



Disability
Rights
Oregon



March 31, 2020

The Honorable Kate Brown
Governor of Oregon
900 Court St NE
Salem, OR 97301

Re: Addressing the needs of people with disabilities in this public health crisis

Dear Governor Brown,

Thank you and the many state agency leaders for efforts that you have collectively undertaken to provide leadership and mobilize state resources to confront the COVID-19 pandemic.

Disability Rights Oregon (DRO), the ACLU of Oregon, FACT Oregon, Oregon Self Advocacy Coalition, Oregon Council on Developmental Disabilities, and others have been diligently working with key stakeholders and governmental agencies including the Oregon Department of Developmental Services, Oregon Department of Corrections, Adults and Persons with Disabilities, Oregon Health Authority, Oregon Department of Education, the Oregon State Sheriff Association, local courts, and many local jails. *See* enclosures. We are also working closely with organizations that represent the interests of historically marginalized and oppressed communities so that we collectively can ensure clarity to our constituents to mitigate the confusion and the harm this pandemic may have on the most vulnerable in our communities.

In full recognition of your exemplary work under enormous pressure, we urge you to take additional actions that are needed to protect the welfare and self-determination of Oregonians with disabilities as the crisis evolves. We know that this public health emergency can pose an enormous challenge to the 950,000 Oregonians with disabilities who live in every corner of our state. People with disabilities are among those at the greatest risk during this crisis because of several factors including: being more likely to have underlying health conditions, being economically disadvantaged, being dependent on others for care, or simply because people with disabilities are disproportionally placed in institutions, incarcerated, or homeless. **Now is a critical time to fight so that Oregonians have equal access to the supports they need to be healthy, safe, and independent.**

Below you will find a list of responsive actions that we respectfully request for you to consider. The list includes both disability-specific measures and others that are more universal but ultimately impact people living with disabilities. Ultimately, as your emergency orders have clearly recognized, Oregon must ensure that all our citizens have access to a safe living situation, medical care, and other resources to weather this crisis together.

INCLUSIVE CRISIS RESPONSE

1. **Include people with disabilities in response.** Like natural disasters, public health emergencies can be even worse for people with disabilities. Yet, their voices are often left out of the planning, response, and key decision-making. People with disabilities are the most effective advocates for issues that affect our lives. We need a seat at the table. Direct local government bodies and department heads to include people with disabilities and disability experts at all levels of government planning and response to address the needs of individuals with disabilities in the planning process.

PREVENTING DISCRIMINATION IN TESTING AND TREATMENT

2. **Direct health care providers to comply with disability nondiscrimination law.** Make clear that healthcare workers must not make discriminatory or biased decisions based on disability or age when determining who receives care and who does not. Discrimination on the basis of disability in health care is prohibited under federal civil rights law and cannot be waived during a crisis.
3. **Increase capacity, transparency, and equal access to state-wide testing and treatment capability** by Oregon's public and private labs including ensuring Oregonians are provided clear and direct information about this first step in the public health response process. People living in institutions and correctional facilities should also be given access to testing as needed.

ENSURING ACCESSIBILITY

4. **Access to Information.** Many individuals with disabilities – including those who reside in institutions or correctional facilities and those who are houseless - require assistance with communications and special consideration in pandemic preparedness planning. Provide accessible forms of communication to individuals—such as ASL interpreters, telephone or text messaging, accessible webpages (large, high-contrast fonts, and file formats that can be read by screen readers), and language is accessible to diverse audiences—for real-time updates of the State's emergency guidelines and response.

EXPAND HOME AND COMMUNITY BASED SERVICES IN AGING AND PEOPLE WITH DISABILITIES SERVICES AND OFFICE OF DEVELOPMENTAL DISABILITY SERVICES

5. **Increase the workforce to support people experiencing disabilities (Personal Support Worker (PSW) and Direct Support Professional (DSP) Workforce for people experiencing IDD and Home Care Worker (HCW) workforce for people using Aging and People with Disabilities Services).** Thousands of Oregonians rely on PSWs, DSPs and

HCWs to live in their communities. We request that you direct APD and ODDS to:

- a. Ensure that people using PSW, DSP or HCW supports have assistance when their care providers are sick or must self-quarantine; and,
- b. Provide funding to community organizations such as developmental disability service providers to close the known existing gaps which have only exacerbated due to the COVID-19 pandemic in order to expand support services given the fluid nature of individual support needs during this crisis.

6. Access to Safe Health Care. Direct the Director of the Oregon Health Authority to:

- a. Halt all terminations and redeterminations of Oregon Health Plan eligibility because continued and expanded access to medical care is critical;
- b. Use your emergency powers to use emergency or appropriated funds to expand community health funding and services immediately;
- c. Ensure continuity and availability of services for children and adults who receive in-home nursing and other services and supports through HCBS waivers and the Community First Choice Plan (K Plan) by availing telehealth, devices, and other technologies to ensure treatment plans and behavior supports continue during this pandemic;
- d. Halt the removal of ventilators from children who use the Children's Intensive In-Home Support (CIIS) program;
- e. Expand community restoration programs and other community mental health supports for those patients who are diverted or are discharged from the state hospital;
- f. Ensure community mental health programs, Personal Support Workers, Direct Support Professionals, and Home Care Workers receive protective personal equipment and supplies. They provide essential services, including 24/7 crisis interventions, mobile crisis services, abuse investigations, and helping clients who are facing emergent health care needs; and,
- g. For prescriptions, relax "refill-too-soon" rules, provide maximum extended day supplies, and ensure home or mail delivery from government providers.

7. Oregon Department of Developmental Services (ODDS)

- a. Increase flexibly of available services and support including maintaining a sufficient pool of DSPs and PSWs in order for families whose needs will fluctuate during this crisis to easily obtain attendant care services, telehealth services, and necessary equipment and technology;
- b. Expand bed holds payments policy to sixty (60) days to ensure flexibility so that individuals can meet their needs including those who have been hospitalized for any reason or those who have had an extended stay with family during this crisis but want to return to their residential placement; and,

- c. Ensure that Stabilization and Crisis Units (SACUs) and other facilities and service providers maintain appropriate screening and precautions for COVID-19, including personal protective equipment, universal access to sanitizer for residents, and increased, private, comfortable spaces to conduct free video and telephonic visiting for all facilities that have suspended family visits.
 - d. Clarify and maintain operational protocols for remote access or other creative approaches to maintaining services and supports identified in a person's Individual Support Plan (ISP).
- 8. **Oregon State Hospitals.** Direct the Superintendent to:
 - a. Increase and identify free video and telephonic visiting for all facilities that have suspended family visits;
 - b. Release or conditionally release any and all state hospital patients who are over age 60 or are at elevated risk, from state hospitals.; and,
 - c. Inform all high risk OSH patients about the process for requesting conditional release.
- 9. **Oregon Vocational Rehabilitation Services.** Direct the Director of Oregon Vocational Rehabilitation Services to coordinate with the federal Rehabilitation Services Administration (RSA) to adopt a protocol for remote intakes as soon as possible, instead of suspending intakes indefinitely.

