

**TESTIMONY ON SB 1070
BEFORE THE SENATE COMMITTEE ON JUDICIARY
MARCH 28, 2023**

**PRESENTED BY: KAITI FERGUSON, SENIOR STAFF COUNSEL
OREGON JUDICIAL DEPARTMENT**

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Kaiti Ferguson, Senior Staff Counsel at the Oregon Judicial Department (OJD). We would like to first thank the Oregon Justice Resource Center (OJRC) for engaging with OJD to discuss and address potential operational and procedural considerations. We would like to also acknowledge OJRC's efforts to address the complex intersectionality of the criminal legal system and domestic abuse victims/survivors who are facing criminal charges or currently are incarcerated and serving sentences on felony convictions. As we anticipate an amendment is forthcoming that will incorporate much of our feedback on technical aspects of the bill, we offer this testimony to provide a brief overview as to how this bill may affect the Oregon courts.

SB 1070 requires a court to consider as mitigation evidence – either at an initial sentencing or if a person was convicted and is currently incarcerated files a petition to the court -- whether the individual being sentenced was subjected to domestic abuse, whether the abuse was a contributing factor in their criminal behavior, and whether sentencing the individual to a 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. If the court finds those three circumstances were established by a preponderance of the evidence, the finding shall constitute substantial and compelling reasons justifying a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission, and the court has discretion to impose a lesser sentence.

Section 11 of the bill also creates a procedure by which a person currently serving a sentence of incarceration may petition the court for resentencing by submitting evidence how the person meets the same requirements relating to domestic abuse and the sentence imposed, as outlined above. If the court determines that the facts set forth in the petition do not meet the eligibility criteria, the court shall enter an order denying the petition and provide a copy of the order to the petitioner, who then may request the court to appoint a lawyer for the petitioner. If the court determines the facts set forth do meet the criteria, the court shall set a hearing and appoint counsel for the petitioner. At the hearing, the petitioner has the burden of proof to establish the factors outlined in their petition by a preponderance of the evidence. If the court finds the person has met their burden, the court shall find there exists substantial and compelling reasons justifying a lesser sentence on a presumptive or mandatory sentence, and the court has the discretion to resentence the individual to a lesser sentence.

From an implementation standpoint, it is difficult to estimate with accuracy the number of individuals who would qualify and seek resentencing under this bill. While New York passed a similar law in 2019 and has not seen a dramatic increase in petitions and resentencing hearings, we note that its eligibility criteria and framework differ from SB 1070 and are cautious to draw any conclusions. Additionally, as an amendment is forthcoming, we look forward to seeing how this bill takes shape and whether those changes may help refine our analysis. Given these considerations, it is challenging to anticipate to what degree OJD can utilize its existing resources to address implementation of SB 1070.

Again, we are grateful to OJRC for its outreach and receptivity to our feedback. OJD welcomes the opportunity to continue to participate in conversations and offer its technical and operational insights as to its processes.

Thank you for your time and the opportunity to provide testimony.