



Legislative Testimony

OREGON DEPARTMENT OF CORRECTIONS

March 27, 2019

The Honorable Jennifer Williamson, Chair
House Committee on Judiciary

RE: House Bill 3249

Chair Williamson and members of the committee, I am Michael Gower, Assistant Director of the Operations Division for the Oregon Department of Corrections (DOC). I am providing written testimony on the anticipated impacts of HB 3249 as it relates to the department.

What the Bill Does:

HB 3249 provides that a client has a right to privately communicate with their lawyer and representatives of their lawyer. Further, evidence derived from a confidential communication is inadmissible in any proceeding to which the client is a party, if the confidential communication was obtained or disclosed without consent of the client.

In addition, the bill requires both local correctional facilities and DOC prisons to maintain one log for lawyers and representatives of lawyers visiting adults in custody (AICs), and one log for all other visitors. The bill requires all visitors to sign the appropriate log and provides that, unless an exception applies, the log for lawyers and representatives of lawyers is confidential, not subject to disclosure as public record and not subject to subpoena. The bill also requires suppression of evidence derived from unlawful disclosure of the log for lawyers and representatives of lawyers.

Background Information:

HB 3249 greatly expands the number of individuals that must be granted space to communicate privately with their incarcerated clients. Although the increased number of representatives is unknown, it is possible that, at high demand times or at high traffic institutions, the need would exceed the necessary space for confidential communication and may necessitate an appointment or scheduling system.

In addition to privacy in communications, HB 3249 requires DOC keep the log of lawyers and representatives of lawyers confidential from other types of visitors. DOC requires photo identification from all visitors. However, acceptable identification does not assist the agency in quickly determining which log a visitor must sign, other than at the request of the visitor. DOC must further ensure confidential access is being given to current representatives of specific lawyers for specific individuals and will likely require a letter of authorization from the lawyer's office.

HB 3249 allows certain exceptions to the strict confidentiality of the log for lawyers and their representatives, including the review by law enforcement in the investigation of a crime involving very narrow criteria. Section 4. (b) (B) states:

(b) The log described in subsection (2) (a) of this section may be inspected as follows:

(A) The staff of the facility may inspect the log when necessary for the operation of the facility.

(B) A law enforcement officer investigating the lawyer for or representative of the lawyer for an inmate for committing a crime against the inmate may inspect those portions of the log documenting visits by the lawyer or the representative of the lawyer to the inmate.

This language prohibits law enforcement from using the lawyer visitor log for any type of investigation other than an investigation of the lawyer or the representative of the lawyer for a crime against the client and prohibits the staff of the facility from inspecting the log or any purpose other than operating the facility. It also renders any evidence gained from such a log obtained or disclosed in violation of Section 4 (a) inadmissible in any subsequent criminal or civil proceeding to which the incarcerated individual is a party. Although not a frequent occurrence, historically, DOC has conducted necessary administrative investigations of lawyers and lawyers' representatives where visitor logs may be a necessary piece of information.

It is our understanding that the language "appropriate identification" was used to allow state and local correctional facilities to continue to request any identification needed in order to allow confidential visits with lawyers and their representatives. For this purpose, DOC will likely flesh this piece out in policy to reduce the likelihood of errors and improve efficiencies within DOC.

Thank you for your time and consideration. Please contact me if you have questions.

Submitted by:

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