

A PORTFOLIO OF CRIMINAL JUSTICE REFORM WORK
FOCUSED ON CLEMENCY AND SENATE BILL 819

by

TAMIR EISENBACH-BUDNER

A THESIS

Presented to the Department of Planning, Public Policy, and Management
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Science

May 2023

An Abstract of the Thesis of

Tamir Eisenbach-Budner for the degree of Bachelor of Science
in the Department of Planning, Public Policy, and Management to be taken June 2023

Title: A Portfolio of Criminal Justice Reform Work Focused on Clemency and Senate Bill 819

Approved: *Laura Leete, Ph.D.*
Primary Thesis Advisor

Due to the expansion of tough-on-crime policies such as Measure 11, Oregon’s incarceration rate has more than doubled since 1995. However, deeper understanding has emerged of the neuroscience, and profound potential for rehabilitation, of young offenders; the corrosive, lifelong impacts of criminal legal involvement; and the racism and dysfunction that pervades the criminal legal system. Additionally, many are rethinking the retributive model of criminal justice in favor of rehabilitation and restoration. Reevaluation of past criminal convictions and sentences that takes these developments into account is crucial. Two mechanisms for such reevaluation within Oregon are the governor’s clemency power and Senate Bill 819, which allows district attorneys and defendants to jointly move for a reduction in the defendant’s sentence. This thesis presents a portfolio of my work with Lewis and Clark Law School’s Criminal Justice Reform Clinic in these areas. I have created writing guides for pardon and commutation clemency petitions; provided constructive, in-depth feedback on sixty-one such petitions submitted by incarcerated people; authored a pardon petition that was personally granted by Governor Brown in June 2021; and authored two Senate Bill 819 petitions that are currently under review. My aim in this work is to make a tangible impact on the lives of the Clinic’s clients and support the broader criminal justice reform movement within Oregon.

Acknowledgements

I wish to express my profound gratitude to several people whose support, guidance, and inspiration I never could have completed this thesis project without.

Firstly, I would like to thank my primary thesis advisor, Dr. Laura Leete, for readily agreeing to jump aboard this unconventional thesis project with me, providing invaluable insights and feedback, and challenging me with thought-provoking questions.

I would also like to thank my Clark Honors College representative, Dr. Anita Chari, for your support and encouragement throughout this process, as well as your inspiring work in prisons as an Inside-Out professor.

I am profoundly grateful for my supervisor at the Criminal Justice Reform Clinic, Aliza Kaplan. Since accepting me into the Criminal Justice Reform Clinic three years ago, you have provided unending support, mentorship, and flexibility, as well as unparalleled legal work opportunities. Thank you for showing me what a true advocate for justice looks like.

I am deeply grateful to my family, who have provided unconditional love and support, not to mention patience every time I had to send “just one more email.”

Finally, I owe the biggest thanks to the Criminal Justice Reform Clinic clients who entrusted me with their legal petitions. Thank you for sharing with me your most vulnerable life experiences; for your faith in me and your patience with me; and for opening my eyes to the resiliency, courage, and beauty of the human spirit. None of this would have been possible without you.

Table of Contents

Background on the Criminal Legal System in Oregon	5
Mass Incarceration in Oregon	5
The Cost of Mass Incarceration	5
How Did We Get Here?	8
What Has Become Clear Since	9
Need for Mechanisms to Reevaluate Past Convictions and Sentences	12
Mechanisms to Reevaluate Past Convictions and Sentences	14
Executive Clemency	14
Senate Bill 819	17
Description of My Work	19
Overview	19
Constructive, In-Depth Feedback on 61 Clemency Petitions	19
Writing Guides for Clemency Commutation and Pardon Petitions	20
Clemency Pardon Petition for Henry	20
2 Senate Bill 819 Petitions	21
Conclusion	22
Bibliography	23

Background on the Criminal Legal System in Oregon

Mass Incarceration in Oregon

Henry Williams¹ is a loving father, hard-working employee of a public health organization, and devoted community member. He has served on the planning committee of the Black Male Achievement Initiative, helped compile resource lists for women in poverty, and organized no-cost expungement clinics for members of his community. And yet, until 2021, because of a crime he committed in self-defense over two decades ago, he was barred from volunteering in his daughter's school, moving to a comfortable apartment, and advancing professionally.

Henry was one among hundreds of thousands of people impacted by Oregon's swollen criminal legal system. Between 1995 and 2018, the number of people imprisoned within Oregon surged from 6,000 to 15,000 - an incarceration rate more than five times that of most European Union countries (*Kaplan 1322*). This does not include the roughly 7,000 Oregonians in jail, 24,000 on parole, 36,000 on probation (*Oregon 2019*), and hundreds of thousands who have felony records (*Shannon*). Particularly impacted are Oregon's youth, who are incarcerated at the fourth highest rate in the country (*States*).

The Cost of Mass Incarceration

Crimes often cause terrible harm to people and communities. When someone poses a danger to others, it may be necessary to segregate them, restrict their behavior, and/or mandate the disclosure of their criminal history in certain circumstances. However, neither the severity nor lifespan of these measures should exceed what is necessary for the preservation of public safety. Because these measures also have untold costs.

