

UNLOCKING MEASURE 57

ABOUT

OREGON JUSTICE RESOURCE CENTER

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

WOMEN IN PRISON PROJECT

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

For more information, contact Project Director and Attorney, Julia Yoshimoto, at julia@ojrc.org.

“Throughout the 1990s and the first half of the 2000s, Oregon continued to have one of the highest property crime rates in the country. Oregon’s property crime rate began dropping precipitously in 2005. From 2005 to 2010, Oregon experienced the largest property crime rate drop of any state.”

Oregon Criminal Justice Commission, 2011 Briefing
Paper: *Measure 57 Implementation and Impact*

INTRODUCTION

Oregon is now facing the unfortunate results of having overlooked its justice-involved women for too long during the era of mass incarceration. Over the past twenty years, the incarceration rate of women in Oregon has tripled,¹ despite Oregon's crime rate being at 30-year lows² and the arrest rate for women having decreased in the last two decades by 36-40%.³

Oregon's only women's prison, Coffee Creek Correctional Facility (CCCCF), is struggling to operate safely under the pressure of housing 1285 women.⁴ Its built capacity, or the number for which it is truly intended, is 1253 women, and its threshold capacity using emergency beds is 1280.⁵ Legislators must now grapple with the decision to open a second women's prison, with estimated costs of approximately \$18 million dollars for the first biennium.⁶ This proposed expenditure comes at a time when the state faces a \$1.7 billion budget shortfall.⁷

Although these are challenging circumstances indeed, legislators can choose to view the 2017 legislative session as an opportunity for real criminal justice reform. It is possible to safely, economically, and more justly reduce the women's prison population for the long term and avoid opening another prison.

To achieve this goal, the legislature should repeal Ballot Measure 57 (M57) which was first enacted on January 1, 2009. M57, in part, created mandatory minimum prison sentences for non-violent property offenses, the type of crime for which nearly half the women at CCCCf have been convicted. In 2016, 47% of prison intakes at CCCCf were for property crimes. Three of the four most common offenses, comprising nearly 31% of all women intakes were theft in the first degree, identity theft, and unauthorized use of a vehicle.⁸

Mandatory minimum sentences

PROPERTY CRIME IN CONTEXT

Property crimes are often driven by underlying social and public health issues such as poverty, abuse, trauma, and drug addiction. The latter is a continual behavior that occurs despite problematic consequences. Some drugs are sold on the black market, an unregulated and cash-based market. Given this context, it is unsurprising that the "repeat property offender" is far more common than the one-time property offender.

take away judicial discretion and shift more power to prosecutors, who already hold significant sway in the criminal justice system. They have nearly unrestricted and opaque discretion to charge crimes in ways that trigger overly punitive and disproportionate sentences.

More aggressive charging practices and mandatory minimum sentences have greatly contributed to increasing incarceration rates across the country.⁹

M57, in part, amended ORS 137.717, the repeat property offender statute. It increased presumptive sentences in ORS 137.717, took away judges' discretion to reduce those presumptive sentences, and widened the net for defendants who could be sentenced under ORS 137.717.

According to the Oregon Criminal Justice Commission, prison intakes for women were significantly fewer during the years prior to the enactment of

