



Legislative Testimony

OREGON DEPARTMENT OF CORRECTIONS

May 6, 2021

The Honorable Janelle Bynum, Chair
House Committee on Judiciary

RE: Senate Joint Resolution 10

Chair Bynum and members of the committee, I am Rob Persson, Assistant Director of the Operations Division for the Oregon Department of Corrections (DOC). I am providing written testimony related to Senate Joint Resolution (SJR) 10.

What the Bill Does:

SJR 10 proposes an amendment to the Oregon Constitution to prohibit slavery and involuntary servitude in all circumstances. It further refers the proposed amendment to the people for their approval or rejection at the next regular general election.

Background Information:

DOC recognizes that compelled prison labor is sometimes perceived as modern-day slavery. DOC believes that perception is misplaced, at least with respect to the manner in which adults in custody (AICs) are engaged in prison work programs in Oregon's prisons. Regardless of one's views on the policy issues underlying SJR 10, the department has concerns regarding the potential legal uncertainty that would result if the language of the ballot measure SJR 10 would refer to the voters were to be approved in light of Article I, Section 41 of the Oregon Constitution (commonly referred to as "Measure 17"). SJR 10 would refer to the voters a ballot measure to amend Article 1, Section 34 of the Oregon Constitution, which would remove the current prison labor exception to the prohibition on slavery and involuntary servitude while incarcerated. Should the proposed ballot measure that would be referred to the voters by SJR 10 be approved by the voters without addressing its effect on Measure 17, and if the ballot measure that would be referred to the voters by House Joint Resolution 5 to repeal Measure 17 were to fail, there would be uncertainty and possible litigation to determine how to interpret these two, seemingly conflicting provisions in Oregon's Constitution. Measure 17, which was approved by the voters in 2014, was premised in part on the ability of DOC to engage AICs in meaningful work and on-the-job training programs, and the obligation of AICs to participate.

For context, as of December 31, 2020, the Colorado Department of Corrections had a population of 10,702 individuals in state custody. Oregon DOC has approximately 10 to 20 percent more AICs than Colorado with 12,176. Colorado recently passed legislation similar to SJR 10. The resulting lawsuits, described in a [Colorado news article](#) in July 2020, were filed by current and former AICs against the Colorado Governor, DOC officials, and a private prison operator. Those suits request the AICs receive at least the state's minimum wage, be considered state employees, and receive the same benefits as state workers such as paid holidays and vacations, paid sick leave, and medical benefits. If successful, the lawsuit could require the state to spend \$400-500 million to pay AICs the \$12

Colorado hourly wage. The lawsuit also asks the state to reimburse AICs retroactively for work performed since 2018, which would reportedly equate to another \$1 billion. Again, Oregon is approximately 15 percent larger than Colorado.

Should the ballot measure that SJR 10 would refer to the voters be enacted by the people without removing the requirement for DOC to engage all AICs in work or on-the-job training programs, the courts through litigation could determine that AICs must be treated similarly to state employees with respect to minimum wage and hour laws, and other benefits. On the other hand, if AICs no longer participate in work opportunities within DOC facilities, an undetermined significant increase in personnel would be required to prepare food, perform building and grounds maintenance, provide medical and custodial support, and a variety of other tasks. It is difficult to determine the number of full-time equivalent (FTE) positions required, but it could easily be 1,000 and go as high as 3,000 positions.

Oregon Corrections Enterprises (OCE) currently provides 29 work programs in nine institutions engaging 1,389 AICs (2,600 participants per year). The total AIC awards paid by OCE in fiscal year (FY) 2019-20 was \$2.88 million. Until last year, OCE had been self-sustaining. OCE closed FY 2019-20 with a loss of \$1.16 million due to the impacts of COVID-19, civil unrest, and wildfires. OCE programs are not mandatory work programs. They are voluntary and highly sought after as the highest paying work opportunities in DOC.

OCE has calculated three scenarios related to paying AICs. The first two are based on state and federal minimum wages and a Prison Industries Enhancement Certification Program (PIECP) model. The third scenario focuses on the laundry program.

Under the PIECP, the Bureau of Justice Assistance (BJA) certifies local and state prison industry programs meet all the necessary requirements to be exempt from the federal restrictions on prisoner-made goods sold in interstate commerce. The program places AICs in realistic work environments, pays prevailing wages, and provides opportunities to develop marketable skills to increase potential for rehabilitation and meaningful employment on release. Currently, 81 AICs participate in PIECP with OCE.

A cost benefit analysis conducted by the Oregon Criminal Justice Commission determined for every dollar spent with OCE the state saves \$5.40 in recidivism costs. They recommended expansion of OCE programs, as they are valuable in reducing recidivism, improving job skills, and providing a productive way to spend time in prison. "Voices from the Inside" on OCE's website shares the AICs perspective on OCE programs and their impact.

Upon voter passage of the ballot measure that would be referred to them by SJR 10, OCE may be required to pay the state or federal minimum wages, rather than prevailing wage as the federal law requires for BJA certified PIECP programs. Not all programs may qualify for PIECP certification. An analysis through BJA and DOJ would be required to determine the legalities of utilizing this model. The following are the cost comparisons for these wage scenarios which include the \$2.88 million already paid by OCE.

	Minimum Wage Costs	PIECP Model based on Minimum Wage
State	\$ 27,487,785.00	\$ 5,497,557.00
Federal	\$ 16,882,060.00	\$ 3,376,412.00

OCE averages between 575-600 AICs in laundry programs. If Oregon's minimum wage of \$12.75 was applied, OCE would have to increase the cost of service by approximately \$0.49 per pound across the board, effectively being priced out of the market.

OCE currently supports approximately half of the state's healthcare industry with laundry service, processing over 24.5 million pounds annually. OCE has supported three public service linen providers with back-up linen service due to the effects of COVID-19 and the shortage of workers. OCE is processing an average of 24 thousand pounds of laundry per month under a backup service agreement for one provider. OCE provides institution laundry service for nine DOC facilities.

This is an example of the expense potentially incurred for only the OCE-employed AICs. In addition to these 1,389 AICs, thousands of other AICs perform necessary tasks within DOC facilities. These AICs would also be considered for either state or federal minimum wages incurring many times the expense shown above.

While DOC is not taking a position on SJR 10, this testimony is being submitted to provide additional information to assist in this decision making process.

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

Submitted by:

Oregon Department of Corrections

Rob Persson, Assistant Director for Operations

Rob.J.Persson@doc.state.or.us

Phone: (503) 945-0932