

# Agency In Crisis

by Justin Low

25 MONTHS. 436 MEDIA REPORTS. 0 REPERCUSSIONS.

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*The Oregon Justice Resource Center (OJRC) is a 501(c)(3) nonprofit founded in Portland, Oregon, in 2011. We work to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. Our clients are currently and formerly incarcerated Oregonians. We work in partnership with other, like-minded organizations to maximize our reach to serve underrepresented populations, train public interest lawyers, and educate our community on civil rights and civil liberties concerns. We are a public interest law firm that uses integrative advocacy to achieve our goals. This strategy includes focused direct legal services, public awareness campaigns, strategic partnerships, and coordinating our legal and advocacy areas to positively impact outcomes in favor of ending mass incarceration.*



# Introduction

**FROM MARCH 1ST, 2020, TO MARCH 30TH, 2022**, the Oregon Department of Corrections (ODOC), the people in its custody, and/or the treatment of those individuals were mentioned at least 436 times in local, statewide, national, and international news articles. While state agencies frequently making headlines during this period was not necessarily uncommon — due to pandemic-related news, guidelines, and services provided — ODOC stood out for the unprecedented number of times it had been mentioned in those 25 months.<sup>1</sup>

Many of those articles highlighted glaring and reoccurring issues within the ODOC's staff, culture, and daily operations related to the abject treatment of adults in custody (AICs) and other agency staff. These abuses include violations of constitutional rights, deprivation of basic needs, sexual violence, negligent medical care, physical and mental harm, and a generalized disregard for human life and well-being. While these issues were extensively documented and reported on during the pandemic, they are neither new nor uncommon — these issues existed well before 2020 and were exacerbated by the agency's inhumanity, incompetence, and inability to prepare for foreseeable crises. Hence, it is abundantly clear that these are interconnected issues related to chronic systemic problems within the agency, department administration, and state leadership, rather than individual incidents occurring within a vacuum. Furthermore, all of this has occurred with little to no repercussions, relative to other state agencies.

Three months after mismanaging a statewide economic crisis that impacted the unemployment benefits of thousands of Oregonians within the general public, the former Oregon Employment Department Director Kay Erickson resigned at the request of Gov. Kate Brown. Speaking about the director and agency's ineffectiveness in meeting the basic needs and services that individuals required of the Oregon Employment Department (OED), Brown said, "This is an unprecedented crisis, and the problems at the department demand an urgent response."<sup>2</sup> The public outcry, the sheer volume of individuals impacted, and the political pressure

*While state agencies frequently made headlines from March 2020 to March 2022, ODOC stood out for the unprecedented number of times it had been mentioned.*

to deliver provided Brown with the mandate to hold OED and Erickson accountable. Meanwhile, a culture of dominance, retaliation, and exploitation has left AICs (Adults in Custody) — who do not enjoy the same agency or political power as the general public — with a prevailing crisis that has long-demanded an urgent response. It has irreparably harmed AICs and stranded them without significant means of accountability over those responsible, beyond glacial litigation in the federal courts.

The status quo is unacceptable. This is not how a society that purports itself to be ‘just’ and ‘righteous’ should be allowed to treat its people. Oregon did not tolerate the harm done to its community members when OED failed to serve its people. So, once again, the people of this state must not stand idly by as another state agency fails to treat its community members with compassion, dignity, and humanity. Transformational change across the state is essential to provide real oversight and accountability over ODOC. Until then, ODOC leadership, state actors, and a complacent general public will continue to allow this brutal system to be upheld. This report will highlight just a few of the many articles and examples that encapsulate ODOC’s running thread of dysfunction that can be found woven into each incident of the last two years and beyond. These seemingly individual events are bound together to form a running tapestry that depicts the story of an agency in crisis. □

## In the News

*A timeline of selected ODOC-related news headlines from March 1, 2020 to March 30, 2022.*

MARCH 2020

*Click any of the headlines on the timeline to read the full news story online.*



**3.12.20**

*Oregon Prisons Suspend Visits to Protect Against Coronavirus*



**3.18.20**

*Oregon prison system, facing escalating costs, cutting employees but no corrections officers*



**4.1.20**

*Prison employee is first confirmed coronavirus case in Oregon Department of Corrections*



**4.2.20**

*First Oregon Prison Inmate Tests Positive For COVID-19*

APRIL 2020

# Issues

## 01 | ODOC's Handling of Overincarceration Puts AIC Well-Being at Risk

Always maintain control; never concede. This statement is reflective of one of the key issues behind ODOC's dysfunction, which is the agency's inability to properly care for the number of people that are required to be in its custody. This issue has then been exacerbated by policymakers, district attorneys, and criminal statutes that continue to drive the number of incarcerated individuals up. Consequently, this has led to overpopulated prisons, a growing aging population in custody, and increasing health care costs.<sup>3</sup> The Oregonian reported that factors like these are what led to a budget shortfall in ODOC's biennial budget and subsequent cuts in early 2020.<sup>4</sup> On March 18<sup>th</sup>, 2020, ODOC announced that a \$60 million budget shortfall would lead to layoffs, a hiring freeze, reduced training, and the cancelation of critical infrastructure improvements.<sup>5</sup> Consequently, ODOC's failure to adapt to the convergence of a budget shortfall and imminent pandemic aggravated already egregious working conditions for their employees and inhumane living conditions for AICs.

While ODOC Director Colette Peters told the Oregonian that the department was also grappling with other complex medical problems among inmates, some of whom required off-site medical treatment,<sup>6</sup> she failed to acknowledge any personal responsibility for the ensuing layoffs and cuts that resulted from the lack of administrative fiscal responsibility. Stacey Chamberlain, the executive director of AFSCME (the labor union representing some of the individuals who were laid off by ODOC), expressed frustration with Director Peters's negligence by stating "I think that as a head of any agency that there is a certain level of responsibility in managing the funds that you have and when they are short, making sure legislators understand where those shortfalls are coming from."<sup>7</sup>

MAY 2020

4.13.20



TVCC lays off 19 as state prison system suspends education programs



4.15.20

Oregon Prison Nurse Suspended After Malnourished Inmate Left Paralyzed

5.20.20



Man Becomes 1st Oregon Inmate To Die With COVID-19



5.22.20

Oregon's maximum-security prison in Salem now the site of state's biggest single coronavirus outbreak

5.31.20



Inmates at Portland Prison Accuse Staff of Retaliation for COVID-19 Lawsuit

Although state agencies are no stranger to incurring budget gaps, officials attributed the unexpected budget projections to the “lack of electronic health records in the prison system that... would have helped identify and track trends in medical care.”<sup>8</sup> Beyond the financial mismanagement by ODOC leadership, this report revealed the agency’s lack of systems necessary to accurately forecast AIC care and associated costs.

