Chapter 421

2005 EDITION

Department of Corrections Institutions; Compacts

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GENERAL PROVISIONS

421.005 Definitions. As used in this chapter, unless the context requires otherwise:

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

(2) "Department of Corrections institutions" means those Department of Corrections facilities used for the incarceration of persons sentenced to the custody of the Department of Corrections, and includes the satellites, camps or branches of those facilities.

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

(4) "Discharge" means any lawful release from a state correctional institution pursuant to the expiration of a judicial sentence or other incarcerative sanction.

(5) "Release authority" means an entity having authority to grant release in a particular case. [Amended by 1959 c.687 §6; 1965 c.616 §47; 1969 c.502 §8; 1971 c.212 §1; 1983 c.505 §7; 1987 c.320 §7; 1989 c.790 §55]

421.010 [Renumbered 421.605]

421.012 [Formerly 421.086; repealed by 1969 c.502 §27]

421.015 [Amended by 1953 c.476 §5; repealed by 1965 c.616 §48 (421.016 enacted in lieu of 421.015)]

421.016 [1965 c.616 §49 (enacted in lieu of 421.015); 1969 c.502 §1; 1971 c.212 §2; repealed by 1987 c.320 §246]

421.020 [Amended by 1953 c.476 §5; repealed by 1965 c.616 §101]

421.025 [Amended by 1953 c.476 §5; repealed by 1959 c.80 §2]

421.030 [Renumbered 421.615]

421.035 [Amended by 1955 c.660 §28; repealed by 1963 c.554 §3]

421.055 [Amended by 1965 c.616 §50; 1987 c.320 §160; repealed by 1997 c.851 §17]

421.060 [Amended by 1959 c.687 §7; repealed by 1995 c.384 §28]

421.065 [Amended by 1959 c.687 §8; 1965 c.616 §51; 1975 c.631 §2; 1987 c.320 §161; 1993 c.18 §106; repealed by 1995 c.384 §28]

ADMINISTRATION

421.068 Revenue from certain sources to be used to enhance inmate activities and programs. (1) Revenues, less operating expenses, from the following sources shall be deposited into an account established by the Department of Corrections to provide money to enhance inmate activities and programs including education programs:

(a) Operation of correctional institution canteens;

(b) Operation of the vending machines in the inmate visiting area of correctional institutions;

(c) Operation of inmate telephones in correctional institutions;

(d) Funds confiscated from the inmates under existing disciplinary procedures; and

(e) Funds donated under administrative rules promulgated by the Director of the Department of Corrections.

(2) The Department of Corrections shall limit use of the fund to uses benefiting the general inmate population and enhancing inmate activities and programs including education programs. [1991 c.663 §1]

Note: 421.068 and 421.081 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.070 [Amended by 1959 c.687 §9; repealed by 1965 c.616 §101]

421.073 Housing of Inmates from Other Jurisdictions Account. The Housing of Inmates from Other Jurisdictions Account is created within the General Fund. Moneys credited to the account are continuously appropriated to the Department of Corrections for costs of incarceration. The Department of Corrections shall deposit all moneys received by the department as reimbursement under ORS 169.053 (3) into the account. [1996 c.1 §2]

Note: 421.073 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.075 [Amended by 1955 c.389 §1; 1959 c.687 §10; 1965 c.616 §52; 1969 c.597 §132; repealed by 1983 c.574 §5]

421.077 [1975 c.443 §1; repealed by 1979 c.204 §1]

421.080 [1955 c.660 §1; renumbered 421.705]

421.081 Corrections Education Advisory Committee; membership; duties. (1) A Corrections Education Advisory Committee is established. Membership of the committee consists of:

(a) The Administrator of Correctional Education, who shall be the chairperson of the committee;

(b) The Superintendent of Public Instruction, or a person designated by the superintendent;

(c) The Commissioner for Community College Services, or a person designated by the commissioner;

(d) The chairperson of the State Board of Parole and Post-Prison Supervision, or a person designated by the chairperson; and

(e) A public member, to be appointed by the Governor, with professional experience in correctional education.

(2) The Administrator of Correctional Education shall plan, design and implement a correctional educational delivery system that can be operated within the existing correctional institutions for inmates of those

institutions. The Corrections Education Advisory Committee shall advise the administrator in the planning, design and implementation.

(3)(a) The primary objective of the correctional education system is the functional literacy program created in ORS 421.084.

(b) The secondary objective is to provide professional and technical education that will insure that inmates who complete the professional and technical program will possess, at a minimum, entry-level marketable professional and technical skills in an occupational field for which there is a demand in this state.

(4) The Administrator of Correctional Education shall provide staff for the committee and shall have administrative control and accountability for the work of the committee. [1991 c.855 §2]

Note: See note under 421.068.

421.082 [1975 c.443 §2; 1987 c.320 §162; 1989 c.363 §1; repealed by 1991 c.855 §6]

421.083 [1955 c.660 §2; renumbered 421.710]

421.084 Inmate functional literacy program; contents. (1) The Corrections Education Advisory Committee shall assist in the development, and the Administrator of Correctional Education shall design a functional literacy program for all individuals in the custody of the Department of Corrections. The program shall:

(a) Test individuals for functional literacy level. Testing for basic intelligence, learning disabilities, developmental disabilities and adaptive behavior skills shall be administered as needed except that the administrator may accept equivalent test results from other sources;

(b) Except as provided in subsection (2) of this section, be mandatory for all individuals testing below a functional literacy level which is defined as a score of 230 on the Oregon Basic Adult Skills Inventory System functional literacy test or a 8.0 grade equivalency on other standardized tests;

(c) Consist of a minimum of 90 days of instruction in functional literacy consisting of one and one-half hours of instruction per day for five days per week, provide progress testing and certification and provide for voluntary attendance beyond the 90-day minimum program;

(d) Provide strong incentives for entering and successfully completing the literacy program and for continuing in the program beyond the 90-day minimum period; and

(e) Maintain records of an individual's achievement in the program and make those records available to the State Board of Parole and Post-Prison Supervision.

(2) Testing for functional literacy level and participation in the functional literacy program are not required for inmates:

(a) Sentenced to less than one year;

(b) Sentenced to life imprisonment without parole;

(c) Sentenced to death; or

(d) Who are developmentally disabled.

(3) For the purposes of this section, "functional literacy" means those educational skills necessary to function independently in society, including but not limited to, reading, writing, comprehension and arithmetic computation. [1989 c.363 §3; 1991 c.855 §4]

INMATE RIGHTS

421.085 Experimentation on inmates prohibited; inmate's right to judicial restraint of violation; action for damages. (1) As used in this section:

(a) "Medical experimentation or research" includes, but is not limited to, the testing and use of drugs and medication, medical and surgical procedures, exposure to substances or conditions or physical manipulation to ascertain their nontherapeutic effect on human beings, and any substance, condition, drug, medication, treatment, or procedure that is not generally recognized and accepted as therapeutic in the medical profession.

(b) "Psychiatric or psychological experimentation or research" includes, but is not limited to, any treatment, therapy, drug, medication, procedure, surgery, or device not generally recognized and accepted as therapeutic in the psychiatric and psychological professions.

(2) There shall be no medical, psychiatric, or psychological experimentation or research with inmates in Department of Corrections institutions of the State of Oregon.

(3) Notwithstanding ORS 137.260, an inmate in any Department of Corrections institution is entitled to maintain an action to restrain any violation of this section or to maintain an action to recover damages caused by a violation of this section. [1973 c.371 §2; 1987 c.320 §163]

421.086 [1955 c.660 §11; renumbered 421.012]

421.095 [1973 c.210 §2; 1987 c.320 §164; repealed by 1997 c.851 §17]

CUSTODY OF INMATES

421.105 Enforcement of rules; violence and injury to inmates prohibited. (1) The superintendent may enforce obedience to the rules for the government of the inmates in the institution under the supervision of the superintendent by appropriate punishment

but neither the superintendent nor any other prison official or employee may strike or inflict physical violence except in self-defense, or inflict any cruel or unusual punishment.

(2) The person of an inmate sentenced to imprisonment in the Department of Corrections institution is under the protection of the law and the inmate shall not be injured except as authorized by law. [Amended by 1953 c.476 §5; 1969 c.502 §9; 1987 c.158 §75; 1987 c.320 §165]

421.110 [Amended by 1955 c.532 §1; subsection (3) of 1959 Replacement Part enacted as 1955 c.485 §2; 1961 c.412 §2; renumbered 137.240]

421.112 [1955 c.660 §10; 1961 c.412 §3; renumbered 137.250]

421.115 [Repealed by 1955 c.532 §3]

421.120 Reduction in term of sentence of inmates; rules. (1) As used in this section, "prison employment" includes actual work in prison industry, meritorious work in connection with prison maintenance and operation, actual work in agriculture and actual work at work camp.

(2) Each inmate confined in execution of the judgment of sentence upon any conviction in the Department of Corrections institution, for any term other than life, and whose record of conduct shows that the inmate faithfully has observed the rules of the institution, shall be entitled to a deduction from the term of sentence to be computed as follows:

(a) From the term of a sentence of not less than six months nor more than one year, one day shall be deducted for every six days of the sentence actually served in the Department of Corrections institution.

(b) From the term of a sentence of more than one year, one day shall be deducted for every two days of the sentence actually served in the Department of Corrections institution.

(c) From the term of any sentence, one day shall be deducted for every 15 days of work actually performed in prison industry, or in meritorious work in connection with prison maintenance and operation, or of enrollment in an educational activity as certified by the educational director of the institution during the first year of prison employment or educational activity, and one day shall be deducted for every seven days of such work actually performed or educational activity certified after the first year to and including the fifth year of prison employment or educational activity certified, and one day for every six days of the work actually performed or educational activity certified after the fifth year of prison employment.

(d) From the term of any sentence, one day shall be deducted for every 10 days of work actually performed in agriculture during the first year of prison employment, and one day for every six days of the work actually performed thereafter.

(e) From the term of any sentence, one day shall be deducted for every six days' work performed at work camp during the first year of prison employment, and one day for every four days thereafter. Once the four-day rate is achieved, it may be applied to subsequent work or education release programs while the inmate is serving the same term.

(3) The deductions allowed in subsection (2)(c), (d) and (e) of this section shall be in addition to those allowed in subsection (2)(a) and (b) of this section.

(4) The Department of Corrections shall develop pursuant to the rulemaking provisions of ORS chapter 183 a uniform procedure for granting, retracting and restoring deductions allowed in subsection (2) of this section.

(5) When a paroled inmate violates any condition of parole, no deduction from the term of sentence, as provided in subsection (2) of this section, shall be made for service by the inmate in the Department of Corrections institution prior to acceptance and release on parole, except when authorized by the State Board of Parole and Post-Prison Supervision upon recommendation of the superintendent thereof.

(6) The provisions of this section shall apply only to offenders sentenced for felonies committed prior to November 1, 1989. [Amended by 1953 c.560 §2; 1955 c.505 §1; 1957 c.686 §1; 1969 c.502 §10; 1973 c.562 §1; 1975 c.264 §1; 1977 c.374 §2; 1981 c.425 §2; 1985 c.53 §1; 1987 c.320 §166; 1989 c.790 §56; 2003 c.14 §231]

421.121 Reduction in term of incarceration; rules. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989, shall be eligible for a reduction in the term of incarceration for appropriate institutional behavior, as defined by rule of the Department of Corrections, and for participation in the functional literacy program described in ORS 421.084.

(2) The maximum amount of time credits earned for appropriate institutional behavior or for participation in the functional literacy program described in ORS 421.084 shall not exceed 20 percent of the total term of incarceration in a Department of Corrections institution.

(3) The time credits shall not be used to shorten the term of actual prison confinement to less than six months.

