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WHAT IS THE WOMEN IN PRISON CONFERENCE?

The annual Women in Prison Conference, organized by the Oregon Justice Resource Center's Women's Justice Project, is a chance for the community to discuss and learn about the issues affecting justice-involved women in Oregon. The presentations aim to demystify the legal aspects of the criminal justice system, address common misperceptions, amplify the voices of women impacted by criminal justice policies, and explore avenues for reform. Thus, the conference builds the foundation of collective knowledge needed for change. The 2018 conference highlighted women and Measure 11, Oregon's mandatory minimum sentencing scheme for "person crimes," such as robbery, assault, and murder. (See page two for more information.) The event sold out, drawing around 180 attendees, including formerly incarcerated individuals, attorneys, social service providers, state and local decisionmakers, and community members.

– Julia Yoshimoto, Director, Women's Justice Project

SATURDAY, OCTOBER 13TH, 2018

Saturday morning kicked off with a full room of attendees, who were eager to listen and engage. Women's Justice Project Director and attorney Julia Yoshimoto welcomed everyone and explained the reason for the conference, and for this year's focus on Measure 11: the experiences of women in the criminal justice system are too often ignored, so it is necessary to bring their stories into the conversation about reform.

Yoshimoto summarized that over the past couple of years, due to the overcrowding at Coffee Creek Correctional Facility (CCCF), Oregon's only women's prison, and the threat of spending millions of dollars to open and maintain a second women's prison, justice-involved women have received more attention than usual. The public conversation has primarily focused on women convicted of drug and property crimes, as more than 60% of women incarcerated in CCCF are there for such offenses. Unfortunately, discussions by policymakers have remained largely about adjusting prison bed numbers, rather than having a deeper conversation about the context in which women are committing crimes and about our community values and letting them guide our criminal justice policies.

Given the statistics on women's offending, an immediate focus on drug and property crimes is understandable. But, in focusing our attention only on women who are


convicted for these crime types and talking about them using language and labels like "non-violent offenders," we often suggest that they are more deserving of closer review and fairer sentences than those whom we term "violent offenders," women convicted of assaults, robberies, and even murder. Julia Yoshimoto emphasized that by failing to discuss and look more closely at women convicted of violent crimes, we are intentionally ignoring grave injustices in our society. We are not equipping ourselves for substantial and power-altering criminal justice reform.

A common misconception is that Measure 11 is reserved for repeat offenders or for "the worst of the worst." In reality, many Measure 11 convictions are first-time convictions. Often, incidents leading to a Measure 11 conviction have underlying stories of trauma, addiction, poverty, mental illness, and domestic violence. Long sentences have a devastating impact on families and children and make re-entry from prison more difficult. To understand how mandatory minimum sentencing operates, we must "bring these stories out of the darkness." Yoshimoto appealed to the audience to ask themselves, as they listened to incarcerated and formerly incarcerated women over the weekend, whether Measure 11 truly promotes their values about fairness, accountability, public safety, and justice.

ORS 137.700 (MEASURE 11)

Since Measure 11 became law in 1995, (codified as ORS 137.700), the statute has been amended by the Oregon legislature several times with other crimes and mandatory minimum sentences added. Below are the sentences required under the law.

Offense	Sentence (in months/in years)
Murder	300 months/25 years
Attempt or conspiracy to commit aggravated murder	120 months/10 years
Attempt or conspiracy to commit murder	90 months/7.5 years
Manslaughter in the first degree	120 months/10 years
Manslaughter in the second degree	75 months/6.25 years
Assault in the first degree	90 months/7.5 years
Assault in the second degree	70 months/5.8 years
Kidnapping in the first degree	90 months/7.5 years
Kidnapping in the second degree	70 months/5.8 years
Rape in the first degree	100 months/8.3 years
Rape in the second degree	75 months/6.25 years
Sodomy in the first degree	100 months/8.3 years
Sodomy in the second degree	75 months/6.25 years
Unlawful sexual penetration in the first degree	100 months/8.3 years
Unlawful sexual penetration in the second degree	75 months/6.25 years
Sexual abuse in the first degree	75 months/6.25 years
Robbery in the first degree	90 months/7.5 years
Robbery in the second degree	70 months/5.8 years
Arson in the first degree	90 months/7.5 years
Using a child in a display of sexually explicit conduct	70 months/5.8 years
Compelling prostitution	70 months/5.8 years
Aggravated vehicular homicide	240 months/20 years



“NAVIGATING AND TRANSCENDING THE PULL OF PRIVILEGE AND STRUCTURAL BIAS TO WORK FOR JUSTICE INSIDE THE LEGAL SYSTEM”

Keynote address by **THE HONORABLE DARLEEN ORTEGA**, Oregon Court of Appeals

[Click to read Judge Ortega's keynote address at the Oregon Justice Resource Center website.](#)

The Honorable Darleen Ortega has served on the Oregon Court of Appeals for 15 years and was the first Latina to serve as an appellate judge in Oregon. She is a court leader on issues of juvenile dependency and questioning structural inequities that the legal system upholds. She is a leader of genuine heart and integrity, who lives her values and continually pushes herself to understand the perspectives of communities on which her decisions will have great impact. She writes frequently on equity and inclusion, structural racism, and privilege.

