

LEGISLATOR DRAFT REQUEST

____ 2020 Session (max. of 2 requests for Rep. and 1 request for Sen. by Nov. 22, 2019)

___x___ 2021 Session

Request Date: January 8, 2021

Legislator: **Reps. Dexter, Bynum, Sanchez;
Sens. Prozanski, Manning, Golden, Dembrow**

Phone: _____

Legislator's Staff: **Zakir Khan**

Phone: _____

PLEASE PROVIDE THE FOLLOWING INFORMATION FOR THIS REQUEST:

① PROBLEM (describe the problem; attach any additional information)

COVID19 has presented extraordinary challenges across the state and across all demographics. The impact on our BIPOC communities has been disproportionately severe, and this has been magnified by the adverse economic impacts of the pandemic for many in these communities. The Governor's direction to "stay home, save lives" is deeply impactful, wise policy on a fundamental level. There are communities, however, that have no ability to protect themselves in this way. These include the houseless, those in mental health and medical congregate living settings and our adults in custody. These communities of individuals deserve a heightened level of protection and delays in actions to this end will result in significant morbidity and mortality. Government's first priority must be the health and safety of Oregonians. The time is now for us to try to augment, from a statutory level, other efforts being taken currently by governmental entities to protect the health and the lives of our adults in custody, the staff who work in our correctional facilities and the families and communities that they hope to return to each day.

We have two major ways to address risk for AICs –

1. Within the walls of correctional institutions through improved testing, tracing, masking, infection control, and medical care availability protocols.
2. By decreasing the number of people in custody, giving adults in custody the opportunity to socially distance and giving those released the agency to protect themselves in supportive and safe environments outside of custody.

The first opportunity is currently being supported by OHA and DOC medical and operational staff amongst others. There are concerning observations from Dr. Mark Baskerville, Assistant Professor of Anesthesiology at OHSU and many others regarding very significant opportunities to do better. Interestingly, we have the ability, using existing statute for a highly empowered, independent Corrections Ombudsperson, whose role was established in 1977, sits in the Office of the Governor, and has not been filled in years. We ask that the Legislature or Emergency Board consider immediately funding this position and also request that the Governor fill the role as urgently as possible with the specific focus on mobilizing a coordinated statewide response to the COVID19 crisis in our state prisons.

Article 1, Section 44 of the Oregon Constitution does not allow the legislature to facilitate the release of AICs. We cannot, as a legislature, take actions that many other states have recently taken to broadly release AICs. We can, however, promote the use of an operational team, a task force, that supports the Corrections Ombudsman in identifying appropriate individuals through transparent and standardized means for recommended clemency to the Governor. Every extra day in custody means more lives at stake in this unprecedented situation.

LEGISLATOR DRAFT REQUEST

Prisons are congregate living and work environments which are particularly susceptible to COVID-19 outbreaks. The coronavirus threatens the health and lives of untold numbers of people under state care and control. Many adults in custody in Oregon are elderly and have underlying health conditions that make them high risk for medical complications or death upon contraction of the COVID-19 virus. For many, a prison sentence could turn into a death sentence.

Statistics and supporting information:

