

WOMEN IN PRISON CONFERENCE 2019

Justice for Survivor-Defendants: Looking Toward Reforms

Report on the conference presented by the Women's Justice Project of the Oregon Justice Resource Center.
November 16-17, 2019, at the Portland Art Museum in Portland, Oregon.



Author: Sarah Bieri, J.D.

Editor: Julia Yoshimoto, M.S.W., J.D.

OJC Oregon Justice
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Advocate. Educate. Engage.

INTRODUCING 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 women intersecting with the legal and prison systems in Oregon. The presentations aim to demystify the criminal legal system, address common misperceptions, amplify the voices of women affected by the system, and explore avenues for reform. Thus, the conference builds the foundation of collective knowledge needed for change. The 2019 conference highlighted opportunities for reform with regard to survivor-defendants, people who are affected by domestic violence who are also defendants. The event sold out, attracting a new record attendance of 260 people, which included formerly incarcerated people, attorneys, social service providers, state and local decisionmakers, and community members.

This report on proceedings at the conference was written by Sarah Bieri. It was edited by Julia Yoshimoto. Additional editing and design and layout were by Alice Lundell.

IN GRATITUDE

Our thanks go to all those who contributed to the success of the Women in Prison Conference 2019. We are particularly grateful to the women who chose to share their stories at the conference. We recognize that participating in this way takes courage and is a tremendously valuable and selfless gift to make to everyone present. We honor and salute these women for their time, their thoughtfulness, and their generosity of spirit.

Conference Schedule

Saturday, November 16

Laying the Foundation

7:45–8:15 am: Check-in and breakfast

8:15–8:30 am: Welcome and opening remarks

8:30–9:00 am: Keynote: State Representative
Tawna Sanchez

9:10–10:10 am: Update on statistics of women in
Coffee Creek Correctional Facility (CCCF)

10:20–11:00 am: HerStory Oregon Survey in
CCCF – Results

11:10 am–12:15 pm: Women incarcerated in
CCCF tell their stories

12:15–1:00 pm: Lunch

1:00–2:15 pm: Women arrested for domestic
violence perpetration: Differentiating between
primary and secondary aggressors

2:25–3:55 pm: Representing criminal defendants
and considering trauma responses

4:00–4:30 pm: Discussion: Different forms of
reforms

Sunday, November 17

Reform Discussions

8:00–8:30 am: Check-in and breakfast

8:30–9:00 am: Opening remarks and stories from
survivor-defendants

9:00–10:00 am: Reforms: Pre-trial/conviction

10:05–11:20 am: Reforms: Sentencing

11:30 am–12:30 pm: Reforms: Parole and Post-
Prison Supervision

12:30–1:15 pm: Lunch

1:15–2:00 pm: Reforms: Clemency

2:05–3:00 pm: Open discussion and Q&A with
audience, and closing remarks





LAND ACKNOWLEDGMENT

Trish Jordan, Executive Director
Red Lodge Transition Services

Each day began with a land acknowledgement to center our minds on the history of the spot where we were gathered. A land acknowledgement reminds us of the thriving presence of Native people in Oregon long before European colonizers arrived, of the history of colonization, and of what it means to live on stolen land.

Saturday's land acknowledgement was led by Trish Jordan of Red Lodge Transition Services, which brings culturally appropriate services to Native women in prison. Her remarks set an important starting point: "We must recognize and honor the original inhabitants of this land." The First Peoples of the Willamette Valley were forcibly removed from this land under treaties with colonizers. Thereafter, indigenous people have engaged in a long fight for legal recognition of their rights, obtaining U.S. citizenship in 1924, voting rights in 1965, and fishing rights in 1973. Meanwhile, other laws and institutions attempted to erase Native culture. For decades, Native children were routinely removed from their parents. In 1956, the Indian Relocation Act was intended to persuade Indians to leave reservations and assimilate.

Portland has the ninth largest urban population of Native Americans in the United States. The local Native American community includes 50,000 people and 300 tribes, and the region boasts a "powerful core of indigenous advocates." While Native Americans have endured oppression and cultural erasure for hundreds of years, Jordan emphasized that "the DNA of our ancestors causes resilience," and inspires service to others.

INTRODUCTION TO THE CONFERENCE

Julia Yoshimoto, Director and Attorney,
Women's Justice Project, OJRC

This conference aims to shine a light on the criminal legal system's impact on women because women are often left out of discussions about mass incarceration and needed reforms. The Women's Justice Project provides direct legal assistance to women incarcerated in Coffee Creek Correctional Facility, Oregon's women's prison, with non-criminal legal issues to reduce barriers to successful re-entry. In 2019, the legislature passed House Bill 2631 to fund expansion of our legal services in Coffee Creek as a two-year pilot program (2019-21) and the first of its kind in the country.. Yoshimoto thanked supporters of HB 2631.

Rooted in women's stories and experiences, the Women's Justice Project also looks for ways to improve public education and advocate for a more gender-responsive criminal legal system. The annual Women in Prison Conference is its biggest public education effort. Each year, the conference highlights a significant issue for women in the system – drawn from issues that come up in the Women's Justice Project's work with clients, from other women impacted by the criminal legal system, and family members who reach out to the Women's Justice Project.

This year's conference is focused on survivor-defendants because, while working with incarcerated women, Yoshimoto said, "we often hear that domestic violence was a significant contributing factor to their conviction." Survivor-defendants are set up in multiple ways to receive unjust outcomes: the legal system was not designed with women in mind; the system doesn't recognize the complexity of the circumstances of domestic abuse; and survivors face a high level of disbelief. This year's conference builds on topics discussed two years ago, and it goes further to discuss ideas for reform. What needs to change so that we treat survivor-defendants more fairly?

Attendees were apprised that engaging with the information and personal stories presented at conference can sometimes be painful or uncomfortable. Resources were made available to support attendees: a resiliency room with grounding activities, volunteer trauma counselors, and peer support specialists for formerly incarcerated people.

Keynote Address

State Representative Tawna Sanchez

Representative Tawna Sanchez has spent her life working to strengthen our community. Born of Shoshone-Bannock, Ute, and Carrizo descent, Sanchez grew up in Portland, and for many years has been a leader fighting for the rights of women, indigenous people, and the most vulnerable. As the Director of Family Services at the Native American Youth and Family Center (NAYA), Tawna helped create the Early College Academy, expanded early childhood services, affordable housing development, elder support, and assisted in building a nationally recognized domestic violence wrap-around service model. Over time, Tawna has helped raise 18 foster kids, and has been active in state policy making – serving on the Family Services Review Commission and the Child Welfare Advisory Committee. As a state representative, Tawna remains committed to standing up for social justice on the side of the oppressed and pushing to make our systems more equitable.

Representative Tawna Sanchez sponsored House Bill 2631, which expanded the Women's Justice Project's services for incarcerated women. Rep. Sanchez acknowledged the important role played by everyone who supported the bill, and in particular by Red Lodge Transition Services, where the program originated. "This is just one small piece," she said, "and we have no intention of stopping there."

Looking at women in the legal system alongside the history of colonization, we realize that "the oppression of women has been in the law for a long time." Rep. Sanchez drew a contrast between attitudes about women and their power in Native cultures, and the patriarchal paradigm that Europeans brought with them. Traditionally, Native cultures respected women as the life-givers. Native women took on the role of managing

“ Our criminal justice system is an abuser in and of itself — it’s a simple reality of how that system was designed. ”

the land and tribal affairs. Under the European view, women had no power – not even over their own bodies. Rep. Sanchez pointed out that "prior to Europeans arriving, there was nothing that looked like a prison." Their patriarchal system kept women in their place: "if you were a 'good woman,' you didn't go to prison."

With this understanding in mind, Rep. Sanchez asked: "How did the criminalization of women get to be so big, to the point we almost opened a second women's prison?" Laws punishing property crimes and addiction-related crimes, which are often related to domestic violence, are a huge factor. In addition, mothers are traditionally held responsible when abusive partners harm children. Another reason is the failure to recognize that criminal behavior may be a reaction to abuse – whether it be by fighting back, or by falling deep into addiction. Either way, "if our system insists on criminalizing behavior that is a response to trauma and violence, that's a problem." Adding insult to injury, abusive dynamics of power and control are perpetuated by the legal system. "Our criminal justice system is an abuser in and of itself – it's a simple reality of how that system was designed."

Rep. Sanchez also referenced the larger context of poverty and extreme income inequality. "If we spent more money on those issues," she said, "we would not spend so much on the Department of Corrections." We also need to treat addiction as a medical issue, instead of incarcerating people for addiction-related crime. Rep. Sanchez closed her remarks with an encouraging message. "The collective 'we' has to stand up and say, 'this is not ok.' If we're the first to do this, we won't be the last. It can seem so far away, the ability to make a difference—but we are the people who will do that."