“The pull of gravity always favors the most privileged.” Judge Darleen Ortega

Judge Ortega's inspiring keynote speech set a thoughtful tone that lasted throughout the weekend. She began by noting that although judges are treated with deference when speaking, she considers her time better spent listening to and leveraging the voices of those on the margins. This is important, she said, because “the pull of gravity always favors the most privileged.” That is, decisionmakers tend to be privileged, so they do not understand the perspectives of the less-privileged individuals they are prosecuting and judging. For the system to value the perspectives of the less privileged, it would first have to acknowledge its own biases.

In the face of this challenge, how can those working for systemic change move forward with hope and not despair? Judge Ortega encouraged us to “live with a relentless commitment to the truth.” This means eschewing quick solutions in favor of listening, accepting uncertainty, and acknowledging one's own privilege. She recommended a

daily spiritual practice as a method for expanding one's capacity for discomfort and developing courage. “There are rarely green lights for systemic change – don't wait for those,” she said. Judge Ortega closed by exhorting those with common goals to cooperate with one another and be “good strategic partners.”


WHAT IS MEASURE 11? AND AN UPDATE ON STATISTICS ABOUT WOMEN IN CCCF

MIKE SCHMIDT

Executive Director, Oregon Criminal Justice Commission

Since the Oregon Justice Resource Center took charge of the Women in Prison Conference in 2014, Mike Schmidt, the Executive Director of the Oregon Criminal Justice Commission, has joined us to present data on the women's state prison population. Having this information presented early in the conference helps establish a common understanding from which to start our conversation. The Criminal Justice Commission is a state agency created to study and improve Oregon's criminal justice system, and it functions as a data clearinghouse and statistical analysis center. It also maintains sentencing guidelines and administers grants to specialty courts and to the Justice Reinvestment Program, which gives funds to counties who implement initiatives designed to reduce prison use.

Schmidt presented a brief history of Oregon sentencing laws to provide context for what Measure 11 does. Prior to 1989, Oregon used “indeterminate sentencing,” whereby sentencing courts ordered a minimum and maximum sentencing term and the parole board later decided the release date. In 1989, the system shifted to “determinate sentencing,” a system where a presumptive sentence is determined using a sentencing grid. The grid contains an axis of “crime severity” and an axis of “criminal history.” A presumptive sentence is reached by combining the criminal history and crime severity scores. Judges then have discretion, with certain convictions, to increase or lower the presumptive sentence based on aggravating or mitigating factors.



In 1994, Ballot Measure 11 was approved by voters, and the law was implemented in 1995.¹ Measure 11 imposes mandatory minimum sentences ranging from 70 months to 300 months for certain “person crimes.”² With rare exceptions,³ judges have no discretion to alter these sentences. Those convicted under Measure 11 are not eligible to earn a sentence reduction by demonstrating positive behavior and participating in skills programs while incarcerated.⁴ Finally, youth ages 15 to 17 are subject to Measure 11. Youth charged with Measure 11 crimes are excluded from the juvenile court system and are automatically waived⁵ into adult court.

Mike Schmidt then discussed how Measure 11 relates to Oregon’s high female incarceration rate, which has tripled since 1994. The increase in the incarceration of women is a nationwide problem, and states are beginning to confront the reality that “the system was not built with women in mind.” As of 2016, Oregon ranked 24th in the country for the female incarceration rate. Schmidt noted as a point of comparison the rates of our regional neighbors: Washington has the 32nd highest female incarceration rate in the U.S., while California ranks 41st. Since 1995, as incarceration rates have risen, Oregon’s female arrest rate has steadily dropped, mirroring a national trend. While the main drivers of female incarceration are drug and property crime, Measure 11 also plays a role. On average, 35 women per year enter prison for a Measure 11 conviction; in 2017, 12% of women entering CCCF were convicted under Measure 11. But, importantly, those convictions make up a significant portion of overall time served; 40% of prison months served in 2017 were under Measure 11. The average length of stay for a Measure 11 conviction is ten years.⁶

There are also data indicating many women in prison have backgrounds involving trauma and marginalization. Judges cannot consider these factors when sentencing women for Measure 11 crimes because Measure 11 removes judicial discretion. A 2015 intake survey of women at CCCF found 76% of women were not employed at the time of their crime, 34% had not completed high school, and more

than 50% had children. Around 40% reported childhood physical abuse; 48% childhood sexual abuse; and 46% domestic violence among parents or caretakers. Mike Schmidt noted that actual numbers are probably higher than is reflected by self-reporting in this intake survey.


