

Senate Bill 365

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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**.

Directs Attorney General to adopt rules describing circumstances under which state may seek death penalty.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the death penalty; creating new provisions; amending ORS 163.150; and declaring an
3 emergency.

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

5 **SECTION 1. (1) The Attorney General shall adopt rules that describe the circumstances**
6 **under which the state may seek a sentence of death under ORS 163.150. The rules must:**

7 **(a) Encourage unbiased practices that are uniform across this state; and**

8 **(b) Have a rational relationship to the criminal justice resources available to the State**
9 **of Oregon.**

10 **(2) Notwithstanding any other provision of law, if a defendant is convicted of aggravated**
11 **murder and the court finds that the state has failed to comply with the rules described in**
12 **subsection (1) of this section, the court may not impose a sentence of death.**

13 **SECTION 2. No later than March 1, 2015, the Attorney General shall submit a report to**
14 **the Legislative Assembly that includes a description of the effect that section 1 of this 2011**
15 **Act has had on prosecutions for aggravated murder.**

16 **SECTION 3. ORS 163.150 is amended to read:**

17 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-
18 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing
19 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described
20 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in
21 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial
22 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,
23 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the
24 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing
25 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.
26 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate
27 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall
28 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented
29 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-
30 pact evidence relating to the personal characteristics of the victim or the impact of the crime on

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 the victim's family and any aggravating or mitigating evidence relevant to the issue in paragraph
2 (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce
3 repetitive evidence that has previously been offered and received during the trial on the issue of
4 guilt. The court shall instruct the jury that all evidence previously offered and received may be
5 considered for purposes of the sentencing hearing. This paragraph shall not be construed to au-
6 thorize the introduction of any evidence secured in violation of the Constitution of the United States
7 or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be
8 permitted to present arguments for or against a sentence of death and for or against a sentence of
9 life imprisonment with or without the possibility of release or parole.

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

12 (A) Whether the conduct of the defendant that caused the death of the deceased was committed
13 deliberately and with the reasonable expectation that death of the deceased or another would result;

14 (B) Whether there is a probability that the defendant would commit criminal acts of violence
15 that would constitute a continuing threat to society;

16 (C) If raised by the evidence, whether the conduct of the defendant in killing the deceased was
17 unreasonable in response to the provocation, if any, by the deceased; and

18 (D) Whether the defendant should receive a death sentence.

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

24 (B) The court shall instruct the jury to answer the question in paragraph (b)(D) of this sub-
25 section "no" if, after considering any aggravating evidence and any mitigating evidence concerning
26 any aspect of the defendant's character or background, or any circumstances of the offense and any
27 victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors
28 believe that the defendant should not receive a death sentence.

29 (d) The state must prove each issue submitted under paragraph (b)(A) to (C) of this subsection
30 beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue
31 considered.

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

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

36 (2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the
37 jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, the trial
38 court shall sentence the defendant to life imprisonment without the possibility of release or parole,
39 as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are
40 sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall
41 sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

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

1 (3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies, **the**
2 **state has failed to comply with the rules adopted under section 1 of this 2011 Act** or the state
3 advises the court on the record that the state declines to present evidence for purposes of sentenc-
4 ing the defendant to death, the court:

5 (A) Shall not conduct a sentencing proceeding as described in subsection (1) of this section, and
6 a sentence of death shall not be ordered.

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

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

24 (c) Nothing in this subsection shall preclude the court from sentencing the defendant to life
25 imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of re-
26 lease or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipu-
27 lation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to
28 a jury sentencing proceeding.

29 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant
30 who has been sentenced to life imprisonment without possibility of release or parole will instead be
31 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS
32 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole,
33 release on work release or any form of temporary leave or employment at a forest or work camp.
34 Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

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

37 (a) Sentence the defendant to imprisonment for life in the custody of the Department of Cor-
38 rections as provided in ORS 163.105 (1)(c); or

39 (b) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding
40 to determine if the defendant should be sentenced to:

41 (A) Death;

42 (B) Imprisonment for life without the possibility of release or parole as provided in ORS 163.105
43 (1)(b); or

44 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
45 163.105 (1)(c).

1 **SECTION 4.** Section 1 of this 2011 Act and the amendments to ORS 163.150 by section 3
2 of this 2011 Act apply to prosecutions for offenses committed on or after the effective date
3 of this 2011 Act.

4 **SECTION 5.** This 2011 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
6 on its passage.

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