



Legislative Testimony

OREGON DEPARTMENT OF CORRECTIONS

April 7, 2015

The Honorable Sara Gelser, Chair
Senate Committee on Human Services and Early Childhood

RE: Senate Bill 739

Chair Gelser and members of the committee, I am Michael Gower, Assistant Director for Operations for the Oregon Department of Corrections (DOC). I am here to testify regarding SB 739, and to answer any questions.

What the Bill Does:

SB 739 mandates specific housing and operational requirements for inmates in DOC custody with serious mental illnesses, including out-of-cell time, therapeutic activity, and conditions for managing inmate behavior. It also establishes a new private right of action in state law for any inmate to sue and maintain an action in state court against DOC to enforce compliance with standards of care established by the bill, to restrain any violation of the standards, and to recover monetary damages from the State alleged to result from a violation of these standards.

Background Information:

Over the past decade, DOC has received an increasing number of individuals with significant mental illness sentenced by the courts to confinement in Oregon's prisons – to the point where the department has become the largest single mental health care provider in the state. Despite resource limitations, DOC believes that it is currently meeting its constitutional and legal mandates to provide necessary medical and mental health care to inmates with serious mental illness who are confined in Oregon's prisons.

In 2003, then Governor Kulongoski appointed the Governor's Mental Health Task Force by Executive Order to address specific issues related to the delivery of mental health services to Oregonians. DOC worked with clinical and community stakeholders on the Managing Mental Illness in Prison Task Force with an eye toward both short-term and long-term planning for the treatment of the mentally ill incarcerated around the state. In the decade since, DOC has implemented many of the Task Force's recommendations, including the creation of specific mental health housing units, instituting the use of "step-down" units to more smoothly transition inmates from crisis back to general population, providing staff training, and updating policy and procedures. The Task Force's recommendations put the department on a glide path toward a purpose-built facility to house both the mentally ill and the medically infirm in Junction City. As such, DOC's current mental health housing configuration is the result of incremental and intermediate temporary steps toward that end goal. Given the passage of sentencing reform in 2013, the Junction City facility will not be needed within the next ten years.

DOC has a long-standing collaborative relationship with Disability Rights Oregon (DRO), the chief proponent of SB 739. DOC and DRO have entered into a Memorandum of Understanding that provides for DRO access to DOC facilities, records, and staff. DOC and DRO are currently working together on a recent review of inmate complaints regarding their care and treatment while housed in the Behavior Health Unit at the Oregon State Penitentiary, and DOC is awaiting DRO's findings.

One of SB 739's chief aims appears directed at restricting DOC's use of "isolated confinement" for inmates with serious mental illnesses. While the department continues to review its policies and practices in this area, and best corrections practices in the field nationally, we believe that the department's use of restrictive housing for inmates with serious mental illness is both measured and appropriate, given resource limitations. Currently, DOC has 1,072 inmates with serious mental illnesses that meet the definition contained in the bill. These inmates are housed within all DOC institutions statewide. Of those inmates who are seriously mentally ill (SMI), 88 percent live in general population housing units. Their illnesses are managed with individual treatment plans and medications that allow them to participate in institution social, educational, treatment, and work activities. About 12 percent, or 125 SMI inmates, live in restricted housing. These individuals are assigned to restricted housing for a variety of reasons, usually as a result of either personal crisis, increased potential for victimization, or demonstrated violence toward others in concert with their illness. BHS staff manage SMI inmates assigned to restrictive housing more intensively, offering therapeutic services and crisis intervention as determined by their treatment plan and behavior.

Over the past decade, DOC has also made improvements in the area of restricted housing. The agency is pleased it was recently selected to participate in the Vera Institute of Justice's Safe Alternatives to Segregation initiative, which is aimed at reducing the use of solitary confinement and other forms of segregated inmate housing. Oregon was one of five states selected after a competitive bidding process.

Impact of the Bill:

The elevated and prescriptive statute changes required by SB 739 will place unprecedented demands on the existing system that could not be implemented without significant resource investment. Delivery of therapeutic care five hours a day, seven days a week; non-structured activity requirements; restrictions on the use of force; and the delays in institution activity for cooling-off periods will significantly increase the numbers of necessary mental health and security staff, and would prove difficult within existing treatment environments. Services to SMI inmates would have to be delivered in evenings and on weekends to meet the increased numbers of hours required by the bill. DOC is already faced with challenges when hiring qualified employees or contractors, it is unknown whether DOC would be able to hire enough qualified employees or contractors to deliver the services that would be required.

In addition to mental health staff, SB 739 would require DOC to hire increased numbers of security staff to escort and manage increased inmate movement for acutely ill SMI inmates who would be out-of-cell for substantially more hours per day attending therapeutic activities or unstructured activities. Some inmates require two or three security staff to escort them when they are out-of-cell to protect the SMI inmate, other inmates, and staff. This is not the case for

medically stable inmates managed in general population, but many of the bill's requirements would also have an impact on their environments.

SB 739 also requires an open-ended cooling off period in the case of an SMI inmate who refuses to comply with staff directives in a non-emergency situation. This requirement would necessitate a stop to all inmate movement within that housing or activity area while mental health staff are called upon to persuade an inmate to comply. This delay prohibits security staff from performing other duties and interferes with the activities and movement of other inmates.

The bill's definition of an emergency, where the most expedient means for gaining control in a situation are allowed, covers the threat of escape, harm to staff, or harm to another inmate, but does not cover the SMI inmate attempting to harm themselves. While self-harm does not happen frequently, it can happen during times of stress.

SB 739's definition of therapeutic activity does not include work. The numbers of hours per day required by the bill in therapeutic activity would mean that inmates who do have jobs would have to give them up. In cases where SMI inmates are able to perform work, it provides an opportunity to practice mental health self-management skills in a work environment, preparing them for the work they will be required to find in the community. This would hinder the overall premise of M17, which requires correctional institutions to actively engage inmates in full-time work or on-the-job training.

Lastly, SB 739's proposed state statutory private right of action will inevitably lead to the filing of numerous lawsuits in state circuit court by inmates to enforce compliance with the elevated and prescriptive standards of care mandated by the bill. The court and litigation processing and defense costs to the State will be significant. Moreover, the bill's private right of action may result in monitoring and supervision of DOC's operations and practices by state circuit court judges, as well as significant monetary legal liability. Because inmates have a number of existing legal remedies available to them in both state and in federal court to enforce compliance with state and federal constitutional standards of care, DOC respectfully submits that creating new state statutory remedies for inmates to sue in state court to enforce compliance with new elevated and prescriptive standards of care is unnecessary and ill-advised.

Requested Action:

For the reasons explained above, DOC respectfully requests that instead of statutory changes, we continue to move forward with initiatives already underway and to continue to engage community partners in those efforts.

Thank you for your time and consideration. I am happy to answer any questions you may have.

Submitted by:

Oregon Department of Corrections
Michael Gower, Assistant Director for Operations
michael.f.gower@doc.state.or.us
Phone: (503) 945-0950