1. The Measure is codified at ORS 137.700 and ORS 137.707; exceptions are codified at ORS 137.712
2. Id.
3. ORS 137.712 sets forth limited circumstances when a judge may depart from the minimum sentence otherwise required by Measure 11.
4. See ORS 137.700; ORS 421.121 (2017).
5. ORS 137.707 (2017). Waiver into adult court has significant repercussions because in the juvenile system, “youth enjoy greater access to resources for rehabilitation, greater civil protections, and far less punitive consequences.” Juvenile court is “designed for accountability and rehabilitation, rather than strictly punishment.” Oregon Council on Civil Rights. (2018) Youth and Measure 11: Impacts of mandatory minimums. 25. Available at <https://ojrc.info/youth-and-measure-11-in-oregon/>.
6. Schmidt, Mike. (2018) Update on statistics of women in CCCF and what is Measure 11. Available at [HerStory Oregon](#).

STORIES FROM WOMEN CURRENTLY INCARCERATED AT COFFEE CREEK CORRECTIONAL FACILITY*

“Lockup is perpetual loss, on many levels.” - Melissa, currently incarcerated woman.

In a deeply affecting presentation, three currently incarcerated women shared their stories of being convicted under Measure 11, and how their experiences in prison have impacted them. During the question and answer period, attendees were concerned to hear about the lack of drug treatment and educational resources in prison, which not only makes rehabilitation difficult but contributes to a sense of despair and hopelessness that can take years to recover from.

Leila began the panel discussion by asking the audience to imagine themselves in the panelists’ shoes: being so afraid of never seeing your children again that there is no choice but to accept a plea agreement. Feeling that your label of “violent offender” means that you are no longer seen as a citizen or even as a person. She asked the room to “hear our voices and speak for us.”



Melissa spoke next. She was convicted for an incident related to drug addiction. When she was arrested, she had been sober for five years, had a 17-month old son, and cared for her terminally ill father. She took a plea deal and spent five years in prison. She described her time there as a step backward for her recovery from addiction. After her release, she struggled with the stigma of being labeled as a “violent offender.” “I was only comfortable around other formerly incarcerated people,” she said. The trauma of losing her family for so many years made it very difficult to navigate life after prison. When her father died, her addiction relapsed. She became involved with an abusive partner and ended up back in prison for theft. “My story would be very different if not for Measure 11,” she said. “‘Scared straight’ doesn’t work.”

Jennifer told her story. She described a childhood of extreme psychological and physical abuse. She became addicted to methamphetamine as a young teenager, seeking an escape from her traumatic home life. She was sentenced to 25 years in prison for murder, for an incident that occurred when she was 15 years old. In the aftermath of the traumatic incident, she said, she had no memory of the action that had taken place: “I didn’t know what I had done.”

While everyone in the room absorbed these difficult stories, CCCF Chaplain Rev. Dr. Emily Brault expressed gratitude to the women for their courage and persistence. “Those who have been to the darkest places can shine a light for the rest of us. Thank you for doing the hard work you have done.”

**Last names of participants in this panel have not been included to protect their privacy.*

REPRESENTING DEFENDANTS CHARGED WITH MEASURE 11 CRIMES AND PLEA NEGOTIATIONS

ISIS HARRIS

IBEW inside wireman apprentice, formerly incarcerated

KASIA RUTLEDGE


Criminal defense attorney

*“Prison is about balancing the idea that you matter, because everything around you tells you you do not.”
- Isis Harris*

What happens when someone is charged under Measure 11? How does the charge affect the defense counsel’s role? And what is the experience of facing Measure 11 charges really like? The next portion of the conference tackled these questions. Defense attorney Kasia Rutledge, and Isis Harris, who is formerly incarcerated, presented and moved through the stages of what happens when a person is charged with a Measure 11 crime.

A person defending a Measure 11 charge faces multiple systemic disadvantages, Rutledge explained. As she put it, the defense attorney “starts from behind” in terms of having timely and accurate information with which to defend the case, and prosecutors hold the most power to decide how it will go. It starts with the police investigation, when police carefully and strategically select evidence to present to the district attorney (DA). The DA then has the discretion to decide what charges to file. The grand jury, evaluating only “handpicked” information from the prosecutor, generally votes to move the charges forward.

Kasia Rutledge explained how the district attorney gains a strategic advantage by “stacking” multiple charges for the same incident. This gives them leverage in plea negotiations by making the lesser charge seem “reasonable.” On the other hand, if the defendant goes to trial, a jury looking at a long list of charges likely will not understand the charges are all for the same conduct. Stacked charges therefore function to intimidate the defendant into accepting a plea offer, while making it less likely that they will succeed if they go to trial.



Furthermore, the jury only decides whether to convict the defendant of the criminal charges; they do not make sentencing decisions. This means that a jury may vote to convict someone without having any idea what prison term the person will serve under the conviction. Isis Harris explained how discouraging it was when she realized what she was up against navigating these realities. “You start off knowing that prison is in your future. It’s a devastating mindset when you’re trying to fight for your life.”