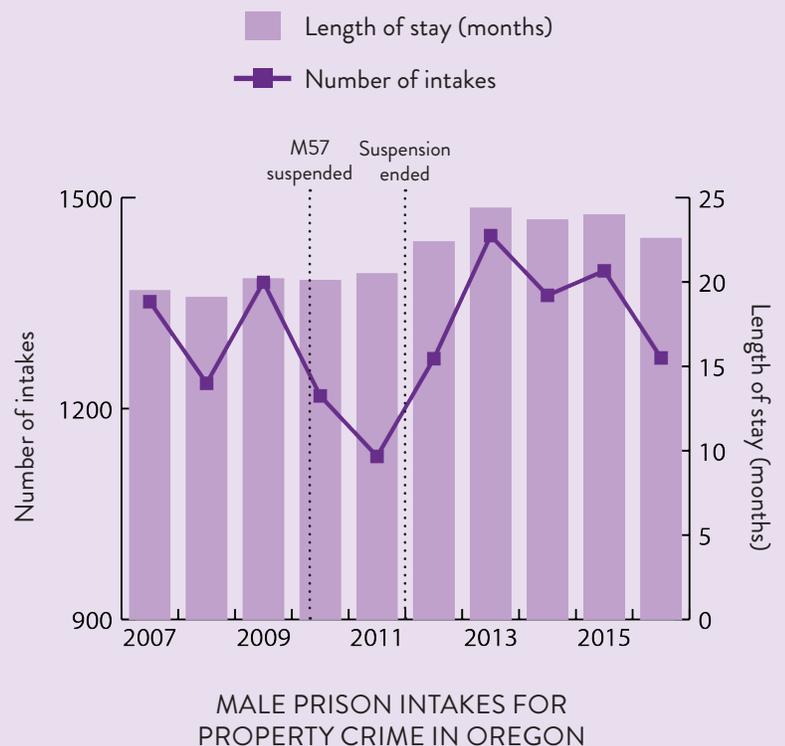
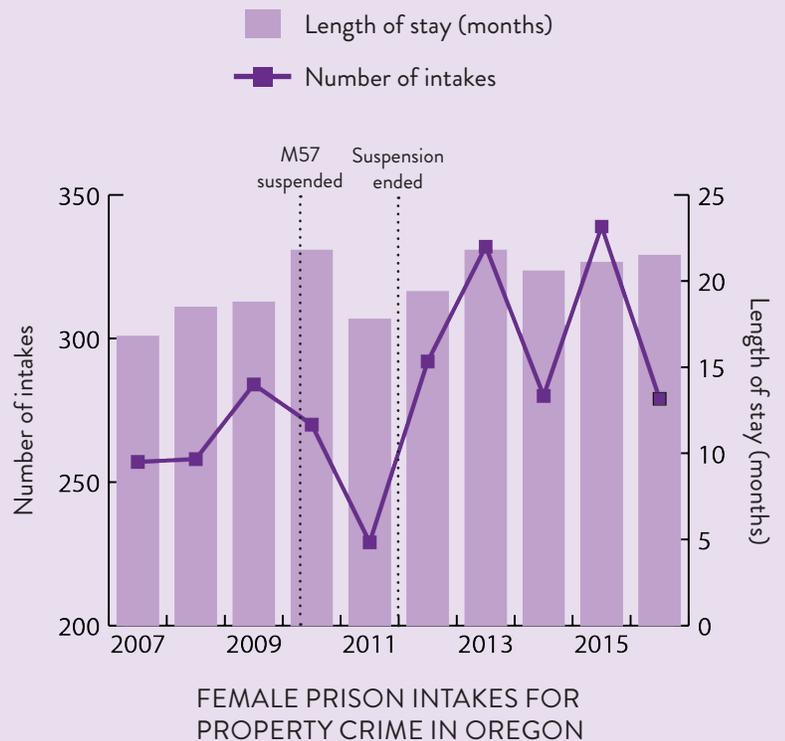
The Criminal Justice Commission estimates that if M57 is no longer in effect on July 1, 2017, 70 prison beds for women would be saved by July 2019 and 130 by July 2021.

M57 and during the brief window of time when the measure was suspended (February 15, 2010 to January 1, 2012) than when M57 has been in effect.¹⁰

The Commission estimates that if M57 is no longer in effect on July 1, 2017, 70 prison beds for women would be saved by July 2019 and 130 beds by July 2021.¹¹

Despite the significant impact of M57, how the measure operates and its criminal law context are not well understood by most Oregonians. This report “unlocks” M57 and its legal context to shed light on just why it has had such a powerful effect. We aim to show how, through a combination of tweaks to sentencing laws and decisions by Oregon courts, criminal activity even in cases with little to no harm caused can be charged and sentenced to prison time, as well as how this situation can be safely and effectively addressed.

PRISON INTAKES FOR PROPERTY CRIMES IN OREGON, 2007-2016¹⁰



TIMELINE

PRE-
1989

INDETERMINATE SENTENCING

Before 1989, Oregon used what is called an “indeterminate” sentencing system in which the sentencing court ordered both minimum and maximum prison terms for a defendant and the parole board later decided the release date.

