Behind the Eleventh Door at the Halfway Point:

Progress at a Standstill

Spring 2018

EXECUTIVE SUMMARY

In May 2015, Disability Rights Oregon (DRO) published a report expressing serious concerns about the treatment of prisoners with serious mental illnesses who are housed in the Behavioral Health Unit (BHU) at the Oregon State Penitentiary. The DRO report focused on the inadequacy of mental health care, unnecessary staff violence, and the near total isolation of the forty or so men who lived in a unit where they most spent 23 hours a day or more in their cells.

Experts are essentially unanimous in concluding that severe isolation of prisoners with mental illness is improper, unethical, and counterproductive. Study after study has concluded that confining prisoners to sterile cells with little or no social interaction for 23 hours a day is psychologically harmful even to prisoners without a mental illness. For prisoners with mental illness, this level of isolation exacerbates the symptoms and often causes long-term harm. Prisoners with depression grow more depressed. Prisoners with anxiety grow more anxious. Prisoners with delusions have an ever-harder time trying to sort out reality.

In recognition of the harm that results when prisoners with serious mental illness are severely isolated, some prison systems have wholly abolished the use of isolation as a way to control behavior. In the legal arena, every court that has examined the practice of isolating prisoners with serious mental illness has found it to be unconstitutional. The combined weight of these studies, court decisions, and DRO's report resulted in a promising agreement to reform how prisoners with serious mental illness are treated in the BHU.

In early 2016, DRO struck an agreement with the Oregon Department of Corrections (ODOC) to improve conditions within the BHU over four years, with a core promise that BHU residents would no longer face prolonged isolation. ODOC promised to change its problematic practices so that BHU residents would spend, on average, at least 10 hours outside of their cells per week in structured activities (group treatment, classes, etc.) and at least 10 hours outside of their cells in unstructured activities (exercise, games, socialization, etc.). DRO and ODOC also agreed on a minimum expectation that prisoners with mental health conditions would be out of their cells at least 3 hours a day to promote mental health, staff safety, and the public good of an enhanced ability to safely return to their communities at the end of their sentences.

For the first two years of the agreement, we have had good access to the BHU and received regular updates on ODOC's efforts to improve conditions. We have also been able to regularly consult with the DOC's retained expert, Joel Dvoskin, Ph.D. A number of positive and important outcomes have resulted from this collaboration.

ODOC has significantly reduced uses of force and a previously alarming frequency of often gruesome self-harm by BHU residents. We have also seen a modest increase of opportunities

for outdoor recreation. In addition, ODOC is building new treatment space that is slated to open this summer when it should provide a better environment for treatment and other activities that improve an individual's ability to regulate his behavior. These changes, in addition to additional training, some very recent clinical staffing increases, and a concerted effort to improve collaboration between security and clinical staffs are welcome improvements.

This report—our second annual assessment of progress toward the goals of an agreement—marks the halfway point in a process that was designed to ensure that the residents of the unit are provided with effective therapeutic interventions in an environment that is safe for them and the staff who work in the unit.[1]

Unfortunately, data from the final quarter of 2017 indicates that progress towards getting BHU residents out of their cells 20 hours a week—the core goal of the MOU—came to a standstill after slow progress over the past two years. During that two years, the BHU repeatedly lost a large portion of its already overtaxed clinical staff to turnovers. ODOC has additionally been unable to hire a psychiatrist to support the BHU's acutely mentally ill residents and the beleaguered clinical staff members who remain. Having enough clinical staff to run the group treatment, classes, and other socialization efforts is a critical step in getting prisoners with mental health conditions out of their cells and ensuring the health and safety of the BHU. In fact, by November 2016, ODOC was informed by its own expert that the failure to hire sufficient clinical staff had become a critical concern.

> Worse yet, during the same period, almost three of every four BHU residents spent less than an hour out of cell per day.

Nevertheless, and despite an acknowledged need to hire and retain sufficient clinical staff, ODOC did not sufficiently prioritize the hiring and training of the required clinical staff until its most recent quarterly report revealed the consequences of its prior failure to do so. The data for the final quarter of 2017 confirm that BHU residents still averaged about an hour out of cell per day. Worse yet, during the same period, almost three of every four BHU residents spent less than an hour out of cell per day. For more than half of the acutely impaired individuals who live in the unit, this means that they continued spend almost every hour of every day in cells where they were isolated from social contact and left to become more and more ill. In this way,

[1] A draft of this report was provided to ODOC in order to afford ODOC an opportunity to provide comments and suggestions for revision. DRO considered and revised the draft after reviewing ODOC's response.