(4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183 to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in subsections (1) to (3) of this section. [1989 c.790 §§60,61; 1991 c.855 §5]

421.122 Status of time enrolled in work release. For purposes of ORS 421.120, the time that a person is enrolled in good standing in the work release program is considered to be part of the sentence of the person actually served in the Department of Corrections institution. Employment performed by an enrollee while so enrolled is considered to be prison employment and shall qualify for the reduction in sentence authorized under ORS 421.120 (2)(d) in addition to any other reduction for which the enrollee may qualify. [1965 c.463 §15; 1969 c.361 §1; 1987 c.320 §167; 2003 c.14 §232]

421.125 Clothing and money for released inmate; inmate moneys; rules. (1) Upon the discharge or parole of any inmate from the Department of Corrections, the department shall see that such discharged or paroled inmate is properly clothed.

(2) It is the responsibility of every inmate of the Department of Corrections, during the inmate's term of imprisonment, to accumulate funds in anticipation of parole, discharge or other authorized prerelease and for the purposes set out in this subsection. The Department of Corrections shall adopt rules to:

(a) Safeguard inmate moneys, whether such moneys are from earnings of the inmate while in a Department of Corrections facility, or from other sources, and to provide for disbursement of such moneys to the inmate following the inmate's release from imprisonment;

(b) Establish, within appropriations provided for this purpose, a program of release funds to be provided for those inmates who have not been able to accumulate sufficient moneys to accommodate their release needs;

(c) Assess fees to the inmate for self-improvement programs, services and assistance provided by the department when the inmate has moneys to pay for such programs, services and assistance;

(d) Permit inmates to purchase elective programs, services or assistance which are approved by, but are not provided by, the department; and

(e) Assess the inmate for damages or destruction caused by willful misconduct of the inmate.

(3) An inmate sentenced to the custody of the Department of Corrections by an Oregon court is eligible to apply for release funds for a period up to 90 days following the release of the inmate from the Department of Corrections facility by parole or discharge, including a release to the legal custody of another authority in this state. However, inmates eligible to apply for release funds do not include inmates released to the legal custody of another authority in this state for ultimate transfer to the custody of a law enforcement or corrections agency in another state. An inmate released to the legal custody of another authority in this state is not eligible to apply for release funds so long as the person is imprisoned under such authority. [Amended by 1955 c.265 §1; 1967 c.612 §1; 1969 c.502 §11; 1969 c.597 §122b; 1969 c.678 §3; 1983 c.447 §1; 1987 c.320 §168]

421.130 [Repealed by 1959 c.687 §24]

421.135 [Renumbered 421.625]

421.137 Labeling of goods made in hobby and recreation programs; disposition of sale price. (1) The requirements imposed by this chapter on the labeling and sale of goods, wares and merchandise made by inmates in any Department of Corrections institution do not apply to any goods, wares or merchandise made as part of any hobby or recreation program at the institutions or made by an inmate on the inmate's own time.

(2) The balance of any proceeds from the sale of any goods, wares or merchandise made by an inmate made as part of a hobby or recreation program or on the inmate's own time, after deducting any amount that has been distributed to the inmate as spending money in accordance with rules made by the Director of the Department of Corrections, shall be paid to the inmate upon release. [1971 c.275 §2; 1987 c.320 §169]

421.140 [Renumbered 421.408]

421.142 Manufacture and sale of handiwork; disposition of sale price. (1) The superintendent of the Department of Corrections institution hereby is vested with authority, in the discretion of the superintendent, to allow the manufacture of small articles of handiwork by the inmates of the Department of Corrections institution, out of raw materials purchased by the inmates with their own funds, which articles may be sold to the public at the Department of Corrections institution. State-owned property shall not be sold or given to inmates under this section.

(2) The superintendent of the Department of Corrections institution in which the inmate manufacturing the article is confined may provide that all or a part of the sales price of the articles be deposited to the account of the inmate manufacturing the article. [1953 c.537 §1; 1969 c.502 §12; 1987 c.320 §170]

421.145 Disposition of moneys earned by inmates. No moneys obtained from the sale of the products of any inmate's labor shall be applied toward the maintenance of the inmate or the support of the dependents of the inmate, or shall become a part of the betterment fund of the Department of Corrections institution, until all the cost of operation, maintenance, depreciation and other expenses in connection with the plant of the Department of Corrections institution industry in which the inmate is employed are fully paid from the fund arising from the sale of such products. [Amended by 1959 c.687 §11; 1987 c.320 §171]

421.147 Disposition of unclaimed or abandoned tangible property of inmates; rules. Notwithstanding ORS 98.302 to 98.436, the Department of Corrections shall determine and direct the disposition of the unclaimed or abandoned tangible property of an inmate of a Department of Corrections institution held by the department. The department shall adopt rules to carry out the duties imposed by this section. [2005 c.184 §2]

421.150 Custody of federal prisoners. Whenever the proper authorities of the United States desire that United States prisoners be imprisoned in a Department of Corrections institution, the Department of Corrections may make arrangements for the custody of the prisoners upon terms that will be just to both this state and the United States. [Formerly 421.230; 1987 c.320 §172]

421.155 Dangerous offenders to be observed and treated. Any person sentenced under ORS 161.725 and 161.735, shall be given such physical, mental and psychiatric observation and treatment as is available and may tend to rehabilitate such person and make possible the earliest possible release from the Department of Corrections institution in which such person is confined, with the least possible danger to the health and safety of others. [Formerly 421.232; 1971 c.743 §364; 1987 c.320 §173]

421.160 Written report concerning conduct of dangerous offenders. The executive officer of the Department of Corrections institution in which a person sentenced under ORS 161.725 and 161.735 is confined, shall make the reports required by ORS 144.228 (2). All such reports shall be made available to the Director of the Department of Corrections. [Formerly 421.233; 1969 c.597 §133; 1971 c.743 §365; 1987 c.320 §174]

421.165 [Formerly 421.239; 1963 c.269 §1; 1967 c.354 §2; 1969 c.502 §13; 1969 c.597 §134; 1980 c.9 §1; 1983 c.516 §1; 1987 c.320 §175; 1989 c.790 §57; 1989 c.1024 §1; repealed by 1989 c.790 §58]

421.166 Emergency leave; rules. The Director of the Department of Corrections shall establish by rule an emergency leave program. An inmate may be granted emergency leave not to exceed 10 days in length for the following purposes:

(1) To visit a terminally ill member of the inmate's family if the member lives within the state.

(2) To visit a gravely ill or injured child of the inmate if the child lives within the state.

(3) To attend the funeral of a member of the inmate's immediate family if the funeral is in the state. [1989 c.790 §62]

421.168 Transitional leave; rules. (1) The Director of the Department of Corrections shall establish by rule a short-term transitional leave program. The program shall provide inmates with an opportunity to secure appropriate transitional support when necessary for successful reintegration into the community prior to the inmate's discharge to post-prison supervision.

(2) An inmate may submit a transition plan to the Department of Corrections. The plan shall indicate that the inmate has secured an employment, educational or other transitional opportunity in the community to which the offender will be released and that a leave of up to 30 days is an essential part of the offender's successful reintegration into the community.

(3) Upon verification of the inmate's transition plan, the department may grant a transitional leave no more than 30 days prior to the inmate's discharge date.

(4) No inmate shall be eligible for transitional leave before having served six months of prison incarceration.

(5) The department shall establish by rule a set of release conditions for offenders released on transitional leave status. An offender on transitional leave status shall be subject to immediate return to prison for any violation of the conditions of release.

(6) The provisions of this section do not apply to inmates whose sentences were imposed under ORS 137.635. [1989 c.790 §63]

421.170 Enrollment of inmate in work release program. The superintendent of the Department of Corrections institution in which an inmate is confined may recommend to the Director of the Department of Corrections that an inmate of the Department of Corrections institution be enrolled in the work release program established under ORS 144.420. If the inmate has not served at least one-fourth of the maximum term of the sentence, the superintendent must, prior to making a recommendation, consider the original recommendation, if any, of the sentencing court. [1965 c.463 §6; 1969 c.502 §14; 1987 c.320 §176]

INMATE DISCIPLINE

421.180 Disciplinary procedures; rules. The Department of Corrections by rule shall adopt procedures to be utilized in disciplining persons committed to the physical and legal custody of the department. [1973 c.621 §4; 1983 c.211 §1; 1987 c.320 §177]

421.185 Assistance and representation in disciplinary procedures. The procedures adopted pursuant to ORS 421.180 shall provide that an inmate shall be entitled to assistance and representation under terms and conditions established by the Department of Corrections. Nothing in this section shall be construed to limit the authority of the department to designate persons eligible to assist and represent the inmate. [1973 c.621 §5; 1987 c.320 §178]

421.190 Admissible evidence at disciplinary hearing. Evidence may be received at disciplinary hearings even though inadmissible under rules of evidence applicable to court procedure and the department shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to afford the inmate a reasonable opportunity for a fair hearing. [1973 c.621 §6; 1987 c.320 §179]

421.194 Disciplinary orders not subject to judicial review. (1) Disciplinary orders of the Department of Corrections issued under procedures adopted pursuant to ORS 421.180 are not subject to judicial review by any court of this state.

(2) This section does not affect any right that an inmate may have to prosecute a writ of habeas corpus. [1995 c.108 §2]

421.195 [1973 c.621 §7; 1977 c.323 §1; 1977 c.374 §4; 1983 c.740 §144; 1987 c.320 §180; repealed by 1995 c.108 §5]

TRANSFER OF INMATES

421.205 Contracts with federal government, other states or counties, or other agencies for detention and care of inmates. (1) The Department of Corrections may enter into contracts or arrangements with the authorities of the federal government, of any state having a reformatory or prison for the confinement and detention of inmates that is not a party to the Interstate Corrections Compact under ORS 421.245 or the Western Interstate Corrections Compact under ORS 421.284, or of any county in this state. This contract may provide for the reception, detention, care, maintenance and employment of persons convicted of felony in the courts of this state and sentenced to a term of imprisonment therefor.

(2) The Department of Corrections may enter into contracts or arrangements with the federal government and with states that are not parties to the Interstate Corrections Compact under ORS 421.245 or the Western Interstate Corrections Compact under ORS 421.284 to receive, detain, care for, maintain and employ persons convicted of felony by the federal government or in such other states, on such basis as it may agree with the authorities of the federal government or of each state. [Amended by 1959 c.290 §9; 1971 c.242 §1; 1973 c.444 §1; 1979 c.486 §4; 1987 c.320 §181]

421.210 Transfer of inmates to contract institutions; term of confinement. After the making of a contract under ORS 421.205, persons convicted of felony in the courts of this state and sentenced to the legal and physical custody of the Department of Corrections, including those who, at the date of entering into the contract, are in the legal and physical custody of the Department of Corrections, may be conveyed, as provided by law, by the Department of Corrections to the jurisdiction named in the contract. They shall be delivered to the authorities of said jurisdiction, there to be confined until their respective sentences have expired or until they are otherwise discharged by law. [Amended by 1959 c.290 §10; 1969 c.502 §15; 1973 c.444 §2; 1987 c.320 §182]

421.211 [1955 c.309 §2; 1959 c.290 §11; 1959 c.687 §12; 1969 c.502 §16; repealed by 1973 c.444 §3]

421.213 Records of transfer; availability of information; rules. Whenever an inmate serving a sentence imposed by a court of this state is transferred from a Department of Corrections institution under this chapter, the superintendent of the Department of Corrections institution in which the inmate was confined shall retain a record of the transfer and shall make such information available to law enforcement agencies and the courts upon request. The Department of Corrections shall adopt rules governing the release of this information to other interested parties under ORS 192.410 to 192.505. [1955 c.309 §7; 1959 c.687 §13; 1967 c.471 §5; 1969 c.502 §17; 1983 c.248 §1; 1987 c.320 §183]

