



Access For All, In Oregon?

A REVIEW OF ABORTION ACCESS IN OREGON'S COUNTY JAILS



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October 2023

Contents

Introduction	1
People Detained In Oregon County Jails	3
Oregon County Jail Abortion Policies	4
Oregon’s county jails largely limit abortion access.	8
Yamhill and Coos counties severely restrict abortion access in jails.	8
Oregon’s remaining county jails either do not have abortion policies or the policies are superficial and devoid of meaningful process.	11
Most county jails restrict abortion access based on an ability to pay.	12
Many policies explicitly state that abortion rights are provided to <i>women</i>	13
Recommendations	14
Recommendations for State and County Lawmakers.....	15
Recommendations for Executive Officials and Commissions	15
Recommendations for Jail and Prison Agency Leaders	16
Recommendations for Reproductive Justice Advocates	16

Introduction

“[The fight for abortion access and care] has never been merely about abortion. Rather, the anti-abortion movement is and always has been about power and domination. The push to end abortion is grounded in the values of white supremacy, including heteropatriarchy and the subjugation of women. It is a part of a broader movement which seeks to maintain and increase oppressive control over marginalized groups.”¹

THE RIGHT TO make decisions about our bodies, our lives, and our futures is a universal value. When the Supreme Court struck down *Roe v. Wade* in *Dobbs v. Jackson Women’s Health Organization*, it stripped us of those federal rights. Protecting access to abortion services and care now falls to the states. Fortunately, since the 1990s, Oregon’s providers, advocates, and state officials have led the nation on issues related to abortion access and standards of care. Most recently, the legislature recognized that abortion is a “fundamental right,” required public and private insurance to cover abortion services, and prohibited public bodies from interfering with abortion access.

Despite lawmakers’ commitment to implementing broader provider protections and guaranteeing equitable access for all communities, the barriers faced by Oregonians incarcerated in county jails are frequently ignored. For people detained in Oregon’s 31 county jails,² competing ordinances, policies, and practices can and do have real and disparate impacts on access to abortion services and care. It is impossible to collect each story in which a person has struggled or failed to access an abortion while detained in Oregon’s jails, but the stories that have emerged are shocking. They involve refusals to transport for services, mandated mental health evaluations, threats to

1 Julia Yoshimoto & Sarah Bieri, Oregon Justice Resource Center, *Stand Against Dobbs and White Supremacy by Ending Collusion with the Carceral System* (2022), available at <https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/62bde5c07a924d514b6c2086/1656612289256/Dobbs+response+FINAL+FORMATTED.pdf>.

2 While some counties detain people in more than one jail, other counties have a shared jail, making up Oregon’s 31 county jails. Multnomah County, for example, detains people in Multnomah County Detention Center and Inverness Jail. Hood River, Gilliam, Sherman, Wasco, and Wheeler counties all detain people in NORCOR.

the life of a pregnant person, and being forced to carry a pregnancy to term.

To better understand the state of abortion access during county detention, the Oregon Justice Resource Center (OJRC) requested reproductive health policies from the state's county jails. Upon review, we discovered that no policy is a model, and that many policies are either vague or absent. Oregon's abortion policies for jails must be standardized and practices must be audited so that being jailed while pregnant does not threaten these rights.

This report will discuss the people impacted, summarize the policies we obtained, explain the various ways in which those policies might prevent a person from obtaining an abortion, and make recommendations so that abortions in Oregon truly can be accessible for all.

People Detained In Oregon County Jails

EACH OF OREGON'S 31 county jails is overseen by an elected sheriff. The county jails typically hold people waiting for trial, people who have been sentenced to less than one year in custody, and people who are serving sanctions for parole or probation violations. More than 64% of people held in Oregon's jails are awaiting trial.³ In other words, they have not been convicted of a crime—and are presumed innocent—but either cannot afford to secure their release by paying bail or are held without the option of release on bail. Some are held overnight, while others spend over a year in county custody waiting for their cases to resolve.