HOUSING

- 10. **End ticketing and towing.** Call on local government to end all ticketing, arrests and vehicle impoundments of people living in vehicles for vehicle habitation and related parking violations;
- 11. **Tenants' Rights.** Provide guidance to landlords about tenants' rights to remain in their dwelling units after testing positive for COVID-19 or being in contact with someone who has tested positive as well as prohibit landlords from requiring tenants to notify their landlord if they or anyone in their household has tested positive for COVID-19 or been in contact with someone who has, but that tenants may voluntarily choose to notify landlords. The guidance should also underscore that landlords' have an obligation to keep all individually identifying health information confidential and that tenants should not be stigmatized or discriminated against because they have tested positive for COVID-19 or are suspected of having COVID-19; and,
- 12. **Prohibit encampment sweeps.** Consistent with the CDC guidelines, prohibit cities and counties from clearing encampments during this emergency and encourage increased access to individual housing units. People sleeping outside should be encouraged to sleep in 12 feet x 12 feet and should be provided with access to hygiene, including restrooms and hand-washing stations.

EDUCATION

- 13. Accessible online learning.** Direct the Oregon Department of Education (ODE) to support all schools and colleges to make every reasonable effort to ensure that students have equal access to online learning or other virtual supports and that those services are accessible to students with disabilities, including using captions, CART, and screen reader accessibility; and,
- 14. Maintain Free and Appropriate Education and Providing Compensatory Education.** Direct ODE to both ensure that districts that are offering credit earning curriculum make every attempt to provide appropriate accommodations and modifications to students receiving special education and to issue guidance about the need to provide compensatory education for students with disabilities who did not receive FAPE for any period of time the district engaged in remote learning.

CRIMINAL JUSTICE SYSTEM

- 15. Screening, Safety, and Visitation.** ODOC and county jails should continue collaborating to ensure all correctional facilities are implementing sound screening and preventative measures for COVID-19 infection and outbreak, including universal free regular access to soap and sanitizer for detainees, quarantine protocols, and significantly increased and free video and telephonic visiting for all facilities that have suspended family visits;
- 16. Release.** Direct all corrections institutions to work with criminal legal system stakeholders to release or parole prisoners and detainees who are over age 60 or have disabilities and others at elevated risk from jail, prison, and juvenile facilities, including by informing them in their primary language of the means to request parole or release. Institutions should make every effort to decrease populations and crowding, including by reducing intakes and refusing to house detainees for Immigrations and Customs Enforcement; and,
- 17. Transparency.** Provide regularly updated detail to the public and those living in prison regarding what additional steps ODOC is taking to respond to the COVID-19 pandemic including but not limited to what information is shared with people who are incarcerated regarding how to prevent the spread of the virus and what protocols are being followed including consideration of PPE for incarcerated workers who are washing health care facility laundry labeled as or at risk of containing COVID-19.

We have closely monitored state actions; but, an emergent de-centralized approach to information sharing has made it challenging for us to find up-to-date information about all actions that are being taken to-date. We have attempted to stay abreast of the state's efforts thus far, but because events are fast moving, you may have already taken some of these

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actions. If this is the case, we thank you for this critical work.

Thank you again for your continuing leadership, and for considering the additional actions outlined above. The undersigned stand ready to support as you implement these measures.

Sincerely

/S/

Jake Cornett
Executive Director
Disability Rights Oregon
511 SW 10th Ave., Ste 200
Portland, OR 97205

/S/

Jann Carson
Interim Executive Director
ACLU of Oregon
506 SW 6th Ave #700
Portland, OR 97204

/S/

Roberta Dunn
Executive Director
FACT Oregon
2475 SE Ladd Ave. Suite 430
Portland, OR 97214

/S/

Gabrielle Guedon
Executive Director
Oregon Self Advocacy Coalition
919 NE 19th Ave.
Portland, OR 97232

Enclosures: Letters to the Oregon Department of Corrections, Adults and Persons with Disabilities, Oregon Health Authority, Oregon Department of Education, the Oregon State Sheriff Association, Oregon Judicial Department, and Governor Brown

Sent via facsimile

March 13, 2020

Colette Peters
2575 Center Street NE
Salem, OR 97301-4667
FAX: 503-373-1173

RE: Request for Briefing on Oregon's Department of Corrections Response to COVID-19
and Planning related to People with Disabilities, Older Adults, and
Immunocompromised People

Dear Director Peters:

We write to request a briefing on Oregon's Department of Corrections planning and response to Novel Coronavirus (COVID-19) specific to the needs of people with disabilities and older adults, including those living in institutional or congregate settings. As you know, Disability Rights Oregon (DRO) is a statewide nonprofit that upholds the civil rights of people with disabilities in Oregon. For more than 40 years, the organization has served as Oregon's federally mandated Protection & Advocacy system.

According to recent reports from the Oregon Health Authority there are 15 confirmed cases of COVID-19, 53 tests pending, and 231 total individuals with COVID-19 symptoms and these numbers are growing. We also reviewed tweets yesterday from the Oregon Corrections Enterprises appearing to confirm that inmates continue to process health care facilities laundry, potentially including facilities treating COVID-19 patients. The Centers for Disease Control and Prevention (CDC) has identified older adults and people with severe chronic conditions as being at higher risk of developing serious COVID-19 illness. The prevalence of chronic conditions are elevated for people with disabilities.

The Life Care Center in Kirkland, Washington—a long-term nursing home—highlights the impact of COVID-19 on high risk groups of people. Officials have reported that 13 residents and one visitor have died. Following the COVID-19 outbreak at the Life Care Center, *The New York Times* reports that 70 of the nursing home's 180 employees have developed symptoms. Likewise, prisons are closed units where disease, especially one like COVID-19, can have a disastrous impact on the lives of vulnerable prisoners.

The death rate among the elderly and those with pre-existing health issues is particularly high. People with cardiovascular diseases, diabetes, hepatitis, chronic obstructive pulmonary

disease, chronic kidney diseases, and cancer are especially susceptible.

Were the CoronaVirus to infect a given prison population while simultaneously raging in the outside world and pressing hospitals to their limits—which is likely to be the case—the demographics of our state's prisons means that deaths among incarcerated populations would be difficult to avoid. In addition, incarcerated people as a group are likely to be given lower priority when medical services become scarce in the broader community.

Transparency in how the state is responding to COVID-19 is vital, especially as the outbreak worsens in Oregon. Moreover, we request a briefing from ODOC on the planning and response to COVID-19 regarding the unique needs of prisoners with disabilities and older adults.

We also ask that you will identify those prisoners who are least able to fight off an infection and refer those prisoners to the Governor's office and other appropriate authorities for consideration of emergency commutation, medical furlough, or parole.

Sincerely,

A handwritten signature in black ink that reads "Thomas Stenson". The signature is written in a cursive, flowing style.

