

# CRIMINAL LAW AND JUVENILE JUSTICE

*"[On the same probation violation for the same crime, my husband] got sentenced to 30 days on his fourth violation; I got sentenced to six months [for my first violation]. . . . Now he's out, he's going through treatment."<sup>1</sup>*

*"If a male and female commit a crime together, it would be highly unlikely that the female would even be charged. If so, lesser charge, lesser sentence."<sup>2</sup>*

## A. INTRODUCTION AND OVERVIEW

Many Oregonians encounter the justice system in the arenas of adult and juvenile criminal law.<sup>3</sup> We found that gender plays a role in several areas.

A significant number of criminal defense lawyers, judges, and male defendants believe that gender plays a role in charging practices, plea agreements, and sentencing for adults accused of committing criminal offenses; they believe that both prosecutors and judges treat female defendants more leniently than male defendants. That perceived discrepancy may be due to a number of factors, including the types of crimes that men and women generally are accused of committing and the fact that judges and prosecutors may take child-care responsibilities into account when establishing sentences or accepting plea bargains for women accused of committing crimes. Additionally, inmates of color perceive that they are targeted for harsher treatment in both charging and sentencing decisions. That perception is consistent with statistical data.

We also looked at whether state and county incarceration facilities provide comparable services for male and female inmates and equal access to those services. Female inmates in state correctional facilities do not have access to the same diversity, quantity, and quality of treatment, job training, work, and general support programs and services as male inmates. Although resources for both men and women exist on the county level, there, too, women do not have access to the same types of programs as men. Moreover, there are few programs and services available to meet the specific needs of female inmates, including sufficient pre- and post-natal care and targeted mental health counseling.

Finally, we researched whether comparable programs and services are available to male and female youths who are detained at state and county facilities. Female youths are less likely to be admitted to "close custody"<sup>4</sup> facilities than are male youths, and female youths generally are detained for shorter periods of time. The Oregon Youth Authority (OYA) spends proportionately more money and expends proportionately more resources on male youths than on female youths.

## B. ISSUES STUDIED

We focused our efforts on three areas:

- (1) prosecutorial and judicial discretion (charging practices, indictments, plea bargains, prosecutors' sentencing recommendations, and judges' final orders);
- (2) programs and services for adults in the Department of Corrections; and
- (3) programs and services for youths at the OYA.

This chapter contains three parts, corresponding to those three topics.<sup>5</sup>

## C. METHODS OF STUDY

Individuals who specialize in the areas of criminal and juvenile law served on the Criminal Law and Juvenile Justice work group. Participants included a district attorney, a legal investigator, defense lawyers for accused youths, a domestic violence expert, a criminologist, a district attorney's victim advocate, a circuit court judge, and others involved in law enforcement and criminal justice issues. Most of the work group members were women. An Asian-American and an African-American were among the members of the group.

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<sup>1</sup> Testimony of female inmate at Oregon Women's Correctional Center hearing, Dec 5, 1996.

<sup>2</sup> Comment of male inmate on survey form.

<sup>3</sup> For a discussion of criminal law issues that arise in the context of domestic violence, see the Domestic Relations Cases chapter.

<sup>4</sup> "Close custody" refers to detention at Hillcrest Youth Correctional Facility, MacLaren Youth Correctional Facility, and Oregon Youth Authority camps.

<sup>5</sup> For a discussion of inmates' perceptions of gender-based treatment on non-sentencing related issues, see the Judicial Administration chapter.

We obtained information through

- public hearings,
- written surveys,
- focus groups,
- interviews,
- surveys from other states' task forces, and
- previous studies and literature in the field.

As discussed in the Introduction to this report, 1,800 randomly selected Oregon lawyers received a survey generated by the Task Force. The survey directed specific questions on criminal law to those lawyers who estimated that 25% or more of their practice was devoted to criminal law.

We sent a separate survey on charging practices to 325 prosecutors and to 518 criminal defense lawyers who have a state contract with the Indigent Defense Services Division of the Office of the State Court Administrator. In addition, we sent a survey containing 22 questions directly related to criminal law and juvenile justice to all circuit and district court judges. Also, we mailed a series of questions to all 36 district attorneys in Oregon, seeking to determine the role, if any, of gender in certain discretionary practices. We asked district attorneys to provide gender-related caseload and case-processing information for the 1995 calendar year. There were additional questions about the use of certain policy guidelines.<sup>6</sup>

Further, we distributed more than 1,300 surveys to a representative sample of inmates in all nine of Oregon's correctional institutions for men — Oregon State Penitentiary (OSP), Powder River Correctional Facility (PRCF), Snake River Correctional Institution (SRCI), Columbia River Correctional Institution (CRCI), Oregon State Correctional Institution (OSCI), Eastern Oregon Correctional Institution (EOCI), Mill Creek Correctional Facility (MCCF), Shutter Creek Correctional Facility (SCCF), Santiam Correctional Institution (SCI) — and to all inmates at the Oregon Women's Correctional Center (OWCC).<sup>7</sup>

The survey response rate for criminal defense lawyers was 13.8% (72), for prosecutors 18.7% (66), for female inmates 22.9% (79), and for male inmates 43.5% (407). The response rate for the separate district attorney

survey was 31% (11). Due to low response rates and small numbers in the surveyed populations, the results of all these surveys (except the survey of male inmates) must be interpreted with great caution.

For a different reason, male inmates' responses also must be interpreted with some caution. Based on their written comments, it appears that some inmates did not understand certain questions as we intended them. For example, when asked how men and women were treated differently in court or in law offices, some inmates selected the answer "subjected to comments about their dress or appearance" and noted that their lawyers had instructed them to wear a coat and tie to court. Other survey respondents reported that they had been subjected to (or had observed the inappropriate use of) terms of endearment and then cited demeaning remarks as examples.

We conducted focus groups with male inmates at EOICI, OSCI, and CRCI, with male inmates of color at EOICI, and with female inmates at CRCI. In addition, we held a "public" hearing with inmates at OWCC. We facilitated single-sex focus groups at Hillcrest Youth Correctional Facility, with both male and female youths. Finally, we interviewed and sought information from officials at adult and juvenile correctional institutions.

## I. PROSECUTORIAL AND JUDICIAL DISCRETION

### A. INTRODUCTION

In this portion of the study, we attempted to discover whether gender plays a role in discretionary decisions involving charging practices, plea agreements, and sentencing recommendations and whether there is a perception that gender unfairly influences such decisions. We also considered whether the intersection of gender with other factors, such as race and sexual orientation, influences those decisions.

Any investigation of judicial discretion must consider Oregon's sentencing guidelines, as well as the nature of the plea-bargaining process. Due to implementation of the sentencing guidelines and enactment of mandatory minimum sentences for certain felony convictions, judges have less opportunity to exercise their discretion in sentencing matters than they had in the past. However,

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<sup>6</sup> This inquiry was prompted by the fact that even the most basic prosecution data, such as the number of felony cases reviewed for prosecution in Oregon, were not available. The fact that there is almost no information about prosecutions in Oregon stands in sharp contrast to what information is known about arrest, sentencing, and incarceration. For example, data show how many men and women were arrested in Oregon each year since the early 1930s. Information also is collected on how many men and women are sentenced each year in Oregon courts, and how many are incarcerated. What is *not* known is how many men and women are prosecuted and with what results.

<sup>7</sup> See Inmate Survey in the Appendix. There were several limitations to the inmate survey. Inmates, both native- and foreign-born, often possess limited reading and comprehension skills in English. The inmate survey was not administered in person. It was printed in English; interpreters were not generally available. Accordingly, the surveys may not have been completed by inmates with limited reading and writing skills in English.

there still is opportunity to exercise some discretion (e.g., in upward and downward departure sentences).

Defendants and defense lawyers overwhelmingly believe that gender plays a role in charging practices, plea agreements, and sentencing and that women are treated more leniently than men, whereas prosecutors and district attorneys believe that these matters generally are handled in a gender-neutral manner. Judges and criminal defense lawyers believe that female defendants are treated more leniently than male defendants in both prosecutors' sentencing recommendations and in judges' final orders. A common reason posited for this difference in treatment is that women have greater direct-parenting responsibilities than men.

## B. FINDINGS

### 1. Charging Decisions, Indictments, and Plea Bargains

Prosecutors charge many different kinds of cases, ranging from relatively minor misdemeanors to homicides. In many cases, prosecutors make charging decisions within 48 hours of the arrest of the defendant, after reviewing the completed investigation file from the police agency responsible for investigating the case. Prosecutors examine the reports to ascertain what, if any, charges to file and whether there are legal impediments that preclude the filing of charges, such as a statute of limitations or search and seizure problem.

The prosecutor may have little personal information about the defendant at the time that a charging decision is made. Generally, the police report includes only a physical description of the defendant and a description of the incident that has led to the arrest. It also may include a description of the victim.

Prosecutors typically have discretion in deciding what charges to file or to take to a grand jury (provided that there is evidence to support the charges). That discretion is limited by the statutes governing the criminal conduct and, occasionally, by internal policies of the district attorneys' offices. For example, the Multnomah County District Attorney's policy manual lists 13 factors for a prosecutor to consider in making a charging decision:

- the nature of the offense,
- the characteristics of the offender,
- the age of the offender,
- the interests of the victim,
- possible improper motives of the victim or witness,
- a history of non-enforcement of the statute,
- likelihood of prosecution by another criminal justice agency,
- possible deterrent value of prosecution,
- undue hardship caused by the accused,
- excessive cost of prosecution in relation to the seriousness of the offense,
- probability of conviction,
- recommendations of the law enforcement agency involved, and
- any mitigating circumstances.<sup>8</sup>

Many other district attorneys' and prosecutors' offices, however, do not have written charging policies and, thus, the factors considered in charging decisions are not so easily identified.

Once a defendant has been charged, the next step is for the defendant to be arraigned. Following arraignment, the prosecutor and the defendant's lawyer typically engage in plea discussions to determine whether the case can be resolved by plea, without a trial.<sup>9</sup> Most often, the defendant agrees to plead guilty to some of the charges in exchange for the dismissal of others.

The prosecutor in charge of the case has broad discretion to determine what plea offer should be made to the defendant. Internal policies of the district attorneys' offices may limit the exercise of that discretion.<sup>10</sup> The policies take into account a number of factors, including:

- the defendant's criminal record,
- the nature of the crime,

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<sup>8</sup> MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL 14 (June 1995).

<sup>9</sup> Oregon's 1973 Criminal Procedure Code established a statutory framework for plea discussions and agreements. Those statutes codified views expressed by the United States Supreme Court and the Oregon appellate courts approving the use of negotiated pleas, as announced in *Santobello v. New York*, 404 US 257, 92 S Ct 495, 30 L Ed 2d 427 (1971); *Rose v. Gladden*, 248 Or 520, 433 P2d 612 (1968); and *Stewart v. Cupp*, 12 Or App 167, 506 P2d 503 (1973). Plea discussions and plea agreements specifically are recognized under ORS 135.405. When cases are presented to a court pursuant to negotiations, the court often is not advised of many of the issues that have been resolved during negotiations.

<sup>10</sup> Some district attorneys' offices have restrictions on discretion in reducing charges for particular crimes. For example, the Multnomah County District Attorney's Office lists 10 offenses for which prosecutors may not agree to allow a defendant to plead to a lesser offense. MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL, *supra* note 8, at 33-34. Those offenses are not "Measure 11" offenses (see note 14, below, for a definition of "Measure 11").

- the views of the victim,
- the likelihood of a conviction if the case goes to trial,
- mitigating circumstances,
- the deterrent value of a prosecution, and
- the need for the conviction to reflect the conduct of the defendant.

