

## **SB 1013 STAFF MEASURE SUMMARY**

### **Senate Committee On Judiciary**

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**Prepared By:** Addie Smith, Counsel

**Meeting Dates:** 4/1, 4/8

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#### **WHAT THE MEASURE DOES:**

Redefines crime of aggravated murder to include criminal homicide of two or more persons that is premeditated, intentional, and committed with the intent to: 1) intimidate, injure, or coerce a civilian population; 2) Influence the policy of a government by intimidation or coercion; or 3) affect the conduct of a government through destruction of property, murder, kidnapping or aircraft piracy. Reclassifies current manners of aggravated murder as Murder in the First Degree and specifies penalties: if over 18 years of age at the time of commission, the court may sentence the person to life without possibility of parole if at least 15 years of age at the time of commission, the sentence is life imprisonment with a minimum of 30 years before parole may be considered. Renames crime of Murder to Murder in the Second Degree. Removes future dangerousness as factor for jury to determine when deciding on sentence of death. Requires state to prove that defendant should receive the death penalty beyond a reasonable doubt. Takes effect 91 days after sine die. Applies to sentencing proceedings occurring on or after the effective date of the measure.

#### **ISSUES DISCUSSED:**

##### **EFFECT OF AMENDMENT:**

No amendment.

##### **BACKGROUND:**

In 1984, two companion ballot measures were enacted to allow for a sentence of death when a defendant has committed aggravated murder. Ballot Measure 6 enacted Article I, section 40, of the Oregon Constitution which provides:

Notwithstanding sections 15 and 16 of this Article, the penalty for aggravated murder as defined by law shall be death upon unanimous affirmative jury findings as provided by law and otherwise shall be life imprisonment with minimum sentence as provided by law.

The companion measure, Ballot Measure 7, created statutory procedures for sentencing a person to death. It requires the court to hold a separate sentencing proceeding following a conviction for aggravated murder, during which a jury considers certain questions, and requires the court to sentence the defendant to death when upon a jury unanimously answers yes to each question.

Since 1984, the legislative definition of aggravated murder has been legislatively changed on at least two occasions, in 1997 murder of a person under the age of 14 years was added to the definition, Or Laws 1997, c. 850 § 1; and in 2012, murder of a liquor enforcement inspector (now referred to as a regulatory specialist) was added to the definition. Or Law c 54 § 26. In that time the legislature also changed the process by which a jury sentences a defendant convicted of aggravated murder. In 1989, the legislature added the sentence of life without parole, Or Laws 1989, c. 720 § 2; in 1989 and 1991 the required jury findings were modified, Or Laws 1989, c. 790 § 135b and Or Laws 1991, c. 885 § 2; and in 1989 and 1995 the consideration of mitigation was included. Or Laws 1989, c. 790 § 135b and Or Laws 1995, c. 531 § 23.

Currently, aggravated murder is defined to include circumstances where the defendant was paid or paid someone to commit murder, where a defendant committed murder after previously being convicted of homicide, where

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there were multiple murder victims in the same criminal episode, where the victim was under the age of 14 years, where the homicide was the result of intentional torture or maiming, where the victim is a justice system official and the murder was related to the person's duties in the justice system, where the homicide occurred while the defendant was in custody or after the defendant escaped from custody, where the means of murder was an explosive, where the murder was an effort to conceal the commission of a crime or the identity of a perpetrator, or where the defendant personally and intentionally committed murder during the course of committing a felony named under ORS 163.115(1)(b). ORS 163.095.

ORS 163.150 describes the sentencing process for an individual convicted of aggravated murder. Under that statute, the following questions are submitted to the jury: 1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with reasonable expectation that death would result; 2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; 3) if raised by the evidence, whether the conduct of the defendant was unreasonable in response to the provocation, if any, by the deceased; and 4) whether, after considering mitigating circumstances, the defendant should receive the death penalty, ORS 163.150(1)(b) & ORS 163.150(1)(c)(B). The state must prove the first three of these questions beyond a reasonable doubt for the jury to return a verdict of yes. ORS 163.150(d). If the jury returns a unanimous affirmative finding on all four of these questions, the trial judge must sentence the defendant to death. ORS 163.150(1)(f). When the jury returns a negative finding to any of the questions the judge must sentence the defendant to life imprisonment, unless 10 or more jury members find mitigating circumstances warrant a sentence of life imprisonment with possibility of parole. ORS 163.150(2).

Senate Bill 1013 redefines the crime of aggravated murder, reclassifies the current definition of aggravated murder as Murder in the First Degree, and renames the crime of murder to Murder in the Second Degree. It also removes future dangerousness as a factor for the jury to determine when deciding whether to sentence a defendant convicted of aggravated murder to death and requires the state to prove that the defendant should receive the death penalty beyond a reasonable doubt.