



TO: Senate Committee on Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: March 21, 2023
RE: OPPOSITION to SB 1060

Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary:

My name is Mae Lee Browning. I represent the Oregon Criminal Defense Lawyers Association. OCDLA's 1,200 members statewide include public defense providers, private bar attorneys, investigators, experts, and law students. Our attorneys represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon. Our mission is championing justice, promoting individual rights, and supporting the legal defense community through education and advocacy.

I am submitting this testimony in opposition to SB 1060. We understand that this measure was introduced to address physical injury cases where the alleged victim is non-verbal due to a disability, not because of age. SB 1060 is poorly drafted and unnecessary, and doesn't address the intent behind the bill.

SB 1060 is unnecessary because a prosecutor can already prove physical injury multiple ways for a non-verbal victim, so long as there is some way to tie the defendant to the injuries suffered (which should be a prerequisite to charging in the first place). Prosecutors can use photos of injuries or lay/expert testimony to establish that there was an impairment (cut, puncture, break, etc).

Page 2, lines 1-2, is confusing and poorly drafted. This definition seems to be limited to those that are "incapable of expressing pain." However, they still include "substantial pain" in that part of the definition.

Page 2, lines 3-4: "Physical trauma" includes most things that are already covered by physical injury (impairment) – fractures, cuts, punctures, and burns all meet the definition of physical injury, so long as they are not superficial. There is also no need to make a new definition of "physical trauma" which is identical to impairment. "Other wounds" is incredibly vague and overbroad. If this measure is for individuals who are non-verbal (those "incapable of expressing pain"), how will they be able to link the "physical trauma" to the defendant's conduct. In other words, how would they know that the defendant's actions caused the fractures, cuts, etc?

Page 2, lines 21-23: Sub (2) and (3) would allow a prosecutor to charge an assault case and prove it with only photos of the injury or even a lay witness testifying that another

person was suffering substantial pain or impairment. There are serious constitutional confrontation issues and hearsay concerns with this language, not to mention the lack of qualification for such testimony.

Page 2, lines 24-26: Sub (4) and (5) seem to advocate the use of a biomechanics expert in cases to establish the amount of force used and how such force would likely cause an injury. It seems like such testimony would be incredibly speculative, especially given that most assault cases are not caught on video. For those cases, the expert isn't interviewing the person accused and can't interview the alleged victim because the victim is non-verbal.

Page 3, line 4: Makes harassment of an elderly person a felony. This is a huge expansion of the crime and OCDLA also strongly opposes this provision.