1. Rapid spread of COVID through Oregon prisons as of November 30, 2020
 - a. Confirmed AIC Positive Cases: 1,396
 - b. Confirmed AIC Recoveries: 1,282
 - c. Confirmed Staff Positive Cases: 391
 - d. Confirmed Staff Recoveries: 321
 - e. Media:
 - i. OregonLive: [“COVID-19 is 10 times higher in Oregon prisons than in rest of state, stoking widespread fear among inmates”](#)
 - ii. NY Times: [Prisons Are Covid-19 Hotbeds. When Should Inmates Get the Vaccine?](#)
 - iii. Workers World: [Oregon Prisoners Resist Denial of Covid-19 Protocol](#)
 - iv. Street Roots: [“My Experience in Prison”](#)
 - v. OregonLive: [Oregon workplace safety officials got 11,000 COVID complaints. As people got sick, inspections lagged](#) (“The coronavirus moved swiftly through Oregon’s prisons, leaving 17 inmates dead and 1,300 infected, along with more than 300 state workers positive. Oregon OSHA has received dozens of complaints about the conditions in prisons, which are responsible for five of the state’s 10 worst outbreaks, excluding long-term care facilities.”)
2. Prison deaths: DOC has seventeen deaths of AICs who tested positive for COVID-19 as of 11/30/20
3. AIC COVID-19-related litigation
 - a. David Hart [Lawsuit](#) “Plaintiffs in a federal class action lawsuit over the handling of the COVID-19 outbreak in Oregon prisons are now seeking damages for the harm suffered by incarcerated people infected with the disease. Their lawsuit, originally filed April 6, names Governor Kate Brown, the Oregon Department of Corrections Director Colette Peters, and other senior ODOC leadership as defendants because of their responsibility for management of Oregon prisons. The seven are all more than sixty years of age and/or have chronic health concerns that the Centers for Disease Control and the Oregon Health Authority recognize as placing them at additional risk from the COVID-19 pandemic.”
 - b. [Over 230 state habeas corpus petitions](#) filed asking judges across the state to order prisons to implement a host of COVID-19 safety measures or release AICs back into the community where they can better protect themselves.
4. Comparison to neighboring states
 - a. [Washington](#): “Washington state has contained the spread of the novel coronavirus with significantly better success. It has logged one-third the positive tests and one-tenth the deaths per capita among its inmates. Washington prison staff, too, have been infected at about one-third the rate as in Oregon.” As of [11/17/2020](#) the total number of AIC cases in Washington has been 610 for a rate of 394/10,000 prisoners; there have been 2 deaths for a rate of 1/10,000.

LEGISLATOR DRAFT REQUEST

- b. [California](#): COVID-19 [Response Efforts](#): Although 22,000 adults in custody have been released since March, California has in recent days has been slammed for its COVID response in prisons. Guards have repeatedly been noncompliant with regulations on personal protective equipment. There are currently 3,600 active cases of the virus. According to the [LA Times](#) on November 29, “Nearly 6,000 guards and other staff including nurses and administrators have also tested positive since the pandemic began.” There are also huge data gaps that are emerging in the corrections department which refuses to provide transparency to the public. As of [11/17/2020](#) the total number of AIC cases in California has been 18,247 for a rate of 1875/10,000 prisoners; there have been 83 deaths for a rate of 9/10,000.
 - c. Idaho? [This article](#) might be helpful (11/16/20). As of [11/17/2020](#) the total number of AIC cases in Idaho has been 3076 for a rate of 2284/10,000 prisoners; there have been 5 deaths for a rate of 7/10,000.
 - d. Nevada? *Note: Nevada has a prison population of ~14,000, like Oregon. This [11/21/20 article](#); [11/23/20 article](#); [11/20/20 article](#) .* As of [11/17/2020](#) the total number of AIC cases in Nevada has been 577 for a rate of 500/10,000 prisoners; there have been 0 deaths.
 - e. Montana - [This article](#) might be helpful (11/25/20). As of [11/17/2020](#) the total number of AIC cases in Montana has been 880 for a rate of 2265/10,000 prisoners; there have been 2 deaths for a rate of 5/10,000.
5. Access to PPE and testing for workers and AICs
- a. As numerous sources have articulated, access to PPE and testing for workers and Adults in Custody remains a deepening challenge.
 - i. Sources:
 - 1. Street Roots (4/29/20):
<https://www.streetroots.org/news/2020/04/29/prisoners-and-protesters-decry-conditions-among-oregon-state-prisons-covid-19>
 - 2. Willamette Week (6/26/20):
<https://www.wweek.com/news/2020/06/26/oregon-health-sciences-university-will-stop-using-prison-labor-to-do-its-laundry/>
 - 3. OregonLive (11/27/20): [Oregon workplace safety officials got 11,000 COVID complaints. As people got sick, inspections lagged](#)
 - b. Vaccine Priority for adults in custody and staff in prisons.
 - i. The American Medical Association has [called](#) for inmates and employees in prisons to be given the vaccine because of the heightened risk of an outbreak there. Further, in a report [published](#) by the Johns Hopkins Center for Health Security, adults in custody are listed as a priority group who should be getting the vaccine.

② PROPOSED SOLUTION TO THE PROBLEM

Activate the Corrections Ombuds position to investigate and assess the Oregon Department of Corrections’ policies and protocols in response to COVID-19 and to establish a task force to support

LEGISLATOR DRAFT REQUEST

the Ombudsman. The Ombudsman shall also mitigate and resolve complaints and put into place protocols similar to a position developed for Washington State. See [report](#) from the Office of Corrections Ombuds dated November 1, 2020.