Thomas Stenson
Deputy Legal Director
Disability Rights Oregon

March 10, 2020

Mike McCormick, Interim Director
Aging & People with Disabilities
500 Summer St. NE E-15
Salem, OR 97301

RE: Request for Briefing on Oregon's Multi-Agency Response to COVID-19 and Planning related to People with Disabilities, Older Adults, and Immunocompromised People

Dear Interim Director McCormick:

We write to request a briefing on Oregon's planning and response to Novel Coronavirus (COVID-19) specific to the needs of people with disabilities and older adults, including those living in institutional or congregate settings.

According to recent reports from the Oregon Health Authority there are 15 confirmed cases of COVID-19, 52 tests pending, and 231 total individuals with COVID-19 symptoms. We have monitored the number of cases, which have increased week by week. The Centers for Disease Control and Prevention (CDC) has identified older adults and people with severe chronic conditions as being at higher risk of developing serious COVID-19 illness. The prevalence of chronic conditions are elevated for people with disabilities. Disability Rights Oregon (DRO) is a statewide nonprofit that upholds the civil rights of people with disabilities in Oregon. For more than 40 years, the organization has served as Oregon's federally mandated Protection & Advocacy system.

The Life Care Center in Kirkland, Washington—a long-term nursing home—highlights the impact of COVID-19 on high risk groups of people. Officials have reported that 13 residents and one visitor have died. Following the COVID-19 outbreak at the Life Care Center, *The New York Times* reports that 70 of the nursing home's 180 employees have developed symptoms.

Care facilities in Oregon that are similar to the Life Care Center provide supports to people with disabilities and older adults. These facilities have infectious disease protocols meant to prevent the spread of illness. However, these protocols are only effective when staff are trained, and the protocol is followed. We are pleased to see today's announcement that 70 licensing staff members with the Office of Aging and People with Disabilities will be focused on the statewide review of long-term care facilities and their pandemic responses. However, we request additional information about the timeline of these reviews and what will be included in the review.

Furthermore, people with COVID-19 are commonly quarantined to prevent the spread of the virus. However, when the person quarantined is a support worker to a person with a disability or an older adult, the support needs of that person with a disability or older adult do not disappear. If COVID-19 spreads in communal placements, nursing homes, or institutions in a manner similar to the Life Care Center in Kirkland, it would have profoundly negative consequences on people with disabilities and older adults. It remains unclear if planning has occurred to provide for the continuing needs of people with disabilities or older adults if their support worker is quarantined.

Transparency in how the state is responding to COVID-19 is vital, especially as the outbreak worsens in Oregon. Moreover, we encourage the state to use accessible communication methods as it communicates with people with disabilities. We request a briefing from the Oregon APD on the interagency planning and response to COVID-19 regarding the unique needs of people with disabilities and older adults.

Sincerely,

A handwritten signature in black ink that reads "Thomas Stenson". The signature is written in a cursive, flowing style.

Thomas Stenson
Deputy Legal Director
Disability Rights Oregon

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March 19, 2020

Sent via electronic mail attachment

Carla Scott
Assistant Attorney General | Special Litigation Unit | Trial Division
Oregon Department of Justice
100 SW Market, Portland OR 97201
carla.a.scott@doj.state.or.us

**RE: 3:02-cv-00339-MO Oregon Advocacy Center et al v. Mink et al: Notice of
Emergency Action**

Dear Carla,

We write to follow up on the meet and confer that occurred yesterday regarding the state's proposal to modify the 2002 *Mink* order in light of the COVID-19 pandemic.

As promised, below is a counterproposal that we sincerely appreciate you sharing with your clients and giving your due consideration to protect all Oregonians impacted by this virus. Following this counterproposal, you will also find a proposed court order that would give your client the authority and flexibility to provide a comprehensive response to this public health emergency.

DRO & MPD Counterproposal

The plaintiffs recognize the disruption and threat to the public health caused by the outbreak of the novel form of coronavirus known as COVID-19. Governor Brown has released a declaration of emergency for the state, and President Trump has declared a national emergency because of the severe impacts of both the virus and the disruption to daily life associated with prevention, quarantine, detection, and treatment of the virus. In response to these emergency declarations, the Supreme Court of Oregon's Chief Justice issued Order 20-006 limiting scheduling civil or criminal matters "to significantly limit the number of persons in our courthouses and places of work. Our goal is to do our part to help slow the spread of the COVID-19 virus and to minimize any health risks to court personnel, litigants, representatives, and others who come to our courthouses, while meeting our courts' obligations to the public." Notably, this order does not apply to "Other circumstances in which a Presiding Judge determines that a postponement or failure to schedule would violate a statutory or constitutional right." Order 20-006(4)(i).

We applaud the tremendous efforts the Oregon Health Authority (OHA) is undertaking to prevent spread of COVID-19 within our state and at the Oregon State Hospital, including by restricting admissions to individuals found guilty except for insanity and people found unable to

aid-and-assist who fit certain limited emergency admission criteria.¹ We are concerned with how this will impact individuals who remain in jail awaiting court ordered restoration services. The implication of the policy is that the vast majority of people deemed unable to aid and assist their attorneys would not be admitted to the state hospital, but would instead remain incarcerated at a local county jail. There is no definite end to how long this prolonged confinement would last, and no one is currently in a position to make predictions. Based on the Chief Justice's order, it is also unclear whether courts will be able to monitor these prolonged conditions and issue informed, timely orders. Further, if such cases are heard, there remains a concern that holding these hearings may present a public health risk to the courts, court personnel, and related parties.

Plaintiffs have a series of critical concerns, both legal and pragmatic, about the proposal to leave people in serious psychiatric crisis in jails indefinitely where they are particularly vulnerable both to the daily difficulties of living in a jail and to the COVID-19 infection. This risk is complicated by local courts trying to limit hearings due to public safety but being tasked with ensuring the constitutional rights of the defendant are maintained.

Under Oregon law, a court must designate the custody of a person unable to aid and assist who is determined to need a hospital level of care to the superintendent of the state hospital or another facility designated by OHA. ORS 161.370(2)(a). State statutory law does not grant the Oregon Health Authority (OHA) the discretion to decline the order or to opt out of it even in an emergency. The federal constitution also prohibits allowing individuals in psychiatric crisis to remain in a jail cell. While the proposed rule might make practical sense when one looks at the narrow confines of limiting the spread of the virus at OSH, it would leave many dozens of inmates who have been merely accused - not convicted - of a crime in vulnerable positions and could foster the spread of the virus in the local jails and in the community creating an even bigger public safety risk as a whole. Beyond the practical or public health implications, it is simply illegal.

The crux of the state's initial proposal assumes that there are two places for aid-and-assist detainees to go: the Oregon State Hospital or the local jails. A better approach would instead focus on the capability of OHA to designate other sites for housing people with serious mental illness. In light of the emergency powers granted by Governor Brown's declaration of emergency, OHA has broad authority to create, purchase, lease, or designate any number of sites outside the state hospital grounds as places for housing people in need of restoration. The president's declaration of a national emergency carried with it broadened abilities for providers to provide services including through telehealth. These combined actions provide OHA with options it did not have in the past. Among the options available for OHA to consider are rapidly expanding the existing community based restoration services, designating new or existing mental health beds for use by aid-and-assist patients, or discharge to community based settings with wraparound mental health services, if appropriate.