421.215 Procurement of transferred inmates when required for judicial proceedings. If the presence of any inmate confined in a county jail or in the institution of another state or the federal government, is required in any judicial proceeding of this state, the superintendent in charge of the institution from which the inmate was conveyed, upon being so directed by the Director of the Department of Corrections or upon the written order or direction of any court of competent jurisdiction or of a judge thereof, shall procure such inmate, bring the inmate to the place directed in such order and hold the inmate in custody subject to the further order and direction of the director, or of the court or of a judge thereof, until the inmate

is lawfully discharged from custody. The superintendent shall, by direction of the director or of the court or a judge thereof, deliver such inmate into the custody of the sheriff of the county in which the inmate was convicted, and shall, by like order, return such inmate to the institution from which the inmate was taken. [Amended by 1955 c.309 §3; 1959 c.687 §14; 1965 c.616 §53; 1969 c.502 §18; 1983 c.740 §145; 1987 c.320 §184]

421.220 Return of transferred inmates. Upon the expiration of any contract entered into under ORS 421.205, all inmates of this state confined in such institution or jail shall be returned by the Department of Corrections to department custody, or delivered to such other institution as the Department of Corrections has contracted with under ORS 421.205. [Amended by 1955 c.309 §4; 1959 c.687 §15; 1965 c.616 §54; 1969 c.502 §19; 1983 c.740 §146; 1987 c.320 §185]

421.225 Expenses of superintendents. The superintendents shall be allowed and paid all their necessary expenses and disbursements incurred while performing any duty required of them by ORS 421.205, 421.210, 421.215 and 421.220. [Amended by 1955 c.309 §5; 1959 c.687 §16; 1969 c.502 §20]

421.229 Transfer of foreign inmates; authority of Governor; written approval of inmate. When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted criminal offender who is a citizen or national of a foreign country to the foreign country of which the offender is a citizen or national, the Governor is authorized to act, in accordance with the treaty, on behalf of the State of Oregon and to approve the transfer of the convicted criminal offender, provided that such offender approves of the transfer in writing. [1979 c.486 §5]

Note: 421.229 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.230 [Amended by 1959 c.687 §17; renumbered 421.150]

421.232 [1955 c.636 §4; 1961 c.424 §7; renumbered 421.155]

421.233 [1955 c.636 §8; 1961 c.424 §8; renumbered 421.160]

421.235 [Repealed by 1957 c.160 §6]

421.237 [1955 c.254 §2; repealed by 1957 c.160 §6]

421.239 [1955 c.59 §1; 1959 c.687 §18; renumbered 421.165]

421.240 [Amended by 1953 c.111 §3; renumbered 421.270]

INTERSTATE CORRECTIONS COMPACT

421.245 Interstate Corrections Compact. The Interstate Corrections Compact is enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I
PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(1) "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico.

(2) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(3) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(4) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(5) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (4) of this Article may lawfully be confined.

ARTICLE III
CONTRACTS

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in insti-

tutions situated within receiving states. Any such contract shall provide for:

(a) Its duration.

(b) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(c) Participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom.

(d) Delivery and retaking of inmates.

(e) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(2) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV
PROCEDURES AND RIGHTS

(1) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the status of the inmate changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V
ACTS NOT REVIEWABLE IN RECEIVING STATE; EXTRADITION

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained in this compact shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI
FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII
ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII
WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX
OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall re-

main in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1979 c.486 §1]

Note: 421.245 to 421.254 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.250 Powers of Governor; delegation of authority. The Governor is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and the Governor may in the discretion of the Governor delegate this authority to the Director of the Department of Corrections. [1979 c.486 §2; 1987 c.320 §186]

Note: See note under 421.245.

421.254 Priority of corrections compacts. Whenever any state that is a party to the Western Interstate Corrections Compact becomes a party to the Interstate Corrections Compact, this state will perform its duty toward that state under the Interstate Corrections Compact instead of under the Western Interstate Corrections Compact in so far as the two compacts conflict. [1979 c.486 §3]

Note: See note under 421.245.

421.255 [1955 c.660 §6; 1959 c.550 §1; repealed by 1965 c.616 §101]

421.260 [1955 c.660 §7; 1959 c.550 §2; repealed by 1965 c.616 §101]

421.265 [1955 c.660 §8; 1959 c.550 §3; repealed by 1965 c.616 §101]

421.270 [Formerly 421.240; repealed by 1959 c.550 §4]

WESTERN INTERSTATE CORRECTIONS COMPACT

421.282 Definitions for ORS 421.282 to 421.294. As used in ORS 421.282 to 421.294, unless the context requires otherwise:

(1) "Compact" means the Western Interstate Corrections Compact as set forth in ORS 421.284.

(2) "Inmate," "institution" and "state" have the meanings defined in Article II of the compact. [1959 c.290 §2]

421.284 Western Interstate Corrections Compact. The Western Interstate Corrections Compact hereby is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I
PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III
CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on

account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the status of the inmate changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the state so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may

have confined pursuant to the provisions of this compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1959 c.290 §3; 2005 c.22 §296]

421.286 Commitments or transfers of inmates to institution in another state. Any court, agency or officer of this state having power to commit or transfer an inmate to an institution for confinement may commit or transfer the inmate to any institution in another state if this state has entered into a contract for the confinement of inmates in an institution of the other state pursuant to Article III of the compact. [1959 c.290 §4]

421.288 Enforcing and administering compact. All courts, agencies and officers of this state or any political subdivision therein shall enforce the compact and carry out its provisions including, but not limited to, making and submitting such reports as the compact requires. [1959 c.290 §5]

421.290 Hearings by director. (1) The Director of the Department of Corrections shall hold such hearings as are requested by another state pursuant to Article IV (f) of the compact. ORS chapter 183 does not apply to these hearings, which shall be conducted in compliance with Article IV (f) of the compact.

(2) The cost of any hearing conducted under subsection (1) of this section shall be paid out of the Department of Corrections Revolving Fund. Reimbursements received from the state that requested the hearing shall be paid into the revolving fund. [1959 c.290 §6; 1965 c.616 §55; 1969 c.597 §135; 1987 c.320 §187]

421.292 Hearings in another state. (1) The State Board of Parole and Post-Prison Supervision may hold hearings in another state in connection with the case of an inmate confined in an institution of another state that is a party to the compact, or may request a hearing to be held by officers of the other state under Article IV (f) of the compact.

(2) The cost of any hearing conducted under subsection (1) of this section shall be paid by the Department of Corrections out of money appropriated to the department for the purpose of paying lawful expenses of the department. [1959 c.290 §7; 1969 c.597 §136; 1983 c.740 §147; 1987 c.320 §188]

421.294 Contracts to implement compact. The Department of Corrections may enter into any contracts on behalf of this state, not prohibited by any law of this state, as it considers appropriate to implement the participation of this state in the compact pursuant to Article III thereof. However, the department shall not enter into any contract:

(1) Relating to commitments or transfers of children who are under 12 years of age;

(2) Providing for commitments or transfers of inmates from another state who are 19 years of age or older to a youth correction facility, as defined in ORS 420.005; or

(3) Providing for commitments or transfers of youths in this state who are under 17 years of age to an institution in another state if any of the inmates in that institution are 21 years of age or older. [1959 c.290 §8; 1987 c.320 §189; 1996 c.4 §6; 2001 c.295 §14]

INTERSTATE FOREST FIRE SUPPRESSION COMPACT

421.296 Interstate Forest Fire Suppression Compact. The Interstate Forest Fire Suppression Compact is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I

Purpose

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life,

property and natural resources in the party states. The purpose of this compact is also, in emergent situations, to allow a sending state to cross state lines with an inmate when, because of weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

ARTICLE II

Definitions

(1) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(2) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(3) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(4) "Institution" means any prison, reformatory, honor camp or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(5) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel and any other persons deemed necessary for the transportation, supervision, care, security and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(6) "Forest fire" means any fire burning in any land designated by a party state or the federal land management agencies as forestland.

ARTICLE III

Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(2) The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

ARTICLE IV

Procedures and Rights

(1) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(2) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, which has entered into a contract pursuant to this compact, decide that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, the authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(3) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(4) The receiving state must make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(5) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel in the establishment and maintenance of fire suppression unit base camps.

(6) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(7) Further, in emergent situations, a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, because of road conditions, it is necessary to facilitate the transport of an inmate.

ARTICLE V

Acts Not Reviewable

in Receiving State: Extradition

(1) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this Article shall be construed to prevent or affect the activities of officers and

guards of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

Entry into Force

This compact shall enter into force and become effective and binding upon approval of this compact by at least two of the states from among the States of Idaho, Oregon and Washington.

ARTICLE VII

Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

ARTICLE VIII

Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE IX

Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1991 c.302 §2]

421.297 Powers of Governor; delegation of authority. The Governor is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and the Governor may in the discretion of the Governor delegate this authority to the Director of the Department of Corrections. [1991 c.302 §3]

421.298 Duties of State Forester. The State Forester shall make reasonable efforts to use local available crews within Oregon before calling on fire suppression units from other states. [1991 c.302 §4]

INMATE INDUSTRIES AND COMMODITIES

421.305 Establishment of industries in institutions; authority of Oregon Corrections Enterprises; rules; fees. (1) Subject to the authority of the Director of the Department of Corrections over care, custody and control of inmates and of corrections institutions, in carrying out the powers and duties generally described by ORS 421.354, Oregon Corrections Enterprises may:

(a) Install and equip plants in any of the Department of Corrections institutions, or any other location, for the employment of any of the inmates therein in forms of industry and employment not inconsistent with section 41, Article I, Oregon Constitution, and this chapter.

(b) Purchase, acquire, install, maintain and operate materials, machinery and appliances necessary in the conduct and operation of such plants.

(c) Make any and all contracts or agreements, enter into any partnerships, joint ventures or other business arrangements, create and participate fully in the operation of any business structure, including but not limited to the development of business structures for inmate work program systems and networks with any public, private, government, nonprofit or for-profit person or entity that in the judgment of Oregon Corrections Enterprises is necessary or appropriate to accomplish the marketing of products or services produced by inmates or the production of goods, wares or services by inmates.

(d) Acquire, receive, hold, keep, pledge, control, convey, manage, use, lend, expend and invest all funds, appropriations and revenues received by Oregon Corrections Enterprises from any source.

(e) Determine, approve or adopt policies for the organization, administration and development of Oregon Corrections Enterprises.

(f) Sue in the name of Oregon Corrections Enterprises and be sued, plead and be impleaded in all actions, suits or proceedings in any forum brought by or against Oregon Corrections Enterprises by any and all private or local, federal or other public entities, agencies or persons. Oregon Corrections Enterprises shall not have authority to sue or be sued by the State of Oregon.

(g) Appoint and employ any instructional, administrative, professional, trade, occupa-

tional and other personnel as are necessary or appropriate to carry out the duties and missions of Oregon Corrections Enterprises, and prescribe their compensation and terms of office or employment.

(h) Purchase, acquire, receive, hold, control, convey, sell, manage, operate, lease, license, lend, invest, improve, develop, use, dispose of and hold title to real and personal property of any nature, including intellectual property, in the name of Oregon Corrections Enterprises.

(i) Hold, control, convey, sell, manage, operate, lease, license, lend, invest, improve, develop, use and dispose of any and all Oregon Corrections Enterprises products and services. Oregon Corrections Enterprises shall adopt policies regarding the sale of products and services of Oregon Corrections Enterprises, which products and services shall be sold for cash or on such terms as are approved by the administrator.

(j) Subject to ORS 283.085 to 283.092, borrow money for the needs of Oregon Corrections Enterprises in such amounts and for such time and upon such terms as may be determined by the administrator.