Once charged, a person who cannot afford bail will often await trial in jail for several months. It is rare for bail to be set at lower than \$50,000. Pre-trial detention is a confusing, traumatic experience. All communications except those with one’s attorney are recorded, so it is impossible to talk openly with trusted family and friends about life-altering decisions. Therefore, individuals often rely primarily on their attorneys to obtain accurate information and to assess their options. Public defenders represent up to 50 clients at a time, limiting the time they can spend with each client. As Isis Harris explained, it is difficult to build rapport with the attorney over the phone and on video. Moreover, public defenders are not often trained on the effects of trauma. Awareness of trauma dynamics is important to learning the full picture of clients’ lives, and to understanding the profound emotional impact and disorientation clients experience while undergoing arrest, incarceration, and sudden separation from loved ones. In terms of trauma and grief, Kasia Rutledge said, coming to terms with a long prison sentence has parallels with entering hospice care.

Isis Harris related how agonizing and stressful it was to decide whether to take a plea offer of 22 months. She was afraid that if she went to prison that long, she would lose her children to the foster care system. When a family member told her she would not continue caring for her children for 22 months, she said, “I turned [the plea offer] down because I wanted [my kids] to be okay. They never offered me another plea [deal].” At trial, she was found guilty of Assault 1 and Assault 2 and expected to serve seven years, six months in prison. Strangely, an agreement

between the prosecutor and her defense attorney was made after the trial. In exchange for Isis Harris’ appeal rights, the prosecutor dropped the assault in the first degree and she was sentenced to five years, ten months in prison. Her sons were traumatized by her ordeal and by the long separation during a developmentally important stage in their lives. Later, they were both also convicted under Measure 11 and sentenced to long prison terms. “It’s a really sick cycle,” Isis Harris said. She felt like she was released, “almost too late to intercede in their lives.”

Isis Harris said the emotional impact of defending her case and feeling that she “had no control over anything” lingered for a long time. She described her first few years at CCCF as a “dark and soul-wrenching” time. After those years, she took as many classes as she could and began earning certificates. She gathered recommendation letters and wrote to the judge about her progress. He replied that there was nothing he could do. “It didn’t matter what classes I took...I continued, but it takes something out of your stride to know that.” She explained how difficult it is to maintain dignity and sense of self in prison. “I didn’t want to become a bitter person and lose my humanity, and it’s a fight.” She described a dynamic where incarcerated women, many of whom are survivors of abuse, must “walk on eggshells” to avoid “setting off” prison guards. “Prison replicates the very domestic violence relationships we left on the outside,” she said. “There is no safe place for us.”

Isis Harris was eager to start her life again after prison, but she quickly discovered that “on probation, your life can be interrupted at any time.” She was suddenly arrested after her probation officer failed to check her voicemail and thought she was being unresponsive. She became so depressed in jail following arrest that she did not eat or move for several days, and was subsequently hospitalized to receive treatment for blood clots caused by inactivity.

Isis Harris said that although her life has gotten a lot better since her incarceration, the effects are “hard to ever completely shake, regardless of how good your life gets. The trauma never leaves you, it’s never expunged.”



PERSPECTIVES FROM THE BENCH

HON. CHERYL ALBRECHT

Multnomah County Circuit Court

HON. AMY HOLMES HEHN

Lead Juvenile Judge on the Multnomah County Circuit Court

HON. DARLEEN ORTEGA

Oregon Court of Appeals

This panel provided information about how the state court system works, and the roles of judges at different court levels. The state court system has three basic tiers: the circuit courts (a.k.a. trial courts), the Oregon Court of Appeals, and the Oregon Supreme Court. The Court of Appeals takes appeals from the criminal and civil circuit courts, except for Tax Court and death penalty appeals, which go directly to the Oregon Supreme Court. The Court of Appeals may decide to reverse the trial court's ruling; it may affirm the ruling with an explanatory written opinion; or it may affirm without an opinion (known as an "AWOP" decision). As the highest state court, the Oregon Supreme Court takes appeals from Court of Appeals decisions on a discretionary basis, meaning it only takes appeals that are determined to present important questions of state law. The appellate courts do not typically review the factual record of a case; their review is generally limited in scope to narrow questions of legal interpretation.


"[Measure 11] hit us like a bomb...our jobs became heartbreaking in many ways." - Judge Cheryl Albrecht

The panel included Court of Appeals Judge Darleen Ortega and two Multnomah County Circuit Court judges: Lead Juvenile Judge Amy Holmes Hehn, and Judge Cheryl Albrecht. Judge Holmes Hehn recalled the political climate of the 1990s to offer context for Measure 11's enactment. Fear of violent crime had a grip on the public imagination, and racist rhetoric about "super-predator" juveniles fueled a push for harsher sentences, she explained. Victims' advocates and district attorneys promoted the idea that the system was "coddling" young people, leading to a shift away from the traditional focus on the "best interests of the child" in the juvenile justice realm.