Further proof of ODOC’s lack of capacity and infrastructure to safely operate their over-incarcerated facilities was revealed in the conversations about commuting sentences at the start of the pandemic. In early 2020, Gov. Brown, who holds the sole power to reduce sentences and then release individuals, was called upon by public health experts and criminal justice advocates to use her ability to commute sentences as a way to protect people in custody and ODOC staff during the pandemic. While numbers, criteria, and consequences were being discussed by groups in favor and in opposition of commutation, ODOC made no attempt to advocate for substantial changes to their overcrowded prison populations, thus creating a false illusion of control over the dire situation.

The Oregonian reported that of the 14,085 AICs in the state prison system in June 2020, 5,800 AICs — about 40% of the entire population — would need to be released in order to comply with CDC social distancing guidelines.<sup>9</sup> While this number was illuminating in terms of the extent ODOC would have to change to comply with the CDC standards, the important takeaway was that it showed how crowded and overpopulated state prisons were. Moreover, although state officials shared that 182 were identified as “most vulnerable to COVID-19”, 638 were “vulnerable”, 804 were age 60 or older, 2,584 were within 6 months of release that were mostly sentenced for drug or property-related crimes, and 1,754 were to be released within the next six to twelve months that were mostly sentenced for similar offenses,<sup>10</sup> OPB reported that Governor Brown ended up commuting the sentences of fewer than 1,000 AICs between July 2020 and October 2021.<sup>11</sup> This left ODOC to continue operating prisons with well over 4,000 more individuals than they could safely stay open with, per CDC guidelines. The discrepancy between the number of people that needed to be released to be in compliance with CDC guidelines and the number the Governor ultimately landed on, exhibited the lack of thought and care that was put into prioritizing AIC health and safety.

While some state leaders like Sen. Michael Dembrow, who advocated for a “careful, targeted reduction of the prison population, focusing on those who did not commit violent offenses,”<sup>12</sup> understood this reality, there were others like Washington County District Attorney Kevin Barton who did not grasp the common-sense task at hand. Instead, Barton advocated for the status quo stating that it is “[ODOC’s] job is to keep these people housed. These are all convicted criminals. They have had their day in court. They have been convicted and it’s the Department of Corrections’ responsibility to safely house these inmates.”<sup>13</sup> Rather than reducing the number of tax dollars spent on over-incarceration — thus, improving community well-being and increasing investments in critical public services and resources — leaders like District Attorney Barton leaned into fear-mongering and punitive rhetoric during this time of crisis. Ultimately, no



6.3.20

*New CenturyLink contract adds communication barriers for Oregon prisoners*  
*Oregon Prisoners Will Not See Stimulus Money from Coronavirus Relief Package*



6.15.20

*Days After Gov. Brown Calls for Release of 100 Inmates, Lawmakers Call for 2000*



6.26.20

*Oregon Health & Science University Will Stop Using Prison Labor to Do Its Laundry*

JULY 2020

large-scale commutation was enacted, prison overcrowding remained, and vulnerable and/or soon-to-be-released AICs were subjected to needless incarceration.

One formerly incarcerated individual expressed their frustration toward the Governor's inaction by telling Street Roots that "(Prisoners) are not too dangerous to sleep next to you and fight a fire with you, they're not too dangerous to answer phone calls for the Oregon Health Plan or for the DMV or have access to your information, but apparently they are too dangerous to come home and safely exist with their families."<sup>14</sup>

## 02 | ODOC Treats Essential Services for AICs as Privileges and Commodities

For Oregon prisons, profits and budgeting take precedence over people. While reports of ODOC's budget shortfall revealed the agency's financial mismanagement and inability to care for the people in their custody, other articles revealed the agency's willingness to treat essential services and programs for AICs as privileges or commodities to be exploited for agency gains.<sup>15 16</sup>

In October 2020, OPB reported that ODOC would be ending contracts with six community colleges that provided high school diploma-equivalent educational programming to AICs.<sup>17</sup> While this response was meant to fill budget gaps and address alleged inconsistency in services provided, it would have eliminated AICs' access to Adult Basic Education, GED programming, English as a Second Language, and Special Education programming provided by the community colleges.<sup>18</sup> In turn, ODOC would have replaced the community college programs with in-house education services and programming.<sup>16</sup> Director Peters defended the move by explaining that "[The] policy decision to bring education in-house is a continued reflection of our ongoing commitment to effectively prepare adults in custody (AICs) for their eventual reentry into our communities."<sup>19</sup>

While ODOC's intention to replace the community college programs with in-house programming was purported to be a cost-effective one-to-one swap, the Oregon Education Association's president, John Larson, strongly contested that notion. Larson told OPB that the Oregon State Penitentiary had already attempted to provide in-house adult education services from 2003-2006, and it resulted in "successful completion of programs [declining] by about 50% while seeing costs rise."<sup>20</sup> Therefore, not only did Director Peters's defense of the decision contradict historical data on effectively preparing AICs for reentry, but it could have exacerbated ODOC's budget crisis even further by raising costs to provide educational programming.

In early 2021, OPB reported that ODOC ended up signing a new contract with the Oregon Higher Education Coordinating Commission (HECC) to renew and keep

AUGUST 2020

8.17.20



*Inmates begin hunger strike at Eastern Oregon Correctional Institute*

8.18.20



*Oregon attorneys say a new phone policy is limiting confidential calls with clients in prison*

8.21.20



*Prison Inmates Are Fighting Oregon Wildfires for Under \$10 a Day*

SEPTEMBER 2020

9.8.20



*Oregon Department of Corrections Evacuated 1,450 Inmates to One Salem Prison. That Could Be a COVID-19 Disaster.*

9.10.20



*Coffee Creek Correctional Facility will evacuate all inmates because of fire threat.*

9.14.20



*Oregon's inmate transfers due to wildfires 'did not go as smoothly' as intended, state concedes*

existing education programming through the community colleges.<sup>21</sup> Although the provision of higher education services seemed resolved by this renewed contract, a greater issue remained regarding ODOC's overall handling of the situation. While the new agreement was struck between ODOC and the HECC to create a more centralized delivery of educational programming and increase student contact hours, the greatest part of interest was that it cost ODOC \$2.7 million less than the previous contract.<sup>22</sup> This deal could be heralded as a great success for ODOC, but the more concerning point was that instead of seeing educational services for the intrinsic value that they hold for AICs, ODOC was willing to threaten a less effective and costlier outcome (i.e., bringing programming in-house), than to renew the contract with the expected price increases associated with renewal. Beyond the intrinsic value that educational services possess, access to higher education has been proven to decrease recidivism rates — something ODOC should both know and care about.<sup>23</sup> Despite both agencies eventually coming to a suitable agreement, ODOC demonstrated that it would gamble with the fate of essential services if it meant they could get a better deal. Thus, treating educational services as a privilege with a price tag.

