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June 5, 2019

Representative Paul Holvey
Chair, House Committee on Rules

RE: Testimony in opposition to A-Engrossed Senate Bill 1013

Chair Holvey and Members of the Committee:

My name is Katie Suver. I am a Deputy District Attorney in Marion County. I have served as a prosecutor in Oregon since September of 1997, first with the Linn County District Attorney's Office and over 19 years with the Marion County District Attorney's Office. I am here on behalf of my office and the Oregon District Attorney's Association. Both oppose Senate Bill 1013.

As a Deputy District Attorney in Marion County I have tried four death penalty cases where the defendant was charged with or had been previously convicted of Aggravated Murder.

Senate Bill 1013 will effectively repeal the death penalty

Supporters of Senate Bill 1013 have testified that the legislature has the authority to define the crime of Aggravated Murder. I agree. But just because the legislature *can* do something does not mean it *should*.

In 1984, when Ballot Measure 6 and 7 were voted into law, Oregonians overwhelmingly determined that a person convicted of Aggravated Murder should be eligible for the death penalty. Over 75% of Oregon voters approved a change to Oregon law that a defendant "convicted of aggravated murder" should be sentenced to death upon unanimous affirmative jury findings to certain statutory questions.

The voters in 1984 knew what "Aggravated Murder" meant in Oregon. In 1984, ORS 163.095 defined Aggravated Murder nearly *identically* to how it is defined today. See Exhibit 1 – page 240 of Oregon's 1984 criminal code which defined Aggravated Murder.

Comparing the current version of ORS 163.095, the only changes the legislature has made to the statute since 1984 have been to minimally expand it. *See* Exhibit 2 – page 479 of Oregon’s 2018 criminal code.

First, the legislature expanded Aggravated Murder to include intentional homicide of a person under 14. Second, the legislature expanded aggravated murder to include the murder of a “regulatory specialist.” In 2014, the legislature expanded “police officer” to include reserve police officers.

Because Senate Bill 1013 will change the *entire definition* of Aggravated Murder, it will repeal what the voters knew to be Aggravated Murder in 1984, when they approved Ballot Measure 6 and implemented Article 1, section 40 of Oregon’s Constitution – preserving the death penalty as a possible punishment for Aggravated Murder.

Why was it appropriate to expand Aggravated Murder in previous legislative sessions? Because expanding the definition of Aggravated Murder was not in conflict with what Oregonians voted into law. To restrict the definition of Aggravated Murder as Senate Bill 1013 does is in conflict with what Oregonians have said should be law. The bill is nothing other than a legislative repeal of the death penalty. That is not a fair or just process because it is in direct conflict with the will of the people.

Senate Bill 1013 will render Oregon’s death penalty statute unconstitutional

As a Deputy District Attorney, I have argued and defended nearly every conceivable attack on Oregon’s death penalty statute. As the Oregon Supreme Court has repeatedly upheld since 1990, Oregon’s statute is constitutional. *State v. Wagner*, 305 Or 115 (1988); *State v. Guzek*, 322 Or 245 (1995). Since *Guzek* was decided in 1995, the Oregon Supreme Court has reviewed death penalties on automatic review, and on each occasion, has rejected arguments that Oregon’s death penalty statute is unconstitutional.

Let me be very clear on this point: The Oregon Supreme Court has *repeatedly* held that Oregon’s death penalty statute is constitutional, including the second question. This year, in *State v. Taylor*, 364 Or 364 (2019), the Oregon Supreme Court rejected a challenge that Oregon’s second question was constitutionally defective.

If you pass Senate Bill 1013 and remove the second question from Oregon’s death penalty statute, you will *guarantee* constitutional challenges to Oregon’s death penalty statute and erase 30 years of precedent that have found the current statute constitutional.

The second question requires the state to prove, beyond a reasonable doubt, that it is more likely than not that the defendant will “commit criminal acts of violence that would constitute a continuing threat to society.” The jury only answers that question if the defendant has been *found guilty* of aggravated murder. The second question requires the jury to find that the defendant will be a continuing threat in prison by committing acts of violence. The second question serves to narrow the class of aggravated murderers who could be eligible for the death penalty, because it is the hardest question to prove. For

prosecutors evaluating whether there is even *evidence* to pursue the death penalty, the second question is often the question that eliminates the death penalty as an option.

Senate Bill 1013 changes the presumptive sentence for the most heinous murders to Life with Parole

Currently, Oregon law provides that the presumptive sentence for Aggravated Murder is life in prison without the possibility of parole. Either a judge or sentencing jury has the authority to provide for the possibility of parole after 30 years in prison if the judge or jury finds “sufficient mitigating circumstances” to warrant parole eligibility after 30 years.

Under Senate Bill 1013, the presumptive sentence for the new crime of Murder in the First Degree (presently defined as Aggravated Murder) would be a life sentence with eligibility for parole after 30 years. Under Senate Bill 1013 the court *may* sentence a defendant to life without the possibility of parole but the court has to state the “reasons” for imposing a true life sentence.

Senate Bill 1013 does not define what the “reasons” have to be or should be. As the word implies, there has to be more than one “reason.”

When a word is undefined in the criminal code, it practically guarantees years of litigation and analysis and speculation around the intent of the legislature. Furthermore, if the proponents of Senate Bill 1013 claim that passage of this bill will save money, how can that be the case when every life sentence without the possibility of parole will be subjected to years of costly appellate review?

Senate Bill 1013 is in conflict with the will of Oregon voters

If the voters of Oregon want the death penalty repealed, let the voters tell the legislature that is what they want.

Thank you for your consideration.