When Measure 11 passed, the "determinate sentencing" grid had been in place for five years. Suddenly, the judicial discretion provided in that system was gone, and "it hit us like a bomb," said Judge Cheryl Albrecht, who was working as a public defender at the time. Since Measure 11 was not merely reserved for the "worst" crimes, she said, "our jobs became heartbreaking in many ways."

About 95% of Measure 11 cases are resolved by plea bargains at the trial court level. Once a plea is agreed to, the conviction cannot be appealed unless it is based on ineffective assistance of counsel (otherwise known as "post-conviction relief"). Trial court judges exert some influence over plea negotiations, but their role is limited. Judge Albrecht said that a judge has "an obligation to bring [her] own perspective to every sentence." Judge Holmes Hehn, referring to her role in juvenile plea settlements, said she will not allow a settlement that looks too "cookie cutter," and asks counsel how the proposed resolution meets rehabilitative goals. For example, if an underlying addiction is present, the resolution should address that.

The role of judges at the appellate level in Measure 11 sentencing is also limited. First, sentences reached by plea agreement are not appealable. This also means that the negotiations leading up to a plea agreement are not subject to appellate review. Individuals who do not take plea agreements and are convicted following a trial have the right to appeal the conviction at the Court of Appeals. In fact, between 60 to 70% of appeals are criminal cases. However, there are multiple structural limitations on what the appellate court can hear and decide. First, the high volume of cases makes it impossible to hear every appeal. In Oregon, which has one of the busiest appeals courts in the country, about 60% of all appeals are "affirmed without opinion" ("AWOP" decisions). Second, appellate review is typically limited to a narrow, technical legal issues; the underlying facts of the case and the individual circumstances of the defendant's life are not generally involved in the analysis. Judge Ortega also noted that the court is reluctant to consider arguments that sentences are not "proportional" to the crime under the Oregon



Constitution. Finally, Judge Ortega said the defendant is not usually present at oral argument, only her attorney. This creates a “distance” among judges from the “lived experience” of those affected by their decisions, she said. In sum, by the nature of how the system is structured, “there’s not a priority on understanding the experiences of marginalized people.”

The Multnomah County bench recently began holding listening sessions for the community to share their thoughts with judges. According to Judge Holmes Hehn, these sessions have largely become a conversation about Measure 11, especially its impact on young people. She also noted that the Multnomah County district attorney has recently become more receptive to returning certain second-degree cases to juvenile court for resolution, where they can be placed on probation instead of going to prison. Judge Holmes Hehn concluded that judges have a unique power and obligation to “convene the conversation” around Measure 11. Judge Ortega also shared some perspectives on the role of judges. Given their relative privilege, she said, decisionmakers must question their own assumptions of objectivity. The public should also hold them accountable to understand the experiences of the less privileged: “I envision a future world where decisionmakers are expected to engage in ongoing education.”

“HIDDEN” EXAMPLES OF WOMEN CONVICTED OF MEASURE 11: ACCOMPLICE LIABILITY, DOMESTIC VIOLENCE SURVIVOR-DEFENDANTS

ERIC DEITRICK

Deputy General Counsel, Office of Public Defense Services

ASHLEY WADE

Cosmetologist, formerly incarcerated

JULIA YOSHIMOTO

Project Director of the Women’s Justice Project

This panel sought to raise awareness that supposedly “violent” criminal convictions can be deceptive. The conviction type often does not give accurate information about a defendant’s intention or role in a crime. Therefore,


long mandatory minimum sentences under Measure 11 are not fitting for many defendants.

Highlighted in this panel was a troubling phenomenon that is not yet widely known or acknowledged in conversations about reform: individuals convicted under Measure 11, women in particular, were not the primary or actual perpetrator of the crime. In other words, they were convicted for helping the primary actor or for merely being present when a crime was committed. At present, the number of women convicted under such circumstances is unclear, in part because indictments and judgments do not make a distinction between primary actors and those charged as “accomplices.” But anecdotally, the panel noted that it appears to be a common experience for women sentenced under Measure 11. “It’s a huge issue,” said Eric Deitrick.

What is accomplice liability? The idea that a person who “aids and abets” is culpable for the crimes committed by the primary actor is a longstanding principle under common law. To meet the elements of accomplice liability, the person must perform some action aiding or abetting the crime, and must have a conscious objective of doing so. Although “mere presence” is not enough,¹ the test is not difficult to meet – the “smallest degree of collusion” will suffice.² Accomplice liability is therefore a powerful tool for prosecutors.

“I thought: ‘I didn’t do anything wrong, it’s going to be okay.’” - Ashley Wade, convicted under accomplice liability.