¹ Henry's real name has been changed to protect his privacy.

The penal system often inflicts severe physical and psychological harm upon the people inside it. While incarcerated, an estimated 35% of males and 24% of females endure physical violence (*Widra*). Nearly all incarcerated people personally witness it (*Widra*). Last year, after people incarcerated within the Federal Correctional Institution in Sheridan, Oregon sued over prison conditions, they were reportedly “beaten, bloodied, intimidated, and in at least one case rendered unconscious and removed on a stretcher” by correctional officers acting in retaliation; “I could hear his screams from across the unit,” one witness wrote (*Court Filing*). Such exposure to violence is one of many aspects of prison life that the World Health Organization deems damaging to mental health, including overcrowding, lack of meaningful activity, and isolation from social networks (*World Health Organization*). One of the worst aspects is solitary confinement, which the United Nations describes as torture when used in excess of 15 days (*Solitary Confinement Should be Banned*); this does not stop the Oregon Department of Corrections from using it for up to 180 consecutive days (*Solitary Confinement*). Prisons are also fertile ground for infectious diseases such as hepatitis, HIV, and tuberculosis (*Incarceration and Health*); in 2020, the rate of Covid-19 infection was 10 times higher inside Oregon prisons than outside (*Green*). And yet, amidst this confluence of consequences for physical and mental health, prison healthcare providers in Oregon routinely fail to provide adequate care for chronic illnesses, medical emergencies, and mental health issues (*ACLU of Oregon 3*). This harrowing environment can hinder rehabilitation (*Nurse*) and leave lasting psychological harm akin to PTSD (*Liem*).

Given the often brutal conditions of incarceration, it is easy to overlook the invisible punishment that succeeds it. Due to felony convictions, an estimated 8% of American adults, and 33% of Black male adults (*Shannon*), suffer permanent legal discrimination in housing,

employment, professional licensing, education, travel, and in some states, voting and public benefits (*ABA Criminal 4*). They also face significant social stigma. These collateral consequences make it extremely difficult for individuals to successfully reintegrate into society and provide for themselves and their families after incarceration (*Oregon Council on Civil Rights 34*). One experimental audit revealed that a criminal record slashes employer callbacks by 50% for white job applicants and by 64% for Black job applicants (*Pager 958*). These barriers reportedly cause intense feelings of discouragement, depression, and stress among people with felony records. They could also hardly be better designed to produce recidivism (*Tuttle*). Those branded with a felony conviction thus join the ranks of a large segment of the population, composed disproportionately of poor people of color, subject to legalized discrimination and exclusion for life, that has been described as “America’s new undercaste” (*Alexander 12*).

However, defendants do not suffer alone. At least 68,000 Oregonian children have an incarcerated parent (*Kaplan 1327*). These children are far more likely than others to enter the foster care system (*Child Welfare*), face food insecurity, struggle in school, become homeless, and interact with the criminal legal system themselves (*Kaplan 1327*). Depending on the relationship, separating a child from their family can also cause mental health issues including severe anxiety, depression, PTSD, and toxic stress (*American Bar Association 6*). And, as explained above, even after a parent returns from incarceration, their criminal record greatly reduces their ability to support their family and participate in their children’s lives. Barred from volunteering in his daughter’s school, Henry yearned “to show up and be in class with [his] kid, bonding with them throughout the whole process, showing them they should focus on school and that they can succeed at it.” His wish reflects what is often the primary reason people seek early

release or erasure of their criminal record: to alleviate the suffering that their conviction inflicts upon their loved ones (*Kaplan 1327*).

Finally, mass incarceration costs us all. The Oregon Department of Corrections spends \$51,417 on each incarcerated person per year (*Issue Brief*). This adds up to more than one million dollars over the course of twenty years. For comparison, the average salary of a public school teacher in Oregon is only slightly higher at \$56,000 (*Public School*). According to Aliza Kaplan, the director of the Criminal Justice Reform Clinic, costs in Oregon “are currently so high that prison housing takes funding away from other pressing areas of need for Oregonian citizens—such as education or crime prevention programs” (*Kaplan 1324*).

How Did We Get Here?

In the 1990’s, rising crime rates, amplified by sensationalized media coverage, filled Americans with panic (*Bogert*). Prominent criminologists (*Haberman*) and politicians (*1996: Hillary Clinton*) trumpeted an impending surge of so-called superpredators: “radically impulsive, brutally remorseless” “elementary school youngsters who pack guns instead of lunches” and “have absolutely no respect for human life” (*Stevenson 159*). These fears generated a wave of tough-on-crime policies that favored retribution over rehabilitation, including automatic adult prosecution of youth, lengthy drug sentences, 3-strike laws, mandatory minimum laws, and determinate sentencing laws.

Oregon was no exception. In 1994, Oregonians voted in favor of Ballot Measure 11, also known as “One Strike You’re Out” (*Measure 11*). The law established lengthy mandatory minimum sentences, mandated waiver of youth fifteen years or older into the adult system, and prohibited sentence reductions for demonstrated rehabilitation, for a variety of person-on-person crimes (*Criminal Justice Commission 1*). The hyperpunitive sentiment of the time was reflected

in the arguments by the bill's sponsors that rehabilitation and probation "flat out doesn't work," and that "we MUST imprison all violent and repeat offenders and keep them locked up for a substantial amount of time" (*Kaplan 1315*). As of 2010, Oregon's Criminal Justice Commission estimated that an additional 2,875 people filled Oregon's prisons due to Measure 11 alone (*Criminal Justice Commission 35*).

