

AN ALTERNATIVE TO WOMEN'S PRISON EXPANSION IN OREGON

PRESENTING SMART SOLUTIONS TO OUR GROWING FEMALE
PRISON POPULATION AND IDENTIFYING WHO HAS THE
POWER TO REDUCE IT.

ABOUT

OREGON JUSTICE RESOURCE CENTER

OJRC is a Portland, Oregon, 501(c)3 nonprofit founded in 2011. We work to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. Our clients are currently and formerly incarcerated Oregonians. We work in partnership with other, like-minded organizations to maximize our reach to serve underrepresented populations, train public interest lawyers, and educate our community on civil rights and civil liberties concerns. We are a client-centered organization that uses integrative advocacy to achieve our goals. This strategy includes focused direct legal services, public awareness campaigns, strategic partnerships, and coordinating our legal and advocacy areas to positively impact outcomes in favor of criminal justice reforms.

WOMEN IN PRISON PROJECT

The Women in Prison Project is a program of OJRC. We created the Project as the first and only program in Oregon to exclusively address the needs of women who are intersecting with the criminal justice system. Our goals are to ensure the criminal justice system treats women fairly, protects their health and safety, and makes it possible for them to successfully rejoin their communities when they are released. We do this through integrative advocacy: combining litigation, legislative and other reforms, and other policy and communications initiatives.

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INTRODUCTION

Over the last four decades, the number of incarcerated Americans has ballooned by more than 500%. While American women as a whole make up only 5% of the world's female population, incarcerated American women are 30% of the world's incarcerated female population.¹

This trend toward growing prison and jail populations has been mirrored in Oregon. Its causes are numerous, including so-called “tough on crime” policies, mandatory minimum sentencing, and the ramping up of charging practices by district attorneys. Contrary to many people's assumptions, increasing crime rates are not the cause of increased incarceration.

Despite today's relatively low crime rates, the number of women imprisoned in Oregon has nearly tripled from 324 in 1994 to 1249 in 2015.² The overwhelming majority of women now

incarcerated in Oregon would not have been put behind bars a generation ago for the same crimes.³ Most women in prison in Oregon were sentenced for nonviolent property or drug crimes. Women present a low public safety risk: they are less likely than men to be incarcerated for violent offenses. An estimated

“The number of women imprisoned in Oregon has nearly tripled from 324 in 1994 to 1249 in 2015”¹

75% of Oregon's women prisoners are mothers.⁴ Children growing up with a parent behind bars face intergenerational cycles of significant diminished future earning potential and increased likelihood of foster care placement and even future incarceration.⁵

Today, Oregon's only women's prison – Coffee Creek Correctional Facility in

Wilsonville – is at capacity with a population hovering around 1300 women. This is the highest level in Oregon's history.

Oregon faces the possibility of opening a new facility for women prisoners at Oregon State Penitentiary's Minimum Unit in order to accommodate the growth in the female prison population. This presents a unique opportunity to reevaluate how many women we are locking up and why before we commit to an expensive alternative of uncertain duration.

PROPOSED PRISON BEDS EXPANSION

Oregon's women's prison, Coffee Creek Correctional Facility (CCCF) has a current population of 1305 – 25 above its official capacity. The proposed solution to this problem is to open a facility within the Oregon State Penitentiary Minimum Unit in Salem to house more women.

In 2016, Oregon legislators are set to approve or deny a budget proposal to direct an additional \$10.5 million towards the Department of Corrections Budget to fund this prison bed expansion.⁶ The discussion is likely to center on whether the extra prison beds are needed in light of prison population forecasts, not on more fundamental questions about how many women we are locking up and why. It is doubtful those communities most impacted by this decision, such as communities of color and those living in poverty will be at the center of discussions. State priorities may not be questioned

around whether we should continue to spend taxpayer money on incarcerating more and more women. With a decision to earmark additional funds toward more prison beds will come the indirect decision not to spend that money on other urgent competing priorities such as affordable housing, infrastructure

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or education. The relentless growth in Oregon's women's prison population over the last 40 years shows why Oregonians can no longer hope to incarcerate their way out of problems such as trauma, addiction, mental illness, homelessness and poverty.

Oregonians and their legislators do not have to agree to continue

the failed past practice of using incarceration to try to fix society's problems. Of course, there are women who commit crimes where incarceration is the appropriate punishment but in other cases there are appropriate alternatives available. Oregon could choose solutions that will both reduce its prison population and save a substantial amount of taxpayer dollars as well as avoid the harms done by incarceration to women and their families.