Of note, one of the major casualties of the current disease outbreak has been the tourism industry. Area hotels have laid off vast numbers of staff as travel halts and demand for hotel

¹ These protocols have been in place since early 2019. Since that time very few people found unable to aid and assist have been admitted to OSH on this limited expedited basis.

rooms plummets.² OHA has power under the emergency declaration to lease, purchase, or requisition any number of rooms to meet the larger volume of patients in need of housing. It has the authority to bypass state requisitioning laws and other bureaucratic hurdles that would typically stand in the way of such endeavors. Aid-and-assist patients could utilize these rooms in lieu of going to the state hospital, with wraparound mental health services provided by the Community Mental Health Program or Assertive Community Treatment teams, if appropriate. The rooms could also be used to facilitate discharge of current patients from OSH who have been determined not to need a hospital level of care. For those patients with stable and supportive places to live, OHA could designate their own homes as a temporary placement, and provide necessary restorative services remotely.

To the extent any element of state law stands in the way of OHA finding non-jail placements for aid-and-assist detainees, the plaintiffs suggest asking Judge Mossman to enter an order permitting OHA to disregard those requirements for at least 90 days so that it has the authority and responses to take emergency action for all Oregonians including those in vulnerable aggregate settings. A proposed order is featured below. Defendants conceded that the federal court has this authority and we eagerly join them in seeking the court's guidance.

The plaintiffs' counterproposal seeks to expand the authority, resources, and good protection against the intrusion of COVID-19 into the state hospital and beyond. The plaintiffs' proposal would also give OHA an additional means to respond to the virus and get a jump start on long-standing barriers to treatment and housing for a challenging-to-serve population, which was recognized in SB 973 and the resulting \$10.6 million to expand community services for people with mental illness who commonly end up incarcerated.

While the plaintiffs' proposal presents its own administrative challenges, these challenges pale in comparison to the risk of harm of prolonged incarceration in a setting known to poorly control contagions and is consistent with the state's ongoing efforts to protect all of the public in its response to the COVID-19. Moreover, the plaintiffs' proposal respects the human and constitutional rights of the most vulnerable people in our community.

Proposed order:

In light of the current emergency related to the novel COVID-19 strain, COVID-19, the Oregon Health Authority shall have authority to house detainees committed to its authority under ORS 161.370(2) in any clinical placement suitable to the purpose, without need for any showing or justification to any party. If the authority is unable to find such a clinical placement, it may place any individual committed to its custody under ORS 161.370(2) in any suitable housing placement, even if no treatment is not currently offered at that site.

² Amber Jamieson, *A Hospitality Union Said 90% of Its Members Might Lose Work Because of the COVID-19*, BuzzFeed News, March 18, 2020 (a major hospitality union reported that 4,000 of its 5,500 members in the Seattle and Portland areas had been laid off due to reduced demand for hotel rooms related to the COVID-19), available at <https://www.buzzfeednews.com/article/amberjamieson/COVID-19-unemployment-laid-off-hotel-service-casino>; Kyle Iboshi, *Portland Hotels See Significant Room Cancellations; Travel Conference Cancelled*, KGW-TV, March 6, 2020, (discussing cancellations and drops in room reservations in area hotels following COVID-19 crisis) available at <https://www.kgw.com/article/news/health/COVID-19/portland-hotels-see-significant-room-cancellations-travel-conference-postponed/283-6d3b08c3-7a8a-4b56-a65c-bac4919cd73d>.

To the extent that any state or local law would restrict the authority from finding a more appropriate placement than a jail cell in a short time period, and to the extent that law was not already superseded by the emergency declaration, this court hereby authorizes the authority to disregard any state acquisition law, local zoning ordinance, or other state or local law that would significantly delay or impede the creation or acquisition of appropriate housing to meet the requirements of the orders of this case.

This order shall remain in effect from ninety days from the date it was entered, and shall be renewed on good cause shown during the pendency of the emergency. During that time period, the defendants shall make their best efforts to comply with the order in this case. The Court, however, shall consider strongly the circumstances associated with the current emergency and the likelihood of delays in prompt discharge of detainees to OHA custody, stemming from circumstances associated with the emergency.

The defendants shall file a written report in 60 days describing the current status of efforts to comply with the orders in this case and how the current emergency affects those efforts.

Conclusion

Thanks again for reaching out and being receptive to coming up with a creative solution to comprehensively reduce the exposure to COVID-19 and to slow the spread of the disease in our communities and in our institutions. We look forward to hearing back from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emily Cooper', with a stylized, wavy line extending from the end.

Emily Cooper
Legal Director

March 24, 2020

Colt Gill, Deputy Superintendent of Education
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310

Via e-mail: Colt.Gill@ode.state.or.us

Re: Improving Special Education Resources During the Pandemic

Dear Deputy Superintendent Gill:

We write to you on behalf of Disability Rights Oregon. You know each of us as DRO attorneys who work on issues related to special education and the rights of children with disabilities. That experience has provided us with a historically grounded understanding of the way that the educational system in Oregon operates when districts are subjected to an evolving set of incentives, guidance, and rules.

It is because of that experience and with no intention beyond protecting our clients that we feel compelled to write you during a crisis that impacts and scares all of us. Please understand that we do so with a full appreciation of the pressures that this dire situation imposes on you as the leader of Oregon's educational system. That said, we are deeply troubled by the predictable outcome of a collision between pending national developments related to the virus and your own recently stated position about the state's plans regarding its duty to ensure the of education that is provided to children with disabilities during circumstances that will be challenging for months if not years.

Our understanding of your position is that the because the state is committed to equity (a laudable goal that we fully support), it will not require or suggest that local districts have any responsibility to provide services to either general education or special education students unless the vehicle for doing so (presumably online learning) is accessible for children with disabilities. At the risk of oversimplification, children with disabilities will get whatever their non-disabled peers get during the crisis and no one will get anything that is not accessible to children with disabilities.

It is our hope that ODE will view the crisis as an opportunity to focus the energy of the state on what local districts *can* (and should) provide rather than using that energy to suggest what services may be permissibly reduced or eliminated. ODE should serve as a vital portal for

information, advice, and direct assistance in providing at least some educational services to *all* Oregon students.

While the U.S. Department of Education's earlier advice may have overstated the option of schools choosing to offer no services during the outbreak, the federal authorities amended and clarified their advice this weekend.¹ The U.S. Department of Education "encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities."² The Oregon Department of Education plays an essential role in facilitating that kind of collaboration.

