DISABILITY RIGHTS OREGON

"You are going to get bitten":

Columbia County Jail's Use of Canines to Intimidate and Control Inmates

Disability Rights Oregon

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EXECUTIVE SUMMARY

Many jails use physical force to control inmates who are considered a safety risk. To protect both inmates and staff, sound correctional practice and law require corrections staff to adhere to several principles before using force including the following:[1]

- Use of force used only as last resort;
- Consider de-escalation and other interventions that address the behavior short of using force; and
- Use force in manner to minimize injury to both inmates and staff

Because the use of police canines to forcibly remove inmates from their cells runs counter to these principles, the practice is rare.[2] Only Oregon and five other states allow this practice. In Oregon, however, Columbia County Jail is the only jail that permits corrections staff to use canines to extract inmates from their cells. No other known country authorizes the use of dogs to attack inmates who do not voluntarily leave their cells.

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Last year, Columbia County Jail's use of a canine to forcibly control inmates was captured in a graphic video. Footage of the August 1, 2017, incident shows officers using a canine to first intimidate Mr. Christopher Bartlett, an inmate with mental illness.[3] The canine barks menacingly for several minutes in order to control Mr. Bartlett's behavior.

[1] Steve J. Martin, *Staff Use of Force in a Confinement Setting*, Vol. XXV No. 1, June-July 2013.

[2] Human Rights Watch's report "Cruel and Degrading: The Use of Dogs for Cell Extractions in U.S. Prisons, available at https://www.hrw.org/report/2006/10/09/cruel-and-degrading/use-dogs-cell-extractions-us-prisons

[3] Portland Tribune article dated December 3, 2017, includes the video footage and is available at http://portlandtribune.com/scs/83-news/380262-267222-sheriff-deems-dog-attack-on-jail-inmate-justifiable

After intimidation fails to persuade Mr. Bartlett to comply with orders, the canine is then unleashed to forcibly remove him from his cell. This incident graphically violates the principles that govern the use of force by jail staff.[4]

Mr. Bartlett with a canine on his back.

Inmates who experience mental illness may be disproportionately subjected to a canine attack. For example, officers may be more likely to subject inmates who experience mental illness to canines when attempting to forcibly remove them from their jail cells when the individual inmate fails to follow jail commands.

Officers who are not specifically trained in de-escalation techniques, crisis intervention, and other trauma informed interventions may wrongly believe inmates' lack of compliance is willful rather than connected to their disability.

> [I]nmates with mental illness may be at greater risk of physical harm once officers use canines to control them.

Moreover, inmates with mental illness may be at greater risk of physical harm once officers use canines to control them. The best way for an inmate to avoid being bitten by the canine is to submit and lie still. It may be much harder for inmates who are anxious, overexcited, or delusional to submit and avoid being bitten. Unsurprisingly, using a police canine to remove an inmate with mental illness from his cell is inconsistent with best practice standards.

Oregon state law is silent as to whether the use of canines in correctional facilities constitutes "physical force" or "physical punishment." During the 2019 legislative session, Disability Rights Oregon (DRO) will advocate for changes in the law to ban the use of canines for intimidation, control, or punishment of inmates.

In February 2018, Columbia County Prosecutor, Jeff Auxier, convened a grand jury to investigate the incident and sought DRO's guidance regarding which experts should testify.[5] The

[4] Mr. Bartlett has also filed a federal lawsuit against Columbia County available at http://media.oregonlive.com/pacific-northwest-news/other/ColCountycasesuit.pdf

[5] The entire Columbia County grand jury report may be found at http://media.oregonlive.com/pacific-northwest-news/other/ColumbiaCountydocs.pdf

grand jury was comprised of community members, not experts familiar with the health, safety, and civil rights of inmates. While concluding the jail "operated in a responsible and professional manner," the grand jury also issued several recommendations.