Important to note, Eric Deitrick emphasized, that the idea that an accomplice is culpable for a crime she aids is a separate concept from the idea that the accomplice must be sentenced the same as the primary actor. But in practice, women charged as accomplices to Measure 11 crimes are subject to Measure 11 penalties. This failure to distinguish between accomplices and primary actors arguably contradicts the Oregon Constitution, which requires that “all penalties shall be proportioned to the offense.”³



This is particularly problematic because many women in prison were involved in abusive relationships at the time of their crime. This increases the likelihood of being coerced into crime, or of being present during a crime. Deitrick explained how easy it can be for someone merely present at a crime to wind up charged as an accomplice. Because the police cannot read minds, determining whether someone intended to help a crime “hinges on inferences” and circumstantial evidence. Detectives can ask the suspect a series of seemingly innocuous questions and easily find a way to create an inference of intent from the answers. The closer the suspect was to the crime – either by relationship to the primary actor, or in physical distance – the easier it will be to develop an accomplice theory. Deitrick also noted that “the theory is premised on two clear-headed defendants.” In reality, an unequal power dynamic usually is present. Accomplices often suffer from mental illness or chemical dependency or are victims of abuse.

Ashley Wade’s story illustrates these realities. At 18 years old, she was addicted to drugs. When a man she was with assaulted someone in front of her, she was stunned and terrified that he was going to hit her next. She ran out of the room and got into her truck. The man followed her, and he demanded to be let into the truck. She let him in and drove away, and they never spoke of the incident. “I thought: ‘I didn’t do anything wrong, it’s going to be okay.’” Days later, she was arrested and held on \$250,000 bail. After three months in jail, she was offered a plea deal of 70 months. She refused and went to trial, where she was tried with the codefendant, and found guilty. “The DA made me out to be a mastermind,” she said.

To close this panel, Julia Yoshimoto spoke about how this issue is connected to domestic violence. Last year, the Women in Prison Conference focused on domestic violence survivors who are convicted of crimes. The wrenching stories of trauma by formerly incarcerated women made clear that context is crucial when it comes to appropriate sentencing. Yoshimoto summarized some of the salient facts highlighted at last year’s conference, and from OJRC’s

2017 survey of 144 women at CCCF. Of those surveyed, 65% were in an abusive relationship at the time of their most recent arrest, and 44% said their relationship contributed to the arrest. The decisions that abuse survivors make are not “irrational,” they are driven by survival, for example, attempting to leave an abusive relationship increases the risk of being killed. Myths surrounding domestic violence can work against survivors charged with crimes, and common defenses to crime are not a good fit for domestic violence survivors. Many public defenders lack training to understand abuse and its role in crime. It is often not readily apparent that someone has experienced abuse because survivors have good reasons not to report it. Further, most cases are resolved with plea deals, and there is no mandate for prosecutors to take domestic abuse into account in plea negotiations. Finally, when survivors are incarcerated, they are often re-traumatized by the power dynamics in prison.

1. State v. Stewart, 259 Or App 588 (2013).
2. State v. Moriarty, 87 Or App 465, 468 (1987).
3. OR. CONST. art. I, § 44. Oregon law also provides that one purpose of the criminal statutes is to “differentiate on reasonable grounds between serious and minor offenses,” and to “prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.” See ORS 161.025 (2017).

CLOSING REMARKS

REV. DR. EMILY BRAULT, CHAPLAIN, COFFEE CREEK CORRECTIONAL FACILITY

Chaplain Brault closed the day by encouraging the audience to give themselves credit for being engaged with these stories, and to remember in the face of trauma and isolation that we are connected through our stories. “Part of overcoming trauma is remembering we are not alone. One person does not have what it takes to change this world. But when we join together, there is nothing that can stop us.”



SUNDAY, OCTOBER 14TH, 2018

GIRLS AND MEASURE 11

STEPHANIE ENGELSMAN

Public Defender, Metropolitan Public Defender Services

ALISHA MORELAND-CAPUIA, M.D.,

Executive Director, Oregon Health Science University's
Avel Gordly Center for Healing

MICHAEL RIGGAN

Superintendent, Oregon Youth Authority Oak Creek Youth
Correctional Facility/Young Women's Transition Program

"As a society, we must decide who we are and who we want to be, and whether we believe young people who make mistakes should just be thrown away or given the opportunity for greatness." – Dr. Alisha Moreland-Capuia


The purpose of this panel was to explore why Measure 11 is a particularly poor approach for young people, to highlight its impact on young women, and to stress the need for trauma-informed practices. Youth charged under Measure 11 are automatically waived into adult court rather than facing charges in the juvenile system. These youth are excluded from a system which places more emphasis on rehabilitation and pushed into a punishment-oriented system. But treating youth as adults is a legal fiction which ignores the accepted scientific understanding that developing brains are different from adult brains. In fact, many states have made recent reforms reflecting the reality that the capacity for complex decision-making and impulse control is not fully developed until the mid-20s. And while Measure 11 is in theory a crime deterrent, most youth do not have a meaningful grasp on the implications of a long prison sentence. Moreover, it is important to remember that Measure 11 has a disproportionate impact on youth of color.

