

Honorable Members of the House Committee on Judiciary

Thank you for your consideration of SB 133. The Oregon Youth Authority asks for your support for this bill and in the work to come to evolve and increase our efforts to support victims and restorative justice programs.

This written testimony concerns SB 133 - Restorative Justice Programs – Sections 1 to 5 in the bill. This portion mirrors the existing legal language for the Department of Corrections Programs. As OYA embarks on creating better avenues to support crime victims and restorative justice, this bill provides a legal foundation to get started. DOC has already been an incredible partner in supporting our growth and engagement in this issue and we thank them for that assistance.

I would like to note that a significant amount of the detail for the Restorative Justice Programs is within DOC rule, that we will also mirror for programming we, in the future develop, in particular around Confidentiality of Facilitate Dialog Communications, as noted in OAR 291-205-0120. Below is a link to the DOC Division 205 Victim Services OAR, and then listed the specific exemptions to confidentiality within the rule. I put this on the record, as our District Attorney partners wanted to ensure that the intent and direction around confidentiality exceptions was captured in the official record for SB 133.

Respectfully,  
Christine Kirk  
Oregon Youth Authority

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=995>

291-205-0120 [Portions that pertain to the exceptions to confidentiality.]  
Confidentiality of Facilitated Dialog Communications, Exceptions

(3) Exceptions to confidentiality and inadmissibility:

(a) Any document that was prepared for purposes other than the Facilitated Dialogue Program and is a public record as defined in ORS 192.311 remains subject to disclosure to the extent provided by ORS 192.311 to 192.478 and may be introduced into evidence in a subsequent proceeding.

(b) A facilitated dialogue is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person.

(c) The crime victim, survivor, inmate, and facilitators in a facilitated dialogue may agree in writing that all or part of a facilitated dialogue is not confidential and may be disclosed or introduced into evidence in a subsequent proceeding, unless the substance of the communication is confidential, privileged, or otherwise prohibited from disclosure under state or federal law.

(d) A crime victim, survivor, inmate, or facilitator may disclose a facilitated dialogue to a person if the

communication with that person is privileged under ORS Chapter 40 or other provision of law.

(e) A crime victim, survivor, inmate, or program facilitator may disclose facilitated dialogue communications to a person for the purpose of obtaining advice or support for the facilitated dialogue if the victim, survivor, inmate, program facilitator, and the functional unit manager or designee agree.

(f) Program staff may disclose facilitated dialogue to a Department of Corrections employee to the extent that the disclosure is necessary to conduct authorized activities of the department. A Department of Corrections employee receiving a facilitated dialogue communication may re-disclose the communication only to the extent necessary to conduct those authorized activities.

(g) A written facilitated dialogue communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the victim, crime survivor, or inmate who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from a facilitator or another participant who does not agree to the disclosure.

(h) Any facilitated dialogue communication relating to child abuse that is made to a person required to report child abuse under ORS 419B.010 is not confidential to the extent that the person is required to report the communication.

(i) Any facilitated dialogue communication relating to elder abuse that is made to a person who is required to report elder abuse under ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication.

(j) Any facilitated dialogue communication relating to abuse of adults with developmental disabilities who are currently receiving services from a community program or facility or were previously determined eligible for services or adults with mental illness who are receiving services from a community program or facility made to a person who is required to report abuse of those adults under ORS 430.765 is not confidential to the extent that the person is required to report the communication.

(k) A facilitated dialogue communication made to a program facilitator, Victim Services Advisory Committee member, or program staff may be disclosed and may be admitted into evidence to the extent the Department of Corrections Director or the functional unit manager determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to institutional security or the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(l) The names of the participants in a facilitated dialogue, the facilitator names, and the case number associated with that case are not confidential, may be disclosed and may be admissible in a subsequent proceeding.

(m) The Department of Corrections may use or disclose facilitated dialogue communications for reporting, research, training, or educational purposes subject to the following:

(A) The department may compile and disclose general statistical information concerning facilitated dialogues if the information does not contain information that would likely reveal the identities of the dialogue participants.

(B) Program staff may use or disclose facilitated dialogue communications or the disposition of matters referred for dialogue to another person for use in research, training, or educational purposes if the communications are used or disclosed in a manner that would not allow that information to be associated with a specific participant or reveal the identity of a participant.

(n) A program facilitator may disclose a facilitated dialogue communication and such disclosures may be admissible in any subsequent administrative, judicial or arbitration proceeding only to the extent that the victim, survivor, inmate, and the functional unit manager or designee agree in writing to the disclosure. The facilitator may disclose the communication only to the extent authorized in the agreement.