ODE's earlier emphasis on not providing inequitable educational services, absent some additional guidance and forceful leadership on your part, will allow if not invite many districts to simply ignore the needs of our clients for the duration of the crisis. Moreover, it is almost certain to engender an already troublingly common and misplaced resentment of children with disabilities who are painted by some as a special interest group which drains resources from already stressed communities.

The prospect of either of these outcomes is particularly disturbing in the context of a still unfolding health crisis that is almost certain to continue until June if not well into the next school year. We are talking about the children who can least afford to interrupt educational progress that is usually far behind that of their non-disabled classmates. In addition, and as you know, our clients are also far more likely than their classmates to need large chunks of time to resume whatever progress they are making when it is interrupted.

Although the likelihood of the above-described disturbing outcomes is difficult to quantify, the historical reluctance and/or inability of many districts (especially small and rural ones) to serve our clients adequately suggests that the risk is significant in most districts and a near certainty in some.

We believe that the current situation requires a combination of innovation by ODE and strong leadership from you. The innovation we suggest is that ODE commit every available resource to an all-out push to quickly create a model online learning program that will be available to districts. As you are aware, many have already stated that they have no capacity to create an online program of any practical value to general education students or special education students. The need for a state-created on line program could not be clearer. Given the gravity of the emergent situation that we all face, we recognize this is not a time to focus on

¹ U.S. Dep't of Ed., Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, March 21, 2020, at <https://sites.ed.gov/idea/idea-files/supplemental-fact-sheet-addressing-risk-covid-19-preschool-elementary-secondary-schools-serving-children-disabilities-march-21-2020/>.

² *Id.*

creating a program that would be fully accessible or capable of providing instruction that aligns with grading and credit requirements.

We recognize that such services cannot be a full replacement for traditional in-school services, but the imperative is to get something useful out to districts. Individualized interim educational plans will need to adapt to the student's individual circumstances and may rely on supplemental services that might be available later this summer to make up for lost time.

The additional leadership that we hope to see from you would be guidance and forceful direction to districts that would make clear to them that regardless of their ability to provide FAPE to our clients during the crisis, they will be responsible for some meaningful level of compensatory education when conditions improve. Absent that level of leadership, history teaches us that least some number of districts will view the crisis as "free days" during which their responsibility to provide FAPE simply goes away. In the event that you view this as a cynical and unwarranted perspective, we remind you of the way that districts across the nation have already misinterpreted IDEA's disciplinary requirements for many years. A quick review of complaints to ODE and court cases from every state makes clear that the idea of a "free ten days" during which a child can be disciplined without review of need for behavioral supports has been widely embraced by many districts, educators, and attorneys who represent districts. The prospect of allowing districts to understand or even hope that the current crisis creates a rule and law free period during which they have no responsibility to our clients would be a tragedy whose impacts would be felt for many years to come. The U.S. Department of Education has outlined several ways in which IDEA structures can flex without destroying the value of the act as a whole.³

Requested Actions

We respectfully ask the Oregon Department of Education to consider the following actions:

- 1) Designate a specific task force of ODE staff to support distance learning and special education during the emergency;
- 2) Hold a statewide videoconference with LEA officials to discuss ways to continue educational services, including special education, during the emergency;
- 3) Create a regularly updated statewide portal of curriculum suggestions,⁴ technological resources, and supports for LEAs in providing educational services, including special education;

³ The U.S. Department of Education proposes, for instance, that reevaluations take place based on review of existing data, rather than in-person meetings, or that IEP meetings take place via teleconference or videoconference. March 21, 2020 Factsheet, *supra*.

⁴ Our national affiliate, the National Disability Rights Network, has begun to collect resources that may be helpful. <https://www.ndrn.org/resource/covid-19-and-education-of-students-with-disabilities-resources/>

- 4) Consult with Oregon stakeholders in the education field generally and special education particularly to create a list of best practices and resources for LEAs;
- 5) Establish a model technology policy for handling the gaps in technological resources, including solicitation of donations of laptops, tablets, and internet access for students; and
- 6) Affirm via formal guidance to LEAs that they must make their best efforts to make education available to all students in their districts during this emergency.

ODE can be a guide for school districts during this emergency and help students get the best educational services available at this trying time. We are happy to work with ODE to identify resources and devise plans to make distance education work. Please contact us with any questions.

Thank you for your estimable time and consideration.

Sincerely,



Thomas Stenson
Deputy Legal Director
Disability Rights Oregon



Christine Shank
Managing Attorney
Disability Rights Oregon

/s/

Joel Greenberg
Attorney
Disability Rights Oregon



March 17, 2020

SENT VIA EMAIL

March 16, 2020

Sheriff Terry Rowan, President
Sheriff Jason Myers (Ret.), Executive Director
Oregon State Sheriffs Association
330 Hood Street NE
Salem, OR 97301

RE: Preparation and Precautions for COVID-19 in Jail Detention Settings

Dear Sheriff Rowan and Sheriff Myers:

As you know, the current outbreak of a novel strain of the coronavirus, COVID-19, has caused widespread concern. Its effects can be fatal, especially among older people, people with respiratory illness, people who are immunocompromised, and people who have diabetes. It spreads easily among people in close contact and from contact with contaminated surfaces. Local jails are a potential hotbed for communication of this illness. In China, coronavirus spread rapidly throughout multiple jails earlier this year.

The undersigned represent a coalition of community organizations interested in the operation of the criminal justice system. We ask you to encourage your member organizations, the sheriffs of Oregon who administer county jails, to adopt the following protective steps:

- 1) **Reduce jail population.** Just as people outside jails are being encouraged to remain home, reducing the overall number of people in a small enclosed jail should be a major goal. Coordinate with the local district attorney, the local court, and other agencies to reduce intake of new detainees and to encourage release of any inmates that can be properly released, especially those who are particularly vulnerable to the coronavirus.

This includes individuals being held for an aid and assist evaluation or transfer to the state hospital for restoration services.

- 2) **Adequate cell and personal hygiene for inmates and staff.** Please ensure that both inmates and staff have adequate soap and running water to wash their hands routinely. Inmates also need regular access to supplies for cleaning their cells or common areas.
- 3) **Consider reserving a quarantine unit for vulnerable inmates.** Inmates who meet the criteria for high vulnerability to coronavirus may need to be separated from the general population, with a dedicated on-duty staff without floaters.
- 4) **Conduct routine screening of staff before and after each shift begins.** Staff and any outside contractors should have their temperatures taken at the beginning and end of each shift and otherwise have their health assessed to ensure that no one carrying the coronavirus begins work.
- 5) **Engage in planning with your local hospital.** Jails in Oregon are not well-equipped to address active coronavirus infections. Please identify the local community hospital that would receive any inmates with suspected symptoms and determine the process for ensuring that inmates who become infected can obtain appropriate and rapid screening, testing, and care.
- 6) **Expand routine medical intake to evaluate new detainees for possible coronavirus.** Brief screening questions about travel, illness in the family, and any current symptoms, as well as checking detainee temperatures, might help identify at-risk detainees.
- 7) **Avoid using large, communal detention cells, overfull cells, and dormitories.** Some facilities make use of a large, communal intake or holding cell. To the extent possible, facilities should avoid pooling large numbers of detainees in a single holding cell. Ongoing overfilling of cells, like triple-celling/triple-bunking in double-cells should halt until this pandemic is under control.
- 8) **Minimize transportation to court.** Communicate with your local court to reduce the need to transport large numbers of detainees together for court appearances. Consider video or telephonic appearances for non-substantive proceedings.
- 9) **Educate staff and inmates about the importance of good hygiene.** The outbreak of the virus has been accompanied by an outbreak of myths and false reporting about the virus. Remind staff and inmates why hygiene is important, what degree of separation is important, and how best to prevent the spread of the virus.
- 10) **Ensure routine assessment of inmate condition.** Inmates who are developing fevers and feeling badly may not be able to report changes in their conditions, either because of physical weakness or changed mental state from the fever. While staff may be used to disregarding an inmate who appears to be sleeping a lot or who is not responsive, it is

