Chapter 423

2003 EDITION

Corrections and Crime Control Administration and Programs

Note Planning and advisory committee on health and well-being of children of parents involved in criminal justice system--2001 c.635 §16

(Temporary provisions relating to provision of correctional services in facility located in another state are compiled as notes preceding ORS 423.010)

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Note: Section 16, chapter 635, Oregon Laws 2001, provides:

Sec. 16. Planning and advisory committee on health and well-being of children of parents involved in criminal justice system. (1) For the 2003-2005 biennium, there is created a planning and advisory committee to make recommendations on how to improve the health and well-being of children whose parents are involved in the criminal justice system.

(2) The planning and advisory committee shall have one representative from each of the following:

(a) The Department of Corrections, appointed by the Director of the Department of Corrections;

(b) The Oregon Youth Authority, appointed by the Director of the Oregon Youth Authority;

(c) The State Court Administrator, appointed by the administrator;

(d) The State Commission on Children and Families, appointed by the staff director of the State Commission on Children and Families;

(e) The Department of Education, appointed by the Superintendent of Public Instruction;

(f) The Department of Human Services, appointed by the Director of Human Services; and

(g) The Oregon Youth Conservation Corps, appointed by the program director of the Oregon Youth Conservation Corps.

(3) In addition to the representatives listed in subsection (2) of this section, the planning and advisory committee shall solicit representatives from the following entities to join the committee:

(a) Local public safety coordinating councils;

(b) Local family law advisory committees;

(c) Local commissions on children and families;

(d) Local public health agencies;

(e) Appropriate research and advocacy groups;

(f) Local law enforcement agencies;

(g) Community corrections agencies;

(h) Community colleges;

(i) The Oregon University System; and

(j) Nonprofit organizations that provide services relevant to the work of the committee.

(4) In soliciting representatives under subsection (3) of this section, the planning and advisory committee shall ensure that the representatives reflect the diversity of communities throughout the state.

(5) The planning and advisory committee members shall jointly designate facilitators for the committee.

(6)(a) The planning and advisory committee shall develop recommendations that address the specific issues and problems faced by the children of parents involved in the following stages of the criminal justice system:

(A) Arrest;

(B) Judicial proceedings;

(C) Incarceration in a local jail;

(D) Incarceration in a state prison; and

(E) Transition from incarceration into the community.

(b) When appropriate, the planning and advisory committee shall assist in the implementation of its recommendations.

(c) No later than December 1, 2004, the planning and advisory committee shall submit its recommendations to the appropriate legislative interim committees and to the agencies listed in subsection (2) of this section.

(7) The planning and advisory committee shall share its recommendations and the results of implementation efforts with state and local governmental agencies and the public at large.

(8) The Department of Corrections shall provide staff support for the planning and advisory committee. [2001 c.635 §16; 2003 c.460 §1]

(Temporary provisions relating to provision of correctional services in facility located in another state)

Note: Sections 1 to 3, chapter 422, Oregon Laws 2003, provide:

Sec. 1. (1) The Department of Corrections may enter into a contract with a public entity for the provision of correctional services in a correctional facility that is located in another state if the facility is suitable for the confinement and care of persons committed to the legal and physical custody of the department.

(2) Contracts entered into under subsection (1) of this section are exempt from the provisions of ORS chapter 279.

(3)(a) After entering into a contract under subsection (1) of this section, the department:

(A) May convey a person committed to the legal and physical custody of the department to a correctional facility owned or operated by the public entity with whom the department has contracted; and

(B) May transfer physical custody of the person to the custodial authorities of the facility.

(b) A person whose physical custody is transferred under this subsection shall be confined in the correctional facility to which the person was conveyed until:

(A) The person's sentence has expired or the person is otherwise discharged by law; or

(B) The department directs that the person:

(i) Be returned to the physical custody of the department; or

(ii) Be conveyed to another correctional facility.

(c) Except as otherwise provided in the contract entered into under subsection (1) of this section, a person whose physical custody is transferred under this subsection is subject to the operational policies and procedures of the correctional facility to which the person is transferred, including but not limited to policies and procedures for the conduct and discipline of persons incarcerated in the correctional facility.

(4) When a contract under subsection (1) of this section expires, the department shall return all persons confined in a correctional facility pursuant to the contract to the physical custody of the department or convey the persons to another correctional facility pursuant to another contract. [2003 c.422 §1]

Note: The amendments to section 1, chapter 422, Oregon Laws 2003, by section 331b, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

Sec. 1. (1) The Department of Corrections may enter into a contract with a public entity for the provision of correctional services in a correctional facility that is located in another state if the facility is suitable for the confinement and care of persons committed to the legal and physical custody of the department.

(2) Contracts entered into under subsection (1) of this section are exempt from the provisions of ORS chapter 279 and sections 1 to 46 [ORS chapter 279A], 47

to 87 [ORS chapter 279B] and 88 to 179 [ORS chapter 279C] of this 2003 Act.

(3)(a) After entering into a contract under subsection (1) of this section, the department:

(A) May convey a person committed to the legal and physical custody of the department to a correctional facility owned or operated by the public entity with whom the department has contracted; and

(B) May transfer physical custody of the person to the custodial authorities of the facility.

(b) A person whose physical custody is transferred under this subsection shall be confined in the correctional facility to which the person was conveyed until:

(A) The person's sentence has expired or the person is otherwise discharged by law; or

(B) The department directs that the person:

(i) Be returned to the physical custody of the department; or

(ii) Be conveyed to another correctional facility.

(c) Except as otherwise provided in the contract entered into under subsection (1) of this section, a person whose physical custody is transferred under this subsection is subject to the operational policies and procedures of the correctional facility to which the person is transferred, including but not limited to policies and procedures for the conduct and discipline of persons incarcerated in the correctional facility.

(4) When a contract under subsection (1) of this section expires, the department shall return all persons confined in a correctional facility pursuant to the contract to the physical custody of the department or convey the persons to another correctional facility pursuant to another contract.