Some statutory limitations exist. For example, in cases involving driving while under the influence of intoxicants (DUI), the prosecutor has no discretion to negotiate a guilty or no-contest plea to another offense in exchange for a dismissal of the DUI charge. ORS 813.170. Additionally, whenever a violent felony has been charged, the prosecutor handling the case is now required, on request, to consult with the victim about possible plea negotiations. ORS 135.406. We did not study whether prosecutors follow those mandates in a gender-neutral manner. As with the charging decision, however, when discretionary decisions are available, it is difficult to determine whether and how gender influences them.

Because of the paucity of quantitative data, and the small number of written charging or sentencing policies that we received, it is difficult to assess fully how gender may influence charging practices and plea decisions. The data clearly established, however, that there exists a *perception*, particularly among defense lawyers and inmates, that gender influences the exercise of prosecutorial discretion in charging practices and plea offers.

Our data revealed that inmates and criminal defense lawyers generally aligned with one another, in contrast to the views of prosecutors, in perceiving gender as an influence in charging practices. For example, when asked, “To what extent is a prosecutor’s willingness to reduce the charges influenced by a defendant’s gender?” 65.7% of defense lawyers and 76.6% of inmates — as opposed to 11.4% of prosecutors — answered “somewhat,” “often,” or “always.” Both male *and* female prosecutors overwhelmingly answered that gender and motherhood rarely were factors in charging, reducing charges, or offering plea bargains, with 85% of male prosecutors and 83% of female prosecutors answering that prosecutors’ charging decisions are “never” or “hardly ever” influenced by a suspect’s gender.

A gender disparity was revealed, however, with regard to answers to two of the survey questions. Whereas just 5.3% of the female prosecutors believed that prosecutors are “somewhat” or “quite a bit” more likely to reduce charges for female defendants, 22% of the male prosecutors so responded, and more than twice the percentage of male prosecutors (22%) as female prosecutors (10.5%) agreed that prosecutors are more likely to offer to reduce charges for women with young children than for women who do not have children.

Approximately half of both female and male defense lawyers believed that gender influences, at least sometimes, prosecutors’ charging decisions. Gender differences among defense lawyers emerged in the responses to two questions. Male defense lawyers are more inclined than female defense lawyers to perceive prosecutors as “going easier on” female defendants than on male defendants. When asked “whether prosecutors are more likely to charge female suspects than male suspects,” almost 48% of male defense lawyers, but only 14% of female defense lawyers, answered “never.” Conversely, nearly twice as many female defense lawyers (41%) as male defense lawyers (22.5%) believed that prosecutors “never” or “hardly ever” are more likely to reduce charges for female defendants than for male defendants.

A comparison of responses from female prosecutors and female criminal defense lawyers revealed dramatic differences. Seventy-one percent of responding defense lawyers, but only 16.7% of responding prosecutors, believed that charging decisions are influenced, at least sometimes, by a suspect’s gender. Similarly, 59.1% of the female defense lawyers, but only 5.3% of the female prosecutors, believed that prosecutors are more likely, at least sometimes, to reduce charges for female defendants than they are for male defendants.

Further analysis involved combining the responses from all defense lawyers and prosecutors and separating them by gender. Consistent with the data summarized above, no significant gender differences were revealed. Rather, it appears that *the role of the lawyer in the criminal justice system*, not the lawyer’s gender, is the most significant predictor of the lawyer’s perception of the effects of gender, if any, on charging decisions.

As noted above, generally speaking, inmates of both sexes concurred with defense lawyers’ perceptions that gender does influence charging decisions. On some issues, however, the perceptions of male and female inmates differed. When asked, for instance, whether prosecutors are more likely to reduce the charges for female defendants than for male defendants, 67% of the male inmates, but only 3% of the female inmates, responded “quite a bit” or “completely.” When asked whether prosecutors are more likely to charge women with young children than women who do not have children, 37% of the female inmates, but just 11% of the male inmates, answered affirmatively.

Because of the scarcity of responses to the survey that we mailed to the 36 district attorneys, we can draw no meaningful general conclusions from those surveys.<sup>11</sup> Only two counties reported the gender distribution for felony cases that they had reviewed during 1995. Three district attorneys reported the male/female distribution of cases in which “charges were issued” and in which “charges were denied.” Only one prosecutor’s office provided any gender data for guilty pleas and charge reductions. For other questions, such as how many

felony cases led to convictions on the original charges, we received no information.

The district attorney from only one, albeit the most populous, of Oregon's 36 counties provided answers to nearly all our questions. In Multnomah County, of the felony cases that come to the district attorney for review, 80% involve male defendants. This 20%/80% split remains largely unaltered for cases "issued," guilty pleas, charge reductions, and cases that go to trial.

## 2. Prosecutors' Sentencing Recommendations and Judges' Final Orders

As noted above, prosecutors and defense lawyers frequently engage in plea negotiations that result in a resolution of the case without a trial. Prosecutors generally have discretion to recommend less than the maximum sentence allowed by law although, as with charging decisions, internal policies of the district attorneys' offices frequently limit the exercise of that discretion.<sup>12</sup>

Once the negotiations are completed, the parties sometimes make a joint sentencing recommendation to the judge. Judges are free to impose any sentence up to the maximum allowed by law. However, in most cases, judges impose the sentence to which the parties have agreed.

In general, judicial discretion in sentencing has been dramatically limited in the last decade. In November 1989, the legislature provided for "sentencing guidelines," which call for the imposition of a "presumptive" sentence for most crimes. Under the guidelines, the defendant's presumptive sentence is specified as a range on a grid formed by crime severity

on one axis and the defendant's criminal history on the other axis. Although judges may depart upward or downward from the presumptive sentence, a departure must be based on substantial and compelling reasons, which the judge must identify at the time of sentencing.<sup>13</sup>

More recently, in 1994, Oregon voters passed Measure 11,<sup>14</sup> which requires the imposition of mandatory minimum sentences in certain cases involving violent crimes against persons. There is no judicial discretion to impose less than the mandatory minimum sentence. A defendant can avoid the mandatory sentencing provisions of the ballot measure only if, in an exercise of prosecutorial discretion, the prosecutor files a charge that is not covered by Measure 11. All felony sentences must comply with the state's sentencing guidelines as well as the requirements of Measure 11, if applicable.

Departure rates from the Oregon Felony Sentencing Guidelines are low overall, according to data collected from the first 15 months of implementation of the guidelines.<sup>15</sup> Standard sentences were imposed in 94% of the cases.<sup>16</sup> Although "women were less likely to receive upward departures, more likely to receive downward departures, and more likely to be sentenced to optional probation," judges ordered upward and

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<sup>11</sup> Several district attorneys submitted comments on the survey, either by separate letter or as part of their anonymous responses to the survey. One district attorney labeled the Task Force survey "another witch hunt by the (Oregon State) Bar" and objected to questioning non-prosecutors about charging decisions and case results. We received other comments indicating a belief that at least some of the questions about charging standards were "outside the scope of duties for the Task Force." Other respondents sent us copies of their charging policies.

Some prosecutors disagreed with the proposition that perceptions of gender bias in the criminal justice system merited examination: "Asking for opinions is not an appropriate method to study gender bias and to facilitate changes in the judicial system," commented one deputy district attorney. "The questions do not consider the complexity of factors in charging decisions, plea negotiations and proceeding to trial," he said, and the queries are "so broadly stated it is impossible to realistically answer." In regard to written charging standards, one district attorney commented that "the Task Force is far outside its appropriate duties by promoting written guidelines."

Others offered their advice. One deputy district attorney in the Portland metropolitan area wrote that "legislation does not seem to be the answer to the problem. Education does not work either. Zero tolerance of gender bias in the workplace is the only answer I can see."

<sup>12</sup> See, e.g., MULTNOMAH COUNTY DISTRICT ATTORNEY'S POLICY MANUAL, *supra* note 8, at 130, 148.

<sup>13</sup> ORS 137.671; OAR 213-008-0001.

<sup>14</sup> Measure 11 was an initiative measure approved by the voters at the November 1994 general election; it became effective on April 1, 1995. Or Laws 1995, ch 2. That measure was codified as ORS 137.700.

<sup>15</sup> K. ASHFORD & C. MOSBACK, OREGON CRIMINAL JUSTICE COUNCIL, FIRST YEAR REPORT ON IMPLEMENTATION OF SENTENCING GUIDELINES: NOVEMBER 1989 TO JANUARY 1991, at 31, 37 (1991), *reprinted in* Michael Tonry, U.S. DEP'T OF JUSTICE, INTERMEDIATE SANCTIONS IN SENTENCING GUIDELINES 21 (1997).

<sup>16</sup> ED DEERY, OREGON CRIMINAL JUSTICE COMMISSION, FELONY SENTENCING IN OREGON 1994 (1997).

downward departures in only 3% of the cases.<sup>17</sup>

Departures notwithstanding, on average women receive shorter prison sentences than men. This difference appears to result both from the types and seriousness of crimes committed by women and also from women's lesser criminal histories. According to an Oregon Criminal Justice Committee report on felony sentencing under Oregon's sentencing guidelines, female defendants who were convicted of a felony accounted for fewer than 20% of convictions overall, and they tended to have less serious criminal histories than male defendants.<sup>18</sup> Nearly two-thirds of the crimes for which women were convicted were offenses in the three lowest "crime seriousness" categories on the sentencing matrix; drug offenses accounted for half the offenses for which women were convicted.

Offenders with multiple prior convictions in the more serious criminal history categories are most likely to receive an upward departure. Men have criminal backgrounds that place them in those categories more often than women (about 32% for men and about 13% for women). Accordingly, statistically, men are more likely than women to receive an upward departure sentence. This factor may account for some perceptions of leniency toward women.

Data also suggest that a disproportionate number of women, as compared to men, are convicted of felony assault of an intimate. One study found that, while approximately one in 10 assaultive offenders were female, "almost one in four convicted intimate violence offenders were female."<sup>19</sup>

In the Task Force survey, approximately half the lawyer respondents of both sexes perceived differences in prosecutors' sentencing recommendations based on the defendant's gender. Regarding judges' final orders, nearly two-thirds of lawyers of both sexes who practice in the area of criminal law believed, based on their experience, that gender-based differences exist.<sup>20</sup> The majority of lawyers who perceived different treatment

based on gender said that female defendants receive more lenient treatment than male defendants. Most commonly, they attributed the differences exclusively to the defendant's gender, although lawyers also cited greater parenting responsibilities, actual or perceived, as a causal factor. Approximately 70% of lawyers said that, under similar circumstances, judges take women's parenting responsibilities into account "more often" than men's parenting responsibilities.

A substantial minority of judges observed gender-based differences in prosecutors' sentencing recommendations. Fifty percent of the female judges who responded, compared to 37% of the male judges who responded, said that they have observed gender differences in sentencing recommendations. Regarding judges' final orders, approximately one-quarter of responding judges observed gender differences (in other judges, 24.2%; in themselves, 28.4%). More female judges than male judges reported observing differences based on gender in sentencing recommendations and judges' final orders. Of the judges responding to the survey, 48.2% of the women, compared to 29.8% of the men, responded that they have observed that other judges' final orders differ depending on the gender of the defendant. The difference between male and female judges is smallest regarding their own behavior: 37.5% of female judges and 29.9% of male judges said that their own orders have differed depending on the defendant's gender.