What Has Become Clear Since:

In the intervening years, the superpredator theory was universally debunked (*National Library*). It was even recanted by its originator, John Dilulio, who joined dozens of experts in writing to the Supreme Court that it had been a "baseless" "myth" that "threw thousands of children into an ill-suited and excessive punishment regime" (*Amicus Brief 8*). Ironically, these punishment regimes likely did the opposite of reducing crime. According to a report by the Surgeon General, due to a lack of age-appropriate social support and a tougher environment, "youths transferred to adult criminal court have significantly higher rates of reoffending and a greater likelihood of committing subsequent felonies than youths who remain in the juvenile justice system" (*National Library*). They also suffer dramatically higher rates of physical abuse, sexual abuse, and suicide (*National Library*).

What is true is that, due to undeveloped prefrontal cortexes, adolescents differ from adults in three key ways. They have "less capacity for self-regulation in emotionally charged contexts," "a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives," and "less ability than adults to make judgments and decisions that require future orientation" (*Reforming*). This means that adolescents are fundamentally less culpable than adults - a fact the Supreme Court has affirmed in multiple rulings over the last two decades (*Tyler*). It also means that, as their brains develop, adolescents become uniquely capable of

rehabilitation. Fortunately, the Oregon legislature amended many elements of Measure 11 with the passage of Senate Bill 1008 in 2019 (*Multnomah County*). However, the bill did not retroactively correct the sentences of youth sentenced between 1994 and 2019.

A deeper understanding has also emerged of the disparate application and impact of the criminal legal system on communities of color. Black Oregonians are arrested, killed by police (*Sinyangwe*), and incarcerated (*Vera*) at a rate four times higher than their white counterparts. As of 2012, Black Oregonian youth were convicted of Measure 11 crimes at a staggering rate of 17 times higher than their white counterparts (*Oregon Council 1*). Some of this disparity can be attributed to higher violent crime rates within marginalized and under-resourced communities (*Household poverty 1*). However, according to the Vera Institute of Justice, “Studies have found that Black people are more likely to be stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people—even when controlling for things like offense severity.” Racial bias has been well-documented in law enforcement (*Pierson*). Moreover, even seemingly color-blind policies often disproportionately impact people of color. For instance, the Portland Police Bureau acknowledges that because “African-American residents in Portland are more likely to live in neighborhoods with higher calls for police service and crime,” they face “a greater risk for being stopped and searched” (*Portland Police 3*). This further perpetuates the inflation of crime rates, presence of law enforcement, and criminalization of residents within those areas relative to others. It is likely for these reasons that in 2015, Oregon’s Criminal Justice Commission revealed that Black Oregonians were convicted of felony drug possession at double the rate of white Oregonians, despite comparable rates of drug use across races (*Crombie*). Another report by the Portland Police Bureau found that police officers requested to search Black drivers they pulled over at a rate 2.7 times higher than they did white

drivers, despite a greater likelihood of finding contraband on white drivers (*Levinson*). Even Oregon's Department of Corrections admits that "Oregon's prison population is reflective of systemic racism" (*Oregon Department 15*). This should come as no surprise. From Black exclusion laws established at Oregon's founding (*Black Exclusion*) to Oregon's almost lone refusal to halt non-unanimous jury convictions designed to reduce minority decision-making power until the practice was ruled unconstitutional in 2020 (*Supreme Court 1*), racism has always pervaded Oregon's criminal legal system. And it still does today.

Oregon's criminal legal system does not just fail defendants of color, however. According to a 2022 report by the American Bar Association, Oregon's Public Defense system has just 31% of the attorneys it needs to adequately manage its current caseload (*ABA The Oregon Project 5*). A 2019 report commissioned by Oregon's legislature found that Oregon's public defense system was essentially unconstitutional (*Sixth Amendment Center*). Oregon's public defenders are forced to "either triage, focusing on a select group of clients at the expense of the others, or [to] spend less time than they should on every client's case," making it difficult to "conduct full investigations, consult experts when appropriate, [and] adequately prepare motions and arguments," and creating "a heightened risk of error" (*ABA The Oregon Project 3*). It is no wonder then that defendants indicted for Measure 11 crimes who can afford a private attorney are 25% less likely to be convicted of a Measure 11 crime than their counterparts who rely on Oregon's public defense system (*Criminal Justice Commission xi*).

Most importantly, the foundational assumption upon which mass incarceration rests -- that tough-on-crime policies reduce crime -- is turning out to be hollow. According to a report by the National Academy of Sciences, incarceration rates and crime rates have proceeded largely unaffected by one another over the past four decades (*Travis 3*). An empirical analysis by the

Brennan Center for Justice estimates that increased incarceration played at most a 25% role in reducing crime rates through the 1990's and has had essentially no impact on crime rates since then (*Eisen*). Rather, the decrease in crime was likely caused by a combination of demographic and economic trends, as well as changes in policing (*Stemen 2*). Incarceration's limited role can be attributed to its diminishing marginal impact on crime, as filling each additional cell requires expanding the pool of prisoners to ever less serious offenders, all else equal (*Stemen 2*).