Sincerely,



Katie Suver

Deputy District Attorney

HOMICIDE

163.005 Criminal homicide. (1) A person commits criminal homicide if, without justification or excuse, he intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

(2) "Criminal homicide" is murder, manslaughter or criminally negligent homicide.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act. [1971 c.743 §87]

163.010 [Amended by 1963 c.625 §4; repealed by 1971 c.743 §432]

163.020 [Amended by 1963 c.625; §5; repealed by 1971 c.743 §432]

163.030 [Repealed by 1963 c.431 §1]

163.040 [Repealed by 1971 c.743 §432]

163.050 [Repealed by 1971 c.743 §432]

163.060 [Repealed by 1969 c.684 §17]

163.070 [Repealed by 1971 c.743 §432]

163.080 [Repealed by 1971 c.743 §432]

163.090 [Amended by 1963 c.878 §2; repealed by 1967 c.396 §1 (163.091 enacted in lieu of 163.090)]

163.091 [1967 c.396 §2 (enacted in lieu of 163.090); repealed by 1971 c.743 §432]

163.095 "Aggravated murder" defined. As used in ORS 163.105 and this section, "aggravated murder" means murder as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

(1)(a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the murder.

(b) The defendant solicited another to commit the murder and paid or agreed to pay the person money or other thing of value for committing the murder.

(c) The defendant committed murder after having been convicted previously in any jurisdiction of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

(d) There was more than one murder victim in the same criminal episode as defined in ORS 131.505.

(e) The homicide occurred in the course of or as a result of intentional maiming or torture of the victim.

(2)(a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:

(A) A police officer as defined in ORS 181.610 (6);

(B) A correctional, parole or probation officer or other person charged with the duty of custody, control or supervision of convicted persons;

(C) A member of the Oregon State Police;

(D) A judicial officer as defined in ORS 1.210;

(E) A juror or witness in a criminal proceeding;

(F) An employe or officer of a court of justice; or

(G) A member of the State Board of Parole.

(b) The defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.

(c) The defendant committed murder by means of an explosive as defined in ORS 164.055 (2)(a).

(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in 163.115 (1)(b).

(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.

(f) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility. [1977 c.370 §1; 1981 c.873 §1]

163.100 [Amended by 1967 c.372 §12; repealed by 1971 c.743 §432]

163.103 Pleading, proof and stipulation regarding previous conviction element in aggravated murder case. (1) In a prosecution for aggravated murder under ORS 163.095 (1)(c), the state shall plead the previous conviction, and shall prove the previous conviction unless the defendant stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by jury:

(a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

(b) The defendant's stipulation to the previous conviction constitutes a judicial admission

HOMICIDE

163.005 Criminal homicide. (1) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

(2) "Criminal homicide" is murder, manslaughter, criminally negligent homicide or aggravated vehicular homicide.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act. [1971 c.743 §87; 2007 c.857 §4]

163.010 [Amended by 1963 c.625 §4; repealed by 1971 c.743 §432]

163.020 [Amended by 1963 c.625; §5; repealed by 1971 c.743 §432]

163.030 [Repealed by 1963 c.431 §1]

163.040 [Repealed by 1971 c.743 §432]

163.050 [Repealed by 1971 c.743 §432]

163.060 [Repealed by 1969 c.684 §17]

163.070 [Repealed by 1971 c.743 §432]

163.080 [Repealed by 1971 c.743 §432]

163.090 [Amended by 1969 c.676 §2; repealed by 1967 c.896 §1 (163.091 enacted in lieu of 163.090)]

163.091 [1967 c.896 §2 (enacted in lieu of 163.090); repealed by 1971 c.743 §432]

163.095 "Aggravated murder" defined. As used in ORS 163.105 and this section, "aggravated murder" means murder as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

(1)(a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the murder.

(b) The defendant solicited another to commit the murder and paid or agreed to pay the person money or other thing of value for committing the murder.

(c) The defendant committed murder after having been convicted previously in any jurisdiction of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

(d) There was more than one murder victim in the same criminal episode as defined in ORS 131.505.

(e) The homicide occurred in the course of or as a result of intentional maiming or torture of the victim.

(f) The victim of the intentional homicide was a person under the age of 14 years.

(2)(a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:

(A) A police officer as defined in ORS 181A.355;

(B) A correctional, parole and probation officer or other person charged with the duty of custody, control or supervision of convicted persons;

(C) A member of the Oregon State Police;

(D) A judicial officer as defined in ORS 1.210;

(E) A juror or witness in a criminal proceeding;

(F) An employee or officer of a court of justice;

(G) A member of the State Board of Parole and Post-Prison Supervision; or

(H) A regulatory specialist.

(b) The defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.

(c) The defendant committed murder by means of an explosive as defined in ORS 164.055.

(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in ORS 163.115 (1)(b).

(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.

(f) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility. [1977 c.370 §1; 1991 c.873 §1; 1991 c.742 §13; 1991 c.837 §12; 1993 c.166 §20; 1993 c.623 §2; 1997 c.850 §1; 2005 c.264 §17; 2012 c.54 §24; 2015 c.614 §149]

163.098 Alternative proof of certain victims of aggravated murder. Notwithstanding ORS 163.095, when an element of a crime charged is that the victim of the crime is a police officer as defined in ORS 181A.355 and the crime was related to the officer's performance of official duties, the state may alternatively prove that the victim of the crime is a certified reserve officer or a reserve officer, as those terms are defined in ORS 181A.355, and the crime was related to the officer's performance of official duties. [2014 c.73 §5]

Note: 163.098 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

163.100 [Amended by 1967 c.872 §12; repealed by 1971 c.743 §432]