

Measure Number: IRR 402

Subject: Eliminating Slavery as a Punishment for Crime

Government Unit Affected: State of Oregon, local governments

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Comments

Section 34, Article I of the Oregon Constitution states, “There shall be neither slavery, nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted.” This mirrors the language of the 13th Amendment to the United States Constitution. However, several states have begun the process of removing similar language, known as the slavery loophole, from their constitutions, including Colorado, Nebraska, and Utah. IRR 402 amends the Oregon Constitution to prohibit slavery and involuntary servitude in all circumstances, including as punishment for a crime. The referral instead allows an Oregon court, or a probation or parole agency to order a person convicted of a crime to engage in education, counseling, treatment, community service, or other alternatives to incarceration as part of sentencing.

Fiscal Impact Summary

Executive Branch Assumptions:

By itself, IRR 402 does not require a change in state expenditures or revenues. IRR 402 allows the courts or parole or probation agencies to order treatment, programming, education or provision of community service, among other alternatives, as part of crime sentencing. Any potential fiscal impact, including a reduction in prison or post-prison expenditures, an increase in state-funded programming and services, or a reduction of expenditure due to community services provided, will depend on future actions of the Oregon courts and parole or probation agencies.

The Oregon Department of Corrections (DOC) has been working with the Oregon Department of Justice on potential areas of risk related to SJR 10, the basis for IRR 402, since its passage in 2021. DOC has raised concerns regarding the possibility of litigation, as initiated in Colorado, and the potential for significant staffing needs.

In December 2020, Colorado passed similar legislation and the resulting lawsuit filed by adults in custody (AIC) requests at least minimum wage of \$12 and state employee status with benefits for those in custody. If successful, the lawsuit could require Colorado spend \$400-

\$500 million. For context, the Colorado DOC has a population of 10,702 AICs and the Oregon DOC currently has a population of 12,148, an increase of approximately 14 percent. Additionally, Oregon's minimum wage is 6 percent greater at \$12.75 per hour.

On the other hand, if AICs no longer participate in work opportunities within DOC facilities, an undetermined significant increase in personnel would be required to prepare food, perform building and grounds maintenance, provide medical and custodial support, and a variety of other tasks. According to DOC, the number of full-time equivalent (FTE) positions required to replace AIC programs could range from 1,000 to 3,000 positions.

The DOC cannot determine a specific fiscal impact upon passage of IRR 402, as so much will depend on potential litigation and interpretation.

Local Government Assumptions:

IRR 401 does not require local governments to take any action and does not require a change to existing local government practices.

Estimate of Financial Impact

This measure will have no financial effect on either state or local government expenditures or revenues.