

Senate Bill 798

Sponsored by Senator PROZANSKI

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**.

Allows court to replace juror with alternate juror in criminal case after jury begins deliberations in certain circumstances.

A BILL FOR AN ACT

1
2 Relating to alternate jurors; amending ORS 136.280 and 136.773.

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

4 **SECTION 1.** ORS 136.280 is amended to read:

5 136.280. (1) If, before the final submission of the case, any juror dies or is unable to perform the
6 duty because of illness or other [*cause which the court deems sufficient, the juror shall be dismissed*]
7 **sufficient cause, the court shall discharge the juror** from the case. Except as provided by ORS
8 163.150, the court shall [*cause to be drawn*] **draw** the name of an alternate juror, who shall then
9 become a member of the jury as though the alternate juror had been selected as one of the original
10 jurors.

11 (2) **If, after the jury has begun deliberations, any juror dies or is unable to perform the**
12 **duty because of illness or other sufficient cause, the court may discharge the juror from the**
13 **case and draw the name of an alternate juror to replace the discharged juror if:**

14 (a) **The court finds that neither party will be prejudiced by the substitution of the alter-**
15 **nate juror; and**

16 (b) **An alternate juror is available and has not yet been discharged.**

17 (3) **If an alternate juror replaces a juror after deliberations have begun under this sec-**
18 **tion, the court shall instruct the jury to begin deliberations anew.**

19 (4) Except as provided in **subsection (2) of this section and** ORS 136.773 (5), any alternate
20 juror not selected to become a member of the jury shall be [*dismissed*] **discharged** from the case
21 upon its final submission to the jury.

22 **SECTION 2.** ORS 136.773 is amended to read:

23 136.773. (1) When an enhancement fact relates to the defendant, the court shall submit the en-
24 hancement fact to the jury during the sentencing phase of the criminal proceeding if the defendant
25 is found guilty of an offense to which the enhancement fact applies unless the defendant makes a
26 written waiver of the right to a jury trial on the enhancement fact and:

27 (a) Admits to the enhancement fact; or

28 (b) Elects to have the enhancement fact tried to the court.

29 (2) If the defendant makes the election under subsection (1)(b) of this section and is found guilty
30 during the trial phase of the criminal proceeding, the enhancement fact shall be tried during the
31 sentencing phase of the proceeding.

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 (3) If there is more than one enhancement fact relating to the defendant and the defendant does
2 not admit to all of them, the defendant shall elect to try to the jury or to the court all enhancement
3 facts relating to the defendant to which the defendant does not admit.

4 (4) If two or more defendants are being tried in the same criminal proceeding, each defendant
5 shall make the elections required by this section.

6 (5) Unless the defendant waives the right to a jury trial on enhancement facts related to the
7 defendant, the sentencing phase shall be conducted in the trial court before the jury following a
8 finding of guilt by the jury. If for any reason a juror is unable to perform the function of a juror,
9 the court shall dismiss the juror from the sentencing phase and draw the name of one of the alter-
10 nate jurors. The alternate juror then becomes a member of the jury for the sentencing phase
11 notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt. The court
12 may allow the substitution of an alternate juror **after the jury has begun deliberations** only if the
13 **court makes the findings as required by ORS 136.280 (2) and instructs the jury to begin de-**
14 **liberations anew** [*jury has not begun to deliberate on the issue of an enhancement fact*].
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