

**SB 1070 A STAFF MEASURE SUMMARY**

**Senate Committee On Judiciary**

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**Action Date:** 04/04/23

**Action:** Without recommendation as to passage, but with amendments and requesting referral to Rules. (Printed A-Eng.)

**Vote:** 3-2-0-0

**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski

**Nays:** 2 - Linthicum, Thatcher

**Fiscal:** Fiscal impact issued

**Revenue:** Revenue impact issued

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**Meeting Dates:** 3/28, 4/4

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**WHAT THE MEASURE DOES:**

Requires sentencing court to consider as mitigation evidence whether defendant was subjected to domestic abuse that was ongoing when the defendant's criminal behavior occurred and that it was contributing factor in criminal behavior. Provides that, if established by a preponderance of the evidence, such evidence constitutes substantial and compelling reasons justifying downward departure sentence. Authorizes court to impose a lesser sentence even if sentence is mandatory or otherwise required by law. Creates procedure by which person currently serving sentence may petition court for resentencing if person was subjected to domestic abuse that was contributing factor in criminal behavior. Requires petition for resentencing under provision to be filed in the circuit court in which the person was originally convicted and sentenced and requires court to issue an order granting or denying a petition within 30 days of the date the petition is filed or the petition shall be deemed granted. Establishes Task Force on Services and Support for Incarcerated Domestic Violence Survivors. Takes effect on 91st day following adjournment sine die.

**ISSUES DISCUSSED:**

- Currently courts lack discretion in sentencing
- Domestic abuse as a mitigating factor generally and examples of impacts on behaviors
- Evidentiary parameters of provision
- Definition of domestic abuse in measure vs existing statutory definitions

**EFFECT OF AMENDMENT:**

Requires that mitigation evidence must demonstrate that the domestic abuse to be considered for mitigation was ongoing when the defendant's criminal behavior occurred and that it was contributing factor in criminal behavior. Removes requirement that court consider sentencing philosophy in determining if a person is eligible to be resentenced under provision. Requires petition for resentencing under provision to be filed in the circuit court in which the person was originally convicted and sentenced. Amends petition component requirements and allows for petitioner to submit documents to support factual statements. Requires court to issue an order granting or denying a petition within 30 days of the date the petition is filed or the petition shall be deemed granted.

**BACKGROUND:**

Oregon criminal statutes establish mandatory minimum sentences a court is required to impose based on the crime of conviction and a defendant's criminal history. An example of these types of sentences are those enacted by the Ballot Measure 11 initiative, passed by Oregon voters in 1994, requiring mandatory minimum sentences for certain crimes codified as ORS 137.700 through 137.712.

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Under ORS 137.080, after a plea or verdict of guilty, in a case where the court has discretion as to the extent of the punishment to be inflicted, the court may or, in some circumstances, is required, to consider certain factors in aggravation or mitigation of the punishment. However, a court may not consider mitigation evidence when imposing sentence for a crime that carries a statutory mandatory minimum similar to those cited above.

Senate Bill 1070 A authorizes a court to impose a lesser sentence even if sentence is mandatory or otherwise required by law if the court finds by a preponderance of the evidence that the defendant was subjected to domestic abuse that was ongoing at the time a defendant's criminal behavior occurred and was a contributing factor in the criminal behavior as outlined by the measure. The measure also creates a procedure by which person currently serving a sentence may petition the court for resentencing if person was subjected to domestic abuse that was a contributing factor in criminal behavior. In addition, the measure establishes a Task Force on Services and Support for Incarcerated Domestic Violence Survivors.