One recommendation noted the county's cost concerns but continued to urge the county to adopt a Corrections Enforcement Response Team.[6] This recommendation is consistent with testimony presented to the grand jury as a safe and effective way "to tailor uses of force" and "increase the safety of deputies and inmates." [7] The grand jury also recommended the county partner with a qualified mental health professional "to attempt to deescalate crisis situations before deputies use force."[8]

DRO encourages Columbia County to stop using canines for use of force in the jail. Instead, DRO will continue to urge Columbia County to explore proven de-escalation tactics consistent with national best practices, especially those most effective with and appropriate for prisoners with mental illnesses or other behavioral disabilities to promote the health and safety of all inmates, including those with disabilities.

[6] Notably, the grand jury reached a different conclusion then DRO, as well as the experts we consulted for this report. The grand jury instead found, "It is the conclusion of the panel that properly training and certified police canines can be a useful tool for corrections deputies when maintaining order inside of a jail facility." According to the information provided to DRO, the grand jury did not hear from any expert witnesses who endorsed using canines for cell extractions in jails or prisons, although some Columbia County employees endorsed the practice.

[7] *Id.* at 5.

[8] *Id.* at 6.

INTRODUCTION

> Disability Rights Oregon sincerely thanks Christopher Bartlett for the courage in sharing his story and information about his disability in this public report. The bias perpetuated against people with mental illness is profound. Yet, you had the strength to stand up for yourself and others like you who experience harm behind jail walls.

In our state and across the country, jails house a staggering number of individuals who experience mental illness. According to the Bureau of Justice Statistics, one out of every four jail inmates experiences "serious psychological distress."[9] Approximately 40% of inmates also report a history of mental illness.[10] While people with mental illness disproportionally represent jail inmates (raising questions of criminalization of mental illness), jails themselves are often ill equipped to respond to inmates whose behaviors relate to their disability requiring treatment rather than punishment.

As the federally designated Protection and Advocacy System for Oregonians with disabilities, Disability Rights Oregon (DRO) has the ability to access facilities that care for or confine people with disabilities. DRO's access authority is used to monitor facility conditions and to investigate concerns of abuse or neglect.[11] We have used this authority in several jails around the state, as well as written public reports to alert members of our community about our findings. The purpose of these reports is to improve the criminal justice system for Oregonians with disabilities.

In December 2017, DRO investigated an allegation that Christopher Bartlett, an inmate with mental illness held in the Columbia County Jail, was forcibly extracted from his cell using a police canine. DRO requested all of Mr. Bartlett's records regarding this incident including the police body camera footage, jail policies, mental health forms, evaluations and assessments, and written complaints. With his permission, DRO now shares our findings from these records in this report to illustrate the harm caused by this problematic practice.

[9] Bronson and Berzofsky, "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12, June 2017, U.S. Department of Justice Bureau of Justice Statistics, available at https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf

[10] *Id.*

[11] 42 U.S.C. § 10805(a)(4) (2012); 42 C.F.R. § 51.41(b),(c) (2016); Or. Rev. Stat. § 192.517 (2015).

To determine the scope of Columbia County's practice, DRO also conducted a public records request of all 36 counties in Oregon. The responsive records revealed that Columbia County Jail is the only jail in our state that permits a canine in use-of-force events.

DRO has two primary concerns about Columbia County Jail deploying canines in use of force events. First, canines are not specially trained to aid officers in forcibly removing inmates. This creates a safety risk for both inmates and corrections staff. Based on information provided to DRO by the Oregon Police Canine Association,[12] police canines are routinely trained for either detection (for drugs, bombs, or to find victims) or violent apprehension in the field to capture fleeing criminals who pose a risk, if uncaught, of creating a serious threat to the public. However, there is no specific training regarding using canines in use of force events in correctional settings.

Canines are not specially trained to aid officers in forcibly removing inmates. This creates a safety risk for both inmates and corrections staff.

Based on DRO's investigation and consultation with experts, using canines to forcibly remove inmates from their cells is not consistent with legal or best practice standards, which will be discussed in greater detail in these two sections below: "An Expert View of Canines and Best Correctional Practices" and "Clear Legal Standard for Use of Force and Inmates with Mental Illness".

[12] https://www.opca.com/

COLUMBIA COUNTY JAIL

August 2017 Incident at Columbia County Jail

Mr. Bartlett sitting on the curb before his arrest.