ODOC's reported outcomes are far short of agreed-upon goals and actually worse than those seen in the summer and early fall of 2017.[2]

DRO is also concerned that ODOC has not taken meaningful steps to implement key recommendations of the Vera Institute, a nationally recognized criminal justice foundation that it contracted with to reduce isolation throughout the ODOC system. In 2016, Vera evaluated ODOC's use of isolation and made a number of recommendations to reduce isolation throughout its system. DRO is particularly disappointed to discover that ODOC has focused on tweaks of disciplinary rules rather than implementing Vera recommendations that would effectively reduce its continued use of in-cell confinement as a primary punishment for rule infractions in the BHU (and other units that house individuals with serious mental illness and developmental disabilities.). This is a serious problem in a unit where rule violations are frequently the direct result of an underlying mental illness.

Recommendations

In light of ODOC's failure to meet its benchmarks for humane treatment of prisoners with mental health conditions and a persistent shortage of behavioral health staff, DRO recommends that ODOC take these immediate interim steps:

Move Swiftly to End Solitary Confinement and Isolation

1.) ODOC should fully implement the recommendations of the Vera Institute, including dedicating itself to **fully abolishing the isolation of prisoners with mental illness and developmental disabilities by December 31, 2019**

2.) ODOC should completely cease using in-cell confinement as a form of punishment in the BHU by barring that practice for non-clinical reasons and then only with the approval of behavioral health staff and psychiatrist

3.) ODOC should significantly reduce the use of isolation as a punishment generally, including by focusing on isolation as a penalty for serious, violent offenses and by devising a more sophisticated sliding scale of consequences for rule violations

[2] ODOC has responded to these statistics by noting that the BHU residents were out of their cells for an average of 6.1 hours/week during March of 2018. Although DRO welcomes this one-month improvement, our concern about ODOC's rate of progress toward the unstructured time-out-of-cell goal of the MOU will continue until we see a sustained and significant upward trajectory toward that 10 hour/week goal.

Move the Most Acutely Impaired BHU Residents to a Therapeutic Environment

4.) ODOC, working with the Governor's office, should devise a plan to transfer the 15 most acutely impaired BHU residents who spend the most time in isolation to non-correctional settings where they would receive appropriate treatment in a clinical environment until conditions on the BHU reach the bare minimum of constitutional adequacy

Urgently Improve Access to High Quality Psychiatric Care

5.) ODOC must take whatever steps are necessary to recruit a psychiatrist and appropriate clinical staff for the BHU within the next sixty days

6.) In the meantime, ODOC must provide a high-quality interim psychiatric provider by contracting for the services of a psychiatrist and exploring how to leverage other psychiatric resources (such as those at nearby Oregon State Hospital) to maintain adequate individualized treatment

Continue and Improve Efforts to Ensure that BHU Residents are Out of Their Cells for an Average of 20 hours per Week

7.) ODOC should devise a plan that utilizes outside contracted and volunteer resources to offer structured out-of-cell activities such as GED classes, art classes, and similar structured but non-clinical offerings

8.) ODOC should devise a plan to use space and staff to offer greater opportunities for unstructured time, including opportunities for exercise in both good and bad weather, for playing games, reading, visitation, and other unstructured out-of-cell time

MEMORANDUM OF UNDERSTANDING: A COMMITMENT TO MEASURABLE GOALS THAT WILL IMPROVE CONDITIONS

Background

On May 1, 2015, Disability Rights Oregon issued Behind the Eleventh Door, a report that documented its yearlong investigation of conditions in the Behavioral Health Unit (BHU) at the Oregon State Penitentiary. We concluded that the Unit had devolved into a hopeless and dysfunctional program where roughly 40 individuals with severe mental illness who were incarcerated in Oregon prisons spent 23 hours a day (or more) in tiny, stifling, cells.