1989

OREGON ADOPTS SENTENCING GUIDELINES

In 1989, Oregon introduced sentencing guidelines, a major policy shift that mirrored a national trend toward determinate sentencing. Under this new system, the sentencing court would use the 99-block Sentencing Guidelines Grid to order a single prison term. This term can only be reduced as provided by statute, through e.g. credit for time served, “good” time etc.

The grid is used to find the “presumptive” sentence that must be imposed on a defendant unless “substantial and compelling” reasons exist to do otherwise. The presumptive sentence is defined by combining two rankings, the defendant’s “criminal history score” and “crime seriousness”.

The criminal history score is “based upon the number of adult felony and Class A misdemeanor convictions and juvenile adjudications¹² in the offender’s criminal history at the time the current crime or crimes of conviction is sentenced.”¹³ To determine the “crime seriousness”, a ranking is assigned from 1 to 11 according to the crime of conviction. (There are some crimes that have sub-classifications that depend upon specific facts.)

Unless otherwise specified by law, courts have discretion to depart from the presumptive sentence, but must find “substantial and compelling reasons justifying a deviation.”¹⁴ That determination is made on the basis of “aggravating or mitigating factors.”¹⁵ A departure that increases the presumptive sentence is known as an upward departure. A departure that reduces the presumptive sentence is known as a downward departure.

Crime Seriousness	A
11	225-269
10	121-130
9	66-72
8	41-45
7	31-36
6	25-30
5	15-16
4	10-11
3	120-60
2	90-30
1	90-30

Oregon’s Sentencing Guidelines Grid is used to determine how much time a person must serve.

1989

THE LEGISLATURE AMENDS THE CRIMINAL HISTORY RULE

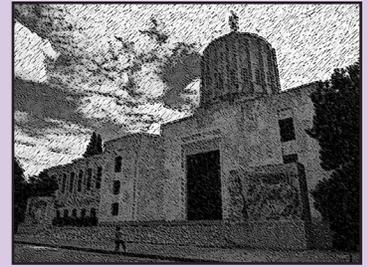
Determining which convictions are considered part of a defendant's criminal history in order to define where they fall on the grid is an important part of sentencing. OAR 213-004-0006(2) is the administrative rule for making this determination. In 1989, the legislature amended this rule to read as follows (the deleted language is ~~struck through~~ and the added language is underlined):

“(2) An offender’s criminal history is based upon the number of adult felony and Class A misdemeanor convictions and juvenile adjudications in the offender’s criminal history at the time the current crime or crimes of conviction ~~was committed~~ is sentenced.”¹⁶

This amendment creates a different reference point for determining which convictions are considered part of a defendant's prior criminal history.

THE LEGISLATURE EXPANDS JOINDER OF OFFENSES

In 1989, the legislature amended ORS 132.560 to “permit offenses that [arise] out of separate criminal episodes to be joined in the same indictment”¹⁷ if the offenses are of the same or similar character, based on the same act or transaction, or based on a common scheme or plan. Consequently, “offenses sentenced in a single criminal proceeding [can] arise out of separate criminal episodes.”¹⁸



By Shaundd (Own work) [CC BY-SA 3.0 (<http://creativecommons.org/licenses/by-sa/3.0/>)], via Wikimedia Commons

In 1989, the Oregon Legislature made two changes with lasting consequences to the charging and sentencing of defendants. The reference point for deciding which convictions are considered part of someone's criminal history was changed and “offenses [from] separate criminal episodes are allowed to be joined in the same indictment” if they are similar or based on “a common scheme.”

1993

STATE V. BUCHOLZ

In the case of *State v. Bucholz*, 317 Or 309, 855 P. 2d 1100 (1993), the Oregon Supreme Court interpreted the criminal history rule, OAR 213-004-0006(2). In *Bucholz*, the defendant committed the crime of theft in the first degree, a Class C felony, and a month later committed unlawful delivery of methamphetamine to a minor, a Class A felony.¹⁹ The defendant was sentenced for both crimes in the same sentencing proceeding.