especially important now to assess whether an inmate is nonresponsive as a result of an illness or for some other reason. Health care staff must be readily available to assess any concerns raised by other staff.

- 11) **Eliminate medical co-pays and fees for medical communications:** Fees and costs should not be a barrier to care. Those in custody should have clear communication about how they can access care and health information free of charge.
- 12) **Ask for and make public medical contractor plans related to COVID-19:** We understand that a number of your members may work with private contractors to provide healthcare in their facilities. These contractors must also have plans in place to respond to the needs of their staff and those in their care. Medical policies and plans should be made available to the public.
- 13) **Collect data:** The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. Oregon's jail and prison systems must be part of this process. The same information that is tracked in the community must be tracked in the jails.
- 14) **Cultural Specificity:** Jails house many people whose first language is not English. Especially during a time of crisis, it's imperative that all information is provided in a person's first language and that there are Q&A sessions in that language to ensure comprehension and mitigate misunderstanding and panic.

Consistent with the above recommendations, we have attached a letter from the Washington Association of Sheriffs and Police Chiefs that provides further guidance. The author of that letter, Dr. Marc Stern, is a professor at the University of Washington, School of Public Health and a corrections healthcare expert.

We hope that your members will consider these recommendations in their role of keeping inmates and staff safe. Please let us know if you have any difficulty accessing testing or related services from your local hospital or public health officials. We understand that you have a unique challenge to combating this virus, and we want to be a partner if we can.

Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Tom Stenson
Deputy Legal Director
Disability Rights Oregon
tstenson@droregon.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Bobbin Singh
Executive Director
Oregon Justice Resource Center
503-944-2270 ext. 205
bsingh@ojrc.info

Andy Ko
Executive Director
Partnership for Safety & Justice
503-335-8449
andy@safetyandjustice.org

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
pjsolomon@sponsorsinc.org

cc

Tina Kotek, Speaker of the House
Peter Courtney, President of the Senate
Nik Blosser, Chief of Staff, Office of the Governor
Constantin Severe, Public Safety and Military Policy Advisor, Office of the Governor
Dustin Buhler, General Counsel, Office of the Governor
Paige Clarkson, President, Oregon District Attorney Association
Lane Borg, Executive Director, Office of Public Defense Services
Justice Walters, Chief Justice, Oregon Supreme Court
Nancy Cozine, State Court Administrator
Colette Peter, Director, Oregon Department of Corrections

Joe O’Leary, Director, Oregon Youth Authority

Pat Allen, Director, Oregon Health Authority

Dawn Jagger, Health Policy Advisory, Office of the Governor



March 23, 2020

SENT VIA EMAIL

Justice Walters
Chief Justice, Oregon Supreme Court
Oregon Supreme Court
1163 State Street
Salem, OR 97301

Judge Albrecht
Chief Criminal Judge, Multnomah County Circuit Court
1021 SW Fourth Avenue
Portland, OR 97204-1123

Nancy Cozine
State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Dear Chief Justice Walters, Judge Albrecht, and State Court Administrator Cozine,

Governor Brown issued Executive Order 20-03 and declared a State of Emergency on March 8, 2020 under ORS 401.165 *et seq* due to the public health threat posed by the novel infectious coronavirus (COVID 19).

Per Judge Albrecht's request, we are submitting recommendations¹ for the Chief Justice Order to be issued on or before 3/27, which will amend the current Chief Justice Order that was issued on 3/16/2020:

1. Definitions. As used in this order:

A. "Social distancing" means at least 6 feet between each participant.

¹ These recommendations are based off of the order issued by the Chief Justice of Supreme Court of Kentucky in response to COVID 19 https://kycourts.gov/courts/supreme/Rules_Procedures/202009.pdf

B. High risk” means the category of persons whom the Centers for Disease Control has identified as being at high-risk for serious illness due to COVID-19:

- i. i. Persons 60 and older;
- ii. ii. Persons with underlying health conditions including heart disease, lung disease, or diabetes;
- iii. iii. Persons with blood disorders, chronic kidney and liver disease, and metabolic disorders;
- iv. iv. Persons with weakened immune systems; and
- v. v. Persons who are pregnant.

Trials, Hearings

- 2. All in-person appearances for civil and criminal dockets should be canceled with the exception of emergency and time-sensitive matters, including but not limited to, stalking, domestic and sexual violence hearings, emergency custody hearings, evidentiary hearings in criminal cases, in-custody arraignments, in-custody preliminary hearings, in-custody release and bail motions, and in-custody probation violation hearings. Judges are encouraged to use telephonic or video technology for all necessary hearings. See Section 4 of CJO Order (3/16/20) for exceptions.
- 3. All civil trials, hearings, and motions should be postponed and rescheduled for a later date or judges are encouraged to use telephonic or video technology for a hearing. Any civil trial or hearing currently in progress shall be set over or completed at the discretion of the presiding judge. Exceptions are civil petitions for an order of protection in cases of stalking, sexual and domestic violence.
- 4. Reasonable attempts should be made to reschedule all criminal trials, subject to a defendant’s right to a speedy trial.
 - A. The courts should prioritize and expedite release hearings, releasing individuals from jail who are not a threat to public safety; courts should review jail rosters and release, without bond, as many individuals as courts are able, especially those being held for non-violent offenses. Except where otherwise required by law, courts should presume that a noncustodial sentence should be entered unless the state proves a defendant presents a risk to the physical safety of a member(s) of the public.²

² Added consideration should be given to: (1) persons considered "high-risk" pursuant to CDC, OHA, and WHO; (2) persons charged with or sentenced for misdemeanors and non-violent felonies; (3) persons charged with or sentenced for violations of probation that do not include the commission of new, violent, person crime(s); (4) persons incarcerated for municipal court matters; and (5) persons who have 90 days or less remaining on their sentence regardless of the underlying offense. See *also*, comments submitted by Carle Macpherson and others to the Task Force.

