

House Bill 2868

Sponsored by Representative EVANS (Pre-session filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act says a court has to look at, when the court determines aggravation, if a person did the crime in an emergency when the court sentences the person. (Flesch Readability Score: 60.7).

Directs a court to consider, when determining aggravation in imposition of a criminal sentence, evidence that the defendant committed the crime during an emergency, an evacuation while an emergency was in effect or within one year after an emergency ceases, provided that the emergency is related to a natural disaster and the defendant took advantage of circumstances related to the emergency, evacuation or recovery from the emergency. Directs the Oregon Criminal Justice Commission to include in the rules concerning sentencing departure factors the commission of a crime under such circumstances.

A BILL FOR AN ACT

1
2 Relating to emergency management; amending ORS 137.090.

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

4 **SECTION 1.** ORS 137.090 is amended to read:

5 137.090. (1) In determining aggravation or mitigation, the court shall consider:

6 (a) Any evidence received during the proceeding;

7 (b) The presentence report, where one is available; and

8 (c) Any other evidence relevant to aggravation or mitigation that the court finds trustworthy
9 and reliable.

10 (2) In determining mitigation, the court may consider:

11 (a) Evidence regarding the defendant's status as a servicemember as defined in ORS 135.881.

12 (b) Whether the defendant committed the crime while under duress, compulsion, direction or
13 pressure from another person who has:

14 (A) Committed acts of domestic violence, as defined in ORS 135.230, against the defendant;

15 (B) Committed acts of abuse as a family or household member of the defendant, as those terms
16 are defined in ORS 107.705, against the defendant; or

17 (C) Used force, intimidation, fraud or coercion to cause the defendant to engage, or attempt to
18 engage, in a commercial sex act.

19 (3) In determining aggravation, the court shall consider whether the person was wearing body
20 armor in the course of and in furtherance of the crime, or to facilitate the immediate flight there-
21 from.

22 **(4)(a) In determining aggravation and in addition to subsection (3) of this section, the**
23 **court shall consider evidence that the crime was committed:**

24 **(A) During an emergency, and the defendant took advantage of circumstances related to**
25 **the emergency;**

26 **(B) During a mandatory evacuation while an emergency was in effect, and the defendant**

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 **took advantage of circumstances related to the evacuation; or**

2 **(C) Within one year after an emergency ceased to be in effect, and the defendant took**
3 **advantage of circumstances related to the recovery from the emergency.**

4 **(b) The Oregon Criminal Justice Commission, in the rules of the commission concerning**
5 **sentencing departure factors, shall include as an aggravating factor circumstances described**
6 **in paragraph (a) of this subsection.**

7 **(c) As used in this subsection:**

8 **(A) "Emergency" means:**

9 **(i) A state of emergency declared by the Governor under ORS 401.165 due to a natural**
10 **disaster, and any extension of the state of emergency;**

11 **(ii) A state of emergency declared by a city or county by ordinance or resolution as de-**
12 **scribed in ORS 401.309 due to a natural disaster; or**

13 **(iii) A catastrophic disaster declared by the Governor, pursuant to Article X-A, section**
14 **1, of the Oregon Constitution, due to a natural disaster.**

15 **(B) "Natural disaster" includes, but is not limited to, a fire, earthquake, flood, volcanic**
16 **eruption or tsunami.**

17 **[(4)] (5) When a witness is so sick or infirm as to be unable to attend a sentencing proceeding,**
18 **the deposition of the witness may be taken out of court at such time and place, and upon such notice**
19 **to the adverse party, and before such person authorized to take depositions, as the court directs.**

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