Instead of appropriating the requested funding to increase prison beds, elected officials and other stakeholders should mirror the national reform movement by embracing alternatives. The proposal to open the women's unit at OSP-M provides an important opportunity to change course.

IMMEDIATE SOLUTIONS

Oregon legislators should deny the Department of Corrections' request to fund a new women's prison unit at OSP-M. But in doing so they should recognize that it is bad policy and unfair practice to require prison staff, contractors, and inmates to endure the potentially dangerous and uncomfortable situations that can be created by overcrowding. The best way forward is not to

try to find the money to open OSP-M by cutting staff or their benefits, or by eliminating programming options for inmates or other cost-cutting solutions that might be suggested as alternatives.

There are solutions that can be put in place in a minimal amount of time which may prevent the need to expand prison beds in Oregon.

These options may require action on the part of the governor, the legislature and/or district attorneys. Elected officials can also take time to consider solutions that will take a longer time to put in place but will more effectively address the roots of crime. In the short term, the opening of OSP-M can be avoided by these six proposed solutions.

1. EXPANDING ELIGIBILITY AND USE OF THE FAMILY SENTENCING ALTERNATIVE PILOT PROGRAM

In 2015, Oregon legislators passed HB 3503 to create the Family Sentencing Alternative Pilot Program (FSAPP). The law was modeled after a similar program in Washington state (SSB 6639).

FSAPP is currently being piloted by five Oregon counties in

partnership with the Department of Corrections, county courts, community corrections agencies and the Department of Human Services. People may be eligible if their presumptive sentence is for one year or more, if they have never been convicted of certain crimes, if they are not being

sentenced for certain offenses, and if they are the parent or legal guardian of a minor child and had physical custody at the time of the offense. The court will then decide at the time of sentencing whether to divert an individual to FSAPP. People who are admitted to FSAPP are sentenced to probation

in the community. This is intended to maintain family bonds and help to reduce or avoid

the harmful effects of parental incarceration on children. According to the Oregon

Department of Corrections, 31 women were participating in FSAPP as of July 19, 2016.

PROPOSED FIX #1

Legislators should make a statutory language fix as proposed by the Department of Corrections' white paper: FSAPP (HB 3503) to expand the eligibility of women to participate in the program:

- Remove statutory language restricting prior person felonies (830(2)(A))
- Remove statutory language restricting 813.010 (Felony DUII) (830(2)(C))
- Add statutory language allowing for consideration of otherwise eligible pregnant offenders

2. STREAMLINING THE CLEMENCY PROCESS

Incarcerated people in Oregon may appeal to the governor for clemency that will reduce or relieve their sentence or fine or even forgive them for the crime they have committed. The

governor has the power, granted to her by the people through the state constitution, to grant pardons, commutations, reprieves and remissions of fines. Petitioners for executive clemency

must demonstrate significant rehabilitation. Clemency is rarely granted in Oregon but could be used more often to recognize the extraordinary efforts of some inmates toward rehabilitation.

PROPOSED FIX #2

Advocates and attorneys should present the governor with streamlined criteria for clemency petition approval that specifically address the characteristics of women offenders. The criteria should focus on categories of women and cases who may be appropriate recipients of clemency such as seniors, nonviolent property and/or drug offenders, or women who have experienced significant levels of intimate partner violence which contributed to the commission of their crime. Advocates and attorneys should prepare and submit clemency petitions on behalf of incarcerated women.

The governor should give consideration to the proposed streamlined criteria for clemency. She should also weigh following the example set by President Obama in his decision to use his executive powers to commute the sentences of more than 500 people, reflecting his belief that, "America is a nation of second chances." The Governor has the opportunity to offer a second chance to those Oregonians she judges worthy of it, greatly benefiting them and their families.

3. EARLY RELEASE FOR TERMINALLY/SEVERELY ILL, PERMANENTLY INCAPACITATED OR ELDERLY PRISONERS

The State Board of Parole and Post-Prison Supervision is empowered to advance the release date of a prisoner in Oregon who is severely or terminally ill, is permanently incapacitated, or is

elderly. The prisoner's release date can be brought forward if the Board decides that continuing to incarcerate would be cruel or inhumane and not in the best interests of the prisoner and

society. This does not apply to people who are sentenced to life imprisonment without the possibility of parole.