“The sentencing judge imposed a sentence of probation, including 90 “custody units,” on the theft charge. The judge then imposed a period of 23 months on the

charge of delivering drugs to a minor and also imposed 36 months of post-prison supervision. The theft conviction was treated as a prior conviction for the purpose of establishing the criminal history score for the defendant on the delivery of drugs charge.”²⁰

The Supreme Court stated that the criminal history rule “permits” the sentencing court to use the conviction of the theft in the first degree as a prior conviction to increase the criminal history score in sentencing the defendant for the unlawful delivery of methamphetamine to a minor.²¹ The use of prior convictions from different criminal episodes, but sentenced in the same proceeding, to increase the criminal history score for the sentencing of subsequent convictions is known as “reconstituting” criminal history.²²

The permissive language used by the Oregon Supreme Court in *Bucholz* gave the sentencing court discretion in determining whether to reconstitute criminal history.

1996

THE REPEAT PROPERTY OFFENDER STATUTE, ORS 137.717

Oregon enacted ORS 137.717, also known as the “Repeat Property Offender” statute.²³ It created higher presumptive sentences for certain property crimes when the defendant had prior property crime convictions.

Under this statute, as enacted in 1996, people who were convicted of burglary in the first degree, faced a presumptive sentence of 19 months if they had:

- a previous conviction for burglary in the first degree, robbery in the second degree, or robbery in the first degree; or
- four previous convictions for property crimes listed in subsection 2 of the statute.

If people were convicted of unauthorized use of a vehicle, possession of a stolen vehicle, or trafficking in stolen vehicles, they faced a presumptive sentence of 13 months if they had:

- a previous conviction for either unauthorized use of a vehicle, robbery in the second degree, robbery in the first degree, possession of a stolen vehicle, or trafficking in stolen vehicles; or
- four previous convictions for property crimes listed in subsection 2 of the statute.



By Oregon Department of Transportation (License plates Uploaded by AlbertHerring) [CC BY 2.0 (<http://creativecommons.org/licenses/by/2.0/>)], via Wikimedia Commons

Crimes such as auto theft attract higher presumptive sentences for Oregon defendants who have prior property crime convictions.

If people were convicted of theft in the first degree, aggravated theft in the first degree, burglary in the second degree, or criminal mischief in the first degree, they faced a presumptive sentence of 13 months if they had:

- a previous conviction for unauthorized use of a vehicle, burglary in the first degree, robbery in the second degree, robbery in the first degree, possession of a stolen vehicle, or trafficking in stolen vehicles; or
- four previous convictions for property crimes listed in subsection 2 of the statute.

The court could decide not to impose the presumptive sentence if it found substantial and compelling reasons justifying a downward departure.

1999

THE LEGISLATURE CREATES THE CRIME OF IDENTITY THEFT

In 1999, Oregon created the crime of identity theft, a class C felony, (see ORS 165.800). A person commits the crime of ID theft “if the person, with the intent to defraud, obtains, possesses, transfers, creates, utters or converts to the person’s own use the personal identification of another person.”

This statute has been criticized for vagueness, which allows this felony crime to be widely charged. Not only can the victim be real or “imaginary”, but the statute does not require that anyone suffer financial harm or loss. By contrast, the crime classification for theft can depend on the value of the property taken. For example, if the value of the property is less than \$100, the crime may be considered theft in the third degree and a Class C misdemeanor.²⁴ If the value of the property is \$1000 or more, the crime may be considered theft in the first degree and a Class C felony.²⁵

REPEAT PROPERTY OFFENDER STATUTE/ORS 137.717 EXPANDS

In 1999, the legislature added more property crimes to the repeat property offender statute, ORS 137.717: identity theft, fraudulent use of a credit card, computer crime, forgery in the first and second degrees, and possession of a forged instrument in the first and second degrees. This increased the number of people who could face higher presumptive sentences.



Identity theft is the use of another person’s identification with the intent to defraud.

2007

THE CRIME OF AGGRAVATED IDENTITY THEFT IS CREATED

The crime of aggravated identity theft, a Class B felony, was created by the legislature in 2007. (See ORS 165.803.) A person commits the crime of aggravated identity theft if they commit ID theft:

- in ten or more separate incidents within a 180-day period;
- and they have a previous conviction of aggravated identity theft;
- and there is a financial loss of at least \$10,000 within a 180-day period;
- and they have ten or more pieces of personal identification from ten or more different people.