Those judges who observed differences based on gender in sentencing recommendations and judges' final orders indicated that female defendants receive more lenient treatment than male defendants. Relatively few judges said that these gender differences are based solely on the defendant's gender or that they are due to structural conditions, such as differences in the availability of facilities or programs for men and women. Rather, parenting responsibilities were most often cited by judges, as they were by lawyers, as the primary reason influencing gender differences in sentencing

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<sup>17</sup> LAURA J. HICKMAN, OREGON DEPT OF CORRECTIONS, THE IMPACT OF INTIMATE VICTIM-OFFENDER RELATIONSHIPS ON SENTENCING IN FELONY ASSAULT CASES 38 (1995). The study discussed in the Hickman Report compared the severity of sentences received by certain felony offenders convicted of assaulting a person with whom they were in a sexually intimate relationship with the sentences received by defendants convicted of assaulting other persons. The data were drawn from Oregon Department of Corrections records of those offenders, convicted or sentenced in Oregon in 1993, whose most serious conviction was for a completed or attempted Assault I, II, or III.

<sup>18</sup> DEERY, *Supra*, Note 16.

<sup>19</sup> LAURA J. HICKMAN, OREGON DEPT OF CORRECTIONS, THE IMPACT OF INTIMATE VICTIM-OFFENDER RELATIONSHIPS ON SENTENCING IN FELONY ASSAULT CASES 38 (1995). The study discussed in the Hickman Report compared the severity of sentences received by certain felony offenders convicted of assaulting a person with whom they were in a sexually intimate relationship with the sentences received by defendants convicted of assaulting other persons. The data were drawn from Oregon Department of Corrections records of those offenders, convicted or sentenced in Oregon in 1993, whose most serious conviction was for a completed or attempted Assault I, II, or III.

<sup>20</sup> Some lawyers and judges also perceived differences in prosecutors' sentencing recommendations and judges' final orders for youthful offenders but, because very few lawyers and judges answered the questions concerning youthful offenders, we can draw no meaningful conclusions. In addition, inmates were not part of our survey on prosecutors' sentencing recommendations and judges' final orders.

recommendations and final orders.<sup>21</sup> Fully 50.5% of the judges said that, despite similar circumstances, they take female defendants' parenting responsibilities into account "more often" than they do the parenting responsibilities of male defendants.

Arguably, women's parenting responsibilities are being taken for granted, while men's are not. On the other hand, it is possible that judges observe women's direct-parenting responsibilities with greater frequency, especially among single mothers. Among respondents to the inmate survey, 65% of the female respondents reported having children under the age of 18, while only 46% of the male respondents reported having children under the age of 18.

A number of inmates discussed the role of pregnancy and child-rearing in their experiences with the criminal justice system. A mother in the role of criminal defies conventional stereotypes and seems particularly to disturb the community; as one female inmate put it, "women are not supposed to commit crimes since they are mothers." Two themes emerged:

(1) if a woman was pregnant (and not a substance abuser) or primarily responsible for raising her children, she might obtain sentencing concessions from the judge; and

(2) crimes committed by women differ from those committed by men and are more often a response to economic pressures resulting from substance abuse<sup>22</sup> or domestic violence.

To the extent that female defendants may receive more lenient sentences than male defendants do, that difference may be attributable, in part, to a perception among judges that women with children have few options in corrections and rehabilitation facilities. Several judges noted that the services for pregnant women and women with children are limited. One judge put it succinctly in a comment on the judge survey: "Women have primary responsibility for children — few programs exist to help treat women with child-care responsibilities." Comments to the lawyer survey echoed that perception. Several lawyers noted that female defendants have more difficulty entering rehabilitative programs because of their child-care responsibilities.

A number of judges noted that a female defendant's child-care responsibilities or pregnancy may influence both the prosecutor's sentencing recommendation and the ultimate sentence. In discussing factors that influence prosecutors' sentencing recommendations, one judge said:

*"If the woman is a custodial parent, her incarceration poses significant problems for her children and social agencies. Efforts are made to avoid incarceration under these circumstances."*

By contrast, several OWCC inmates testified that they believed that they were sentenced more harshly, and were sent to prison, because of their pregnancy and concurrent substance abuse problem. One inmate recounted at the hearing that she and her husband had violated their probation in exactly the same manner (failing to enter in-patient treatment) but that her husband, who had an extensive criminal record, was given a 30-day jail sentence, while she received a six-month prison sentence.

Finally, lawyers and inmates expressed their belief that, if women are perceived as abusing or neglecting children or fetuses, they will receive harsher treatment than men in similar circumstances. One female inmate observed:

*"[T]he kind of treatment you receive in our judicial system has more to do with if you have money than what gender you are . . . [I]f a single mother struggling to raise a child alone gets accused of neglect or abuse falsely, the system is all over them rather than treating them as if they're innocent until proven guilty."*

A judge stated that, in drug-diversion programs, a pregnant defendant's release automatically will be revoked if she uses drugs. One lawyer called this the "public health theory" of sentencing. Some judges freely acknowledged that they sentence pregnant substance abusers to incarceration, even when they would not incarcerate similarly situated men or non-pregnant women.

Another issue to consider is that not all potential sentences, if applied evenly, necessarily would have the same effect on female defendants as on male defendants. For example, in a letter to the Task Force, one woman wrote that inmates who participate in "boot camps" can gain a significant reduction in their sentences. However, she asserted that studies show that a "boot camp" environment can be detrimental to women who have a history of being abused. She wrote:

*"Since a significant number of female offenders have histories of physical/sexual abuse, these female offenders do not have the opportunity for sentence reduction that male offenders do."*

We could not determine from the data gathered for this report the extent to which the dynamics between male lawyers and female defendants affect female defendants' willingness to resist a plea agreement and contest the charges. However, anecdotal evidence

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<sup>21</sup> One exception to this generalization may be judges' sentencing orders in cases involving defendants who are pregnant substance abusers.

<sup>22</sup> Fifty percent of female inmates are in prison on a drug conviction, and 27% are incarcerated on a property conviction. In comparison, 37% of male inmates are in prison on a drug conviction, and 28% are incarcerated on a property conviction. DEERY, *supra* note 18, at 55.

suggests that women may be more likely than men to accept plea bargains and not contest the charges against them. At the OWCC hearing, a 19-year prison employee explained the differences that he saw between male and female defendants:

*"[The difference between the two is that the women often, often do what their [lawyer] tells them, whatever it may be. . . . The majority of women here, I think, have not had the opportunity for legal redress that the men have had. The women often take the first suggestion that their attorneys [propose]. The attorneys are over-burdened, the defense funds are overburdened and they often plead out and take the first remedy."<sup>23</sup>*

Several OWCC inmates who testified echoed that sentiment.

### 3. Intersectionality Issues

We examined how factors other than gender, such as race or sexual orientation, may coincide with gender to influence prosecutors' and judges' discretionary choices.

There is a distinct difference between the racial profile of inmates and the racial profile of the state in general:

	Oregon <sup>24</sup> Population (percentages)	Inmate <sup>25</sup> Population (percentages)
White	93.8	73.2
African-American	1.7	12.5
Asian/Pacific Islander	3	1.2
Hispanic	5.4 <sup>26</sup>	10.9
Native American	1.6	2.2

Those numbers reflect, to some extent, a perception articulated both in comments appended to the inmate survey and in comments made in male inmates' focus groups that men of color, particularly African-American and Hispanic men, are targeted for harsher treatment (both in charging and in sentencing) than are either white women or women of color. One African-American inmate said that he "already has a loaded count being a black man given the history and the predominance of the [Oregon] judicial system."

Approximately 4% of male inmates and 21% of female inmates reported that they are bisexual. About 2% of male inmates reported that they are gay, and almost 3% of female inmates reported that they are lesbian. In the comments on the inmate survey, gay men voiced a concern that they are treated as predatory

in their interactions with other men and with children. Some gay men believed that police officers and, perhaps, district attorneys may associate being gay and male with pedophilia. Lesbian women did not report similar concerns.

On the other hand, lesbian inmates expressed their belief that the charging decisions, findings of guilt, and sentencing decisions in their cases were affected by their sexual orientation. They believed that, if they did not fit a "feminine" stereotype, the prosecutor, judge, and jurors saw them as more dangerous. As one lesbian inmate testified at the OWCC hearing:

*"I've always been a lesbian and I feel that I was, because of this, and the fact that I don't know anybody in the State of Oregon to verify what kind of a person that I am, I feel like I was being prejudiced against. . . . The D.A. decided that I was a psychotic lesbian."*

A number of heterosexual female inmates echoed similar concerns about the importance of personal appearance and compliance with gender roles in how they were perceived and treated. For example, many female inmates stated that it was extremely important that they be provided access to make-up and hair-care products before court appearances, so that they would conform to the court's and the jury's expectations about how women should look.

One female African-American inmate expressed her belief that it was particularly important for her to appear feminine, because she was exceptionally tall; otherwise, she thought, the jury would be afraid of her. Another inmate commented that, when she dressed well and wore make-up, she looked "well off" and was treated better. Another woman said that she was treated badly because she was a "very large woman" and "looked mean."<sup>27</sup>

The issue of class appeared repeatedly. During inmate focus groups, inmates emphasized their concerns about court-appointed counsel. Many of the women felt powerless and unable to alter the relationship between themselves and court-appointed counsel. Several female inmates reported that they felt patronized by counsel and the court, because they were women and because they

<sup>23</sup> The witness also noted the disparity between the legal resources available to female inmates and those available to male inmates. Testimony at OWCC hearing, Dec 5, 1996.

<sup>24</sup> Data as of July 1996.

<sup>25</sup> Data as of Dec 1, 1997.

<sup>26</sup> Because the Hispanic population of Oregon is divided among several racial groups, the total population percentages listed exceed 100%.

<sup>27</sup> See also Richard Morin, *Justice smiles on good-lookers*, OREGONIAN, Dec 15, 1997, at C3.

were poor.<sup>28</sup> One woman told us that she had tried to scrape together money to hire a lawyer to represent her on a drug charge. After her initial meeting with the lawyer, he told her that she would not have to pay him if she would have sex with him. She felt trapped by the charges, and the lawyer continued to represent her. Ultimately, the lawyer stole the money that she put in a trust fund to pay her restitution.<sup>29</sup>

## C. CONCLUSIONS

A significant proportion of criminal defense lawyers and inmates believe that the gender of the defendant influences charging decisions, indictments, and plea bargains. Not surprisingly, prosecutors of both sexes overwhelmingly deny that gender plays any part in their decision-making. A significant proportion of judges and criminal defense lawyers concur that female defendants are treated more leniently than male defendants in both prosecutors' sentencing recommendations and judges' final orders. Whether there is any factual basis for either viewpoint is difficult to determine from the data received. A primary reason given for this reported difference in treatment is the perception that women have greater direct-parenting responsibilities than men. Approximately 65% of female inmates, compared to only 46% of male inmates, reported having children under the age of 18.

A significant proportion of male inmates, but not female inmates, believe that female defendants receive more lenient treatment from prosecutors. Again, our data could not confirm or refute the accuracy of this perception. Despite the fact that it is difficult to determine from the data received the degree to which perceptions reflect reality, these impressions are important, because perceptions of gender unfairness can undermine faith in the criminal justice system.

## D. RECOMMENDATIONS

### 1. All district attorneys' offices should:

a. by January 1, 1999, review their policies to ensure that gender does not play an inappropriate role in charging practices, plea offers, and sentencing recommendations. Other offices should consider using the Multnomah County District Attorney's policy manual as a model.

b. as soon as possible, begin to keep data that permit analysis of gender fairness in charging practices, indictments, and plea offers and agreements, and annually evaluate those data.