Update on Statistics of Women in Coffee Creek Correctional Facility

Mike Schmidt, Executive Director, Oregon Criminal Justice Commission

Mike Schmidt presented data about Oregon's incarcerated women. Since the Oregon Justice Resource Center took charge of the Women in Prison Conference in 2014, Schmidt, the Executive Director of the Oregon Criminal Justice Commission, has joined us to present information 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. It performs several functions. First, it acts as a data clearinghouse and statistical analysis center. Second, it maintains sentencing guidelines. Third, it administers grants to specialty courts and to the Justice Reinvestment Program, which gives funds to counties to implement initiatives designed to reduce prison use. Highlights from the slides he presented are summarized below.

TIMELINE OF SENTENCING CHANGES THAT HAVE AFFECTED THE FEMALE PRISON POPULATION*



2017

Safety and Savings Act/HB 3078: When this law was enacted, 26% of incarcerated women were convicted of Identity Theft or Theft I. These crimes were removed from Measure 57. The law also expanded short term transitional leave from 90 - 120 days and created a downward departure program designed to allow more sentences of probation.

2019

SB 1008: For juveniles charged under Measure 11, ends automatic waiver into adult court. and ends life without parole for youth.

2019

SB 1013: Created a narrower definition of the crime of aggravated murder and limited the cases that are eligible for the death penalty.

*More information about sentencing developments over the years can be found in the Women's Justice Project report "Unlocking Measure 57" available on the OJRC website at <https://bit.ly/39cdlld>.

DATA ON INCARCERATED WOMEN IN OREGON (2018)



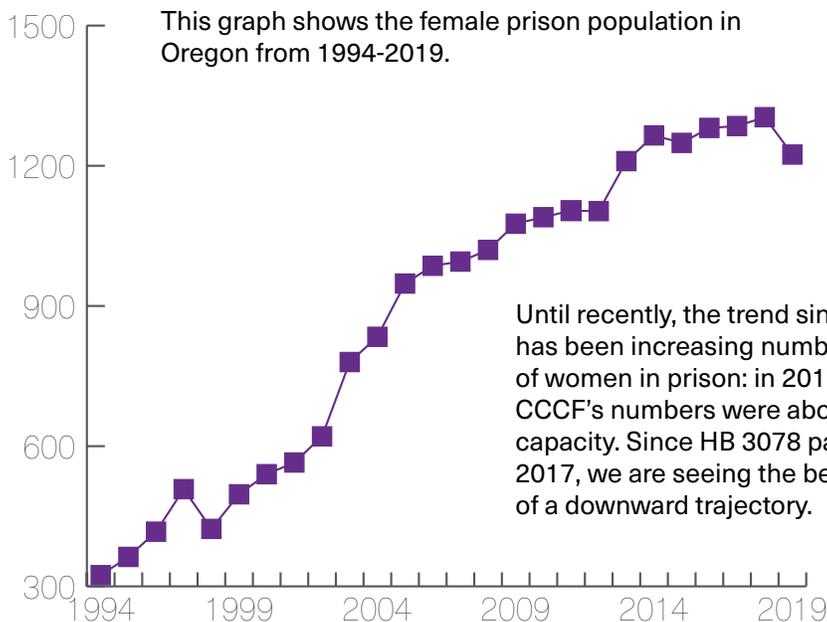
Average sentence length for women in 2018 was 25 months.



The most common crimes of conviction were property and drug-related crimes and women were convicted of these crime types in higher proportions than the male prison population.

1 in 9

In 2018, 11% of incarcerated women had been convicted of a Measure 11 crime or attempted crime. Those convictions represented 30% of total prison months because of Measure 11's lengthy mandatory sentences.



The most frequent Measure 11 convictions are second-degree Robbery and second-degree Assault. Schmidt noted that a conviction for attempt is often the result of a plea deal, and therefore does not necessarily reflect what factually happened at the incident.

Q&A

Audience questions to Mike Schmidt:

Q: Does the CJC gather statistics on the prison population with respect to disability status, socioeconomic status, or race/ethnicity?

A: The CJC gathers some data on race/ethnicity, but not on socio-economic class or disability. The data on race is not always based on self-identification, so it is not perfect, but it's a baseline for understanding the picture.

Q: Does the CJC track data about the mental health of women in prison?

A: According to the Department of Corrections (DOC), around 70% of incarcerated women have mental health issues, but CJC is not tracking data about this.

Q: Are you looking at how long women stay in prison and how that intersects with child welfare?

A: No, but we should be doing this.

Q: Are there any data on arrest rates or incarceration rates of women with male co-defendants convicted of the same crime?

A: No, and even if we could do this, it wouldn't give the whole picture, because co-defendants in the same incident may be charged with different crimes.

Q: Are there any data about transgender people in prison?

A: DOC tracks that information but CJC does not.



HerStory Oregon Survey in Coffee Creek Correctional Facility

Julia Yoshimoto, Director and Attorney, Women's Justice Project, OJRC

In the winter of 2017 and the spring of 2018, the Oregon Justice Resource Center's Women's Justice Project and Portland State University's Department of Criminology and Criminal Justice surveyed more than 140 incarcerated women about their experiences through the criminal process – from arrest to sentencing, from intake in Coffee Creek Correctional Facility (CCCF) to their thoughts about their future release from prison. The survey was possible because of the cooperation of CCCF and the courage of many of the women incarcerated there. The HerStory Oregon Survey was a two-part written survey.

Criminal systems were not designed with women in mind and there is often little to no consideration by decision makers and stakeholders of how women experience the system. The purpose of the HerStory Oregon Survey was to hear directly from women and identify problematic trends in their treatment in Oregon's criminal system. The intent is to use this information to highlight for stakeholders, decision makers, and the community needs for a fairer and more just criminal system. The original goal had been to include at least 300 women, so that the results would be considered statistically significant. This threshold was not reached but the numbers were still high enough to provide useful information.

“ I couldn't help feeling that there was a gender issue at play – like being a mother, or a victim of abuse – that was related to their involvement in the system. ”

Yoshimoto explained how she developed the idea for this survey. She began working with incarcerated women in 2014, through a fellowship with Red Lodge Transition Services. Her clients would tell her about their experiences in the criminal legal system, and they impressed upon her that more people need to know how women are experiencing the system. Hearing these stories, “I couldn't help feeling that there was a gender issue at play—like being a mother, or a victim of abuse—that was related to their involvement in the system. But I was working with a small number of women, so it's too easy to dismiss an experience as an isolated incident.” She wanted to find a way to identify trends in the larger population and present this information to policy makers.

Yoshimoto gauged potential interest in the survey by talking to clients and formerly incarcerated women, and “the overwhelming response was positive.” She then talked to CCCF administrative staff, who were “very supportive, and also interested in the results.” After drafting the survey, she sought input from formerly incarcerated women, who helped adjust it for length and readability. She presented informational sessions at CCCF about the purpose and method of the survey, notifying participants that the survey would cover difficult and potentially re-traumatizing topics.

Part I was conducted in Winter 2017 and focused on the process from arrest to intake in CCCF. Participants completed one of two versions, depending on whether they were convicted after a trial, or without a trial. The survey consisted of around 200 questions and asked about pre-crime factors, arrest, pre-trial detention, trial, sentencing, and transfer to prison. Part II was conducted in Spring 2018 and had approximately 230 questions. It focused on experiences in CCCF, family history, substance use, mental and physical health, and post-release plans. Though the surveys took 1-2 hours to complete, the results showed no evidence of “survey fatigue;” participants stayed engaged with the questions through to completion.

The results revealed several salient trends about incarcerated women:

- Intimate partner violence and trauma often play a role in being charged with crimes.
- Health problems are prevalent among incarcerated women.

TAKEAWAYS FROM *INTIMATE PARTNER VIOLENCE AND TRAUMA*

65%

of the women who were 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.

72%

of the women reported experiencing other types of trauma.

Common within descriptions of IPV and crime:

- Drug and alcohol abuse.
 - Financially desperate.
 - Doing crime to escape relationship.
 - Being blamed for something their partner did.
 - Being threatened or coerced by partner.
 - Partner used children to have control and/or abused children.
 - Majority of women experienced abuse either as children or as adults.
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- Many do not understand the legal processes affecting them.
 - Many are mothers and/or caregivers of minor children.
 - Many lack stable housing at the time of arrest.

The survey results are being shared through a series of reports. As of the conference date, WJP has published two reports: *Intimate Partner Violence and Trauma* (Feb. 2019) and *Mental Health, Physical Health and Substance Use* (Sept. 2019).

The survey results illustrate common ways that abuse can lead to criminal involvement. Direct pathways include self-defense, coercion by the abuser, and being falsely accused by an abuser. Indirect pathways include social isolation, addiction, and financial depletion. Yoshimoto read selected quotes from survey participants related to how a relationship with an abuser affected them. Although these quotes are difficult to hear, “it’s important to see the challenging details behind the numbers to see the fuller situation.” The results also demonstrate that survivor-defendants face specific challenges at all stages of the criminal system. For example:

- Pre-trial: A survivor-defendant may be reluctant to talk about abuse to their defense attorney, and the abuser may attempt to influence her decisions.
- Trial: Juries may hold biases and misconceptions about abuse victims.
- Conviction/Sentencing: Women who are abused are vulnerable to being coerced into helping the abuser commit crimes, and under accomplice liability, they may be convicted and sentenced as if they were the primary actor. Mandatory minimum sentencing doesn’t allow the judge to consider abuse.
- Incarceration: The abuser may find ways to control from outside, e.g., taking over a rental lease.
- Post-prison supervision: The abuser may use the supervision to control by threatening to call the police and get the survivor in trouble.