(k) Erect, construct, improve, develop, repair, maintain, equip, furnish, lease, lend, convey, sell, manage, operate, use, dispose of and hold title to buildings, structures and lands for Oregon Corrections Enterprises.

(L) Authorize, create, eliminate, establish, operate, reorganize, reduce or expand any program, system, facility or other unit of operation in furthering the missions of Oregon Corrections Enterprises.

(m) Establish, charge, collect and use charges and fees for Oregon Corrections Enterprises services and the use of Oregon Corrections Enterprises facilities.

(n) Establish agreements with any state agency for the performance of such duties, functions and powers as the administrator may determine to be appropriate.

(o) Make available, by lease or otherwise, or control access to any Oregon Corrections Enterprises facilities or services or other of its properties and assets to such persons, firms, partnerships, associations or corporations and on such terms the administrator considers appropriate, charge and collect rent or other fees or charges therefor and terminate or deny any such access or any such lease or other agreement for such reasons as the administrator considers appropriate and as may be consistent with the obligations of Oregon Corrections Enterprises under any such lease or other agreement.

(p) Contract for the operation of any department, section, equipment or holdings of Oregon Corrections Enterprises and enter into any agreements with a person, firm or corporation for the management by a person, firm or corporation on behalf of Oregon Corrections Enterprises of any of its properties or for the more efficient or economical performance of clerical, accounting, administrative and other functions relating to its inmate work program facilities.

(q) Enter into affiliation, cooperation, territorial, management or other similar agreements with other public or private inmate work programs for the sharing, division, allocation or furnishing of services on an exclusive or a nonexclusive basis, management of facilities, formation of Oregon Corrections Enterprises systems and other similar activities.

(2) Products and services provided to a private vendor pursuant to a contract under subsection (1)(c) of this section are not subject to the limits imposed by ORS 421.312.

(3)(a) Plants may be installed or equipped for purposes of this section on the premises of a Department of Corrections institution upon approval by the Director of the Department of Corrections.

(b) The director shall have sole discretion regarding whether a plant may be installed on the premises of a Department of Corrections institution, and the director shall determine the manner of such installation.

(c) The director shall have sole discretion regarding access by any person to any plant under construction, installed or located on the premises of a Department of Corrections institution.

(d) The director may enter into any and all contracts or agreements, enter into any partnership, joint venture or other business arrangement and create and participate fully in the operation of any business structure, including but not limited to the development of business structures for inmate work program systems and networks with any public, private, government, nonprofit or for-profit person or entity that in the judgment of the director is necessary or appropriate to accomplish the production services by inmates.

(4) Compensation, if any, paid to inmates assigned to work in industries under this section shall be determined and established by the administrator of Oregon Corrections Enterprises upon the approval of the director. The prevailing wage paid in the marketplace for the work performed shall be paid to workers, other than inmates, who are employed to operate the industry provided for in this section.

(5) The director, in consultation with the administrator of Oregon Corrections Enterprises, shall adopt rules providing for the

disposition of any compensation earned under this section. [Amended by 1965 c.616 §57; 1983 c.574 §1; 1987 c.320 §190; 1995 c.384 §11; 1997 c.851 §3; 1999 c.955 §15]

421.310 [Amended by 1955 c.55 §3; 1965 c.616 §58; 1969 c.349 §4; 1981 c.380 §1; 1983 c.574 §2; 1987 c.153 §2; 1987 c.320 §191; 1989 c.89 §1; 1995 c.384 §12; repealed by 1997 c.851 §17]

421.312 Contracts with federal government for producing goods or furnishing services of inmates during national emergency authorized. (1) The Department of Corrections or Oregon Corrections Enterprises may enter into contracts or agreements with any agency of the federal government providing for the sale to such agency of goods, wares or merchandise manufactured, mined or produced in any of the Department of Corrections institutions of this state or by Oregon Corrections Enterprises, or providing for the furnishing of the labor or services of inmates of any such institutions to such agency, or containing both such provisions, when the President of the United States has, by official action, recognized the existence of a national emergency.

(2) A contract or agreement made pursuant to subsection (1) of this section may authorize the use of the facilities of any Department of Corrections institution or Oregon Corrections Enterprises facilities in conjunction with:

(a) The manufacturing, mining or producing of any goods, wares or merchandise being sold to an agency of the federal government.

(b) The furnishing of the labor or services of inmates of any Department of Corrections institution to any agency of the federal government. [1955 c.55 §2; 1965 c.616 §59; 1987 c.320 §192; 1999 c.955 §16]

421.315 [Amended by 1955 c.55 §4; 1965 c.616 §60; repealed by 1981 c.380 §4]

421.320 [Amended by 1965 c.616 §61; repealed by 1981 c.380 §4]

421.325 [Amended by 1959 c.687 §19; 1983 c.574 §4; 1987 c.320 §193; 1995 c.384 §13; repealed by 1999 c.955 §28]

421.330 [Amended by 1965 c.616 §62; repealed by 1981 c.380 §4]

421.335 [Amended by 1965 c.616 §63; 1969 c.349 §5; repealed by 1981 c.380 §4]

421.340 Rules for exchange of products among institutions. The Department of Corrections and such officials as may direct or control the management of penal, correctional, custodial and charitable institutions of the state or its political subdivisions, and the youth correction facilities, shall jointly annually promulgate rules to authorize the purchase by such institutions of the products to be manufactured by Oregon Corrections Enterprises. [Amended by 1965 c.616 §64; 1987 c.320 §194; 1999 c.955 §17]

421.343 [1989 c.82 §1; repealed by 1999 c.955 §28]

OREGON CORRECTIONS ENTERPRISES

421.344 Creation of Oregon Corrections Enterprises as semi-independent agency; administrator. There is established Oregon Corrections Enterprises, a semi-independent agency. The Director of the Department of Corrections shall assign or appoint an administrator who shall serve at the pleasure of the director. The administrator shall have authority to do all things necessary and convenient to carry out ORS 192.502, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.442, 421.444 and 421.445. [1999 c.955 §3]

421.345 [Amended by 1955 c.445 §1; repealed by 1965 c.616 §101]

421.347 Advisory council; membership; duties. (1) The administrator of Oregon Corrections Enterprises shall establish, by the issuance of a policy directive or order, an advisory council consisting of not fewer than three members to provide policy input concerning Oregon Corrections Enterprises operations and its discharge of the functions and duties prescribed by section 41, Article I of the Oregon Constitution, and ORS 192.502, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.442, 421.444 and 421.445. The council shall select one of its members as chairperson. The council shall meet not less frequently than semiannually at the offices of Oregon Corrections Enterprises. The council shall meet at such other times and places specified by the administrator. All members shall be entitled to expenses as provided in ORS 292.495.

(2) The membership of the advisory council shall consist of at least one representative of each of the following interests, as determined at the discretion of the administrator:

(a) At least one member shall be a person who has experience in, and can represent the interests and perspective of the banking or finance industry;

(b) At least one member shall be a person who has experience in and can represent the interests and perspective of private business in Oregon; and

(c) At least one member shall be a person who has experience in the field of labor relations and can represent the interests and perspective of organized labor.

(3) Members of the advisory council must be citizens of the United States and residents of the State of Oregon. No member of the council may be an employee of the Department of Corrections or of Oregon Corrections Enterprises.

(4) The order or policy directive that establishes the advisory council may specify the terms of office of members of the council and may provide for removal of members from the advisory council by the administrator, either at the pleasure of the administrator or for other grounds specified in the order or policy directive. Upon the expiration or termination of the term of any member appointed to represent an interest under subsection (2) of this section, the administrator shall appoint a successor to represent that interest. A member of the advisory council shall be eligible for reappointment. [1999 c.955 §4]

421.349 Advisory committee; duties. In addition to the advisory council required by ORS 421.347, the administrator may establish, by the issuance of a policy directive or order, one or more advisory committees, bodies or advisors to advise and assist Oregon Corrections Enterprises in discharging its functions and duties as prescribed by section 41, Article I of the Oregon Constitution, and ORS 192.502, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.442, 421.444 and 421.445. The administrator may authorize the payment of expenses, as provided in ORS 292.495, to the members of any advisory committee or body established under this section. [1999 c.955 §5]

421.350 [Amended by 1965 c.616 §65; repealed by 1981 c.380 §4]

421.352 Applicability of certain statutes to Oregon Corrections Enterprises. (1) The provisions of ORS chapters 182, 183, 240, 270, 273, 276, 279A, 279B, 279C, 283, 291, 292 and 293 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.345, 190.430, 190.490, 200.035, 236.380, 236.605 to 236.640, 243.303, 243.305, 243.315, 243.325 to 243.335, 243.345, 243.350, 243.696, 279.835 to 279.855, 282.010 to 282.150 and 656.017 (2) shall not apply to Oregon Corrections Enterprises.

(2) Oregon Corrections Enterprises shall not be subject to any provision of law enacted after December 2, 1999, that governs state agencies generally unless the provision specifically provides that it applies to Oregon Corrections Enterprises. [1999 c.955 §6; 2003 c.794 §279]

421.354 Authority of Oregon Corrections Enterprises. (1) Oregon Corrections Enterprises may engage eligible inmates in state corrections institutions in work or on-the-job training. This authority is subject to the authority granted the Director of the Department of Corrections by section 41, Article I of the Oregon Constitution, and to any rules or orders issued by the director regarding care, custody and control of inmates. Oregon Corrections Enterprises shall ensure that all inmate work and on-the-job training programs are cost-effective and designed to develop inmate motivation, work capabilities, cooperation and successful transition into the community.

(2) Oregon Corrections Enterprises may enter into contracts or agreements with private persons or government agencies for the purpose of:

(a) Accomplishing the production and marketing of products or services produced or performed by inmates;

(b) Making prison work products or services available to any public agency and to any private enterprise; or

(c) Making prison work products available to any private person.

(3) Oregon Corrections Enterprises may make or enter into any agreement to assist inmates in making a successful transition upon release by state correction institutions.

(4) Oregon Corrections Enterprises shall carry out the public purposes and missions stated in section 41, Article I of the Oregon Constitution, and in this section in the manner that, in the determination of Oregon Corrections Enterprises, best promotes the public welfare of the people of the State of Oregon. [1999 c.955 §7]

421.355 [Amended by 1965 c.616 §66; repealed by 1981 c.380 §4]

421.357 Limitation on amount agency may charge Oregon Corrections Enterprises; costs of audits. (1) A state agency shall not charge Oregon Corrections Enterprises for services or products provided by the agency in an amount that exceeds the amount the agency charges other state agencies for the same services or products.

(2) Oregon Corrections Enterprises shall pay the cost of audits of Oregon Corrections Enterprises performed pursuant to the Secretary of State's statutory and constitutional authority. [1999 c.955 §11]

421.359 Disposition of income and revenues. All income and revenues generated or received by Oregon Corrections Enterprises shall remain within, and are continuously appropriated to, Oregon Corrections Enterprises for the purposes of discharging the functions and duties prescribed by section 41, Article I of the Oregon Constitution, and ORS 192.502, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.442, 421.444 and 421.445. There shall be no commingling of funds between Oregon Corrections Enterprises and the Department of Corrections. [1999 c.955 §9]

421.360 [Repealed by 1981 c.380 §4]

421.362 Continuation of employment of certain Department of Corrections employees; alternative retirement programs. (1) All persons employed by the De-

partment of Corrections in inmate work programs on December 2, 1999, shall be offered continuation of their employment with Oregon Corrections Enterprises. Those employees who continue employment with Oregon Corrections Enterprises shall retain their Public Employees Retirement System status granted prior to December 2, 1999. The terms and conditions of the continued employment shall be determined by the administrator. The terms and conditions of employment for Oregon Corrections Enterprises employees who may become represented for collective bargaining in the appropriate bargaining unit shall be determined in accordance with ORS 243.650 to 243.782, except for ORS 243.696. For purposes of collective bargaining, the appropriate bargaining unit shall be a separate unit composed exclusively of Oregon Corrections Enterprises employees.