This added an additional felony property crime to Oregon's laws and was also added to ORS 137.717 in 2007.²⁶

2008

VOTERS PASS MEASURE 57

In 2008, voters passed Measure 57. It was referred to them by legislators as an alternative to Ballot Measure 61 (M61). M61 would have, among other changes, created “36-month minimums for identity theft, first degree burglary, and Class A felony manufacture/delivery” of various controlled substances and “30-month minimums for Class B felony manufacture/delivery of same specified controlled substances.”²⁷ M61 was projected to increase the prison population by the thousands²⁸ and cost the state millions of dollars, increasing each year to a cost of \$154-247 million in the fourth year of its implementation.²⁹ M57 was also projected to cost many millions of dollars and increase the prison population, but to a lesser degree, and was considered by criminal justice reform advocates to be the only way to defeat M61.³⁰

M57, in part, amended the repeat property offender statute ORS 137.717 to greatly broaden the definition of a repeat property offender, increase the presumptive prison sentences for repeat property offenders, and eliminate judicial discretion to downward depart from the presumptive prison sentences for substantial and compelling reasons - creating another mandatory minimum sentencing scheme.

More specifically, M57 broadened the definition of repeat property offender by adding to the lists of



In November 2008, voters faced a choice between two competing ballot measures, Measures 57 and 61. M57 was introduced in a successful attempt to prevent M61 from passing. M61 was projected to increase Oregon's prison population by thousands at a cost of hundreds of millions of dollars per year.

property offenses that trigger the use of ORS 137.717, including “attempt to commit” property crimes. It also decreased the number of prior property convictions needed to qualify for the mandatory minimum sentence from four to two prior convictions, or to one prior conviction if the current crime was committed while the defendant was on supervision or within three years of completing supervision.

M57 also increased the presumptive sentences, specifically from 18 to 24 months for aggravated theft in the first degree, burglary in the first degree, robbery in the third degree, identity theft, and aggravated identity theft, and from 13 to 18 months for all other felony property crimes. It then increased the presumptive sentence by two months, up to a maximum of 12 months, for each additional prior property offense not already used to increase the sentence. The sentence can then be doubled for substantial and compelling reasons but may not exceed the maximum prison term specified in ORS 161.605.^{31 32}

Furthermore, M57 amended ORS 137.717 to eliminate judicial discretion to downward depart from the presumptive sentence for substantial and compelling reasons. Now a judge can only order a lesser sentence if the prosecutor and the defendant agree or if all of the following criteria are met:

- The person is not on supervision for a felony property offense at the time of the new crime;
- The person has not received a downward departure before;
- Harm or loss of the crime is not greater than usual, and
- Considering the nature of the offense and the harm to the victim, a downward departure would increase public safety, enhance the likelihood that the person will be rehabilitated, and not unduly reduce the punishment.

These criteria are very restrictive and difficult to satisfy.

2009

HOUSE BILL 3508 SUSPENDS THE IMPLEMENTATION OF MEASURE 57

Due to the economic recession and the cost of M57, the legislature passed House Bill 3508, suspending the changes made to ORS 137.717 from February 15, 2010 to January 1, 2012.



Women’s prison intakes dipped sharply during the suspension and rose again once it was lifted.

2009

THE OREGON COURT OF APPEALS TURNS PETTY THEFT INTO A FELONY

In instances of typical shoplifting, or theft by unlawfully taking items out of a store, the classification of the crime as a misdemeanor or a felony is determined by the value of the items.³³ This is not the case with so-called “return fraud”. Return fraud is generally the act of taking an item from a store shelf and “returning” it to the store in order to receive cash or a gift card for the value of the returned item. In 2009, the Oregon Court of Appeals in *State v. Rocha*, 233 Or App 1 (2009), decided that return fraud is “theft by receiving.” Per ORS 164.055(1)(c), theft by receiving is theft in the first degree, regardless of value, and a Class C felony.

If an individual shoplifted, by taking an item from the store, less than \$100 worth of merchandise, he or she could be facing a Class C misdemeanor charge for theft in the third degree, which would not trigger ORS 137.717 or be considered a prior property offense to increase the presumptive sentence required by ORS 137.717. But if an individual committed return fraud for that same amount, he or she would be facing a Class C felony charge of theft in the first degree, which would trigger ORS 137.717 and could be used later to further increase the presumptive sentence required in ORS 137.717.



