

Few pending cases meet Oregon's higher bar for death penalty

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Oregon Public Broadcasting

For a state that hasn't seen an execution in more than two decades, the death penalty has cast an enormous shadow in Oregon this year.

Now, the potential for any future executions has become much more limited, even in pending cases that were eligible for the death penalty when they were charged, an analysis by Oregon Public Broadcasting has found.

A new law that restricts the state's only capital crime took effect Sunday. Prosecutors, victims, lawmakers and an army of advocacy groups had already traded barbs on the issue for months. The debate was so fraught that Gov. Kate Brown nearly called lawmakers in for a special legislative session, before deciding against it.

Especially controversial are decades-old death penalty cases — at least two inmates formerly sentenced to die are no longer eligible under the change to state law. But those cases represent a sliver of the impact Oregon's shifting approach to the death penalty will have. The greatest outcome, sweeping and immediate, will be felt in the everyday charging decisions made by prosecutors across the state.

As the new rules took effect Sunday, at least 43 open cases included one or more charges of aggravated murder, the state's only death-eligible crime. Under the now narrower definition of the law, though, OPB found just one of those cases appears certain to proceed as an aggravated murder charge. Up to five additional defendants have cases that potentially still qualify.

The remaining aggravated murder charges will likely be downgraded to first-degree murder, a new crime under Oregon law that carries a maximum sentence of life in prison without parole.

"The vast majority of cases will not meet that definition of aggravated murder," Washington County District Attorney Kevin Barton said, echoing prosecutors around the state who have fought the changes. "It's possible a few might, but I'm talking a few statewide."

For those who oppose the death penalty, that's the very point of the narrowed law. They view the immediate reduction in death penalty cases, and their decreased use in subsequent years, as a long-needed correction.

"Oregon had a significantly expansive view of what constituted aggravated murder," said Carl Macpherson, executive director of Metropolitan Public Defender, the state's largest public defense firm. "The narrowing of the law was fantastic and, I think, was appropriate."

Changed approach

The steep reduction in potential death penalty cases is the result of Senate Bill 1013, which passed the Legislature this year almost solely on the strength of Democratic support.

Oregon has a fickle history with the death penalty, but it's been enshrined in the state constitution since 1984. It can only be removed through a public vote. SB 1013 was a way for lawmakers to drastically reduce instances in which a death sentence is even an option.

To do that, the bill strictly narrowed what constitutes aggravated murder. The crime had previously encapsulated a wide array of potential factors. SB 1013 ensures it can only be used in small subset of murders. Those include premeditated murders of children under 14 years old or murders of law enforcement officers, terrorist attacks that kill at least two people, and prison killings carried out by someone who'd previously been convicted of murder.

The practical impact of the law on Oregon executions is negligible, for now. The state's last two governors have halted executions in the state, a policy that has been in place since 2011. Yet that political environment has not stopped prosecutors from seeking the death sentence.

To get a sense of how SB 1013's changes would impact Oregon's criminal justice system, OPB compiled data for all open aggravated murder cases awaiting trial, then compared the facts of the alleged crimes against the law's new definition. District attorneys in 11 of the 16 counties with such cases also offered some insight into how they believe SB 1013 had impacted them. Prosecutors in



Laurie Isola/Oregon Public Broadcasting

Jeremy Christian listens during a hearing in a Multnomah County courtroom in Portland on May 3. Christian was in court seeking a delay in the beginning of his trial while the state considers changes to its death penalty law.

Multnomah, Lincoln and Tillamook counties declined to comment, while officials in Linn and Douglas counties didn't respond to inquiries.

The cases OPB found span a wide array of narratives, from prison-yard stabbings, to drug deals or romantic entanglements gone awry, to alleged serial killings. They reveal the latitude prosecutors used to have in wielding aggravated murder charges, sometimes saddling the same defendant with multiple counts of Oregon's most severe charge for a single killing.

Now — in at least 86% of cases OPB analyzed — the charge is no longer an option.

In Washington County, seven open aggravated murder cases will no longer be eligible for the death penalty, Barton confirmed. Executions are also "off the table" in three Lane County cases, District Attorney Patty Perlow said.

In Multnomah County, as many as nine murder cases could be downgraded from aggravated murder. Though neither a spokesperson nor District Attorney Rod Underhill would discuss specifics, that list potentially includes the case of Jeremy Christian, the alleged white supremacist accused of carrying out a 2017 triple stabbing on a Portland light-rail train that left two men dead.

