Oregon Justice Resource Center
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March 18, 2025

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

Re: **Senate Bill 1179 – 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 1179 and to urge your support of it. SB 1179 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. It also encourages system actors to take domestic violence seriously, including in cases where the defendant is also a victim. And it provides relief to survivor-defendants who can't access traditional affirmative defenses, but who are deserving of a lesser sentence.

SB 1179 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 a person 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 lesser sentence, and only when the crime and the accused meet specific, narrow criteria.[1] In all other circumstances, judges' hands are tied. Even if a judge believes that a defendant's victimization warrants a lesser sentence, the judge is required to impose the mandatory minimum. SB 1179 gives judges the freedom to order a lesser sentence for a survivor-defendant if the mandatory minimum would be unduly harsh. Judges would maintain their authority to keep the mandatory minimum if they see fit, but would no longer be forced to do so if, based on the mitigation presented and the totality of the circumstances, they found the mandatory minimum to be inappropriate.

SB 1179 encourages system actors to take domestic violence seriously.

Too often, domestic violence mitigation is overlooked, especially when it doesn't negate guilt but nevertheless reduces culpability. The prosecutor only gets mitigating information relating to domestic violence if the defense attorney provides it. But by the time the prosecutor receives this information, the survivor is already a defendant, and the prosecutor is already invested in their understanding of the case. Representing survivor-defendants, I had cases in which I tried to show 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 prosecutor was dismissive of the

[1] Those criteria do not include considerations related to domestic violence.

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idea that their case could be flawed or that my client was deserving of a sentence that took into account their victimization. District attorneys' offices in Oregon generally do not have policies on how to evaluate or weigh information concerning domestic abuse experienced by a defendant. Defense attorneys are acutely aware that sharing information about domestic violence with the wrong prosecutor or judge, or in the wrong case, could backfire, resulting in a worse outcome for the accused. SB 1179 would ensure that all system actors understand and appreciate the mitigating impact domestic violence may have on survivor-defendants.

SB 1179 applies to survivor-defendants who can't access legal defenses, but whose culpability nevertheless warrants a lesser sentence.

SB 1179 only applies at sentencing, after a defendant has been convicted. Affirmative defenses, like self-defense or duress, are only available at trial when guilt is at issue, not at sentencing when the appropriate punishment is determined. Approximately 95% of cases are resolved by plea agreements. Survivor-defendants, in particular, may choose to plead guilty to avoid confronting their abuser at trial or risking a "trial tax." Thus, many survivor-defendants do not have the opportunity to raise an affirmative defense at trial. Furthermore, the experiences of survivor-defendants often do not fit neatly into the available affirmative defenses. Psychological abuse that compels a survivor to commit a crime will almost never fit into the very circumscribed definition of duress. Similarly, self-defense that occurs within the context of the cycle of abuse often won't fit the legal definition of self-defense. SB 1179 recognizes that not all guilty parties are equally culpable and allows judges to sentence survivor-defendants with due regard for their circumstances and victimization.

Thank you for your attention to this crucial legislation. Please pass SB 1179.

Sincerely,

s/ Malori M. Maloney