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To: Senate Committee On Judiciary
From: Brian Decker, Transparency and Accountability Director, Oregon Justice Resource Center

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

My name is Brian Decker, and I am the Transparency and Accountability Director for the Oregon Justice Resource Center, writing in support of Senate Bill 1070. I am a former federal prosecutor and public defender, having spent most of my 16-year attorney career practicing criminal law in Oregon and other jurisdictions, at both the trial level and appellate level. OJRC urges the committee to support SB 1070 because it solves a problem that is otherwise unaddressed in Oregon. Right now, neither District Attorneys nor law enforcement systematically address survivor-defendant issues.

As you're aware, SB 1070 permits leniency in sentencing when a defendant was subjected to domestic abuse, that abuse was a contributing factor to the criminal behavior, and the presumptive or mandatory minimum sentence would be unduly harsh in light of all the circumstances.

At OJRC, my colleagues and I conducted research to answer the question of whether these circumstances are already factoring in to the decisions that police and prosecutors are making in criminal cases. Police have the discretion to decide what people should be detained and arrested, what charges should be presented to the District Attorney for prosecution, what information to investigate, and therefore what facts to include in their reports. And DAs have the discretion to decide what charges to present to a grand jury, what plea bargains or alternative resolutions to offer, and what sentences to recommend to a judge. In cases involving mandatory minimum sentences in particular, these are the decisions that really drive the outcomes of cases; by the time a case reaches sentencing, the judge usually has no choice but to impose the mandatory minimum sentence. Using public records requests, we conducted a review of district attorney and law enforcement policies and training materials related to survivor-defendants. We wanted to know: **In making their decisions, are police and prosecutors already, by policy and training, considering a defendant's history as a domestic abuse survivor?**

The answer, we found, is no. DA offices may claim to take evidence of domestic violence into consideration during plea negotiations, but because there is no systemic basis in the training or policies that affect the thousands of cases assigned to deputy DAs, that assurance is not reliable or universal. And prosecutors are unlikely to have information about the defendant's DV history, let alone how it contributed to the crime, to factor into their plea negotiations because they don't do their own investigation and the negotiations depend on police reports. Police reports don't have this type of information because law enforcement agencies have no policies about investigating the arrestee's prior history, such as whether the arrestee is a domestic abuse survivor or how such domestic abuse may have contributed to the crime.

Regarding district attorney offices, we reviewed the policy manuals for four of Oregon's largest counties, representing about half the state's population. We found no specific policies related to survivor-defendants. We examined policies for charging, plea negotiation, determination of eligibility

for diversion programs and treatment courts, and other decisions that rest with prosecutors. The offices had guidelines for how these decisions should be handled, and most included consideration of "mitigating factors" or "interests of justice" generally. In most cases, the policy focus was on what criminal charges, criminal history, or aggravating factors excluded a defendant from a favorable exercise of prosecutorial discretion, rather than what mitigating factors made a person eligible. But most offices did not specify what counted as a mitigating factor, and none specifically included a defendant's status as a survivor of domestic violence as a mitigating factor. Of course, because no policy specifically identified survivor-defendants as a concern in discretionary decisions, none outlined any effect on cases for such concerns. We also asked that district attorney offices provide us with any policies or training materials related to mitigating factors not included in their policy manuals. Half the large offices had no such supplemental policies or training materials. Of those that did provide additional information, none addressed survivor-defendant concerns.

Regarding law enforcement, our review of the policies for eleven of the largest agencies in the state found no policy relating to potential survivor-defendants. While most agencies had policies relating to domestic violence, these policies typically outline the process for answering a call for service for a domestic violence-related crime. For example, the policies will define domestic violence, detail evidence collection procedures, and articulate the process for serving a protective order. They do not, however, address how law enforcement might relate to survivors of domestic violence in other contexts, such as if they are to be charged with a crime in connection with the domestic violence they suffered. We also submitted public records requests to those law enforcement agencies for the training their officers receive on domestic violence. Our review of those materials reveals that, while some agencies have robust training programs on domestic violence that includes complicating factors like survivors being coerced into committing crimes, most had little or no training on domestic violence outside that offered by the Department of Public Safety Standards and Training. Even for the law enforcement agency that provided the most records on domestic violence training and education (Beaverton Police Department), there were only a few slides (out of hundreds) that spoke to the issues faced by survivor-defendants. As a result, such issues are unlikely to be noticed by police officers and so rarely included in police reports.

As a result of this research, we concluded that consideration of a suspect's or defendant's status as a survivor of domestic abuse is not a systemic practice. It may well be the case that individual police officers or individual prosecutors happen to be aware of these issues, and so we cannot rule out the possibility that a survivor-defendant's status might act as a mitigating factor in an isolated case from time to time. But without policies and procedures in place, and without training communicating such policies and their application to the police and prosecutors making the decisions, there is no assurance that each survivor-defendant receives such consideration.

SB 1070 solves this problem by requiring that a defendant's status as a domestic violence survivor, though not necessarily determinative of the outcome of cases, be taken into consideration by the time of sentencing. This is sure to have upstream effects, forcing decision-makers to contemplate a suspect's or defendant's abuse history at each relevant decision point. To address the current shortcoming, we urge the committee to pass the bill.