On any given day, 6,400 people are incarcerated in Oregon jails. Of that 6,400, 990 are housed in women's units.⁴ Over the course of a year, 42,000 different people will spend time in an Oregon jail.⁵ The number of women in Oregon's jail has continually increased over the years, growing 17-fold from 1970—the year *Roe v. Wade* was filed in district court—to 2015.⁶

3 Z. Zeng & T. D. Minton, *Census of Jails, 2005–2019—Statistical Tables*, Bureau of Justice Statistics (Oct. 2021), <https://bjs.ojp.gov/library/publications/census-jails-2005-2019-statistical-tables>.

4 *Id.*

5 Wanda Bertram & Alexi Jones, *How Many People in Your State Go to Local Jails Every Year?*, Prison Policy Initiative (Sep. 18, 2019), <https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/>.

6 *Incarceration Trends in Oregon*, Vera Institute of Justice, 2, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-oregon.pdf>.

Oregon County Jail Abortion Policies

WHILE OREGON STATE statutes lay out general standards for county jails,⁷ each is run by the local, elected sheriff and policies and practices vary greatly from one facility to the next.

The Oregon State Sheriff's Association (OSSA) has created a voluntary set of jail standards, or "best practices," directed towards the operation of jails in Oregon. The standards note only that while "inmates do not have a right to obtain elective health care procedures," "female [incarcerated people] do have a right to obtain an abortion" (at the incarcerated person's expense).⁹ The standards do not provide details, but direct jails to create their own policies and procedures to ensure consistent, uniform processes.¹⁰

While some Oregon sheriffs have created their own policies and procedures, these policies are largely inconsistent from county to county. Some provide a simple foundation for access to abortions; most, however, are vague, minimal, or silent on the issue of access. Based on the plain language of the policies OJRC has obtained, we know:

- A. Two counties severely restrict access to abortions;
- B. Six counties either have no policies on reproductive health or have policies that do not include a provision covering abortion access;
- C. All Oregon counties that have an abortion policy categorize abortion as an elective procedure;
- D. Seven counties include a right to abortion with no explicit language limiting financial access;¹¹

7 See ORS 169.076.

8 Though the OSSA website states "[e]very Oregon Sheriff has voluntarily agreed to use the OSSA Jail Standards and each county jail is inspected on a bi-annual basis to ensure they are using best practices," not every abortion access policy is consistent with the relevant standard. *Jail Standards*, Or. State Sheriff's Ass'n, <https://oregonsheriffs.org/jail-standards/>.

