

SENATE AMENDMENTS TO HOUSE BILL 3037

By COMMITTEE ON RULES

July 29

1 On page 1 of the printed bill, line 2, delete “creating new provisions; and” and after “163.095”
2 insert “and 163.103”.

3 Delete lines 4 through 31 and delete page 2 and insert:

4 “**SECTION 1.** ORS 163.095 is amended to read:

5 “163.095. As used in ORS 163.105 and this section, ‘aggravated murder’ means murder as defined
6 in ORS 163.115 [*which*] **that** is committed under, or accompanied by, any of the following circum-
7 stances:

8 “(1)[*(a)*] The defendant committed the murder pursuant to an agreement that the defendant re-
9 ceive money or other thing of value for committing the murder.

10 “[*(b)*] (2) The defendant solicited another to commit the murder and paid or agreed to pay the
11 person money or other thing of value for committing the murder.

12 “[*(c)*] (3) The defendant committed murder after having been convicted previously in any juris-
13 diction of any homicide, the elements of which constitute the crime of murder as defined in ORS
14 163.115 or manslaughter in the first degree as defined in ORS 163.118.

15 “[*(d)*] (4) There was more than one murder victim in the same criminal episode as defined in
16 ORS 131.505.

17 “[*(e)*] (5) The homicide occurred in the course of or as a result of intentional maiming or torture
18 of the victim.

19 “[*(f)*] (6) The victim of the intentional homicide was a person under the age of 14 years.

20 “(7) **The victim was a pregnant woman and, at the time of the murder, the defendant**
21 **knew or reasonably should have known that the victim was pregnant.**

22 “[*(2)(a)*] (8) The victim was one of the following and the murder was related to the performance
23 of the victim’s official duties in the justice system:

24 “[*(A)*] (a) A police officer as defined in ORS 181.610;

25 “(b) **A reserve officer as defined in ORS 181.610;**

26 “[*(B)*] (c) A correctional, parole or probation officer or other person charged with the duty of
27 custody, control or supervision of convicted persons;

28 “[*(C)*] (d) A member of the Oregon State Police;

29 “[*(D)*] (e) A judicial officer as defined in ORS 1.210;

30 “[*(E)*] *A juror or witness in a criminal proceeding;*

31 “[*(F)*] (f) An employee or officer of a court of justice; or

32 “[*(G)*] (g) A member of the State Board of Parole and Post-Prison Supervision.

33 “[*(b)*] (9) The defendant was confined in a state, county or municipal penal or correctional fa-
34 cility or was otherwise in custody when the murder occurred.

35 “[*(c)*] (10) The defendant committed murder by means of an explosive as defined in ORS 164.055.

1 “[(d)] (11) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally com-
2 mitted the homicide under the circumstances set forth in ORS 163.115 (1)(b).

3 “[(e)] (12) **The defendant committed** the murder [*was committed*] in an effort to conceal the
4 commission of a crime, or to conceal the identity of the perpetrator of a crime.

5 “[(f)] (13) **The defendant committed** the murder [*was committed*] after the defendant had es-
6 caped from a state, county or municipal penal or correctional facility and before the defendant had
7 been returned to the custody of the facility.

8 “(14) **The victim was a juror or witness in a criminal proceeding or a witness in a juvenile**
9 **proceeding under ORS 419C.005 and the murder was related to the performance of the vic-**
10 **tim’s official duties as a juror or witness. As used in this subsection, ‘witness’ means:**

11 “(a) **A person who has testified in a criminal proceeding or who knows or is expected to**
12 **know material facts about the crime, and who has been or is likely to be summoned to testify**
13 **about those facts at some stage of the proceeding; or**

14 “(b) **A person who has testified in a juvenile proceeding or who knows or is expected to**
15 **know material facts about the act alleged to have been committed by a juvenile, and who has**
16 **been or is likely to be summoned to testify about those facts at some stage of the proceeding.**

17 “**SECTION 2.** ORS 163.103 is amended to read:

18 “163.103. (1) In a prosecution for aggravated murder under ORS 163.095 [(1)(c)] (3), the state
19 shall plead the previous conviction, and shall prove the previous conviction unless the defendant
20 stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by jury:

21 “(a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

22 “(b) The defendant’s stipulation to the previous conviction constitutes a judicial admission to
23 that element of the accusatory instrument. The stipulation shall be made a part of the record of the
24 case, but shall not be offered or received in the presence of the jury;

25 “(c) For the purpose of establishing the prior conviction solely as an element of the crime under
26 ORS 163.095 [(1)(c)] (3), neither the court nor the state shall reveal to the jury the previous con-
27 viction, but the previous conviction is established in the record by the defendant’s stipulation; and

28 “(d) The court shall not submit the accusatory instrument or evidence of the previous conviction
29 to the jury.

30 “(2) In a proceeding under ORS 163.095 [(1)(c)] (3), the state may offer, and the court may re-
31 ceive and submit to the jury, evidence of the previous conviction for impeachment of the defendant
32 or another purpose, other than establishing the conviction as an element of the offense, when the
33 evidence of the previous conviction is otherwise admissible for that purpose. When evidence of the
34 previous conviction has been admitted by the court, the state may comment upon, and the court may
35 give instructions about, the evidence of the previous conviction only to the extent that the com-
36 ments or instructions relate to the purpose for which the evidence was admitted.

37 “(3) When the defendant stipulates to the prior conviction required as an element of aggravated
38 murder under ORS 163.095 [(1)(c)] (3), if the jury finds the defendant guilty upon instruction re-
39 garding the balance of the elements of the crime, the court shall enter a judgment of guilty of ag-
40 gravated murder.”.