Another example of ODOC's lack of concern for changing the services that AICs depend on came in the form of contracting a new telecommunication services provider. In June 2020, Street Roots reported that ODOC signed a new contract with CenturyLink — which was already known for receiving numerous consumer complaints — effectively handing over statewide prison telecommunications control to the private corporation.<sup>24</sup> It is important to note that all the while, ODOC and its leadership have emphasized how crucial it is for AICs to have continued and accessible means of connecting with family since research shows it improves the likelihood of successful reentry and reintegration.<sup>25</sup> However, instead of becoming more accessible, the switch to CenturyLink increased telecommunication fees and privacy issues for AICs and their families.<sup>26</sup> Additionally, the new contract allows for the collecting and storing of individual voices and messages to create biometric signatures that CenturyLink and ODOC could then use for tracking individuals.<sup>27</sup> All of this came at a time when AICs were simply looking to reconnect with loved ones after already being cut off from in-person visits during the pandemic.<sup>28</sup>

Only six months earlier, CenturyLink had settled a lawsuit for charges of deceptive advertising and undisclosed fees in Oregon, which would place them on the hook for \$4 million.<sup>29</sup> Notwithstanding this concerning development, ODOC continued pursuing a telecommunications service contract with CenturyLink. Once the transition happened, it was evident to AICs and their families that CenturyLink's issues that they had previously been sued for, had carried over to the prison telecommunications system. Street Roots shared that in addition to service issues, families were subject to new fees when they deposited money into AIC telecommunications accounts, which ended up offsetting CenturyLink's advertised lower phone and video call rates.<sup>30</sup> On top of the increased costs for video chatting and calls, ODOC and CenturyLink also changed the way AICs and families instant message one another.<sup>31</sup> Before, AICs accessed messages from their families immediately upon login.<sup>32</sup> Now, ODOC and CenturyLink have changed it



9.18.20

*For Prisoners in the West, the Virus and the Wildfires are Colliding Threat*



9.25.20

*Wildfire evacuation conditions for Oregon Prisoners criticized as 'inhumane'*



10.1.20

*Brown Balks at Significant Release of Prisoners as COVID Cases Near 1,000 in Oregon Prisons*



10.5.20

*Oregon Prison Officials Placed on Leave Following Wildfire Evacuations*



10.13.20

*State will pay record \$2.7 million settlement in Oregon prisoner's death from flu*



10.20.20

*Oregon DOC employees file lawsuit accusing agency of misleading lawmakers, misusing money*

OCTOBER 2020

NOVEMBER 2020



to a message approval system where prison staff would determine whether or not to forward messages to an AIC.<sup>33</sup> Furthermore, should a message be declined for forwarding, no refunds would be provided for AICs or family members.<sup>34</sup>

Finally, not only did these changes come at the direct expense of AICs and their families, but ODOC, through a legislative loophole, can collect millions of dollars a year in fees from CenturyLink in the form of staff reimbursement and third-party vendor fees.<sup>35</sup> Although the Oregon Legislature passed legislation to prevent kickbacks from corporations to state agencies, a loophole exists for prisons and jails that outsource video and calling services.<sup>36</sup> So, while AICs and families are subjected to poor telecommunication services, higher service fees, and invasive data collection, ODOC is lining their pockets with kickbacks and shared profits from CenturyLink. Through this action, ODOC makes it clear that telecommunication services are a commodity rather than a basic need or human right for AICs and an essential service that helps reduce recidivism. For ODOC, these services can be bought, sold, or contracted out, so long as it is financially beneficial for the prison agency.

After the \$4 million settlement was finalized between the Oregon Department of Justice and CenturyLink for the charges of deceptive advertising and undisclosed fees, Oregon Attorney General Ellen Rosenblum resoundingly stated, “[The] settlement sends a clear message that hidden fees and other forms of unfair and deceptive business practices will not be tolerated in Oregon.”<sup>37</sup> Disappointingly, the Attorney General’s statement against deceptive advertising and undisclosed fees didn’t seem to extend to Oregonians who are in custody — and AICs and their families are well aware of it.

As the spouse of one AIC noted of CenturyLink’s takeover of prison telecommunication services, “... [T]his change was just awful. No tech company would get away with this out here, but we have no choice but to use it.”<sup>38</sup>

## 03 | ODOC Acts with Blatant Disregard for AIC Health, Rehabilitation, and Release

AIC well-being is not a priority for ODOC. Beyond the financially calculated decisions that ODOC makes on services that reduce recidivism and are essential to AICs, the state agency further demonstrates its apathy toward AIC health, rehabilitation, and release through its actions toward treatment programs and health care. While education and telecommunications are critical to AIC growth, development, and connection, media reports have revealed that ODOC’s provision of health-related services that are statutorily required is dismal, at best.<sup>39 40 41</sup> These services are fundamental to the physical, mental, and emotional health of AICs, and can impact release dates, treatment of illnesses, and daily function. Yet, news articles



11.23.20

*Corrections officer who smuggled drugs into Coffee Creek pleads guilty*

DECEMBER 2020



12.11.20

*Nurse accused of sexual assault by 6 Coffee Creek inmates*



12.16.20

*The power has been out at Oregon’s Two Rivers prisons for nearly 1 week, amid surge in COVID-19*

have revealed that ODOC acts with blatant disregard for the provision of these resources.

As per ORS 421.504(1), ODOC is statutorily required to establish alternative incarceration programs (AIPs) that reflect evidence-based practices, promote self-discipline, physical work, and physical exercise, and provide rehabilitative and cognitive programming.<sup>42</sup> They can also include drug and alcohol treatment.<sup>43</sup> AIPs are developed in collaboration with other state agencies like the Oregon Criminal Justice Commission and the Oregon Health Authority to ensure a comprehensive approach to design.<sup>44</sup> AIPs are supposed to last a minimum of 270 days in duration,<sup>45</sup> require a minimum of 14 hours of high structured routines per day, seven days a week, and include a period of structured non-prison leave.<sup>46</sup> The end goal of an AIP is an eventual successful community transition for the enrolled AIC. Participation in AIPs can move up AIC release dates by weeks or more than a year, and participants have demonstrated lower recidivism rates than the general population.<sup>47</sup>

“Being able to really address the root of what leads women to prison was our goal. ... Seeing what this women-focused, trauma-informed program could do to help people blew the water out of what I thought was helping people,” is how Teresa Melville, a former AIP case manager, explained her view of the former HOPE program at Coffee Creek Correctional Facility to Street Roots.<sup>48</sup> The Healing Opportunities Promoting Empowerment (HOPE) program, was an AIP that provided AICs at Coffee Creek Correctional Facility with gender- and trauma-responsive treatment, designed to address the underlying factors behind their addiction and offending behavior.<sup>49</sup> HOPE was unique in that it went beyond standard substance treatment and behavioral counseling programs, incorporating gender-responsive programming to address the trauma experienced specifically by women.<sup>50</sup> Not only did this help over 75% of participants in increasing healthy coping strategies and reducing post-traumatic stress symptoms, but it also contributed to significant reductions in recidivism rates for alumni of the program.<sup>51</sup>

At the onset of the pandemic, ODOC immediately terminated/suspended all in-person AIP programming in their prison facilities,<sup>52</sup> but kept some programs — like higher education programs — running through a transition to remote delivery. The abrupt suspension of all AIPs department-wide had immediate consequences on AICs. This included the delay of release dates for dozens, if not hundreds, of individuals that got pushed back for weeks or months, the cancellation or indefinite hold on other AIC release dates, and the unaddressed trauma that people had to sit with after dredging them up during treatment and then having their AIP abruptly suspended.<sup>53</sup> There was no care or consideration for these individuals and what they had to endure during these AIP suspensions and terminations, which spoke volumes about the culture and value system of ODOC. Unfortunately, when AIPs were allowed to resume in ODOC facilities, not all the programs returned,<sup>54</sup> thus exacerbating the negative impact and harms already done to AICs during the initial pause.