(2) Notwithstanding the provisions of ORS chapter 237, Oregon Corrections Enterprises may offer to its employees alternative retirement programs in addition to the Public Employees Retirement System. [1999 c.955 §13]

421.364 Provision of legal services to Oregon Corrections Enterprises. Notwithstanding any other provision of law, the Attorney General, at the request of Oregon Corrections Enterprises, shall identify one or more assistant attorneys general to provide legal services related to the inmate work programs of Oregon Corrections Enterprises. At least one assistant attorney general shall have an office located at the main office of Oregon Corrections Enterprises as a primary office location. [1999 c.955 §14]

421.365 [Repealed by 1981 c.380 §4]

421.367 Report to Governor and Legislative Assembly. (1) Oregon Corrections Enterprises shall report annually to the Governor and the Legislative Assembly regarding Oregon Corrections Enterprises activities and operations for the preceding year.

(2) Notwithstanding ORS 421.352, Oregon Corrections Enterprises shall provide to the Oregon Department of Administrative Services such financial information as the Oregon Department of Administrative Services may require for purposes of completing the financial report described in ORS 291.040. [1999 c.955 §8]

421.400 [1989 c.855 §1; repealed by 1997 c.851 §17]

INMATE LABOR GENERALLY

421.405 Use of inmate labor for benefit of officials prohibited; exceptions. (1) Except as provided in subsection (2) of this section, no officer or employee of this state shall receive the use or profit of the labor or services of any inmate of a Department of Corrections institution, or be directly or indirectly interested in any contract or work upon which inmates are employed. However, this subsection does not prohibit inmates from doing work or services:

(a) As janitors or gardeners in or about the institutional premises or premises owned or controlled by Oregon Corrections Enterprises.

(b) As chauffeur or driver of a vehicle used by any prison official or employees of Oregon Corrections Enterprises in the discharge of official business.

(c) Contemplated under ORS 421.455 to 421.480.

(2) Subsection (1) of this section does not prohibit inmates from performing work or services as apprentices or trainees in a program conducted pursuant to ORS 660.002 to 660.210 for any officer or employee of this state who does not exercise direct Department of Corrections institution supervisory authority over the inmates. [Amended by 1959 c.687 §20; 1961 c.213 §1; 1965 c.616 §67; 1969 c.502 §21; 1979 c.68 §1; 1987 c.320 §195; 1999 c.955 §18]

421.408 [Formerly 421.140; 1965 c.616 §68; 1969 c.502 §22; 1969 c.570 §1; 1987 c.320 §196; repealed by 1995 c.384 §28]

421.410 [Amended by 1957 c.343 §1; 1961 c.213 §2; 1965 c.463 §20; 1965 c.616 §69; 1979 c.68 §2; 1981 c.380 §2; 1983 c.574 §3; 1987 c.320 §197; repealed by 1999 c.955 §28]

421.412 Use of inmate labor in acquisition of crops to be consumed in state institutions. (1) Notwithstanding any other provision of law, the Department of Corrections or Oregon Corrections Enterprises may enter into a contract with a person for the purchase or donation of fruit, vegetables or other crops for use or consumption in state institutions. The contract may provide that any or all labor required inside or outside of the Department of Corrections institutions to harvest, load and transport the fruit, vegetables or other crop shall be performed by inmates confined in such institutions. The department or Oregon Corrections Enterprises may enter into a contract pursuant to this section only if it appears to the department or Oregon Corrections Enterprises that the contract would be advantageous.

(2) Notwithstanding any other provision of law, the Director of the Department of Corrections, in compliance with the rules of the department, may authorize the use of inmates from the institution for the purpose of harvesting, loading and transporting the fruit, vegetables or other crops which are the subject matter of a contract made under subsection (1) of this section.

(3) This section authorizes use of inmate labor for cultivating, clearing, grading, draining, restoring riparian areas and other improvement of private or public land, or any

contract or agreement therefor. [1955 c.253 §2; 1959 c.687 §21; 1965 c.616 §70; 1969 c.502 §23; 1987 c.320 §198; 1999 c.955 §19]

421.415 [Amended by 1959 c.687 §22; repealed by 1965 c.616 §101]

421.420 Use of inmate labor to clear unimproved land. The Department of Corrections may enter into a contract with any person whom it considers advisable in connection with a Department of Corrections institution for employment of inmates therein in clearing unimproved land in the state. [Amended by 1959 c.687 §23; 1965 c.616 §71; 1987 c.320 §199]

421.425 [Renumbered 421.620]

421.430 [Repealed by 1959 c.687 §24]

421.431 [1995 c.384 §1; repealed by 1997 c.851 §17]

421.434 [1995 c.384 §2; repealed by 1999 c.955 §28]

421.435 [Repealed by 1959 c.687 §24]

421.436 [1995 c.384 §14; repealed by 1997 c.851 §17]

PRISON WORK PROGRAMS

421.437 Inmate compensation; rules. (1) Inmates who participate in programs operated by the Department of Corrections or Oregon Corrections Enterprises shall be permitted to retain a portion of compensation earned, if any, for their personal use as determined and established by the Director of the Department of Corrections by rule. The director shall ensure that the rules adopted under this section are designed to:

(a) Instill in inmates a viable work ethic;

(b) Emulate private gainful employment;

(c) Encourage productivity; or

(d) Maintain the safe, secure and orderly operation and management of department facilities.

(2) Except as otherwise required by federal law to permit transportation in interstate commerce of goods, wares or merchandise manufactured, produced or mined, wholly or in part by inmates, the rules adopted under subsection (1) of this section may not authorize inmates engaged in prison work programs to retain for their personal use more than 20 percent of gross compensation paid. [1997 c.851 §11; 1999 c.955 §20]

421.438 Authority to enter into contracts concerning certain operations and programs. (1) The Department of Corrections may enter into contracts for the purchase or other acquisition, transfer or disposition of supplies, materials, equipment, products and other personal property, and services for the following prison operations and programs:

(a) Prison work and on-the-job training programs;

(b) Forest and work camps established under ORS chapter 421;

(c) Farm and agricultural operations and programs;

(d) Food services operations and programs; and

(e) Facility or property maintenance operations and programs.

(2) Notwithstanding ORS 179.040 or any other law, the provisions of ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C do not apply to contracts entered into by the department under this section. [1995 c.384 §17; 1997 c.802 §19; 1997 c.851 §4; 2003 c.794 §280]

Note: 421.438 and 421.442 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.440 [1995 c.384 §25; repealed by 1999 c.955 §28]

421.442 Creation of accounts and subaccounts relating to prison work and on-the-job training programs. (1) The Department of Corrections may create accounts and subaccounts as reasonably required to discharge the functions and duties prescribed by section 41, Article I of the Oregon Constitution, including accounts and subaccounts for the deposit of income generated from prison work programs. Accounts and subaccounts created under this subsection shall be maintained separate and distinct from the General Fund. Moneys credited to the accounts and subaccounts are continuously appropriated to the department for the purpose of implementing, maintaining and developing prison work programs. Moneys in the department accounts or subaccounts may be transferred to the inmate injury component of the Insurance Fund for the payment of expenses therefrom authorized by law. Moneys in the accounts or subaccounts may be invested as provided in ORS 293.701 to 293.790 and as authorized by ORS 421.305. Earnings on the investment of moneys in the accounts or subaccounts shall be credited to the respective account or subaccount.

(2) Oregon Corrections Enterprises may create accounts and subaccounts as reasonably required to discharge the functions and duties prescribed by section 41, Article I of the Oregon Constitution, and ORS 192.502, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.444 and 421.445 and this section, including accounts and subaccounts for the deposit of income generated from prison work programs. All moneys collected or received by Oregon Corrections Enterprises shall be deposited into an account or subaccounts established by Oregon Corrections Enterprises in a depository bank insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. The administrator shall ensure that suffi-

cient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. All moneys in the account or subaccounts are continuously appropriated to Oregon Corrections Enterprises for the purpose of implementing, maintaining and developing prison work programs. Moneys in the accounts or subaccounts may be invested as provided in ORS 293.701 to 293.790 and as authorized by ORS 421.305. Earnings on the investment of moneys in the accounts or subaccounts shall be credited to the respective account or subaccount.

(3) Moneys credited to or received by inmate work programs conducted by the department may not be commingled with moneys credited to or received by inmate work programs conducted by Oregon Corrections Enterprises.

(4) Moneys in the accounts or subaccounts are available for implementing, maintaining and developing prison work and on-the-job training programs, including, but not limited to:

(a) The purchase of all necessary machinery and equipment for establishing, equipping and enlarging prison industries;

(b) The purchase of raw materials, the payment of salaries and wages and all other expenses necessary and proper in the judgment of the Director of the Department of Corrections or the administrator of Oregon Corrections Enterprises in the conduct and operation of prison industries; and

(c) Department transfers to the inmate injury component of the Insurance Fund from the payment of expenses authorized by law.

(5) No part of the accounts or subaccounts may be expended for maintenance, repairs, construction or reconstruction, or general or special expenses of a Department of Corrections institution, other than for prison work and on-the-job training programs.

(6) The transfers referred to in subsections (1) and (4)(c) of this section may be authorized by the Legislative Assembly, or the Emergency Board if the Legislative Assembly is not in session, whenever it appears to the Legislative Assembly or the board, as the case may be, that there are insufficient moneys in the inmate injury component of the Insurance Fund for the payment of expenses authorized by law. [1995 c.384 §26; 1997 c.851 §5; 1999 c.955 §27; 2003 c.405 §8]

Note: See note under 421.438.

421.444 Intellectual property; acquisition and development. (1) The Department of Corrections and Oregon Corrections Enterprises each may acquire or develop intellectual property of any kind, whether patentable or copyrightable or not, including patents, copyrights, trademarks, inventions, discoveries, processes and ideas.

(2) The department and Oregon Corrections Enterprises each may manage, license, market, develop or dispose of its intellectual property, in whole or in part, in any manner deemed by the department or Oregon Corrections Enterprises to be advisable for implementing, maintaining and developing prison work programs.

(3) Money received by the department or Oregon Corrections Enterprises as a result of its use, ownership, disposal or management of property acquired under this section or of transactions regarding such property shall be deposited in accounts maintained by the department or Oregon Corrections Enterprises as authorized by law. [1997 c.851 §12; 1999 c.955 §21]

421.445 Supervision of inmates in Oregon Corrections Enterprises program; agreements. Notwithstanding any other law, inmates participating in a program operated by Oregon Corrections Enterprises may be supervised by any employee or agent of a local, state or federal governmental agency pursuant to an agreement between the agency and Oregon Corrections Enterprises. An agreement entered into under this section must require that the person exercising custodial supervision over inmates receive security training approved and provided by the Department of Corrections. [1997 c.851 §18; 1999 c.955 §22]

Note: 421.445 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FOREST AND WORK CAMPS

421.450 Definitions for ORS 421.455 to 421.480. As used in ORS 421.455 to 421.480, unless the context requires otherwise:

(1) "Local inmate" means a person sentenced by a court or legal authority to serve sentence in a county or city jail, but does not include a child detained by order of the juvenile court.

(2) "State inmate" means an inmate of a Department of Corrections institution. [1967 c.504 §2; 1987 c.320 §200]

421.455 Forest work camps; restrictions on placement at camps. (1) The Director of the Department of Corrections shall establish at places in state forests recommended by the State Board of Forestry one or more forest work camps at which state inmates and local inmates may be employed. Only such state inmates as are de-

termined by the Department of Corrections to require minimum security may be placed at a forest work camp, but the Department of Corrections shall not place an inmate at a forest work camp if the department is aware that the inmate has ever been convicted, of:

(a) Rape in the first degree, as described in ORS 163.375.