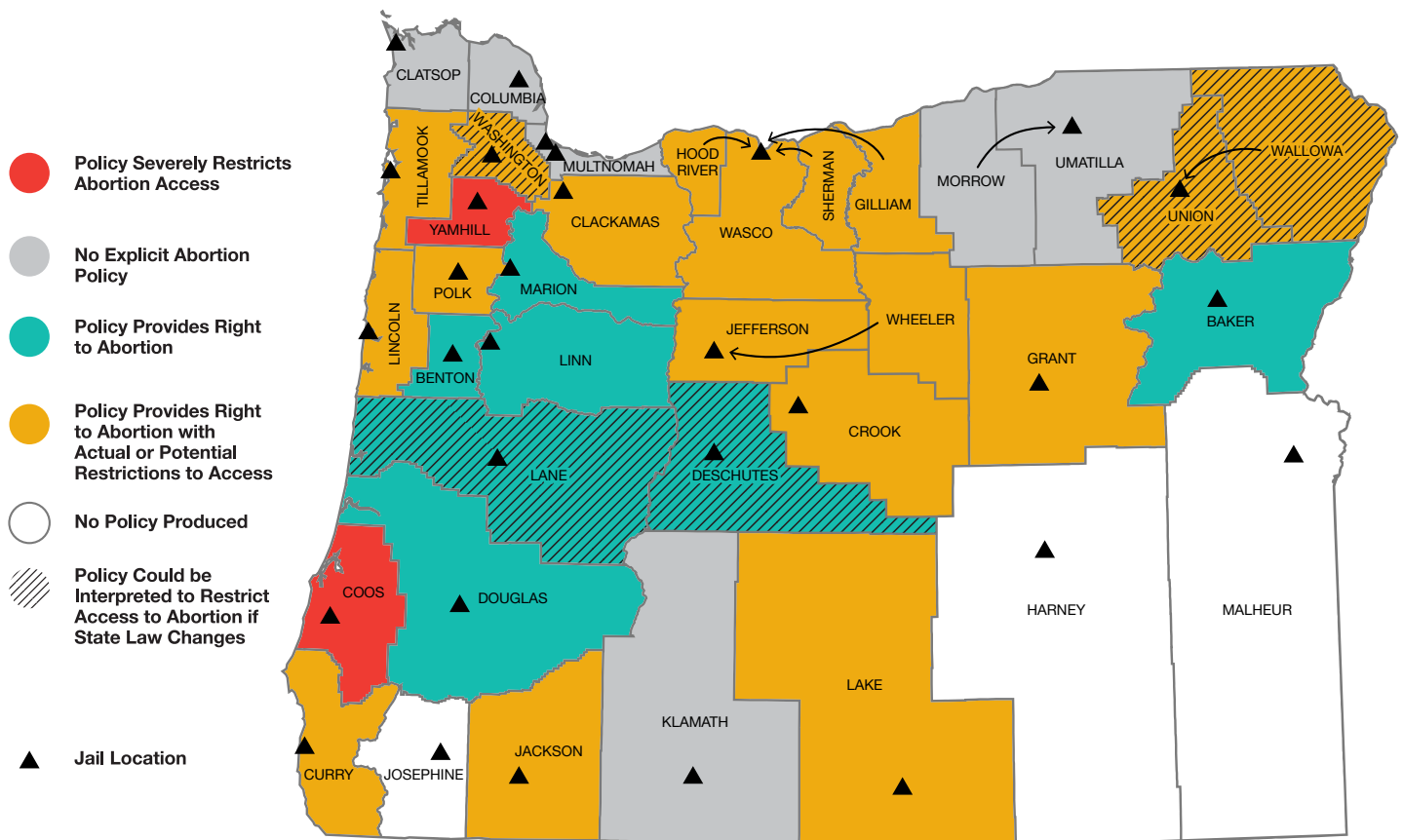
9 *Jail Standards*, Or. State Sheriff's Ass'n, 150-151, <https://oregonsheriffs.org/jail-standards/>. <https://oregonsheriffs.org/jail-standards/> (see policy number G-208).

10 See *id.*

11 Though these policies do not explicitly limit access, they also do not contemplate payment and scheduling, which may impact access.

- E. In eighteen counties where there is a right to an abortion, the policies include explicit language limiting access based on an ability to pay. Some of those counties require proof of payment or actual payment before the procedure may be scheduled;
- F. In two counties where there is a right to an abortion, the policies explicitly state that a person must arrange for their own abortion while in custody;
- G. Five counties allow access to abortions so long as there is a state or federal right to an abortion; and
- H. At least ten policies address abortions only for “women” and/or “females.”

Below is the county breakdown:



County	Policy Severely Restricts Abortion Access	No Explicit Abortion Policy	Policy Provides Right to Abortion	Policy Provides Right to Abortion with Actual or Potential Restrictions to Access	Policy Could be Interpreted to Restrict Access to Abortion if State Law Changes
Baker			X		
Benton			X		
Clackamas				X	
Clatsop		X			
Columbia		X			
Coos	X				
Crook				X	
Curry				X	
Deschutes			X		X
Douglas			X		
Gilliam (NorCor)				X	
Grant				X	
Hood River (NorCor)				X	
Jackson				X	
Jefferson				X	
Klamath		X			
Lake				X	
Lane			X		X
Lincoln				X	
Linn			X		
Marion			X		
Morrow (Umatilla)		X			
Multnomah		X ¹²			
Polk				X	
Sherman (NorCor)				X	
Tillamook				X	
Umatilla		X			

12 In response to a request clarifying their policy, Multnomah County Corrections Health responded, “Corrections Health provides access to health care including reproductive health care for adults and youth in custody within Multnomah County Jails. Specifics regarding care plans would be dependent on the patient’s needs and the provider.”