Sec. 2. The Department of Corrections may not enter into a contract under section 1 of this 2003 Act unless the department:

(1) Evaluates the availability and cost of correctional facilities in this state considering constitutional requirements, state law requirements and the availability of programs that enhance the likelihood of offenders successfully functioning in society upon release; and

(2) Determines that appropriate correctional facilities are not available in this state. [2003 c.422 §2]

Sec. 3. Sections 1 and 2 of this 2003 Act are repealed on December 31, 2009. [2003 c.422 §3]

GENERAL PROVISIONS

423.010 Definitions for ORS 423.010 to 423.070. As used in ORS 423.010 to 423.070, unless the context requires otherwise:

(1) "Department" means the Department of Corrections.

(2) "Department of Corrections institutions" has the meaning given that term in ORS 421.005.

(3) "Director" means the Director of the Department of Corrections.

(4) "Youth correction facility" has the meaning given that term in ORS 420.005. [1965 c.616 §1; 1969 c.597 §96; 1983 c.505 §13; 1987 c.320 §210; 1997 c.249 §135; 2001 c.295 §15]

423.020 Department of Corrections; duties and powers; fees. (1) The Department of Corrections is created. The department shall:

(a) Supervise the management and administration of the Department of Corrections institutions, parole and probation services, community corrections and other functions related to state programs for corrections;

(b) Carry out legally mandated sanctions for the punishment of persons committed to its jurisdiction by the courts of this state;

(c) Exercise custody over those persons sentenced to a period of incarceration until such time as a lawful release authority authorizes their release;

(d) Provide adequate food, clothing, health and medical care, sanitation and security for persons confined;

(e) Provide persons who are motivated, capable and cooperative with opportunities for self-improvement and work;

(f) Conduct investigations and prepare reports for release authorities; and

(g) Supervise persons sentenced or placed in the community for the period of time specified and in accordance with conditions of supervision ordered by the release authority.

(2) The Department of Corrections may provide consultation services related to the criminal justice system to local or statewide public or private agencies, groups, and individuals, or initiate such consultation services. Consultation services shall include, but not be limited to, conducting studies and surveys, sponsoring or participating in educational programs, and advising and assisting these agencies, groups or individuals. Nothing in chapter 320, Oregon Laws 1987, is intended to diminish the state's efforts to plan, evaluate and deliver effective human services programs to offenders, either in an institution or on probation or parole. Therefore, the Department of Corrections and the Department of Human Services shall continue to jointly develop and implement needed social and rehabilitative services, including services for inmates housed in regional minimum security facilities.

(3) The Department of Corrections shall be the recipient of all federal funds paid or to be paid to the state to enable the state to provide corrections programs and services assigned to the Department of Human Services before June 15, 1987.

(4) Notwithstanding any other provision of law, the department may charge a person confined in a Department of Corrections institution a reasonable health care fee for any health care services, medications and equipment provided the person during the person's confinement if the department:

(a) Provides necessary medical care regardless of the person's ability to pay;

(b) Provides equal treatment to all persons confined in a department institution regardless of a person's ability to pay;

(c) Establishes a system that notifies the person of the fees and what services are covered; and

(d) Establishes a grievance system that allows a person to challenge the deduction of a fee from the person's account.

(5) The department may provide ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for a person under 18 years of age who is confined in a Department of Corrections institution and, in an emergency in which the safety of the person appears urgently to require it, may authorize surgery or other extraordinary care. [1965 c.616 §2; 1967 c.352 §1; 1967 c.585 §6; 1969 c.597 §98; 1971 c.401 §107; 1987 c.320 §1; 1995 c.523 §2; 2001 c.195 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 320, Oregon Laws 1987." Chapter 320, Oregon Laws 1987, enacted into law and amended the ORS sections which may be found by referring to the 1987 Comparative Section Table located in Volume 18 of Oregon Revised Statutes.

423.025 [1969 c.597 §§97,137; repealed by 1971 c.319 §11]

423.027 [1969 c.597 §111; 1975 c.605 §21; repealed by 1985 c.565 §66]

423.030 Department not limited by ORS 423.020. The enumeration of duties, functions and powers in ORS 423.020 is not exclusive nor intended as a limitation on the powers and authority vested in the Department of Corrections by other provisions of law. [1965 c.616 §3; 1969 c.597 §99; 1987 c.320 §211]

423.035 Application of ORS 409.710 (1). ORS 409.710 (1) applies to the Department of Corrections. [Derived from 1987 c.781 §2]

Note: 423.035 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 423 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

423.040 [1965 c.616 §4; 1967 c.7 §39; 1969 c.597 §100; 1971 c.319 §7; repealed by 1987 c.320 §246]

423.050 [1965 c.616 §5; repealed by 1987 c.320 §246]

423.060 [1965 c.616 §6; 1969 c.597 §101; repealed by 1987 c.320 §246]

423.070 Deposit and disbursement of funds received under Western Interstate Corrections Compact. All funds received by this state or by the Department of Corrections under a lawful contract with another party to the Western Interstate Corrections Compact made in compliance with Article III thereof, shall be paid into the State Treasury. The Director of the Department of Corrections shall expend these funds in compliance with the contract. [Formerly 179.122; 1987 c.320 §212]

423.075 Director; appointment; duties; rules. (1) The Department of Corrections shall be under the supervision and control of a director who is responsible for providing for programs for the delivery to the public of the services assigned to the department, and for undertaking long-range planning necessary for the effective and efficient delivery of these services.

(2) The Governor shall appoint the director for a term of four years, but the director may be removed at any time during such term at the pleasure of the Governor. The appointment of the director is subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(3) The director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the Governor, and shall be reimbursed for all expenses actually and necessarily incurred by the director in the performance of official duties.

(4) The director may appoint a deputy director, whose appointment is subject to approval by the Governor and who shall serve at the pleasure of the director. The deputy director shall have full authority to act for the director, subject to directions of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(5) The Director of the Department of Corrections shall:

(a) For purposes of administration and control, and with the approval of the Governor, organize and reorganize the department in whatever manner the director deems necessary to conduct the work of the department.