Additionally, for all but the most dangerous of offenders, lengthy sentences do little to reduce crime through either deterrence or incapacitation (*Travis 155*). Likely for these reasons, researchers have been able to find “no discernible pattern between the number of young people charged with a Measure 11 offense and the juvenile crime rate” in Oregon (*Partnership for Safety 4*). These findings paint a picture of a regime that comes at massive cost to incarcerated people, their families, and American taxpayers, while providing far less than it purports to.

Moving forward, one would hope for a transformed legal system that moves beyond retribution in favor of fairness, rehabilitation, restoration, public safety, and human dignity, along with strengthened anti-poverty social policy that prevents crime in the first place. After all, “the safest communities are not the ones with the most police, prisons, or electronic monitors, but the ones with quality schools, health care, housing, plentiful jobs, and strong social networks that allow families not merely to survive but to thrive” (*Alexander 15*).

Need for Mechanisms to Reevaluate Past Convictions and Sentences

Today, many extraordinary, remorseful, and rehabilitated Oregonians, who have done everything possible to take accountability and who yearn to contribute to their families and communities, suffer behind bars or under the weight of felony records for crimes they committed decades ago when their characters were unformed and their adolescent brains undeveloped. I

believe our legal system must provide accessible avenues for such individuals to demonstrate that their sentences or convictions were either unjust from the beginning, or no longer serve justice today. This thesis will focus on two mechanisms for such reevaluation within Oregon: executive clemency and Senate Bill 819.

Mechanisms to Reevaluate Past Convictions and Sentences

Executive Clemency:

Oregon's Constitution gives the governor the unilateral power "to grant reprieves, commutations, and pardons, after conviction, for all offences [sic] except treason, subject to such regulations as may be provided by law" (*Oregon Constitution*). A clemency commutation cuts short a person's prison sentence. A clemency pardon forgives a person for a crime and removes it from their record. The governor thus often becomes the last hope in cases involving extraordinary rehabilitation, mitigating factors, or injustice that would otherwise receive no recognition within the legal system.

Petitioners seeking clemency usually must submit an exhaustive account of their life including their upbringing, the events that led to their crime, their process of rehabilitation, how they have taken accountability for their crime, their family and community involvement, their educational and professional accomplishments, their hopes and plans for the future, and the reasons they are seeking clemency. Petitions also often include dozens of letters of support, legal documents, and photos. Successful petitions usually run between 50 and 100 pages.

Clemency is typically reserved for only the most extraordinary of circumstances. Between 1995 and 2015, Oregon governors granted an average of just three commutations and one pardon each year (*Kaplan 1316*). Initially, Governor Brown followed the same trend. Between 2015 and 2018, she granted just four pardons and three commutations in total (*Kaplan 1317*).

However, around 2020 Governor Brown's position on clemency shifted. Citing Aliza Kaplan as particularly influential in the development of her thinking, she came to see clemency as an "incredibly useful tool to correct injustices" and "an opportunity to save lives" (*Crombie*).

By her last day as governor on January 9, 2023, Brown had commuted a total of 104 individual sentences and granted 130 pardons (*Crombie*). She employed clemency especially to redress systemic racism within the legal system; 44% of her pardon recipients, and 37% of her commutation recipients, were Black (*Chung*). Following in the footsteps of presidents who pardoned draft dodgers and drug law violators en masse (*Kaplan 1293*), she also employed clemency as a broader policy tool. In 2020, she commuted the prison sentences of about 1,000 non-violent incarcerated people at severe risk for COVID-19. In 2021, she commuted the sentences of 73 incarcerated people convicted as juveniles to allow them to apply for parole. In 2022, she pardoned 47,274 Oregonians for marijuana possession charges. She also forgave \$1.8 million in unpaid traffic violation court fees that were preventing 7,000 Oregonians from driving. Finally, she commuted the sentences of all 17 Oregonians on death row to life without parole (*Crombie*).

These decisions have not gone unchallenged. Despite Governor Brown's commitment to seeking out and considering the input of crime victims in her clemency decisions (*Brown 4*), many crime victims feel disregarded. After all, many individual clemency recipients committed serious, violent crimes, and even decades later, the harm caused by those crimes often remains unhealed. Rosemary Brewer, the executive director of the Oregon Crime Victims Law Center, says "I don't understand how [Governor Brown] can't have any awareness of what's going on for [crime victims], the amount of trauma they have suffered... She's not just governor of inmates. She represents all of us" (*Crombie*). In 2020, a group of district attorneys and crime victims sued the governor over her clemency actions. However, The Oregon Court of Appeals upheld their legality. "Whenever [clemency] has been used," the court wrote, "it has been lauded by some, and condemned by others... Hurt – no matter how sympathetic – does not translate to

authority to challenge and displace commutations that accord with the constitutional powers afforded the Governor” (*Haas*).