County	Policy Severely Restricts Abortion Access	No Explicit Abortion Policy	Policy Provides Right to Abortion	Policy Provides Right to Abortion with Actual or Potential Restrictions to Access	Policy Could be Interpreted to Restrict Access to Abortion if State Law Changes
Union				X	X
Wallowa (Union)				X	X
Wasco (NorCor)				X	
Washington				X	X
Wheeler (NorCor & Grant)				X	
Yamhill	X				
Harney	No policy produced.				
Josephine	No policy produced.				
Malheur	No policy produced.				

Oregon's county jails largely limit abortion access.

AS OF THE writing of this report, the right to an abortion in Oregon is statutory. In July 2023, the Oregon Legislature passed House Bill 2002, which made abortion a fundamental right.

Every individual has a fundamental right to make decisions about the individual's reproductive health, including the right to make decisions about the individual's reproductive health care, to use or refuse contraception, to continue the individual's pregnancy and give birth or to terminate the individual's pregnancy.¹³

Additionally, Oregon precludes public bodies from interfering with a person's right to an abortion,¹⁴ provides public funding for abortions,¹⁵ and requires private insurance companies to cover abortions.¹⁶ Those confined within Oregon's jails, however, may not have access to these strong protections and privileges.

Yamhill and Coos counties severely restrict abortion access in jails.

People detained in Yamhill and Coos County Jails suffer from the harshest abortion restrictions. Though the Yamhill County Sheriff does not have an abortion policy, Yamhill County Ordinance 634 explicitly bans Yamhill County agents¹⁷ from facilitating "by any means the performance of an abortion, other than to the extent required by

13 House Bill (HB) 2002 (2023).

14 ORS 659.880(3).

15 OAR 410-130-0562; See *Planned Parenthood Ass'n v. Dep't of Human Res.*, 663 P.2d 1247 (Or. Ct. App. 1983), aff'd on other grounds, 687 P.2d 785 (Or. 1984) (striking down administrative rule denying funding for medically necessary abortions).

16 ORS 743A.067(2)(g).

17 "'Agent' means any county employee or representative, whether paid or serving as an unpaid volunteer, while acting within the scope of his or her employment or representation." Yamhill County Ordinance 634, § 2(a).

federal and state law.”¹⁸ “‘Facilitate’ means to assist in any manner, whether by means of staff time, physical transport, accompanying, or in any way to use county funds or other county resources.”¹⁹

Prior to the 2017 passage of ORS 659.880, which precludes public bodies from interfering with the right to an abortion, Ordinance 634 had been interpreted to mean that people in the Yamhill County Jail could not obtain abortions. In one reported incident, the Yamhill County Sheriff refused to transport Bridget Burkholder to a facility for an abortion without a court order, a process not required in Oregon.²⁰ Before he would approve her transport for an abortion, the judge in the case ordered Ms. Burkholder to be stabilized in an intensive care facility and evaluated by a mental health professional to determine if she was competent to make the decision to have an abortion.²¹ Again, the Yamhill County Sheriff would not transport another person in its custody when Joni Ledbetter requested an abortion. Due to a serious medical condition, her pregnancy was a threat to her life.²²

Since 2017, no person has challenged the legality of this ordinance or reported on its use by the Sheriff. It is therefore unknown whether the Sheriff and his officers, employees, and agents are interfering with imprisoned persons’ statutory rights.

Yamhill Ordinance 634 requires the county jail to allow abortion access only to the extent that access is explicitly protected by state or federal law. The same is true of Deschutes, Lane, Union, Willamette, and Washington counties. Prior to Dobbs, abortion access in Oregon’s county jails would have been protected under federal and state law. If protections loosen under state law, people detained in Yamhill County (and Deschutes, Lane, Union, Willamette, and Washington counties) may not be able to access abortions at all.

The Coos County Sheriff’s policy states that “Counseling, abortions and adoptive procedures are considered elective procedures and are not provided by the Coos County Jail Medical Department.” The policy does not discuss whether a person may access abortion care outside of the Coos County Jail Medical Department. It does not discuss physician referrals, scheduling, transport, or payment.