PROPOSED FIX #3

Working with the Department of Corrections, attorneys and advocates should identify and review the cases of all women who may be eligible for early release due to their severe or terminal illness, permanent incapacitation or advanced age. The State Board of Parole and Post-Prison Supervision should review applications and grant them where it is clear that an inmate meets the requirements to qualify for an advanced release date and that it would be in her and the community's best interests if she were to leave prison early.

4. SENSITIVE HANDLING OF PROBATION AND POST-PRISON SUPERVISION TECHNICAL VIOLATIONS

Defendants in Oregon may be sentenced to probation rather than prison or jail, allowing them to remain in their communities but requiring them to comply with certain rules or conditions. Oregonians may also be required

to spend time in post-prison supervision for a period following their release, complying with certain rules or conditions in a similar way to people on probation. A probation or post-prison supervision violation

occurs when a person fails to comply with the rules that have been set for them. Violations can result in someone being sent (or sent back) to prison, thereby increasing the numbers of incarcerated people.

PROPOSED FIX #4

District attorneys and probation officers should continue to work persistently to assist women who have committed technical violations of their probation or post-prison supervision but have not committed new crimes. Alternatives to (re)incarceration should be considered first to address violations.

5. EXPAND ACCESS TO TRANSITIONAL LEAVE AND ALTERNATIVE INCARCERATION PROGRAMS

Some incarcerated Oregonians may qualify for transitional leave; that is, a period at the end of their sentence that is served in the community with the goal of achieving successful reentry. Transitional leave may begin no more than 90 days before the

end of an inmate's sentence and requires individuals to develop a plan for how their transition time can best be used to reintegrate into their community. Alternative incarceration programs allow individuals to be sentenced to drug treatment or cognitive

behavioral therapy programs rather than incarceration. Upon completion of AIP they may be eligible for early release. Each of these programs therefore helps to reduce the number of people incarcerated in Oregon.

PROPOSED FIX #5

The legislature should expand short term transitional leave from the current maximum duration of 90 days. Lawmakers and DOC should also expand eligibility for and the capacity of alternative incarceration programs.

6. INCREASED PRO BONO ASSISTANCE TO WOMEN WHO MAY BE ELIGIBLE FOR PAROLE

People who are eligible for parole may be released from incarceration before their maximum sentence is complete provided they agree to comply with certain conditions and have demonstrated that it is appropriate for them to be allowed to return

to the community at that time. At a parole hearing, members of the State Board of Parole and Post-Prison Supervision consider whether an woman should be granted parole and allowed to leave incarceration and finish

serving her sentence under community supervision. The Board does not have authority over people serving certain types of sentences such as mandatory minimums who cannot have their sentences reduced.

PROPOSED FIX #6

Working with the State Board of Parole and Post-Prison Supervision and the Department of Corrections, advocates and attorneys should review the cases of all women who are or will be eligible for parole. Pro bono assistance should be provided to these women to allow them to fully represent the merits of their cases at parole hearings.

STAKEHOLDERS

GOVERNOR

The Governor is vested with the authority bestowed by the Oregon constitution to grant executive clemency to petitioners seeking pardons, commutations, reprieves or remission of fines. She can follow President Obama's lead in granting clemency to incarcerated individuals who have demonstrated rehabilitation and shown that they would pose little threat to society if they are released.

LEGISLATURE

Legislators have the power to pass statutory fixes identified by the Department of Corrections to expand eligibility for the Family Sentencing Alternative Pilot Program to increase the number of mothers eligible to participate. The legislature should also look at expanding transitional leave and expanding eligibility for and the capacity of alternative incarceration programs.

DISTRICT ATTORNEYS

District attorneys and their staff should be mindful of the option of diverting women away from prison and into alternatives to incarceration such as the Family Sentencing Alternative Pilot Program. If each of the pilot counties (Deschutes, Jackson, Lane, Marion and Multnomah) expanded enrollment of women in the FSAPP by just ten women, the opening of OSP Minimum could be avoided. District attorneys should work with community corrections agencies to continue to assist women who have committed technical violations of their probation but have not committed new crimes. Alternatives to incarceration should be considered first to address violations.

ADVOCATES AND ATTORNEYS

Advocates and attorneys should provide legal and other assistance where they can in several areas to women. They should research and develop criteria for clemency petitions that specifically apply to women and present those to the governor for her to consider. They should assist individual women in preparing and submitting their petitions for executive clemency. Advocates and attorneys should work with the Department of Corrections to identify and review cases of women who may be eligible for early release due to their severe/terminal illness, permanent incapacitation or advanced age. They should review the cases of women who are or will be eligible for parole and provide pro bono assistance with hearings.