### 2. Prosecutors, criminal defense lawyers, and corrections staff should:

- participate in educational programs concerning issues of gender fairness and intersectionality.

### 3. Criminal defense lawyers should:

- consider whether gender plays a role in who accepts pleas and who rejects pleas and, if so, whether procedural changes are called for.

### 4. The Oregon Department of Corrections should:

- by January 1, 2001, develop plans for a long-term solution to the increasing problems involving inmates who are primarily responsible for the care of their children.

### 5. The Education Division of the Office of the State Court Administrator should:

- develop a judicial education program to explore issues pertaining to the sentencing of pregnant substance abusers.

### 6. The Chief Justice and the Oregon State Bar, working with the Oregon State Police, the Oregon District Attorneys Association, the Oregon State Sheriffs' Association, and the Oregon Association Chiefs of Police, should:

- by January 1, 2002, study whether gender unfairly affects police practices at the pre-indictment and pre-charging stage.

### 7. The Oregon Judicial Department, working with the Oregon District Attorneys Association, should:

- by January 1, 2003, study court records to determine whether any gender-based patterns exist with respect to prosecutors' sentencing recommendations and judges' final orders.

## II. PROGRAMS AND SERVICES FOR ADULT OFFENDERS

### A. INTRODUCTION

In this portion of the study, we examined

(a) the comparability of facilities, programs, and services that are available to female and male offenders in state correctional institutions, county jails, and community corrections programs; and

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<sup>28</sup> Interestingly, in comments on the inmate survey, some of the male inmates reported similar observations regarding the treatment of female inmates. Several male inmates felt that women were treated in a "paternal" way by the court and legal counsel, while poor and, particularly, African-American men were not treated kindly and were perceived as dangerous.

<sup>29</sup> Although the speaker did not identify the lawyer, we believe that this speaker was referring to a lawyer who ultimately was disbarred for his conduct.

(b) the extent of training provided to corrections and personnel relating to the specific needs of women.

To help focus this effort, we formulated six questions:

(1) Do female inmates in state correctional facilities have access to the same treatment, education, health, job training, work, and general support programs and services as male inmates?

(2) Are the same types of community corrections programs and county jail programs available to women as to men?

(3) Are there programs and services available to meet the specific needs of women, *e.g.*, pre- and post-natal care and targeted mental health counseling?

(4) Do inmates perceive gender-based differences in the programs and services available to them in the state correctional institutions?

(5) Do staff who work with offenders or who establish policies and programs for inmates receive training or have experience in understanding gender-specific issues?

(6) What are the beliefs, attitudes, and practices of judges, lawyers, and inmates about the availability and effectiveness of services and programs for male and female inmates?

The Oregon Department of Corrections (ODOC) operates 12 correctional institutions, three of which house women. As of July 1, 1997, 41% of the female inmates were housed at OWCC, 38% at CRCI, and 2.5% at Shutter Creek; the remaining 18.4% were residing at contracted space in Arizona.<sup>30</sup>

In the judge and lawyer surveys, we included questions designed to determine lawyers' and judges' attitudes about programs and services for male and female offenders. In the inmate survey, we asked inmates to assess the services and programs available to them in correctional institutions. We analyzed responses

by gender, racial or ethnic background, sexual orientation, age, and other demographic factors.

We also conducted telephone interviews with seven institutional program services managers and with five central ODOC program administrators about the programs in each institution, and we interviewed two lawyers who have represented the state in corrections matters. Additionally, we culled information from comments made in hearings by inmates, parole and probation officers, and other parties about the programs and services in the state institutions. Finally, we asked county jail managers for information about services and programs available to female inmates in county jails, but we received few responses.

The judge and lawyer surveys contained several questions, specifically directed at lawyers whose practice was 25% or more in criminal law, on their perceptions of the availability and adequacy of rehabilitation programs and services (job training, education, and health care) to male and female inmates in community corrections, prisons, and jails. Most criminal defense lawyers did not know about the availability of programs and services for inmates. Only 20% of the 571 lawyers surveyed answered some or all of the questions on criminal law. Of the lawyers who did respond to those questions, approximately 30% did not answer or indicated that they "don't know" in reply to most of the questions.

Throughout the process, the group reviewed existing studies and literature in the field.

## B. FINDINGS

On the whole, the services and programs available to women at state and county facilities are less comprehensive than those provided to men. This disparity is most apparent in the areas of job training and work opportunities, in mental health and alcohol and drug treatment, and in programs and services provided in county facilities. Further, there is a shortage of programs that address specific needs of female inmates.

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<sup>30</sup> The inmate population of each Oregon correctional institution on July 1, 1997, was as follows:

- Oregon State Penitentiary (OSP) - 2,057 men
- Oregon State Correctional Institution (OSCI) - 951 men
- Eastern Oregon Correctional Institution (EOCI) - 1,430 men
- Powder River Correctional Facility (PRCF) - 162 men
- Shutter Creek Correctional Institution (SCCF) - 244 men and 11 women
- Snake River Correctional Institution (SRCI) - 807 men
- Santiam Correctional Institution (SCI) - 404 men
- Mill Creek Correctional Facility (MCCF) - 267 men
- Oregon Correctional Intake Center (OCIC) - 155 men
- South Fork Forest Camp (SFFC) - 145 men
- Columbia River Correctional Institution (CRCI) - 235 men and 162 women
- Oregon Women's Correctional Center (OWCC) - 174 women

The total number of men in custody in Oregon prisons on July 1, 1997, was 6,857, with another 396 in custody in Arizona. The total number of women in custody in Oregon prisons was 347, with another 78 women housed in Arizona.

Building a new women's prison is one of the top priorities of the Oregon Department of Corrections, because there is space for only 190 inmates at OWCC.

Finally, judges and lawyers are poorly informed about what is available.

## 1. Programs and Services - State Institutions

### a. Education

The Department of Corrections tests all inmates for their literacy level, writing skills, and math abilities upon incarceration. In the last six to seven years, the results have been consistent: There has been no difference in literacy rates between male and female inmates. Between 22% and 24% were functionally illiterate in reading, and between 75% and 80% were functionally illiterate in math skills. The average writing skill level for inmates was somewhere between second- and third-grade level. Seventy percent of all inmates had dropped out of school, although 40% had obtained some sort of high school degree, either a basic diploma or General Education Diploma (GED). Eight percent had some higher degree, such as an associate's certificate or bachelor's degree.<sup>31</sup>

Several educational and vocational programs are available to male and female inmates at the various institutions. Adult Basic Education (ABE), GED, and English as a Second Language (ESL) programs are available in all state institutions and generally are offered through contract with local community colleges. All inmates are eligible for these programs, and there appears to be no gender difference in accessibility to the programs.<sup>32</sup> A number of institutions also have interactive computer courses in study methods and basic skills for math, reading, and writing. Some institutions use ED-Net for college and community college classes, although fewer inmates are enrolled in these classes than in years past, because Basic Educational Opportunity Grants are no longer available to them.<sup>33</sup> Although there often are waiting lists for classes, men and women alike may enroll.

For high school and post-high school training there was little difference in the percentages of male and female inmates' perception of availability, of use, and of helpfulness, although slightly more women used post-high school training and said that it was helpful. More female inmates of color than white female inmates

said that they took advantage of educational opportunities and that they found the educational opportunities useful.

Most lawyers who responded to the question (about 60% of both male and female lawyers) believed that education through high school is equally available to inmates of both sexes.

### b. Work Opportunities and Job Training

With respect to *work* opportunities, all institutions use some inmate labor in the day-to-day operation of the prison. Additionally, CRCI places female inmates in sex-segregated outside work crews in a variety of jobs. Male institutions place work crews with the Forest Service, Bureau of Land Management, Oregon Department of Fish and Wildlife, Oregon Department of Transportation, and local city and school maintenance operations. Garment and furniture manufacture and laundry work are performed within the institutions for outside customers. At Shutter Creek, work crew opportunities available to male inmates also are available to female inmates.

Also, all Oregon correctional institutions now make some *job training* available to inmates, to satisfy the requirements of Measure 17.<sup>34</sup> As a result, some inmates are learning a trade as they work in a particular production area. Job training varies by institution, based on the nature of the population and the length of stay of inmates. Those with shorter sentences have less opportunity to take advantage of job training. That fact has a greater effect on female inmates than on male inmates, because female inmates tend to have shorter sentences, on average, than male inmates. Some kinds of training, such as books on tape, computer graphic arts, meat-cutting, and auto mechanics, currently are available only to male inmates. Corrections officials assert that none of these job training opportunities is available to female inmates because of space and supervision limitations.

In attempting to compare what is available to male and female inmates, we examined the work and training opportunities that are:

- available to women at OWCC,

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<sup>31</sup> Information provided by Oregon Department of Corrections, Education/Vocational Training Department.

<sup>32</sup> One female inmate testified at the OWCC hearing:

"[I]n 1985 I came to prison. When I came to OWCC, the programs available for women were a GED, you could become a secretary, or you could do some repair in the mills. In other words, basically the information I have got was society preferred that women stay barefoot and pregnant, and if you couldn't do that, we'll teach you to be good secretaries and good beauticians."

<sup>33</sup> Recently, Congress passed legislation that prohibited "any individual who is incarcerated in any Federal or State penal institution" from receiving these federal grants, which pay tuition costs for post-secondary education for low-income persons. See 20 § 1070a(b)(8) (1996). Many of the post-secondary programs in the prisons have been discontinued, because most prisoners cannot pay for them.

<sup>34</sup> Measure 17, passed by Oregon voters in November 1994, added Article I, section 41, to the Oregon Constitution; it requires inmates to work, to be enrolled in educational programs, or to be in full-time treatment. Reportedly, none of the institutions is in full compliance but, on average, the compliance rate at OWCC is the same as, or greater than, the overall compliance rate. Telephone conversation between Beth Allen, Task Force volunteer, and Randy Iverson, Oregon Department of Corrections.

- available to women at OSCI or OSP,<sup>35</sup>
- not available to women,
- available to men, and
- not available to men.

We were not able to compare definitively the opportunities for men and women. (For example, we did not compare the number of training slots in a particular trade or educational program, divided by gender, to the number of male and female inmates who are interested in filling those slots.)<sup>36</sup> However, in general, male inmates have more diverse opportunities than do female inmates, and male inmates have more opportunities to become *certified* as capable of performing specified kinds of work. There are a total of 24 training programs and production jobs that are available to men but not available to women; 2 of those 24 programs soon will be available to women. There are 6 programs available to women that are not available to men; 1 of those 6 soon will be available to men. There are 2 certification programs available to female inmates and 8 certification or licensure programs available to male inmates. The only certification program that is available to women but not to men is “Clerical Basics.” Attachment A to this chapter summarizes what we learned.

We also examined perceptions of the available programs. For example, CRCI provides an eight-week program to help female inmates develop job skills, improve self-esteem, change lifestyles, and become self-sufficient.<sup>37</sup> A study of this program found that, of 187 inmates who responded who had graduated from the program, 83% found employment after their release, and 59% said that they had similar or greater incomes than before they were imprisoned.<sup>38</sup> The classes in the program specifically are designed around issues that are relevant to women, such as responding to domestic

violence and raising children. Although the state provides funding for the program, it depends heavily on volunteers.

With respect to job-training opportunities, the responses of male inmates and female inmates were approximately the same, but a slightly higher percentage of men (73%) than women (66%) said that opportunities are available, and a higher percentage of women (50%) than men (40%) have used the services and also said that they are helpful. (Sixty-nine percent of the male inmates and 89% of the female inmates who responded to the question said that the services are helpful.)

