FAQ
SB 1179

Support *All* Survivors of Domestic Violence:
End the overincarceration and continued abuse of survivors

How many survivors will benefit from SB 1179?

We know that in Oregon, more than one third of women have experienced domestic violence. And numerous studies in the U.S., dating as far back as the 1980s, observed high rates of victimization that link violence in women's lives to their entry into the criminal justice system as defendants.

A 2017-2018 survey of more than 140 women incarcerated in Oregon revealed the following:

- 65% of the women in a relationship at the time of arrest reported experiencing abuse in their relationship.
- 44% of the women in a relationship at the time of arrest said the relationship contributed to their conviction.

Defendants who would be eligible for sentencing considerations under this bill have largely been invisible. They are not recognized by the criminal legal system and therefore there is no record of the number or frequency of domestic violence survivors who are convicted for crimes committed out of abusive relationships.

What types of relationships involving abuse are considered under SB 1179?

SB 1179 recognizes the same "family or household relationships" currently used by prosecutors to charge and convict domestic violence offenses: spouses; former spouses; adult persons related by blood or marriage; persons cohabiting with each other; and persons who have cohabited with each other or who have been involved in a sexually intimate relationship. ORS 135.230.

How does SB 1179 define the abuse that the court must consider when sentencing a survivor-defendant?

SB 1179 requires the defendant to show that they have been subjected to "domestic abuse," as defined by the United Nations. In SB 1179, *"domestic abuse" means a pattern of behavior in a relationship by which one person in the relationship gains or maintains power and control over the other person, consisting of physical, sexual, emotional, economic or psychological actions or threats of action that influence another person, including but not limited to actions or threats of action that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound the other person.*

Under SB 1179, is claiming abuse enough to get a lesser sentence? What must defendants show to judges to be considered for a sentence less than the mandatory minimum sentence?

In deciding whether to order a lesser sentence, judges will look at the **totality of the circumstances**: whether the defendant was subjected to domestic abuse, as defined in SB 1179 and as defined by the United Nations (see question above); **and** whether the abuse was a contributing factor to the crime; **and** whether the mandatory or presumptive sentence is unduly harsh in light of the circumstances of the crime, the circumstances of the defendant, and the abuse the defendant suffered. SB 1179 does not require judges to order a lesser sentence.

Doesn't "self-defense" already protect survivors in the criminal legal system?

Self-defense is a type of defense to a crime. Defenses only apply when the court is determining whether someone is guilty and should be convicted of a crime, not at sentencing when the court is ordering a defendant's punishment.

The circumstances and experiences of domestic violence survivor-defendants don't fit neatly into the available defenses, like self-defense, duress, etc. For example, self-defense that occurs within the context of the cycle of abuse that so many survivors of violence experience will not fit the legal definition of self-defense and therefore will not protect survivors from unjust treatment in the criminal legal system. Another limitation is that defenses almost always have to be raised at trial. (95% of cases are resolved by plea agreements.) Because of the charging practices and the power of the prosecutor, many defendants will not go to trial because by doing so they risk receiving much harsher penalties if they are found guilty, than if they accept a plea offer from the prosecutor.

SB 1179 addresses the sentencing phase of the criminal proceedings, after the defendant has been found guilty at trial or pled guilty to crimes. Defenses, like self-defense, do not apply at sentencing.

I understand that SB 1179 only applies at sentencing. But can't judges now consider the impact of domestic violence and order a lesser sentence that is proportionate to the defendant's true culpability?

Judges can only order a lesser sentence in extremely limited circumstances, when we're talking about crimes that involve mandatory minimum sentences.

In 1994, Oregon passed Measure 11, which imposes mandatory minimum sentences for about 25 different crimes. In the vast majority of cases, once someone is convicted under Measure 11, whether because they pled guilty or they're found guilty at trial, the judge has no discretion whatsoever to give them a lesser sentence. The judge is required by law to give them the mandatory minimum sentence.

Is the defendant's domestic violence victimization already considered by prosecutors in plea negotiations?

We have spoken to many incarcerated survivors of domestic violence over the past ten years, to defense attorneys, investigators, and to former prosecutors. Based on their reports, we conclude that it is **exceedingly rare** that a defendant's domestic violence victimization is considered by prosecutors in plea negotiations.

Prosecutors rely almost exclusively on the police reports in making charging decisions (which drive plea offers) and as a basis for their plea negotiations. District Attorney's offices rarely if ever conduct their own investigation of a defendant's history, such as being a survivor of domestic abuse. **The DA offices from four of Oregon's largest counties, representing half of the state's population, have no specific policies for defendants who are survivors of domestic violence** when it comes to charging, plea negotiations, determination of eligibility for diversion programs and treatment courts, or other decisions that rest with prosecutors.

While plea negotiations depend on police reports, law enforcement agencies rarely investigate any information about 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. **Eleven of the largest law enforcement agencies in Oregon have no policies relating to potential defendants who are survivors of domestic abuse.** While most agencies have 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, speak to 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.

Any information a prosecutor receives about the defendant's history or context for the crime is almost always provided by the defense attorney as mitigating evidence, in an attempt to convince the prosecutor to consider it in plea negotiations. But it can be difficult and even impossible for survivors to talk about the abuse with their attorneys for a variety of reasons, including not fully understanding the abusive nature of their relationship; being too deep in a state of trauma to verbalize the abuse; or still being under the control of their abuser during the criminal case. Defense attorneys, given their limited time and capacity, are unlikely to directly ask their clients about their abuse history unless such a history is relevant to a defense against the charge, which is often not apparent or available. Also, most defense attorneys, like other stakeholders in the criminal legal system, are not trained or educated about the dynamics of domestic violence.

If domestic violence did come to light during the criminal case and was considered by the prosecutor and defense attorney in the plea agreement, there would be/will be a record of it in case files or in court records. If an incarcerated person who resolved their case through a plea agreement petitions the court for re-sentencing under SB 1179, they would have to demonstrate that the information was not already considered in their sentence.

Will perpetrators of domestic abuse who are criminal defendants benefit from sentence reductions under SB 1179?

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Currently, Oregon law defines "domestic violence" as "abuse between family or household members" (ORS 135.230(3)) and "abuse" as a singular act of causing physical injury, placing someone in fear of physical injury, or committing sexual abuse in the first degree (*see* ORS 135.230(1)). As you can see, "domestic abuse" as defined in SB 1179 is a more accurate definition of domestic violence and therefore makes it difficult for a defendant to falsely claim they are a victim of domestic abuse and to be eligible for a sentence reduction under SB 1179.

Furthermore, in deciding whether to order a lesser sentence, judges consider more than the claims of domestic abuse. They must consider the totality of the circumstances: whether the defendant was subjected to domestic abuse, as defined in SB 1179 and as defined by the United Nations; and whether the abuse was a contributing factor to the crime; and whether the mandatory or presumptive sentence is unduly harsh in light of the circumstances of the crime, the circumstances of the defendant, and the abuse the defendant suffered.