On July 18, 2017, Christopher Bartlett was arrested for charges related to alleged vandalism, disorderly conduct, and resisting arrest. This was not the first time Mr. Bartlett was arrested or taken to Columbia County Jail.

The arresting officer noted that Mr. Bartlett "rambled" and "accused us of stealing his heritage from him." The officer went on to note that Mr. Bartlett failed to follow multiple commands and, due to this failure, physical force was used to book him. The July 18, 2017, Columbia County booking form indicates a question mark as the response to the question, "Do you have any concerns about the prisoner's mental health?" After Mr. Bartlett was booked into jail, the arresting officer noted that Mr. Bartlett was placed in a safety cell to prevent him from harming himself.

On August 1, 2018, Columbia County Jail decided to move Mr. Bartlett from his current cell to another cell "due to his behavior in the jail." The county reports it "used standard recommended de-escalation methods in accordance with best practices for several hours before using force."

At approximately 1pm, five deputies and the canine got into position to forcibly remove Mr. Bartlett from his cell. While the canine was loudly barking and jumping, Mr. Bartlett was ordered to put his hands in the cuff port in his jail cell door. When Mr. Bartlett went to lay back down on his bed, he was told to comply or he was "going to get bitten." When he refused to follow commands, the canine was deployed. When the canine was released, the dog immediately bit Mr. Bartlett on the hip and right torso dragging him abruptly to the floor. The deputies then cuffed Mr. Bartlett while he was screamed in pain.

The deputies took Mr. Bartlett out of the jail cell and "pod" when they noted his injuries and sent him to the hospital for medical attention. The jail's August 2, 2017, progress note states Mr. Bartlett was injured during the attack including a wound due to "a dog bite on his R[ight] upper arm" and "old wound on knees open during use of force."

Mr. Bartlett has a Serious Mental Health Condition

Mr. Bartlett identifies as having serious mental illness. There were no records or assessments provided by the jail dated August 2nd, the day a canine was used to forcibly extract him from his cell, to verify or assess Mr. Bartlett's mental health on that particular day. However, at his July 18th booking, the question, "Do you have any concerns about the prisoner's mental health?" on the Columbia County booking form was answered with a question mark.

Mr. Bartlett's handwritten notes to jail staff also contain several potential indicators of delusion. One statement said, "U see I'm was directly related to Jesus Christ." Months later, this grandiose delusion was confirmed by a jail psychiatrist on October 13, 2017. This evaluation also notes that Mr. Bartlett experienced auditory hallucinations, was prescribed antipsychotic medication, and was diagnosed as "psychosis NOS, consider schizophrenic."

Auditory hallucinations and the resulting inability to determine whether what is being heard is coming from an internal or external source may be a clinical reason why a person experiencing psychosis is not able to follow or understand verbal commands.

It is unclear whether Mr. Bartlett's disability was factored in the decision to authorize the planned use of force or whether he could understand the verbal commands to place his hands in the cuff port. It is also unclear if there was a consultation with jail mental health prior to the planned cell extraction regarding the contraindicating mental health symptoms.

DRO agrees with the grand jury the Columbia County grand jury: the jail should partner with a qualified mental health professional to conduct an assessment and attempt to "deescalate crisis situations before deputies use force."[13]

[13] The Grand Jury report at page 6, available at http://media.oregonlive.com/pacific-northwest-news/other/ColumbiaCountydocs.pdf

Video Evidence Shows Use of Force Not Justified

Despite the grand jury's conclusion, DRO remains concerned that using a canine to forcibly remove Mr. Bartlett from his cell on August 1, 2017, was not justified.[14] First, the records provided by the jail appear to contain several inaccuracies. For example, the General Offense report from the August 1st use of force states:

"I watched Sergeant [redacted] and another deputy attempt to handcuff Bartlett, but Bartlett pulled his hands back inside the cell, Bartlett became irate and was not complying with commands."

These words are not consistent with the video footage. On the video, immediately prior to the canine attack, you can hear the voice of the Sergeant clearly stating that Mr. Bartlett went back to lay down on the mattress. There was no attempt to handcuff nor footage of Mr. Bartlett becoming "irate." Laying back down does not indicate becoming "irate" or being a risk to oneself or others which may justify use of force.