At all stages, the system doesn’t effectively take the effects of abuse into account. For this reason, Yoshimoto said, “we have to ask ourselves: what can we do differently to make this a fairer system for survivor-defendants?”

Q&A

Audience questions to Julia Yoshimoto:

Q: What did the survey show about the relationship between plea bargaining and abusive relationships?

A: Most of the time, IPV was not considered during plea bargaining, in terms of influencing a fairer outcome.

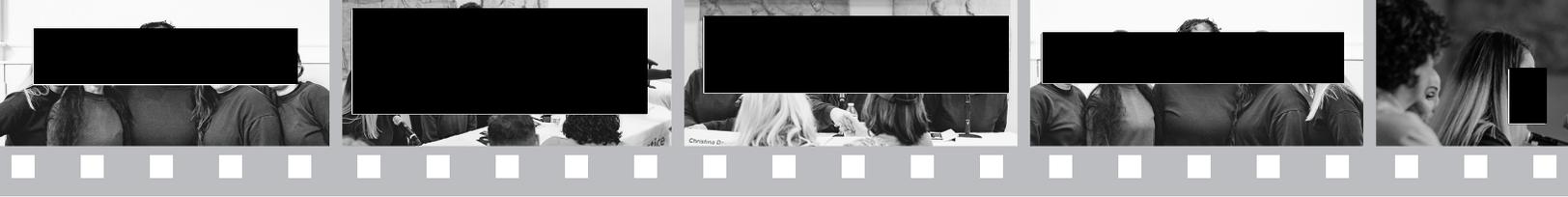
Q: Did you collect data on women returning to DV situations to see their children?

A: No, the survey focused on the front end of the criminal process.

Q: Could you do this survey in jail? If you do the survey again in Coffee Creek, could there be multiple times so more women can participate?

A: We haven't considered doing the survey in jail, because CCCF is where we have built a relationship. If we do the survey again in CCCF, they are open to offering the survey more than once.





R [REDACTED] Story

R [REDACTED] began her story by describing a childhood fraught with violence and instability. Her father neglected the family due to a cocaine addiction. Her mother became involved with an abusive boyfriend. She and her siblings witnessed their mother being beaten, and they were also subjected to abuse by him. She described a painful sense of abandonment by her mother, saying, “she always put him first.”

As an adult, R [REDACTED] was arrested for selling drugs. At the time, she was a single mother. She described selling drugs as a “side hustle” effort to earn extra money for her family. She was sentenced to 80 months in prison. Her children were then six and twelve years old, and it was heartbreaking to be separated from them. The day she arrived at prison, she said, “I was completely broken.”

However, she determined to apply herself to learning and self-improvement while in prison. As she spoke about her efforts, her strength and hope for the future were apparent. She spoke with great enthusiasm about the classes she’s taken, and about her children. She’s studied how to start and run a business, and she participates in a hair design program. She and her daughter participate in the Girl Scouts program. She explained how it gives mothers an opportunity to instill values and to act as positive role models for their children. “We lead by example,” she said. She explained how much she appreciated the parenting skills class, given that she did not have a good example of parenting to learn from while she was growing up. In the class, “I learned so much about parenting styles and techniques.” R [REDACTED] lit up as she talked about her journey of personal growth and told the room, “Don’t count me out. I’m a work in progress.”

J [REDACTED] Story

J [REDACTED] grew up in an abusive household and witnessed her father beating her mother. She promised herself that would never be her situation when she grew up. “But the people we fall in love with, they don’t come with a sign on their back saying they’re abusive,” she said. [REDACTED] was a single mother working for a financial institution when she met her boyfriend. After she became ill with meningitis, her boyfriend was helpful in the beginning. Eventually, she realized he was using drugs. When she confronted him, he grabbed her by the hair and threw her down a flight of stairs. J [REDACTED] went to the hospital, and upon returning, her boyfriend was contrite. She agreed to stay when he asked for help with his drug problem. “That’s where my cycle began.” Nobody in her family knew that she was being abused.

After J [REDACTED] went back to work, her boyfriend began probing her for information related to her job. She gave him information that he used to commit crimes, and J [REDACTED] didn’t realize she could be charged the same as if she’d done the crimes herself. It was only after she was arrested that she learned of her boyfriend’s past: “I had no idea he was considered a career criminal.” Upon sentencing, the judge could not take the abuse into consideration, because she was charged under Measure 57. Although this was her first offense, the state stacked 29 charges against her, resulting in a sentence of 98 months in prison. Janny said she has benefitted from the coping skills class while in prison.

C Story

C also grew up seeing her mother's boyfriend hit her mother. The same man also sexually abused C from a young age, and never faced consequences. As a teenager, C's "core belief systems and coping behaviors set in." She used drugs and began to find herself in abusive relationships. "I thought it was normal. I didn't know any different; nobody ever intervened to show me what 'normal' was."

She explained the mental and emotional aspect of abuse, and how being in an abusive relationship "becomes a way of life. You don't understand how to function any other way. You learn to act a certain way because you're going to get that look. You try to prevent that look from happening. I was conditioned over years and years. Now I'm labelled as a drug addict and a criminal."

C was convicted of identity theft and sentenced to 65 months in prison. At the time, she had three children and was pregnant with a fourth child. After C gave birth, the baby was adopted. C said she felt "forced by DHS" to do the adoption. Her other children went to live with family members.

In 2015, C took a class she described as an "eye-opener." She realized that "I didn't know how to be a grown woman and not live under this abuse." Despite this realization, she found it difficult to break with old patterns. She began dating someone who wasn't abusive. "I got bored. I don't know how to accept love." C said she "went back to what I knew." She began using drugs and again became entangled in the criminal system. "Now, here I am."

Despite her struggles to move beyond her past, C said she has not "lost hope of dealing with trauma." She is excited about participating in the HOPE treatment program. She is also participating in Parenting Inside Out, Mercy Corps, and Fire Crew.

A Story

A has been incarcerated for 23 years. She experienced abuse and neglect from the time she was born. The experiences she endured were so traumatic, A said, that "I don't remember much of my childhood." Her biological parents suffered from severe alcohol addiction, and at age three, A was placed in foster care, where she was physically abused. A is Native American, and at age seven, she was adopted by white parents who had other adopted children. A said her new family was completely unprepared to raise a child with such a traumatic history. "They were told I was normal." In reality, A was a deeply troubled child. She attempted suicide by throwing herself in front of a truck. "I was obsessed with death – I held funerals for dolls." When her parents spanked her, "I would laugh, because I wasn't going to let them hurt me."

A specialist told her parents she would never be "normal," and recommended institutionalization. Although she was not institutionalized, A said she acutely felt how differently she was treated compared with her siblings: "When you are told you are damaged beyond repair, you start to believe it." A began what she described as a "downward spiral to prison" after she was sexually assaulted at age 19. When she met the man she would marry, "I found myself running to someone I thought could take the pain away. I thought I met someone who wouldn't treat me like I was damaged." Instead, her new husband was severely abusive. After she became pregnant, her husband raped her, beat her, and threatened to kill her if she tried to leave. "I slept with a butcher knife under my pillow." A reached out to her adoptive parents to no avail. "They said I had made my bed, and now I had to lie in it." When her son was born, A fell into a post-partum depression and felt no emotional attachment to her baby. "I tried to love my son, but it didn't come naturally." Isolated with an abusive, alcoholic husband, with "no money and nowhere to go," A's mental health deteriorated until "I was on verge of having a breakdown."

A tearfully described the day of the incident that would send her to prison. Her four-month-old baby was crying inconsolably. The last thing she remembers is going to his crib and picking him up. The next thing she knew she was trying to wake her baby up and slowly realizing he was not going to wake up.

Later in life, A█ was diagnosed with Fetal Alcohol Effect, a result of her mother drinking while pregnant. She learned that the sound of a crying baby can trigger the brain of someone with FAE in an extreme way. She wonders how life would have been different if she'd been diagnosed with FAE earlier. But, she said, "the what-ifs don't bring my son back."

A█ added, "Very little was raised in my trial about my domestic abuse." She was sentenced to 25 years under Measure 11. "If I could do it all over again, I would have gotten the help I needed before it was too late." When A█ gets out of prison, she wants to help teenage mothers who are in abusive relationships or who have FAE.