Female lawyers were much more likely than male lawyers (59% to 27%) to believe that prison and jail programs are more available to men than to women. Only 6% of the female lawyers and 22% of the male lawyers believed that jail and prison rehabilitation programs are adequate for women. On the other hand, about 28% of the male lawyers, and between 25% and 35% of the female lawyers, thought that these programs are adequate for men.<sup>39</sup> About half the lawyers who responded said that they believed that availability of job training is limited for both men and women.

More than two-thirds of male and female judges believed that job-training programs are limited in scope for both men and women. Overall, 53% of the female judges, but only 18% of male judges, believed that there are gender inequities in the availability and nature of rehabilitation programs and facilities for male and female adult offenders.

### c. Health Services

Health-care services for inmates are funded through ODOC, and the Oregon Health Plan priority list<sup>40</sup> is considered when determining the level of care that is provided.<sup>41</sup> All institutions have accredited health-care programs<sup>42</sup> but, because all except OSP lack 24-hour

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<sup>35</sup> OWCC, OSCI, and OSP are located in Salem, Oregon. The Oregon Department of Corrections transports OWCC inmates to OSP and to OSCI to participate in some programs.

<sup>36</sup> These issues have been the subject of protracted litigation between the state and a class of female inmates incarcerated at OWCC. In the second appeal in that litigation, the United States Court of Appeals for the Ninth Circuit held that “prison education programs subject to Title IX must be ‘equally’ available to male and female inmates.” *Jeldness v. Pearce*, 30 F3d 1220, 1228 (9th Cir 1994). In 1996, after the Ninth Circuit’s second remand to the district court, the parties in *Jeldness* signed a settlement agreement. As part of that agreement, several OSP apprenticeship programs were terminated (thereby eliminating the obligation to make such programs “equally” available to female inmates at OWCC). Telephone conversation between Task Force Coordinator Jessica Mindlin and Oregon Department of Justice lawyer Jan Londahl, Oct 15, 1997.

<sup>37</sup> See ANNETTE JOLIN ET AL, AN EVALUATION OF THE WICS-LIFESKILLS PROGRAM FOR WOMEN AT THE COLUMBIA RIVER CORRECTIONAL INSTITUTION, PRELIMINARY RESULTS (1997) (“Jolin Study”). See also Tomoko Hosaka, *I’m just like a gladiator*, OREGONIAN, Nov 22, 1997, at B1.

<sup>38</sup> See Jolin Study, *supra* note 37.

<sup>39</sup> Among female lawyers, 34% believed that programs and services in the jails are adequate to meet the needs of male offenders; 25% believed that prison programs and services are adequate for male inmates.

<sup>40</sup> See OAR 410-141-0520.

<sup>41</sup> Treatment is provided to all inmates who are HIV-positive, and specific resources are targeted for counseling and education about HIV, regardless of gender.

<sup>42</sup> The accrediting agency is the National Association of Corrections Health Care.

infirmary beds, the prisons must use OSP and local hospitals when needed. All institutions have a nurse on duty or on call 24 hours a day. Both OWCC and CRCI have a women's health-care nurse practitioner on staff.

The annual health-care cost for each female inmate in Oregon has been estimated at \$3,433. This figure is somewhat more than the health-care costs for male inmates, although an exact figure was not available.<sup>43</sup> Prison officials explained that larger institutions, which house men, have lower costs per day because of economies of scale. Another factor is that women entering prison generally have more health problems than men, problems that require more tests and laboratory services,<sup>44</sup> and also have more need for emergency and health services while in prison.<sup>45</sup> Pregnancy and complications of pregnancy also may increase the costs of providing health services to female inmates.

Additionally, in Oregon, following the national trend, the average cost of providing health care to female inmates continues to rise at a rate faster than that for male inmates. Oregon's annual spending for health-care costs for incarcerated women recently increased by 172%, from less than \$500,000 in 1994 to more than \$1.2 million in 1995.<sup>46</sup> Under Senate Bill 1145 (1995),<sup>47</sup> which requires that offenders sentenced to 12 months or less be incarcerated at the county level, some of the responsibility for providing obstetric and gynecological services will shift to the counties. It is uncertain how this shift will affect health services.

Obstetric and gynecological services at the institutions housing women are on contract with outside or on-call physicians. Pregnant inmates at OWCC receive pre-natal and childbirth services. In Oregon, female inmates who give birth while incarcerated are not permitted to care for their newborns in the institution, so new-baby care is not provided.<sup>48</sup> Inmates who had delivered children while incarcerated expressed concern that they had no contact with their children once they were born. One inmate, who had recently had a baby who was being cared for by a relative, expressed concern (at the OWCC hearing) that she was not able to bond with her child. Another female inmate lamented, "I have not seen my child since the day she was born. I have no pictures."

About 96% of both male and female inmates believed that health care is available, but a slightly higher percentage of women reported that they had used the services. One-third of both male and female inmates said that the health care was helpful. Regarding gynecological services, about three-quarters of the women said that they had used the service, and about two-thirds said that it was useful.

However, at the hearing at OWCC, female inmates expressed concern that the waiting list to see a doctor is too long. One female inmate at OWCC (where private physicians provide services on a contract basis) testified that

*"it took about two months for me to start my [pre-natal] care, because they were so backed up . . . there were so many people coming in and out. . . . I only had about three or four visits with the doctor."*

Additional comments from female inmates were few, but generally indicated dissatisfaction with the availability of health services, counseling, and mental health treatment. According to one female inmate, "You have to fight to be seen when you need it [health services] and, when you are seen, they don't always help you." Male inmates in focus groups did not raise this issue of access to doctors, even though all institutions but one, OSP, rely on private physicians who work under contract.

To an even greater degree than female inmates themselves, lawyers and judges believed that health services for female inmates are inadequate. Among respondents to the lawyer survey, 44% of the female lawyers and 34% of the male lawyers who practice in the area of criminal law believed that the health care available to female inmates is too limited in scope. Approximately 40% of both male and female judges thought that health care for female inmates is available but limited.

#### **d. Mental Health, Alcohol, and Drug Treatment**

According to ODOC, the institutions focus on prioritizing inmate needs and then servicing high-need populations. Mental health case managers in each institution screen and evaluate cases and then contract with local providers for mental health treatment groups. Some institutions have on-site counselors. The institutions attempt to identify inmates with persistent and clear mental health problems and those with a high

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<sup>43</sup> Greg Wees, *Inmate Health Care Part II*, CORRECTIONS COMPENDIUM, Vol 21, No 11, Nov 1996, at 15. A 1995 survey conducted by *Corrections Compendium* asked respondents to indicate whether health-care costs for female inmates "were higher, the same, or lower than those for men." *Id.* at 11. Oregon reported that its costs for women were higher. *Id.* at 15.

<sup>44</sup> Barbara A. Nadel, *Designing for Women: Doing Time Differently*, CORRECTIONS COMPENDIUM, Vol 21, No 11, Nov 1996, at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 10.

<sup>47</sup> Codified as ORS 137.124. Or Laws 1995, ch 423, § 12a.

<sup>48</sup> Only four states — Massachusetts, Nebraska, New York, and South Dakota — report that they permit newborns to stay with their incarcerated mothers. Wees, *supra* note 43, at 14-15.

suicide risk. On-site personnel staff a special management unit for acute-care psychiatric crises and day treatment for those who need more than a group setting.

Studies of inmates by ODOC reveal that a higher percentage of female inmates than male inmates have a mental illness; depression is the primary diagnosis. Despite that fact, acute care and day treatment are not available for women. The Oregon Department of Corrections anticipates that, when the new women's prison is complete, there will be 18 beds to accommodate female inmates with these needs.

As previously noted, according to Oregon Criminal Justice Council data, 50% of all female inmates in Oregon are in prison for a drug conviction. A 1995 report for ODOC concluded similarly that drug dependency is a leading cause of criminal activities by women and that sexual, emotional, or physical abuse often is a factor leading to substance abuse by women.<sup>49</sup> The report viewed long-term treatment as essential to address female offenders' chemical dependency problems effectively. The report concluded that, because most female offenders are mothers, supporting them in effective parenting is critical not only for the inmates' success, but also for the physical and emotional health of their children. Female inmates and probation and parole officers concurred that the presence of one supportive, caring individual who expects the best from a female offender often makes a pivotal difference in ensuring her long-term success. Because social networking is a valuable part of female inmates' rehabilitation, CRCI has developed a mentoring program that pairs women in the community with female inmates.<sup>50</sup>

In the area of counseling and treatment services, about the same percentage (88%) of male and female inmates said that counseling is available, although a higher percentage of women (71%) than men had used the service. However, all inmates believed that access to counseling services is limited. Almost all respondents (over 90%) found alcohol and drug treatment available. Alcohol and drug treatment programs serve women at six times the rate that they serve men. Of those who had used that service, a higher percentage of women (82%) than men (65%) found it useful.

A residential therapy unit at CRCI now has a "dual diagnosis" unit to treat alcohol or drug issues and mental illness. The Oregon Department of Corrections has a short-term drug treatment program for male inmates only

(Cornerstone) that serves inmates who are in custody for six months or less. There is no comparable program for female inmates.

Some women who responded to the survey felt that counseling and treatment services are inadequate, stating (for example) that "there is no mental health treatment for women and six new programs for men" and that "counseling is not available for me and this is wrong."<sup>51</sup> During hearings at OWCC, inmates sounded a similar theme. Some expressed concern that there often are too many prerequisites to entering the limited number of mental health and alcohol and drug treatment programs. At the Salem public hearing, a former OWCC inmate testified that, if an inmate was not incarcerated for a drug offense, it was difficult to get drug treatment.

Sex-offender treatment programs are available for male inmates at SRCI, which is where men convicted of sex offenses are sent. OWCC provides a small sex-offender treatment group (OWCC houses very few female sex offenders). No female sex offenders are incarcerated at the other two institutions that house female inmates. At OWCC, there also are special groups for victims of sexual abuse and domestic violence. This group is run by volunteers; OWCC does not provide financial support.

#### **e. Intersectionality Issues**

Female inmates of color tended to articulate a strong feeling of isolation both from white women "in the system" and from male inmates of color. Particularly in the one coeducational institution, CRCI, female inmates of color and white female inmates reported that female inmates of color find it difficult to create a sense of community, either with white female inmates or with male inmates of color in the institution.

At the male penal institutions, several "cultural clubs" support inmates with particular racial or ethnic identities.<sup>52</sup> Female inmates of color have not developed similar support systems.

## **2. Programs and Services - County Jails**

### **a. Introduction**

As noted above, as a result of SB 1145 (1995), persons sentenced to less than 12 months of incarceration must be placed in county detention facilities. To examine the effect of SB 1145 (1995) on services and programs in county facilities, we asked jail managers to provide information about services and

<sup>49</sup> INTERMEDIATE SANCTIONS FOR WOMEN OFFENDERS POLICY GROUP, OREGON DEP'T OF CORRECTIONS, INTERMEDIATE SANCTIONS FOR WOMEN OFFENDERS 8 (1995).

<sup>50</sup> See Jolin Study, *supra* note 37, at 16.

<sup>51</sup> Comments on inmate surveys.

<sup>52</sup> For example, at OSCI, inmates may belong to a Native American cultural club (Inipi-O-Yate-Ki), a Chicano club (La Raza Unida), an African-American club (Weusi Umoja), or an Asian club that does not have a name. These clubs are authorized to promote a positive understanding of the cultures and to further the cultures' values.

programs that currently exist for female and male offenders. We also asked them whether any additional programs are planned in the light of SB 1145 (1995).