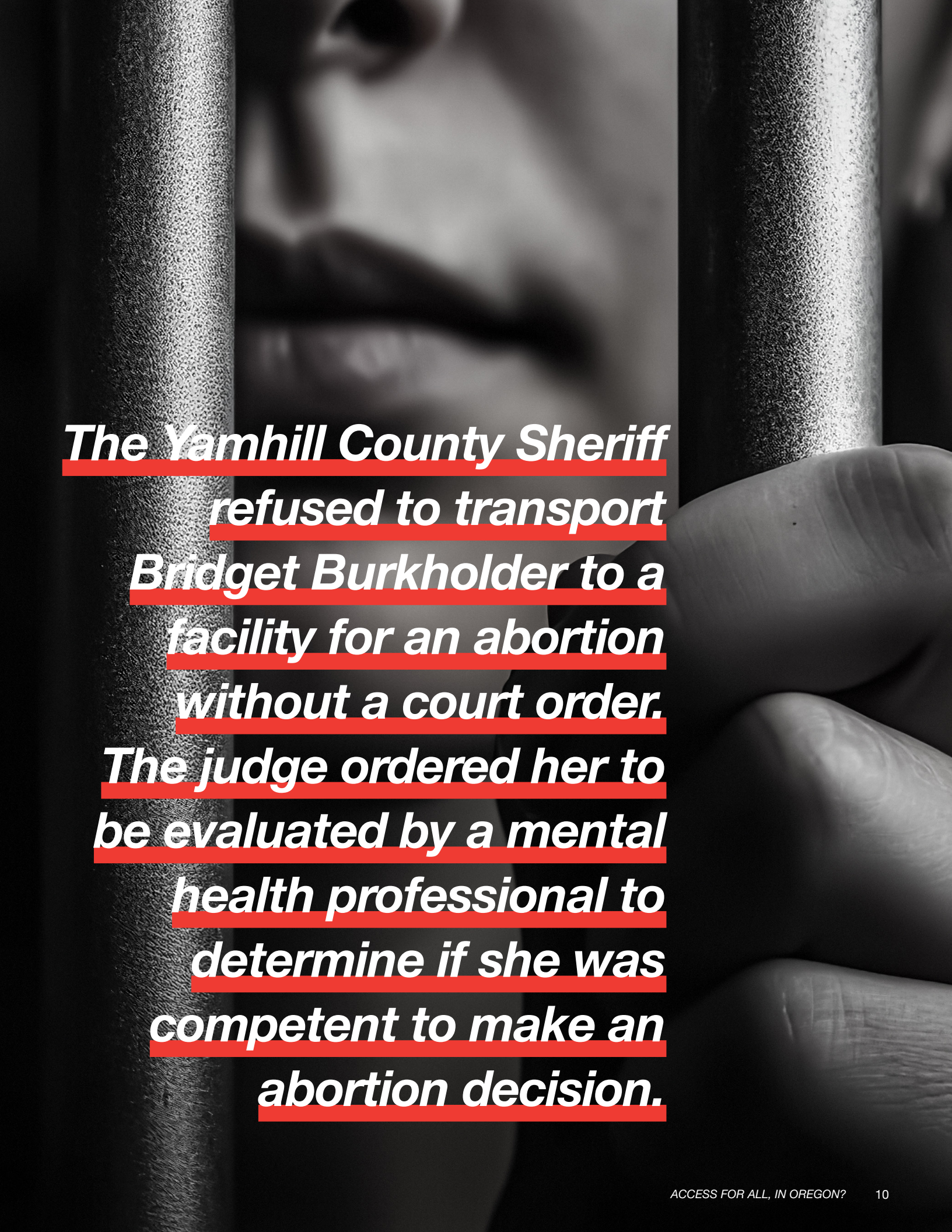
18 *Id.*

19 *Id.*

20 See Carla Axtman, *Hey Yamhill County, You Deserve Better*, BlueOregon (Jul. 5, 2011), <https://www.blueoregon.com/2011/07/hey-yamhill-county-you-deserve-better/>.

21 See Carla Axtman, *Hey Yamhill County, You Deserve Better*, BlueOregon (Jul. 5, 2011), <https://www.blueoregon.com/2011/07/hey-yamhill-county-you-deserve-better/>; Patrick Preston, *Oregon Inmate Seeking Abortion Awaits Judge’s Approval*, KATU News (Jul. 7, 2011), https://lawprofessors.typepad.com/reproductive_rights/2011/07/inmate-seeking-abortion-awaits-judges-approval.html.