S█ Story

S█ started by saying that in contrast with the stories we'd just heard, "I came from a loving family; there was no domestic violence." She lost her mother to cancer at age 11. Despite the trauma of that event, S█ said, "I'm the last person I would imagine to be sitting here today." She traced her path to prison as beginning with a snowboarding accident at age 24. She was prescribed pain medication that she took, as recommended by her doctor, for two years. When her medication was cut off suddenly, she went through withdrawal. She started getting pills from friends, and things "spiraled out of control."

S█ explained, "Words can't even describe how strong addiction is and how it changes somebody so much." A series of thefts from Walmart led to a sentence of 18 months, of which she served seven. After release, she entered rehab programs numerous times and got involved in an abusive relationship. She was re-incarcerated for probation violation. While in prison, her father passed away from cancer. Having become estranged with her brother following her problems with addiction, she found herself without a family. She became more reliant on the abusive partner.

"All I had was this guy. The first two years was the honeymoon stage." In 2015, S█ became pregnant. Her pregnancy was "one of the hardest times.." Her boyfriend choked her to the point of unconsciousness. She forgave him after he apologized, because "he was literally all I had." He'd isolated her from her friends, and other people she knew were afraid of him. For two months while she was pregnant, he forced her to live locked inside the garage.

S█ left her abuser after her son was born but later got back together with him in one last effort to keep her family together, a decision she later came to regret. "Things kept getting worse. He made me think there was no way out." She described how he would hide their son from her in an effort to control her. One day in 2018, he "threw her" into his car, which unbeknownst to her, contained drugs. They were pulled over and arrested. S█ was convicted of commercial delivery of drugs and sentenced to 56 months in prison. She tearfully ended her story by disclosing that her parental rights to her son had been terminated two weeks earlier.

COMMENT

Rev. Dr. Emily Brault, Chaplain, Coffee Creek Correctional Facility

Coffee Creek Correctional Facility Chaplain Emily Brault followed the panel by expressing her admiration for these women, and others, who go through terrible experiences and "who can come out the other side with hope and grace, and a rare compassion." She pointed out the disconnect between the reductive logic of the criminal system compared with the more complex reality: "The criminal justice system is predicated on the idea that we are individuals in charge of our own decisions, and we reap what we sow. But the reality is that we are so connected to each other—that we reap what we sow." This is why it's so important to build community, "so we have fewer stories like this." Chaplain Brault encouraged us to "build mutual awareness of how we are connected, and how what we do matters. We are the people who can make this world a better place."

Dr. Chris Huffine, Executive Director, Allies in Change
Susan Reyes-Torres, Group Facilitator, Allies in Change

Allies in Change is a nonprofit organization focused on domestic violence that offers individual and group therapy. Some participants are self-referred, and others are court-ordered. They offer sliding-scale fees for self-referred individuals. This panel provided insights about the complex relationship dynamics that are often in play when women are arrested for perpetrating domestic violence. Often, women are acting as “secondary aggressors” rather than “primary aggressors.” According to Dr. Huffine, “The majority of women we see who are involved in the (criminal) system are secondary aggressors.” These women are often on probation after being convicted of a domestic violence crime. He described a secondary aggressor as “akin to a bullied kid who acts out and gets in trouble.”

Dr. Huffine explained that, to understand which person in a relationship is the abuser, one has to look for a larger pattern of abuse and control, rather than focusing on a single incident. When looking at patterns of abuse, a significant gender divide appears. Women are far more likely to be victim of a pattern of abuse than men are. The key qualities that reveal a pattern of abuse are frequency, intent, impact, and context. The frequency of incidents is important because abuse is considered a pattern of coercive behavior to control and subordinate the other person.

What does it mean to have an abusive intent? This means that the person holds a “pro-abuse belief system.” The belief system underlies behavior in the same way that the foundation underlies a house. The house symbolizes frequent emotional abuse and controlling behavior. Physical abuse, which may be less frequent—and is typically easier for the abuser to stop doing than emotional abuse—is symbolized as smoke coming from chimney. For change to occur, the pro-abuse belief system must be addressed.

A pro-abuse belief system is a “power over” mentality. In this framework, the person believes that they are in a hierarchical power struggle with their romantic partner. The assumption is that each person is always in either a one-up or one-down position. Often, the person who feels they are in the one-down position is actually the abuser. Dr. Huffine noted that this concept of reality is reinforced by traditional masculine culture.

By contrast, a victim of abuse or secondary aggressor is more likely to be in a “personal power” belief system. In this framework, the person assumes there can be more than one “winner” and more than one right answer. Instead of a power struggle, the belief is that both people can get their needs met. Often, someone locked into a “power over” mindset will assume that their partner views reality in the same way. By the same token, a victim of abuse will often mistakenly assume that their abuser views the world from a perspective of “personal power.”

In looking at whether domestic violence has an abusive impact, one would look at whether the behavior causes harm, and how the victim is affected. For example, do they live in fear of the abuser? Do they feel they must walk on eggshells, or that they are “going crazy”? Does the victim have difficulty setting limits effectively with the abuser? These would be indications that the perpetrator of violence is the primary aggressor.

Finally, one must look at the context of the violence. A person who is subjected to a pattern of abuse may perpetrate isolated incidents of abusive behavior. They may act in self-defense; to avoid future abuse; to protect children; act out suddenly from pent-up frustration. The crucial difference between this person and the primary aggressor is that their actions are not driven by an underlying belief system; they are a reaction to being abused. Accordingly, their acts of violence will typically stop when they are no longer being abused.

To summarize, it's important to recognize these dynamics, because many women who are arrested following a domestic violence incident are not the primary aggressor in the relationship. Of course, it's possible for a woman to be the primary aggressor. Female primary aggressors are more likely to have childhood trauma, co-occurring mental illness and addiction, and prior victimization history than male primary aggressors.

Q&A

Audience questions to Chris Huffine and Susan Reyes-Torres

Q: Are there differences in the way you approach group therapy for LGBT individuals?

A: There is a lack of resources tailored to the LGBT context or that address situations where the woman is the abuser. Much of the existing material is gendered with men as the abusers. We account for that in our approach; otherwise, the heart of the approach to group therapy is not different.

Q: What thoughts do you have about terminology used for "secondary aggressors"? Isn't there an element of victim-blaming in that terminology? It seems that society struggles to describe justified reactions to being abused.

A: I agree that the terminology could be better.

Q: Some characteristics of primary aggressors overlap with features of personality disorders. Do you have data on this?

A: Although there's a common belief that domestic violence aggressors tend to have personality disorders, this is a misconception. For instance, whereas someone with a personality disorder usually has difficulties in all their social interactions, a domestic violence abuser will often get along well with everyone except their partner.

Q: Can you give more examples / definitions of pro-abuse beliefs?

A: For someone who holds this belief system, the idea that their partner is on their side is a radical belief. Other characteristics include self-absorption, taking everything personally, and having a need to retaliate for perceived slights.



Representing Criminal Defendants and Considering Trauma Responses

Kasia Rutledge, Criminal Defense Attorney, Kasia Rutledge Law
Dr. Sarina Saturn, Associate Professor, University of Portland

This panel provided information about the impact of trauma, and why it's crucial for criminal defense lawyers to approach client interactions in a trauma-informed manner. Dr. Saturn gave an overview of trauma's effect on the brain. Trauma is defined as any event that overwhelms a person physically or emotionally. Trauma often plays a role in "antisocial" behaviors like social withdrawal, aggression, addiction, and abusive behavior. It also increases likelihood of engaging in risky behaviors and developing depression, and it can present itself through physical ailments.

Trauma changes the structure of the brain in multiple ways. Extremely stressful experiences increase the surface area of receptors in the amygdala, which is responsible for our primal "fight, flight, or freeze" responses to stress. A traumatized person will have an amygdala that is hyper-responsive to perceived threats. Through its impact on the hippocampus, trauma also affects the ability to remember the details of one's environment, causing fragmented, disjointed memories of the event. The pre-frontal cortex governs the brain's ability to reason and plan, and controls impulses by inhibiting the amygdala. Trauma causes shrinkage and reduced activity in the pre-frontal cortex, which affects the ability to make decisions and accurately assess risks.

One way to incorporate a trauma-informed approach is to practice listening with empathy, and to be aware of our own emotional responses to trauma. Dr. Saturn discussed how the nervous system's own self-soothing capabilities can counteract the stress response and allow us to connect with others empathetically. For example, oxytocin modulates stress hormones, stimulates feelings of trust, and makes it possible to feel empathy for strangers. Dopamine is also key to feelings of altruism. When with a person who is in distress, having the ability to self-soothe is crucial. Otherwise, we may be so caught up in our own emotional responses that we lose the ability to engage with compassion.

Rutledge pointed out the many ways in which the current system fails to account for the complexities of trauma and the lived experiences of defendants. On the contrary, "the entirety of the criminal justice system is about reproducing trauma. And while all this is happening, no one is talking about it. Or, they talk about it in non-nuanced, uninformed ways." The legal system values efficiency and finality, which leaves little room for a trauma-informed approach. There is a lack of training about how to account for trauma in client interactions, as well as how to take care of one's self.