Fourteen counties responded to the survey.<sup>53</sup> Larger counties reported more programs, although all responding counties provided most programs. No county said that it offered programs only to male inmates. However, generally speaking, counties with fewer jail beds provide a narrower range of services or, at best, contract with an outside agency when certain services are needed. Although many counties have specialized supervision caseloads for female offenders, few programs exist that are designed to address the unique needs of women. Also, some counties reportedly have more limited visiting hours for female inmates than for male inmates.

#### **b. Programs and Services Provided**

The programs in education, work, health service, alcohol and drug treatment, and mental health treatment provided to men and women who are incarcerated in county jails vary depending on the size of the jail population and the availability of resources. Adult Basic Education and GED programs, work programs, and health-care programs exist in every county that responded to the survey. Marion, Lane, and Jackson Counties provide work release programs in established or to-be-established work release centers.

County jail managers expressed concerns about housing mentally ill persons. Mental health programs, as well as alcohol and drug treatment programs, generally are provided by religious or other private groups or by contract with county mental health departments. More populous counties, such as Lane and Marion Counties, often are able to offer in-house programs in these areas and do their own screening and placement in treatment programs.

In a letter to the Task Force, one person noted that, when Lane County operated a Forest Work Camp, men were placed in a rural work camp setting and were given opportunities to learn skills such as woodworking and carpentry, but that women were housed at the local Community Corrections Center, where their job was to wash police cars twice a week. The women spent the rest of their time watching television or "hanging out in the common day room area." The entire program has been terminated due to funding decreases, but it may be reinstated with funding provided pursuant to SB 1145 (1995).

Pregnant women housed at county jails usually are referred to local physicians. Private service providers expressed concern about the lack of services for pregnant offenders in some counties and noted that these women, despite having been sentenced to jail,

have been sent to state prison so that they can receive pregnancy-related services there. Such diversion from county jails may no longer be possible under the limits of SB 1145 (1995), and counties will have to explore ways to meet this need.

### **3. Education and Training of Corrections Staff**

We interviewed staff members who are responsible for the education and training of personnel in corrections, as well as directors of criminal justice programs in post-secondary educational institutions, about the content of course work dealing with gender-related issues. They reported that ODOC uniformed staff are trained through the Board of Public Safety and Standards Training and receive additional, periodic in-service education. They reported no specific effort to address gender issues, although the training addresses outside pressures on inmates, including family and child concerns. The Oregon State Police offer a program on services for victims of domestic violence, through ED-Net, that is available to community corrections departments. In addition, each institution has its own in-house educational program adapted to its inmate population.

## **C. CONCLUSIONS**

Female inmates in state correctional institutions do not have access to all the same job training, work programs, and services as male inmates. Space is the most pressing problem. The Oregon Department of Corrections expects to rectify that deficiency in the next several years with the construction of a new women's prison.

In the state and county facilities, there are few programs and services available to meet some of the specific needs of women, such as pre- and post-natal care and targeted mental health counseling. Men's programs, including sports competition and music activities, generally are regarded as more comprehensive; yet, as one female inmate stated, "women still have just as many if not more needs than men." Several female inmates concluded that the disparity in services simply was discriminatory.

Of the prison inmates responding to the survey, most do not perceive gender-based differences in the overall programs and services available to them in state correctional institutions. However, a number of anecdotal responses indicate a perception of discrimination against female inmates in programs and services provided.

Judges and lawyers who responded to the pertinent survey questions perceive a greater gender-based difference in the availability and effectiveness of services

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<sup>53</sup> The following counties responded to our survey: Baker, Benton, Deschutes, Harney, Jackson, Josephine, Lane, Malheur, Marion, Umatilla, Union, Wallowa, Washington, and Yamhill.

and programs than do the inmates themselves. There is a clear demarcation between male and female lawyers and judges as to their perceptions, with more women in both categories stating that they believe that women have fewer resources available.

Finally, staff who work with inmates or who establish policies and programs for inmates generally do not receive specific training in understanding gender issues.

## D. RECOMMENDATIONS

### 1. The Oregon Department of Corrections should:

- a. provide adequate space in the new women's prison for educational, vocational, and work programs, as well as for recreation and family visiting;
- b. by January 1, 1999, expand work programs and vocational training programs for female inmates to include apprenticeships that realistically prepare them for work opportunities upon release;
- c. by January 1, 2000, expand the current dual diagnosis (substance abuse and mental health treatment) programs, which now are available at Columbia River Correctional Institution, to female inmates at other institutions;
- d. by January 1, 2000, assess the feasibility of permitting contact between incarcerated mothers and their children (especially newborns) and give special attention to pregnant inmates' needs for services;
- e. by January 1, 1999, develop educational materials for corrections officers, program staff, and contract providers on the unique needs of female inmates and make such materials a part of all orientation programs; and
- f. ensure that adequate job-training opportunities are available for inmates with sentences of varying lengths. One possible means of ensuring that people who are incarcerated for a relatively short period of time (disproportionately women) complete programs is to permit them to continue training during post-prison supervision.

### 2. The counties should:

- a. begin to address concretely the unique needs of female offenders who are housed in county jails

and, by January 1, 1999, develop policies to address those needs; and

- b. by January 1, 1999, ensure that female and male offenders are afforded equal access to jail visiting hours and programs.

### 3. The Oregon State Bar and the Education Division of the Office of the State Court Administrator, working with the Oregon Department of Corrections, including Community Corrections, should:

- by January 1, 1999, create an educational program for lawyers and judges about the availability and nature of the programs and services in Oregon's correctional institutions, county jails, and community corrections facilities.

## III. JUVENILE CORRECTIONS

### A. INTRODUCTION

In this part of the study, we considered whether comparable programs and services are available to males and females at the Hillcrest and MacLaren<sup>54</sup> youth correctional facilities and at county detention facilities. We focused on three issues:

- (a) whether male and female youths<sup>55</sup> who have been committed to secure custody in the juvenile justice system have access to the same treatment, education, and health programs and services;
- (b) whether there are programs and services to meet the specific needs of adolescent girls and young women in custody; and
- (c) whether the range of county detention programs and services available to female youths in custody is as extensive as that available to male youths in custody.

We surveyed the 11 county juvenile departments that operate juvenile detention facilities, concerning their programs and services. We held two single-sex focus groups at Hillcrest to hear the opinions of male and female youths separately.<sup>56</sup> In addition, we interviewed the Hillcrest superintendent in person concerning programs and services at Hillcrest, and the MacLaren administration self-reported on programs and services available to boys committed to MacLaren. We solicited

<sup>54</sup> MacLaren houses only male youths. Hillcrest houses both male and female youths.

<sup>55</sup> Throughout this chapter, the terms "juveniles," "youths," "boys," and "girls" refer to individuals under 18 years of age. Oregon statutes refer both to "youth offenders" (see ORS 419A.004(29)) and to "juveniles" (see ORS 169.730 *et seq.*). See also note 63, *infra*.

<sup>56</sup> We conducted the juvenile department surveys and the Hillcrest focus groups in collaboration with the Oregon Commission on Children and Families, which also is studying the treatment of female youths in the juvenile justice system. See JUVENILE JUSTICE ADVISORY COMM, 1997 REPORT TO THE GOVERNOR AND OREGON LEGISLATURE (1997) ("JJAC Study").

the opinions of Oregon judges and lawyers through the Task Force surveys. Finally, we reviewed national and state studies and data.

We found that a disproportionate percentage of youth offenders in custody are boys. Moreover, a disproportionate share of funds is used for boys committed to “close custody” facilities, despite statutory requirements that girls receive a proportionate share of youth corrections funding and services. Because fewer dollars and other resources are dedicated to providing services and training to female youth offenders, they often do not receive the services and training that they need to prepare them to enter and remain in the general community. In particular, girls are receiving inadequate job-training opportunities and insufficient mental health treatment opportunities.

## B. FINDINGS

### 1. Demographic Trends

The United States Department of Justice reports a disturbing national trend:

*“Although male juvenile offenders still account for most delinquent acts, the relative growth in juvenile arrests involving females was more than double the growth for males between 1989 and 1993. While juvenile arrests for violent crimes increased 33 percent for males during that period, they increased 55 percent for females. In fact, the ratio of male juvenile arrests to female juvenile arrests declined from [8:1] in 1989 to [6:1] in 1993.”<sup>57</sup>*

In Oregon, too, the increase in the number of girls arrested for delinquent acts has outpaced the increase for boys. Between 1990 and 1995, arrests of youth offenders increased 38%; the rate of increase for girls was 49.7%.<sup>58</sup> Arrests of girls increased in all categories of criminal offenses; disturbingly, the greatest increase (100%) was in crimes against persons.<sup>59</sup> In recent years, there has

been an increase in girls’ gang membership and affiliation, as well.<sup>60</sup>

Although girls account for 24% of crimes against persons by youths, girls constitute only 11% of commitments to close custody.<sup>61</sup> Between 1988 and 1992, Oregon admitted almost 8,000 youths to detention, of whom 17% were female, and admitted almost 2,000 youths to secure facilities, of whom 9% were female.

### 2. Oregon’s Juvenile Justice System<sup>62</sup>

Under Oregon’s statutes, persons under 18<sup>63</sup> who have committed an act that would be a crime if committed by an adult,<sup>64</sup> youth who have committed “status offenses” (such as being a minor in possession of alcohol, committing a curfew violation, or running away),<sup>65</sup> and children who have been abused or neglected, may be subject to juvenile court jurisdiction upon the filing of a petition and its adjudication.<sup>66</sup> The courts have wide discretion in fashioning a disposition for each of these circumstances, although only youths adjudicated as delinquents (as distinct from those adjudicated as “dependents”) may be committed to secure facilities. Secure facilities are offered at both the state and county levels. Youths can be held before trial, or for a limited time after adjudication, in county-operated detention facilities. Following adjudication, if they are found to be within the jurisdiction of the court, youths who are to be committed to secure facilities are placed in one of the state youth correctional facilities.

#### a. County Secure Custody

Eleven counties have detention facilities operated by their county juvenile departments: Coos, Deschutes, Jackson, Klamath, Lane, Lincoln, Marion, Multnomah, Umatilla, Wasco, and Yamhill.<sup>67</sup> Juvenile Department Directors in those 11 counties were surveyed, and nine

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<sup>57</sup> See EILEEN POE-YAMAGATA & JEFFREY A. BUTTS, U.S. DEP’T OF JUSTICE, FEMALE OFFENDERS IN THE JUVENILE JUSTICE SYSTEM, STATISTICS SUMMARY at iii (1996).

<sup>58</sup> OREGON COMM’N ON CHILDREN AND FAMILIES, OREGON’S YOUTH: DEMOGRAPHIC PROFILES AND CRIME ANALYSIS 18 (Draft report, 1997) (cited with permission).

<sup>59</sup> This 100% increase reflects a change from 1.4 per 1,000 youths arrested to 2.8. JJAC Study, *supra* note 56, at 32.

<sup>60</sup> OREGON COMM’N ON CHILDREN AND FAMILIES, *supra* note 58, at 233, 235.

<sup>61</sup> See OREGON YOUTH AUTH, EQUAL ACCESS TO SERVICES FOR FEMALE AND MALE YOUTH (Report on HB 3576 (ORS 417.270)) (Appendix to the Governor’s Budget, 1997), at Budget p 234.

<sup>62</sup> This chapter does not address the treatment of girls or boys as victims of abuse or neglect, nor does it address the treatment of young mothers or fathers accused of abusing or neglecting their children.

