

Requested by Senator CAMPOS

**PROPOSED AMENDMENTS TO
SENATE BILL 1070**

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 be-
3 havior occurred and was a contributing factor to the criminal behavior;
4 and”.

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

6 Delete pages 21 and 22.

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

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

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

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

15 **“(c) The domestic abuse was ongoing when the person’s criminal
16 behavior occurred and was a contributing factor to the criminal be-
17 havior; and**

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

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

5 “(b) The petition shall include:

6 “(A) The case number and specific counts for which the person is
7 requesting resentencing; and

8 “(B) A factual statement explaining how the person meets the el-
9 igibility requirements described in subsection (1) of this section.

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

11 “(d) Facts within the petition that are within the personal knowl-
12 edge of the petitioner, and the authenticity of all documents accom-
13 panying the petition, must be sworn to affirmatively by the petitioner
14 as true and correct.

15 “(3)(a) Upon filing the petition, the person shall serve a copy of the
16 petition on the district attorney.

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

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

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

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

23 “(4)(a) Upon receiving the petition, the sentencing court shall de-
24 termine whether the facts stated in the petition are sufficient to sup-
25 port a finding that the person meets the eligibility requirements
26 described in subsection (1) of this section. When making this deter-
27 mination, the court shall assume that the facts stated in the petition
28 are uncontested and established in court by a preponderance of evi-
29 dence. If the court determines that the facts stated in the petition are
30 sufficient, the court shall grant the petition. If the court determines

1 that the facts stated in the petition are insufficient, the court shall
2 enter an order denying the petition and shall cause a copy of the order
3 to be provided to the person.

4 “(b) If a petition is denied, upon the request of the person, the court
5 shall appoint counsel for the person for the purpose of assisting the
6 person in preparing an amended petition. Pursuant to ORS 151.216 and
7 151.219, the Public Defense Services Commission shall provide for the
8 representation of a person for whom counsel is appointed under this
9 paragraph.

10 “(c) Upon granting a petition, including an amended petition, the
11 court shall set a resentencing hearing, and shall hold the hearing
12 within 60 days of the date the petition was granted unless the court
13 finds good cause to hold a hearing at a later date. If counsel was ap-
14 pointed under paragraph (b) of this subsection, the appointed counsel
15 shall continue to represent the petitioner for the hearing.

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

20 “(e) If, upon review of an amended petition, the court determines
21 that the facts stated in the petition are insufficient to support a find-
22 ing that the person meets the eligibility requirements described in
23 subsection (1) of this section, the court shall issue a final order deny-
24 ing the petition. The person may not file another petition upon issu-
25 ance of a final order described in this paragraph except as described
26 in subsection (8) of this section.

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

29 “(5)(a) When the court sets a resentencing hearing under subsection
30 (4) of this section, the court shall appoint counsel for the person, if

1 counsel has not previously been appointed or hired for the current
2 petition, and notify the person, the person’s counsel, the Department
3 of Corrections and the district attorney of the hearing date. Upon re-
4 ceipt of the notice, the district attorney shall make reasonable efforts
5 to inform the victim of:

6 “(A) The hearing date; and

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

8 “(b) Pursuant to ORS 151.216 and 151.219, the Public Defense Ser-
9 vices Commission shall provide for the representation of a person for
10 whom counsel is appointed under this subsection.

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

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

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

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

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

22 “(c) Upon the conclusion of the hearing, if the court finds that the
23 person has met the burden of proof, the court shall find that there
24 exists substantial and compelling reasons justifying a downward du-
25 rational departure or a downward dispositional departure from any
26 presumptive or mandatory sentence and shall resentence the defend-
27 ant to an appropriate sentence under the rules of the Oregon Criminal
28 Justice Commission.

29 “(d) The court may not resentence a person under this section to
30 a more severe sentence than originally imposed or impose an upward

1 durational or dispositional departure.

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

4 “(f) The sentencing court has jurisdiction to amend its judgment
5 and resentence the defendant as provided in this subsection.

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

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

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

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

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

24 “(10) As used in this section:

25 “(a) ‘Domestic abuse’ means a pattern of behavior in a relationship
26 by which one person in the relationship gains or maintains control
27 over the other person, consisting of physical, sexual, emotional, eco-
28 nomic or psychological actions or threats of action that influence the
29 other person, including but not limited to actions or threats of action
30 that frighten, intimidate, terrorize, manipulate, hurt, humiliate,

1 **blame, injure or wound the other person.**

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

3 **“(A) Spouses.**

4 **“(B) Former spouses.**

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

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

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

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

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

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

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