A governor considering granting clemency should always take the preferences and needs of crime victims into account. However, crime victims are but one stakeholder among many, including the person requesting clemency, the wider community, and the State. No matter how much a person has changed since they committed a crime, it is unrealistic to expect the victims of that crime, who have not personally witnessed that change and whose last interaction with the person was likely in a courtroom decades earlier, to see them as anything other than a wrongdoer. The governor, on the other hand, has the responsibility to evaluate such situations holistically. And Governor Brown did not grant commutations uncarefully; in her final year, she granted only 2.5% of all commutation requests (*Brown I*). She reports:

These thoughtful and measured clemency actions—which required months of information gathering and deliberation—have a net positive impact on public safety. Communities are safer and better off with these individuals, who have demonstrated accountability and reformation, reentering society from prison and having the opportunity to become positive, contributing members of their communities (or having their conviction removed altogether, in the case of the pardons described below). Many of the individuals who I have granted clemency to are actively working to reduce crime and recidivism by mentoring at-risk and gang-impacted youth, providing drug and alcohol treatment services, volunteering their time in the community, assisting in the provision of mental and behavioral health services, engaging in restorative justice, and lifting the voices of marginalized, traumatized, and over-incarcerated people of color across the state. Even before their releases, these amazing men and women inspired others in custody to transform their lives and now, after their releases, are helping many more avoid a path that leads to incarceration (*Brown 5*).

U.S. Supreme Court Justice Holmes explains that clemency “is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme” (*Kaplan 1291*).

Governor Brown has used her clemency power exactly as it was constitutionally intended: to remedy injustice at both the individual and large-scale level.

Senate Bill 819:

In 2021, the Oregon State Legislature passed Senate Bill (SB) 819. The law establishes a procedure by which a person convicted of a felony (other than aggravated murder) may request that the district attorney of the county in which they were sentenced join them in a motion for legal relief which goes to the sentencing court. The sentencing court may then grant the requested relief if it determines that the original sentence or conviction “no longer advances the interests of justice” (*Senate Bill 819*). The law also requires notification, opportunities for involvement, and support of crime victims throughout the process.

Like clemency, SB 819 relief may include removal of the conviction from the person’s record or a reduction of their sentence in some way. Also like clemency, people petitioning for SB 819 relief must generally make the case for how they have changed since committing the crime and why reconsideration of their case is warranted.

SB 819 was championed by the Criminal Justice Reform Clinic. The Clinic drew inspiration from similar laws in Washington and California. Since then, Illinois and Louisiana have also added prosecutor-initiated resentencing laws (*Nadel*).

Because SB 819 is so new, there is little information about how it has been applied (*Levinson*). SB 819 relief has likely been granted in a couple dozen cases around Oregon thus far. Hundreds of SB 819 applications are likely sitting in district attorney’s offices awaiting review.

Clemency actions by governors are often criticized for tampering post facto with the legal outcome determined by the criminal legal system. SB 819 actions, on the other hand, are immune to such critiques because rather than an outside party making the decision to grant relief, it is the very person who has been elected within a county to preserve public safety and hold offenders

accountable. If the district attorney herself believes that a conviction or sentence that her office secured no longer advances the interests of justice, it is difficult to argue.

One such district attorney is Multnomah County's district attorney, Mike Schmidt. He recognizes that prosecutors do not always get it right the first time, or that circumstances may change. "It's almost like a release valve," Schmidt says. "You can't be perfect predictors of the future, but now we can look backwards, if we're willing to, and say, 'Hey, maybe we can change that.'" (*Levinson*).

Of course, not all district attorneys around Oregon will embrace the law as warmly as Schmidt. Each district attorney's office has complete discretion. While the Multnomah County DA's office has already approved numerous SB 819 petitions, tough-on-crime district attorneys elsewhere in the state may never consider a single one. Even if it does not reach all counties, however, SB 819 still has the power to reduce the burden of mass incarceration on individuals and the state. Additionally, less receptive District Attorney's may change their minds or be replaced by more receptive ones in the future.

SB 819 provides a promising new avenue for people to seek reconsideration of their sentences or convictions. And, in receptive counties, SB relief is much more accessible than clemency relief, which is typically reserved for only the most extraordinary of circumstances.

Description of My Work:

Overview:

I have interned for the Criminal Justice Reform Clinic (CJRC) since the summer of 2020. Operating out of the Lewis and Clark Law School, the CJRC advances criminal justice reform in Oregon through case work, research, and legislative advocacy. Some of its focus areas include clemency, parole, access to courts for incarcerated youth, and forensic science in criminal cases. This portfolio presents the subset of my CJRC work that is focused on clemency and SB 819.

Constructive, In-Depth Feedback on 61 Clemency Petitions:

Because the CJRC can only represent a small number of people, we offered to review people's clemency petition drafts and send them feedback. Almost all the petitions we received were from incarcerated people seeking commutations. Their drafts ranged from a couple pages to a couple hundred pages. Over the course of several months, I reviewed 61 petitions and then provided each person with a response letter containing constructive, in-depth feedback on every element of their petition that could be strengthened. My feedback ranged from small grammatical corrections to overarching feedback about how to strike the right balance between taking responsibility for one's actions and contextualizing those actions. In January, I was overjoyed to learn that one of the petitioners whom I had worked most extensively with -- whose petition I had helped guide from its skeletal stages to its final form -- was granted a commutation by Governor Brown. He had been sentenced to life in prison without the possibility of parole; now he will be eligible for parole after serving 25 years, which will be in 2031.