In addition to describing the conditions that BHU residents endured, our report identified causes and made a number of recommendations for changes that would be necessary to restore the Unit to its intended purpose: to provide practically effective mental health treatment in a humane and safe environment. The Oregon Department of Corrections (ODOC) strenuously objected to our assessment that many of the problems in the BHU were attributable to a culture that marginalized the concerns of the Unit's clinicians in favor of overly over-zealous security measures. Nevertheless, the Department agreed with our central assessment that conditions in the Unit had reached a point that demanded change.

Based on the shared conclusion and a belief that litigation would cost time and money that would be better used to improve the Unit, DRO and ODOC met and negotiated for many months before signing a Memorandum of Understanding (MOU) on January 8, 2016. The MOU described a collaborative DRO/ODOC effort to improve the conditions in the BHU within the four-year period of the agreement. DRO believed that improving BHU conditions would result in residents receiving more effective mental health care, a decrease in the use of force against residents, and a decrease in incidents of self-harm and attempted suicide. ODOC agreed to take a number of actions to reach specified goals and allowed DRO to monitor progress toward those goals.

Memorandum of Understanding: Key Elements

- BHU residents will spend an average of **20 hours per week out of their cells** in both treatment and educational activities and unstructured time that would encourage positive socialization and relationships with other residents and staff

- ODOC will **better train and increase the numbers of clinical and correctional staff** to enable more clinically informed and coordinated responses to the problem behaviors and learned isolation of BHU residents

- ODOC will collect data on **the use of force** in the BHU and provide it to DRO on a quarterly basis

- ODOC will collect data on the incidents of self-harm and attempted suicide and provide it to DRO a quarterly basis

- The space available for clinical, educational, and treatment activities will be expanded and improved

- ODOC will provide DRO with continued access to the Unit and quarterly reports describing progress toward the goals of the MOU

- **ODOC will hire an expert** to guide and oversee the Department's efforts to achieve the goals of the MOU. DRO will have extensive access to that expert and receive reports of his thoughts about the Department's progress

Additional Benefits

In addition to the benefits promised by the MOU, the extended negotiations and discussions that produced it resulted in a useful and ongoing collaboration between DRO and ODOC. That collaboration, although not always easy or comfortable for the two parties, has allowed DRO to monitor and observe conditions in the BHU and other ODOC units and institutions that house individuals with serious mental illness and other disabilities.

DRO believes that the MOU has generally served the interests of both agencies in our efforts to ensure that individuals with disabilities can lead safer and more productive lives when their disabilities, especially psychological ones, are better understood and addressed in ways that are consistent with evidence-based methods and research. DRO also believes that the safety and job satisfaction of ODOC employees and contractors who staff units that house individuals with

serious mental illness will improve if those individuals are provided with more effective and evidence-based treatment and behavioral interventions.

Progress: Year One

In April of 2017, DRO released, Behind the Eleventh Door One Year Later, a first annual report to document its assessment of ODOC's progress toward the goals of the MOU. Simply put, that one-year assessment expressed cautious optimism tempered by some continuing concerns.

Progress: Year Two

One year after our first progress report, this report provides an update on ODOC's efforts to reach the agreed upon goals outlined in our MOU. While some progress has been made, DRO's current assessment is that important aspects of the MOU are not likely to be accomplished by its end date of January 2020.

DRO reaches that conclusion reluctantly and without satisfaction because it is clear that ODOC has expended great effort to make some welcome and significant changes in the configuration, leadership, and operation of the unit. The Department has also continued its willingness to consider DRO's suggestions and constructive criticism through a number of processes that include quarterly reviews, discussions, and visits to the BHU by DRO and Dr. Dvoskin. Moreover, as mentioned in our previous annual report, the Department has partially achieved a number of the goals of the MOU. Those accomplishments include critically important reductions in the use of force and incidents of self-harm on the unit.

Important aspects of the MOU are not likely to be accomplished by its end date of January 2020.

However, ODOC's recent lack of progress toward key MOU goals is especially frustrating in light of some improvements that were seen in the third quarter of 2017 when it seemed that those goals were finally within reach. Unfortunately, fourth quarter data from 2017 make clear that the previous rate of progress has not been sustained.