- B. Courts should avoid resolutions that could lead to immigration detention where possible.
 - C. The 30-day preliminary hearing requirement for out-of-custody defendants under ORS 135.070 should be waived during this time period.
 - D. Courts must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.
5. With the exception of emergency matters and hearings statutorily required to be held, small claims, eviction, juvenile, probate, traffic, and guardianship cases should be set over. See Section 4 of CJO Order (3/16/20) for exceptions.
 6. A case involving an attorney or party who is ill or in a high-risk category should be rescheduled.
 7. Judges should issue citations in lieu of bench warrants or notices of failure to appear.
 8. All show cause dockets for payment of fines and court costs scheduled within this timeframe should be continued for 60 days.

Special Docket

9. A clear and expedited process should be identified for those who are currently incarcerated and are therefore seeking legal remedies for release, treatment, a change in conditions, or anything related to their treatment and COVID 19 putting them at high risk for serious medical complications if or when the disease is contracted.

All Other Direct Court Services

10. Remove the Presiding Judge's discretion to hold treatment courts and order that no treatment courts take place.
11. Courtroom attendance should be limited to attorneys, parties, district attorney-based and/or community-based victim advocates, and necessary witnesses.
 - A. Requirements for All In-Person Court Operations. For all in-person trials, hearings, and operations, the court shall, when reasonably possible and considering the need for safety measures, take the following precautions For all in-person trials, hearings, and operations, the court shall, when reasonably possible and considering the need for safety measures, take the following precautions:
 - i. Courtrooms are required to limit the number of people in the courtroom to no more than ten people (depending on the size and configuration), and social distancing of six feet or more must be followed; and
 - ii. Maintain vigilance about cleaning in accordance with other OJD guidelines.

- B. All judges and staff must be assigned to work from home, or otherwise directed not to come into the courthouse to work, unless the Administrative Authority directs that they be at work to provide court services in accordance with these restrictions. The Administrative Authority or designee should avoid directing persons in high-risk categories, or those with good cause, to report to the court for work.
- 12. Jurors who are ill, caring for someone who is ill, or in a high-risk category should have their jury service postponed to a later date.
- 13. New juror orientations should be suspended.
- 14. Existing jury panels may be extended at the discretion of the court.
- 15. Accessible signage should be posted at all public entry points advising individuals not to enter the building if they have:
 - A. In the previous 14 days, visited South Korea, Iran, China, any European countries, or any other high-risk countries identified by the CDC;
 - B. Resided with or been in close contact with someone who has been in any of those countries within the previous 14 days;
 - C. Traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
 - D. Been asked to self-quarantine by any doctor, hospital, or health agency;
 - E. Been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19; or
 - F. A fever, cough or shortness of breath.
- 16. Individuals attempting to enter in violation of these protocols should be denied entrance by a bailiff or court security officer.
- 17. Bailiffs should discourage congregating outside courtroom doors and encourage social distancing inside the courtroom.
- 18. Individuals with legitimate court business who are ill, caring for someone who is ill or in a high-risk category are advised to stay home and request a continuance by calling the local Office of Circuit Court Clerk.
- 19. Cancel probation, parole, and pretrial meetings; court-ordered classes, in-person drug testing; and modify all reporting conditions to phone reporting.
- 20. Circuit court judges should use their power to grant release under ORS 137.520; judges can order release of people in jail, subject to conditions and return to jail if conditions are breached.
- 21. Courts should waive all overdue court fees, fines, or penalties and order that no fees, fines, or penalties should be assessed during this crisis.
- 22. Public Safety and Community

- A. Courts must work with the Criminal Justice Advisory Committee, their Local Public Safety Coordinating Councils, and other stakeholder groups to explore system issues and ensure the health of those who are incarcerated and coming to court.
- B. Courts must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.
- C. Courts must work with attorneys and their local bar associations to ensure that every possible opportunity to reduce risk and preserve the function of Oregon courts has been identified and explored.

23. Meetings and Conferences, and Travel

- A. No in-person meetings or conferences of more than 5 people may be held, except as authorized by the Presiding Judge, State Court Administrator, or designee. Judges and staff should hold or attend meetings of 5 or fewer persons only after weighing the benefits and risks and the available alternatives.

Participants shall maintain social distancing. Those who do not participate in person should try to attend remotely.

- B. All other meetings and conferences should be conducted remotely.
- C. All in-state and out-of-state work-related travel is prohibited, except as authorized by the State Court Administrator or designee.

24. Appellate Courts, Tax Court, and OJD Divisions

- A. The restrictions described in paragraphs 2 through 23 apply, to the extent practicable, to the Supreme Court, the Court of Appeals, the Tax Court, and except as described in subparagraph 1. below, to the Office of the State Court Administrator (OSCA) and the Divisions within that Office. To the extent that those courts, OSCA, or any divisions are able to continue to conduct their operations using remote services, they should do so.

i. The Citizen Review Board (CRB), in keeping with paragraph 2 and 3 of this order, shall postpone and not schedule any CRB reviews during the period of these restrictions.

25. Notice and Communication: Presiding Judges, Trial Court Administrators, and the State Court Administrator and designees must work together to:

- A. Use all reasonable means to inform judges, staff, lawyers, and the public of these restrictions; and
- B. Post information about these restrictions and local court operations on the court's webpage.

Nothing shall preclude the presiding judges in each circuit from implementing additional local restrictions as needed.

These restrictions are to be in effect no later than the beginning of business on Friday, March 27, 2020. These restrictions will continue to until at least May 1, 2020. They may be extended by further order, or they may be amended by further order.

Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Tom Stenson
Deputy Legal Director
Disability Rights Oregon
tstenson@droregon.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Bobbin Singh
Executive Director
Oregon Justice Resource Center
503-944-2270 ext. 205
bsingh@ojrc.info

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
pjsolomon@sponsorsinc.org

March 16, 2020

The Honorable Martha Walters
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

RE: Closure of Trial Courts to Residential Eviction Cases During COVID-19 Outbreak

Madam Chief Justice:

In light of the current outbreak of the COVID-19 strain of the coronavirus, the extreme hardship on the general population, and the health hazards of conducting unnecessary public hearings, Disability Rights Oregon asks you to direct trial courts across Oregon to stop scheduling residential eviction proceedings and to rescind pending orders to remove tenants, pending control of the COVID-19 outbreak.

Oregon law allows the Chief Justice to “exercise administrative authority and supervision over the courts of this state . . .” ORS 1.002(1). That administrative authority includes the power to “[m]ake rules and issue orders” in support of that authority, the power to “[e]stablish time standards for disposition of cases,” the power to “[e]stablish procedures for closing courts in emergencies,” and the power to “[e]stablish standards for determining when courts are closed. . . .” ORS 1.002(1).

Other state supreme courts and court administrators across the country have recognized the crisis facing residential tenants and halted evictions, often with widespread support from landlords. The Chief Judge of the Court of Appeals of New York ordered a statewide suspension on eviction proceedings in New York state that begins tonight.¹ A group of New York State landlords, holding 150,000 rental units, saluted efforts to halt evictions and voluntarily halted all eviction enforcement for 90 days, even prior to the order.² Similarly, the Chief Justice of the North Carolina Supreme Court announced yesterday that she would halt

¹ Letter from Lawrence K. Marks, Chief Administrative Judge, Memorandum: Updated Protocols, March 15, 2020 at <https://www.nycourts.gov/whatsnew/pdf/Updated-Protocol-AttachmentA3.pdf>.