JANUARY 2021



1.13.21

*Oregon Prison Inmates Were Evacuated from Wildfires onto the Home Turf of their Former Gang Associates*



1.20.21

*Records recount tumultuous melee at Snake River Correctional Institution*



1.22.21

*7 prisoners seek restraining order, ask federal judge to compel Oregon to vaccinate them against COVID-19*



1.30.21

*Judge blasts Oregon prisons doctor; says must follow CDC rules*



2.2.21

*Oregon expected to begin vaccinating inmates starting next week [after U.S. magistrate ordered all AICs be prioritized for vaccines]*



2.8.21

*Suicide remains the leading cause of death in Oregon's jails, new report finds*



2.11.21

*Pendleton inmate fears he'll die from COVID-19 while in prison*

FEBRUARY 2021

Street Roots reported that while many AIPs and their providers were allowed to start back up around mid-May 2020 via virtual programming or paper packets, the HOPE program was denied the opportunity to restart by ODOC.<sup>55</sup> Even though the HOPE program staff painstakingly rewrote the curriculum to deliver the program remotely, ODOC informed the provider of HOPE that it could not accommodate holding the program virtually or through paper packets.<sup>56</sup> This was contrary to the experience of other AIPs that had the opportunity to return to prisons or restart programming remotely.<sup>57</sup> As a result, ODOC terminated the program on July 17, 2020, forcing participants to finish an in-house version of the program with ODOC staff, enter a new program that didn't provide gender-responsive programming, or opt-out of continued treatment completely.<sup>58</sup> Despite ODOC's half-hearted attempts to transition folks to new programming, their efforts disregarded the quality of clinical and trauma-informed programming that HOPE provided and ignored the abandonment and re-traumatization felt by the AICs of Coffee Creek.

Consequently, this prompted legislative intervention in 2021; a new law was passed that now prevents ODOC from suspending or terminating AIPs without first exploring alternatives.<sup>59</sup> Senator Michael Dembrow, who sponsored the legislation explained that "These treatment programs that provide structure and valuable resources to adults in custody must not be pushed to the side as we continue to navigate uncertain times."<sup>60</sup> Additionally, if an AIP is suspended in a manner that significantly impacts AIC release dates, ODOC is then required to report that to the Legislature within 14 days.<sup>61</sup> Action taken by the policymakers demonstrated the importance of AIPs to individuals in custody, their families, and overall community well-being, but it also revealed the Legislature's lack of faith in ODOC's ability to prioritize the health and care of people within their custody.

Another area that reports claim ODOC has shown negligence in is the provision of and access to quality health care for people in their custody. ORS 423.020(1)(d), states that ODOC must provide adequate health and medical care for persons in custody.<sup>62</sup> Yet, recent articles provide a window into the egregious issues that have long existed within ODOC's health care system and point to a lack of oversight, transparency, and care for individuals with medical needs and/or conditions.

In October 2020, the Oregonian reported on the largest ODOC settlement in history, which was a \$2.75 million payout to the family of Michael Barton who was an adult in custody that passed away from the flu due to complications and lack of treatment.<sup>63</sup> In the lawsuit, it was stated that Mr. Barton's flu-related symptoms and complications advanced to the point where he developed pneumonia, a staph infection, and sepsis.<sup>64</sup> The attorney representing the Barton family further explained the context of Mr. Barton's death by saying, "Michael Barton died a brutal death because he was ignored and then was written off as faking symptoms and refusing medication."<sup>65</sup> The lawsuit also stated that Mr. Barton suffered from severe bipolar disorder and depression, and an investigation by Disability Rights Oregon found that Mr. Barton's "severe cognitive disability made it impossible for him to advocate for his own needs or understand and follow medical advice and orders."<sup>66</sup>

MARCH 2021



3.3.21

*Prisoners eligible for stimulus checks, but getting payout behind bars is complicated*



3.11.21

*Gov. Brown to consider trimming prison sentences for inmates who fought wildfires as reward for serving state 'in time of crisis'*



3.24.21

*Guard at Oregon women's prison faces felony charges for domestic violence*

APRIL 2021

The suit went on to explain that because of the flu “[Mr. Barton’s] weakened condition prevented him from drinking water or other fluids, from eating, and from taking medicine for his mental and physical conditions. Trays of uneaten food accumulated in his cell. ... Despite knowing of his weakened condition and diagnosed pneumonia, prison personnel failed to enter his cell to take vital signs during days when his health was collapsing and his life was in danger. During this time, prison personnel directed an inmate assistant to desist from trying to help Mr. Barton drink water that he needed to take medications.”<sup>67</sup>

The Oregonian reported that Mr. Barton passed on February 6<sup>th</sup>, 2018, but noted that ODOC made no effort to inform his family.<sup>68</sup> Relatives of Mr. Barton did not learn of his death until over a year later, in July 2019.<sup>69</sup> He had been serving a 2.5-year sentence for a bank robbery conviction.<sup>70</sup> Mr. Barton’s story demonstrates the absolute negligence and inhumanity of ODOC’s staff and health care system. From being infected with the flu in the first place to the complete absence of proper medical care, Mr. Barton’s needless and preventable death was a product of ODOC’s systemic and cultural failures. Moreover, Mr. Barton’s death was telling of how ODOC fails to care for AICs that have mental, cognitive, or developmental health needs. Joel Greenburg, senior staff attorney for Disability Rights Oregon, summed up these failures by stating that ODOC needs “to change a culture that treats patients with cognitive and mental health disabilities as less than human.”<sup>71</sup>

In addition to ODOC failing to care for the complex medical needs of people in their custody, the state agency charges AICs to access artificial limbs and other essential medical equipment,<sup>72</sup> which would at least be partially covered by most health insurance policies available to the general public. The Oregonian reported that these include, but are not limited to, hearing aids, batteries, dentures, prosthetic limbs, and artificial eyes.<sup>73</sup> The ensuing lawsuit, which was brought forward by Disability Rights Advocates, claims that this practice violates the Americans with Disabilities Act.<sup>74</sup> The lawsuit goes on to claim that if an individual cannot afford to pay for the medical equipment, they are denied access to it.<sup>75</sup> One of the plaintiffs in the case, Donald Terrill, earns about \$45 a month in job earnings and pays ODOC \$19.125 a month for his artificial leg, which costs a total of \$25,090.<sup>76</sup> That monthly expenditure alone takes up almost half of Terrill’s monthly earnings, leaving very little left for basic hygiene needs (which cost about \$20 a month), communication services (which cost \$2.70 per 30-minute phone call), required general victim’s assistance compensation fund contributions (which are 5% of an AIC’s monthly earnings), or statutorily required court-ordered financial obligations (which can take up 10-15% of an AIC’s monthly earnings). At the time of the lawsuit being filed, Mr. Terrill still owed \$14,415 for his artificial leg.<sup>77</sup>

These predatory practices take advantage of serious health issues that individuals face in prisons and exploit the fact that folks don’t have anywhere else to turn in receiving life-changing medical care and equipment. These reports make it clear that ODOC doesn’t believe its AICs deserve adequate and accessible health care, and that as a state agency it can unilaterally create conditions of power and dominance to control medically vulnerable individuals.

