

Corrected

A-Engrossed
Senate Bill 369

Ordered by the Senate April 27
Including Senate Amendments dated April 27

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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.

Creates [*Death Penalty Review Panel. Directs panel to review*] **process by which judge, appointed by Chief Justice of Supreme Court, reviews** cases in which sentence of death is imposed when conviction or sentence is subject to litigation. Authorizes [*panel*] **judge** to convene settlement conference and make settlement recommendation.

Makes biennial appropriation from General Fund to Judicial Department for purpose of carrying out review process.

Prohibits court from imposing sentence of death unless district attorney files and serves notice of intent to seek sentence of death during specified time period.

Applies to prosecutions alleging commission of aggravated murder committed on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

5 **SECTION 1. (1) The Chief Justice of the Supreme Court shall appoint a judge who has**
6 **experience with aggravated murder cases to review cases in which a sentence of death is**
7 **imposed. Each review shall be conducted for the purpose of determining whether a settle-**
8 **ment conference would be beneficial to the parties. The judge shall review each case at the**
9 **following times:**

10 (a) **When a petition for habeas corpus is filed under ORS 34.310 to 34.730.**

11 (b) **When a petition for post-conviction relief is filed under ORS 138.510 to 138.680.**

12 (c) **When a court conducts appellate review of a petition described in paragraph (a) or (b)**
13 **of this subsection.**

14 (d) **When a case is remanded to the trial court.**

15 (2) **The judge may convene a settlement conference between the parties and may re-**
16 **commend to the state that the state offer the defendant a sentence of life imprisonment**
17 **without the possibility of release or parole as described in ORS 163.105 (1)(b).**

18 (3) **The Judicial Department shall provide staff support to the judge.**

19 (4) **All agencies of state government as defined in ORS 174.111 are directed to assist the**
20 **judge in the performance of the judge's duties and, to the extent permitted by laws relating**

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 to confidentiality, to furnish such information and advice as the judge considers necessary
2 to perform the judge's duties.

3 (5) When a retired judge is appointed by the Chief Justice under this section, service
4 under this section:

5 (a) Constitutes service as a pro tem judge for purpose of ORS 238.535 (1)(c); or

6 (b) Entitles the judge to compensation in the amount of \$200 per day plus necessary
7 travel expenses.

8 **SECTION 2.** There is appropriated to the Judicial Department, for the biennium begin-
9 ning July 1, 2011, out of the General Fund, the amount of \$_____ for the purpose of car-
10 rying out the provisions of section 1 of this 2011 Act.

11 **SECTION 3.** (1) The court may not sentence a defendant to death under ORS 163.150 (1)(f)
12 unless the district attorney files and serves a notice of intent to seek a sentence of death in
13 accordance with this section. Except for good cause shown, the notice must be filed with the
14 court and served on counsel for the defendant no later than 180 days after a defendant
15 charged with aggravated murder, as defined in ORS 163.095, is held to answer following a
16 preliminary hearing, is arraigned on an indictment or waives indictment. In no event may
17 the court allow a district attorney to file and serve the notice less than 90 days before trial.

18 (2) 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 4.** 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.
30 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate
31 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall
32 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented
33 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-
34 pact evidence relating to the personal characteristics of the victim or the impact of the crime on
35 the victim's family and any aggravating or mitigating evidence relevant to the issue in paragraph
36 (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce
37 repetitive evidence that has previously been offered and received during the trial on the issue of
38 guilt. The court shall instruct the jury that all evidence previously offered and received may be
39 considered for purposes of the sentencing hearing. This paragraph shall not be construed to au-
40 thorize the introduction of any evidence secured in violation of the Constitution of the United States
41 or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be
42 permitted to present arguments for or against a sentence of death and for or against a sentence of
43 life imprisonment with or without the possibility of release or parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-
42 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105
43 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to
44 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.
45 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the

1 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding, ev-
2 idence may be presented as to any matter that the court deems relevant to sentence, including, but
3 not limited to, victim impact evidence relating to the personal characteristics of the victim or the
4 impact of the crime on the victim's family.

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

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

18 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant
19 who has been sentenced to life imprisonment without possibility of release or parole will instead be
20 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS
21 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole,
22 release on work release or any form of temporary leave or employment at a forest or work camp.
23 Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

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

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

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

30 (A) Death;

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

33 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
34 163.105 (1)(c).

35 **SECTION 5. Section 3 of this 2011 Act and the amendments to ORS 163.150 by section 4**
36 **of this 2011 Act apply to prosecutions alleging the commission of aggravated murder com-**
37 **mitted on or after the effective date of this 2011 Act.**

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