Homer Lee Jackson, an alleged serial killer accused of sexually assaulting and murdering four Portland women in the 1980s and '90s, also appears ineligible for the death sentence.

In Malheur County, prosecutors had planned to seek the death penalty against a defendant named Anthony Montwheeler, but the man's alleged fatal stabbing of his ex-wife doesn't qualify, according to District Attorney David Goldthorpe.

The list also includes two men who've previously been sentenced to death, but who have been granted new trials. The defendants, David Lee Cox and Martin Johnson, are no longer eligible for execution under the new definitions.

Even one case that appears to fit snugly within the new definition of aggravated murder is off limits, a prosecutor said. Marion County defendant Craig Bjork was convicted of a quadruple murder that included his two young sons decades ago in Minnesota. He subsequently killed an inmate in that state.

Bjork was eventually transferred, and wound up in the Oregon State Penitentiary. He is now accused of killing a fellow inmate there in 2013.

The details of Bjork's history — a twice-convicted murderer now accused of killing a fellow inmate — appear to match up well with Oregon's revised aggravated murder law. But Marion County Deputy District Attorney Katie Suver said that's not the case, and that the county is dropping its bid to have Bjork sentenced to death. The reason: Suver said the precise language of the crimes of which Bjork was convicted in Minnesota are now incompatible for prosecution under Oregon's death penalty law.

"This is something that we have gone over and over and over," Suver said. "I can safely say our analysis is correct. Bjork's lawyers know our analysis is correct."

In Clackamas County, District Attorney John Foote also has an open aggravated murder case that will move forward as a murder charge, no longer eligible for the death penalty. He argues the focus on changing the law has ignored crime victims.

"We have a double murder here where the family has been dealing with that," Foote said. "And now they find out that the Legislature changed the law in their case, in the middle of their case. ... They don't understand why someone would do that to them."

In other cases, it's less clear how prosecutors will proceed.

"I'm still deciding how to address the matter in this case," Deschutes County District Attorney John Hummel wrote in an email regarding the case of Tashina Jordan, who allegedly shot and killed her 7-year-old disabled son last year.

In the sole instance where a prosecutor signaled he will likely move forward with an aggravated murder case, Malheur County's Goldthorpe said he believes the law still applies to a convicted murderer named James DeFrank, who is accused of killing another inmate at Eastern Oregon's Snake River Correctional Institution in 2011.

"My evaluation up to this point (so not a permanent determination) leads me to believe that the new statute ... does still allow (the death penalty) to be sought in Mr. DeFrank's case," Goldthorpe wrote in an email to OPB.

'A sick charade'

The state's prosecutors have often said SB 1013 has injected unwarranted confusion into the state's criminal justice system. Perlow, the Lane County district attorney, went so far as

to suggest that the bill's backers welcomed "chaos."

But death penalty opponents say the new arrangement makes more sense than the system Oregon has worked within for decades.

They point out that death penalty cases often require more resources, as defense attorneys scramble to minutely investigate not only their clients' alleged crimes, but their lives. Salient details about a history of abuse suffered by a defendant, for instance, could be key in convincing jurors they don't deserve death.

"It is extremely time consuming, extremely long and very expensive," Macpherson said. When Metropolitan Public Defender fields a death penalty case, he said, each defense team includes two attorneys, a mitigation specialist, a fact investigator and legal assistants.

But in the majority of aggravated murder cases, prosecutors don't seek death. Death penalty opponents said that has led to a waste of resources in many aggravated murder cases.

"It's like a sick charade that we put on that defense attorneys, prosecutors and all the other system stakeholders are going through," said Bobbin Singh, executive director of the Oregon Justice Resource Center. "I think 1013 mitigates the impact of the ineffectiveness of that charade. It makes that charade a little bit smaller."

Lewis and Clark College law professor Aliza Kaplan has extensively studied the costs of capital punishment in Oregon and believes the death penalty should be eliminated in the state. SB 1013 is a step in the right direction, she said.

"To me, it's moving cases along faster and resolving them, and it's getting to the very same result that we've always gotten: that very few people end up with the death penalty in Oregon," Kaplan said.

The debate between these two viewpoints was seemingly decided on Sept. 29, when the bill went into effect without any changes. But the outcome might have been far different.