People who face criminal charges are forced to make important decisions very quickly without adequate information or support. Throughout the process, the system removes actual choice while offering the illusion of choices. Rutledge explained that the system works this way because it was "designed without centering the experiences or perspective of the people affected." Instead, "we center the experiences of those who have not been accused." Even well-meaning lawyers can cause harm by enacting an internalized value system of white supremacy. Part of the problem is that "law school doesn't teach you anything about how to communicate with people from different backgrounds." Further, making uninformed, quick judgments about clients can result in decision-making that is based on unexamined racism and bias.

Rutledge shared lessons she's learned through her experiences as a public defender. One observation is that the nature of the criminal justice system causes public defenders to become hardened to injustice, which makes it more difficult to feel comfortable turning to colleagues for support or to share frustrations. Another is that it's a system in which defendants may be further harmed if they reveal vulnerability. This makes building trust with clients particularly important. "I tell my clients on day one they should not trust me. I don't expect

them to—it's something we have to build together.” To build trust, “sometimes it's more important just to sit with someone and hear what they're expressing,” before jumping straight into the legal analysis.

This panel led several group activities throughout their presentation. First, they asked attendees to reflect on and discuss how they tend to react when confronted with someone else's trauma. Second, a group discussion about what it takes to effectively make hard decisions—who do you rely on, what information, time, and structures do you need? This exercise brought home the reality that a person facing criminal charges will not have the adequate supports to make hard decisions. Finally, attendees were asked to think about the worst thing they'd ever done or experienced, and to imagine telling a stranger about it.

A final takeaway from this panel is that incarceration is inherently traumatic because there is no “culture of belonging” in prison. Social isolation is always harmful, and especially so for traumatized individuals.

Q&A

Audience questions to Kasia Rutledge and Dr. Sarina Saturn

Q: Why are prisons so concerned with restricting touch, given how powerful and necessary touch is?

A: (Kasia) “Because the CJ system is not about caring for humans, it's about us excising something we decide is not a piece of us and absolving ourselves of responsibility.”

Q: What are the effects of going for extended periods of time without hugging another person?

A: (Dr. Saturn) Oxytocin deprivation can have severe health consequences. Lack of touch can lead to people lashing out as a way of seeking contact.

Q: To not allow physical touch is one of the cruelest policies in prison, especially for women. What would you suggest for changing this policy?

A: (Kasia) “Incarcerated and formerly incarcerated folks' voices need to be centered.” Also, we should look for ways to counteract what the criminal justice system does. For example, when asking the court for sentencing, the attorney could include research about how damaging it is to be incarcerated without touch.



Different Forms of Reforms

Bobbin Singh, Executive Director, OJRC

As a starting point for thinking about reforms, Singh emphasized that to prevent the “trajectory from repeating itself,” we need to have a “holistic conversation” and remember the importance of changing the culture. With this in mind, he gave an overview of how changes could be made through the legislative, judicial, and executive branches of government.

In the legislature, it’s easier to effectuate change during “long” sessions (the upcoming session in 2020 will be a “short” session). The main mechanism is to change statutes. It’s important to consider timing and the political landscape into which a bill is introduced.

In the judiciary, change is made by engaging courts to interpret statutes and the Oregon constitution in a more favorable way. This is slower than legislative action; cases can take years to reach the Oregon Supreme Court. Amicus briefs are a chance to educate the courts using social science and stories. To maximize this avenue of reform, we should pay attention to judicial elections.

The executive branch includes the governor’s office, the Department of Corrections, and the Board of Parole and Post-Prison Supervision. Change is made through implementing administrative regulations. While these rules are limited in scope, they can still make a profound impact. The public doesn’t generally think about administrative rules as avenues for change, so it’s important to keep these in mind.

Ballot initiatives are also an option, but they are very difficult and expensive to implement. They are also risky because, despite changing attitudes, many voters may not be on board. Losing a ballot initiative can be a setback in terms of advancing the larger conversation. Finally, the office policies and practices of district attorneys, public defenders, police, and courts have a lot of transformative potential. Change from this direction will require buy-in from the stakeholders.

Most importantly, a culture change is ultimately what’s needed to encourage reforms and to ensure that they are implemented effectively. This requires the leadership of decisionmakers and stakeholders. Singh encouraged attendees, as they listened to the next day’s presentations, to think about the power that the different speakers have. How could their power be used differently? “We can engage with them and begin to move them in a positive direction.”

Q&A

Audience questions to Bobbin Singh

Q: What about repealing Measure 57?

A: The Safety and Savings Act helped mitigate the impact of Measure 57, and we have to continue thinking of creative ways to whittle it down.

Q: Reforms are great, but shouldn’t abolition be the ultimate goal?

A: My primary goal is the values and culture change. Taking something down is one thing, but there have to also be values that underpin it. If we can change the culture—for example by talking about moral values instead of fiscal impacts—other changes will flow from that.

Q: Who was behind the rule change regarding DOC grievance policy and phone policy?

A: It’s unclear exactly who was behind it, but I would speculate that it was the DOJ.

Q: What do you think about trying to get retroactive application of progressive reforms like the Safety and Savings Act?

A: The ‘Truth in Sentencing’ provision of the Oregon Constitution makes retroactive application challenging, but we are thinking of ways to do that.

Sunday, November 17



LAND ACKNOWLEDGMENT

Jackie Whitt
Women's Justice Project Advisory Committee

Whitt is an enrolled member of the Cherokee nation and was formerly incarcerated. She explained that, having never met her father, she wasn't connected to her Native culture until she became involved in the Red Lodge Transition Services program while in prison. She made a call to action drawing connections between historic oppression of Native Americans by colonizers, and continuing oppressions of the criminal justice system.

"I pray something will spur people to action," Whitt said. "We all know it is definitely time." She asked, "Does anyone know whose land we are actually standing on?" Voices called out: "Clackamas." "Cowlitz." "Chinook." She continued, "What price did those people pay for us to be standing here?" Someone called out, "genocide."

Whitt reminded us that every day, people who live in this region say the names of Native Tribes, without "any clue" of their origins. She challenged non-Natives to educate themselves about the history of colonization in this region. "We all know that you cannot discover a place where people already occupy the land." The colonial narrative, sold to us as a "glorious history," is a form of gaslighting. Pointing out the example that Christopher Columbus continues to be celebrated as a hero, Whitt emphasized that "colonization is an ongoing process."

Whitt drew parallels between treaty negotiations that led to tribes losing their land, and the coercive tactics of the criminal justice system: "The transfer of land in Oregon is founded on treaties with flawed foundations. My stomach turns at this thought. It's kind of like how the justice system bullies people into taking pleas while they're in a vulnerable position."

Whitt ended by encouraging attendees to play an active role in supporting the Native American community. "Consider doing a land acknowledgment at your next function. Learn treaties and your obligations to those treaties. Contact tribes and tribal organizations to support their work. What can you do to support political and economic rights of Native Americans? I would love to hear at the next conference what efforts you have made."

Stories from Survivor-Defendants

Zuleyma Figueroa
Melissa Vitellaro

Julia Yoshimoto introduced two formerly incarcerated women who are survivors of domestic abuse. They are passionate about educating the public about the connection between surviving violence and becoming involved in the criminal justice system. Yoshimoto reminded us that as we consider ideas for reform, “Everything we’re talking about starts with how people are currently experiencing the system.”



Zuleyma's Story

Zuleyma Figueroa worked as a teacher for 15 years. She had a house and a job she enjoyed. When she came out as gay, her family supported her. “My mother was my hero,” she said. In 2007, she met someone and fell in love. The relationship took her down a path that would lead to incarceration. Although the relationship was “good for a couple of years,” her partner suddenly began buying expensive cars and throwing parties every weekend. She discovered that her girlfriend was involved in a drug dealing operation. “Sadly, it was a life I never asked for.”

Figueroa found herself trapped in a dynamic of manipulation and control, trying to keep her partner happy. “She gave me constant reassurance everything was fine.” “I was being brainwashed. I lost my identity, and started being very co-dependent.”

In 2010, Figueroa was arrested for selling drugs and spent three months in jail. She lost her teaching license. Intending to rebuild her life on her own, she turned down her girlfriend's request to get back together. In response, her ex began to terrorize her, and threatened to “disappear” her sister. “She sent people to spy on me. She broke into my house and put a gun to my head.” To appease her, Figueroa became her maid, and told her family not to contact her. She was so frightened that “I would have done anything she said. I wanted to kill myself because my life became unbearable.”

Figueroa was arrested for delivery of drugs in 2012. “I told them I didn’t know anything. It didn’t matter, I was sent to prison.” The abuse she’d suffered in her relationship was not taken into account when she was charged. For the first two years in prison, she was “angry and bitter,” and felt ashamed that her name was in the news as a “drug dealing teacher gone bad.”

While in prison, she worked at the canteen warehouse and found satisfaction in helping people prepare for the GED. She also studied electrician work and carpentry. The classes she took began to “heal my fractured spirit,” and her guilt and shame diminished. After being released in May 2016, she lived in a halfway house and worked temporary construction jobs as a laborer. “Women are very capable of doing these types of jobs,” she said.