Funding options:

- a. Eboard to fund existing Ombuds position then transition to full-time ombuds work
- b. Contract at \$250K for temporary position that includes salary and travel (December 2020-December 2021) in order to satisfy CRF requirements to spend money by 12/31
- c. Fund through a special session in December (not sure what mechanism is in play here.)

State of Oregon Job Description:

Position Title: Office of Corrections COVID19 Ombuds Position

Location: State of Oregon

Duration: 12 months with option to extend for a total of 12 additional months if mutually agreed upon

Objective:

The legislature created an independent Corrections Ombuds position in 1977 and it has been left unfilled for more than 10 years. It is time to bring this position back urgently, in light of COVID19, to elevate the transparency and accountability our department of corrections has with the public. The person appointed to this time- and scope-limited position will assist in strengthening procedures and practices that will protect the health and safety as well as the welfare and rehabilitation for individuals who are incarcerated with the extraordinary pressure COVID19 has put on current operations.

Overview:

The Office of Corrections COVID19 Ombuds will oversee the following:

- Investigate and assess the Department of Corrections' policies and protocols in response to COVID-19 and produce a report with recommendations.
- Create protocols for the dissemination of information, as appropriate, to individuals who are incarcerated as well as their family members and representatives, so they are adequately informed of changing circumstances and know how to get their concerns and questions addressed.
- Inform Department of Corrections employees, contractors, and other interested parties regarding the rights of AICs.
- Investigate and monitor conditions of confinement and assess Department of Corrections compliance with applicable federal, state, and local rules, regulations, policies, and best practices as related to the health, safety, welfare, and rehabilitation of inmates, especially as these areas are impacted by COVID19.
- With the support of the task force, facilitate development of protocols to assist with the urgent identification of appropriate individuals in custody to be considered for clemency and confirm timely delivery of these lists of individuals to the Governor's office.
- Provide technical assistance to support individuals in custody as well as their families with participation in self-advocacy.
- Collect and analyze data related to the following:
 - Deaths, suicides, and suicide attempts in custody;

LEGISLATOR DRAFT REQUEST

- COVID19 infections;
 - COVID19 outbreak tracing - including suspected sources of infection;
 - Number of people placed in administrative segregation or solitary confinement, and duration of stay in such confinement;
 - Number of facility lockdowns lasting longer than 24 hours;
 - Number of staff vacancies at each facility;
 - Inmate to staff ratios at each facility;
 - Staff tenure and turnover;
 - Staff overtime;
 - Staff masking, distancing and hygiene compliance
-
- Inspecting each Department of Corrections facility as often as needed, with or without notice to the Department of Corrections to ensure compliance with COVID-19 policies and protocols;
 - Publicly issue periodic facility inspection reports and a contract completion report with recommendations on the state of Department of Corrections facilities and a summary of data and recommendations arising from any complaints investigated and resolved, and any other thematic reports covering any topic the Office finds relevant to running a safe, secure, and humane corrections department;
 - Confirm completion of a secure and confidential online form to be made available on the Office's website wherein family members, friends, and advocates can submit complaints pertinent to COVID19 and inquiries regarding covered issues on behalf of an individual incarcerated within the Department of Corrections;
 - Confirm completion of a secure and confidential process wherein AIC's may submit complaints and inquiries pertinent to COVID19 on their own behalf;
 - Confirm completion of a secure and confidential online form to be made available to all Department of Corrections employees and contractors to file complaints and inquiries pertinent to COVID19 on their own behalf.

③ HAS THIS BEEN INTRODUCED IN A PRIOR SESSION? No

Year _____ Bill # _____

④ DO YOU KNOW WHETHER THIS AMENDS A CURRENT LAW OR PROGRAM?

Yes _____ Original reference to ORS 423.400. Does not amend, but this is requesting funding for the position No x

⑤ Effective Date:

- ☐ Regular (January 1 following session)
- ☐ 91st day after session
- ☒ Emergency Clause

Please indicate if there is anyone we may consult:

LEGISLATOR DRAFT REQUEST

Name: _____ Rep. Maxine Dexter Rep. Janelle Bynum

Phone: _____

THANK YOU