(b) Appoint all subordinate superintendents, officers and employees, whether classified or unclassified, of the department, prescribe their duties and fix their compensation, subject to applicable provisions of the State Personnel Relations Law.

(c) Delegate to departmental employees such responsibilities and authority as the director determines to be necessary.

(d) Provide for the safety of all prisoners in the custody of the department and may adopt rules for the government and administration of the department. [1987 c.320 §§2,3]

423.076 Director's authority to grant peace officer power to corrections officer. (1) The Director of the Department of Corrections may grant to an individual corrections officer or classification of corrections officer all the powers and authority of a peace officer over inmates.

(2) A corrections officer granted the authority of a peace officer under subsection (1) of this section shall have the authority to:

(a) Prevent an escape from the grounds of a correctional facility by an inmate; and

(b) Go beyond the grounds of a correctional facility to:

(A) Pursue an inmate if the inmate is in the act of escaping from a correctional facility;

(B) Search for an inmate if the inmate is in the act of escaping from a correctional facility; and

(C) Recapture an inmate if the inmate is in the act of escaping from a correctional facility.

(3) A corrections officer who has been granted the authority of a peace officer under subsection (1) of this section shall retain the authority until the law enforcement agency having general jurisdiction over the area in which the escape or attempted escape of the inmate took place assumes responsibility for recapture of the inmate.

(4) The Department of Corrections shall inform the appropriate law enforcement agency of an escape or attempted escape of an inmate as soon as is reasonably practicable.

(5) As used in this section, "inmate" means a person sentenced to a period of incarceration in a prison or other correctional facility until such time as a lawful release authority authorizes the release of the person. [1991 c.879 §1]

423.078 Visitors; visiting status; administrative review of status changes; rules. The Department of Corrections shall establish by rule an internal procedure for administrative review of decisions to revoke or restrict an approved visitor's visiting status within a department facility. The department shall include in the internal procedure established under this section an opportunity for the person to obtain final administrative review of the disputed action from a department official who is assigned to the department's central administration. [1999 c.679 §2]

423.080 [1967 c.564 §§8,9; repealed by 1969 c.597 §281]

423.085 Administrator of Correctional Education. (1) The Director of the Department of Corrections shall appoint an unclassified employee to the position of Administrator of Correctional Education.

(2) The Administrator of Correctional Education shall be employed full-time with authority over, and responsibility for, statewide corrections education programs. The administrator shall:

(a) Chair the Corrections Education Advisory Committee created in ORS 421.081;

(b) Plan, design and implement the correctional education programs required in ORS 421.081; and

(c) Recommend to the Director of the Department of Corrections rules as necessary to carry out the responsibilities of the office of Administrator of Correctional Education.

(3)(a) The Department of Corrections, through the Administrator of Correctional Education, may negotiate contracts with organizations and agencies to implement the provisions of ORS 421.081, 421.084 and this section. The Department of Corrections, in discharging its duties under this section, shall honor provisions of existing collective bargaining agreements with current employees of the department that provide for contracting out.

(b) All moneys appropriated to the Department of Corrections for general, professional and technical education instruction shall be expended only for those purposes. [1977 c.435 §7; 1987 c.320 §213; 1989 c.363 §4; 1991 c.855 §1]

423.090 Establishment or designation of diagnostic facilities. The Department of Corrections may establish or designate facilities to be used for diagnostic purposes for such categories of persons as the department may by rule assign to the facility. Such assignments shall not exceed 60 days in duration. [1967 c.585 §1; 1987 c.320 §214]

423.093 Reimbursement of expenses from prisoner; limitation. Neither the Department of Corrections nor any city or county may seek reimbursement for expenses incurred in safekeeping and maintaining prisoners through a counterclaim or request for setoff in an action by a person against the department or the county or city. [2001 c.641 §4]

423.097 Department of Corrections Account. (1) The Department of Corrections Account is established in the General Fund of the State Treasury. Except for moneys otherwise designated by statute, all fees, assessments, proceeds from the issuance of certificates of participation and other moneys received by the Department of Corrections shall be paid into the State Treasury and credited to the account. All moneys in the account are continuously appropriated to the department for purposes authorized by law.

(2) The department shall keep a record of all moneys deposited in the account. The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(3) The department may accept gifts, grants and donations from any source to carry out the duties imposed upon the department. [1999 c.909 §10]

423.100 Revolving fund. (1) On written request of the Department of Corrections, the Oregon Department of Administrative Services shall establish a revolving fund of not to exceed $15,000, including unreimbursed advances, by drawing warrants on amounts appropriated to the Department of Corrections for operating expenses. The revolving fund shall be deposited with the State Treasurer, to be held in a special account against which the department may draw checks.

(2) The revolving fund established under subsection (1) of this section may be used by the department to pay for:

(a) Travel expenses for employees of the department and for any consultants or advisors for whom payment of travel expenses is authorized by law, or advances therefor;

(b) Purchases not exceeding $100 each, which may be required from time to time;

(c) Receipt or disbursement of federal funds available under federal law;

(d) Emergency expenses of indigent inmates released on any form of temporary release or transitional leave; or

(e) Settlement of legal claims against the department in cases where immediate payment is necessary or advisable.

