

2007 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: SB 328

STATUS: A-Engrossed

SUBJECT: Juvenile Psychiatric Security Review Board and Developmentally Disabled Youth

GOVERNMENT UNIT AFFECTED: Psychiatric Security Review Board, Department of Human Services, Oregon Youth Authority, Oregon Judicial Department, and Public Defense Services Commission

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DATE: April 17, 2007

EXPENDITURES:	<u>2007-2009</u>	<u>2009-2011</u>
Department of Human Services		
Personal Services – General Fund	\$ 53,682	\$ 61,350
Personal Services – Federal Fund (Medicaid XIX)	\$ 53,361	\$ 60,985
Total Personal Services	\$ 107,043	\$ 122,335
Services and Supplies – General Fund	\$ 15,312	\$ 11,725
Services and Supplies – Federal Fund	\$ 15,222	\$ 11,657
Total Services and Supplies	\$ 30,534	\$ 23,382
Special Payments – General Fund	\$ 1,931,006	\$ 3,955,972
Special Payments – Other Fund	\$ 197,280	\$ 9,360
Special Payments – Federal Fund (Medicaid XIX)	\$ 2,249,857	\$ 4,870,528
Total Special Payments	\$ 4,378,143	\$ 8,835,860
Total General Fund Expenditures	2,000,000	4,029,047
Total Other Fund Expenditures	197,280	9,360
Total Federal Fund Expenditures (Medicaid XIX)	2,318,440	4,943,170
Total All Funds Expenditures	\$ 4,515,720	\$ 8,981,577

REVENUES:	<u>2007-2009</u>	<u>2009-2011</u>
Department of Human Services – Federal Funds (Medicaid XIX)	\$ 2,318,440	\$ 4,029,047
Department of Human Services – Other Funds (proceeds from the former Fairview Facility sale account)	\$ 197,280	\$ 9,360
Total Federal and Other Funds Revenue	\$ 2,515,720	\$ 4,038,407

POSITIONS / FTE:

DHS - Program Technician-2 1/0.88 1/1.00

EFFECTIVE DATE: January 1, 2008

GOVERNOR’S BUDGET: This bill is anticipated by the Governor’s recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: This measure expands the definition of a mental disease or defect to include developmental disability (DD). This provides similar access to the current Juvenile Code's dispositional system for juveniles who successfully assert the defense of "Responsible Except for Insanity (REI)."

Under this measure, Juvenile courts would have the option of placing a DD juvenile under the jurisdiction of the recently established Juvenile Panel of the Psychiatric Security Review Board (PSRB). Additionally, the Juvenile Panel of the PSRB may direct that *any* juvenile (not just DD juveniles) under its jurisdiction be moved to a specific type of facility or direct specific care or supervision if the PSRB determines that after review the current placement of the DD young person in a particular hospital or facility is "...so inappropriate as to create a substantial danger to others..." While juvenile court decides whether the DD juvenile is to be placed in a hospital, other facility, or be conditionally released, the Department of Human Services (DHS) is the agency responsible for designating, placement, and payment of expenses of the DD juvenile in which hospital or other facility a DD juvenile is placed. When DHS considers destination of a hospital or facility for such a commitment, it "...take[s] into account the care and treatment needs of the [DD] young person, the resources of the department and the safety of the public." The PSRB would be required to adopt administrative rules defining the type of dangerous behavior that requires temporary placement in a secure hospital or facility under this measure, after consulting DHS.

Under current law, a DD juvenile is placed by juvenile courts in either: (a) the custody of DHS and child welfare for out of home placement with services being paid for by DHS; (b) placed in the custody of the family for home placement under juvenile court probation; (c) civilly committed to the Oregon State Hospital (i.e., Children's Farm Home, youth forensics facility), or (d) sentenced to the Oregon Youth Authority. The decision by the court on which of these options is directed is based on the DD juveniles (continued) perceived threat to public safety.

Department of Human Services

DHS estimates that the Department will phase-in during the 2007-09 biennium, a total of ten DD juveniles who successfully assert a REI defense. They will be placed in either a secure intensive inpatient facility or other such facility based upon the diagnosis and public safety risk of the DD juvenile. DHS notes, however, that the number of such placements is uncertain and will likely increase over time as courts become more inclined to place such youth under the jurisdiction of the Juvenile Panel of the PSRB rather than any of the other four options outlined above. Of particular note is that the measure does not statutorily limit or cap the number of DD juveniles that the Department must serve so DHS would continue services until individuals "age-out" or reach the age of 18. At that point, they would no longer be under the jurisdiction of the Juvenile PSRB and may or may not be transferred to the jurisdiction of the adult panel of the PSRB. Regardless, DHS would continue to provide services to DD adults in a secure intensive facility in order to assure public safety and prevent further crime.

According to the Department, it is not currently serving these DD juveniles and the children's mental health placement system does not have the capacity to provide the services required by this measure.

The DHS fiscal impact is estimated to be \$4.5 million (0.88 FTE) for 18-months (see note on position cost below) of the 2007-09 biennium and \$9.0 million (1.00 FTE) for 24-months of the 2009-11 biennium. The 2007-09 biennium impact was included in the Governor's recommended budget (with some exception such as Federal Funds) and has been included in the Co-Chairs of the Joint Committee on Ways and Means budget (as of the date of this fiscal impact). Approximately 97% of what DHS

estimates as its fiscal impact would be paid as a special (contract) payment to private or non-profit vendors and to certain counties for county case management services.