DEPARTMENT OF CORRECTIONS

The Department of Corrections should work with advocates and attorneys to identify and review cases of women who may be eligible for early release due to their severe/terminal illness, permanent incapacitation or advanced age. If the legislature agrees to increase transitional leave, DOC should work with women to develop transition plans and prepare for their release into community supervision. DOC should also work with the State Board of Parole and Post-Prison Supervision as well as advocates and attorneys to review the cases of women who are or will be eligible for parole.

STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION

The State Board of Parole and Post-Prison Supervision should review cases of women who may be eligible for early release due to their severe/terminal illness, permanent incapacitation or advanced age. They should work with the Department of Corrections to review the cases of women who are or will be eligible for parole.

COMMUNITY CORRECTIONS AGENCIES

Community corrections agencies should work with district attorneys to continue to assist women who have committed technical violations of their probation but have not committed new crimes. Alternatives to incarceration should be considered first to address violations.

CONCLUSION

Decisions made by elected officials in the coming months will have real world consequences for struggling Oregonians. The continuing growth in Oregon's incarcerated population robs state coffers of the funds to spend on other urgent priorities such as education and mental health treatment.

New thinking is needed. Elected officials have the power to veto prison expansion and invest in policies, practices and reforms that cost less and benefit more. We can address root causes of crime at a fraction of the human and fiscal cost of incarceration.

LONG TERM SOLUTIONS

While we have focused on achievable, immediate solutions to overcrowding at CCCF, it is clear that longer term action is needed to stem the flow of new women into our correctional system. A deeper discussion needs to take place about the purpose and effectiveness of incarceration as a response to a wide range of

crimes, many of them nonviolent and nonsexual in nature. We should question how long we are locking women up for, at what cost and why we are doing so.

Two groups in particular have the authority and the opportunity to create change:

DISTRICT ATTORNEYS

District attorneys are some of the most powerful actors in the system. Incarceration trends could change rapidly if DAs changed their charging practices. Instead of using convictions as a measure of success, prosecutors could be encouraged to aim to reduce the prison population, saving money to invest in alternatives with proven successful outcomes.

LEGISLATORS

Legislators could take the lead in overhauling so-called "tough on crime" policies and criminal codes. They should request an analysis of the impact Measure 57 has had on the incarceration rate

of women and consider suspending or repealing it. Mandatory minimum sentencing laws such as Measure 57 take away the power of judges to weigh all aspects of a case and impose an appropriate sentence. They represent a transfer of sentencing power from judges who act in public to prosecutors who have total discretion over which charges to bring against a defendant and whether to engage in plea bargaining. Their charging decisions are made in private. A smarter approach to sentencing reform would allow judges more flexibility and the opportunity to determine appropriate punishments for each defendant. With proportionate sentences we could reduce sentence length without endangering public safety.

Legislators could also learn from examples in other states. In California, the habeas law allows women to have their sentences reexamined if their crimes arose from a domestic violence situation.⁷ Women may be eligible for early release or "time served."

REFERENCES

¹ Kajstura, Aleks and Immarigeon, Russ. "State of Women's Incarceration: the Global Context." Institute for Criminal Policy Research, 2015. Accessed August 2, 2016. <http://www.prisonpolicy.org/global/women/>

² Schmidt, Mike. "Women in Oregon's Criminal Justice System." Presented as part of the Women in Prison Conference 2015 at Lewis & Clark Law School, Portland, Oregon.

³ Eitenmiller, Katherine. "Bending the Bars for Mothers: How Prison Alternatives can Build a Stronger Oregon." Oregon Law Review, Vol. 92 (2014): 767

⁴ Hoffman, Hannah. "Jail Birds." Willamette Week, January 17, 2012. Accessed August 4, 2016. <http://www.wweek.com/portland/article-18696-jail-birds.html>

⁵ Murphey, David and P. Mae Cooper. "Parents Behind Bars: What Happens to their

Children?" October 2015.

⁶ Neburka, Julie. Item 32: Department of Corrections, Oregon State Penitentiary – Minimum. Legislative Fiscal Office Emergency Board, May 2016. <https://olis.leg.state.or.us/liz/2015I1/Downloads/CommitteeMeetingDocument/90175>. Accessed August 5, 2016.

⁷ Adams, Jill E. "Unlocking Liberty: Is California's Habeas Law the Key to Freeing Unjustly Imprisoned Battered Women." Berkeley Journal of Gender, Law & Justice. Vol. 19, Issue 1. September 2013.