MAY 2021

JUNE 2021



4.19.21

*Judge orders release of inmate over poor medical care by staff at Two Rivers state prison*

4.21.21

*Oregon Department of Corrections sued for charging prisoners for artificial limbs, other medical equipment*

6.4.21

*Oregon’s Prison population is outpacing the state’s vaccination rate*



Mr. Terrill recounted the impacts that ODOC's actions have had on folks like him by sharing, "Because I am being charged for my prosthesis, I cannot buy much beyond toothpaste and deodorant, or save up for shoes. ... I must choose between calling my family and buying essentials." This is the reality that ODOC has created for the people in their facilities.<sup>78</sup>

## 04 | ODOC is Woefully Unprepared for Foreseeable Events

Reaction rather than preparation. Based on reports from 2020 to 2022, this seems to be the standard operating procedure that ODOC abides by during a time of crisis or emergency.<sup>79 80 81 82</sup> Even when the crises are foreseeable, predicted, and/or occur annually, Oregon's prison agency consistently fails to meet the moment. Anecdotes from individuals familiar with ODOC's responses to crises claim that in the face of reoccurring extreme weather patterns that have plagued Oregon year after year, the agency's only department-wide emergency plan is their Cascadia Earthquake plan. While a plan of action for ODOC's response whenever "the big one" occurs is important, that is woefully inadequate and inappropriate for addressing the other emergencies that the state routinely faces — wildfires, extreme heat, cold freezes, river flooding, windstorms, blizzards, torrential rains. For a state that consistently experiences at least one of these crises per year, ODOC is drastically unprepared in how to respond to them while maintaining AICs' safety, health, and dignity.

In early September 2020, wildfires raged across the state and plunged ODOC into further crisis. The Oregonian reported that due to their close proximity to the wildfires and associated smoke zones, ODOC evacuated over 3,400 AICs from Coffee Creek Correctional Facility, Oregon State Correctional Institution, Santiam Correctional Institution, and Mill Creek Correctional Facility to the Oregon State Penitentiary (OSP)<sup>83</sup> and Deer Ridge Correctional Facility.<sup>84</sup> While OSP was accustomed to housing 1,850 AICs before the wildfires, the penitentiary ended up housing over 3,000 AICs during the wildfires. Ultimately, over 5,000 incarcerated individuals were impacted by the wildfire evacuation movement by ODOC; this was the largest population move in Oregon that occurred during the wildfires of 2020. For a move of that scale, it would be expected that there would be some semblance of strategic planning, preparation, and organization involved. However, based on the recounts from AICs and local news reports, ODOC's actions resembled anything but that.

At the start of the evacuations at Coffee Creek Correctional Facility, Anna Valdez, an AIC of Coffee Creek, had already sensed that the move was not destined to be humane or successful.<sup>85</sup> "I don't know how they're going to do this. They have no coordination at all. It's insane right now," Valdez told OPB reporters.<sup>86</sup> "A lot of people are nervous. They're giving us a plastic bag to just take our meds and a few



6.25.21

*Some Oregon Prisons Will Rely on Fans and Swamp Coolers During Historic Heat Wave*



6.30.21

*Oregon inmates struggle with extreme heat inside prisons; advocates call for better cooling systems*



7.11.21

*An Oregon Prison Sold Inmates \$18 Towels to Stay Cool After Record Temperatures [at a nearly 100% markup]*



7.20.21

*Oregon Corrections Department Sued Over Finger Loss*

items and then go.”<sup>87</sup> The AICs of Coffee Creek were forced onto school buses late at night and transferred to Deer Ridge Correctional Institution.<sup>88</sup> They were forced to stay on the buses for over eight hours in the parking lot and were subjected to horrendous conditions during that wait.<sup>89</sup>

The ex-husband of one AIC described to OPB what his ex-wife was subjected to. “Everyone was told by the officers to go to the bathroom in their pants. Women were peeing in cups and throwing tampons and feces out the windows of the bus, because they could not leave the bus to use the bathroom,” he said.<sup>90</sup> OPB also reported that beds were not ready or available when the women arrived and clean clothes were not provided for those who had soiled their clothing on the buses.<sup>91</sup> The Oregonian added that AICs were withheld medication, denied access to food and water for up to 24 hours, and subjected to air quality conditions that were worse than the area near the Coffee Creek facility.<sup>92</sup> Some women ended that first evening sleeping on bare metal bed frames or on the floor.<sup>93</sup>

At the Oregon State Penitentiary, where people from Oregon State Correctional Institution, Santiam Correctional Institution, and Mill Creek Correctional Facility ended up, ODOC placed evacuees in direct danger by mixing minimum and maximum-security AICs all in one facility.<sup>94</sup> The Oregonian reported that former gang members were mixed in with current gang members, those who had committed violent offenses with those who had not, and very little space or separation was afforded for folks as they shared common spaces.<sup>95</sup> Tara Herivel, a defense attorney who has represented AICs in lawsuits against ODOC, exclaimed “[ODOC] have this complex classification system at any prison, and they just blew all that off.”<sup>96</sup>

As a result of this botched evacuation, 11 large fights broke out during OSP’s housing of evacuated AICs.<sup>97</sup> These fights led to bloodshed within common living spaces, individuals experiencing mental health crises, and pepper spray used on AICs by ODOC staff.<sup>98</sup> One AIC revealed to Al Jazeera that some AICs were then subjected to eating “the same food that was just pepper-sprayed.”<sup>99</sup> Moreover, the conditions at OSP per reports suggested that they were extreme and inhumane, including a lack of access to water, clean air, basic hygiene, and restrooms.<sup>100</sup>

To this day, there has been no investigation or assessment conducted about what occurred during the wildfires; there has been no public oversight or review by any outside entity, setting a horrific precedent for what ODOC believes is the appropriate treatment of individuals during times of crisis. Valdez captured the overarching takeaway from the wildfire evacuations by telling OPB, “I feel like this is a learning experience for them. But it’s at our expense.”<sup>101</sup> While Valdez’s sentiments captured the mood of the entire wildfire crisis, ODOC would demonstrate its failure to learn from the event in the subsequent year.

