Oregon Justice Resource Center
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March 28, 2023

To: Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Committee on Judiciary
Re: **Senate Bill 1070 – SUPPORT**

My name is Malori Maloney. As a public defender, I saw firsthand the devastating impacts domestic violence had on many of my clients. In some cases, the domestic abuse they experienced directly contributed to their crimes.

I write to you today to thank you for giving your attention to SB 1070 and to urge your support of it. SB 1070 is a modest, commonsense reform that frees judges to sentence defendants with due consideration for their offenses as well as the surrounding circumstances, specifically domestic violence.

SB 1070 gives judges the freedom to decide whether a sentence is unduly harsh.

Too often, judges are unable to consider relevant evidence of domestic violence during sentencing. In the overwhelming majority of cases, once someone is convicted under Measure 11, a judge has no discretion to give them a lesser sentence. Of the 25 crimes subject to Measure 11 sentencing, only eight allow for the possibility of a departure sentence, and only when the crime and the accused meet specific, narrow criteria. In all other circumstances, the judge's hands are tied. That means that even if the judge believes that the person is not a danger, even if they are a victim, even if they deserve less time in order for the sentence to reflect their true culpability, the judge is required by law to give them the mandatory minimum.

SB 1070 gives judges the freedom to impose a lesser sentence for a survivor-defendant if the mandatory minimum would be unduly harsh. Judges would maintain the authority to keep the mandatory minimum if they see fit, but they would no longer be required to do so if, based on the mitigation presented, they didn't find the mandatory minimum to be appropriate.

SB 1070 would encourage system actors to take domestic violence seriously.

Public defenders are not typically trained to screen their clients for domestic violence. But even when they have the tools to identify clients affected by such abuse, they're faced with prosecutors and judges who don't appreciate the significance of it.

By the time someone has been arrested and charged, the police have already investigated—which frequently means they spoke to the involved parties and came to a conclusion about who they thought was telling the truth. The prosecutor—who doesn't do their own investigation, but rather, relies on what the police reports say—has decided to press charges.

The prosecutor only gets mitigating information, like that relating to domestic violence that contributed to the commission of the crime, if the defense attorney provides it. But

by the time this information can be collected by the defense attorney and presented to the prosecutor, the survivor is already a defendant, and the prosecutor is already invested in their understanding of the case. I had cases in which I tried to convince the prosecutor that they were going after the wrong person or that the circumstances surrounding the crime were worth considering. In almost all such cases, the district attorney was dismissive of the idea that their prosecution may be flawed or that my client was deserving of a sentence that took into account their victimization.

Public defenders work with the same prosecutors and appear in front of the same judges day in and day out. They come to know what prosecutors and judges care about, what kind of mitigation they're used to considering, and what is going to be compelling to them. In some cases, defense attorneys make a strategic decision not to share information about domestic violence because they don't believe it will do their client any good. The prosecutor may not believe it, the judge may think it's just an excuse, and so on. District attorneys' offices in Oregon generally do not have policies on how to evaluate or weigh information concerning domestic abuse experienced by a defendant. Sharing information about domestic violence with the wrong prosecutor or judge, or in what they perceive to be the "wrong" case could backfire, resulting in a worse outcome for the accused.

SB 1070 would ensure that defense attorneys screen for domestic violence and present relevant mitigating information to the court for consideration in each case. And it would foster a culture shift in which prosecutors and judges are more receptive to such mitigation.

SB 1070 provides relief to survivor-defendants who can't access legal defenses, but whose culpability nevertheless merits a lesser sentence.

The experiences of survivor-defendants often don't fit neatly into available legal defenses. Psychological abuse that pushes a survivor to commit a crime will almost never fit into the very circumscribed definition of duress. Self-defense that occurs within the context of the cycle of abuse so many survivors experience likewise often won't fit the legal definition of self-defense.

Moreover, legal defenses must be raised at trial. That means that if the jury doesn't believe the survivor—who already may have been disbelieved by the police, who may be convinced as a result of emotional abuse that no one will believe them, who, by virtue of the prosecution is obviously disbelieved by the district attorney—they will be convicted and will likely face a much harsher penalty than what they could receive through plea negotiations.

SB 1070 recognizes that not all guilty parties are equally culpable and provides an opportunity for limited relief for the convicted survivor.

Please pass SB 1070.

Thank you for your attention to this crucial legislation.

Sincerely,

/s/ Malori M. Maloney