She met many others in prison who had been in similar circumstances. “A lot of women [in abusive relationships] shut down and go into survival mode, and most of us can’t even get out of survival mode until we get out of prison.” Figueroa said she wanted to share her story despite a lingering fear of her abuser, because she wanted us to understand how domestic violence affects people. “We need a more gender-responsive justice system. Frankly, we just need a new justice system, period.”

Visit our HerStory Oregon website to watch a video and read Zuleyma Figueroa’s blogposts.
www.herstoryoregon.org/stories.



Melissa's Story

When Melissa Vitellaro was convicted under Measure 11, “My lawyer gave me my money back, and said, ‘you’re going to prison – that’s it.’ I went on the run and decided I wasn’t going to use meth anymore.” Vitellaro moved to another state and had a son. She stayed clean for six years and relapsed when her son was 17 months old. She eventually was incarcerated for five years for the conviction. While there, she threw herself into every program she could, and made “genuine connections—I met some pretty amazing women in prison.” She was thankful for the Family Preservation Project which “gave me a chance to be a mom in prison.”

She was released in May 2015. “I was different,” she said. “I thought all the parents at [her son’s] school could tell” that she’d been in prison. She found a sense of connection to be “pretty hard to find out in the world.” Then she connected romantically with an old friend who had also been in prison. “There’s a non-judgment you find with people who are also previously incarcerated.” What Vitellaro didn’t know was that her new boyfriend had been in prison for “almost killing his ex-girlfriend.”

Vitellaro had seen friends in bad relationships before and wondered why they would stay. “Then all of a sudden, I was that girl.” She was trapped in a cycle of making excuses for him, leaving and going back, and eliminating her own supports. “Throughout this, me and my son were supposed to be reconnecting.”



In the midst of this, her father passed away from a terminal illness. Her abuser showed up to the funeral drunk, demanding that she give him a ride. While driving him around, she had an “a-ha” moment and realized something had to change, yet still found it difficult to extricate herself. She began a cycle of getting restraining orders against him. “He would hurt me, and then the only person I wanted to console me was also him.” She’d think, “He’s not like those other guys; he has issues, and I do, too.”

Eventually Vitellaro got a domestic violence grant, which helped her move into her own apartment. Her second day there, her ex-boyfriend moved himself in. About a month later, he almost killed her by striking her head with a wrought-iron bar stool. Her landlord subsequently kicked her out of the apartment and she began living in her truck. Her abuser continued following her “from parking lot to parking lot.” Vitellaro described herself as being “on autopilot” during this time. When her son wanted a dog, “because I was on drugs, it seemed perfectly fine to walk into Petsmart and take the dog.” She was arrested again and spent another two years in prison. “Healing my relationship with my son had to be put on hold.”

“ He would hurt me, and then the only person I wanted to console me was also him. He’s not like those other guys; he has issues, and I do, too.

She “begged” prosecutors to consider the circumstances of abuse leading up to the time she was arrested. “There was no consideration for that,” she said. “I remember feeling so overlooked and unimportant. I was lost; I just needed help, and I ended up in prison. I was being terrorized, and nobody did anything to help me.” Vitellaro said sharing her experience, and emphasizing the importance of programs like the Family Preservation Project, is a way to empower herself and to advocate for others. “I want to feel important again. So that’s why I share my story.”



POEM: NOAH SHULTZ

Noah was formerly incarcerated. He was sentenced under Measure 11 in 2009. Before reading his poem, he said, “As long as we dehumanize each other, we will always be in a place of suffering.”

Noah later read more of his poetry, interspersed throughout the day.

Reforms: Pre-trial and Conviction

Sara Foroshani, Deputy Public Defender, Public Defender of Marion County, Inc.

Sara Foroshani presented ideas for reform at the pre-trial and conviction stages. She discussed how public defenders can be better advocates for survivor-defendants and highlighted the potential benefits of collaboration between public defenders and domestic violence advocates. Her perspective is informed by her recent collaboration with Jayne Downing, Executive Director for Center for Hope and Safety. (Downing was scheduled to join this presentation but was unable to attend).

Public defenders and domestic violence advocates are “unlikely friends.” Usually, public defenders would view the DV advocate as the opposition. But collaboration can actually make for better advocacy. Foroshani relayed the story of a client who was charged with assault after defending herself against her abuser. She had been conditioned to take responsibility for the incident when neighbors called the police. Downing was an expert witness at the trial, to explain why people stay in abusive relationships, and the psychological effect of conditioning over years of abuse. “Her testimony taught me a lot about my clients.”



Foroshani explained that when the police arrive on the scene of a domestic violence incident, “emotions run high.” People are less able to communicate effectively, or they may be afraid of what will happen from turning in their partner. To prevent arresting the wrong person, police need to investigate more thoroughly, and need training in de-escalation to talk through high emotions and understand the story better; and training to counteract sexist attitudes about “crazy” women. Actors in the system also need training to identify defensive wounds. This knowledge helps public defenders to defuse shame surrounding the incident, enabling clients to fully tell their story. It improves their ability to communicate accurate information to decisionmakers.

She described another client who was arrested after acting in self-defense. After the incident, she had bruises all over her body. “It was horrific, but it was even more horrific that she was the one who was arrested.” Through coordinated work between Foroshani, Downing, and the district attorney, the client’s injuries were photographed, and the client was given the opportunity to give a fuller account of what happened. Although her charges were dismissed, her abuser had sold all her possessions while she was living in a hotel. “It’s good that it got dismissed, but it’s not enough, because the arrest should not have ever happened,” Foroshani said.

Foroshani identified multiple ideas for reform. For example, on the prosecution side, we have victim advocates. Special advocates could also be used for survivor-defendants. “The public defender doesn’t always know about all client’s issues,” such as loss of housing, or a DHS case. Caseload reform is another way to better serve survivor-defendant clients. “It takes time to earn trust,” and effective relationship-building is critical to an effective defense. Specialized defense services tailored to working with women who have experienced trauma is another idea with potential.

We should also educate ourselves about the particular collateral consequences suffered by survivor-defendants. Foroshani has noticed in her work that a conviction has a disparate effect on female clients, because women are more likely to work in fields with extensive background checks: teaching, caregiving, and cosmetology, for example. Losing employment causes not only financial impact but a loss of identity and self-value, which can cause people to feel trapped in an abusive relationship.

Reforms: Sentencing

Erik Deitrick, General Counsel, Office of Public Defense Services
Julia Yoshimoto, Director and Attorney, Women's Justice Project, OJRC

Educating legislators and the public as to why sentencing reform is needed is essential to make the system fairer for survivor-defendants. Sentencing law is complex; Erik Deitrick's presentation described the current legal landscape. Julia Yoshimoto presented examples of recent sentencing reform efforts targeting survivor-defendants around the country.

Deitrick noted that Oregon is the only state that has outsourced its public defender system to private contractors. Two-thirds of the public defender caseload is contracted out to for-profit firms. A recent study by the Sixth Amendment Center showed that public defenders who are paid by the case tend to take on larger caseloads, which diminishes the quality of representation. But Deitrick explained that to create a fairer system, it is not as simple as increasing funding for public defense. Structural reform will also be necessary. Deitrick identified the two key components of ending mass incarceration: sentencing reform and closing prisons. Oregon's population has grown by 57% since 1983. In the same time period, the prison population has grown from 2500 people to 15,000 – a 600% increase.

Under the Oregon Constitution, sentencing must be proportional to the offense. Erik explained that Oregon's sentencing grid guidelines align with this principle, because they give judges discretion to alter sentences depending on individual factors. However, only about 5% of cases are sentenced under these guidelines, because other sentencing laws intersect with, contradict, or overrule the grid. For example, Measure 11 imposes mandatory minimum sentences for certain "person crimes" and Measure 57 enhances minimum sentences for repeat property crimes.

Deitrick highlighted recent sentencing reform accomplishments:

THE JUSTICE REINVESTMENT ACT, HB 3194 (2013)

Gives block grants to counties to incentivize them to decrease their use of prison sentences; tracks which counties overuse prison sentences. This law helped avoid the need to build a new prison.

ORS 137.090 (amended 2017)

Added a mitigating factor for cases sentenced under the grid guidelines: the court may take into consideration whether a defendant was under duress as a result of domestic abuse.

HB 2355 (2017)

"De-felonized" drug possession (of personal use quantities), which is a "game-changer" because it means that a person whose sole "offense" is drug addiction will not be saddled with a felony record. HB 2355 also reduced the potential sentence for a misdemeanor from 365 days to 364 days. This is significant because a 365-day sentence triggers deportation of non-citizens under federal law.

HB 3078 (2017)

Reduced sentences for Identity Theft and Theft I and removed those sentences from Measure 57. This law is significant because repeat property crime is a factor in the over-incarceration of women. Also, property crime tends to be a repeat offense because it is often related to addiction.