Writing Guides for Clemency Commutation and Pardon Petitions:

The most common feedback I gave while reviewing clemency petitions was to provide more detail. High-quality clemency petitions resemble autobiographies. However, the official clemency application provided by the governor's office indicated no such thing. It consisted of a form and a dozen short questions that, if answered straightforwardly, would in my opinion fail to produce a petition of high enough quality for consideration. I became frustrated by the number of highly worthy clemency candidates who did not have the information they needed about how to write their clemency petitions. I requested permission from my supervisor to create comprehensive writing guides for pardon and commutation petitions, to be distributed in prisons. The CJRC shared the guides that I wrote with dozens of incarcerated people and used them to train new law student clinic members.

Clemency Pardon Petition for Henry:

I was assigned to author a clemency pardon petition for Henry. Over several months, I interviewed him about his life and wrote up his story. I also collected dozens of letters of support, legal documents, and photos. The CJRC submitted his 62-page clemency petition to Governor Brown in January 2021. In July 2021, Henry received a life-changing call. His petition was one of just five pardons that Governor Brown granted between June 2021 and March 2022, out of 89 total applications. Governor Brown wrote:

Since his conviction and discharge from post-prison supervision, [Mr. Williams] has been a law-abiding citizen, has been a valuable member of his community, and has served as a responsible member of society. Notably, he has maintained his sobriety, has volunteered his time and participated in public service to our State in a time of immense crisis, is beloved in his community, and is now serving some of our most vulnerable populations with an abiding dedication to racial justice and equity. The [District Attorney's office of the county in which Mr. Williams was convicted] did not object to [Mr. William's] request for a pardon. I concluded that [Mr. Williams] should be pardoned of the abovementioned crime,

thereby restoring him to all of the rights and privileges heretofore enjoyed by him under the laws of this State.

When Henry heard the news, his first thought was of his six-year old daughter. He recalls, “That was the first thing that came to my brain. I'm going to be able to go into our school. I can go to parent teacher meetings. I'll be able to go to the soccer games, not thinking that somebody's looking at me in a different way.”

After Henry was granted a pardon, he joined the CJRC's Black Oregonian Pardon Project as a community ambassador. He brought in dozens of his community members for the CJRC to assist, several of whom went on to receive pardons as well.

Henry's life story illuminated for me how difficult it can be, even for people with every positive quality imaginable, to escape the circumstances into which they are born – and at the same time, the immense power each of us has to make a positive impact on others, no matter what our circumstances are. I am thankful to have been added to an ever-growing, hundreds-long list of people whose lives Henry has changed.

2 Senate Bill 819 Petitions:

In Fall 2022, I was assigned two SB 819 cases. They were “collateral consequences” cases, meaning that both clients had completed their sentences but were being held back in life by their felony records. Both had committed Measure 11 crimes in their youth. I repeated the process of interviewing them, writing up their stories, and collecting photos, letters of support, and legal documents. Both SB 819 petitions are now under review by the district attorney's office responsible.

Conclusion:

In 2018, as Henry glided around the room at one of the expungement clinics he helped organize, assisting people with their forms, handing out snacks, and listening to their excitement about what they could now accomplish, he felt like the whole room was brimming with light. However, a man came up to Henry to apologize. He admitted that he had been the person who had killed Henry's closest step-brother in a gang shooting when they were all teenagers. At the time, Henry had been so enraged by it that he would have reacted to the information in a terrible way. But on that night in 2018, they hugged. Henry understood better than anyone how their neighborhood played a part in destroying young men's lives, and the importance of moving on from the past in order to focus on the future. Oregon's criminal legal system should recognize this as well, and I hope that my work helps it do so in at least a few cases.

Bibliography

- “1996: Hillary Clinton on ‘Superpredators’ (C-SPAN).” YouTube, C-SPAN, 25 Feb. 2016, https://www.youtube.com/watch?v=j0uCrA7ePno&t=2s&ab_channel=C-SPAN.
- ACLU of Oregon, et al. Brief Of Amicus Curiae Disability Rights Oregon, Lewis & Clark Law School’s Criminal Justice Reform Clinic, And American Civil Liberties Union Of Oregon In Support Of Plaintiff-Appellant Andrew Abraham, https://www.aclu-or.org/sites/default/files/field_documents/abraham_v._corizon_amicus_curiae.pdf.
- Alexander, Michelle, and Cornel West. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2020.
- American Bar Association Criminal Justice Section, *Collateral Consequences of Criminal Convictions Judicial Bench Book*, <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf>.
- American Bar Association, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-or-proj-rept.pdf.
- American Bar Association, *Trauma Caused by Separation of Children from Parents*, https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf.
- Amicus Brief on Superpredators, <https://eji.org/wp-content/uploads/2019/11/miller-amicus-jeffrey-fagan.pdf>.
- “Black Exclusion Laws in Oregon .” *The Oregon Encyclopedia*, https://www.oregonencyclopedia.org/articles/exclusion_laws/.
- Bogert, Carroll, and Lynnell Hancock. *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, The Marshall Project, 20 Nov. 2020, www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth.
- Brown, Katherine. Oregon Governor, 2023, 1.9.23 Clemency Letter, <https://s3.documentcloud.org/documents/23572389/010923-governors-executive-clemency-report.pdf>.
- “Child Welfare Services to Children and Families of Prisoners.” *Children of Incarcerated Parents*, Youth.gov, <https://youth.gov/youth-topics/children-of-incarcerated-parents/child-welfare-services-children-and-families-prisoners>.
- Chung, Sandy. “Governor Brown's Historic Clemency Actions Provide Hopeful Lesson.” *ACLU of Oregon*, 12 Jan. 2023, <https://www.aclu-or.org/en/news/governor-browns-historic-clemency-actions-provide-hopeful-lesson>.

