

THE OREGON DEATH PENALTY STATUTE: A COMPARATIVE ANALYSIS

Prosecutorial Discretion to Seek the Death Penalty

A common feature of death penalty statutes is the requirement that a prosecutor exercise discretion and seek death only in the worst cases.

For example, Washington law requires a prosecutor to file a “notice” of intent to seek a death sentence within a period of time after charging and arraignment. As a result, prosecutors in Washington only seek a death sentence in a small percentage of eligible cases.

No such provision exists under Oregon law. Instead, the death penalty is automatically put into issue by the return of an aggravated murder indictment.

The “Special Issues” Decided by a Jury

Oregon adopted its death penalty statute from Texas. These two statutory schemes are unique in several respects.

When jurors convict a defendant of aggravated murder, jurors are then asked to decide: (1) was the crime committed deliberately; (2) is the defendant likely to commit future acts of criminal violence; and, if the answers are “yes,” (3) does he deserve death?

Studies in Texas and Oregon have consistently shown that jurors who predict that a defendant will be a future danger even if sentenced to life in prison are wrong 95% of the time.

Most states that have the death penalty require jurors to find that the aggravating aspects of the crime outweigh any proffered mitigation. Oregon jurors are not required to “weigh” aggravating factors against mitigation in order to answer the “deserve death” question affirmatively. As a result, under our statute Oregon jurors could conclude that the mitigation outweighs the aggravation, but still return a death sentence.

Mandatory Sentence Review

Another common statutory provision found in death penalty laws is the requirement of automatic death sentence review to determine whether a sentence of death is proportionate or consistent with other sentences returned in similar cases, as well as “passion and prejudice” review designed to eradicate the influence of race on a death sentence. Some states, like North Carolina, have gone further and allow a death sentenced defendant to use statistical proof to establish that race impermissibly entered into a death penalty decision.

While Oregon requires an appeal of a death sentence, Oregon does not conduct proportionality review of any kind, does not track the race of the defendant, victim, or jurors who imposed a death sentence, does not conduct any type of “passion and prejudice” review, and does not have any law resembling a racial justice act.