<sup>63</sup> Until recently, Oregon statutes referred to a person under the age of 18 as a “child.” During the 1995 session, the Oregon legislature revised the statutes. Now, a person under the age of 18 who is alleged to have committed an act that, if done by an adult, would be a violation or a crime is referred to as a “youth.” ORS 419A.004(27).

<sup>64</sup> ORS 419C.005.

<sup>65</sup> This report does not address the treatment of status offenders, the majority of whom are girls.

<sup>66</sup> ORS 419B.100.

<sup>67</sup> No surveys were sent to youths in county facilities and, accordingly, there are no data on their perceptions of the services and programs provided in those facilities.

responded.<sup>68</sup> All those county facilities are available to house both boys and girls. To varying degrees, as noted below, the facilities offer educational, recreational, health, treatment, and parenting services to detained youths.

All the county detention facilities offer school programs with certified instructors for boys and girls. The counties all provide a variety of skill-building classes, including anger management, refusal skills, stress management, and empathy enhancement. Lane County also offers a girls' support group. Lincoln, Deschutes, Marion, and Multnomah Counties offer opportunities to complete a GED. All nine detention facilities offer coeducational recreational activities.<sup>69</sup>

Regarding health and treatment services, all the counties indicated that, if they find that a particular issue exists, both boys and girls are provided care for that issue. For example, eight counties provide support groups for substance abusers, either sex-segregated or coeducational.

Coos, Jackson, and Marion Counties provide individual counseling services for boys and girls who are survivors of sexual abuse. Marion County also provides coeducational groups. Two counties, Coos and Lane, provide sex-offender treatment for boys and girls; Multnomah County provides such treatment for boys only.

Multnomah is the only county that routinely tests every girl for pregnancy; other counties test only if there is reason to believe that a girl is pregnant.<sup>70</sup> All nine counties responding to the survey provide obstetric and gynecological care for pregnant girls. Two counties,

Jackson and Marion, provide counseling concerning post-birth placement options. Other services for pregnant girls include nutritional information,<sup>71</sup> dietary supplements,<sup>72</sup> and pregnancy-prevention information.<sup>73</sup> Two counties, Marion and Multnomah, provide parent-training classes. In responding counties, detainees who are parents may visit with their children, either during regularly scheduled visiting hours or by special arrangements made through probation counselors.

**b. Commitment to State Custody**

The Oregon Youth Authority (OYA) is the agency that is responsible for youths found to be within the jurisdiction of the court for committing an act that, if done by an adult, would constitute a crime. Currently, youths committed to secure custody reside at either MacLaren (317 beds for boys) or Hillcrest (181 beds for both boys and girls).<sup>74</sup> In addition, OYA soon will open regional youth correctional facilities for boys and girls in Albany, Grants Pass, Prineville, and Warrenton. A new facility in Burns will serve boys only. OYA also operates all-male boot camps.<sup>75</sup> There are no boot camps for girls.

ORS 417.270 requires state agencies (including OYA) that provide services to youths to specify in their budgets what funds are expended for boys and for girls. That statute also requires those state agencies to identify spending disparities and to ensure equal access to appropriate services and treatment. OYA estimates that, during the 1995-97 biennium, it spent proportionately fewer dollars for females than for males in the areas of foster care,<sup>76</sup> gang-transition services,<sup>77</sup> and residential

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<sup>68</sup> The survey was developed jointly by the Task Force on Gender Fairness, Linda Wagner, and the Oregon Commission on Children and Families. Results are based on nine responses; Klamath and Umatilla Counties did not respond to the survey.

<sup>69</sup> Multnomah County reported that it also offers sex-segregated activities for boys and for girls; it did not identify those activities.

<sup>70</sup> The counties that responded to the survey estimated that there were a total of 71 pregnant detainees; about half of them were reported by Multnomah County.

<sup>71</sup> Multnomah, Yamhill, Coos, Jackson, Lane, and Marion Counties.

<sup>72</sup> Multnomah, Yamhill, Coos, Jackson, Lane, and Marion Counties.

<sup>73</sup> Multnomah, Yamhill, Jackson, and Marion Counties.

<sup>74</sup> Hillcrest originally was intended to house only girls. Now the majority of residents are boys. Eight cottages are for boys only, two cottages are for girls only, and one cottage is coeducational (by wing).

<sup>75</sup> Hillcrest's former superintendent, Mary Ellen Eiler, reports that, because the data on all-male boot camps in other states suggest that they are less than effective, Oregon has incorporated more intensive treatment in its boot camps. Oregon is experimenting with boot camps for a trial period and, if they prove effective, they may be offered to girls as well. We note that assessing the efficacy of boot camps for boys presumes that, if something is ineffective for boys it will be ineffective for girls and that what is effective for boys also will be effective for girls. That presumption may or may not be correct.

<sup>76</sup> Girls comprised almost 20% of all youths placed in foster care but received 15.6% of the expenditures. OREGON YOUTH AUTH, *supra* note 61, at Budget p 232.

<sup>77</sup> Seventy-eight percent of the youths served through residential treatment programs were male and 22% were female; 79% of the expenditures in this category were for males and 21% were for females. *Id.*

treatment.<sup>78</sup> It spent proportionately fewer dollars for boys than for girls in the areas of sex-offender aftercare (.72% of the youths who received sex-offender aftercare were girls, but 1.56% of expenditures for such services were for girls.)<sup>79</sup>

**ESTIMATED 1995-97 EXPENDITURES  
BY OREGON YOUTH AUTHORITY**

Category of Service	% Girls Served	% Expenditures for Girls
Foster care	20	15.6
Gang transition	22	21
Residential treatment	4.5	1.1
Sex-offender aftercare	.72	1.56

In its 1997-99 Recommended Budget to the legislature, OYA noted that, historically, male offenders have dominated Oregon's juvenile justice system to the detriment of female offenders:

*"Because of the different types of crimes young men and young women committed, young men have received the bulk of juvenile services and funds. In addition, OYA acknowledges that, with limited bed space, young women were often released from secure facilities and, thus, were unable to complete treatment programs available prior to release. In turn, the recidivism [rate] for women is high."<sup>80</sup>*

Several girls echoed this concern in a focus group at Hillcrest. They complained that, after they had acclimated to the institution but before they could benefit fully from the programs and services available to them, they were released. The girls believed that boys housed at Hillcrest were not returned to the community as quickly as girls were.

Having recognized the disparities in services and programs for boys and girls and the equal access requirements of ORS 417.270, OYA is developing a Gender Equity Advisory Board to advise it on the adequacy and quality of services to male and female youths in the juvenile justice system. In addition, OYA Parole and Probation is developing a Task Force on Girls to identify needs and resources and to ensure that girls receive quality services from the Oregon juvenile justice system. The following sections discuss the types of services and programs available to boys and girls at MacLaren and Hillcrest.

**c. Services and Programs Provided at State Facilities**

**i. Education**

The types of educational programs that are available to boys and girls are similar. Boys who are committed to MacLaren and who have not graduated from high school or obtained a GED attend the Lord School on campus. The school is certified by the Oregon Department of Education and has programs that lead to either a high school diploma or a GED. Some of the cottages or programs have self-contained educational programs. Approximately 60% of the boys at MacLaren have special education needs and are on an Individual Educational Program (IEP). Access to community college is now provided through the Internet. According to an official at MacLaren, boys and girls have equal access to Internet facilities.

Girls committed to Hillcrest have access to the Robert S. Farrell High School on campus. Since July 1994, the school has been administered by the Oregon Department of Education and offers mid-high, high school, Chapter 1,<sup>81</sup> and vocational education programs. All students who have received a diploma or GED may take community college and college classes by correspondence. Information about what percentage of girls have special education needs and are on an IEP was not available.

**ii. Job Training**

The availability of and access to job training, as well as the types of job training available, are greater for boys than for girls. Indeed, the primary job training available to girls seems to be based on stereotypical perceptions of "appropriate" careers for girls, and accessibility to job training in non-traditional positions is quite limited. For example, beauticians' school is available to girls over 16 who have demonstrated trustworthiness with scissors, razors, and other tools. No such program is offered at MacLaren.

MacLaren offers vocational training to boys in horticulture, business services, building trades, and hospitality. In addition, boys at MacLaren are involved in a structured work program in the following areas: institutional laundry, food services, building maintenance, grounds upkeep, garbage and recycling collection, and janitorial and canteen services. There also is a lattice factory where the boys assemble decorative

<sup>78</sup> Four and one-half percent of the youths who received gang-transition services were girls, but girls received only 1.1% of the funds expended on those services. *Id.*

<sup>79</sup> *Id.* at 232. Disproportionately more dollars may have been spent for services to girls due to the paucity of female sex offenders. Their limited numbers often result in their receiving individual, rather than group, treatment. OYA also spent proportionately fewer dollars during the 1995-97 biennium for Individualized Flexible Services (IFS) to boys. IFS are services provided to youths who are leaving close custody or being diverted from close custody. *Id.* Until part way through the 1995-97 biennium, the IFS program served only girls, to compensate for gender inequities in the residential treatment program. *Id.* at 235.

<sup>80</sup> See *id.* at Budget p 233.

<sup>81</sup> "Chapter 1" refers to Individual Educational Programs and other federally mandated educational services.

cedar lattice used in wood fencing. Due to space shortages, not all boys who request opportunities in job training have access to the programs, however.

Boys at Hillcrest have better access than girls to vocational educational programs through Farrell High School, such as maintenance crew and food service training. Staff shortages sometimes deprive girls of opportunities. For example, maintenance crew training is available to girls only if more than one girl is interested, because training supervisors are men; girls are not allowed to work in food service, because all the staff members are men. Also, girls and boys at Hillcrest are not allowed to serve on the same work crew or training program team. A minimum number of participants must be interested in a work crew or a training program before Hillcrest staff is assigned to supervise the group. Because boys greatly outnumber girls at Hillcrest, this policy has a disparate effect on girls.<sup>82</sup>

### iii. Health Services

Girls have less access to health care than do boys. For example, MacLaren operates a 24-hour-a-day, 7-day-per-week health clinic accredited by the National Commission on Corrections Health Care. That clinic employs a full-time physician, a half-time dentist, and several nurses. MacLaren also contracts for psychiatric and psychological services and for additional dental services.<sup>83</sup>

On the other hand, Hillcrest has a health clinic for both boys and girls that is staffed by six registered nurses. A physician is available at predetermined times, and a dentist comes to the clinic as needed. Pregnant girls have access to pre-natal care, a local obstetrician-gynecologist, outside birth coaches, and post-birth baby placement counseling. Access to childbirth classes may vary.<sup>84</sup>

Several girls in the focus group expressed dissatisfaction with the health services at Hillcrest. Although most participants spoke highly of the nurses, they stated that additional medical staff was needed, because staff response time often was slow. One girl recounted that, when she was pregnant, she contacted medical staff because she thought that she was in labor. She reported that she was not examined but, instead, was told that she was not in labor and was directed to return to her room. When she finally was seen by a nurse, she was dilated five centimeters and was taken to the hospital for delivery. In a related matter, girls who give birth at Hillcrest generally are allowed to stay in the hospital for one night following the birth. Several young mothers felt that this was not enough time to bond with

their newborns. Additionally, several girls who had been victims of sexual abuse reported discomfort, fear, and extreme anxiety when a male doctor performed a physical examination, including a pap smear. (Every girl receives a complete physical examination upon admittance to Hillcrest.)

### iv. Mental Health Treatment

The types of mental health treatment provided for detained boys and girls are similar.<sup>85</sup> However, the manner in which treatment is provided and the amount of time within which to take advantage of mental health treatment programs are not the same.

