

SB 1013 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary**Action Date:** 04/08/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 5-2-0-0**Yeas:** 5 - Fagan, Gelser, Linthicum, Manning Jr, Prozanski**Nays:** 2 - Bentz, Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 4/1, 4/8**WHAT THE MEASURE DOES:**

Redefines crime of aggravated murder to include: premeditated, intentional homicide of two or more persons that is committed with the intent to either intimidate, injure, or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government through destruction of property, murder, kidnapping or aircraft piracy; murder by a defendant in custody, after the defendant was previously convicted in any jurisdiction of any homicide that would constitute the crime of aggravated murder or murder in the first degree; or premeditated intentional murder against a person under 14 years of age. Removes future dangerousness as factor for jury to determine when deciding on sentence of death. Clarifies that attempted aggravated murder and attempt of any degree of murder are Class A felonies. Reclassifies current manners of aggravated murder as Murder in the First Degree and specifies penalties. Renames crime of Murder to Murder in the Second Degree. Requires state to prove that defendant should receive the death penalty beyond a reasonable doubt. Takes effect 91st day following adjournment sine die. Applies to sentencing proceedings occurring on or after the effective date of the measure.

ISSUES DISCUSSED:

- History of the definition of aggravated murder
- History of the death penalty in Oregon
- Cost of aggravated murder trials and appeals
- Perspective of faith leaders
- Perspective of victims
- Crimes committed by individuals currently sentenced to the death penalty

EFFECT OF AMENDMENT:

Includes in the definition of aggravated murder while the defendant was in custody after the defendant was previously convicted in any jurisdiction of any homicide that would constitute the crime of aggravated murder or murder in the first degree and premeditated, intentional murder against a person under 14 years of age. Clarifies that attempted aggravated murder and attempt of any degree of murder are Class A felonies.

BACKGROUND:

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

[T]he 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.

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The companion measure, Ballot Measure 7, created statutory procedures for sentencing a person to death. Those require the court to ask, and the jury to answer, a series of questions following a conviction for aggravated murder. Should a jury unanimously answer yes to each question, the court must sentence the defendant to death.

Since 1984, the 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. 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 Legislative Assembly also changed the process by which a jury sentences a defendant convicted of aggravated murder. In 1989, the Legislative Assembly 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. Finally, 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 includes proceedings in which the defendant was paid or paid someone to commit murder; the defendant committed murder after previously being convicted of homicide; the defendant committed multiple murders in the same criminal episode, the victim of the intentional homicide was under the age of 14 years; the homicide was the result of intentional torture or maiming; the victim of the murder was a justice system official delineated in the statute and the murder was related to the person's duties in the justice system; the murder occurred while the defendant was in custody or after the defendant escaped from custody; the means of murder was an explosive; the murder was an effort to conceal the commission of a crime or the identity of a perpetrator; or the defendant personally and intentionally committed murder during the course of committing one of the felonies named under ORS 163.115(1)(b). ORS 163.095.

ORS 163.150 describes the current 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 an answer 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 A 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 clarifies that attempted aggravated murder and attempt of any degree of murder are Class A felonies. Finally, SB 1013 A 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.