(b) Rape in the second degree, as described in ORS 163.365.

(c) Rape in the third degree, as described in ORS 163.355.

(d) Sodomy in the first degree, as described in ORS 163.405.

(e) Sodomy in the second degree, as described in ORS 163.395.

(f) Sodomy in the third degree, as described in ORS 163.385.

(g) Unlawful sexual penetration in the first degree, as described in ORS 163.411.

(h) Unlawful sexual penetration in the second degree, as described in ORS 163.408.

(i) Sexual abuse in the first degree, as described in ORS 163.427.

(j) Sexual abuse in the second degree, as described in ORS 163.425.

(k) Any crime in any other jurisdiction that would constitute a crime described in this subsection if presently committed in this state.

(L) Any attempt to commit a crime described in this subsection.

(2) The State Board of Forestry may make contracts with any other state agency in order to effectuate the purposes of ORS 421.455, 421.465, 421.470 and 421.476. [Amended by 1965 c.616 §72; 1967 c.504 §5; 1987 c.320 §201; 1987 c.478 §1; 1991 c.386 §13; 1991 c.830 §12]

421.460 [Amended by 1961 c.656 §2; repealed by 1965 c.616 §101]

421.465 Transfer of state inmates to forest work camp; limitations and conditions. (1) Upon the requisition of the State Forester, the superintendent shall send at the time and to the place designated as many state inmates requisitioned from the institution under the supervision of the superintendent as have been determined under rules adopted by the Director of the Department of Corrections to be eligible for employment at a forest work camp and as are available.

(2) Before a state inmate is sent to any forest work camp, the superintendent of the institution in which the inmate is confined shall cause the inmate to be given such inoculations as are necessary in the public interest.

(3) While a state inmate is at a forest work camp, the superintendent of the institution in which the inmate was confined is responsible for the custody and care of the inmate. [Amended by 1961 c.656 §3; 1965 c.616 §73; 1967 c.504 §6; 1969 c.502 §24; 1987 c.320 §202]

421.467 Transfer of local inmates to forest work camp; limitations and conditions. (1) Subject to ORS 421.468, the governing body of a county or city in this state may transfer a local inmate to the temporary custody of the Department of Corrections solely for employment at a forest work camp established under ORS 421.455 to 421.480. The county or city transferring the local inmate shall pay the cost of transportation and other expenses incidental to the local inmate's conveyance to the forest work camp and the return of the local inmate to the county or city, including the expenses of law enforcement officers accompanying the local inmate, and is responsible for costs of any medical treatment of the local inmate while the local inmate is employed at the forest work camp not compensated under ORS 655.505 to 655.555.

(2) Before a local inmate is sent to a forest work camp, the governing body of the county or city shall cause the local inmate to be given such inoculations as are necessary in the public interest, and must submit to the Department of Corrections a certificate, signed by a physician licensed under ORS chapter 677, that the local inmate is physically and mentally able to perform the work described in ORS 421.470, and is free from communicable disease. [1967 c.504 §3; 1987 c.320 §203]

421.468 Prior approval required for transfer of local inmate; return; custody and jurisdiction. (1) A local inmate may not be transferred under ORS 421.467 without the prior approval of the Director of the Department of Corrections. The director shall return each local inmate to the county or city from which the local inmate was transferred at such time as the local inmate is to be released by the county or city, or upon request of the governing body of the county or city.

(2) While employed at a forest work camp established under ORS 421.455 to 421.480, a local inmate is temporarily within the custody of the Director of the Department of Corrections and subject to rules promulgated by the director governing such custody and employment, but remains subject to the jurisdiction of the county or city. [1967 c.504 §4; 1987 c.320 §204]

421.470 Authority over inmates in camps; cost of care. (1) The Director of the Department of Corrections has authority over the forest work camps except as provided in subsection (2) of this section.

(2) The State Forester shall assign and supervise the work of the state inmates and local inmates, which work shall be:

(a) Manual labor, as far as possible, of the type contemplated by ORS 530.210 to 530.280.

(b) Fire-fighting labor of the type contemplated for forest protection districts under ORS chapter 477.

(3) Moneys for the cost of custody of the state inmates and local inmates, and for the labor done by them under this section, shall be paid from funds appropriated and made available to the State Board of Forestry. Moneys for the cost of care of each local inmate shall be paid by the county or city from which the local inmate was transferred under ORS 421.467, but not to exceed $2 a day for each local inmate. Additional moneys required for the cost of care of local inmates shall be paid from funds appropriated and made available to the State Board of Forestry. All such moneys shall be collected by the Director of the Department of Corrections who shall deposit such funds to the credit of the State Prison Work Programs Account. [Amended by 1961 c.213 §3; 1961 c.656 §4; 1965 c.253 §142; 1967 c.504 §7; 1987 c.320 §205; 1995 c.384 §15]

421.475 [Amended by 1955 c.433 §1; 1961 c.656 §5; 1965 c.616 §74; 1967 c.504 §8; 1969 c.570 §2; 1987 c.320 §206; 1995 c.384 §16; repealed by 1997 c.851 §6 (421.476 enacted in lieu of 421.475)]

421.476 Compensation of inmates for labor at forest camps; rules. The Director of the Department of Corrections shall determine and establish compensation, if any, to be paid to inmates assigned to work in forest work camps. The director shall adopt rules providing for the disposition of any compensation earned under this section. [1997 c.851 §7 (enacted in lieu of 421.475)]

421.480 Return of inmate to institution. When the need for the labor of a state inmate or local inmate transferred to a forest work camp has ceased or when the inmate is guilty of any violation of the rules of the Director of the Department of Corrections, the director may return the inmate to the institution, county or city from which the inmate was transferred. [Amended by 1961 c.656 §6; 1967 c.504 §9; 1987 c.320 §207]

421.490 Work camps. In addition to camps established under ORS 421.455 to 421.480 the Department of Corrections may execute agreements for the establishment and operation of work camps for minimum custody inmates of Department of Corrections institutions in cooperation with all public agencies. [1963 c.157 §2; 1987 c.320 §208]

ALTERNATIVE INCARCERATION PROGRAM

421.500 Findings. The Legislative Assembly finds that:

(1) There is no method in this state for diverting sentenced offenders from a traditional correctional setting;

(2) The absence of a program that instills discipline, enhances self-esteem and promotes alternatives to criminal behavior has a major impact on overcrowding of prisons and criminal recidivism in this state; and

(3) An emergency need exists to implement a highly structured corrections program that involves intensive mental and physical training and substance abuse treatment. [1993 c.681 §1; 1999 c.239 §2]

Note: 421.500 to 421.512 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.502 Definitions for ORS 421.502 to 421.512. As used in ORS 421.502 to 421.512:

(1) "Cognitive restructuring" means any rehabilitation process that redirects the thinking of an offender into more socially acceptable directions and that is generally accepted by rehabilitation professionals.

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

(3)(a) "Offender" includes a person who:

(A) Is in the custody of the department; and

(B) Is at least 18 years of age at the time of entry into the program.

(b) "Offender" includes a person who is under 18 years of age and has been convicted of a crime upon remand from the juvenile court.

(c) "Offender" does not include a person convicted of a crime described in ORS 163.095, 163.115, 163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.525, 164.325 or 164.415.

(4) "Program" means the special alternative incarceration program established under ORS 421.504 and the intensive alternative incarceration addiction program established under ORS 421.506. [1993 c.681 §2; 1999 c.239 §1; 2003 c.464 §3]

Note: See note under 421.500.

421.504 Alternative incarceration program; requirements. (1) The Department of Corrections, in consultation with the Oregon Criminal Justice Commission, shall establish a special alternative incarceration program stressing a highly structured and regimented routine. The program:

(a) Shall be based on a military basic training model that includes extensive discipline, physical work, physical exercise and military drill;

(b) Shall provide for cognitive restructuring in conformance with generally accepted rehabilitative standards;

(c) Shall include a drug and alcohol treatment component that meets the standards promulgated by the Department of Human Services pursuant to ORS 430.357; and

(d) Shall be no longer than 270 days' duration.

(2) The department shall provide capital improvements and capital construction necessary for the implementation of the program.

(3) Notwithstanding subsection (1) of this section, the department may convert the special alternative incarceration program required by this section into an intensive alternative incarceration addiction program as described in ORS 421.506 if the department determines that the needs of offenders in the department's custody would be better served by an intensive alternative incarceration addiction program than by the special alternative incarceration program. [1993 c.681 §3; 1997 c.63 §3; 2005 c.271 §7; 2005 c.708 §12]

Note: See note under 421.500.

421.506 Intensive alternative incarceration addiction program; requirements. The Department of Corrections shall establish an intensive alternative incarceration addiction program. The program shall:

(1) Be based on intensive interventions, rigorous personal responsibility and accountability, physical labor and service to the community;

(2) Require strict discipline and compliance with program rules;

(3) Provide 14 hours of highly structured and regimented routine every day;

(4) Provide for cognitive restructuring to enable offenders participating in the program to confront and alter their criminal thinking patterns;

(5) Provide addiction treatment that incorporates proven, research-based interventions; and

(6) Be at least 270 days' duration. [2003 c.464 §2]

Note: See note under 421.500.

421.508 Determination of eligibility for program; denial; suspension; completion. (1)(a) The Department of Corrections is responsible for determining which offenders are eligible to participate in, and which offenders are accepted for, a program. However, the department may not consider an offender for a program unless authorized to do so as provided in ORS 137.750.

(b) The department may not accept an offender into a program unless the offender submits a written request to participate. The request must contain a signed statement providing that the offender:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the program description provided by the department and agrees to comply with each of the requirements of the program.

(c) The department may deny, for any reason, a request to participate in a program. The department shall make the final determination regarding an offender's physical or mental ability to withstand the rigors of the program.

(d) If the department determines that an offender's participation in a program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the department, the department may, in its discretion, accept the offender into the program.

(2) The department may suspend an offender from a program for administrative or disciplinary reasons.

(3) When an offender has successfully completed a program, the department may release the offender on post-prison supervision. Successful completion of a program does not relieve the offender from fulfilling any other obligations imposed as part of the sentence including, but not limited to, the payment of restitution and fines. [1993 c.681 §4; 1997 c.313 §17; 2003 c.464 §4]

Note: See note under 421.500.

421.510 Eligibility for transitional leave. Offenders participating in a program are eligible for transitional leave as provided in ORS 421.168. Notwithstanding the 30-day maximum period allowed in ORS 421.168, the Department of Corrections may grant a transitional leave of up to 90 days for an offender in a program. The offender may not be released on transitional leave more than 90 days prior to the offender's discharge date. [1997 c.63 §2; 2003 c.464 §5]

Note: See note under 421.500.

421.512 Rulemaking. (1) The Department of Corrections shall adopt rules to carry out the provisions of ORS 421.504, 421.506 and 421.508.

(2) The Oregon Criminal Justice Commission shall adopt or amend rules as necessary to integrate the programs into sentencing guidelines. [1993 c.681 §5; 2003 c.464 §6]

Note: See note under 421.500.

MEDICAL TREATMENT PROGRAMS

421.590 Medical treatment programs; sex offenders; establishment; rules. (1) For the purposes of this section:

(a) "Medical treatment program" means a treatment program based on a successful medical model that has been proven to reduce recidivism, and that may include treatment by prescribed medication when recommended by a qualified psychiatrist or physician, psychological treatment, or both. Any treatment administered under a medical treatment program must be within the range of treatments generally recognized as acceptable within the medical community.

