

# Senate Bill 368

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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**.

Requires district attorney to provide notice of intent to seek sentence of death and disclose evidence that will be offered in support. Prohibits admission of evidence in sentencing hearing unless described in notice or offered to rebut defendant's evidence.

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 court may not sentence a defendant to death under ORS 163.150 (1)(f)**  
6 **unless the district attorney files and serves a notice of intent to seek a sentence of death in**  
7 **accordance with this section. Except for good cause shown, the notice must be filed with the**  
8 **court and served on counsel for the defendant no later than 180 days after a defendant**  
9 **charged with aggravated murder, as defined in ORS 163.095, is held to answer following a**  
10 **preliminary hearing, is arraigned on an indictment or waives indictment. In no event may**  
11 **the court allow a district attorney to file and serve the notice less than 90 days before trial.**

12 **(2) The notice described in subsection (1) of this section must include a description of any**  
13 **evidence the district attorney will present at the sentencing hearing conducted under ORS**  
14 **163.150 (1). The court may not admit evidence in a sentencing hearing conducted under ORS**  
15 **163.150 (1) unless the evidence:**

16 **(a) Is described in the notice; or**

17 **(b) Is offered to rebut evidence introduced in the hearing by the defendant.**

18 **(3) A defendant may not enter a plea of guilty or no contest to a charge of aggravated**  
19 **murder more than 90 days before trial without the consent of the district attorney.**

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

21 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-  
22 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing  
23 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described  
24 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in  
25 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial  
26 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,  
27 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the  
28 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing  
29 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.

**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 substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate  
2 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall  
3 be conducted before a jury impaneled for that purpose. [*In the proceeding*] **Except as provided in**  
4 **section 1 of this 2011 Act**, evidence may be presented **in the proceeding** as to any matter that the  
5 court deems relevant to sentence including, but not limited to, victim impact evidence relating to  
6 the personal characteristics of the victim or the impact of the crime on the victim's family and any  
7 aggravating or mitigating evidence relevant to the issue in paragraph (b)(D) of this subsection;  
8 however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that  
9 has previously been offered and received during the trial on the issue of guilt. The court shall in-  
10 struct the jury that all evidence previously offered and received may be considered for purposes of  
11 the sentencing hearing. This paragraph shall not be construed to authorize the introduction of any  
12 evidence secured in violation of the Constitution of the United States or of the State of Oregon. The  
13 state and the defendant or the counsel of the defendant shall be permitted to present arguments for  
14 or against a sentence of death and for or against a sentence of life imprisonment with or without  
15 the possibility of release or parole.

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

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

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

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

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

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

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

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

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

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

42 (2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the  
43 jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, the trial  
44 court shall sentence the defendant to life imprisonment without the possibility of release or parole,  
45 as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are

1 sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall  
2 sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

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

7 (3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies, **the**  
8 **state has failed to comply with section 1 (1) of this 2011 Act** or the state advises the court on  
9 the record that the state declines to present evidence for purposes of sentencing the defendant to  
10 death, the court:

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

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

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

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

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

5 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS  
6 163.105 (1)(c).

7 **SECTION 3. Section 1 of this 2011 Act and the amendments to ORS 163.150 by section 2**  
8 **of this 2011 Act apply to sentencing hearings for persons who commit aggravated murder on**  
9 **or after the effective date of this 2011 Act.**

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

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