During the summer of 2021, the AICs in OSP, Santiam Correctional Institution, Shutter Creek Correctional Institution, and South Fork Forest Camp endured a blistering heatwave without access to central air-cooling systems in their facilities.<sup>102</sup> Instead, Willamette Week reported that those facilities allegedly relied on



8.11.21

*Prison Medical Staff Indifference Causes Severe Bodily Damage, Lawsuit Says*



8.19.21

*New Deer Ridge prison superintendent charged in Bend with DUII, resisting arrest*

SEPTEMBER 2021

opening windows, using fans and swamp coolers, shutting down outdoor recreation, and providing ice water to AICs and staff to aid in keeping people cooled off.<sup>103</sup> However, a follow-up report by Willamette Week revealed that some AICs were deprived of access to cold water or ventilation, one individual committed self-harm in order to convince ODOC staff to turn on air conditioning, and another facility forced 120 AICs to share one drinking fountain that dispensed hot water.<sup>104</sup> In total, five AICs were treated for heat-related illnesses during the 2021 heatwave.<sup>105</sup>

These incidents are reflective of ODOC being woefully unprepared to handle these climate crises and uninterested in learning how to prepare for the next time. They do not have the capacity, knowledge, or leadership necessary to properly care for AICs during an emergency. Wildfires, heatwaves, and generally extreme weather events are now a common feature in our lives, and reports have demonstrated that ODOC cannot adequately address them or plan for them in a meaningful way.

## 05 | ODOC Maintains a Culture of Abuse, Sexual Violence, and Retaliation

Dominance is ODOC's operational baseline. Contributing to the systemic dysfunction of ODOC, a culture of abuse of power, coercion, and sexual violence exists within the state agency.<sup>106 107 108</sup> In the summer of 2020, Statesman Journal reported on two civil rights lawsuits that were filed in federal court against ODOC, accusing officials of allowing a predatory employee to target and sexually abuse two women at Coffee Creek Correctional Facility.<sup>109</sup> The subject of the claims, former corrections officer Richard Alberts II, was reported on by news outlets earlier in the year for his arrest on drug trafficking charges.<sup>110</sup> The AICs in the lawsuit explained that drug trafficking was only the tip of the iceberg, detailing that sexual assault occurred on multiple occasions at the hands of Alberts.<sup>111</sup>

Furthermore, the lawsuit names other prison staff, correctional officers, and top prison leaders for their role in committing sexual assault or enabling a culture of sexual violence to exist.<sup>112</sup> The lawsuit went on to explain that the culture of enablement shows that Alberts's actions did not take place in a vacuum.<sup>113</sup> The suit goes on to claim that not only were Alberts's actions not stopped by prison leaders or officials, but prison staff went on to formally punish the AICs listed in the lawsuit through segregation, denied visits, and fines.<sup>114</sup> Ginger Mooney, the attorney representing the plaintiffs in the civil lawsuit, recounted the retaliation against one AIC by explaining "(She) was inappropriately sanctioned for the actions of a correctional officer — a correctional officer who forced plaintiff to engage in criminal activity or face physical, sexual and emotional harm."<sup>115</sup> The retaliation included isolation in a room with no windows or clocks, withheld meals and showers, threats to move one of the plaintiffs to an out-of-state prison away from her family, and repeated taunting by officers about her being pregnant with Alberts's child.<sup>116</sup> "I tried to kill myself," the plaintiff shared with the Statesman

OCTOBER 2021



10.21.21

*Oregon Governor Grants Clemency to Dozens of People Who Committed Crimes as Kids*

NOVEMBER 2021



11.4.21

*Oregon inmate, 48, dies less than a month after starting 12-year prison sentence*

Journal.<sup>117</sup> “They continued to threaten me. ... They didn’t care.”<sup>118</sup> Up until the day that article was published, the plaintiff explained to reporters that she still feared retaliation by ODOC officials for speaking out about the lawsuit.<sup>119</sup>

Another major incident regarding Coffee Creek Correctional Facility was reported in March 2022, when former corrections nurse Tony Daniel Klein was indicted on 21 counts of depriving the victims of their Eighth Amendment right not to be subjected to cruel and unusual punishment by sexually assaulting them.<sup>120</sup> The U.S. Department of Justice indictment alleged that from 2016 through 2017, Klein committed multiple forms of sexual assault, including aggravated sexual abuse, some of which resulted in bodily injury.<sup>121</sup>

Lisa Whipple, a formerly incarcerated individual who accused Klein of touching her inappropriately while serving a sentence at Coffee Creek from 2016 to 2017, is one of the victims identified in the federal indictment and shared with OPB that “It wasn’t just Tony. ... He is the ultimate predator and person in this situation. But the Department of Corrections, there’s a whole bunch of things they could’ve done... to make sure that this type of victimizing does not happen within these walls.”<sup>122</sup> Her claims of how ODOC operates as an environment that enables sexual abuse are similar to the claims made in the Alberts case.

While, at the time of the federal indictment being unsealed, Director Peters stated that “Today’s indictment shows that the voices of women in custody are heard and taken seriously. ... Allegations will not be swept under the rug or ignored,” OPB reported out that in 2020, the state of Oregon had paid \$1.7 million to settle civil lawsuits brought forward by 10 women who alleged Klein of sexual abused them, with those settlements including that Klein and the state would not have to admit to any fault or wrongdoing.<sup>123</sup> On top of that report, The Oregonian also shared that after the Oregon State Board of Nursing conducted an investigation into the sexual assault allegations in September 2018, they submitted the investigation results to the Washington County District Attorney’s Office, which declined to prosecute the case due to insufficient evidence.<sup>124</sup> Lastly, as of this report’s publication, Klein maintains an active nursing license, according to the Oregon State Board of Nursing website.

Although these lawsuits are ongoing events where the facts of the case and culpability of the accused are still subject to due process in a court of law, these articles strongly suggest that a culture of sexual predation, abuse, and enablement is present within ODOC. Rather than existing as one-off articles reporting on isolated incidents regarding the prison agency, they come together to present a comprehensive picture of repeated patterns with ODOC and other state entities acting in concert to maintain the status quo.