² Dima Williams, “U.S. Cities and Counties Halt Evictions Amid Coronavirus Pandemic,” Forbes, March 14, 2020, at <https://www.forbes.com/sites/dimawilliams/2020/03/14/cities-and-counties-halt-evictions-to-fight-the-coronavirus/#2cd348c714b8>.

most nonemergency proceedings, including eviction proceedings.³ Similarly, Delaware court authorities have ordered trial courts to reschedule all landlord-tenant matters for no sooner than May 1, 2020.⁴

Multiple reasons justify significant delays in handling eviction cases, landlord-tenant cases, or other nonessential civil matters. Basic rationing of limited court resources militates in favor of postponing nonessential proceedings. Most of the orders cited above limited other civil proceedings as well, primarily because those proceedings were not especially time-sensitive. As a general matter, evictions are not highly time-sensitive matters. At this time, the fewer hours employees, including judicial employees, spend in the workplace interacting with the public, attorneys, claimants, and witnesses, the better.

Particular to eviction cases, the continued pursuit of landlord claims against tenants will force people from their homes when sheltering in one's home is the most important means for citizens to protect themselves and others from further spread. Forcing people out into the street—either to look for new housing or into homelessness—would work against the public interest in disease control.

At the same time, Oregonians are finding their employment ended or suspended as workplaces close. Many low-income employees work part-time or in an unsalaried capacity and may not receive pay while their workplaces are closed. To the extent an eviction is grounded on nonpayment of rent, allowing eviction proceedings to proceed would be deeply unjust to plaintiffs. Similarly, after a successful eviction, those tenants would likely find it extraordinarily difficult to find new housing while unemployed in the midst of a global pandemic, again feeding a cycle of homelessness and forcing people into large, congregate settings like homeless shelters.

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³ Chief Justice Cheri Beasley, North Carolina Supreme Court, Memorandum: Coronavirus Update for Our Courts, March 15, 2020, at <https://www.nccourts.gov/assets/inline-files/Coronavirus-Update-for-our-Courts-Memo-to-Judicial-Officials-3-15-20.pdf?TuzuseooAnyFyzogb4eejpcawxCrf4kl>.

⁴ Chief Magistrate Alan G. Davis, Standing Order Concerning COVID-19 Precautionary Measures, March 15, 2020, at <https://courts.delaware.gov/rules/pdf/JPCourt-Standing-Order-Concerning-COVID19.pdf>.

In light of all these challenges, Disability Rights Oregon respectfully asks that you take steps to close the Oregon court system to actions to evict tenants from housing. If you have any concerns, please contact me at jcornett@droregon.org or 503-243-2081 x 210.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake Cornett".

Jake Cornett
Executive Director
Disability Rights Oregon



March 24, 2020

Sent via electronic mail attachment

The Honorable Kate Brown
Governor of Oregon
900 Court St NE
Salem, OR 97301
c/o Renee Stineman, Oregon Department of Justice

Re: Protecting Oregonians with disabilities from unlawful rationing of healthcare during COVID-19 public health response

Dear Governor Brown,

Thank you for your leadership in the face of this daunting public health challenge. We extend our deep gratitude to the public health officials and healthcare workers across the state who are heroically battling this pandemic on the frontlines.

In the coming days and weeks, healthcare providers in Oregon, and across the country, may be forced to make extraordinarily difficult decisions about who receives scarce healthcare resources. We know that public health officials have planned for this possibility.ⁱ As preparation to implement this plan unfolds, we must work together to ensure the plan and implementation of this plan do not inadvertently discriminate against people with disabilities in violation of federal and state disability rights laws.ⁱⁱ To guard against this, we ask you to immediately issue clear directives that all trainings remind healthcare providers not to give priority to treating people who are younger and healthier and leave those who are older and with more health conditions—people with disabilities—to go without care or treatment.

For people with disabilities, facing discrimination while seeking lifesaving care is nothing new. Before this pandemic, people with disabilities often fought ingrained attitudes about the inherent value of our lives to receive healthcare. During this emergency, we're concerned that barriers that people with disabilities commonly confront could be heightened; specifically, that bias could influence life or death healthcare decisions about who gets treated and who doesn't.

This concern is not unfounded. In Oregon, we've seen this implicit bias before in determining whether people with disabilities should receive an organ transplant. For example, a child with intellectual and developmental disabilities who was in urgent need of a transplant was assumed unable to comply with a necessary healthcare protocol. Put plainly, that child was almost denied lifesaving care merely because he had a disability. We were gratified when, in

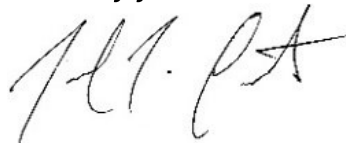
2017, you signed into law legislation to prevent medical providers from discriminating against Oregonians with disabilities in organ transplants. In signing that bill, you proved that Oregon can be a leader in the fight for equal access to healthcare. This virus is unlike anything we have seen before. However, the false assumptions and stereotypes that came into play when denying organs—scarce healthcare resources—to people with disabilities are equally relevant today.

In recent days, advocates around the country have been pushing for national action to prevent discrimination against people with disabilities in healthcare rationing.ⁱⁱⁱ Just yesterday, our sister organization in Washington filed a complaint against Washington state for an unlawful plan to ration care.^{iv} See enclosure. We hope they succeed. However, Oregon should not wait for additional guidance from the federal government to remind providers of their obligations. Therefore, we ask you to immediately issue clear directives that all trainings remind healthcare providers not to give priority to treating people who are younger and healthier and leave those who are older and with more health conditions—people with disabilities—to go without care or treatment. We must make clear and plain that the lives of people with disabilities have inherent value.

Every one of us deserves to be protected from this public health threat. Even in a crisis, healthcare providers may not abandon the principle of nondiscrimination. These decisions are difficult in the best of times, which is why we need your strong, clear leadership to remind Oregonians of our values and responsibilities.

Thank you again for your leadership during these unprecedented times.

Sincerely yours,



Jake Cornett
Executive Director
Disability Rights Oregon

Enclosure: HHS Complaint filed by Disability Rights Washington, et al., March 23, 2020

ⁱ Oregon Crisis Care Guidance, [June 2018](#).

ⁱⁱ Discrimination on the basis of disability in health care is prohibited under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act.

ⁱⁱⁱ American Association of People with Disabilities, Letter to Congress, [3/18/2020](#).

^{iv} Disability Rights Washington, Self Advocates Becoming Empowered, The Arc of the United States, and Laura Ivanova Smith, Complaint filed with U.S. Health and Human Services Office of Civil Rights, [3/23/2020](#).