

Senate Bill 370

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim 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**.

Modifies scope of Supreme Court review in death penalty cases.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the death penalty; creating new provisions; amending ORS 138.012; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 138.012 is amended to read:

6 138.012. (1) The judgment of conviction and sentence of death entered under ORS 163.150 (1)(f)
7 is subject to automatic and direct review by the Supreme Court. The review by the Supreme Court
8 has priority over all other cases and shall be heard in accordance with rules adopted by the Su-
9 preme Court.

10 **(2) The review by the Supreme Court shall include, but is not limited to, the following:**

11 **(a) Whether there is sufficient evidence to justify the imposition of a sentence of death;**

12 **(b) Whether, considering the nature of the crime and the characteristics of the defend-**
13 **ant, the sentence of death is excessive or disproportionate to the sentence imposed in similar**
14 **cases;**

15 **(c) Whether the sentence of death was brought about through passion or prejudice; and**

16 **(d) Whether the defendant is mentally retarded.**

17 [(2)] **(3)** Notwithstanding ORS 163.150 (1)(a), after automatic and direct review of a conviction
18 and sentence of death the following apply:

19 (a) If a reviewing court finds prejudicial error in the sentencing proceeding only, the court may
20 set aside the sentence of death and remand the case to the trial court. No error in the sentencing
21 proceeding results in reversal of the defendant's conviction for aggravated murder. Upon remand
22 and at the election of the state, **unless the Supreme Court orders otherwise**, the trial court shall
23 either:

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

26 (B) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding
27 to determine if the defendant should be sentenced to:

28 (i) Death;

29 (ii) Imprisonment for life without the possibility of release or parole as provided in ORS 163.105
30 (1)(b); or

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 (iii) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
2 163.105 (1)(c).

3 (b) The new sentencing proceeding is governed by the provisions of ORS 163.150 [(1), (2), (3) and
4 (5)]. A transcript of all testimony and all exhibits and other evidence properly admitted in the prior
5 trial and sentencing proceeding are admissible in the new sentencing proceeding. Either party may
6 recall any witness who testified at the prior trial or sentencing proceeding and may present addi-
7 tional relevant evidence.

8 (c) The provisions of this subsection are procedural and apply to any defendant sentenced to
9 death after December 6, 1984.

10 (4) **As used in this section, “similar cases” means criminal actions in which:**

11 (a) **A person was convicted of aggravated murder committed on or after December 6,**
12 **1984; and**

13 (b) **A jury determined whether the defendant would be sentenced to death.**

14 **SECTION 2. Notwithstanding ORS 138.012 (3)(c), the amendments to ORS 138.012 by sec-**
15 **tion 1 of this 2011 Act apply only to cases in which a person is sentenced to death for an**
16 **offense committed on or after the effective date of this 2011 Act.**

17 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
19 **on its passage.**

20