The state's prosecutors were key voices calling on Brown and legislative leaders to convene a special session to tweak the bill, which they say extended to more cases than they initially realized. Prosecutors wanted the special session to change the law so nearly all 43 aggravated murder cases OPB analyzed would still potentially qualify for the death penalty.

That opinion had backing from Brown, and Sen. Floyd Prozanski, D-Eugene, one of SB 1013's key authors. The tweak prosecutors had in mind appeared amenable to many Republican lawmakers, too.

But a special session didn't materialize. Brown announced Sept. 18 that not enough votes had emerged. Ultimately, the proposed changes could not muster enough support it seemed among House Democrats, who'd achieved their goal: drastically limiting the death penalty.

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SEVEN-DAY FORECAST FOR ASTORIA

TODAY	FRIDAY	SATURDAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY
59 45	61 47	63 46	67 50	66 50	60 46	58 45
Periods of rain	A morning shower	Partly sunny	Sunshine	Showers possible	Showers possible	Showers possible

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Astoria through Tuesday

Temperatures

High/low 61/35
 Normal high/low 65/47
 Record high 78 in 1952
 Record low 35 in 2019

Precipitation

Tuesday to date 0.00"
 Month to date 0.00"
 Normal month to date 0.11"
 Year to date 31.79"
 Normal year to date 40.35"

Forecasts and graphics provided by
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UNDER THE SKY

Tonight's Sky: The Double Clusters of Perseus just below Cassiopeia.

Source: Jim Todd, OMSI

SUN AND MOON

Sunrise today 7:16 a.m.
 Sunset tonight 6:52 p.m.
 Moonrise today 1:10 p.m.
 Moonset today 10:18 p.m.

First	Full	Last	New
Oct 5	Oct 13	Oct 21	Oct 27

TODAY'S TIDES

Astoria / Port Docks	Time	High (ft.)	Time	Low (ft.)
5:34 a.m.	6.7	11:14 a.m.	1.9	
5:05 p.m.	8.0	none		
Cape Disappointment	5:10 a.m.	6.5	10:24 a.m.	2.0
4:44 p.m.	7.7	11:19 p.m.	-0.6	
Hammond	5:20 a.m.	7.0	10:45 a.m.	2.0
4:56 p.m.	8.2	11:39 p.m.	-0.5	
Warrenton	5:29 a.m.	7.1	10:58 a.m.	2.0
5:00 p.m.	8.4	11:55 p.m.	-0.1	
Knappa	6:11 a.m.	7.0	12:19 a.m.	-0.6
5:42 p.m.	8.2	12:15 p.m.	1.6	
Depoe Bay	4:24 a.m.	7.1	9:53 a.m.	2.6
3:56 p.m.	8.5	10:53 p.m.	-0.1	

NATIONAL CITIES

City	Today	Fri.
	Hi/Lo/W	Hi/Lo/W
Atlanta	98/74/pc	96/71/s
Boston	58/52/c	60/45/sh
Chicago	66/45/pc	57/51/pc
Dallas	94/72/t	87/72/t
Denver	71/40/s	83/41/s
Honolulu	86/75/sh	86/75/pc
Houston	93/73/s	90/73/t
Los Angeles	82/58/s	81/59/s
Miami	88/78/pc	88/78/c
New York City	60/57/r	62/46/pc
Phoenix	94/71/s	96/71/pc
San Francisco	70/51/s	73/55/s
Wash., DC	83/65/c	75/51/s

Weather (W): s-sunny, pc-partly cloudy, c-cloudy, sh-showers, t-thunderstorms, r-rain, sf-snow flurries, sn-snow, l-ice.

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REGIONAL FORECAST

Shown is today's weather. Temperatures are today's highs and tonight's lows.

City	Today	Fri.	City	Today	Fri.
	Hi/Lo/W	Hi/Lo/W		Hi/Lo/W	Hi/Lo/W
Seattle	57/48		Wenatchee	60/40	
Tacoma	60/45		Moses Lake	64/39	
Aberdeen	57/46		Yakima	63/34	
Olympia	57/43		Kennewick	67/46	
Longview	59/47		Walla Walla	63/45	
Astoria	59/45		Hermiston	66/47	
Portland	61/49		Pendleton	61/43	
Corvallis	60/46		La Grande	58/39	
Albany	61/46		John Day	57/38	
Eugene	61/48		Burns	61/30	
Bend	56/36		Ontario	66/43	
Medford	63/44		Caldwell	65/41	
Klamath Falls	57/29				