

SENATE AMENDMENTS TO SENATE BILL 1070

By COMMITTEE ON JUDICIARY

April 17

1 On page 1 of the printed bill, delete line 13 and insert:

2 “(b) The domestic abuse was ongoing when the defendant’s criminal behavior occurred and was
3 a contributing factor to the criminal behavior; and”.

4 In line 16, before “abuse” insert “domestic”.

5 Delete pages 21 and 22.

6 On page 23, delete lines 1 through 12 and insert:

7 “**SECTION 11. (1) Except as provided in subsection (9) of this section, a person serving**
8 **a sentence of imprisonment after conviction of a felony is eligible to be resentenced under**
9 **this section if:**

10 “(a) The person was sentenced to, and is currently serving, a term of imprisonment for
11 the felony conviction;

12 “(b) The person was subjected to domestic abuse by a family or household member;

13 “(c) The domestic abuse was ongoing when the person’s criminal behavior occurred and
14 was a contributing factor to the criminal behavior; and

15 “(d) The sentence the person received was unduly harsh in light of the circumstances of
16 the crime, the circumstances of the person, the domestic abuse the person suffered and the
17 likely sentence the person would receive if the person were sentenced under current law.

18 “(2)(a) A person described in subsection (1) of this section may file a petition for a
19 hearing to determine whether the person should be resentenced in the circuit court in which
20 the person was originally convicted and sentenced.

21 “(b) The petition shall include:

22 “(A) The case number and specific counts for which the person is requesting resentenc-
23 ing; and

24 “(B) A factual statement explaining how the person meets the eligibility requirements
25 described in subsection (1) of this section.

26 “(c) The petition may be accompanied by supporting documents.

27 “(d) Facts within the petition that are within the personal knowledge of the petitioner,
28 and the authenticity of all documents accompanying the petition, must be sworn to
29 affirmatively by the petitioner as true and correct.

30 “(3)(a) Upon filing the petition, the person shall serve a copy of the petition on the dis-
31 trict attorney.

32 “(b) Upon receipt of the petition, the district attorney shall make reasonable efforts to
33 inform the victim:

34 “(A) That the person has petitioned the court for a resentencing;

35 “(B) Of the victim’s rights implicated by the resentencing; and

1 “(C) That the victim has the right to appear at the resentencing and be heard.

2 “(4)(a) Upon receiving the petition, the sentencing court shall determine whether the
3 facts stated in the petition are sufficient to support a finding that the person meets the el-
4 igibility requirements described in subsection (1) of this section. When making this deter-
5 mination, the court shall assume that the facts stated in the petition are uncontested and
6 established in court by a preponderance of evidence. If the court determines that the facts
7 stated in the petition are sufficient, the court shall grant the petition. If the court deter-
8 mines that the facts stated in the petition are insufficient, the court shall enter an order
9 denying the petition and shall cause a copy of the order to be provided to the person.

10 “(b) If a petition is denied, upon the request of the person, the court shall appoint
11 counsel for the person for the purpose of assisting the person in preparing an amended pe-
12 tition. Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
13 provide for the representation of a person for whom counsel is appointed under this para-
14 graph.

15 “(c) Upon granting a petition, including an amended petition, the court shall set a re-
16 sentencing hearing, and shall hold the hearing within 60 days of the date the petition was
17 granted unless the court finds good cause to hold a hearing at a later date. If counsel was
18 appointed under paragraph (b) of this subsection, the appointed counsel shall continue to
19 represent the petitioner for the hearing.

20 “(d) The court shall issue an order granting or denying a petition with 30 days of the date
21 the petition is filed. If the court does not issue an order as described in this paragraph, the
22 petition shall be deemed granted.

23 “(e) If, upon review of an amended petition, the court determines that the facts stated
24 in the petition are insufficient to support a finding that the person meets the eligibility re-
25 quirements described in subsection (1) of this section, the court shall issue a final order de-
26 nying the petition. The person may not file another petition upon issuance of a final order
27 described in this paragraph except as described in subsection (8) of this section.

28 “(f) An order granting or denying a petition under this subsection is not appealable.