For example, recent data shows a marked and unacceptable reversal of a trend toward the central "ten and ten" goal of the agreement.[3] Ten and ten, although an ambitious goal when compared to the state of affairs that led DRO to investigate the BHU in 2015, is quite modest. Consistent out-of-cell time would be accomplished if, on average, BHU residents spent a little less than three hours per day out of their cells each day.

The ten and ten goal, in addition, is consistent with a growing number of lawsuits and settlement decrees that have recognized it as the constitutional floor necessary to avoid violation of the Eighth Amendment's prohibitions against cruel and unusual punishment and related claims of deliberate indifference.

Positive Progress

In addition to the previously noted reductions in the use of force and self-harm, BHU's new leadership has been supported by OSP's Superintendent to implement a system of behavioral management. It empowers security staff to issue bankable rewards for positive behavior (or failure to engage in frequently seen negative behaviors.). These rewards are provided in the form of "BHU Bucks."

BHU residents are generally positive about the system and no longer consistently send negative reports to DRO about the conduct and attitudes of the Custody Officers who work on the unit. That is an important and positive change.

Additionally, ODOC reports that its new treatment building is on track to be completed by spring of 2018. As we reported last year, DRO shares ODOC's belief that the lives of BHU residents will further improve when the building comes on line so that BHU clinicians and contractors will have greatly expanded space for confidential therapy, office work, education, and other treatment activities. We also share its hope that this expanded availability of more useful space for therapeutic and social activities will result in better mental health and safety for our clients and the staff who support them.

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[3] That goal envisions that the average number of hours that BHU residents spend out of the cells will be twenty hours per week consisting of ten hours of structured activities such as classes and therapy, and ten hours of unstructured activity such as socializing in a common area where residents might play cards or simply walk and talk with others.

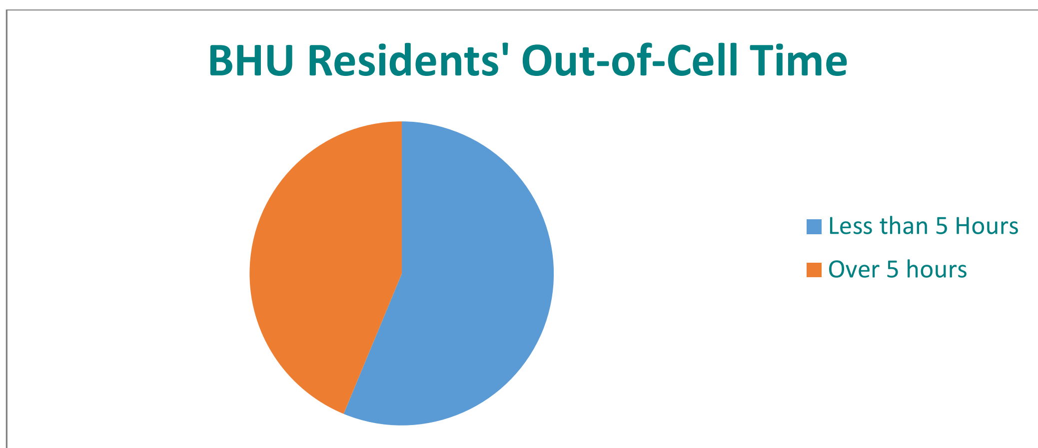
Negative Trends

Unfortunately, the above-noted progress pales in significance when considered in light of the Department's fourth quarter report of January 16, 2018. That report confirms that despite improving progress toward the ten and ten goal over the first 21 months of the agreement, the BHU's current 48 residents, on average, were out of their cells for about 7.4 hours per week during the last three months of the two-year period that ended in January of 2018. That means that BHU residents, on average, were once again confined to their cells for almost 23 hours per day.

Although, this is still an improvement from the alarming under-five hour per week average total recorded at the end of 2016, it confirms a rate of improvement that is far too slow to suggest that the ten and ten goal of the MOU is attainable during the agreement's four-year lifespan.

That means that BHU residents, on average, were once again confined to their cells for almost 23 hours per day.

While the average numbers for the fourth quarter of 2017 are deeply concerning, a review of the individual residents' data demonstrates that the situation is even more dire when we look past unit averages. In fact, over half of all BHU residents did not leave their cells for even a single hour each day. Tweny-seven of the 48 BHU residents were out of their cells for five or fewer hours per week during the 4th quarter.