(3) The revolving fund shall be reimbursed by warrants drawn by the Oregon Department of Administrative Services upon the verified claims of the department charged against the appropriate fund or account. [1973 c.818 §5; 1974 s.s. c.13 §6; 1987 c.320 §215; 1989 c.790 §64]

423.205 [1969 c.177 §7; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.210 [1967 c.572 §1; 1969 c.177 §4; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.220 [1967 c.572 §2; 1969 c.177 §1; 1973 c.212 §1; 1973 c.792 §15; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.230 [1967 c.572 §3; 1969 c.177 §2; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.240 [1967 c.572 §4; 1969 c.177 §3; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.280 [1967 c.572 §5; repealed by 1985 c.44 §2 and 1985 c.558 §9]

423.310 [1967 c.534 §7; 1971 c.401 §108; 1981 c.171 §3; renumbered 419A.044 in 1997]

423.315 [1981 c.171 §2; renumbered 419A.045 in 1997]

423.320 [1967 c.534 §8; 1971 c.401 §109; repealed by 1981 c.171 §7]

423.330 [1969 c.498 §2; 1971 c.429 §2; 1981 c.171 §4; renumbered 419A.046 in 1997]

423.340 [1969 c.498 §3; 1971 c.429 §3; 1981 c.171 §5; renumbered 419A.047 in 1997]

423.350 [1969 c.498 §4; 1971 c.401 §110; 1971 c.429 §1; 1981 c.171 §6; renumbered 419A.048 in 1997]

423.360 [1969 c.498 §5; 1971 c.401 §111; repealed by 1981 c.171 §7]

CORRECTIONS OMBUDSMAN

423.400 Office established; appointment by Governor. The office of Corrections Ombudsman is established in the office of the Governor. The Governor shall appoint the Corrections Ombudsman. [1977 c.378 §1]

423.405 Qualifications for office; prohibited activities. (1) The Corrections Ombudsman shall be a person of recognized judgment, objectivity and integrity who is qualified by training and experience to analyze problems of law enforcement, corrections administration and public policy.

(2) No person while serving as Corrections Ombudsman shall:

(a) Be actively involved in political party activities;

(b) Be a candidate for or hold other public office, whether elective or appointive; or

(c) Be engaged in any other full-time occupation, business or profession. [1977 c.378 §2]

423.410 Term; reappointment. The Corrections Ombudsman shall serve at the pleasure of the Governor for a term of four years. The Corrections Ombudsman may be reappointed for additional terms. [1977 c.378 §3]

423.415 Deputy and additional officers and employees. The Corrections Ombudsman may appoint a Deputy Ombudsman and any other subordinate officers and employees necessary to the performance of the duties of the ombudsman and shall prescribe their duties and fix their compensation. [1977 c.378 §4]

423.420 General duties and powers; rules. The Corrections Ombudsman shall have the power:

(1) To investigate, on complaint or on the ombudsman's own motion, any action by the Department of Corrections or any employee thereof without regard to its finality;

(2) To adopt rules required for the discharge of the duties of office, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, not inconsistent with ORS 423.400 to 423.450;

(3) To examine by subpoena the records and documents of the Department of Corrections or any employee thereof;

(4) To enter and inspect without notice any premises under the jurisdiction of the Department of Corrections;

(5) To subpoena any person to appear, to give sworn testimony or to produce docu-

mentary or other evidence that is reasonably material to an inquiry;

(6) To undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as might lead to improvements in the functioning of the Department of Corrections;

(7) To bring suit in the Circuit Court for Marion County to enforce ORS 423.400 to 423.450;

(8) To establish and administer a budget for the office; and

(9) To strengthen procedures and practices which lessen the possibility that objectionable corrections actions will occur. [1977 c.378 §5; 1987 c.320 §216]

423.425 Investigatory authority. (1) The Corrections Ombudsman shall investigate, on complaint or on the ombudsman's own motion, any corrections action that is or is alleged to be:

(a) Contrary to or inconsistent with law or Department of Corrections practice;

(b) Based on mistaken facts or irrelevant considerations;

(c) Inadequately explained when reasons should have been revealed;

(d) Inefficiently performed; or

(e) Unreasonable, unfair, or otherwise objectionable, even though in accordance with law.

(2) Notwithstanding subsection (1) of this section, the Corrections Ombudsman may decide not to investigate because:

(a) The complainant could reasonably be expected to use a different administrative remedy or action;

(b) The complaint is trivial, frivolous, vexatious or not made in good faith; or

(c) The complaint has been too long delayed to justify present examination. [1977 c.378 §6; 1987 c.320 §217]

423.430 Investigative priority; confidentiality of matters; charging fees prohibited. The Corrections Ombudsman shall:

(1) Give priority to investigating administrative actions that are not otherwise reviewable by either administrative or judicial action;

(2) Treat confidentially all matters and the identities of the complainants or witnesses coming before the ombudsman; and

(3) Not levy any fees for the submission or investigation of complaints. [1977 c.378 §7]

423.435 Recommendations following investigation; notice from Department of Corrections of action taken; notice to Legislative Assembly of recommended statutory changes. (1) After investigation of any action, the Corrections Ombudsman shall state the recommendations and reasons if, in the ombudsman's opinion, the Department of Corrections or any employee thereof should:

(a) Consider the matter further;

(b) Modify or cancel any action;

(c) Alter a rule, practice or ruling;

(d) Explain more fully the administrative action in question;

(e) Rectify an omission; or

(f) Take any other action.

(2) If the Corrections Ombudsman so requests, the Department of Corrections shall, within the time specified, inform the ombudsman about the action taken on the recommendations or the reasons for not complying with them. After a reasonable period of time has elapsed, the Corrections Ombudsman may issue a report.

(3) If the Corrections Ombudsman believes that any action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, the ombudsman shall bring to notice of the Legislative Assembly any views concerning desirable statutory change. [1977 c.378 §8; 1987 c.320 §218]

423.440 Letters between ombudsman and persons in custody; immunity of complainants and ombudsman; privilege against giving evidence or testifying. (1) A letter to the Corrections Ombudsman from a person held in custody, including by detention, incarceration and hospitalization, by the Department of Corrections shall be forwarded immediately, unopened, to the Corrections Ombudsman. A letter from the Corrections Ombudsman to such person shall be immediately delivered, unopened, to the person.

(2) No person who files a complaint pursuant to ORS 423.400 to 423.450 shall be subject to any penalties, sanctions or restrictions because of such complaint.

(3) The Corrections Ombudsman and the staff of the office shall have the same immunities from civil and criminal liabilities as a judge of this state.

(4) The Corrections Ombudsman and the staff of the ombudsman shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce ORS 423.400 to 423.450. [1977 c.378 §9; 1987 c.320 §219]

423.445 Witness rights; fees; expenses of state agency personnel. (1) Any person required to testify under ORS 423.400 to 423.450 shall be accorded the same privileges

and immunities, receive the same fees and mileage and be subject to the same penalties provided in ORS 183.440.