“Court Filing Cites Inmates' Abuse at Sheridan Federal Prison.” US News, Associated Press, <https://www.usnews.com/news/best-states/oregon/articles/2022-08-02/court-filing-cites-inmates-abuse-at-sheridan-federal-prison>.

Criminal Justice Commission State of Oregon, Longitudinal Study of the Application of Measure 11 and Mandatory Minimums in Oregon, https://www.jrsa.org/awards/winners/11_Oregon_Measure_11_Analysis_Final.pdf.

Crombie, Noelle. “Gov. Kate Brown Ends Term with Flurry of Commutations, Pardons; Calls Clemency a Chance 'to Save Lives'.” OregonLive, The Oregonian, 15 Jan. 2023, <https://www.oregonlive.com/politics/2023/01/gov-kate-brown-ends-term-with-flurry-of-commutations-pardons-calls-clemency-a-chance-to-save-lives.html>.

Crombie, Noelle. “Racial, Ethnic Disparities Emerge in Oregon's Conviction Rate for Drug Possession.” OregonLive, The Oregonian, 15 Dec. 2016, https://www.oregonlive.com/politics/2016/12/stark_racial_disparities_emerg.html.

Eisen, Lauren-Brooke, et al. “What Caused the Crime Decline?” Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline>.

Green, Aimee. “Covid-19 Is 10 Times Higher in Oregon Prisons than in Rest of State, Stoking Widespread Fear among Inmates.” Oregon Live, The Oregonian, 27 Oct. 2020, <https://www.oregonlive.com/news/2020/10/covid-19-is-10-times-higher-in-oregon-prisons-than-in-rest-of-state-stoking-widespread-fear-among-inmates.html>.

Haas, Ryan. “Oregon Appeals Court Sides with Gov. Brown in Emotional Fight over Early Prison Releases.” Oregon Public Broadcasting, 10 Aug. 2022, <https://www.opb.org/article/2022/08/10/oregon-appeals-court-sides-with-gov-brown-in-emotional-fight-over-early-prison-releases/>.

Haberman, Clyde. “When Youth Violence Spurred 'Superpredator' Fear.” The New York Times, The New York Times, 6 Apr. 2014, <https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html>.

“Household Poverty and Nonfatal Violent Victimization, 2008–2012.” *US Department of Justice*, bjs.ojp.gov/content/pub/pdf/hpnavv0812.pdf.

Incarceration and Health: A Family Medicine Perspective. American Academy of Family Physicians, 12 Dec. 2019, <https://www.aafp.org/about/policies/all/incarceration.html>.

Issue Brief Quick Facts. Oregon Department of Corrections, <https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>.

Kaplan, Aliza, and Venetia Mayhew. “The Governor's Clemency Power: An Underused Tool to Mitigate the Impact of Measure 11 in Oregon.” *Lewis & Clark Law Review*, vol. 23, no. 4, <https://law.lclark.edu/live/files/29478-lcb234art4kaplan-mayhewpdfpdf>.

- Levinson, Jonathan. “In Portland, Black Drivers Make up 18% of Traffic Stops, 5.8% of Population.” *Oregon Public Broadcasting*, 27 Nov. 2020, <https://www.opb.org/article/2020/11/27/portland-police-bureau-black-drivers-report/>.
- Levinson, Jonathan. “Multnomah County DA Revisits Past Convictions under Program to Right Previous Wrongs.” *Oregon Public Broadcasting*, 14 Aug. 2022, www.opb.org/article/2022/08/14/multnomah-county-da-revisits-past-convictions-under-program-to-right-previous-wrongs/.
- Liem, Marieke, and Maarten Kunst. “Is There a Recognizable Post-Incarceration Syndrome among Released ‘Lifers’?” *International Journal of Law and Psychiatry*, vol. 36, no. 3-4, 2013, pp. 333–337., <https://doi.org/10.1016/j.ijlp.2013.04.012>.
- Measure 11. Marion County Oregon, <https://web.archive.org/web/20151231160807/https://www.co.marion.or.us/JUV/Pages/measure11.aspx>.
- “Multnomah County Celebrates SB 1008, a Milestone in Juvenile Justice Reform.” Multnomah County, 7 July 2021, <https://www.multco.us/multnomah-county/news/multnomah-county-celebrates-sb-1008-milestone-juvenile-justice-reform>.
- Nadel, Matt, and Charlie Lee. “Prosecutors in These States Can Review Sentences They Deem Extreme. Few Do.” *The Marshall Project*, 11 Nov. 2022, www.themarshallproject.org/2022/11/11/prosecutors-in-these-states-can-review-sentences-they-deem-extreme-few-do-it.
- National Library of Medicine, Youth Violence: A Report of the Surgeon General., <https://www.ncbi.nlm.nih.gov/books/NBK44297/>.
- Nurse, J. “Influence of Environmental Factors on Mental Health within Prisons: Focus Group Study.” *BMJ*, vol. 327, no. 7413, 2003, p. 480., <https://doi.org/10.1136/bmj.327.7413.480>.
- “Oregon 2019.” National Institute of Corrections, The United States Department of Justice, 20 Oct. 2021, <https://nicic.gov/state-statistics/2019/oregon-2019#:~:text=The%20Prison%20System,a%20budget%20of%20%24%E2%80%AD1%2C872%2C870%2C000>.
- “Oregon Constitution.” Oregon State Legislature, https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx.
- Oregon Council on Civil Rights, Youth and Measure 11 in Oregon, https://www.opb.org/pdf/youth_and_measure_11_in_oregon_final_sj4dfx_1526506236812.pdf.