Explanations for Poor Progress toward Increased Out-of-Cell Time

ODOC hired Dr. Joel Dvoskin, a national expert, to help them reach compliance with the settlement goals. On October 25, 2017, Dr. Dvoskin conducted his last review of BHU progress toward the goals of the MOU. Based on a review of data from the second quarter of 2017, Dr. Dvoskin noted the positive efforts to train correctional officers who worked in the BHU. He found that improvements in therapeutic and correctional leadership for the unit were far ahead of schedule and progressing beyond his best hopes. The same was true of the previously problematic level of cooperation between Corrections/Security and Mental Health clinicians.

Similarly, he was impressed by the enthusiastic acceptance of the BHU Bucks program by correctional staff and BHU residents. He was also, with some remaining reservations, positively impressed with early changes to a number of disciplinary processes that had previously worked at cross purposes with ODOC's effort to increase time-out-of-cell for BHU residents.

Nevertheless, Dr. Dvoskin found that the rate of progress toward the MOU's ten and ten goal was unacceptable. He definitively attributed that slow rate of improvement to two factors:

> 1.) An inadequate staffing level for the Qualified Mental Health Practitioners (QMHPs) who work in the BHU; and
>
> 2.) ODOC's continued inability to hire another prescribing psychiatrist.

As DRO understood Dr. Dvoskin's comments and suggestions, there would be no acceptable and consistent rate of progress toward the MOU out-of-cell goal until these issues were solved. On February 28, 2018, ODOC informed DRO that it had not been able to hire another prescribing psychiatrist since Dr. Dvoskin's last visit.

Beyond the critical absence of treating psychiatrist, Dr. Dvoskin also advised ODOC that the unit required an **effectively available cohort of eight well-trained QMHPs.** He further explained that this could not be accomplished with fewer than ten (and perhaps twelve) trained QMHPs (often called "Qs"). This increased number of Qs would mean that absences, vacations, resignations would not continually result in an inability to field eight adequately trained Qs at any given time.

To this end, ODOC hired four additional Qs during the fourth quarter of 2017 bringing the total of Qs assigned to the unit to a total of nine. However, that total does not satisfy the need for

eight Qs who are effectively available at any given time.[4] Moreover, ODOC had assigned the task of training its new QMHPs to the four overworked clinicians who were assigned to the BHU before the new hires.[5] DRO believes that this hiring and training scheme was a key factor in the serious decline in progress toward the ten and ten goal. Arguably, this problem may be temporary if the therapeutic and clinical load in the BHU will eventually be shared by eight reliably available and well-trained and prepared QMHPs.

The damage done by the large fourth quarter backslide toward 23-hour per days of cell time is impossible to know.

However, DRO is concerned about two aspects of that hoped for result. First, there need to be sufficient numbers of trained and available QMHPs to ensure the effective availability of eight clinicians at any given time. Second and regardless of the cause, the damage done by the large fourth quarter backslide toward 23-hour per days of cell time is impossible to know. DRO is concerned that any prior movement toward a more therapeutically capable unit has been slowed to a point from which it may be difficult to recover.

ODOC has offered a number of facts to partially explain the fourth quarter crash in its erratic progress toward ten and ten. That list of facts includes what it deems to be temporary problems that include the above-described hiring process, shorter winter days, and bad weather that limited the time a BHU resident could spend outdoors during winter months.

ODOC MUST REDUCE "REFUSALS" TO LEAVE CELL

More significantly, ODOC ties the setback to the increasing rate of reluctance of BHU residents to leave their cells. That reluctance is captured by ODOC's tracking of "refusals" or instances in which a BHU resident turns down an opportunity to leave his cell. DRO credits those explanations to a degree. However, we note that there will be no adequate progress toward ten and ten until ODOC accepts that the reduction of refusals is a critical task to be accomplished through therapeutic intervention and assessment of mental health acuity rather than a justification for poor progress.

[4] Currently, ODOC reports that it has hired and/or retained a cohort of 11 Qs.

[5] DRO is not aware of how and by whom the most recently hired Qs will be trained.