“Return fraud” is the act of defrauding a retailer by misusing its returns process. It often involves taking items from a store and returning them in order to receive cash or gift cards to the value of the items.

2013

HOUSE BILL 3194 MAKES INEFFECTUAL CHANGES TO ORS 137.717

The state legislature passed House Bill 3194, also known as the Justice Reinvestment Initiative, in 2013. Among a range of moderate sentencing reforms, in an attempt to flat-line prison growth in Oregon, HB 3194 amended ORS 317.717 to reduce the presumptive sentence for robbery in the third degree and identity theft from 24 to 18 months. It should be noted that this change did not reduce the average length of stay in prison for these crimes.³⁴ These changes to ORS 137.717 are due to sunset in 2023.

2013

STATE V. SAVASTANO EXPANDS PROSECUTORIAL DISCRETION IN CHARGING

In *State v. Savastano*, the Oregon Supreme Court considered whether prosecutors are required to adhere to a “coherent, systematic policy in making charging decisions”, in light of constitutional guarantees of equal application of the law.³⁵ It noted the Court of Appeal’s finding that “the way in which multiple theft transactions are aggregated into a smaller number of criminal charges is of constitutional magnitude because of a defendant’s possible burden to defend against ‘a multitude of minor charges’ and because of the range of possible penalties that could accompany different charging decisions.”³⁶

Despite this, the Supreme Court determined that the Oregon constitution “does not require consistent adherence to a set of standards or a coherent, systematic policy.”³⁷ In other words, prosecutors may charge defendants as they wish, so long as they can supply “a rational explanation for the differential treatment.”³⁸

“If I represent a person with no previous criminal history who is accused of stealing \$10,000 from his employer, a prosecutor might charge that defendant with a single, serious felony (and thus guarantee a sentence of probation). A different prosecutor might decide to charge that defendant with ten less serious felonies, and then stack those felonies at sentencing to impose a lengthy prison sentence.”

Brook Reinhard, Executive Director of Lane County Public Defender Services, writing for the *Register-Guard* on January 25th, 2017.

2015

STATE V. CUEVAS ENDS NEARLY ALL JUDICIAL DISCRETION IN REPEAT PROPERTY CASES

In *State v. Cuevas*, the Oregon Supreme Court reviewed its 1993 interpretation of the criminal history rule in *State v. Bucholz*. It determined that the criminal history rule required the reconstituting of criminal history - using prior convictions from different criminal episodes, even when sentenced in the same proceeding, to increase a defendant’s criminal history score for subsequent convictions.³⁹ It did not use permissive language as it had in *Bucholz* and thereby ended judicial discretion regarding reconstituting criminal history.

This was a 4-3 decision by the court. The dissent, made up of Justices Walters, Landau, and Brewer, argued for overruling *Bucholz*. Walters, writing for the dissent, argued that the criminal history rule “permit[s] a sentencing court to include, as part of a defendant’s criminal history, only those convictions that preceded the hearing at which a defendant’s ‘current crime or crimes’ are sentenced.”⁴⁰

SENTENCING PROPERTY CRIMES IN OREGON

WHERE DO WE STAND TODAY?

Oregon has a joinder statute, ORS 132.560, which allows the prosecution of multiple allegations, spanning multiple criminal episodes, in one indictment. This allows for the sentencing of multiple criminal episodes or property crimes in the same proceeding.

Oregon has a criminal history rule that requires considering convictions stemming from separate criminal episodes as prior convictions when sentencing subsequent convictions in the same proceeding. This allows defendants, who are being sentenced for the first time for property crimes, to be sentenced under ORS 137.717 as repeat property offenders.

Oregon has a vague identity theft statute that applies equally to those who cause financial harm and to those who cause no financial harm.

Oregon has an interpretation of a theft statute by the Oregon Court of Appeals which converts petty thefts in the form of “return fraud” into felony theft.

Oregon has a broad and punitive mandatory minimum sentencing scheme, Measure 57, for defendants who commit non-violent property crimes.

Oregon has an interpretation of the state constitution by the Oregon Supreme Court that allows prosecutors great discretion to charge defendants as they wish, without a “consistent adherence to a set of standards or coherent systematic policy,” as long as they can offer “a rational explanation for differential treatment.”

