

# House Bill 3269

Sponsored by Representative GREENLICK; Representatives BYNUM, GORSEK, KENY-GUYER, LIVELY, NOBLE, PILUSO, SALINAS, Senators DEMBROW, MONNES ANDERSON, STEINER HAYWARD

## 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**.

Removes future dangerousness as factor for jury to determine when deciding on sentence of death. Requires state to prove beyond reasonable doubt that defendant should receive death sentence.

Specifies procedures for persons already sentenced to death to be resentenced to life imprisonment without possibility of parole.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to aggravated murder; creating new provisions; amending ORS 163.150; and prescribing an  
3 effective date.

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

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

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

**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 issues to the jury:

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

4 [(B) *Whether there is a probability that the defendant would commit criminal acts of violence that*  
5 *would constitute a continuing threat to society;*]

6 [(C)] (B) If raised by the evidence, whether the conduct of the defendant in killing the deceased  
7 was unreasonable in response to the provocation, if any, by the deceased; and

8 [(D)] (C) Whether the defendant should receive a death sentence.

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

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

19 (d) The state must prove each issue submitted under paragraph [(b)(A) to (C)] (b) of this sub-  
20 section beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on  
21 each issue considered.

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

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

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

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

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

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

41 (B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-  
42 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105  
43 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to  
44 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.  
45 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the

1 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding,  
2 evidence may be presented as to any matter that the court deems relevant to sentence, including,  
3 but not limited to, victim impact evidence relating to the personal characteristics of the victim or  
4 the impact of the crime on the victim's family.

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

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

18 (4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant  
19 who has been sentenced to life imprisonment without possibility of release or parole will instead be  
20 sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS  
21 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole,  
22 release on work release or any form of temporary leave or employment at a forest or work camp.  
23 Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

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

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

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

30 (A) Death;

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

33 (C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS  
34 163.105 (1)(c).

35 **SECTION 2. (1) The amendments to ORS 163.150 by section 1 of this 2019 Act apply to**  
36 **crimes committed before, on or after the effective date of this 2019 Act that are the subject**  
37 **of sentencing proceedings occurring on or after the effective date of this 2019 Act.**

38 **(2) A person who was sentenced to death in this state prior to the effective date of this**  
39 **2019 Act shall receive a new sentencing proceeding before the trial court within one year of**  
40 **the effective date of this 2019 Act.**

41 **(3) A trial court resentencing a defendant under this section shall sentence the defendant**  
42 **to imprisonment for life without the possibility of release or parole as provided in ORS**  
43 **163.105 (1)(b).**

44 **SECTION 3. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
45 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