Just as concerning as the claims of retaliation toward adults in custody who have challenged ODOC as plaintiffs in ongoing litigation, the state agency is no stranger to reports of alleged retaliation against its own staff who work to correct the wrongdoings of the agency and its leaders. The Oregonian shared that after becoming the head of ODOC’s Diversity and Inclusion Office, Gary Sims tackled



11.24.21

*Jailhouse lawyer put in solitary confinement for contraband—toy phone placed on his desk by staffer, suit alleges*



12.1.21

*High number of deaths in Oregon state prisons*



12.8.21

*How prisons in a US state botched wildfire evacuations*

DECEMBER 2021  
JANUARY 2022



racial disparities and inequities within the agency by helping AICs and staff pursue discrimination claims against the department.<sup>125</sup> Sims explained in his 2019 lawsuit that his office acted as “an avenue to internally raise concerns of discrimination and to correct those disparities.”<sup>126</sup>

Reports stated that after being instructed by Director Peters to cease advocacy on behalf of AICs and agency staff, Sims’s Diversity and Inclusion Office was closed due to alleged budget concerns, effectively terminating Sims as an employee.<sup>127</sup> Beyond the consequences of losing employment with ODOC, Sims told reporters of The Oregonian that he was blacklisted from being hired by other state agencies after leaving the prison agency.<sup>128</sup> As a result, Sims filed a lawsuit against ODOC in 2019.<sup>129</sup> Finally, in January 2022, news outlets reported that an agreement had been reached between both parties, and Sims was awarded a \$350,000 settlement from ODOC.<sup>130</sup> A spokesperson for ODOC cited “uncertainty within the litigation process” as the reason why the state decided to settle the case.<sup>131</sup> Sims told reporters that he took the settlement as “vindication.”<sup>132</sup> While Sims’s lawsuit against ODOC ended in a settlement, other employees are still in an uphill court battle against the agency.

Another lawsuit against ODOC alleges that two ODOC staff were retaliated against after calling out agency leaders for misleading Oregon legislators and misusing grant funds.<sup>133</sup> OPB reported that Gina Raney-Eatherly and Merilee Nowak both worked in ODOC’s Research Unit when they were asked to review the agency director’s presentation to the Oregon Senate House Judiciary Committee on substance dependency treatment for AICs.<sup>134</sup> According to the lawsuit, upon reviewing the presentation Raney-Eatherly and Nowak attempted to correct the data due to its exaggeration of the number of AICs struggling with substance dependency.<sup>135</sup> Despite Raney-Eatherly and Nowak’s efforts, the lawsuit stated that “the incorrect and false information which misrepresented the need for substance abuse treatment in adults in custody was presented to the Senate House Judiciary Committee without any of the changes provided.”<sup>136</sup>

Another time, during a following legislative hearing, the late State Senator Jackie Winters asked then-ODOC Assistant Director of Correctional Services Heidi Steward if treatment programs impacted recidivism rates of AICs.<sup>137</sup> The lawsuit went on to state that Steward told Sen. Winters that “We lack researchers in our Research Unit, and so I don’t get that data historically or on a regular basis.”<sup>138</sup> Both Raney-Eatherly and Nowak were qualified staff in the ODOC Research Unit that could have provided the data that Sen. Winters requested. However, the lawsuit claimed that “... Ms. Steward stated she did not want this data provided to Sen. Winters, and instead planned to provide a written response describing DOC’s lack of sufficient resources to comply with the request.”<sup>139</sup>

Subsequently, the lawsuit states that a few months later Raney-Eatherly and Nowak’s Research Unit was instructed to pose as an “external research partner” while ODOC applied for two federal grants that required the hiring of such an entity.<sup>140</sup> The lawsuit went on to state that ODOC planned to redirect the additional grant funds provided to hire an “external research partner” to fund



1.21.22

Former diversity manager who alleged retaliation paid \$350,000 by Oregon Department of Corrections



1.28.22

Corvallis man dies in custody of Oregon Department of Corrections



2.3.22

Officer under investigation for supplying drugs to inmates at Eastern Oregon Correctional Institution

FEBRUARY 2022

MARCH 2022

other ODOC projects.<sup>141</sup> According to court documents, after Raney-Eatherly and Nowak spoke out against the deceptive plan, both were demoted and reorganized out of the Research Unit.<sup>142</sup> Following those events, both employees submitted unlawful retaliation complaints to the Oregon Department of Administrative Services and a tort lawsuit in Marion County Circuit Court hoping to hold ODOC accountable for its unlawful practices.<sup>143</sup>

So far, the only form of accountability offered to AIC victims, former ODOC staff, and current ODOC staff has come from pursuing litigation in the courts. Beyond that, there are no external mechanisms of oversight that actively keep ODOC in check. Given the frequency and the gravity of the issues that have occurred at ODOC, Oregon can no longer afford to leave its prison agency unchecked. The values of justice, equity, and basic human decency depend on how a society decides to treat its most vulnerable and restricted community members. The state of Oregon can do better — and it must do better. In that spirit, below are recommendations on how the executive, legislative, and judicial branches can play a role in holding ODOC accountable and creating a more just system. ▣



3.14.22

*Former Oregon Corrections  
Official Indicted for Sexually  
Assaulting a Dozen Female  
Inmates While Serving as a Nurse*



3.30.22

*Federal judge warns staff  
against retaliation at Oregon's  
Two Rivers prison*

# Proposed Solutions

## 01 | Executive Branch Solution: Corrections Ombudsman

The solution that Oregon's executive branch could immediately take to hold ODOC accountable would be to fill the long-vacant Corrections Ombudsman position, which has the statutory ability to audit, subpoena, and sue ODOC as a way to provide external oversight over the prison agency.

In 1977, the Oregon Legislature passed a law that established the office of Corrections Ombudsman in the Governor's Office.<sup>144</sup> The statutes that empower and regulate this office are located in ORS 423.400 to 423.450. The Corrections Ombudsman is a position that serves as an independent office of oversight for the Department of Corrections (ODOC), and the Governor holds the authority to appoint an individual to fill it.<sup>145</sup>

The Correctional Ombudsman's abilities include investigating ODOC actions or employees at will, subpoenaing ODOC documents, entering and inspecting ODOC premises without notice, commissioning studies related to improving DOC, and bringing suits against ODOC in the Circuit Court of Marion County.<sup>146</sup> Furthermore, the Correctional Ombudsman can investigate matters beyond wrongdoing, such as inconsistent practices, inefficient performance, actions taken based on mistaken facts, or unreasonable, unfair, or otherwise objectionable actions, even though

in accordance with the law.<sup>147</sup> Lastly, they can also offer recommendations and findings to the Legislative Assembly if they believe statutory change is desirable.<sup>148</sup> These abilities point to the comprehensive potential vested in the Correctional Ombudsman position to serve as an effective check and balance for ODOC.

While the Correctional Ombudsman position had been filled in the years succeeding its creation, the last known position holder was in 1990. Since then, the position has gone unfilled by Governors for the last few decades. Recently, in the 2022 Legislative Session, the Legislature approved and allocated \$365,928 to fund the ombudsman position again through the Governor's office in the 2021-2023 biennial budget.<sup>149</sup> The Governor now has the financial ability and mandate to appoint a new individual to the Correctional Ombudsman position to begin overseeing and investigating ODOC, its employees, and its actions.

## **02 | Legislative Branch Solution: Senate Subcommittee on Corrections**

The solution that Oregon's legislative branch could develop to more effectively pass policy related to improving and overseeing ODOC, would be to create a fully staffed standing subcommittee in the Senate Committee on Judiciary dedicated to corrections and individuals in state custody.