Dr. Moreland-Capuia is a medical doctor and trauma expert. She presented information on how trauma and stress affect early brain development. To understand and address problematic youth behavior, she said, we must

understand the role of underlying social conditions and toxic stress. Trauma can impact brain development in utero, through the mother's experiences. Stress factors like poverty, racism, violence, poor nutrition, and substance use cause inflammation, which affects the brain as early as four weeks after conception, when many women do not even realize they are pregnant. Continued stress over time (in utero and beyond) has a toxic effect that causes the brain's survival mechanisms to become overactive at the expense of higher brain functions. The limbic system tells us to choose "fight, flight, or freeze" in the face of danger, and contains the amygdala, which governs aggression. When the limbic system is engaged, activity in the cerebral cortex is inhibited. The cerebral cortex governs functions like reasoning, judgment, impulse control, planning, and empathy. This dynamic poses problems in adolescence because it is a vulnerable stage of development when children are figuring out how to form their identities, make complex decisions, and articulate feelings. Dr. Moreland-Capuia stressed that the brain can heal from the effects of trauma: for example, studies show regular mindfulness practices can shrink the amygdala and enhance the capacity of portions of the brain inhibited by trauma.

The current approach to problematic youth behavior fails to acknowledge the role of trauma. Dr. Moreland-Capuia said implementing trauma-informed practices is a start, but we also need to be motivated by an underlying value of grace, and the belief that people can change. She noted that calling a child "noncompliant" is not productive, because that child might not be capable of certain behaviors yet. Consider also the difference between branding someone a "felon" versus "someone who committed a crime." Dr. Moreland-Capuia said we also need to include race and racism in this conversation, and acknowledge the fact that in this country, black children continue to be judged more harshly than white children.

Public defender Stephanie Englesman next spoke about her work defending youth charged with Measure 11 crimes. She highlighted some of the reasons that the measure is "a plague" on the criminal justice system: The



high risk of a lengthy prison term frightens people into taking a plea deal, thus undermining the fundamental right to a jury trial. Judges do not have the opportunity to consider the role of childhood trauma, because there is nothing they can do with this information to mitigate the sentence. Englesman also noted that felony convictions of youth can never be expunged.

Although two statutory provisions exist which provide youth with potential relief from a mandatory sentence, Stephanie Englesman explained that they have limitations. First, under the “second-look” statute,¹ youth convicted of certain crimes may get a hearing to re-evaluate their conviction after they have served half of their imposed sentence. But these are very rare in practice: most cases are settled by a plea deal, and Multnomah County prosecutors routinely take away the possibility of a second look as a condition of their plea offer. Second, the “escape hatch”² provision allows departure from Measure 11 sentencing for certain second-degree crimes. But to obtain relief, the judge must find that multiple criteria are met, and not all judges are receptive to applying the provision.

Englesman also discussed some of the unique challenges of representing children charged with Measure 11 crimes. Expert testimony is required to explain the connection between adverse childhood experiences (“ACES”) and maladaptive behavior because of a lack of general understanding of the relevant brain science. Further, due to the way cases are assigned, public defenders may not regularly be assigned child defendants and may therefore not develop an understanding of juvenile issues. Another challenge is getting the prosecutor to see the defendant as a child, particularly when representing children of color, who are more likely to be viewed as adults. Finally, it can be challenging to build rapport and trust with children who are traumatized.

Michael Riggan works with incarcerated youth at Oak Creek Youth Correctional Facility. Minors convicted of Measure 11 crimes are placed in Oregon Youth Authority correctional facilities until age 25, when they are

transferred to adult prison. Riggan presented a slideshow illuminating some of the reasons that female youth become involved in crime, as compared with males. He said young women have lower recidivism rates than young men, and are less likely to commit violent crime. If a young woman does commit a violent crime, he said usually one of three factors is present: mental illness, the involvement of an older man, or a gang-related incident. Whereas boys are more likely to commit crime as a “means to an end,” such as to acquire status, girls’ involvement in crime is generally rooted in trauma. Many girls have been traumatized by being coerced into sex and criminal behavior by older men.

Michael Riggan identified the primary underlying causes of youth crime as mental illness and adverse childhood experiences (“ACES”). The higher one’s ACE score is, the more likely it is that a person will misuse substances, suffer from mental illness, and have diminished ability to detect and avoid risky situations. With these facts in mind, Michael closed by posing a question: do we want to think of youth as criminals who happen to be kids, or as kids who have committed crimes? If it’s the former, perhaps Measure 11 makes sense. But if it’s the latter, then “in a just, fair, merciful society, something like Measure 11 would not be in existence.”