Oregon’s criminal laws used with broad discretion by prosecutors to aggressively charge result in mandatory minimum sentencing for non-violent property crimes that applies too widely, is overly punitive, and does little to address root causes of property crime and so does little to deter future crimes.

CONCLUSION

Overcrowding at Coffee Creek Correctional Facility and the \$1.7 billion state budget shortfall create an opportunity for Oregon lawmakers to truly address the long-ignored rising incarceration rates of women in this state and the overly punitive sentencing of property crimes for which many women are incarcerated.

Although legislators could choose to relieve the pressure on CCCF by continuing to rely on incarceration and open a second women's prison, this choice seems shortsighted. It is clear from the data provided by the impartial Criminal Justice Commission that we cannot assume the women's prison population will naturally trend downwards in the coming years. It also seems fiscally irresponsible to commit our state to an ongoing cost of \$18 million per biennium (with likely increases as the years go by) when alternatives to safely and appropriately reduce the incarceration rate exist.

Furthermore, opening a second prison for women would be at odds with everything we have learned throughout the era of mass incarceration - simply locking people up is not an effective response to addiction, poverty, and other social and public health problems.

Legislators should instead confront the incarceration rates of women head-on. Doing so by making small changes to Oregon's criminal laws could be difficult in light of the accumulation of statutes and case law that this report describes. As we have seen, developments in the law over the last three decades have resulted in more severe punishment than in the past. This has helped drive explosive growth in Oregon's women's prison population, which has tripled in the past twenty years.

For legislators who are serious about leveling off or even reversing this trend, the solution is clear. Lawmakers must act to repeal

Measure 57 and directly tackle mandatory minimum sentencing of repeat property offenders, which, as we have seen, is overly broad and overly punitive. Repealing Measure 57 is the surest and swiftest way to make a significant impact on the ever-growing number of women incarcerated in Oregon.

ACKNOWLEDGEMENTS

The framework for this report was developed from a presentation about Measure 57 given by Eric Deitrick at the Women in Prison Conference held by the Oregon Justice Resource Center in Portland, Oregon, on October 16th, 2016.

We also wish to acknowledge the contribution made by law student Sarah Bieri to the research and writing of this report.

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12. "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act which, if committed by an adult, would be punishable as a felony. See OAR

213-003-0001(11).

13. See OAR 213-004-0001 through 213-004-0013.

14. See ORS 137.671; OAR 231-008-0001.

15. See OAR 213-002-0001(3)(d).

16. *State v. Bucholz*, 317 Or 309, 312 (1993).

17-18. *State v. Cuevas*, 358 Or 147, 153 (2015).

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24. ORS 164.043.

25. ORS 164.055.

26. SB 464 (2007).

27. Summary from Ballot Measure 61 (from City Club of Portland's "A City Club Report on Ballot Measures 61 and 57", published in the City Club of Portland Bulletin, Vol. 91, No. 12, Friday, October 10, 2008, p4.)

28. Measure 57 Implementation and Impact, 2011 Briefing Paper, Oregon Criminal Justice Commission. Accessed December 13, 2016, at www.oregon.gov/

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29. Financial Impact Statement, Oregon Secretary of State (from City Club of Portland's "A City Club Report on Ballot Measures 61 and 57" published in the City Club of Portland Bulletin, Vol. 91, No. 12, Friday, October 10, 2008, p.9.).

30. Measures 57 and 61 Revisited, by David Rogers, Partnership for Safety and Justice, Justice Matters Spring 2009.

31. ORS 137.717(5).

32. ORS 161.605 Maximum prison term for felonies. The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

1. For a Class A felony, 20 years
2. For a Class B felony, 10 years
3. For a Class C felony, 5 years
4. For an unclassified felony as provided in the statute defining the crime. [1971 c.743 §74].

Note: prison terms can be sentenced consecutively.

33. If the value is under \$100, the theft is a Class C misdemeanor. [ORS 164.043.] If the value is \$100-\$999, the theft is a Class A misdemeanor. [ORS 164.045.] If the value is \$1000 or more, the theft is a Class C felony. [ORS 164.055.]

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37-38. *State v. Savastano*, 354 Or 64, 69 (en banc) (2013).

39. *State v. Cuevas*, 358 Or 147, 164-165 (2015).

40. *State v. Cuevas*, 358 Or 147, 168 (2015).