



## Legislative Testimony

### OREGON DEPARTMENT OF CORRECTIONS

March 14, 2023

The Honorable Jason Kropf, Chair  
House Committee on Judiciary

#### **Subject: House Bill 2345**

Chair Kropf and members of the committee, my name is Rob Persson, and I serve as the Assistant Director of the Oregon Department of Corrections (DOC) Operations Division. I am providing written testimony regarding House Bill (HB) 2345-1.

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

HB 2345-1 requires the Department of Corrections to reduce the number of days an adult in custody (AIC) may be maintained in “segregated housing”. This shall be done by establishing a committee including at least one current AIC, one former AIC, and one representative of each of the staff unions. The Department of Corrections shall report progress annually and may not house an AIC in “segregated housing” for more than 14 consecutive days after July 1, 2027.

#### **Potential Impacts**

The Department of Corrections operates twelve facilities across the state housing over 12,000 Adults in Custody. Prison officials have a legal duty under the Eighth Amendment of the Constitution to protect prisoners from assault by other prisoners.

Due to Oregon’s sentencing structure fifty-six percent of those in our custody are ineligible for an earned time reduction in prison sentence based upon their individual behavior record and engagement in programming. This powerful motivator of positive behavior in prison is not a motivator for this population. Our administrators have few alternatives to respond to serious prison misconduct in a proportional and effective manner.

Even with these limitations, the Department of Corrections is dedicated to reducing reliance on disciplinary segregation while maintaining safety and accountability in our prisons. We are aware of the work that the Association of State Corrections Administrators (ASCA), the United Nations, the American Correctional Association (ACA), the National Commission on Correctional Health Care (NCCHC), and others have done in the last decade to make the negative impacts of long-term solitary confinement known. In 2015 the Department of Corrections was able to leverage federal funding to partner with the Vera Institute of Justice with the goal of understanding and changing the way we use disciplinary segregation.

The Department of Corrections classifies misconduct based upon how great of a threat the misconduct has on the safety and security of the institution rather than classifying violations as

violent versus non-violent. To use an example, distributing fentanyl is not a violent behavior but has a grave impact on the safety of the individuals in our custody. The Department of Corrections utilizes determinate sanctions to Disciplinary Segregation Unit (DSU) to separate AICs from the general population who create a continuing threat to the safety and security of AICs and staff.

In 2016 the findings of Vera Institute of Justice reported Oregon housed 702 AICs in DSU based on misconduct on April 1, 2015. On March 1, 2023 there were 341 AICs in DSU due to misconduct. This snapshot shows what has not been made clear to many: our sustained efforts to act on the recommendations in the Vera report have resulted in meaningful change in our use of disciplinary segregation as a sanction. This 49% reduction in the number of individuals housed in disciplinary segregation came during a time when the overall prison population dropped 18% due to the pandemic. The disciplinary segregation population dropped nearly three times as much as the overall population showing it is intentional and not a byproduct of the reduction in prison population.

We have also worked to reduce the average length of stay for AICs sanctioned to DSU. For our most severe (level one) rule violations, the average length of stay during the second quarter of 2015 was 96 days in DSU. During the fourth quarter of 2022 the average length of stay for this same violation was 69 days in DSU.

Effective January 1, 2023, the Department of Corrections made changes to our rule that have further reduced the average length of stay in DSU. The changes to the rule reduced the maximum sanction for our most severe rule violations (level 1-3) by half and eliminated DSU as a possible sanction for lower levels of misconduct. This rule change also reduced the maximum consecutive stay in DSU from 180 days to 90 days. The average length of stay in the first quarter of 2023 was 44 days for a level one rule violation. This is a 45% reduction in the average length of stay for our most severe rule violations in less than eight years. This rule change is also expected to further reduce the number of AICs in DSU for misconduct by an additional 60 AICs by July 1, 2023.

With the short term steps I've identified above, our work is not done. Our most significant partnership is between DOC's leadership team, staff, and AICs. DOC leadership and employees across divisions recognized years ago the need to develop effective evidenced based treatment and programming while maintaining the wellbeing of adults in custody. We are bringing evidence based programming to our Disciplinary Segregation Units in an effort to make long-term positive behavior changes for those AICs creating significant threats to safety and security of our institutions. In the past, out of cell time has been viewed as a privilege that was used as an incentive. That view is changing. While out of cell time is a motivator to engage AICs in positive behavior change, the out of cell time must be provided for all AICs as a baseline rather than a reward. This approach should reduce uses of force and foster positive behavior change for AICs. This is also necessary for individuals to become a lower risk to engage in

violent and self-harming behavior. We are making this change and I'm proud of our accomplishments, but we know we can not be satisfied and must continue to change this perspective on out of cell time.

The Department of Corrections is working to prevent violence that typically places an AIC in Disciplinary Segregation. Relying on evidence based assessment tools to identify those at highest risk to engage in violence before they engage in the misconduct is another long term solution to reducing the use of disciplinary segregation. Many of these high risk AICs are gang affiliated, young, and serving a sentence for violence in the community. A recent study by the DOC research team highlights the need for this shift: a review of the population of our 6 largest facilities found that AICs who scored as high risk on the assessment tool make up 6.4% of the total population but make up 35.1% of major misconducts, with an emphasis on AIC on AIC assaults. A review of the evidence base on this shift shows DOC could expect a 25% reduction by this group of high risk AICs and that would mean a 9% reduction in major misconduct for the entire department. This would result in less use of disciplinary segregation, less violence, and better conditions for all those who live and work in Oregon's prisons.

Lastly, engagement with AIC peers who have a record of living safely and productively in general population and overcoming the myriad temptations to misbehave in the prison environment is critical. DOC is building a Peer Mentorship Certified program to respond to this need. With staff facilitated oversight, certified Peer Mentors from the AIC community are a powerful voice that can model pro-social behavior for those in disciplinary segregation as they work to re-enter the general population. Additionally, these mentors more closely reflect the racial composition of the prison population. For too long, this voice has been met with suspicion because of the mentor's prior criminal behavior. Raising this voice and aligning these individuals' experience and insights with the overall mission of preparing folks to control their own behaviors and become better neighbors both in prison and when they re-enter Oregon's communities is a long term growth area that will be used to reduce disciplinary segregation by preparing those in disciplinary segregation to behave themselves in an environment with more freedom of movement and less confinement.

The Oregon Department of Corrections has been on this journey to reduce our reliance on disciplinary segregation for many years. These changes have been accomplished safely, and have become culturally embedded in the values of the Department of Corrections. I fear the short timelines of change required by this bill would put staff and AICs at risk. The introduced HB 2345 utilizes the overly broad term "segregated housing". As stated above, Prison officials have a legal duty under the Eighth Amendment of the Constitution to protect prisoners from assault by other prisoners.

This is often done by separating violent offenders from the general population

DOC remains fully committed to the wellbeing of AICs under our care and custody. Though we agree reducing or eliminating the use of “long term solitary confinement” as defined by the by the Nelson Mandela Rules is prudent, the passage of this bill in current form will have a negative effect on living and working conditions for AICs and staff. DOC remains fully committed to reducing our reliance on restrictive housing in a manner that is safe for AICs and staff.

If this bill continues to move forward, I look forward to working with our external partners to ensure the safety of AICs and staff while reducing the operational impacts to the agency.

Thank you for your time and consideration.

*Submitted by:*

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