22 *Inmate Refused Requested Abortion*, Chicago Tribune (Aug. 31, 1997) <https://www.chicagotribune.com/news/ct-xpm-1997-08-31-9708310205-story.html>; Case No. CV97340 (Petition for Writ of Habeas Corpus in Yamhill County).



***The Yamhill County Sheriff
refused to transport
Bridget Burkholder to a
facility for an abortion
without a court order.
The judge ordered her to
be evaluated by a mental
health professional to
determine if she was
competent to make an
abortion decision.***

There have been no legal challenges to this policy or news reports on its implementation. It is therefore unknown whether the Sheriff and his officers, employees, and agents are interfering with imprisoned persons' statutory rights.

Oregon's remaining county jails either do not have abortion policies or the policies are superficial and devoid of meaningful process.

Clatsop, Columbia, Klamath, Morrow, Multnomah, and Umatilla county jails do not have abortion access policies. It is unknown whether people detained in these counties have been able to access abortions.

Twenty-five county jails have policies that affirm the right to an abortion. However, these policies are frequently vague or lack detail beyond restating the right itself. Being detained in a county jail is often a life-altering event. At arrest, people are focused on their criminal cases and the immediate effects of detention, such as loss of housing and employment, access to ongoing medical care, and care for dependent children, family members, and pets. While an abortion may be a priority prior to arrest, the impacts of detention quickly take precedent. Given that abortions are time-sensitive, detailed and easily available policies are critical to ensuring access. Few policies, if any, state, for example:

- how a person may put in a request for an abortion;
- how quickly a request will be granted;
- where the abortion will take place;
- what procedures or pill options might be available;
- what sort of counseling services might be available;
- what post-abortion care is available; or
- if required, how to schedule an abortion with a private provider.

In at least one case, a woman was forced to carry a pregnancy to term. She was not able to obtain an abortion while held in pretrial detention because she could not jump through the many hoops set by the court to release in time to have an abortion. These demonstrate that in practice, even clear policies may not ensure continuity of care for people detained in county jails. However, having clear, written procedures that are easily accessible decreases the risk that people incarcerated in Oregon's jails will be unable to access the healthcare they need, including abortion care.

Most county jails restrict abortion access based on an ability to pay.

All counties with abortion access policies categorize abortion as an elective procedure. Labeling an abortion as an elective, rather than necessary or emergent procedure allows counties to put greater restrictions on access.²³ For example, eighteen counties explicitly restrict access to elective procedures based on a person's ability to pay. Some counties even require full payment in advance of scheduling any sort of procedure. The remaining seven counties that do provide access to abortions do not state whether a person must be able to pay.²⁴

Although people who are privately insured might still be able to access abortions, people covered by the Oregon Health Plan/Medicaid or who do not have the means to cover the costs of an abortion without health insurance will likely be forced to carry out their pregnancies. Under federal law, people in custody lose Medicaid coverage. Thus, people who are detained in Oregon county jails “become uninsured, and all medical care costs that arise while the person is incarcerated fall to the jurisdiction in which the person is incarcerated.”²⁵ Because most jurisdictions will not pay for abortions, the cost falls on the detained person. Though the Oregon Health Authority recently applied for a Medicaid waiver for people in need of inpatient procedures, that request is still pending and would not apply to most abortions.²⁶

We can reasonably conclude that many, if not most, of the people detained in Oregon's jails will fall into this category of lost coverage, and therefore, lost access to abortions. In 2021, the Oregon Judicial Department reported that 84% of people charged with felonies and 70% of people charged with misdemeanors were represented by a public defender.²⁷ In Washington County, about 80% of people charged with misdemeanors and felonies are represented by a

23 Labeling an abortion an elective procedure also suggests that people will not be given priority over procedures characterized as medically necessary. Of course, this is likely to become an issue if a person is reaching the time limit to obtain an abortion procedure or to obtain an abortion via pill, which is likely to assist in cutting down costs.