(b) "Program participant" means a person sentenced for a term of imprisonment based on conviction of a sex crime or a felony attempt to commit a sex crime, or a person who is eligible for parole or post-prison supervision after a term of imprisonment based on conviction of a sex crime or a felony attempt to commit a sex crime, who agrees to participate in a medical treatment program after having been evaluated to be a suitable candidate and who has been provided with adequate information to give informed consent to participation.

(c) "Sex crime" means rape in any degree, sodomy in any degree, unlawful sexual penetration in any degree and sexual abuse in the first or second degree.

(2) The Department of Corrections shall establish a medical treatment program for persons convicted of a sex crime or a felony attempt to commit a sex crime. Any person sentenced for a sex crime or a felony attempt to commit a sex crime may be evaluated to determine if available medical or psychological treatment would be likely to reduce the biological, emotional or psychological impulses that were the probable cause of the person's criminal conduct. If the evaluation determines that the person is a suitable candidate, the department shall offer to allow the person to participate in the medical treatment program. The person must agree to become a program participant.

(3) The State Board of Parole and Post-Prison Supervision shall offer as a condition of parole or post-prison supervision to persons convicted of a sex crime or a felony attempt to commit a sex crime the opportunity to participate in a medical treatment program established by the Department of Corrections under this section. Any person eligible for release for a sex crime or felony attempt to commit a sex crime may be evaluated to determine if available medical or psychological treatment would be likely to reduce the biological, emotional or psychological impulses that were the probable cause of the person's criminal conduct. If the evaluation determines that the person is a suitable candidate, the board shall offer to allow the person to participate in the medical treatment program. The person must agree to become a program participant.

(4) The Department of Corrections shall adopt rules prescribing the procedures and guidelines for implementing the medical treatment programs required under the provisions of this section. [1993 c.807 §5; 2003 c.14 §233]

Note: 421.590 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

STATE PENITENTIARY

421.605 Location and use of penitentiary. The Oregon State Penitentiary, located in Salem, Marion County, shall be used as a Department of Corrections institution for the imprisonment of male persons committed to the custody of the Department of Corrections. [Formerly 421.010; 1971 c.212 §3; 1987 c.320 §208a]

421.609 New correctional facilities; authorization; limitation on. (1) The Department of Corrections may not seek authorization for construction or expansion of new correctional facilities or expansion of existing correctional facilities in this state unless the department:

(a) Has evaluated the availability and cost of using correctional facilities outside this state; and

(b) Has determined that constructing new correctional facilities, including costs of debt service and infrastructure improvements, or expanding existing correctional facilities in this state is less expensive than using correctional facilities outside this state after considering constitutional requirements, requirements of state law and available programs that enhance the likelihood of offenders successfully functioning in society upon release.

(2) If the Department of Corrections determines that using appropriate correctional facilities outside this state is less expensive than constructing new correctional facilities, including costs of debt service and infrastructure improvements, or expanding existing correctional facilities, the department shall use correctional facilities outside this state. [1997 c.715 §6(1),(2)]

Note: 421.609 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.610 [1961 c.491 §1; 1971 c.212 §4; repealed by 1987 c.320 §246]

CORRECTIONS FACILITIES SITING

(Generally)

421.611 Findings. The Legislative Assembly finds that:

(1) There is a serious and urgent need to construct and operate additional correctional facilities in this state to accommodate current and projected prison populations.

(2) Immediate corrections facility planning and siting requires an expedited process. Existing corrections facility siting procedures are inadequate to meet the current and projected need for the siting of additional correctional facilities in this state. [1995 c.745 §1]

Note: 421.611 to 421.630 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.612 Definitions. As used in ORS 421.611 to 421.630, unless the context otherwise requires:

(1) "Authority" means the Corrections Facilities Siting Authority as established in ORS 421.621.

(2) "Department" means the Department of Corrections. [1995 c.745 §2]

Note: See note under 421.611.

421.614 Corrections facilities; determining location. (1) The Department of Corrections shall determine locations for corrections facilities pursuant to the provisions of ORS 421.611 to 421.630.

(2) The department shall establish, by rule, mandatory and desirable criteria to be used in the nominations made under ORS 421.616. [1995 c.745 §3]

Note: See note under 421.611.

421.615 [Formerly 421.030; 1969 c.502 §25; repealed by 1971 c.212 §6]

421.616 When department required to nominate sites for corrections facilities; criteria for nominations; report required. When directed by executive order of the Governor to initiate the corrections facility siting process established in ORS 421.611 to 421.630, the Department of Corrections shall:

(1) Nominate sites for the construction and operation of additional corrections facilities in this state, based on the criteria adopted by the department pursuant to ORS 421.614, and the following criteria:

(a) The interest demonstrated by local jurisdictions in having a site selected for a corrections facility within their jurisdiction.

(b) The availability or the ability of the local jurisdictions to provide adequate infrastructure to serve the facility.

(c) Natural features that allow design to promote compatibility with surroundings.

(d) The availability of or ability to provide local support facilities.

(e) The cost of developing the proposed facility, including but not limited to:

(A) The cost of land acquisition and construction including the availability of land or facilities owned by the State of Oregon.

(B) The cost of operating the facility.

(f) The location and dispersal of social service residential facilities and other corrections facilities.

(2) Publish an initial report stating the conclusions of the department with regard to each site nominated.

(3) Provide copies of the report to:

(a) Each of the county commissioners in the county where any of the nominated sites are located;

(b) Each of the city council members where that site is located if any one of the sites is in a city;

(c) Governmental agencies that may be called upon to provide services to the facility at any of the sites, including police, fire, water, sewage, roads and public transit; and

(d) Any member of the public who requests a copy and pays a fee as set by the department.

(4) Provide media notice regarding the process and the sites nominated, including but not limited to publication in a newspaper of general circulation in the county or counties where the sites are located. [1995 c.745 §4]

Note: See note under 421.611.

421.618 Meetings to discuss site selections. Prior to nominating sites pursuant to ORS 421.616, the Department of Corrections shall hold a meeting or multiple meetings with the elected local government officials involved to discuss the site selections, the on-site and off-site improvements needed at each site and the site preferences of the local governments. [1995 c.745 §5]

Note: See note under 421.611.

421.620 [Formerly 421.425; repealed by 1965 c.616 §101]

421.621 Corrections Facilities Siting Authority; membership; duties. (1) There is established a Corrections Facilities Siting Authority. Subject to the approval of the Governor, the authority shall make corrections facility site selection decisions as set forth in ORS 421.623. The authority shall consist of five persons, to be appointed by the Governor and to serve at the Governor's pleasure. The Governor shall appoint one of the members as chairperson.

(2) A majority of the authority members constitutes a quorum for the transaction of business. Members of the authority are entitled to compensation and expenses as provided in ORS 292.495. Any vacancy shall be filled by the Governor.

(3) The authority shall:

(a) Direct such staff as assigned to it by the Department of Corrections;

(b) Consult with the department, local government officials and others as it deems necessary;

(c) Hold hearings; and

(d) Make decisions on the siting of corrections facilities. [1995 c.745 §6]

Note: See note under 421.611.

421.623 Hearings in region where nominated site located; ranking sites; findings. (1) Within 30 days after nomination of sites as set forth in ORS 421.616, the Corrections Facilities Siting Authority shall hold a hearing within the region where each nominated site is located to receive Department of Corrections, local government, neighborhood, law enforcement and public testimony regarding the sites nominated and conditions proposed therefor.

(2) Not later than 10 days before the hearing held by the authority as required by subsection (1) of this section, any affected local government or any person may submit proposed conditions to the authority. Each proposed condition shall:

(a) Be stated separately;

(b) Be in writing;

(c) Identify the site to which the condition, if approved, would attach;

(d) Be specific;

(e) Directly relate to any site or its proposed development, infrastructure, access thereto or physical condition on or in the immediate vicinity of such site; and

(f) Be supported by a statement of the need or reasons therefor.

(3)(a) Within 45 days after nomination of the sites as set forth in ORS 421.616, the authority shall select and rank in order of preference such sites as the Governor deems necessary or advisable for the construction and operation of corrections facilities, and specify site development conditions for each site, supported by findings, which findings shall address the criteria specified by the department pursuant to ORS 421.614 and in ORS 421.616.

(b) In addition to the findings required by paragraph (a) of this subsection, when the authority refuses to adopt a proposed condition submitted in accordance with subsection (2) of this section, the authority shall state on the record why, in its judgment, the refusal to adopt the proposed condition is in the public interest.

(4) If one or more of the nominated sites meets the mandatory criteria established by the department pursuant to ORS 421.614, the local jurisdiction demonstrates interest as described in subsection (5) of this section, and the authority selects a site that has not demonstrated interest as described under subsection (5) of this section, the authority shall make findings that demonstrate why it selected the site in which the local jurisdiction did not demonstrate interest.

(5) A local jurisdiction may demonstrate interest by presenting to the Department of Corrections a resolution that sets forth such interest no later than 30 days from issuance of an executive order under ORS 421.616. [1995 c.745 §7; 1999 c.853 §1]

Note: See note under 421.611.

421.625 [Formerly 421.135; repealed by 1965 c.616 §101]

421.626 Notification to Governor; approval or disapproval of sites. (1) As soon as practicable after making the siting decisions, the Corrections Facilities Siting Authority shall notify the Governor and shall make available for the Governor's review any documents or materials that the Governor may request.

(2) Within 15 days after receiving the notification required by subsection (1) of this section, the Governor shall approve or disapprove such sites as selected and ranked by the authority as the Governor deems necessary and advisable.

(3) If the Governor disapproves one or more of the sites, the Governor may direct the authority to make and rank an additional selection or selections, as appropriate, from the nominated sites and notify the Governor of the selection. Within 15 days of receiving any new selection, the Governor shall approve or disapprove such additional sites as selected and ranked by the authority as the Governor deems necessary or advisable. [1995 c.745 §8]

Note: See note under 421.611.

421.628 Effect of decision of Corrections Facilities Siting Authority; public services necessary for constructing and operating facility. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, the decisions of the Corrections Facilities Siting Authority, if approved by the Governor, shall bind the state and all counties, cities and political subdivisions in this state as to the approval of the sites and the construction and operation of the proposed cor-

rections facilities. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates and enter into any intergovernmental agreements as necessary for construction and operation of the facilities, subject only to the conditions of the siting decisions.

(2) Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for infrastructure improvements for the proposed corrections facilities.

(4) The Department of Corrections shall seek to obtain public services necessary for the construction and operation of corrections facilities from a public body providing such services. The department shall not acquire or develop and furnish its own public services under this section that could be provided by a public body unless the department concludes that the state can achieve significant cost savings by doing so.

(5) Upon request of the Department of Corrections, a public body furnishing public services shall make public services available to the department that are either necessary for the construction and operation of a corrections facility or required by additions to or remodeling of a corrections facility sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall assure the public body the recovery of the additional costs of providing and maintaining the requested service to the corrections facility, including, but not limited to, feasibility and design engineering costs, and reasonable capacity replacement, but shall not exceed the public body's actual capital and operating expenses, including reasonable reserves charged to all ratepayers, for such service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair and reasonable if the department and public body so agree in writing.

(6) If the Department of Corrections and the public body cannot agree on the rates, terms and conditions of furnishing necessary public services to a corrections facility, either the department or the public body may deliver to the other a notice of request to mediate any disputed issues, including, but not limited to, whether the department can achieve significant cost savings to the state by acquiring or developing and furnishing its own public services. If either the department or the public body requests mediation, the other shall participate in good faith in such mediation. Unless otherwise agreed by the department and the public body, the mediation shall be concluded within 30 days of delivery of the notice of request to mediate.

