

Senate Bill 81

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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 minimum term of incarceration for offenders convicted of aggravated murder who are eligible for parole.

A BILL FOR AN ACT

1
2 Relating to sentencing; creating new provisions; and amending ORS 163.105 and 163.150.

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

4 **SECTION 1.** ORS 163.105 is amended to read:

5 163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

6 (1)(a) Except as otherwise provided in ORS 137.700, when a defendant is convicted of aggravated
7 murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to
8 death, life imprisonment without the possibility of release or parole or life imprisonment.

9 (b) A person sentenced to life imprisonment without the possibility of release or parole under
10 this section shall not have that sentence suspended, deferred or commuted by any judicial officer,
11 and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce
12 the period of confinement in any manner whatsoever. The Department of Corrections or any execu-
13 tive official may not permit the prisoner to participate in any sort of release or furlough program.

14 (c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined
15 for a minimum of [30] **31** years without possibility of parole, release to post-prison supervision, re-
16 lease on work release or any form of temporary leave or employment at a forest or work camp.

17 (2) At any time after completion of a minimum period of confinement pursuant to subsection
18 (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a
19 prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated
20 within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be re-
21 habilitated within a reasonable period of time. At the hearing, the prisoner has:

22 (a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation
23 within a reasonable period of time;

24 (b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented
25 by legal counsel, appointed by the board, at board expense; and

26 (c) The right to a subpoena upon a showing of the general relevance and reasonable scope of
27 the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by
28 the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

29 (3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members,
30 finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement

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 should be changed to life imprisonment with the possibility of parole, release to post-prison super-
2 vision or work release, it shall enter an order to that effect and the order shall convert the terms
3 of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-
4 prison supervision or work release and may set a release date. Otherwise the board shall deny the
5 relief sought in the petition.

6 (4) If the board denies the relief sought in the petition, the board shall determine the date of the
7 subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS
8 144.285.

9 (5) The board's final order shall be accompanied by findings of fact and conclusions of law. The
10 findings of fact shall consist of a concise statement of the underlying facts supporting the findings
11 as to each contested issue of fact and as to each ultimate fact required to support the board's order.

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

13 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-
14 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing
15 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described
16 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in
17 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial
18 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,
19 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the
20 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing
21 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.
22 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate
23 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall
24 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented
25 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-
26 pact evidence relating to the personal characteristics of the victim or the impact of the crime on
27 the victim's family and any aggravating or mitigating evidence relevant to the issue in paragraph
28 (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce
29 repetitive evidence that has previously been offered and received during the trial on the issue of
30 guilt. The court shall instruct the jury that all evidence previously offered and received may be
31 considered for purposes of the sentencing hearing. This paragraph shall not be construed to au-
32 thorize the introduction of any evidence secured in violation of the Constitution of the United States
33 or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be
34 permitted to present arguments for or against a sentence of death and for or against a sentence of
35 life imprisonment with or without the possibility of release or parole.

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

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

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

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

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

45 (c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b)

1 of this subsection, any mitigating circumstances offered in evidence, including but not limited to the
2 defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of
3 the mental and emotional pressure under which the defendant was acting at the time the offense
4 was committed.

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

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

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

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

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

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

27 (3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies or
28 the state advises the court on the record that the state declines to present evidence for purposes
29 of sentencing the defendant to death, the court:

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

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

41 (b) Following the presentation of evidence and argument under paragraph (a) of this subsection,
42 the court shall instruct the jury that the trial court shall sentence the defendant to life
43 imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless
44 after considering all of the evidence submitted, 10 or more members of the jury find there are suf-
45 ficient mitigating circumstances to warrant life imprisonment with the possibility of parole as de-

1 scribed in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating
 2 circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sen-
 3 tence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

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

9 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant
 10 who has been sentenced to life imprisonment without possibility of release or parole will instead be
 11 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS
 12 163.105 (2), the defendant shall be confined for a minimum of [30] 31 years without possibility of
 13 parole, release on work release or any form of temporary leave or employment at a forest or work
 14 camp. Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

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

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

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

21 (A) Death;

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

24 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
 25 163.105 (1)(c).

26 **SECTION 3. The amendments to ORS 163.105 and 163.150 by sections 1 and 2 of this 2013**
 27 **Act apply to crimes committed on or after the effective date of this 2013 Act.**

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