24 Alternatively, counties are constitutionally required to provide necessary medical care to people regardless of ability to pay. See also ORS 169.150(2)(a) (counties may only charge a reasonable fee for “necessary medical care.”).

25 Ken Sanchagrin, *Jail Health Care Standards Advisory Council Report*, Or. Criminal Justice Comm'n, 8 (Sep. 15, 2022), <https://www.oregon.gov/cjc/CJC%20Document%20Library/2022%20HB%203229%20Jail%20Health%20Care%20Standards%20Report.pdf>.

26 Conrad Wilson, *Bill to Create a Commission Overseeing Health Care in Oregon Jails Has Died*, Or. Pub. Broad. (Mar. 22, 2023, 6 AM) <https://www.opb.org/article/2023/03/22/oregon-politics-health-care-jails-house-bill-3391-criminal-justice/>.

27 Noelle Crombie, *Oregon's Chief Justice Sounds Alarm on Public Defense Crisis; Multnomah County DA Prosecuting Only 'Most Serious' Cases*, OregonLive (Apr. 08, 2022, 11:49 AM.), <https://www.oregonlive.com/portland/2022/04/oregons-chief-justice-sounds-alarm-on-public-defense-crisis-multnomah-county-da-prosecuting-only-most-serious-cases.html?outputType=amp>.

public defender.²⁸ Many of the people who qualify for public defense services are also likely to qualify for Oregon Health Plan/Medicaid because both qualifications are based, in part, on financial inability to pay for private options.²⁹

Many policies explicitly state that abortion rights are provided to *women*.

At least ten counties that provide abortion access have policies that describe the right to an abortion as belonging to “women” or “females.” Regardless of drafting intent, such language could be interpreted to restrict pregnant transgender and gender-nonconforming people from accessing abortion care.

For jailed trans and gender-nonconforming people, the confluence of law enforcement culture of bias, gendered policy language, and the discretionary nature of such policies in practice may compound barriers to abortion care. Transgender and gender-nonconforming people face disproportionate violence, discrimination, and harassment in custody and in the community. As Lambda Legal and National Center for Transgender Equality has reported, “homophobia and transphobia remain rampant in most, if not all, law enforcement agencies.”³⁰ Even in Multnomah County, the Oregonian reported that “[u]nidentified Portland police officers left derogatory remarks on an anonymous survey seeking their feedback about online training regarding how to refer to and interact with people in the LGBTQ+ community.”³¹

28 Noelle Crombie, *Oregon Prosecutors Press for Higher Caseloads for Public Defenders as Jail Release Deadline Looms*, Oregon Live (Aug. 19, 2023, 10:02 AM), <https://www.oregonlive.com/politics/2023/08/oregon-prosecutors-press-for-higher-caseloads-for-public-defenders-as-jail-release-deadline-looms.html?outputType=amp>.

29 Cf. ORS 151.485; *Oregon Health Plan (Medicaid/SCHIP)*, Benefits.gov, <https://www.benefits.gov/benefit/1334>.

30 *Policing and the LGBTQ community*, Before House (2019)(statement of Lambda Legal and National Center for Transgender Equality), <https://docs.house.gov/meetings/JU/JU00/20190919/109952/HHRG-116-JU00-20190919-SD042.pdf>.

31 Maxine Bernstein, *Some Portland officers responded to LGBTQ+ training with racist feedback, report says*, Oregon Live, Apr. 18, 2023, <https://www.oregonlive.com/crime/2023/04/some-portland-officers-responded-to-lgbtq-training-with-racist-feedback-report-says.html>.

Recommendations

A REVIEW OF Oregon’s county jail abortion policies makes it clear that there are glaring issues, concerns, and challenges that pregnant people seeking abortions in jail are facing. The policies are inconsistent, vague, incomplete, and often harmful. Even if abortion rights are nominally protected, in practice, access to abortion care for those in custody may be out of reach. To move closer to reproductive justice for all, Oregon needs mandatory, statewide reproductive health standards for people detained in county jails that reflect the level of care provided to insured, pregnant people who are out of custody.

