

June 3, 2020

The Honorable Senator Prozanski, Chair
The Honorable Senator Thatcher, Vice Chair
Senate Judiciary Committee Members

**Re: Oregon Department of Corrections Response to COVID-19 Epidemic for Adults
in Custody**

Chair Prozanski, Vice Chairs, Members of the Committee,

For the record, my name is Bobbin Singh and I am the Executive Director of the Oregon Justice Resource Center (OJRC).

The OJRC was founded in 2011 and is a family of unique programs addressing the unmet needs for legal services and advancing reform in our state. Our clients are currently and formerly incarcerated individuals and we provide our services at no cost to the clients. We operate 5 statewide programs and are the only legal organization that is involved with clients from arrest through reentry, which provides us with a unique perspective and comprehensive understanding of the system

The impact of the COVID-19 pandemic on the state of Oregon and the country has been extraordinary. The burden on our all of our systems due to the rapid spread of COVID-19 continues to be extreme. The aggressive and unrelenting spread of COVID-19 in carceral settings has already been demonstrated in several jurisdictions across the country. Of the 50 largest clusters of COVID-19 cases, just over 30 include prisons and jails. The inability to control and mitigate the impacts of COVID-19 in our prisons will directly impact and harm surrounding communities, and Oregon, in general.

Oregon's response to prisons must not be examined in isolation but must occur with appreciation and consideration of national data and grounded in the latest medical research, through a public health lens.

As of today, 44 staff people and 159 Adults in Custody (AIC) have tested positive for COVID-19 in four institutions. The positive testing rate in ODOC is approximately 29% compared with an approximately 3.5% positive rate in the Oregon public, showing a greater rate of infection and a need for more testing. Overall, there is a about 4%. We are not satisfied with the testing rates and protocols, for those in custody and preparing to reenter. On May 21, 2020 an Oregon State Penitentiary AIC who had tested positive for COVID-19 died. The day before, OPB reported that three AICs had been hospitalized and on ventilators.

While the facts of this pandemic continue to evolve, the story remains consistent— Oregon is not providing proactive and adequate, preventative measures in prisons proven to prevent COVID-19 transmission.

It has been made clear since the beginning of this pandemic that social distancing is the cornerstone of preventing the mass spread of COVID-19. And, ODOC concedes that ODOC

facilities cannot provide for enforced social distancing in all living areas and activities. On April 13, 2020 ODOC reported to Governor Brown that “5,800 inmates – an estimated 40 percent of the prison population – would have to be released to allow for social distancing in prisons statewide to guard against the spread of coronavirus”

As we approach this issue, it is incumbent upon us to require reasonable action within the totality of the situation, not simply some action taken within the constraints of the ODOC itself.

We do not doubt that ODOC has spent a great deal of time considering COVID-19 in its prisons. And, it is clear that other measures, such as increased cleaning, hygiene, COVID-19 testing, and proper quarantine and isolation can help to prevent the mass spread of COVID-19 along with social distancing. But, without social distancing, we will not be able to meaningfully protect those who live and work in our prisons.

Currently, the OJRC is involved with litigation against ODOC and Governor Brown in our federal courts demanding that they take the actions necessary to implement public health mandates in Oregon prisons to ensure the protection of people with severe medical conditions who are vulnerable to the potentially catastrophic consequences of COVID-19.

Before we began our legal actions, we wrote to public officials and public safety stakeholders outlining our concerns and the actions that we believe should be taken in order to mitigate the harm created by COVID-19. In those initial weeks after we wrote our letters, there was minimal response or reaction to our requests for meetings and identified actions. Our letters form the basis of what we are seeking in our litigation.

For your reference, we have submitted those letters to this committee along with over 50 declarations about the current experiences in prison from AICs, a corrections officer, and public health and other experts. The declarations cover the following issues: lack of social distancing, lack mask wearing, issues with Oregon Corrections Enterprise, verbal abuse, issues with medical care and DSU, vulnerable issues, lack of cleaning supplies, transfers, difficulty getting testing and scared to get testing, non-Oregon Corrections Enterprise work issues, staff frustrations, limited or no access to the law library, staff disregard for COVID-19, questionable quarantine and isolation practices, inability to access communications, issues with grievances, and AIC frustrations.

The declarations create an unfortunate reality inside our prisons and affirms that in this pandemic that the mere articulation and production of a policy is not taking and does not result in reasonable action. We hope that you will take the opportunity to review just some of the stories that have been shared with us by AICs and others connected to our prison system.