During Oregon's 2021 Legislative Session, two subcommittees were established within the House Committee on Judiciary to carve out additional spaces where legislators could develop and scrutinize policies specific to civil law and equitable policing. Each subcommittee had five state representatives and committee services provided by the full House Committee on Judiciary staff (e.g., four legislative counsel staff and three policy analysts). These subcommittees were critical to thoroughly vetting and amending bills that the full House Committee on Judiciary did not have had the time to individually go through because of committee deadlines that must be met to keep legislation moving through the building. However, due to the division of labor and subject-matter expertise present in each subcommittee, a total of 44 bills related to civil law and equitable policing were moved from the subcommittee all the way to the Governor's desk to be signed into law.

Legislative subcommittees have proven to be valuable spaces where legislators can engage in policymaking, oversight, and debate over niche subject matters they typically wouldn't have the time or resources to get to. Therefore, the Oregon State Senate should develop a standing subcommittee within the Senate Committee on Judiciary called the Senate Judiciary Subcommittee on Corrections. This subcommittee would allow legislators to address the chronic and cultural issues currently plaguing ODOC in a way that provides them with the staff and



resources necessary to navigate the issues and empowers them to pass legislation more efficiently.

In the same 2021 Legislative Session, where the House Judiciary Subcommittees on Civil Law and Equitable Policing passed 44 bills, there were 30 bills introduced related to ODOC. Of those 30 bills, of which only eleven passed, nine bills were administrative or operations-related, one bill was a general fund appropriation for ODOC's biennial budget, and one bill was to establish a task force on Corrections Medical Care. Barring the task force on Corrections Medical Care, none of those bills offered any direct legislative action or reform on the crises that ODOC experienced leading up to 2021.

Of the bills that died in committee were concepts that would have: prohibited most uses of deadly physical force against adults in custody by ODOC staff, created a more straightforward process for early medical release of an AIC from prison, provided health services to adults in custody during pregnancy, labor, birth and the postpartum period, created a study regarding special dietary needs and accommodations for adults in custody, and prohibited ODOC from imposing certain limitations on calls between attorneys and in-custody clients. While some of these bills may have died due to substantial opposition, financial restraints, or logistical issues that hadn't been ironed out, many of these bills died simply because the legislative session ran out of time. Having a dedicated subcommittee on corrections would give bills like these the opportunity to be heard and worked on to keep up with the fast-moving pace of Oregon's legislative sessions.

## **03 | Judicial Branch Solution: Rights of Action and Temporary Assigned Judges Program**

The solution that Oregon's judicial branch could take to address the backlog of time-sensitive legal claims related to ongoing incidents in ODOC, would be to create a Temporary Assigned Judges Program that can oversee a "rocket docket" of urgent state-level cases brought forward by harmed AICs

In addition to ODOC's historic issues being exacerbated and brought to light during the pandemic, the judicial branch's system and services were also severely impacted by COVID-19. Most notably was the accrual in cases that began accumulating when courts stopped holding in-person trials, hearings, and other routine court functions.<sup>150</sup> While this freeze universally impacted all justice-involved people and their cases, AICs who had pending cases as plaintiffs were disproportionately affected since they had to continue enduring the problems, neglect, and abuse they were suing over while their cases were on hold.

A solution to this issue would be for the Legislature to develop statutory mechanisms that grant AICs prompt access, procedurally, to the courts so that a case could move forward to a special docket that can fast-track these time-sensitive cases. This special docket could be handled by a program similar to the one California Chief Justice Tani G. Cantil-Sakauye recently launched, called the Temporary Assigned Judges Program.<sup>151</sup> Importantly, this docket would allow for immediate judicial intervention for alleged harm committed by ODOC. Currently, it is nearly impossible to provide swift judicial oversight of ODOC at the state level; most opportunities for judicial oversight occur at the federal level. Importantly, if and when judicial intervention does occur, the harm has long since passed (months, if not years). With a Temporary Assigned Judges Program, retired judges would be recruited and made available to assist in the cases brought forward by a legislative right of action, thus providing AIC plaintiffs with a more accessible and expedient way to have their cases heard and addressed. ■

# Conclusion

The ODOC is an agency in crisis. Anyone who follows the themes and patterns present in each individual article will notice that they are a single star in the broader constellation, creating a clear image of the historical and systemic issues that make up ODOC. The articles and issues highlighted in this report provide the public, stakeholders, and state leaders with a comprehensive narrative that points to the omnipresent dysfunction of ODOC. Together they point to core issues of domination, control, and retribution that are infecting the prison agency, and they open a conversation to be had about potential cures that can address the symptoms of neglect, abuse, and retaliation.

ODOC is responsible for the custody and care of 12,000-15,000 individuals and, for too long, it has operated with minimal oversight and intervention by all three branches of government, leaving it unscathed in the face of countless scandals. Moreover, AICs are essentially discouraged and prevented from seeking redress for alleged harm from their own state government, leaving justice and fairness to the wayside. The recommendations offered in this report provide the public and state with insights and initiative on how to create checks and balances necessary to hold ODOC accountable. Complacency, by the public or state leaders, is no longer a viable option.

Finally, it should be noted that the 436 media stories related to ODOC between March 1<sup>st</sup>, 2020, and March 31<sup>st</sup>, 2022, only represent a fraction of what is happening, as they are the rare stories that manage to make it to the press and usually by remarkable effort by advocates, reporters, and those harmed. But, extrapolating from the stories, the picture the media creates for us is one that is disturbing and requires immediate intervention and action. Transparency, oversight, and mechanisms for swift intervention will ensure that those who are in ODOC custody are afforded the dignity of being recognized as members of the community and worthy of humane treatment. ■

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The following is a comprehensive list of the media outlets whose news articles were utilized for this report:

*Al Jazeera, Albany Democrat-Herald, Angus Observer, Associated Press, Baker City Herald, Bend Bulletin, CBS News, Corrections1, Diverse Education, East Oregonian, Eugene Weekly, Fox 12, Governing Magazine, Herald and News, Huffington Post, KATU 2, KCBY, KDRV, KGW 8, KOBI-TV NBC5, KOIN 6, KPIC, KRDO, KTVB, KTVL, KTVZ, KVAL, Lake County Examiner, Malheur Enterprise, Ms., MyCentralOregon, NBC News, Newsweek, Oregon Public Broadcasting, Oxygen, Public Broadcasting Service, Portland Tribune, Salem Reporter, Snake River Correctional Institution, Statesman Journal, Street Roots, The Bulletin, The Chronicle, The Columbian, The Corvallis Advocate, The Epoch Times, The Guardian, The Independent, The Lund Report, The Madras Pioneer, The New York Times, The News & Observer, The News-Review, The Oregonian, The Portland Mercury, The Register-Guard, The United States Department of Justice, US News & World Report, Walla Walla Union-Bulletin, Willamette Week, and YakTriNews*