(2) The fees and mileage shall be paid by warrant upon the State Treasurer upon the certificate of the Corrections Ombudsman. No tender of witness fees or mileage in advance shall be necessary.

(3) Notwithstanding subsection (1) of this section, a representative of a state agency shall receive actual necessary traveling expenses only. [1977 c.378 §10]

423.450 Contempt proceedings against person interfering with ombudsman. If any person willfully obstructs or hinders the proper and lawful exercise of the Corrections Ombudsman's powers, or willfully misleads or attempts to mislead the Corrections Ombudsman in inquiries under ORS 423.400 to 423.450, the judge of the Circuit Court for Marion County, on application of the ombudsman, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1977 c.378 §11]

COMMUNITY CORRECTIONS

423.475 Findings. The Legislative Assembly finds and declares that:

(1) Passage by the voters of chapter 2, Oregon Laws 1995, has created mandatory minimum penalties for certain violent offenses, and the probable effect thereof will be a significant increase in the demands placed on state secure facilities.

(2) These demands are a shared responsibility of the State of Oregon and its county governments. The state recognizes that it is in a better position than counties to assume responsibility for serious violent offenders and career property offenders.

(3) Counties are willing, in the context of a partnership with the state, to assume responsibility for felony offenders sentenced to a term of incarceration of 12 months or less.

(4) Under the terms of the partnership agreement, the counties agree to assume responsibility for the offenders described in subsection (3) of this section, subject to the state agreeing to provide adequate funding to the counties for this responsibility.

(5) The amendments to statutes made by sections 1a to 5, 7, 8, 9a, 9b, 9c, 10 to 14, 17 to 19 and 22 to 29, chapter 423, Oregon Laws 1995, and the provisions of ORS 423.478, 423.483 and 423.549 and section 5a, chapter 423, Oregon Laws 1995, are intended to acknowledge and implement the terms of the partnership between the state and the counties. [1995 c.423 §1]

423.478 Duties of department and counties; authority of county supervisory authority. (1) The Department of Corrections shall:

(a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

(b) Provide central information and data services sufficient to:

(A) Allow tracking of offenders; and

(B) Permit analysis of correlations between sanctions, supervision, services and programs, and future criminal conduct; and

(c) Provide interstate compact administration and jail inspections.

(2) Subject to ORS 423.483, the county, in partnership with the department, shall assume responsibility for community-based supervision, sanctions and services for offenders convicted of felonies who are:

(a) On parole;

(b) On probation;

(c) On post-prison supervision;

(d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;

(e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for violation of a condition of parole, probation or post-prison supervision; and

(f) On conditional release under ORS 420A.206.

(3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration, when an offender is committed to the custody of the supervisory authority of a county under ORS 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority releases a person from custody under this subsection and the person is required to report as a sex offender under ORS 181.595, the supervisory authority, as a condition of release, shall order the person to report to the Department of State Police, a chief of police or a county sheriff or to the supervising agency, if any:

(a) When the person is released; and

(b) Within 10 days of a change of residence. [1995 c.423 §9; 1997 c.313 §33; 1997 c.433 §9; 1999 c.156 §1; 1999 c.626 §21; amendments by 1999 c.626 §44 repealed by 2001 c.884 §1]

423.483 Baseline funding; basis on which county can discontinue participation. (1) The baseline funding for biennia beginning after June 30, 1999, is the current service level for the expenses of providing management, support services, supervision and sanctions for offenders described in ORS 423.478 (2). At a minimum, each biennium's appropriation must be established at this baseline.

(2) If the total state community corrections appropriation is less than the baseline calculated under subsection (1) of this section, a county may discontinue participation by written notification to the director 180 days prior to implementation of the change. If a county discontinues participation, the responsibility for correctional services transferred to the county, and the portion of funding made available to the county under ORS 423.530 reverts to the Department of Corrections. In no case does responsibility for supervision and provision of correctional services to misdemeanor offenders revert to the department.

(3) As used in this section, "current service level" means the calculated cost of continuing current legislatively funded programs, phased in programs and increased caseloads minus one-time costs, decreased caseloads, phased out programs and pilot programs with the remainder adjusted for inflation as determined by the Legislative Assembly in its biennial appropriation to the Department of Corrections. [1995 c.423 §6; 1999 c.952 §1]

423.500 Definitions for ORS 423.500 to 423.560. As used in ORS 423.500 to 423.560, unless the context requires otherwise:

(1) "Director" means the Director of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Plan" means the biennial community corrections plan required by ORS 423.535. [1977 c.412 §1a; 1979 c.160 §2; 1987 c.320 §220; 1995 c.423 §1a]

423.505 Legislative policy on program funding. Because counties are in the best position for the management, oversight and administration of local criminal justice matters and for determining local resource priorities, it is declared to be the legislative policy of this state to establish an ongoing partnership between the state and counties and to finance with appropriations from the General Fund statewide community correction programs on a continuing basis. The intended purposes of this program are to:

(1) Provide appropriate sentencing and sanctioning options including incarceration, community supervision and services;

(2) Provide improved local services for persons charged with criminal offenses with the goal of reducing the occurrence of repeat criminal offenses;

(3) Promote local control and management of community corrections programs;

(4) Promote the use of the most effective criminal sanctions necessary to protect public safety, administer punishment to the offender and rehabilitate the offender;

(5) Enhance, increase and support the state and county partnership in the management of offenders; and

(6) Enhance, increase and encourage a greater role for local government and the local criminal justice system in the planning and implementation of local public safety policies. [1977 c.412 §1; 1989 c.607 §1; 1995 c.423 §2]

423.510 [1977 c.412 §2; 1985 c.44 §3; 1985 c.558 §7; repealed by 1995 c.423 §31]

423.515 [1977 c.412 §4; 1987 c.320 §220a; repealed by 1995 c.423 §31]

423.520 Financial grants to counties from Department of Corrections. The Department of Corrections shall make grants to assist counties in the implementation and operation of community corrections programs including, but not limited to, preventive or diversionary correctional programs, probation, parole, work release and local correctional facilities and programs for offenders. The department shall require recipients of the grants to cooperate, to the extent of available information systems resources, in the collection and sharing of data necessary to evaluate the effect of community corrections programs on future criminal conduct. [1977 c.412 §5; 1987 c.320 §221; 1995 c.423 §3; 1997 c.433 §10]

423.525 Application for financial aid; review of application; rules for program evaluation; use of funds; community corrections manager; modification of plan. (1) A county, group of counties or intergovernmental corrections entity shall apply to the Director of the Department of Corrections in a manner and form prescribed by the director for funding made available under ORS 423.500 to 423.560. The application shall include a community corrections plan. The Department of Corrections shall provide consultation and technical assistance to counties to aid in the development and implementation of community corrections plans.