> It's imperative for the health and safety of everyone in jails that use of force be justified.

The canine officer also inaccurately states in his report that "I commanded him to the ground and he did not obey." Yet, the video shows the canine immediately taking Mr. Bartlett down upon entering cell and no command was given to get to the ground.

It's imperative for the health and safety of everyone in jails that use of force be justified. The video does not show that force was used as a last resort or that it was proportional to the resistance or the threat encountered. The discrepancy between the incident reports and the video suggests the use of force was not justified.

DRO remains concerned that Columbia County Jail stands behind its policy to use a canine in use of force events. Using canines to forcibly remove Mr. Bartlett from his cell was unnecessary. This is deeply troubling given that Mr. Bartlett was seriously injured and still has nightmares about the attack over a year later.

[14] Again, the grand jury impaneled by Columbia County, consisting of lay members of the community rather than experts, disagreed with DRO's assessment and concluded the jail "is operated in a responsible and professional manner." *Id.*

An Expert View of Canines and Best Correctional Practices

Steve J. Martin, a career corrections professional with over 45 years' experience and former expert for both the U.S. Department of Justice Civil Rights Division and the Department of Homeland Security Division of Civil Rights, has reviewed the footage of the Columbia County Jail extraction and issued the following expert opinion: [15]

Mr. Bartlett being taken down the K9

The use of physical force to control confined persons is a lamentable event in any operation of American prisons, jails, and juvenile facilities. Moreover, there are few elements of a confinement operation that can more quickly generate civil or criminal legal action than alleged instances of unnecessary staff use of force.

Because staff use of force necessarily involves risk of physical injury to both inmates and staff, it is also necessarily governed by sound correctional standards, policies, guidelines and decisions of the court system through application of the 8th and 14th Amendments to the U. S. Constitution. It is on these grounds I will address the efficacy of utilizing K-9s during the course of a cell extraction be it in prisons or jails.

Mr. Martin goes on to offer the following expert opinion regarding Mr. Bartlett's cell extraction:

> "Both sound correctional practice and the law consistently set out core principles governing staff use of force. They are as follows:
>
> - Force should be used as a last resort;
> - Force should be used in a manner to minimize injuries to both inmates and staff;
> - Force should cease when control has been established;
> - Force should never be used to punish or inflict wanton pain on a subject; and
> - Force should be proportional to the resistance or threat encountered.
>
> *The use of K-9s in a cell extraction violates each and every one of these core principles.*

[15] Mr. Steven J. Martin is also the author of Correctional Law Reporter, *Staff Use of Force in a Confinement Setting*, Vol. XXV No. 1, June-July 2013.

First, absent imminent threat of serious bodily injury or death, the use of K-9s, given all the modern day tactical options available to staff, should never be employed as a last resort. Second, because a K-9 is an animal whose behavior cannot be completely controlled, injuries cannot be minimized to the subject and may actually be exponentially increased because defensive resistance and panic by the subject can actually increase the K-9's attack.

Third, ceasing force once control is established may not be immediately accomplished after the K-9 engages the subject. Fourth, use of a K-9 to inflict injury under the guise of a less than precise control tactic may give rise to the claim of punishment and wanton infliction of pain. Finally, use of a biting dog, given the tremendous jaw strength of such an animal, is not proportional to the resistance or threat encountered absent the circumstances justifying lethal force.

While it is not unusual for K-9s to be used in a correctional setting for contraband detection, tracking, and escorting*, I am not aware of a single confinement operation that permits* K-9*s to be used in cell extractions*. I have reviewed policies that strictly prohibit their deployment to intervene or participate in a cell extraction. One such policy I reviewed includes a provision that K-9s on facility patrol shall never be deployed to intervene during a use of force between staff and inmates because this would place staff at risk of a bite from the K-9. In sum, an agency official who authorizes K-9s in cell extractions, subjects himself/herself and subordinates to needless liability claims and even criminal civil rights claims. Perhaps, most importantly, such a practice is antithetical to the first rule of correctional administrators, i.e., to provide a safe work environment for staff, civilians, and inmates. *The use of* K-9*s in cell extractions represent quite simply unacceptable risks of harm to both staff and inmates*."

