



**TO: Sen. Floyd Prozanski, Chair
Sen. Kim Thatcher, Vice-Chair
Members of the Senate Committee on Judiciary**

**FR: Amanda Dalton
Oregon District Attorney's Association**

RE: SB 1070 - OPPOSE

ODAA recognizes that SB 1070 is intended to acknowledge that there are some defendants in the criminal justice system that have been victims in an abusive relationship or even commit their crimes on behalf of an abusive person. Today, this information is currently allowed to be considered as mitigation by the Judge at the time of sentencing.

While we understand the intent of SB 1070, we are strongly opposed to the proposal as drafted and would like to share the following concerns with the bill:

Bill would allow domestic violence abusers to weaponize mitigation:

The bill is not limited to situations where a domestic abuse survivor was coerced or manipulated by their abusive partner into committing a crime. Rather, the bill allows mitigation and a reduction in sentence by the judge when the "abuse was a contributing factor to the defendant's criminal behavior." "Contributing factor" is a broad term that is not defined and could result in a serial domestic abuser claiming that they were abused by their victim and that their act of violence toward their victim was due to the alleged abuse they had suffered.

Bill has explicit protections for defendants but not crime victims and survivors:

The bill explicitly allows the judge to weigh whether the presumptive or mandatory sentence would be unduly harsh "in light of the circumstances of the crime, the circumstances of the defendant and the abuse the defendant suffered." However, it does not explicitly provide the same protective weighing for the circumstances of the victim or the survivor.

Bill does not have safeguards as to who perpetrated the abuse or any time limitation on when the abuse occurred:

The bill has no requirement that the abuse suffered be close in time to the crime committed or that it was the victim of the crime who perpetrated the abuse. For example, a defendant could suffer domestic abuse at the age of 18 and at the age of 45, claim that an argument with their current partner (an entirely different person) is triggering to that prior abuse and use that decades old abuse to mitigate a sentence for causing serious physical injury, and even death, to their victim.

The Bill does not require that the prior domestic abuse be a significant factor:

The bill only requires that the domestic abuse be a “contributing factor” and not a “significant factor.” The bill would allow a defendant to avail themselves of this mitigation evidence so long as it was a contributing factor in any way. This is an incredibly low legal bar.

Bill would apply to all felony sentences:

The bill would affect all felony sentences from aggravated murder, murder, serious violent felonies and sex crimes, elder abuse, crimes and crimes committed by repeat property offenders. Without sufficient safeguards to make sure that abusers and that those who commit significant harm to others cannot weaponize this process, it would open a loophole in Oregon’s sentencing laws that hold those who cause harm accountable.

The Bill would allow for significant sentencing disparities:

The bill does not define what the broad terms of “contributing factor” or “unduly harsh” sentence means and as a result judges may end up treating defendants differently even in the same courthouse.

Bill is retroactive:

The bill would allow individuals who have been convicted in court or pled guilty to reopen their sentencing hearing without actually establishing any allegation of innocence or legal error. This leads to more uncertainty in sentencing for crime victims. Victims should be able to rely on the finality of the sentence previously imposed by the Court and not be subjected to the emotional trauma of revisiting the harms of the past that they believed were completely closed.

Bill requires victims go through two hearings in the proposed retroactive process:

The retroactive resentencing process the bill creates would require crime victims and survivors to undergo two separate hearings if they wished to contest the defendant’s petition for resentencing. First, they would need to contest the initial petition in the sentencing court, and if the court found the petition to be insufficient the defendant would have the right to request court appointed counsel to assist them in preparing an amended petition for a second hearing that the victim would potentially have to attend to contest the petition.

Bill silent on key notice provisions important to protect crime victim rights:

Except for the retroactive petition process, the bill does not require the defense to provide notice to the state that mitigating domestic violence evidence will be presented at sentencing. Notice would be crucial to allow a victim to contest the assertions made by the defendant and for the State to independently investigate the defendant’s claims.