POOR ENGAGEMENT WITH CLINICIANS AND TREATMENT PLANS

Similar but related and concerning issues were revealed during a recent DRO/ODOC meeting, which was convened to discuss the implications of the alarming data from the fourth quarter of 2017. During that meeting, ODOC attributed much of the concerning decline in out-of-cell time to the fact that BHU residents had been confined to their cells for approximately ten days per month when the unit was shut down. This occurred when residents “popped” (tore out) the fire sprinklers in their cells, flooding the cells.

> Some of the BHU residents were apparently so poorly engaged with their clinicians and treatment plans that they were willing to be locked down for 10 days a month just to frustrate the staff members who were forced to evacuate and clean the section.

DRO understood the frustration of ODOC employees who were forced to respond to these repeated events. However, we were surprised that ODOC did not seem to appreciate that the willingness of one or more BHU residents to engage in this behavior was an indication that the unit was not operating in a manner that allowed the residents to see it as an environment that was helping them in a meaningful way. It is concerning that at least some of the BHU residents were apparently so poorly engaged with their clinicians and treatment plans that they were willing to be locked down for 10 days a month just to frustrate the staff members who were forced to evacuate and clean the section.

Given what that mental calculus suggests, longer days and better weather will not sufficiently improve the rate of refusal until the 48 men in the BHU consistently see a good reason to leave their cells. Whether that reason is useful therapy, an opportunity to safely socialize, a class, or a recreational activity that is more valuable to them than sleep will probably vary with each individual.

Accordingly, DRO believes that until there is enough highly trained and adequately supported therapeutic staffing to develop and identify better reasons for BHU residents to leave their cells, they will stay on their bunks with little improvement in their ability to live safely absent overly tight restrictions that ultimately endanger everyone in the unit.

Longer days and better weather will not sufficiently improve the rate of refusal until the 48 men in the BHU consistently see a good reason to leave their cells.

Similarly, DRO shares ODOC's opinion that the unit urgently needs additional security staff to ensure that daylong unit lockdowns are not the default response to sprinkler popping and other still frequent problems.

VERA RECOMMENDATIONS -- AN ADDITIONAL PROBLEM

> "Although this practice goes by many names –isolation, restricted housing, administrative segregation, protective custody, special housing, disciplinary segregation, etc. – the old adage about ducks applies: if it looks like a duck."
>
> —*Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives.* Vera Institute of Justice Report, May 2015

During DRO's negotiations with ODOC in 2015, one of ODOC's talking points was its enthusiastic acknowledgement of its partnership with the Vera Institute of Justice. DRO viewed this enthusiasm as promising given ODOC's larger commitment to reducing many forms of solitary confinement and segregation that were most egregiously relied upon in the BHU. During this time, ODOC also informed DRO that it had solicited the assistance of Vera to evaluate and make recommendations about how ODOC facilities could safely house the individuals in its custody by reducing segregation and related practices that breed unnecessary danger and conflict.

Though Vera's work is separate from the MOU itself, the Vera partnership was also a topic of discussion in many of the subsequent quarterly meetings during which DRO and ODOC reviewed MOU progress. Similarly, Vera's work with ODOC was also cited during many discussions that addressed disability-related issues at other ODOC facilities that were brought to DRO's attention as a by-product of our original report.

Given that history, DRO believes that it is useful and fair to review ODOC's response to Vera's work in this report.

Although many other prison systems applied, Vera selected ODOC as one of only five U.S. prison systems that it would work with as part of its 2015 Safe Alternatives to Segregation Initiative.[6] Through this initiative, Vera partnered with five corrections agencies on the local and state level to assess their policies and practices, analyze related outcomes, and provide recommendations for safely reducing the use of segregated housing and solitary confinement

[6] The initiative was funded by the U.S. Department of Justice's Bureau of Justice Assistance.

in their jails or prisons. DRO saw that focus and assistance as an additional and relevant support for what we hoped to accomplish in the BHU.

In 2016, we obtained a much anticipated copy of Vera's final report on its year of work with ODOC. That report, "The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Oregon Department of Corrections," focused on concern with how ODOC might reduce its reliance on segregation, analyzed conditions and provided insights that were highly relevant to key goals of the MOU. It also contained a number of recommendations[7] that are highly related to DRO's collaboration with ODOC to achieve the goals of the MOU.