(2)(a) From July 1, 1995, until June 30, 1999, a county, group of counties or intergovernmental corrections entity may make application requesting funding for the construction, acquisition, expansion or remodeling of correctional facilities to serve the county, group of counties or intergovern-

mental corrections entity. The department shall review the application for funding of correctional facilities in accordance with criteria that consider design, cost, capacity, need, operating efficiency and viability based on the county's, group of counties' or intergovernmental corrections entity's ability to provide for ongoing operations.

(b)(A) If the application is approved, the department shall present the application with a request to finance the facility with financing agreements to the State Treasurer and the Director of the Oregon Department of Administrative Services. Except as otherwise provided in subparagraph (B) of this paragraph, upon approval of the request by the State Treasurer and the Director of the Oregon Department of Administrative Services, the facility may be financed with financing agreements, and certificates of participation issued pursuant thereto, as provided in ORS 283.085 to 283.092. All decisions approving or denying applications and requests for financing under this section are final. No such decision is subject to judicial review of any kind.

(B) If requests to finance county correctional facility projects are submitted after February 22, 1996, and the requests have not been approved by the department on the date a session of the Legislative Assembly convenes, the requests are also subject to the approval of the Legislative Assembly.

(c) After approval but prior to the solicitation of bids or proposals for the construction of a project, the county, group of counties or intergovernmental corrections entity and the department shall enter into a written agreement that determines the procedures, and the parties responsible, for the awarding of contracts and the administration of the construction project for the approved correctional facility. If the parties are unable to agree on the terms of the written agreement, the Governor shall decide the terms of the agreement. The Governor's decision is final.

(d) After approval of a construction project, the administration of the project shall be conducted as provided in the agreement required by paragraph (c) of this subsection. The agreement must require at a minimum that the county, group of counties or intergovernmental corrections entity shall submit to the department any change order or alteration of the design of the project that, singly or in the aggregate, reduces the capacity of the correctional facility or materially changes the services or functions of the project. The change order or alteration is not effective until approved by the department. In reviewing the change order or alteration, the department shall consider whether the implementation of the change order or alteration will have any material adverse impact on the parties to any financing agreements or the holders of any certificates of participation issued to fund county correctional facilities under this section. In making its decision, the department may rely on the opinions of the Department of Justice, bond counsel or professional financial advisers.

(3) Notwithstanding ORS 283.085, for purposes of this section, "financing agreement" means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement to finance a correctional facility described in this section, or to refinance a previously executed financing agreement for the financing of a correctional facility. The state is not required to own or operate a correctional facility in order to finance it under ORS 283.085 to 283.092 and this section. The state, an intergovernmental corrections entity, county or group of counties may enter into any agreements, including, but not limited to, leases and subleases, that are reasonably necessary or generally accepted by the financial community for purposes of acquiring or securing financing as authorized by this section. In financing county correctional facilities under this section, "property rights" as used in ORS 283.085 includes leasehold mortgages of the state's rights under leases of correctional facilities from counties.

(4) Notwithstanding any other provision of state law, county charter or ordinance, a county may convey or lease to the State of Oregon, acting by and through the Department of Corrections, title to interests in, or a lease of, any real property, facilities or personal property owned by the county for the purpose of financing the construction, acquisition, expansion or remodeling of a correctional facility. Upon the payment of all principal and interest on, or upon any other satisfaction of, the financing agreement used to finance the construction, acquisition, expansion or remodeling of a correctional facility, the state shall reconvey its interest in, or terminate and surrender its leasehold of, the property or facilities, including the financed construction, acquisition, expansion or remodeling, to the county. In addition to any authority granted by ORS 283.089, for the purposes of obtaining financing, the state may enter into agreements under which the state may grant to trustees or lenders leases, subleases and other security interests in county property conveyed or leased to the state under this subsection and in the property or facilities financed by financing agreements.

(5) In connection with the financing of correctional facilities, the Director of the Oregon Department of Administrative Services may bill the Department of Corrections, and the Department of Corrections shall pay the amounts billed, in the same manner as provided in ORS 283.089. As required by ORS 283.091, the Department of Corrections and the Oregon Department of Administrative Services shall include in the Governor's budget request to the Legislative Assembly all amounts that will be due in each fiscal period under financing agreements for correctional facilities. Amounts payable by the state under a financing agreement for the construction, acquisition, expansion or remodeling of a correctional facility are limited to available funds as defined in ORS 283.085, and no lender, trustee, certificate holder or county has any claim or recourse against any funds of the state other than available funds.

(6) The director shall adopt rules that may be necessary for the administration, evaluation and implementation of ORS 423.500 to 423.560. The standards shall be sufficiently flexible to foster the development of new and improved supervision or rehabilitative practices and maximize local control.

(7) When a county assumes responsibility under ORS 423.500 to 423.560 for correctional services previously provided by the department, the county and the department shall enter into an intergovernmental agreement that includes a local community corrections plan consisting of program descriptions, budget allocation, performance objectives and methods of evaluating each correctional service to be provided by the county. The performance objectives must include in dominant part reducing future criminal conduct. The methods of evaluating services must include, to the extent of available information systems resources, the collection and analysis of data sufficient to determine the apparent effect of the services on future criminal conduct.

