



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 6, 2019

The Honorable Chair Floyd Prozanski
The Honorable Vice-Chair Kim Thatcher
Members of the Senate Judiciary Committee

RE: Testimony in Support of SB 488

Dear Chair Prozanski and Members of the Committee:

About OCDLA:

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

We are testifying in support of Senate Bill 488. We support the bill for two reasons: (1) incarcerated people have a constitutionally recognized right to adequate health care, which encompasses immunization, and; (2) providing flu shots can limit unnecessary suffering and save lives.

First, those who have been convicted and sentenced to a term of incarceration cannot go to a primary care doctor, or to flu shot center. Incarcerated people's wellbeing is at the mercy of the facility in which they are housed. When their health is neglected, or healthcare is otherwise inadequate, there is nearly nothing they can do to help themselves. For that reason, the United States Supreme Court has held,¹ continues to uphold adequate health care as a government

¹ *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) ("These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death, the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.")

obligation.² Failure to do so is an actionable violation of their civil rights. SB 488 ensures the State is fulfilling its obligation of adequate health care by providing the option of immunization.

Second, inadequate disease prevention can cause an incredible amount suffering, and even death. This past year, Oregon's Coffee Creek Correctional Facility became a national example of failures to provide inmates with adequate immunization.³ Tina Ferri lost her life because of complications related to her preventable infection from the influenza virus. 44 other inmates were also infected. Ms. Ferri was not vaccinated, nor is it clear that she had the option. That same year Coffee Creek purchased 519 influenza vaccines, which was only enough to immunize less than a third of the facility's population. State-wide, Oregon Department of Corrections purchased 4,650 vaccines, which is also less than a third of the total people in DOC facilities.⁴ Leaving two thirds of an enclosed population is a recipe for an outbreak.

Intuitively, it may seem as though prisons and jails would isolate their populations from disease. The opposite is true. Not only are those who enter jails and prisons are disproportionately sicker and more prone to illness, but once they are in a facility, the risk for infection increases.⁵ Circulating inmate populations, outside contact through inmate visitation and DOC employees, close quarters, lacking general infection control standards, and the reality of mass incarceration have all been cited as unique factors of prisons and jails that create an increased risk of spreading influenza to an already vulnerable population.⁶ To prevent influenza infections, the Federal Bureau of Prisons recommend all staff and inmates be offered vaccination,⁷ "to reduce morbidity and mortality[.]"⁸ Without offering all inmates the option of immunization, the risk of rapid and possibly lethal outbreaks like that in Coffee Creek persist here in Oregon.

Some of us may forgo our annual flu shot, only to deal with a doctor visit and maybe a sick day. Those who are incarcerated in Oregon correctional facilities do not have that liberty. They do however, have an additional risk. For a population already predisposed to illness, and little place to hide from it, SB 488 would be fulfilling the State's constitutional obligations of adequate health care. **For the reasons above, we urge to you vote in favor of SB 488.**

Taylor Snell for Mary Sofia

For questions or comments contact Mary A. Sofia, OSB # 111401
Legislative Director
Oregon Criminal Defense Lawyers Association
503.516.1376 * msofia@ocdla.org

² *Brown v. Plata*, 131 S.Ct. 1910 (2011)

³ *Inmate's family sues Oregon following her flu death*, The Associated Press, [<https://apnews.com/df6e2ab5126e450bbb2d6e2c217a5e10>] (accessed February 5, 2019).

⁴ Katherine Shepherd, *Oregon Failed to Provide Flu Vaccinations to Most of Its Prison Inmates. One Woman Died*, *Willamette Week*, March 21, 2018 [<https://www.wweek.com/news/state/2018/03/21/oregon-failed-to-provide-flu-vaccinations-to-most-of-its-prison-inmates-one-woman-died/>] (accessed February 5, 2019)

⁵ Jacobi, J., *Prison Health, Public Health: Obligations and Opportunities*, *American Journal of Law & Medicine*, 451, n.5-n.7 (2005).

⁶ Laura M. Maruschak, et. al., *Pandemic Influenza and Jail Facilities and Populations*, 99 *Am J Pub. Health*. October, (2009).

⁷ Federal Bureau of Prisons, *Seasonal Influenza Guidance*, Section 3 [https://www.bop.gov/resources/pdfs/seasonal_influenza_guidance.pdf] (accessed February 5, 2019.)

⁸ Federal Bureau of Prisons, *Immunization: Federal Bureau of Prisons Clinical Guidance*, Module 5 (September 2018) [https://www.bop.gov/resources/pdfs/immunization_201808.pdf] (accessed February 5, 2019)