- Oregon Department of Corrections, Assessment of Oregon's Prison Footprint, <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/232889>.
- Pager, Devah. "The Mark of a Criminal Record." *American Journal of Sociology*, vol. 108, no. 5, 2003, pp. 937–975., <https://doi.org/10.1086/374403>.
- Partnership for Safety and Justice & Campaign for Youth Justice, *Misguided Measures: The Outcomes and Impacts of Measure 11 on Oregon's Youth*, https://www.njjn.org/uploads/digital-library/Misguided_Measures_July_2011.pdf.
- Pierson, Emma, et al. "A Large-Scale Analysis of Racial Disparities in Police Stops across the United States." *Nature Human Behaviour*, vol. 4, no. 7, 2020, pp. 736–745., <https://doi.org/10.1038/s41562-020-0858-1>.
- Portland Police Bureau, STOPS Data Collection: The Portland Police Bureau's Response to the Criminal Justice Policy and Research Institute's Recommendations, <https://www.portlandoregon.gov/police/article/481668>.
- "Public School Teacher Salary in Oregon." *Salary.com*, <https://www.salary.com/research/salary/benchmark/public-school-teacher-salary/or>.
- "Reforming Juvenile Justice: A Developmental Approach." *Reforming Juvenile Justice: A Developmental Approach*, The National Academies Press, <https://nap.nationalacademies.org/read/14685/chapter/2>.
- Senate Bill 819. Oregon Legislative Assembly, <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB819/Introduced>.
- Shannon, Sarah K., et al. "The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010." *Demography*, vol. 54, no. 5, 2017, pp. 1795–1818., <https://doi.org/10.1007/s13524-017-0611-1>.
- Sinyangwe, Samuel. "The Police Departments with the Biggest Racial Disparities in Arrests and Killings." *FiveThirtyEight*, *FiveThirtyEight*, 4 Feb. 2021, <https://fivethirtyeight.com/features/the-biden-administration-wants-to-address-racial-bias-in-policing-what-cities-should-it-investigate/>.
- Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services*, https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf.
- "Solitary Confinement Should Be Banned in Most Cases, UN Expert Says | UN News." *UN News*, United Nations, <https://news.un.org/en/story/2011/10/392012>.

- “Solitary Confinement.” Oregon Justice Resource Center, <https://ojrc.info/solitary-confinement#:~:text=Solitary%20confinement%20is%20used%20in%20Oregon%20prisons%20for%20a%20variety,known%20as%20%E2%80%9Cthe%20hole%E2%80%9D>.
- “States with the Lowest Juvenile Incarceration Rates.” *U.S. News*, www.usnews.com/news/best-states/rankings/crime-and-corrections/corrections/juvenile-incarceration. Accessed 15 May 2023.
- Stemen, Don. Vera, The Prison Paradox: More Incarceration Will Not Make Us Safer, https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.
- Stevenson, Bryan. *Just Mercy: A Story of Justice and Redemption*. Scribe, 2021.
- Supreme Court of the United States. *Ramos v. Louisiana*. 20 Apr. 2020.
- Travis, Jeremy, and Bruce Western. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. The National Academies Press, 2014.
- Tuttle, Cody. “Snapping Back: Food Stamp Bans and Criminal Recidivism.” *American Economic Journal: Economic Policy*, vol. 11, no. 2, 2019, pp. 301–27. JSTOR, <https://www.jstor.org/stable/26641373>. Accessed 7 Mar. 2023.
- Tyler, Morgan. *Understanding the Adolescent Brain and Legal Culpability*. American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/.
- Vera, *Incarceration Trends in Oregon*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-oregon.pdf>.
- Widra, Emily. “No Escape: The Trauma of Witnessing Violence in Prison.” *Prison Policy Initiative*, <https://www.prisonpolicy.org/blog/2020/12/02/witnessing-prison-violence/>.
- World Health Organization, *Mental Health and Prisons*, https://static.prisonpolicy.org/scans/mh_in_prison.pdf.