(8) All community corrections plans shall comply with rules adopted pursuant to ORS 423.500 to 423.560, and shall include but need not be limited to an outline of the basic structure and the supervision, services and local sanctions to be applied to offenders convicted of felonies who are:

(a) On parole;

(b) On probation;

(c) On post-prison supervision;

(d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;

(e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, probation or post-prison supervision; and

(f) On conditional release under ORS 420A.206.

(9) All community corrections plans shall designate a community corrections manager of the county or counties and shall provide that the administration of community corrections under ORS 423.500 to 423.560 shall be under such manager.

(10) No amendment to or modification of a county-approved community corrections plan shall be placed in effect without prior notice to the director for purposes of statewide data collection and reporting.

(11) The obligation of the state to provide funding and the scheduling for providing funding of a project approved under this section is dependent upon the ability of the state to access public security markets to sell financing agreements.

(12) No later than January 1 of each odd-numbered year, the Department of Corrections shall:

(a) Evaluate the community corrections policy established in ORS 423.475, 423.478, 423.483 and 423.500 to 423.560; and

(b) Assess the effectiveness of local revocation options. [1977 c.412 §6; 1987 c.320 §222; 1989 c.790 §65; 1995 c.79 §218; 1995 c.423 §§4,4a; 1996 c.4 §§7,8; 1997 c.433 §11; 1999 c.156 §2; 1999 c.952 §2]

423.530 Procedure for determining amount of financial grants; rules. (1) Financial grants for community corrections pursuant to ORS 423.500 to 423.560 consist of the Grant-in-Aid Program. The Grant-in-Aid Program consists of moneys appropriated to the Department of Corrections for the purposes of management, support services and supervision of offenders described in ORS 423.478 (2). The department shall determine, prior to July 1 of each odd-numbered year, each county's percentage share of the amount appropriated for the purposes of this subsection. Such determination shall be based upon a weighted formula of workload and population as adopted by the department by rule. In adopting the rule, the department shall consult with a broad based committee including, but not limited to, representatives of the Department of Corrections, local county community corrections, county boards of commissioners and county sheriffs.

(2) Funding received by a county pursuant to ORS 423.500 to 423.560 approved for county corrections programs shall not be reduced by the department except by action of the Legislative Assembly or the Emergency Board. Such reductions shall be made proportionately using the applicable allocation formula. [1977 c.412 §7; 1979 c.160 §1; 1985 c.708 §1;

1987 c.320 §223; 1989 c.613 §1; 1989 c.790 §66; 1993 c.680 §1; 1995 c.423 §5]

423.535 Biennial community corrections plan required; county authority to contract for services. (1) Prior to receiving funds, the county shall have a biennial community corrections plan.

(2) The county and the Department of Corrections shall enter into an intergovernmental agreement referring to the plan.

(3) The county may contract with public or private agencies including, but not limited to, other counties, cities, special districts and public or private agencies for the provision of services to offenders. [1977 c.412 §13; 1987 c.320 §224; 1989 c.613 §2; 1995 c.423 §7]

423.540 Program compliance review by Director of Department of Corrections; effect of failure to comply. The Director of the Department of Corrections shall annually review a county's compliance with the intergovernmental agreement under ORS 423.500 to 423.560. A county must substantially comply with the provisions of its community corrections intergovernmental agreement and plan established pursuant to ORS 423.525 (7). If the director determines that there are reasonable grounds to believe that a county is not in substantial compliance with the intergovernmental agreement or plan, the director shall contact the county regarding the alleged noncompliance and offer technical assistance to reach compliance. If the county does not resolve the alleged noncompliance, the director shall, after giving the county not less than 30 days' notice, conduct a hearing to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. After technical assistance is provided and the hearing occurs, the director may suspend any portion of the funding made available to the county under ORS 423.500 to 423.560 until the required compliance occurs. [1977 c.412 §8; 1979 c.487 §14; 1987 c.320 §225; 1995 c.423 §8; 1997 c.715 §5]

423.545 [1977 c.412 §9; 1987 c.320 §226; repealed by 1995 c.423 §31]

423.549 State positions in community corrections branch; abolishment; county authority; affected employees; pay. (1) Notwithstanding ORS 236.605 to 236.640, all state positions in the state community corrections branch of the Department of Corrections, the funding for which is transferred to counties, are abolished on January 1, 1997. Counties have sole discretion in the development of methods and means of county community corrections operation under ORS 423.500 to 423.560 including establishment of wages, benefits and working conditions and selection of any employees to operate supervision programs or other services and sanctions under ORS 423.478 and 423.525. The implementation of this section does not give rise to any bargaining obligation under ORS 243.650 to 243.782. Notwithstanding any collective bargaining agreement, the department shall first offer to any employee so affected and not hired by a county a vacant position in other department branches and operations for which the employee is qualified. This preference lapses 90 days after the operative date of this section. The department has sole discretion in selecting and filling vacant positions from among affected employees having preference.

(2) Notwithstanding subsection (1) of this section, for each month of employment during the period of January 1, 1997, through June 30, 1997, a county shall pay each affected employee hired by the county in regular full-time employment to provide or to support the provision of community corrections programs and services the same minimum gross monthly salary or hourly wage that the affected employee received in state employment immediately prior to termination of the employee's state position. In the event an affected employee formerly employed by the state in a supervisory position is hired by a county in a nonsupervisory position, the county shall pay the affected employee during this period the same minimum gross monthly salary or hourly wage to which an affected employee in the nonsupervisory position would have been entitled to receive in state employment at the top step of the state pay classification for that position immediately prior to its termination. A county shall also provide to each affected employee during this period the same benefits provided to existing county employees performing the same or substantially similar work, giving full consideration to the length of the employee's state service as though the service had been in and for the county. [1995 c.423 §16 (enacted in lieu of 423.550)]

423.550 [1977 c.412 §10; 1987 c.320 §227; 1989 c.607 §3; 1989 c.614 §3; 1993 c.680 §2; repealed by 1995 c.423 §15 (423.549 enacted in lieu of 423.550)]