While Oregon is working toward improving healthcare in its jails, to date, there has not been public discussion around abortion access. In September 2022, an Oregon Criminal Justice Commission advisory committee (JHCSAC) published the Jail Health Care Standards Report.³² The report is intended “to craft recommendations for minimum jail health care standards and recommendations for an independent jail commission to continue reviewing and refining jail health care standards in the future[.]”³³ The report makes no mention of abortions or reproductive health. Additionally, in 2023, Oregon HB 3391 was introduced to allow for the Criminal Justice Commission to “study ways to improve the provision of health care to adults in custody in local correctional facilities” and provide recommendations based on the study.³⁴ Unfortunately, that bill failed, and it is unclear whether legislators will reintroduce it next session.³⁵

Without concrete steps toward solving these issues, Oregon will continue to deny some of our most vulnerable community members the right to bodily autonomy and care for their physical, mental, and emotional health. The Oregon Justice Resource Center recommends the following:

32 Ken Sanchagrin, *Jail Health Care Standards Advisory Council Report*, Or. Criminal Justice Comm’n (Sep. 15, 2022), <https://www.oregon.gov/cjc/CJC%20Document%20Library/2022%20HB%203229%20Jail%20Health%20Care%20Standards%20Report.pdf>.

33 *Id.*

34 House Bill (HB) 3391 (2023).

35 Wilson, *supra*, at 6.

Recommendations for State and County Lawmakers

Lawmakers should repeal existing laws and ordinances that create barriers to abortion.

State lawmakers should classify abortions as necessary or emergent procedures to ensure that financial eligibility does not prevent access to services and cause harm to the pregnant person. By classifying these services as medically necessary or emergent, requests for abortion care will also likely be prioritized in an expedient manner, without adding unnecessary barriers or delays that exist with elective procedures. Abortion care is time sensitive and can have major life and health implications if it is not easily and quickly accessible.

State lawmakers should establish detailed, statewide standards that county jails must meet regarding abortion access to make policies, access, and implementation uniform across the state. Abortion care should be accessible to all Oregonians, regardless of their financial situation, custodial status, or in which county they happen to be arrested.

Finally, state lawmakers should ensure regular, independent audits of abortion access in Oregon jails.

Recommendations for Executive Officials and Commissions

OJRC commends the legislature for convening the JHCAC and is in support of the JHCAC continuing its work on healthcare in Oregon's jails. The JHCAC should, however, add a council member who has professional experience specializing in reproductive health. While the membership at the time of the 2022 Council Report was robust and well-rounded, with membership spanning across legal fields, mental health fields, elected officials, and health care providers, it was not fully comprehensive. Adding an additional member with this professional background will ensure that abortion service providers have a voice in providing analysis and recommendations on jail health care.

To maintain the integrity and objectivity of the work, it is strongly recommended that the JHCAC remain a permanent and independent commission under the Oregon Criminal Justice Commission. There, the JHCAC will continue to receive the institutional support, expertise, independence, and resources needed to investigate this topic and collect data for public reporting.

Recommendations for Jail and Prison Agency Leaders

Under current law, Oregon’s elected sheriffs have the power to shape abortion access in county jails. Given their roles in the direct care of pregnant people who are in custody, sheriffs should work to ensure that employees follow current state laws, advocate for clearer standards and laws at the state level, support audits by groups such as JHCAC, and create policies that center the pregnant person’s choice and prioritize access to that choice.

Recommendations for Reproductive Justice Advocates

When advocating for reproductive equity, remember the specific needs of incarcerated people, connect with county sheriffs about providing support to people seek abortions and post-abortion care, and contact lawmakers to ensure necessary laws and ordinances are being updated and followed consistently with our statutory rights.



OJRC is a Portland, Oregon, 501(c)(3) nonprofit founded in 2011. We work to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. Our clients are currently and formerly incarcerated Oregonians. We work in partnership with other, like-minded organizations to maximize our reach to serve underrepresented populations, train public interest lawyers, and educate our community on civil rights and civil liberties concerns. We are a public interest law firm that uses integrative advocacy to achieve our goals. This strategy includes focused direct legal services, public awareness campaigns, strategic partnerships, and coordinating our legal and advocacy areas to positively impact outcomes in favor of criminal justice reforms.

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