29 “(5)(a) When the court sets a resentencing hearing under subsection (4) of this section,
30 the court shall appoint counsel for the person, if counsel has not previously been appointed
31 or hired for the current petition, and notify the person, the person’s counsel, the Depart-
32 ment of Corrections and the district attorney of the hearing date. Upon receipt of the notice,
33 the district attorney shall make reasonable efforts to inform the victim of:

34 “(A) The hearing date; and

35 “(B) The victim’s rights implicated in the resentencing hearing.

36 “(b) Pursuant to ORS 151.216 and 151.219, the Public Defense Services Commission shall
37 provide for the representation of a person for whom counsel is appointed under this sub-
38 section.

39 “(6)(a) At the hearing, the person has the burden of proving by a preponderance of the
40 evidence that:

41 “(A) The person was subjected to domestic abuse by a family or household member;

42 “(B) The domestic abuse was a contributing factor to the person’s criminal behavior; and

43 “(C) The sentence the person received is unduly harsh in light of the circumstances of
44 the crime, the circumstances of the person, the domestic abuse the person suffered and the
45 likely sentence the person would receive if the person were sentenced under current law.

1 **“(b) The district attorney may introduce evidence at the hearing.**

2 **“(c) Upon the conclusion of the hearing, if the court finds that the person has met the**
3 **burden of proof, the court shall find that there exists substantial and compelling reasons**
4 **justifying a downward durational departure or a downward dispositional departure from any**
5 **presumptive or mandatory sentence and shall resentence the defendant to an appropriate**
6 **sentence under the rules of the Oregon Criminal Justice Commission.**

7 **“(d) The court may not resentence a person under this section to a more severe sentence**
8 **than originally imposed or impose an upward durational or dispositional departure.**

9 **“(e) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply to a hearing conducted under**
10 **this section.**

11 **“(f) The sentencing court has jurisdiction to amend its judgment and resentence the de-**
12 **endant as provided in this subsection.**

13 **“(7) Unless the court orders otherwise, a person shall appear at a hearing described in**
14 **subsection (6) of this section by simultaneous electronic transmission as defined in ORS**
15 **131.045.**

16 **“(8) A person whose petition is denied under subsection (4) of this section after filing an**
17 **amended petition, or who is not resentenced after a hearing under subsection (6) of this**
18 **section, may file a new petition under this section only if the new petition is based on the**
19 **following evidence not previously considered by the court:**

20 **“(a) Evidence that did not exist at the time the previous hearing was held or previous**
21 **petition or amended petition was filed; or**

22 **“(b) Evidence that existed at the time the previous hearing was held or previous petition**
23 **or amended petition was filed, but could not have been discovered with reasonable diligence.**

24 **“(9) A person serving a sentence for aggravated murder as defined in ORS 163.095 is not**
25 **eligible to file a petition under this section unless the conduct leading to the conviction would**
26 **constitute murder in the first degree under ORS 163.107 or murder in the second degree**
27 **under ORS 163.115 under current law.**

28 **“(10) As used in this section:**

29 **“(a) ‘Domestic abuse’ means a pattern of behavior in a relationship by which one person**
30 **in the relationship gains or maintains control over the other person, consisting of physical,**
31 **sexual, emotional, economic or psychological actions or threats of action that influence the**
32 **other person, including but not limited to actions or threats of action that frighten, intim-**
33 **idate, terrorize, manipulate, hurt, humiliate, blame, injure or wound the other person.**

34 **“(b) ‘Family or household member’ means:**

35 **“(A) Spouses.**

36 **“(B) Former spouses.**

37 **“(C) Adult persons related by blood or marriage.**

38 **“(D) Persons cohabiting with each other.**

39 **“(E) Persons who have cohabited with each other or who have been involved in a sexually**
40 **intimate relationship.**

41 **“(F) Unmarried parents of a minor child.**

42 **“(c) ‘Reasonable efforts to inform the victim’ has the meaning given that phrase in ORS**
43 **147.500.**

44 **“(d) ‘Victim’ has the meaning given that term in ORS 147.500.”.**

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