Ruling in *State v. Fonte*, 363 Or 327 (2018)

Overtaken *State v. Rocha*, 233 Or App 1 (2010) and ended the classification of "return theft" as "theft by receiving," which is a felony crime. Fraudulent returns are a common way to seek cash by those suffering from addiction.

SB 1008 (2019)

Established a presumption that juveniles charged under Measure 11 should be tried in juvenile court instead of automatically being treated as adults.

SB 1013 (2019)

Created a more limited definition of Aggravated Murder, which means that fewer defendants will be eligible for the death penalty. Deitrick noted that no one currently on death row would fall under the new definition of Aggravated Murder, and he predicted future litigation seeking mitigation under the new standard.

Deitrick also proposed ideas for sentencing reform going forward:

Eliminate or modify the criminal history rule.

This allows stacking sentences to increase a person's criminal history score. Under OAR 213-004-0006, the criminal history is calculated by adding up the number of convictions when the new crime is sentenced, instead of when the new crime is committed. This means that in effect, a person being sentenced for the first time may be treated as a "repeat offender" and thereby face longer incarceration. Under *State v. Cuevas*, 358 Or 157 (2015), application of the criminal history rule is mandatory.

Decriminalize drug possession.

Oregon was recently selected by the Drug Policy Alliance as the first state to try a decriminalization ballot initiative (Initiative 44). Titled the Drug Addiction Treatment and Recovery Act of 2020, this initiative will likely make its way to the voters, and polling indicates support for treatment over incarceration. Revenue for drug treatment could be generated from taxes on cannabis sales.

Expand the reforms to Measure 57 created by HB 3078 (2017).

That law was limited to Identity Theft and Theft I, but it could be expanded to include other property crimes.

Eliminate Measure 11.

Adjust penalties for accomplices.

Principal actors and those who assist them are often treated identically under the law. This ignores the reality that survivor-defendants are often coerced into participation. Deitrick noted that attempted crimes and solicitation to commit crimes are treated as lesser offenses, and we could do the same for accomplices. The idea that treating accomplices the way we do is a deterrent "doesn't translate into the real world."

Modify the definition of Identity Theft.

The law currently doesn't differentiate between completed ID Theft and attempted ID Theft. We should differentiate between actions that cause financial harm and those that do not.

Expand restorative justice options.

Under ORS 135.703 "civil compromise" law, the court may dismiss the case if the victim acknowledges satisfaction. Usually, "satisfaction" has been interpreted to mean financial compensation. The result is that only people with money may avoid criminal punishment. We could expand application of this law to include additional crimes and expand the definition of "satisfaction."

Next, Julia Yoshimoto presented recent sentencing reform efforts specific to survivor-defendants from other states, to get us thinking about potential ideas to change Oregon sentencing law. As a caveat, every state is different, and passing legislation will be more complicated than merely copying a law that passed elsewhere. Also, because the Illinois and New York laws are recent, it is too soon to fully assess what impact they will have on outcomes for survivor-defendants.

Illinois passed legislation in 2016 directing courts to consider domestic violence as a mitigating factor in sentencing. The law also allows incarcerated survivors to petition for resentencing if they were unable to present evidence of abuse at trial. They must prove five elements by a preponderance of evidence: (1) they were convicted of a "forcible felony"; (2) participation in the offense was "related to having been a victim of domestic violence as perpetrated by an intimate partner"; (3) no evidence of domestic violence was presented at the sentencing hearing; (4) the petitioner was not aware of the mitigating nature of the evidence of domestic

violence at sentencing; and (5) the new evidence of domestic violence is “material and noncumulative” to other evidence at sentencing and would “likely change the sentence imposed by the original trial court.”

New York’s Domestic Violence Survivors Justice Act was enacted in 2019. It was the result of a decade of lobbying by advocates, including former survivor-defendants. The law provides alternative sentencing for defendants impacted by domestic abuse who meet eligibility criteria. The following crimes are explicitly ineligible, including convictions for attempt or conspiracy: First-degree murder, Aggravated Murder, an offense requiring sex offender registration, Terrorism, and Second-degree murder involving sexual assault where the victim was under 14.

To impose an alternative sentence, the court must find that: 1) When the crime was committed, the defendant was a “victim of domestic violence subjected to substantial physical, sexual or psychological abuse” inflicted by an intimate partner or family member (as defined by statute); 2) The abuse was a “significant contributing factor to the defendant’s criminal behavior”; and 3) A sentence under the standard law would be “unduly harsh” in light of the circumstances of the crime and “the history, character and condition of the defendant.” The language is somewhat vague, so the law’s impact will depend in part on judicial interpretation.

The New York law also provides a process for currently incarcerated survivor-defendants to apply for re-sentencing. Before applying, a petitioner must submit a request to the judge who imposed the original sentence, with documentation proving initial eligibility criteria: 1) The applicant is currently incarcerated; 2) the original sentence was at least 8 years incarceration; 3) the conviction was before August 12, 2019, and 4) the crime conviction is eligible for alternative sentencing. If these criteria are met, the court will allow an application to go forward, and the petitioner may request appointed counsel. The application must include at least two pieces of evidence that the person was a victim of domestic violence at the time of the offense. The court then holds a resentencing hearing, where it may vacate the original sentence and order an alternative sentence if it makes the required findings.

Oklahoma considered a bill in 2019 that did not pass. Like New York’s DVSJA, the law would have provided alternative sentencing for survivor defendants and allowed currently incarcerated survivors to apply for re-sentencing. Eligible survivor-defendants could be sentenced to “one-half of the maximum term imposed for the original sentence.” Currently incarcerated survivors could petition for sentence modification. This bill is narrower in scope than the DVSJA because it would only apply where the defendant’s abuser was the victim or intended victim of the crime.

Q&A

Audience questions to Erik Deitrick and Julia Yoshimoto

Q: Can you explain why reforms are never made retroactive?

A: (ED) Politically, it’s more comfortable to talk about future applications. When talking about individual past actions, emotions can get involved. Bobbin Singh added that the “truth in sentencing” provision of the Oregon Constitution (Art. I, § 44) limits the ways a sentence can be changed, once imposed.

Q: If Measure 11 and Measure 57 are eliminated, what happens to people already sentenced under those laws?

A: (ED) It would take “a groundswell of support” for retroactive application to move the legislature. Singh again noted that the Oregon Constitution also presents complications.

Q: In light of the fundamental culture shift that’s needed, what are the plans or discussions to enact retroactive application of reform?

A: (ED) Not aware of any current conversations among lawmakers about retroactive application. Singh added that we are always trying to find creative ways to expand the application of laws. Ultimately, it will require a culture change.

Reforms: Parole and Post-Prison Supervision

Michael Hsu, Chairperson, Board of Parole and Post-prison Supervision
Patty Cress, Board Member, Board of Parole and Post-prison Supervision
John Bailey, Board Member, Board of Parole and Post-prison Supervision
Katie Roller, Criminal Justice Member, Department of Community Justice, Multnomah County

This panel shared information that helps to demystify the role of the Board of Parole and Post-Prison Supervision, as well as describing the Board's recent efforts to make their practices more gender-responsive. The Board consists of five members who are appointed by the governor for four-year terms, and they are supported by a staff of 28 people. The functions the Board performs include:

- Conducting parole hearings. Although this is part of the Board's role, most defendants are not eligible for parole, because most sentences are determinate or by a mandatory minimum scheme.
- Establishing Post-Prison Supervision conditions.
- Issuing arrest warrants and approving sanctions for people who violated parole or Post-Prison Supervision.
- Assessing and classifying registered sex offenders.

In light of the high rates of trauma and abuse among justice-involved women, the Board has made efforts to make their policies more gender-responsive. These changes were influenced by feedback from the Office of Justice Programs (a division of the U.S. Department of Justice), who visited Oregon and made recommendations to state agencies. For example, the Board is currently working towards offering safety planning to all women releasing from prison. They expect to implement this program within the next six months. The Board has also discontinued the practice of imposing a routine condition against sexual relationships to women convicted of domestic violence offenses. One challenge to implementing a gender-responsive approach is the fact that parole officers play a significant role in how survivor-defendants experience supervision. While the Board doesn't supervise POs, it has made suggestions to them in how to approach their role sensitively.

Multnomah County has formed a Women and Family Services Unit that serves 450 women. The Unit aims to help women get their lives on track, and includes parole officers, DHS family specialists, and health specialists. They coordinate with community organizations to provide resources including toiletries, household items, and clothing. Its campus in Gresham is a quiet environment with plenty of natural light and a children's play area. They host special events such as a back-to-school supply night and Thanksgiving dinner.

The program targets women in recognition of the unique needs and risks that they face, and the fact that many children of justice-involved women end up in foster care. Children who enter foster care are more likely to become involved in the criminal system themselves, particularly those in foster care for lengthy periods.

Q&A

Audience questions to Michael Hsu, Patty Cress, John Bailey, and Katie Roller

Q: (1) How many women are in Coffee Creek for a parole/PPS violation? (2) Are you forming any partnerships with district attorneys, to apply the spirit of this work in a more upstream way?