1. ORS 420A.203.
2. ORS 137.712.

LIFE IN PRISON WITH MEASURE 11 CONVICTIONS

REV. DR. EMILY BRAULT

Chaplain, Coffee Creek Correctional Facility


TRISH JORDAN

Creek, Executive Director, Red Lodge Transition Services

SAMMANATHA SAUCEDO

Optical Program Coordinator, formerly incarcerated

This panel aimed to provide some insight into the true impact that long prison sentences have on women during incarceration and after release. The panel was comprised of Sammantha Saucedo, a formerly incarcerated woman; Rev. Dr. Emily Brault, who is a chaplain at CCCF, and Trish



Jordan, who brings culturally-appropriate services and programs to incarcerated Native American women, who are over-represented in the criminal justice system.¹

Sammantha Saucedo entered prison as a teenager. When she was 18 years old, her 13-year-old sister was being held captive by an older man. She attempted to rescue her sister, and the altercation that followed led to her being charged and convicted under Measure 11. She was sentenced to 70 months in prison. She emphasized that spending such a long time incarcerated, and the resulting emotional devastation and sense of wasted time, made rehabilitation and a successful re-entry very difficult. In CCCF, she wanted to use her time to pursue an education, but she became frustrated with the lack of available resources to channel her interests. Over time, she became defeated and bitter. Eventually, frustration “got the best of [her],” and she was sent to solitary confinement following a fight with another woman. After release from solitary confinement, she decided to try seeking out educational resources again, and found it “very hard” to get into programs and classes. Following her release, she had “no confidence,” and struggled to reconnect with society with a felony on her record. She also said it was difficult to rebuild family connections and relationships.

“These women have trauma. We need to do better for our women.” - Trish Jordan

Trish Jordan works with incarcerated women and sees firsthand the challenges they face. As she put it: “These women have trauma. We need to do better for our women.” Echoing the experience Sammantha Saucedo described, Jordan said women who spend years in prison often tell her they are not learning what they need to help themselves move forward in life after release. Further, long prison sentences put mothers at risk of permanently losing custody of their children. Trish Jordan’s organization, Red Lodge Transition Services, brings Native American spiritual and cultural programs into CCCF and supports Native American women after release from prison. Jordan teaches life skills, healthy relationship dynamics, and the importance of cultural identity. She emphasized that

successful re-entry from prison requires not only learning practical life skills, but a multi-faceted approach to help women move beyond “survival mode.”

To close the panel, Dr. Brault offered some brief reflections on the short-sightedness of the current system’s emphasis on punishment and long prison sentences. She pointed out that the system is designed to be “efficient, not effective,” and it lacks compassion and dignity because it is based on fear. To move past this, she said, those of us who know better must fight for our knowledge and stories to be honored.

1. For example, Trish Jordan noted that Native American girls are five times more likely than Caucasian girls to be confined in juvenile detention.

WHAT WILL IT TAKE TO REPEAL MEASURE 11?

DAVID ROGERS

Executive Director, American Civil Liberties Union of Oregon

BOBBIN SINGH

Executive Director, Oregon Justice Resource Center

This panel gave an overview of potential avenues for repealing or limiting Measure 11. David Rogers and Bobbin Singh discussed the merits of three possible ways to challenge the law: through litigation in the courts, through a legislative action, or through a ballot measure. Although significant legal obstacles exist, there are also emerging signs that the public, courts, and lawmakers may be becoming more receptive to the idea that lengthy prison sentences are not the best approach, in particular for youth.

Mandatory minimum sentencing implicates three provisions of the Oregon Constitution. First, Article 1, Section 16 prohibits “cruel and unusual” punishments, and requires that criminal penalties be proportional to the offense committed.¹ In order to challenge a criminal sentence under this provision, the case must have been resolved at trial, and the issue must have been raised at



trial and preserved for appellate review. Because most Measure 11 convictions are resolved by plea agreement, opportunities to use this provision are limited.

Second, Article 1, Section 44 provides that a term of imprisonment imposed by a court must be fully served, otherwise known as “truth in sentencing.” This provision would limit the effect of any reform to Measure 11 to apply to future cases only. Third, Article IV, Section 33, also known as Measure 10, provides that any reduction of sentences approved by initiative or referendum requires a two-thirds vote of the entire legislature.²

The main takeaway from the panel is that, given the practical challenges of repealing Measure 11, it is crucial that we continue to put political pressure on prosecutors and legislators.

1. “Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense. In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.”

2. This Section is a constitutional amendment passed by voter initiative in 1994 as Measure 10.

CLOSING REMARKS

JULIA YOSHIMOTO

Women’s Justice Project Director, Oregon Justice Resource Center

In closing the conference, Julia Yoshimoto remarked that although those in power know how to frame these issues and sound rational, the system is brutalizing people. She encouraged audience members to continue to educate themselves on the realities of the current criminal system, and to think about whether it reflects their values.

Chaplain Brault then took the podium to say that this time spent connecting with others, and to something larger than ourselves, can give us courage to keep going in the face of resistance. She encouraged those present to continue “in faith that our steps matter, our voices matter, and we will be heard.”

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