For DHS' special payments, the contract payments include: program costs, DD juvenile/DD adult case management, housing, and a local administrative fee of four percent. There are three general categories of such costs as outlined below:

1. Kerr Model – secure community faculty group home(s): Initially nine of the ten DD juveniles would be placed at Kerr at a cost of \$3.4 million for 18-months of the 2007-09 biennium and \$3.8 million for 24-months of the 2009-11 biennium. The average cost per day is estimated to be \$500. These expenditures would be eligible for matching Title XIX Federal Funds at a match rate of approximately 61%. There would also be approximately \$197,280 in Other Funds whose source would be proceeds from the sale of the former Fairview Training facility and which can only be used for housing related expenses. These Other Funds are matched with a similar amount of General Fund. The costs outlined include construction of new residential group homes and retrofitting the existing facility, all at state (and federal) expenses for the 2007-09 biennium. These may be one-time expense (see note below regarding the possible need for additional Kerr group homes).
2. Children's Farm Home [Trillium Corporation] Model: Initially one of the ten DD juveniles would be placed at the Children's Farm Home at a cost of \$234,783 for 18-months of the 2007-09 biennium and \$713,067 for 24-months of the 2009-11 biennium. The average cost per day is estimate to be \$619. These expenditures would be a General Fund expense and *ineligible* for matching Title XIX Federal Funds given it is a secure/locked or closed facility. The one exception is that nominal case management costs could be matched with federal dollars. It is at this facility that DD juveniles with a dual-diagnosis would be sent. The Department has stated that a federal waiver seeking Federal Funds for the Children's Farm Home costs is unlikely to be granted.
3. "Aged-Out" of Juvenile System: As DD juveniles reach the age of 18 they would transition out of one of the aforementioned facilities or similar facilities, and as noted may or may not continue under the jurisdiction of the PSRB, but would remain clients of DHS. The associated costs would be \$746,323 for 18-months of the 2007-09 biennium and \$4.4 million for 24-months of the 2009-11 biennium. The higher 2009-11 costs reflect the cumulative caseload impact as individuals age-out of the juvenile system into adult services. The average cost per day is estimated to be \$317. These expenditures would be eligible for matching Title XIX Federal Funds at a match rate of approximately 61%.

DHS states that the Department would also need direct program administration support. The Department would hire one permanent full-time Program Analyst-2 position, with associated services and supplies, to oversee the program, complete PSRB reporting requirements, and provide DHS staff support for court and PSRB hearings. The associated costs would be \$137,577 (0.88 FTE) for 21-months of the 2007-09 biennium and \$145,717 (1.00 FTE) for 24-months of the 2009-11 biennium, which includes personal service and service and supply costs combined. Please note that the measure does not provide the Department any statutory authority to begin implementing this measure before its January 1, 2008 operative date, although the DHS position has a start date three months prior to that date.

If more than the assumed ten juveniles are directed to a more appropriate facility, then up to three would be sent to the Children's Farm Home on a temporary, contract basis. Upon the fourth court-ordered DD juvenile, DHS reports that it would be more cost-effective to develop another four-person facility at the Kerr campus.

Psychiatric Security Review Board

The Juvenile PSRB may have a fiscal impact depending upon the number of DD young person hearings above what is currently budgeted. If additional hearings are required, the impact would be approximately \$1,000 per hearing for board member per diem and travel expenses and miscellaneous administrative expense. At this time, and based on only ten DD young persons, these costs are thought to be minimal.

Oregon Youth Authority

OYA estimates two DD juveniles a year at its correctional facilities may transition to DHS under this measure. It is unlikely OYA's *budgeted* bed capacity would be reduced as a result of this measure given it is almost certain that beds freed up for juveniles that the courts directed to the Juvenile PSRB under this measure would immediately be filled with other non-DD juvenile offenders.

Public Defense Services Commission

PDSC estimates a minimal fiscal impact based on the assumption that the public defense cost of proceeding under this measure would be approximately the same as proceeding under the existing non-statutory procedure.

Oregon Judicial Department

The Department anticipates a minimal fiscal impact due to the low number of cases affected by this measure.

Legislative Fiscal Office Comments

The Legislative Fiscal Office notes several concerns in regard to this measure's fiscal impact, and believes that it could be underestimated. They are:

1. The actual number of DD juveniles falling under this measure could exceed the ten juveniles estimated for this fiscal impact given the discretion of courts and the indeterminate nature of crime rates among this population, including the recidivism rate;
2. The DHS presumption that nine of the ten DD juveniles will go to the less secure and less expensive Kerr Model versus the Children's Farm Home is noteworthy because if more DD juveniles are sent to the Children's Farm Home then there would be a material increase in the General Fund cost with a corresponding loss of federal matching funds. This concern is reinforced by the authority the measure grants the Juvenile Panel of the PSRB in directing DHS to re-direct Juveniles to more appropriate or secure intensive inpatient facility or other such facility, which presumably would be the Children's Farm Home based on the assumption that the Department's current placement creates a substantial danger to others;
3. The position requested by DHS is budgeted for three months earlier than the effective date of this measure;
4. Lastly, the 2011-13 roll-up costs of this measure is estimated at \$14.6 million, with the most significant of those costs being related to DD adults.

The uncertainty of the number of DD juveniles surrounding this measure suggests that DHS, and perhaps the PSRB, may need to seek a (indeterminate) supplemental General Fund appropriation and perhaps Other and Federal Funds limitation increases during the 2007-09 biennium at a Legislative Emergency Board.

Lastly, this measure currently does not have a subsequent referral to the Joint Committee on Ways and Means. The Legislative Fiscal Office believes this measure warrants such a referral for consideration of this measure's budgetary impact on the State's General Fund beyond the 2007-09 biennia.