423.551 [1989 c.614 §5; repealed by 1995 c.423 §31]

423.552 [1989 c.510 §2; repealed by 1995 c.423 §30]

423.553 [1989 c.510 §3; repealed by 1995 c.423 §30]

423.554 [1989 c.510 §§4,5; repealed by 1995 c.423 §30]

423.555 Statewide program evaluation and information system. The Department of Corrections shall establish and operate, with the cooperation and participation of county community corrections agencies, a statewide evaluation and information system to monitor the effectiveness of correctional services provided to criminal offenders under ORS 423.500 to 423.560. To the extent of available information systems resources, the system shall permit ongoing evaluation of apparent correlations between services pro-

vided and future criminal conduct. [1977 c.412 §11; 1987 c.320 §228; 1995 c.423 §10; 1997 c.433 §12]

423.560 Local public safety coordinating council; duties. (1) The board or boards of county commissioners of a county shall convene a local public safety coordinating council. The council shall include, but need not be limited to:

(a) A police chief selected by the police chiefs in the county;

(b) The sheriff of the county or, if two or more counties have joined together to provide community corrections services, a sheriff selected by the sheriffs in the counties;

(c) The district attorney of the county or, if two or more counties have joined together to provide community corrections services, a district attorney selected by the district attorneys of the counties;

(d) A state court judge, and a public defender or defense attorney, both appointed by the presiding judge of the judicial district in which the county is located;

(e) A director of community corrections, a county commissioner, a juvenile department director, a health director, a mental health director and at least one lay citizen, all appointed by the county commissioners;

(f) A city councilor or mayor and a city manager or other city representative, both selected by the cities in the county;

(g) A representative of the Oregon State Police, who is a nonvoting member of the council, selected by the Superintendent of State Police; and

(h) A representative of the Oregon Youth Authority, who is a nonvoting member of the council, selected by the Director of the Oregon Youth Authority.

(2) The boards of county commissioners of two or more counties may jointly convene a single, regional local public safety coordinating council by means of an intergovernmental agreement. Local officials may combine the council with existing local criminal justice advisory councils established under ORS 1.851.

(3) The local public safety coordinating council shall, at a minimum:

(a) Develop and recommend to the county board of commissioners a plan for use of:

(A) State resources to serve the local offender population; and

(B) State and local resources to serve the needs of that part of the local offender population who are at least 15 years of age and less than 18 years of age, which plan must provide for coordination of community-wide services involving prevention, treatment, education, employment resources and intervention strategies; and

(b) Coordinate local criminal justice policy among affected criminal justice entities.

(4) Nonvoting members of a local public safety coordinating council may not be counted in determining whether a quorum exists. [1977 c.412 §12; 1995 c.423 §11; 1997 c.249 §136; 1997 c.698 §1; 2003 c.162 §1]

Note: Section 2, chapter 162, Oregon Laws 2003, provides:

Sec. 2. No later than July 1, 2004, the board or boards of county commissioners of a county shall make the additional appointment required by the amendments to ORS 423.560 by section 1 of this 2003 Act. [2003 c.162 §2]

423.565 Additional duties of public safety coordinating council. In addition to the duties assigned to it under ORS 423.560, the local public safety coordinating council convened by the board of commissioners shall, at a minimum:

(1) Develop and recommend to the county board of commissioners the plan for use of state resources to serve the local youth offender population;

(2) Coordinate local juvenile justice policy among affected juvenile justice entities; and

(3) In consultation with the local commission on children and families, develop and recommend to the county board of commissioners a plan designed to prevent criminal involvement by youth. The plan must provide for coordination of community-wide services involving treatment, education, employment and intervention strategies aimed at crime prevention. [1995 c.422 §75; 1995 c.423 §11a]

PAYMENTS BY SUPERVISED PERSON

423.570 Monthly fee payable by person on supervised release; use; payment as condition of release; waiver. (1) A person sentenced to probation or placed by an authority on parole, post-prison supervision or other form of release, subject to supervision by a community corrections program established under ORS 423.500 to 423.560, shall be required to pay a monthly fee to offset costs of supervising the probation, parole, post-prison supervision or other supervised release.

(2) A person sentenced to probation or placed by an authority on parole, post-prison supervision or other form of release, subject to supervision other than by a community corrections program established under ORS 423.500 to 423.560, may be required by the releasing authority to pay a monthly fee to offset costs of supervising the probation, parole, post-prison supervision or other supervised release.

(3) When a fee is required under subsection (1) of this section, the fee shall be determined and fixed by the releasing authority but shall be at least $25, and if the releasing authority fails to establish the amount of a released person's required fee, the fee shall be $25.

(4) Fees are payable one month following the commencement of probation, parole, post-prison supervision or other supervised release and at one-month intervals thereafter. If the released person is supervised under county authority, the county shall collect or provide by contract for the collection of the fee from the released person and shall retain the fee to be used by the county for funding of its community corrections program.

(5) Except in the case of a probation granted by a court before that date, the fee requirements imposed by this section apply beginning July 1, 1981, to all persons under supervised probation, parole, post-prison supervision or other form of supervised release pursuant to subsection (1) of this section, including persons on such supervised release in this state under any interstate agreement. Timely payment of the fee is hereby made a condition of such probation, parole, post-prison supervision or other supervised release. In the case of a probation granted by a court prior to July 1, 1981, the court may amend its order granting probation to provide for payment of the fee.

(6) In cases of financial hardship or when otherwise advisable in the interest of the released person's rehabilitation:

(a) The community corrections manager may waive or reduce the amount of the fee.

(b) The sentencing court may waive or reduce the amount of the fee for any person whom the court has sentenced to probation. If any of the fee requirement is reduced by the court, only the court may restore the requirement. [1981 c.169 §1; 1983 c.252 §1; 1987 c.320 §229; 1989 c.497 §1; 1989 c.790 §67; 1993 c.14 §23; 1995 c.423 §14]

CHAPTERS 424 AND 425

[Reserved for expansion]