



## Legislative Testimony

### OREGON DEPARTMENT OF CORRECTIONS

March 29, 2021

The Honorable Floyd Prozanski, Chair  
Senate Committee on Judiciary and Ballot Measure 110 Implementation

#### **Re: Senate Bill 836**

Chair Prozanski and members of the committee, I am Joe Bugher, Assistant Director of the Health Services Division for the Oregon Department of Corrections (DOC). I am providing written testimony on the anticipated impacts of SB 836 as it relates to the department.

#### **What the Bill Does:**

SB 836 directs DOC to consider all other alternatives before suspending, terminating, or taking other specified action concerning alternative incarceration programs (AIP).

It also establishes legislative requirements for reporting within 14 days of suspending or terminating a program or taking other action. It requires DOC to communicate with adults in custody (AICs) participating in AIP about changes and decisions concerning the program and the effect on release dates.

Lastly, it requires these programs to be trauma-informed, gender-responsive, and available at all department facilities.

The sections with the greatest impact to DOC are as follows:

#### **Section 2 (1) and (2)**

This section requires DOC not to suspend or terminate an AIP that would result in delays to AIC release dates without considering modifications to the programs or other methods in which the programs could be run. If DOC does suspend or terminate an AIP, it must provide a written report to the Judiciary Committees of the Legislative Assembly regarding what alternatives were considered, why they weren't implemented, and the plan to resume programs as soon as possible.

The requirement in Section 2 (1) and (2) for DOC to consider modification or alternatives would not likely have a large operational or financial impact. DOC considered several of those things when the decision was made to suspend contractors' access to facilities, which in turn caused DOC to temporarily suspend AIP at the beginning of the current pandemic.

However, there are a couple of points in ORS 421.502 - 421.512 not changed with this bill which would make modifications difficult: 421.504 (a) "Shall reflect evidence-based practices," (b) "Shall include a component of intensive self-disciplined, physical work, and physical exercise;"

421.506 (2) "Require strict discipline and compliance with program rules," 421.506 (3) "Provide 14 hours of highly-structured and regimented routine every day."

One significant impact would be the sentence, "The Department of Corrections may not suspend or terminate an alternative incarceration program..." Most AIPs are run by contracted services. This bill would hamper DOC's ability to manage its contracts and programs.

#### **Section 4**

This section requires DOC to establish three different methods of communicating to those participating in AIPs about changes or decisions impacting the programs and/or release dates: a process to communicate in writing, develop a process to ensure alternative incarceration program counselors communicate with participants, and designate a staff member at each facility who is accessible to AICs to provide information. The process involving "AIP counselors" could have an impact, since most of these services are provided by contractors. This would likely require DOJ's legal sufficiency and contract language changes to allow DOC to direct how a contractor provides services.

#### **Sections 5 and 6**

These sections would have the largest impact, as the bill requires alternative incarceration programs to be available at all DOC facilities. This requirement will have a significant fiscal impact as DOC currently operates AIPs at four facilities. To implement these highly-regimented programs at every DOC facility would require many additional employees, supplies, and training. Space constraints are also a substantial barrier at many facilities.

During the 2017–2019 biennium, DOC spent more than \$1.8M adding modular buildings to Oregon State Penitentiary's Behavioral Health Services unit to provide additional program space. With the cost increase of resources needed to manufacture these modular buildings, DOC believes each additional location would cost the same amount, if not more. A high-level calculation presumes the cost to be between \$10.8M and \$15M to add similar program space to six additional institutions.

In the 2019-2021 biennium, HB 2257 required DOC to submit a report regarding the barriers and possible solutions to treating substance use disorder (SUD) as a chronic illness. In the report, DOC made a recommendation to considerably amend the AIP statute as it creates several barriers to treating SUD as a chronic condition. SB 836 continues to strengthen AIP requirements, further limiting DOC's ability to treat SUD and run programs that allow some flexibility during times of crisis.

Additionally, 26 individuals have left AIP before completion due to sentence commutations, and many others have declined to enter AIP in hopes they will receive a commutation. If DOC had more flexibility in providing SUD services outside of the AIP statute, AICs could be treated much earlier in their incarceration, with program completion prior to potential commutation.

**Requested Action:**

In conclusion, many of the requirements identified in SB 836 are currently being met. With additional resources and funding, DOC could implement some provisions of the bill. However, there are several aspects that would be costly, very complex, and difficult – if not impossible – to execute within DOC's system. The timeline is also of concern, as this bill will be ineffective without adequate time and resources to carry out many of the provisions.

For the reasons explained above, the department respectfully requests the sections of SB 836 described above be amended and encourage the drafter to collaborate with DOC to address concerns and impacts.

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

*Submitted by:*

Oregon Department of Corrections

Joe Bugher, Assistant Director for Health Services

[Joe.a.bugher@doc.state.or.us](mailto:Joe.a.bugher@doc.state.or.us)

Phone: (503) 378-2857