Clear Legal Standard for Use of Force and Inmates with Mental Illness

Mr. Martin and other criminal justice experts advise against the use of canine in cell extractions - including forcible removing inmates with mental illness from their cells because those inmates are at greater risk of physical harm.

In order to avoid injury, an inmate being bitten by a dog must submit to the dog and lie still. Pulling away from a biting dog is likely to increase tissue damage and serious injury. Inmates with mental health conditions may be fearful, anxious, overexcited, or delusional, making them least likely to submit and most likely to pull away, thus suffering greater or potentially permanent injury. The harm caused to inmates serves as the legal basis for prohibiting the use of canines in jail use of force events.

This harm is especially problematic when there are other, safer ways to manage an inmate's behavior without resulting in a canine attack. For example, local experts included in Columbia County's grand jury investigation testified regarding other uses of force or de-escalation techniques rather than using canines. First, Sergeant Brandon White from Multnomah County testified about their Corrections Enforcement Response Team (CERT).

Noting Columbia County's cost concerns, the grand jury still recommended that county establish CERT to "increase the safety of deputies and inmates." Second, Gabe Gitnes from the Oregon Department of Corrections testified regarding the proven effectiveness in de-escalation techniques and the Department of Corrections "significant reduction in use of force incidents using these tools."[16] These local corrections practices outside of Columbia County are consistent with the national standards.

Mr. Bartlett being bitten by a CANINE.

The American Bar Association (ABA) Criminal Justice Standard clearly states, *"Canines should never be used for purposes of intimidation or control of a prisoner or prisoners."*[17] The ABA Criminal Justice Standard also cites to applicable 8th Amendment jurisprudence that forms a legal basis to reject using canines to respond to behaviors of inmates with disabilities as it is both cruel and unusual.

Instead, jail staff should first "determine whether the prisoner has any contraindicating medical conditions, including mental illness."[18] This includes when an inmate does not comply with commands potentially related to their disability. For example, an officer's wish to compel a prisoner's compliance with an order is insufficient to justify use of either electronic or chemical weaponry.[19]

[16] Columbia County Grand Jury Report, pages 5-6, available at http://media.oregonlive.com/pacific-northwest-news/other/ColumbiaCountydocs.pdf

[17] The ABA Criminal Justice Standard 23-5.8 Use of Chemical Agents, Electronic Weaponry, and Canines (the "ABA Criminal Justice Standard") available at https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf.

[18] *Id.* at 140-142.

[19] See, *e.g., Hickey v. Reeder*, 12 F.3d 754, 758-59 (8th Cir. 1993) (shooting a prisoner with a stun gun to make him clean his cell violated the Eighth Amendment).

Columbia County Jail records show no evidence that a clinical consultation was conducted to consider contraindications even though the cell extraction was planned and Mr. Bartlett's medical records clearly establish his disability. It is also unclear if jail corrections staff understood or considered whether Mr. Bartlett's refusal to comply was due to this disability and, in particular, his experience of hearing or seeing things that were not there.

> "Canines should never be used for purposes of intimidation or control of a prisoner or prisoners." The American Bar Association Criminal Justice Standard

Humane Treatment of Inmates with Disabilities

The Substance Abuse and Mental Health Services (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of our communities.[20] SAMHSA continuously issues guidance to jails to ensure corrections staff provide trauma informed care and interventions.[21]

In particular, SAMHSA offers training to corrections staff so that they can avoid re-traumatizing individuals and offering more effective interventions for responding to inmates with mental illness.[22]

As a matter of public policy, we all have a shared interest in ensuring all people, including those with disabilities, are treated humanely while they are being held in jail. Ultimately, those who are charged with crimes do come back to our communities when they are found to be not guilty or when they have served their time.

We should all be invested in ensuring that our fellow Oregonians are not severely injured or prevented from fully re-integrating back into society simply because their disability may have made it more difficult to comply with jail rules.

