial in the proceedings resulting in petitioner’s conviction, or in the appel-  
 17 late review thereof, of petitioner’s rights under the Constitution of the United States, or under the  
 18 Constitution of the State of Oregon, or both, and which denial rendered the conviction void.

19 (b) Lack of jurisdiction of the court to impose the judgment rendered upon petitioner’s con-  
 20 viction.

21 (c) Sentence in excess of, or otherwise not in accordance with, the sentence authorized by law  
 22 for the crime of which petitioner was convicted; or unconstitutionality of such sentence.

23 (d) Unconstitutionality of the statute making criminal the acts for which petitioner was con-  
 24 victed.

25 **(e) Unconstitutionality of a sentence of death under section 1 of this 2009 Act.**

26 (2) Whenever a person petitions for relief under ORS 138.510 to 138.680, ORS 138.510 to 138.680  
 27 shall not be construed to deny relief where such relief would have been available prior to May 26,  
 28 1959, under the writ of habeas corpus, nor shall it be construed to affect any powers of executive  
 29 clemency or pardon provided by law.

30 (3) ORS 138.510 to 138.680 shall not be construed to limit the original jurisdiction of the Su-  
 31 preme Court in habeas corpus as provided in the Constitution of this state.

32 **SECTION 6. (1) The amendments to ORS 163.150 by section 2 of this 2009 Act apply to**  
 33 **sentencing proceedings conducted on or after the effective date of this 2009 Act.**

34 **(2) The amendments to ORS 137.463 by section 3 of this 2009 Act apply to death warrant**  
 35 **hearings conducted on or after the effective date of this 2009 Act.**

36