Two important ideas that we would like to dispel: First, our litigation is hindering the ability of stakeholders and advocates to find solutions and implement best practices and second, we are not seeing an outbreak of COVID-19 in all of the prisons, yet, so everything is fine. I want to be direct and transparent: this is inaccurate and dangerous. Here are the facts:

1. Our legal actions are not in any way, shape, or form preventing Governor Brown, Oregon Department of Corrections, Oregon Board of Parole, public safety system stakeholders, or community advocates from being transparent about what is happening, identifying and implementing best practices, and finding political solutions that protect those who are incarcerated.
2. Ultimately, we hope that COVID-19 does not spread throughout all of our prisons. However, the current environment and conditions create an unnecessary risk of profound harm. The largest hotspot in the state is the Oregon State Penitentiary and we already have one death. Coupled with incredibly low testing rates, the state's actions must not be guided by the current numbers of positive cases or be seduced that these numbers represent a managed problem. We simply do not know the true extent to which COVID-19 has spread throughout the prisons and COVID-19 will continue to be prevalent without a vaccine in our community for at least the remainder of the calendar year. Importantly, and fundamentally, this is about how we treat individuals in our community. The way in which we have chosen to treat those incarcerated by simply relegating them to second class status, not deserving the dignity of the same types of protection we enjoy in the community, is shameful.

We have created a double standard.

We have rightly shut down our state and entire sectors of our society, at profound detrimental impact to our economy and disruption to our lives, because we accept what public health officials are mandating to protect ourselves. We have closed schools, businesses, government agencies, and public spaces. Since the start of the COVID-19 crisis, Oregon has reported that over 400,000 Oregonians have filed for unemployment insurance. We have dramatically restructured our society to protect our health because the risk of harm is too great; we must do everything necessary to protect our community.

However, there is an unwillingness to apply these same values, standards, and practices to those who live and work in our prisons. Instead, the state's approach seems to be grounded in a reluctance to make comparably difficult decisions, allowing the outdated notions of politics of fear and anger to undermine sound public health reasoning. Experts agree on the actions that are required to protect those who are incarcerated, yet the state refuses to act. Even more stunningly, we have heard from DAs who have publicly opposed the consideration of legal options available to the Governor to protect the public and safely reduce the prison population yet in their own counties we have seen reductions in jail populations as high as 75%. The mental gymnastics to sustain these contradictions are quite extraordinary and causing catastrophic harm.

In the weeks since Governor Brown issued her first executive order declaring a state of emergency, we have spoken to several hundred AICs and their loved ones. Oregonians who are incarcerated and their families and friends have desperately sought to make sure that our state considers them in our response to COVID-19.

They are begging for their lives, scared, and anxious. We cannot overstate the fear and anxiety AICs and their loved ones are experiencing.

We would not expose individuals in the community to the same conditions as those who are incarcerated. We would not intentionally inflict this kind of emotional and psychological trauma on individuals in the community that we are currently inflicting on those incarcerated and their loved ones. The single fact that these individuals are incarcerated increases exponentially their hospitalization and mortality rate.

This is cruel and inhumane. No one should be harmed or die because they are incarcerated.

We know what needs to happen to keep those who live and work in prisons safe. Under the laws of Oregon, Governor Brown and the executive branch is primarily responsible for making the difficult decision to act to protect those who live and work in our prisons. However, the legislature must play a key role in supporting and resourcing the reduction of the prison population.

Reducing the prison population would help most in allowing those who remain to follow the advice of public health experts. It will increase the potential for ODOC to effectively manage this public health crisis within facilities.

The OJRC is requesting the following actions:

- Governor Kate Brown should use her powers to commute sentences to community supervision or temporarily suspend sentences by granting reprieves, targeting release of people who can safely return to the community; those who are at highest risk of poor outcomes if they contract the virus, such as the elderly and those with chronic health conditions; and those who have a scheduled release date in 2020 or 2021.
- Governor Brown should expedite the review of existing clemency applications and grant worthy applications promptly.
- The Board of Parole should act more broadly and aggressively under the current early medical release statute to release individuals, and advance the release dates of those who have an exit interview or prison term hearing in 2020 and 2021 and use processes available to speed up release.
- The legislature should:
 - Appropriate emergency funding to reentry and treatment programs and transitional housing programs across the state so that individuals can be released back into the community fully supported, resourced and educated.
 - Appropriate emergency funding to the Board of Parole and the Governor's office to support the expedited release of individuals through the clemency and parole process.
 - Pass appropriate legislation that would expand or broaden current mechanisms available for releasing individuals. We are happy to provide you with suggestions.

There are thousands of individuals in custody who can return to the community and in this current environment it serves no value to keep them incarcerated.

Our litigation and advocacy on behalf of those incarcerated in Oregon's prisons demands that those with the power to protect the incarcerated immediately commit to reasonable actions. We must consider our response holistically, keeping every option on the table and involving every branch of government, and do what medical and public health experts are mandating.

Every elected person, public safety system stakeholder, and community advocate with the power to do something, including decarceration, should exercise that power now, without hesitation and to the fullest extent allowed under the law. **Anything less is unacceptable. And, by all metrics, we have failed as a state.**

The time has come for Oregon to adhere to what the public health community is mandating and enforce social distancing in our prisons and act with humanity. This cannot be put off for another day. Nor can half measures ameliorate the broken premise that this can be accomplished without social distancing. Mistakes can cause grievous harm and experiments can be deadly. What we know is that the science demands that social distancing must be utilized, that is the extreme measure that has been required all over the world to save lives, in spite of the costs to do so.

Thank you for your time and I am happy to provide more details to anything discussed and answer any questions you may have on this issue.

Bobbin Singh
Executive Director
Oregon Justice Resource Center