[20] https://www.samhsa.gov/about-us

[21] SAMHSA Emerging Issues in Behavioral Health and the Criminal Justice System, available at https://www.samhsa.gov/criminal-juvenile-justice/behavioral-health-criminal-justice

[22] https://www.samhsa.gov/criminal-juvenile-justice/state-federal-collaborations

Instead, these individuals should have the same opportunity as all of us to be contributing members of society.

When DRO last spoke to Mr. Bartlett, he told us that while he had not been arrested again, he still has nightmares about a dog attacking him and the scars to prove it.

RECOMMENDATIONS

To protect inmates who experience mental health conditions and to maintain the safety and security of correctional facilities, DRO recommends the following:

1. Prohibit Using Canines for Cell Extraction Due to Risks of Harm

In the state of Oregon, there are no clear state or local training protocols for police canine and their involvement in correctional use of force events. For example, in the Columbia County General Offense report dated August 1, 2017, the canine officer notes that the canine used for the cell extraction is only certified for patrol as defined as "tracking area…article…building searching," as well as "narcotics detention."

DRO was provided the training records for the canine used to attack Mr. Bartlett. Based on the records, it appears that the canine received approximately 330 hours in training ranging from searching, tracking, agility, obedience, and aggression. The vast majority of these hours were spent training the canine on searching, tracking, and obedience. Notably, the canine received approximately 7 hours of training on "apprehension." The notes from the apprehension trainings also indicate that the canine had difficulty releasing its bite on command and frequently needed an electric collar to correct the poor behavior.

To address this gap in state law, in the 2019 legislative session, DRO will advocate for legislation that prohibits the use of canines in correctional facilities for the purpose of intimidation or control. We will also seek clarity regarding when a "use of physical force" for the purpose of intimidation or control is a type of "physical punishment."

2. Train Staff to Use Interventions More Appropriate to Respond to Inmates with Disabilities

There are several interventions and techniques better suited to respond to inmates with disabilities. When responding to a person whose disability may prevent them from following commands or procedures, correctional staff should carefully approach the use of force and be specifically trained in de-escalation techniques, crisis intervention, and other trauma informed interventions rather than resorting to physical force including using canine. Otherwise, inmates with mental illness or other disabilities may be disproportionally subject to acts of force when untrained officers wrongly believe the lack of compliance is willful rather than due to their disability.

Consistent with the testimony provided by Oregon Department of Corrections to the Columbia County grand jury, DRO continues to encourage the county to reach out to SAMSHA to obtain proven de-escalation training and related policies.

3. Ensure the Use of Force is Justified and Proper Reporting is Conducted

Any use of force must be justified and its use must be accurately and properly documented. Accurate reporting of such incidents allows for thoughtful and accurate debriefing. Without it, it's far more difficult to hold jail staff accountable or understand how jail staff can create a safe and appropriate jail environment.

CONCLUSION

The August 2017 use of a canine to remove Mr. Bartlett from his cell in the Columbia County Jail does not appear to be an isolated incident. Based on statements made to the media, DRO understands that former Sheriff Dickerson estimates “a canine deputy” has been used on inmates in the jail "about half a dozen times" since the police canine was deployed to the jail in November 2015.

In September 2018, DRO’s Legal Director, Emily Cooper, met with Columbia County jail officials and their attorneys to raise the same concerns addressed in this report. It is DRO’s understanding that the jail will remain the only county in the state of Oregon that allows canines to forcibly remove inmates from their cells.

DRO urges Columbia County to prohibit the use of canine for the purposes of intimidation or control of inmates whose disabilities may be the basis for their failure to comply with commands. More broadly, our viewing of the video in this case left the strong impression that the barking canine was used to terrorize the inmates into compliance. This should not be an acceptable strategy in a civilized society.

Jail is no place for people with mental illness. Our local communities need psychiatric crisis services, housing, and supports to keep people out of crisis. This will require new or shifted resources that can only be provided by public action.

DRO also calls for state legislators to adopt legislation to prohibit the use of canines in any use of force event in jail settings.

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Disability Rights Oregon is the Protection and Advocacy System for Oregon.

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