

Corrected

SENATE AMENDMENTS TO SENATE BILL 369

By COMMITTEE ON JUDICIARY

April 27

1 On page 1 of the printed bill, line 2, after “penalty;” insert “creating new provisions; amending
2 ORS 163.150;”.

3 Delete lines 4 through 29 and delete page 2 and insert:

4 **“SECTION 1. (1) The Chief Justice of the Supreme Court shall appoint a judge who has
5 experience with aggravated murder cases to review cases in which a sentence of death is
6 imposed. Each review shall be conducted for the purpose of determining whether a settle-
7 ment conference would be beneficial to the parties. The judge shall review each case at the
8 following times:**

9 **“(a) When a petition for habeas corpus is filed under ORS 34.310 to 34.730.**

10 **“(b) When a petition for post-conviction relief is filed under ORS 138.510 to 138.680.**

11 **“(c) When a court conducts appellate review of a petition described in paragraph (a) or
12 (b) of this subsection.**

13 **“(d) When a case is remanded to the trial court.**

14 **“(2) The judge may convene a settlement conference between the parties and may re-
15 commend to the state that the state offer the defendant a sentence of life imprisonment
16 without the possibility of release or parole as described in ORS 163.105 (1)(b).**

17 **“(3) The Judicial Department shall provide staff support to the judge.**

18 **“(4) All agencies of state government as defined in ORS 174.111 are directed to assist the
19 judge in the performance of the judge’s duties and, to the extent permitted by laws relating
20 to confidentiality, to furnish such information and advice as the judge considers necessary
21 to perform the judge’s duties.**

22 **“(5) When a retired judge is appointed by the Chief Justice under this section, service
23 under this section:**

24 **“(a) Constitutes service as a pro tem judge for purpose of ORS 238.535 (1)(c); or**

25 **“(b) Entitles the judge to compensation in the amount of \$200 per day plus necessary
26 travel expenses.**

27 **“SECTION 2. There is appropriated to the Judicial Department, for the biennium begin-
28 ning July 1, 2011, out of the General Fund, the amount of \$_____ for the purpose of car-
29 rying out the provisions of section 1 of this 2011 Act.**

30 **“SECTION 3. (1) The court may not sentence a defendant to death under ORS 163.150
31 (1)(f) unless the district attorney files and serves a notice of intent to seek a sentence of
32 death in accordance with this section. Except for good cause shown, the notice must be filed
33 with the court and served on counsel for the defendant no later than 180 days after a de-
34 fendant charged with aggravated murder, as defined in ORS 163.095, is held to answer fol-**

1 **lowing a preliminary hearing, is arraigned on an indictment or waives indictment. In no**
2 **event may the court allow a district attorney to file and serve the notice less than 90 days**
3 **before trial.**

4 **“(2) A defendant may not enter a plea of guilty or no contest to a charge of aggravated**
5 **murder more than 90 days before trial without the consent of the district attorney.**

6 **“SECTION 4.** ORS 163.150 is amended to read:

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

30 “(b) Upon the conclusion of the presentation of the evidence, the court shall submit the follow-
31 ing issues to the jury:

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

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

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

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

39 “(c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b)
40 of this subsection, any mitigating circumstances offered in evidence, including but not limited to the
41 defendant’s age, the extent and severity of the defendant’s prior criminal conduct and the extent of
42 the mental and emotional pressure under which the defendant was acting at the time the offense
43 was committed.

44 “(B) The court shall instruct the jury to answer the question in paragraph (b)(D) of this sub-
45 section ‘no’ if, after considering any aggravating evidence and any mitigating evidence concerning

1 any aspect of the defendant's character or background, or any circumstances of the offense and any
2 victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors
3 believe that the defendant should not receive a death sentence.

4 “(d) The state must prove each issue submitted under paragraph (b)(A) to (C) of this subsection
5 beyond a reasonable doubt, and the jury shall return a special verdict of ‘yes’ or ‘no’ on each issue
6 considered.

7 “(e) The court shall charge the jury that it may not answer any issue ‘yes,’ under paragraph (b)
8 of this subsection unless it agrees unanimously.

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

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

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

21 “(3)(a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies,
22 **the state has failed to comply with section 3 of this 2011 Act** or the state advises the court on
23 the record that the state declines to present evidence for purposes of sentencing the defendant to
24 death, the court:

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

27 “(B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sen-
28 tenced to life imprisonment without the possibility of release or parole as described in ORS 163.105
29 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to
30 a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact.
31 The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the
32 procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding, ev-
33 idence may be presented as to any matter that the court deems relevant to sentence, including, but
34 not limited to, victim impact evidence relating to the personal characteristics of the victim or the
35 impact of the crime on the victim's family.

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

44 “(c) Nothing in this subsection shall preclude the court from sentencing the defendant to life
45 imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of re-

1 lease or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipu-
2 lation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to
3 a jury sentencing proceeding.

4 “(4) If any part of subsection (2) of this section is held invalid and as a result thereof a de-
5 fendant who has been sentenced to life imprisonment without possibility of release or parole will
6 instead be sentenced to life imprisonment in the custody of the Department of Corrections as pro-
7 vided in ORS 163.105 (2), the defendant shall be confined for a minimum of 30 years without possi-
8 bility of parole, release on work release or any form of temporary leave or employment at a forest
9 or work camp. Subsection (2) of this section shall apply only to trials commencing on or after July
10 19, 1989.

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

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

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

17 “(A) Death;

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

20 “(C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS
21 163.105 (1)(c).

22 **“SECTION 5. Section 3 of this 2011 Act and the amendments to ORS 163.150 by section
23 4 of this 2011 Act apply to prosecutions alleging the commission of aggravated murder com-
24 mitted on or after the effective date of this 2011 Act.**

25 **“SECTION 6. This 2011 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
27 on its passage.”.**

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