A: (1) It's rare for justice-involved women to return to prison for a violation of post-prison condition; most sanctions are resolved locally. (2) District attorneys are very involved in the justice-reinvestment program.

Q: Do probation officers acknowledge the power dynamic between themselves and the person on probation, as far as it may parallel the power and control dynamics of abuse?

A: When case-planning, they give clients a choice of what issues they want to focus on. John Bailey described his own "evolution" as focusing more on genuinely caring about the client's success -- putting aside "the authority piece," and focusing on how he can help.

Q: (Bobbin Singh) The programs you've described are in Multnomah County. How can we get other counties to do this?

A: This program is an example to show other counties that you don't need a huge budget to implement gender-responsive changes.

Comment: This program provides resources to people after they are convicted of crimes. But what about providing resources at the front end? Why does the criminal justice system have to be the intermediary to meet people's basic needs?

Comment from Laurie Palmer, who identified herself as formerly incarcerated: She applauded the efforts of the Board because "these are the things that women need."

Comment: Someone proposed the idea that the Board should use an advisory committee of people who have lived through the system.

Q: When POs interact with women and children in full uniform, is this a trauma-informed practice? Doesn't this have a negative impact on children, in particular?

A: We mitigate that issue by telling people at our first meeting that at home visits, POs will be in uniform. It's part of the practice and policy to protect officer safety. *(Attendee pushed back, saying although this issue isn't something you're going to hear someone complain about, it may still have negative psychological effects).*

CLOSING STATEMENT BY BOBBIN SINGH

The Board has a genuine desire to engage and learn from community. Other organizations are encouraged to engage with the Board in a respectful way. We should consider the role of the Board and think about how to expand these gender-responsive reforms on a statewide level.



ACKNOWLEDGEMENT OF PEOPLE WHO PROVIDE SERVICES IN PRISONS

Rev. Dr. Emily Brault, Chaplain, Coffee Creek Correctional Facility

"I have patience for people. I don't have a lot of patience for institutions." Chaplain Brault says she calls our current system the "criminal punishment system," a phrase she picked up from the abolition movement. Chaplain Brault explained that the nature of this system makes it difficult for people to grow and change while they are living in it. "A system of power and control can't teach healthy relationships and nonviolent values and practices." Think about nonviolent communication skills, and then compare with how officers communicate in prison. Therefore, often the people who most recognize and nurture people's potential to grow are coming "from outside." For example, the Family Preservation Program teaches parenting skills. Girl Scouts opens up a new world of relationships. Volunteers offer a wide range of service from yoga and gardening, to AA and NA. Reentry mentors and Mercy Corps programs give people insight to how to foster their own well-being. Religious services volunteers offer grief counseling and teach about forgiveness, hope, and unconditional love. They offer a perspective of self-worth and the message that "your life matters." Volunteers donated bracelets inscribed with the message: "You matter, don't give up," that were distributed to all people in prison and all new intakes. "Being in prison is not a helpful experience for very many people," she said, therefore the people who are helping deserve our thanks.

Reforms: Clemency

Dustin Buehler, Deputy General Counsel to Governor Kate Brown
Emily Matasar, Government Accountability Attorney

Dustin Buehler and Emily Matasar are two of the three attorneys who evaluate clemency petitions and make recommendations to the governor. They presented an overview of the clemency process. There are four types of clemency: pardon, commutation, reprieve, and remission of fines. Governor Brown has issued 15 pardons and four commutations of sentence. Details of the clemency process are set forth in ORS 144.649 -.670. In 2019, SB 388 made a change to the law that allows pardoned convictions to be sealed. If the pardon occurred in the last five years, it will be sealed automatically. Older pardons can be sealed by request. Under prior law, when a conviction was pardoned, the conviction would remain in the record with a note indicating the pardon.

Under the Oregon Constitution, the governor has the sole power to grant clemency. Under ORS 144.649, some limits may be placed on this power. However, the ruling in *Haugen v. Kitzhaber*, 353 Or 715, 306 P3d 592 (2013) (en banc) calls this statutory limitation into question. Under *Haugen*, the governor's office is free to process applications as they see fit. Buehler said that the governor uses the clemency power sparingly because she views clemency as an "extraordinary form of relief." Between March 2018 to June 2019, 310 clemency petitions were denied.

The process begins when clemency applications are delivered to the governor's general counsel team. The team gathers supporting materials and reviews the applications before making a recommendation to the governor. If more information is needed, they may interview the applicant. The governor's staff will then either deny the application; recommend that the governor grant clemency; or recommend that the governor consider whether to grant or deny, if they think it's a call that she herself should make.

Buehler and Matasar explained that when looking at clemency petitions, they consider a variety of factors. There's no "magic formula" to what makes a successful petition. For example, an opposing statement from the district attorney isn't necessarily fatal to the application. A lengthy petition also isn't essential: the governor has granted clemency based solely on the eight-page printed application. Having the assistance of a lawyer is helpful, but not required. However, it is essential for the applicant to be candid and honest.

Matasar said some of her most rewarding moments have been witnessing clemency being granted. She has seen incarcerated petitioners being escorted into Capitol building in shackles, and then walking out of the building with their freedom after meeting with the governor. The panel shared a few examples of individuals who were granted clemency. Brandon Dixon was a youth addicted to methamphetamine when he was convicted for armed robbery. He did exceptionally well at Oregon Youth Authority and was granted a conditional commutation the day before his 25th birthday, which prevented him from entering adult prison. Vanessa Morris was convicted of manslaughter as a juvenile. She also did very well at OYA. Her first clemency application was denied, but two years after she transferred to the Department of Corrections, she re-applied and won clemency.

Q&A

Audience questions to Dustin Buehler and Emily Matasar.

Comment: Chaplain Brault She addressed the panel and gave voice to incarcerated women who were denied clemency. The panel had expressed how powerful it is to witness when someone is granted clemency. Chaplain Brault reminded the panel that "receiving a denial is also very powerful." There are a lot of tears from the women, and from their families. We've been talking about survivor-defendants and their path to crime. We

hold them to same level of accountability as those who pull the trigger. "I have yet to see, in my 15 years, any of these women [receive clemency], who have stellar records in the prison, who have done all of the hard work it takes to become a functioning and compassionate human being in a violent system."

Panel Response: When reviewing clemency petitions, "we remind ourselves that this is a human being with hopes and dreams." Applications do come in from survivor-defendants, and the panel said they appreciate having that information.

Q: Governor Brown has granted only four commutations. Compare that with other states – for example, Oklahoma recently commuted the sentences of over 400 people. Among those 310 people denied clemency was a 75-year-old woman asking to die with dignity. Another woman is serving a 30-year sentence on a theory of accomplice liability that was ruled unconstitutional. Why isn't Governor Brown being a leader on this issue?

A: (Dustin Buehler) "It is personal to the governor to decide what the clemency power means to her. She feels like it should not be used as broadly as if it were post conviction relief or habeas relief." However, we will communicate this to the governor. "Part of why we are here is to hear your thoughts." He encouraged attendees to also have conversations with other leaders who may later become the governor. Matasar pointed out that one of the reasons for the large number of denials is that the governor came into office with a backlog of hundreds of applications.

Q: Out of pardons and commutations granted, how many were women? How does the governor take these issues into account when reviewing applications?

A: (Emily Matasar) Roughly one third of applications come from women. The process gives applicants an opportunity to offer their version of events compared with the official version.



Open Discussion

Bobbin Singh, Executive Director, OJRC

Julia Yoshimoto, Director and Attorney, Women's Justice Project, OJRC

1. A woman who identified herself as formerly incarcerated asked people to donate to OJRC. "I wish there was something like this when I was incarcerated," she said. By supporting OJRC, "You have an opportunity to change someone else's life."
2. Laurie Powell, representing Brain Injury Connections NW and the Center on Brain Injury Research and Training, offered a resource: a toolkit called "Abused and Brain Injured" by Dr. Helena Hogg, available at www.abitoolkit.ca
3. Zoe Klingmann, staff to Representative Piluso, wanted to raise awareness of an effort in the legislature to fund the Family Preservation Project, which wasn't funded in 2019. She asked people to reach out to their legislators to voice support for FPP.
4. The director of a gardening program in prison said they wanted to echo what Chaplain Brault said about the importance of supporting programs and volunteers that work inside prisons.
5. A person from The Pathfinder Network made a comment that they were just happy to be here, and thanked attendees for their support. "It's great to hear people having these conversations and asking difficult questions."
6. Sarah Crumb asked attendees to check out a campaign called Oregon DA for the People. They are not backing a particular candidate; their purpose is to push the conversation about district attorneys in a more progressive direction.

CLOSING REMARKS

Bobbin Singh, Executive Director, OJRC

Bobbin Singh thanked everyone for coming to the conference. It's intended to provide information, and also to start a conversation about reform that includes those outside the legal community. At this moment, there's a lot of potential and opportunity to enact change if we consider these issues holistically.

