

House Bill 2227

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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**.

Authorizes introduction of victim impact evidence in nondeath penalty aggravated murder sentencing proceedings.

A BILL FOR AN ACT

1
2 Relating to victim impact evidence; amending ORS 163.150.

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

4 **SECTION 1.** ORS 163.150 is amended to read:

5 163.150. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, ex-
6 cept as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing
7 proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described
8 in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in
9 ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial
10 jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror,
11 the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the
12 name of one of the alternate jurors, who shall then become a member of the jury for the sentencing
13 proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt.
14 The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate
15 on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall
16 be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented
17 as to any matter that the court deems relevant to sentence including, but not limited to, victim im-
18 pact evidence relating to the personal characteristics of the victim or the impact of the crime on
19 the victim's family and any aggravating or mitigating evidence relevant to the issue in paragraph
20 (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce
21 repetitive evidence that has previously been offered and received during the trial on the issue of
22 guilt. The court shall instruct the jury that all evidence previously offered and received may be
23 considered for purposes of the sentencing hearing. This *[subsection]* **paragraph** shall not be con-
24 strued to authorize the introduction of any evidence secured in violation of the Constitution of the
25 United States or of the State of Oregon. The state and the defendant or the counsel of the defendant
26 shall be permitted to present arguments for or against a sentence of death and for or against a
27 sentence of life imprisonment with or without the possibility of release or parole.

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

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

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

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

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

6 (c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b)
7 of this subsection, any mitigating circumstances offered in evidence, including but not limited to the
8 defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of
9 the mental and emotional pressure under which the defendant was acting at the time the offense
10 was committed.

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

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

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

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

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

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

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

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

38 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-
39 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105
40 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to
41 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.
42 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the
43 procedure of subsection (1)(a) of this section, as modified by this subsection. **In the proceeding,**
44 **evidence may be presented as to any matter that the court deems relevant to sentence, in-**
45 **cluding, but not limited to, victim impact evidence relating to the personal characteristics**

of the victim or the impact of the crime on the victim's family.

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

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

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

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

(a) Sentence the defendant to imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c); or

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

(A) Death;

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

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