

Senate Bill 739

Sponsored by Senator SHIELDS (at the request of Disability Rights Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Establishes standards of care for Department of Corrections inmates with serious mental illness.

A BILL FOR AN ACT

Relating to Department of Corrections inmates with serious mental illness.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 and 2 of this 2015 Act:

(1) "Chemical agent" means a chemical element or compound that, when deployed, is designed to cause sufficient physiological effect to stop, control or temporarily incapacitate a person.

(2) "Department of Corrections institutions" has the meaning given that term in ORS 421.005.

(3) "Emergency" means any situation or circumstance that jeopardizes the safety of persons or compromises the security of Department of Corrections institutions and that requires immediate action to stop the threat.

(4) "Employee" means any person employed by or working as an independent contractor for the Department of Corrections.

(5) "Inmate" means all incarcerated persons sentenced to the custody of the Department of Corrections.

(6) "Inmate with serious mental illness" means:

(a) An inmate with a current diagnosis or a recent significant history of any of the following diagnoses that are described in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5):

(A) Schizophrenia;

(B) Delusional disorder;

(C) Schizophreniform disorder;

(D) Schizoaffective disorder;

(E) Brief psychotic disorder;

(F) Substance/medication-induced psychotic disorder (excludes intoxication and withdrawal);

(G) Unspecified schizophrenia spectrum and other psychotic disorder;

(H) Major depressive disorders;

(I) Bipolar I disorder; or

(J) Bipolar II disorder;

(b) An inmate who is actively suicidal or who has engaged in a recent, serious suicide

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 attempt;

2 (c) An inmate diagnosed with a mental illness that is characterized by frequent breaks
3 with reality or misperception of reality and that results in a significant functional impair-
4 ment;

5 (d) An inmate diagnosed with an organic brain syndrome that results in a significant
6 functional impairment; or

7 (e) An inmate diagnosed with a severe personality disorder that is manifested by frequent
8 episodes of psychosis or depression and that results in a significant functional impairment.

9 (7) "Isolated confinement" means prolonged cell confinement of 21 hours or more per day
10 and restricted activity, movement, and social interaction, whether caused by administrative,
11 disciplinary or classification action. Isolated confinement may occur as part of, but is not
12 limited to, administrative segregation, disciplinary segregation, and mental health special
13 housing.

14 (8) "Physical force" means the use of hands or other parts of the body, objects, instru-
15 ments, electronic devices, firearms or other physical methods to restrain, subdue, control
16 or intimidate a person, to compel the person either to act in a particular way or to stop
17 acting in a particular way.

18 (9) "Qualified mental health professional" means:

19 (a) A licensed medical practitioner; or

20 (b) Any other person who:

21 (A) Has, through education and experience, demonstrated the competency to:

22 (i) Identify precipitating events relating to mental illness;

23 (ii) Gather information such as histories of mental and physical disabilities, alcohol and
24 drug use, past mental health services and criminal justice contacts;

25 (iii) Assess family, social and work relationships;

26 (iv) Conduct a mental status examination;

27 (v) Document a diagnosis using the criteria set forth in the fifth edition of the Diagnostic
28 and Statistical Manual of Mental Disorders (DSM-5);

29 (vi) Write and supervise an individual plan of care;

30 (vii) Conduct a mental health assessment; and

31 (viii) Provide individual, family or group therapy within the scope of training; and

32 (B) Meets any of the following minimum qualifications:

33 (i) A graduate degree in psychology;

34 (ii) A bachelor's degree in nursing and a valid Oregon nursing license;

35 (iii) A graduate degree in social work;

36 (iv) A graduate degree in a behavioral science field;

37 (v) A graduate degree in recreational, music, or art therapy; or

38 (vi) A bachelor's degree in occupational therapy and a valid Oregon occupational therapy
39 license.

40 (10) "Significant functional impairment" means a functional impairment involving acts
41 of self-harm or other behaviors that have a seriously adverse effect on an inmate's mental
42 or physical health.

43 (11) "Structured therapeutic activity" means individual psychiatry, individual
44 psychotherapy, a psychotherapy group, rehabilitative counseling, a psycho-educational group,
45 crisis intervention, an educational activity, a religious activity or release planning.

1 (12)(a) "Unstructured activity" means an activity in which an inmate may engage outside
2 the cell such as exercise or recreation.

3 (b) "Unstructured activity" does not include a structured therapeutic activity or show-
4 ering.

5 (13) "Use of force" means any situation in which an employee uses physical force or a
6 chemical agent against an inmate.

7 SECTION 2. (1) The standards of care for Department of Corrections inmates with seri-
8 ous mental illness are as follows:

9 (a) Inmates with serious mental illness may not be subject to isolated confinement.

10 (b) Inmates with serious mental illness shall receive at least five hours of structured
11 therapeutic activities a day every day of the week.

12 (c) Inmates with serious mental illness shall receive at least two hours of unstructured
13 activities a day every day of the week.

14 (d) All nonemergency use of force on an inmate with serious mental illness must be
15 preceded by a cooling-off period to allow the inmate an opportunity to comply with employee
16 orders. The cooling-off period must include attempts by a qualified mental health practitioner
17 to counsel and persuade the inmate to voluntarily comply with employee orders.

18 (e) Use of force likely to cause serious bodily injury to an inmate with serious mental
19 illness may not be used except to prevent escape or to eliminate an immediate threat of se-
20 rious physical injury to another person, such that a lesser use of force would not prevent
21 escape or eliminate the threat.

22 (f) Chemical agents may not be used on an inmate with serious mental illness except in
23 an emergency.

24 (g) Passive resistance by an inmate to placement in restraints, or refusal to follow em-
25 ployee orders, does not constitute an emergency for the purposes of this section.

26 (2) The department shall adopt rules to effectively implement sections 1 and 2 of this 2015
27 Act, and shall include in the rules provisions for the appropriate and ongoing training of
28 employees on the standards of care described in this section.

29 (3) An inmate in any Department of Corrections institution is entitled to maintain an
30 action to restrain any violation of this section or to maintain an action to recover damages
31 caused by a violation of this section.

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