

March 24, 2023

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

I write to strongly support SB 1070, which would enable judges to consider whether domestic violence was a contributing factor to a defendant's criminal behavior, whether the presumptive or mandatory sentence would be too harsh in light of that history and the circumstances of the crime, and to depart downwards in appropriate cases.

I have represented victims of violence for almost thirty years. For most of that time, I worked on the civil side of the legal system, representing clients subjected to abuse in protective order, divorce, custody, child support, and related proceedings. But my clients were sometimes involved with the criminal system as well, either as witnesses or as defendants. Despite the evidence of their abuse that I was able to marshal for their civil cases, they were nonetheless charged with criminal offenses when they defended themselves against their partners. I became interested in why this was happening to my clients, which led me to study the issue and ultimately culminated in my representing criminalized survivors of violence, first on my own and later through the Gender Violence Clinic that I founded at the University of Maryland Carey School of Law.

For about 15 years, I have written about the issues confronting people subjected to abuse who are criminalized as a result of that abuse. My new book, *Imperfect Victims*, describes how the criminal legal system punishes victims of violence. The book argues, based on my experience in these cases as well as the social science and criminology literature, that the legal system frequently overlooks or ignores a defendant's history of victimization, imposing additional unwarranted trauma on people who have already experienced great harm.

This has certainly been true of my own clients. For the last ten years, I have represented incarcerated criminalized survivors of violence in post-sentencing proceedings. These are defendants who acted in self-defense to save their own lives or the lives of their children, who acted under duress from or coercion by their abusive partners, or who otherwise committed crimes directly related to their own victimization (for example, self-medicating through the use of illegal substances). In many of these cases, the defendant's history of victimization was not considered at all or, if it was considered, was dismissed as irrelevant or insignificant. If convicted, they are then subjected to the trauma of imprisonment, which is difficult for all incarcerated people but exponentially more so for people who enter prison already traumatized by intimate partners.

These cases can present in several different ways. Some of my clients have fought back against abusive partners and, in attempting to save their own lives, accidentally took the lives of their partners. Despite the clear history of intimate partner violence in these cases, judges have been bound by mandatory minimum sentences, resulting in lengthy terms of incarceration for

these women. Others look a little different: for example, one of my clients was sentenced to life imprisonment for felony murder after she cleaned up the apartment where her abusive partner had killed a woman. When police began their investigation, she was afraid to answer their questions, because her partner had threatened to kill her and her children if she disclosed any information. As soon as he was arrested, however, she cooperated fully, leading police to the murder weapon and showing them the places where she had cleaned. Nonetheless, she was prosecuted for his crime. In another case, my client confided that she was being abused to her mother, who told the rest of the family. One of her cousins, who was already in conflict with her partner, killed him. My client was held responsible for his murder and is serving a life sentence. Again, had the court been able to consider the history of domestic violence in that case (she had been assaulted and hospitalized just days before the murder), her sentence might have been different.

We teach law students that criminal punishment is meant to do one of four things: to incapacitate, to rehabilitate, to deter, or to serve as retribution. But criminalized survivors are generally do not need to be rehabilitated or incapacitated; their crimes are a product of their circumstances. And given the unique conditions in which their crimes are committed, punishment is unlikely to deter them or others in a similar situation. Their punishment can in theory be justified by retribution, but retribution is supposed to be proportionate to the offense. Given the years of abuse that these clients have often suffered before encountering the criminal legal system, the lengthy sentences that they are condemned to as a result of mandatory minimums (which disproportionately affect women of color in Oregon) are unduly harsh.

I first became aware of the issues facing criminalized survivors in Oregon when I read the Oregon Justice Resource Center's study showing that 44% of the women in Coffee Creek Correctional Facility were in relationships at the time of their offenses that contributed to their convictions and that 69% of the women linked trauma to their incarceration. These numbers echoed what I have seen in my own practice and all over the United States. What is different in Oregon, though, is that there is an opportunity with SB 1070 to acknowledge the context that brings criminalized survivors into the system and recognize the impact of those circumstances during sentencing.

SB 1070 is an important step towards recognizing the trauma and abuse that victims of domestic violence have experienced before they enter the criminal legal system and mitigating that harm by enabling judges to depart downward where appropriate. I strongly support its passage and hope that you will as well.

Sincerely,



Leigh Goodmark
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