

Senate Bill 76

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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**.

Modifies procedures related to executing sentence of death.

A BILL FOR AN ACT

1
2 Relating to the death penalty; creating new provisions; and amending ORS 137.463.

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

4 **SECTION 1.** ORS 137.463 is amended to read:

5 137.463. (1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy
6 of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall
7 deliver the defendant within 20 days from the date the judgment is entered to the correctional in-
8 stitution designated by the Director of the Department of Corrections pending the determination of
9 the automatic and direct review by the Supreme Court under ORS 138.012.

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

14 (a) The defendant must be present; and

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

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

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

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

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

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

30 (a) After appropriate inquiry, shall make findings on the record whether the defendant suffers
31 from a mental condition that prevents the defendant from comprehending the reasons for the death

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 sentence or its implication. The defendant has the burden of proving by a preponderance of the ev-
2 idence that the defendant suffers from a mental condition that prevents the defendant from com-
3 prehending the reasons for the death sentence or its implication.

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

7 (c) Shall determine whether the defendant intends to pursue any challenges to the sentence or
8 conviction. If the defendant states on the record that the defendant does not intend to challenge the
9 sentence or conviction, the court after advising the defendant of the consequences shall make a
10 finding on the record whether the defendant competently, knowingly and voluntarily waives the
11 right to pursue:

12 (A) A petition for certiorari to the United States Supreme Court;

13 (B) Post-conviction relief under ORS 138.510 to 138.680; and

14 (C) Federal habeas corpus review under 28 U.S.C. 2254.

15 (5) Following the death warrant hearing, a death warrant, signed by the trial judge of the court
16 in which the judgment was rendered and attested by the clerk of that court, shall be drawn and
17 delivered to the superintendent of the correctional institution designated by the Director of the
18 Department of Corrections. The death warrant shall specify a day on which the sentence of death
19 is to be 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 consider-
21 ation the needs of the Department of Corrections. The trial court shall specify a date not less than
22 90 days nor more than 120 days following the effective date of the appellate judgment.

23 (6)(a) Notwithstanding any other provision in this section, if the court finds that the defendant
24 suffers from a mental condition that prevents the defendant from comprehending the reasons for the
25 sentence of death or its implications, the court may not issue a death warrant until such time as the
26 court, after appropriate inquiries, finds that the defendant is able to comprehend the reasons for the
27 sentence of death and its implications.

28 (b)(A) If the court does not issue a death warrant because it finds that the defendant suffers
29 from a mental condition that prevents the defendant from comprehending the reasons for the sen-
30 tence of death or its implications, the court shall conduct subsequent hearings on the issue on mo-
31 tion of the district attorney or the defendant's counsel or on the court's own motion, upon a showing
32 that there is substantial reason to believe that the defendant's condition has changed.

33 (B) The court may hold a hearing under this paragraph no more frequently than once every six
34 months.

35 (C) The state and the defendant may obtain an independent medical, psychiatric or psychological
36 examination of the defendant in connection with a hearing under this paragraph.

37 (D) In a hearing under this paragraph, the defendant has the burden of proving by a prepon-
38 derance of the evidence that the defendant continues to suffer from a mental condition that prevents
39 the defendant from comprehending the reasons for the sentence of death or its implications.

40 (7) If for any reason a sentence of death is not executed on the date appointed in the death
41 warrant, and the sentence of death remains in force and is not stayed under ORS 138.686 or other-
42 wise by a court of competent jurisdiction, the court that issued the initial death warrant, on motion
43 of the state and without further hearing, shall issue a new death warrant specifying a new date on
44 which the sentence is to be executed. The court shall specify a date for execution of the sentence,
45 taking into consideration the needs of the Department of Corrections. The court shall specify a date

1 not more than [20] 30 days after the date on which the state's motion was filed.

2 (8) No appeal may be taken from an order issued pursuant to this section.

3 **SECTION 2. The amendments to ORS 137.463 by section 1 of this 2013 Act apply to**
4 **motions filed on or after the effective date of this 2013 Act.**

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