However, ODOC has failed to adopt a concrete plan that would implement many of Vera's recommendations. Given Vera's observations about the necessity of abandoning distinctions between many forms of segregation that are common in ODOC's prisons, a particular concern is ODOC's continued failure to adopt and implement a data collection system that would allow it to accurately understand the amount and frequency of segregation throughout the system.

In light of the harm caused to prisoners in prolonged segregation, DRO strongly recommends that ODOC create a concrete plan to take the necessary steps to reduce ODOC's continued overreliance on segregation as a way to control individuals whose behavior and mental health are not responsive to isolation. Absent such a plan, ODOC's proposed changes may nibble at the edges of reducing the inappropriate and ineffective use of segregation. However, as Vera noted in its report, segregation is not reduced or accurately measured through meaningless differentiations between disciplinary practices that lock an individual in his cell for 22 to 24 hours a day.

From our perspective, the most relevant of the Vera recommendations is:

> "Prohibiting placing adults in custody with serious mental illness, severe developmental disability, or neurodegenerative diseases in any form of extremely isolating segregation."

[7] Hastings et al., *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Oregon Department of Corrections*, October 2016, https://digital.osl.state.or.us/islandora/object/osl:77484.

However, ODOC offered no meaningful response to this recommendation. ODOC's continued effort to address the problem with small refinements of disciplinary processes must shift if any meaningful change is reached. To that end, DRO urges ODOC to create a behavior response system for difficult behaviors in the BHU (and other units that house individuals with serious mental illness and developmental disabilities) to identify those that are related to a person's disability and would improve with clinical intervention rather than punishment.

After all, BHU residents have already been identified as individuals with serious mental illness who cannot 1.) follow the normative rules of general population, and 2.) require an effective clinically-based intervention strategy. Given that, it is hard to expect that a system which continues to rely heavily on punishment and isolation will improve their ability to follow rules or learn to control their behavior.

CONCLUSION

Disability Rights Oregon continues to hope that it is both possible and practical to achieve the goals of the MOU, but ODOC's sporadic progress toward significantly increasing the hours that BHU residents spend out of their cells while engaged in meaningful activity does not support that hope. Because we trust that ODOC's planned and current efforts to improve its rate of progress toward that goal are sincere and well-intended, we must also consider whether its failure to do better may be attributable to other factors that are not touched by our agreement. DRO continues to hope that this not the case. However, until progress is more robust and consistent, we cannot realistically hope that the goals of the MOU will be accomplished by the end of our agreement in January of 2020.

For now, we agree with ODOC's expert that it must prioritize the acquisition of a stable, adequately redundant, highly trained and well-selected staff. Until that happens, it is unlikely that we will know whether the BHU can become the safe and effective therapeutic environment that is the shared goal of DRO and ODOC. In the meantime and as noted in the executive summary of this report, DRO recommends that ODOC consider seeking non-correctional settings for BHU residents with mental health impairments that are simply too acute to support a reasonable hope that current BHU staffing levels and available activities can meet their individual needs. DRO finally recommends that ODOC continue to identify and remove other obstacles that have impeded the rate of progress toward the ten and ten goal of our agreement.

Although our agreement with ODOC provides a useful way to measure progress toward ten and ten and other goals, we must remember that those goals are stand-ins for the ultimate goal of the MOU: a unit that provides its residents with a safe environment in which they receive needed therapeutic interventions without being subjected to cruel and unusual punishment. It is for that reason that DRO will evaluate and monitor ODOC's progress toward the goals of the MOU in a manner aimed at spurring ODOC and other state officials to adopt short and long term strategies that are needed to improve the health and safety of BHU residents.

It is important to emphasize that the collaboration between DRO and ODOC that has been fostered by the MOU has been a productive and beneficial one for both agencies and our clients throughout the ODOC system. However, it is equally important to state that a continued failure of ODOC to improve its current rate of progress toward the overarching goal of the MOU will force us to question whether it has the capability to safely provide the services that BHU residents require in a prison environment.

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Written by Joel Greenberg, Staff Attorney.

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DISABILITY RIGHTS OREGON

Disability Rights Oregon
511 S.W. 10th Avenue, Suite 200
Portland, Oregon 97205
503-243-2081 or 800-452-1694
FAX 503-243-1738
droregon.org