The focus group with girls revealed considerable concern about treatment services for female sex offenders and survivors of sexual abuse. Several girls reported that sex-abuse survivor issues are not fully assessed upon admission and that the girls themselves might not disclose a history of sexual abuse upon admission, even if asked. In addition, girls were angry and concerned that female sex offenders and victims had been placed in the same therapy group. Some girls also expressed concern that female sex offenders do not have their own rooms, as do male sex offenders but, instead, are bunked with non-offenders, many of whom are survivors of sexual abuse.

With regard to mental health treatment generally, one girl reported:

*"There are only two and a half cottages for girls, and the rest are for boys, and ours are overflowing. We are getting quantity treatment instead of quality treatment because of the number of girls who need to come in all the time. We constantly have to cap girls out so they aren't even finished with their treatment before they get to leave."*

### v. Opportunities for Visits with Family Members

Family visits are scheduled on a designated day each week at Hillcrest and MacLaren although, with advance notice, visits may be scheduled at other times, depending on staff availability. Boys are permitted and encouraged to visit with their families, including their own children. Although the boys at MacLaren generally are prohibited from visiting with non-related girls under 18, this prohibition is waived when the mother of a male resident's child accompanies their child on the visit. At MacLaren's and Hillcrest's parenting classes, the youths' children and the other parent of those children are invited to participate.

<sup>82</sup> In a focus group at Hillcrest, some girls said that they were frustrated that girls are denied access to certain training programs for these reasons.

<sup>83</sup> Personal communication with Robin Cole, Program Director at MacLaren.

<sup>84</sup> In a focus group at Hillcrest, one girl reported being given only a pamphlet on childbirth.

<sup>85</sup> See Appendix for a complete list of services at MacLaren and Hillcrest.

Several girls reported that they do not see their children during weekly visiting hours because there is no one to transport the children. They suggested that volunteers be recruited to provide needed transportation.

**d. Special Concerns for Female Youths Committed for Measure 11 Crimes**

Female youths who have been sentenced under Measure 11 are placed in the legal custody of the Oregon Department of Corrections. As part of the intake process, ODOC (in consultation with OYA) decides whether to place a girl at Hillcrest or at OWCC. Girls who are 15 years old are sent directly to Hillcrest; girls who are 16 or 17 years old proceed through the OWCC intake process but then may be transferred to Hillcrest.<sup>86</sup> Some girls initially are placed at Hillcrest and later are transferred (or returned) to OWCC. Hillcrest administrators said that there is little coordination between Hillcrest and OWCC regarding girls sentenced under Measure 11 and that there are no policies in place to require uniform treatment at the two facilities.

**e. Staff Training Regarding Gender Issues**

The Juvenile Corrections Training Academy provides a two-week educational program for Hillcrest and MacLaren staff. The program includes security and safety issues, crisis intervention, and identifying the different needs of youths on the basis of gender with regard to treatment needs and safety from sexual harassment. Once they have completed the Academy program, staff members at Hillcrest commence two weeks of on-the-job training.

Both boys and girls reported that staff members are generally caring. Nonetheless, girls reported that two staff members told them that they were “too needy” and that the staff members preferred to work with boys. Girls reported concerns about under-staffing, commenting that staff members are spread too thin and do not have time to talk with them, “address our issues,” or escort them to recreational activities on the Hillcrest campus.<sup>87</sup>

**C. CONCLUSIONS**

The number of girls entering the juvenile justice system is on the rise, with the increase in the number of girls arrested for delinquent acts outpacing the increase for boys. However, girls still are less likely to be admitted to close custody facilities. When girls are committed to secure facilities, they stay for shorter periods of time than do boys, although girls are being committed for longer periods of time than in the past. A shorter stay in a secure facility may not be beneficial in all respects, because it deprives some girls of the

opportunity to complete training or treatment that may help keep them from re-offending.

In county detention facilities, boys and girls have access to similar educational opportunities and recreational activities. Eight of the 11 counties with juvenile detention facilities reported that they provide treatment for substance abuse. Three counties provide counseling to victims of sexual abuse for both boys and girls, and three counties provide treatment for sex offenders, with two offering treatment to boys and girls and one (Multnomah County) offering treatment only to boys. All nine counties that responded to our survey provide pregnancy-related health care. Counseling regarding birth-control options, pre-natal information and care, and post-birth baby placement is provided in about half the counties.

OYA estimates that it spends proportionately more money for services directed at boys and that the limited funds and limited space for girls have resulted in incomplete treatment for girls. OYA is taking steps to address those disparities.

Many girls in close custody are not satisfied with the health-care services that they receive. Their primary concerns are inadequate staffing and the lack of a female doctor to treat girls. Girls with children are concerned about visitation rules and about the lack of transportation resources that limit their ability to visit with their children.

**D. COMMENDATION**

We commend the Legislative Assembly for enacting ORS 417.270, which:

- “acknowledges that females under 18 years of age often lack equal access, both individually, and as a group, when compared with males under 18 years of age, to the facilities, services and treatment available through human services and juvenile corrections programs provided by or funded by the State of Oregon” (ORS 417.270(1));
- requires any state agency that regularly provides services to minors to specify in its annual budget the percentages of moneys allocated to, and expended for, minor males and minor females in Oregon (ORS 417.270(3)(a));
- requires all state agencies providing human services and juvenile corrections programs to “identify existing disparities in the allocations of moneys and services to, and expended for, . . . males under 18 years of age and females under 18 years of age” and to document such disparities, if any (ORS 417.270(3)(b)); and

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<sup>86</sup> See ORS 137.124(5).

<sup>87</sup> Depending on the girls' privileges, Hillcrest offers basketball, pool, table tennis, cards, television, and music on campus.

- requires the state agencies to develop a plan to implement equal access to appropriate services and treatment for minor males and females and monitor the implementation of that plan (ORS 417.270(3)(c)).

**4. The Oregon Judicial Department should:**

by January 1, 2001, undertake to study gender and intersectionality issues affecting juveniles who are adjudicated as “status” offenders (disproportionately girls).

**E. RECOMMENDATIONS**

**1. The Oregon Youth Authority should:**

- a. immediately take steps to comply fully with ORS 417.270 and to ensure proportional allocation of funds to girls and boys;
- b. provide more programs and services, including drug and alcohol treatment, to serve girls in the juvenile justice system. The OYA should have a plan to implement those programs by January 1, 1999, and should implement the programs by January 1, 2000;
- c. ensure that sex-offender treatment programs are available to boys, without waiting;
- d. by January 1, 1999, review staffing standards at secure facilities to determine whether the number of staff is sufficient to meet the needs and deliver programs and services, especially to girls;
- e. ensure that adequate treatment and vocational services are available for youths who are detained for shorter periods of time (disproportionately girls). One possible means is to permit them to continue in the program or receive services after they leave the secure facility but while they remain in the legal custody of OYA;
- f. by January 1, 2000, ensure that girls and boys have access to the same types of job training (*e.g.*, building trades for girls, beauticians’ school for boys), based on interests, skills, and the like;
- g. by January 1, 1999, hire women to fill maintenance crew, food service, and other training supervisor vacancies so that girls have access to the same job-training opportunities to which boys have access; and
- h. by January 1, 1999, provide or arrange for transportation for children of youths who are in close custody, so as to encourage a stronger bond between the youths and their children.

**2. The Oregon Youth Authority and the Oregon Department of Corrections should:**

- by January 1, 1999, to the extent permitted under the law, jointly develop a policy on programs and services for girls who are sentenced under Measure 11.

**3. The Hillcrest Youth Correctional Facility should:**

- by January 1, 2000, hire a female doctor to perform obstetric and gynecological services.

## ATTACHMENT A

### Professional, Technical, and Production Programs Available to Female and to Male Inmates in Oregon<sup>88</sup>

	Available to female inmates at OWCC	Available to female inmates at OSCI or OSP	Not available to female inmates	Available to male inmates	Not available to male inmates	May Result in Certification or Licensure <sup>89</sup>
<b>PROFESSIONAL/TECHNICAL TRAINING PROGRAMS (includes classroom instruction, lab, and on-the-job training)</b>						
Building Maintenance (OSP, OSCI, OWCC, SCI, MCCF)	X			X		Cleaning Management Institute Certification (Levels I & II)
Organic Gardening (OWCC <sup>90</sup> )	X				X	NO
Clerical Basics (OWCC)	X				X	Chemeketa Community College Certificate
Auto Mechanics (OSP)			X	X		Automotive Servicing Excellence (ASE) Certification
Hair Design (OSP)			X	X		State Licensure
Cabinet Making (OSP, OSCI)		X		X		NO
Furniture Refinishing (OSCI)		X		X		NO
Intarsia <sup>91</sup> (OSCI)		X		X		NO
Computer Literacy (OSP)			X	X		NO
Building Technology (SRCI)			X	X		Treasure Valley Community College Certificate
CAD/CAM <sup>92</sup> (certification program) (SRCI)			X	X		Treasure Valley Community College Certificate
Culinary Arts (OSCI)		(will soon be available to female inmates)	X	X		Chemeketa Community College Certificate
Books on Tape (EOCI)			X	X		NO
Audio Tape Player Refurbishing (EOCI)			X	X		NO
Computer Refurbishing/Recycling (OSCI)		(will soon be available to female inmates)	X	X		NO
Meat Cutting (MCCF)			X	X		NO
Computer Graphic (Desktop Publishing) (EOCI)			X	X		Blue Mountain Community College Certificate

88 Information provided by Oregon Department of Justice lawyer Jefry J. VanValkenburgh.

89 Oregon Department of Corrections issues certificates to all inmates who successfully complete a course or educational program. Those certificates are not to be confused with a certification (or licensure) awarded by a college or professional or trade organization.

90 No male inmates are transported to OWCC for training, education, or production purposes.

91 Intarsia is a craft that involves gluing small peices of wood into a hollow wooden support (popular in 15th century Italy).

92 CAD/CAM is Computer Aided Drafting/Computer Aided Manufacturing.

*CRIMINAL LAW AND JUVENILE JUSTICE*

	Available to female inmates at OWCC	Available to female inmates at OSCI or OSP	Not available to female inmates	Available to male inmates	Not available to male inmates	May Result in Certification or Licensure <sup>89</sup>
<b>PRISON INDUSTRIES/INMATE WORK PROGRAMS (Production Only)</b>						
Phone Answering (DMV) (OWCC)	X				X	n/a
Phone Answering (Secretary of State) (OSCI)			X	X		n/a
Phone Answering (Oregon Health Plan) (OSCI)			X	X		n/a
Mail Room Operations (OSCI)			X	X		n/a
Printing Shop (OSCI)			X	X		n/a
Uniform Repair/Embroidery (OWCC)	X				X	n/a
Card Folding (OWCC)	X				X	n/a
Furniture Manufacturing (OSP)			X	X		n/a
Upholstery (OSP)			X	X		n/a
Bar Code Scanning Equipment Assembly (OSP)		X		(will soon be available to male inmates)	X	n/a
Metal Fabrication (OSP)		X		X		n/a
Laundry (OSP, EOCI)			X	X		n/a
Construction (SRCI and SRCI Expansion)			X	X		n/a
Metal / Wood Fabrication (PRCF)			X	X		n/a
CAD/CAM (work program)(OSCI)		X		X		n/a
Garment Manufacturing (Prison Blues) (EOCI)			X	X		n/a
Milk Packaging Operation (MCCF)			X	X		n/a
Meat Cutting(MCCF)			X	X		n/a
Wood Pallet Manufacturing (SCI)			X	X		n/a