(7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by either the Department of Corrections or the public body, the department and the public body may agree to submit any disputed matters to arbitration. The arbitration may be either binding or nonbinding. If the department and the public body cannot agree on the selection of the arbitrator and the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The arbitrator's decision and award shall be guided by the standards set forth in this section. The decision and award of the arbitrator shall be final and binding on the department and the public body only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the department and public body have agreed to binding arbitration of disputed issues, either the department or the public body, if dissatisfied with the arbitrator's decision and award, may file exceptions in the Court of Appeals within 21 days of the issuance of the decision and award. Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for modification or correction of an award under ORS 36.710. If any of the exceptions requires consideration of facts that do not appear on the face of the arbitrator's decision and award or is not stipulated to by the parties, the court may appoint a master to take evidence and make the necessary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

(8) If the Department of Corrections and the public body have submitted disputed matters to nonbinding arbitration or if the department and public body have chosen not to submit disputed matters to arbitration, the department shall issue a preliminary order to the public body that either concludes that the state can achieve significant costs savings by acquiring or developing and furnishing its own public services, or establishes the rates, terms and conditions upon which the public body shall make necessary public services available to the department for the corrections facility. The public body, no later than 15 days following the department's issuance of its preliminary order, may contest the preliminary order by filing a

written notice to that effect with the department. The preliminary order shall become final, binding and conclusive if the public body fails to request a hearing within the time permitted in this section.

(9) If a hearing is requested, the department shall provide the public body with an opportunity to be heard and shall issue its final order upon conclusion of the hearing. The department shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to afford the public body a reasonable opportunity for a fair hearing. The procedures shall ensure that the public body has a reasonable opportunity to place in the record the information upon which the public body relies as a basis for its position. The department's order shall be guided by the standards set forth in this section.

(10) Proceedings for review of the department's final order shall be instituted when the affected public body files a petition with the Court of Appeals that meets the following requirements:

(a) The petition shall be filed within 21 days of issuance of the final order on which the petition is based.

(b) The petitioner shall serve a copy of the petition by registered or certified mail upon the Department of Corrections and the Attorney General.

(11) Within 30 days after service of the petition, the department shall transmit to the Court of Appeals the original or a certified copy of the entire record and any findings that may have been made.

(12) The Court of Appeals shall review the final order of the Department of Corrections de novo on the record created before the department. The Court of Appeals' decision shall be final and not subject to further review.

(13) Proceedings for review in the Court of Appeals under this section shall be given priority over all other matters before the Court of Appeals.

(14) The Department of Corrections or other state agency shall not be required to make payments to the public body for necessary public services to a corrections facility in excess of funds that are legally available for such purposes.

(15) Nothing in this section shall require a public body to furnish public services to the Department of Corrections for a corrections facility in the event that the Legislative Assembly fails to make funds available in an amount sufficient to pay the state's share of costs of such services as determined under this section.

(16) As used in this section, "public services" means off-site infrastructure, including, but not limited to, sewer and water systems and service, and road improvements. [1995 c.745 §9; 1997 c.715 §4; 2003 c.598 §44]

Note: Operation of the amendments to 421.628 by section 9, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval, including amendments by section 45, chapter 598, Oregon Laws 2003, is set forth for the user's convenience.

421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, and except for permit decisions delegated by the federal government to the Department of State Lands, the decisions of the Corrections Facilities Siting Authority, if approved by the Governor, shall bind the state and all counties, cities and political subdivisions in this state as to the approval of the sites and the construction and operation of the proposed corrections facilities. Except for those statutes and rules for which permit decisions have been delegated by the federal government to the Department of State Lands, all affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates and enter into any intergovernmental agreements as necessary for construction and operation of the facilities, subject only to the conditions of the siting decisions.

(2) Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for infrastructure improvements for the proposed corrections facilities.

(4) The Department of Corrections shall seek to obtain public services necessary for the construction and operation of corrections facilities from a public body providing such services. The department may not acquire or develop and furnish its own public services under this section that could be provided by a public body unless the department concludes that the state can achieve significant cost savings by doing so.

(5) Upon request of the Department of Corrections, a public body furnishing public services shall make public services available to the department that are either necessary for the construction and operation of a corrections facility or required by additions to or remodeling of a corrections facility sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall assure the public body the recovery of the additional costs of providing and maintaining the requested service to the corrections facility, including, but not limited to, feasibility and design engineering costs, and reasonable capacity replacement, but may not exceed the public body's actual capital and operating expenses, including reasonable reserves charged to all ratepayers, for such service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair and reasonable if the department and public body so agree in writing.

(6) If the Department of Corrections and the public body cannot agree on the rates, terms and conditions of furnishing necessary public services to a corrections facility, either the department or the public body may deliver to the other a notice of request to mediate any disputed issues, including, but not limited to, whether the department can achieve significant cost savings to

the state by acquiring or developing and furnishing its own public services. If either the department or the public body requests mediation, the other shall participate in good faith in such mediation. Unless otherwise agreed by the department and the public body, the mediation shall be concluded within 30 days of delivery of the notice of request to mediate.

(7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by either the Department of Corrections or the public body, the department and the public body may agree to submit any disputed matters to arbitration. The arbitration may be either binding or nonbinding. If the department and the public body cannot agree on the selection of the arbitrator and the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The arbitrator's decision and award shall be guided by the standards set forth in this section. The decision and award of the arbitrator shall be final and binding on the department and the public body only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the department and public body have agreed to binding arbitration of disputed issues, either the department or the public body, if dissatisfied with the arbitrator's decision and award, may file exceptions in the Court of Appeals within 21 days of the issuance of the decision and award. Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for modification or correction of an award under ORS 36.710. If any of the exceptions requires consideration of facts that do not appear on the face of the arbitrator's decision and award or is not stipulated to by the parties, the court may appoint a master to take evidence and make the necessary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

(8) If the Department of Corrections and the public body have submitted disputed matters to nonbinding arbitration or if the department and public body have chosen not to submit disputed matters to arbitration, the department shall issue a preliminary order to the public body that either concludes that the state can achieve significant costs savings by acquiring or developing and furnishing its own public services, or establishes the rates, terms and conditions upon which the public body shall make necessary public services available to the department for the corrections facility. The public body, no later than 15 days following the department's issuance of its preliminary order, may contest the preliminary order by filing a written notice to that effect with the department. The preliminary order shall become final, binding and conclusive if the public body fails to request a hearing within the time permitted in this section.

(9) If a hearing is requested, the department shall provide the public body with an opportunity to be heard and shall issue its final order upon conclusion of the hearing. The department shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to afford the public body a reasonable opportunity for a fair hearing. The procedures shall ensure that the public body has a reasonable opportunity to place in the record the information upon which the public body relies as a basis for its position. The department's order shall be guided by the standards set forth in this section.

(10) Proceedings for review of the department's final order shall be instituted when the affected public body files a petition with the Court of Appeals that meets the following requirements:

(a) The petition shall be filed within 21 days of issuance of the final order on which the petition is based.

(b) The petitioner shall serve a copy of the petition by registered or certified mail upon the Department of Corrections and the Attorney General.

(11) Within 30 days after service of the petition, the department shall transmit to the Court of Appeals the original or a certified copy of the entire record and any findings that may have been made.

(12) The Court of Appeals shall review the final order of the Department of Corrections de novo on the record created before the department. The Court of Appeals' decision shall be final and not subject to further review.

(13) Proceedings for review in the Court of Appeals under this section shall be given priority over all other matters before the Court of Appeals.

(14) The Department of Corrections or other state agency is not required to make payments to the public body for necessary public services to a corrections facility in excess of funds that are legally available for such purposes.

(15) This section does not require a public body to furnish public services to the Department of Corrections for a corrections facility in the event that the Legislative Assembly fails to make funds available in an amount sufficient to pay the state's share of costs of such services as determined under this section.

(16) As used in this section, "public services" means off-site infrastructure, including, but not limited to, sewer and water systems and service, and road improvements.

Note: See note under 421.611.

421.630 Judicial review. (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825 or any other law, exclusive jurisdiction for review of any decision relating to the establishment of, addition to, remodeling of or siting of a corrections facility including the establishment of criteria under ORS 421.614, the nomination of sites under ORS 421.616 or any actions under ORS 421.623 or 421.626 is conferred upon the Supreme Court.

(2) Proceedings for review shall be instituted when any person or local government adversely affected files a petition with the Supreme Court that meets the following requirements:

(a) The petition shall be filed within 21 days of issuance of the specific decision on which the petition is based, except that a petition based on a decision to adopt criteria pursuant to ORS 421.614 shall be filed within 21 days of the issuance of the criteria. A decision made pursuant to ORS 421.623 or 421.626 with respect to any site may be reviewed by the Supreme Court as provided in ORS 421.611 to 421.630.

(b) The petition shall state the nature of the decision the petitioner desires reviewed, in what manner the decision below rejected the position raised by the petitioner below and shall state, by supporting affidavit, the facts showing how the petitioner is adversely affected. In the case of a decision by the Corrections Facilities Siting Authority, the petitioner is adversely affected only when the petitioner can establish by clear and convincing evidence in the affidavit that:

(A) The petitioner participated before the authority;

(B) The petitioner will be within sight or sound of the facility or is affected economically in excess of $5,000 in value; and

(C) The petitioner proposed conditions as required by ORS 421.623 (2) that were rejected by the authority.

(c) The petitioner shall serve a copy of the petition by registered or certified mail upon the Department of Corrections, the authority and the Attorney General.

(d) Within 30 days after service of the petition, the department shall transmit to the Supreme Court, or a special master it designates, the original or a certified copy of the entire record and any findings that may have been made. The court shall not substitute its judgment for that of the Governor, the department or the authority as to any issue of fact or issue within executive branch discretion.

(3) If the petition is for review of a decision made by the siting authority, the record shall include only:

(a) The report of the authority.

(b) The conditions, if any, on the nomination.

(c) The transcript of the hearing before the authority. However, on motion of the authority, the Supreme Court may limit the transcript to those matters in which the petitioner is interested as provided in subsection (2)(b) of this section.

(d) Evidence submitted by the petitioner to the authority, but on motion of any party to the judicial review, the Supreme Court may supplement the record with additional materials from the hearing before the authority.

(e) The transcript of the decision-making meeting of the authority.

(f) The authority findings and decision.

(4) Upon review, the Supreme Court may reverse or remand the decision if the Supreme Court concludes that the department, the authority or the Governor:

(a) Exceeded the statutory or constitutional authority of the decision maker;

(b) Made a decision based on findings that are not supported by substantial evidence in the record as described in ORS 183.482 (8)(c); or

(c) Refused to adopt a proposed condition submitted under ORS 421.623 (2) and failed to provide the statement required by ORS 421.623 (3)(b).

(5) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court. [1995 c.745 §10; 1999 c.853 §2]

Note: See note under 421.611.

(Women's Facility and Intake Center)

421.635 Definitions for ORS 421.635 to 421.657. As used in ORS 421.635 to 421.657:

(1) "Adversely affected" has the meaning used in ORS 183.480. A person within sight or sound of the women's correctional facility and intake center complex is presumed to be adversely affected by decisions or actions under ORS 421.635 to 421.657.

(2) "Complex" means a women's correctional facility and intake center, administration and other associated buildings, roads, sewer and water lines and other public services, and any other improvements made to the real property approved for siting under ORS 421.643.

(3) "Public services" means off-site infrastructure to support the construction and operation of a complex. "Public services" includes but is not limited to electric and telecommunications services, sewer and water systems, fire and life safety services and road improvements.

(4) "State building code" has the meaning given that term in ORS 455.010. [1999 c.982 §2]

421.637 When department required to propose site; criteria; report; media notice. When directed by executive order of the Governor, the Department of Corrections shall:

(1) Propose a site for the construction and operation of a women's correctional facility and intake center complex in this state. The department shall consider the following criteria:

(a) Interest demonstrated by local jurisdictions in having the site selected for a women's correctional facility and intake center complex. A local jurisdiction may demonstrate interest by presenting to the Director of the Department of Corrections a resolution setting forth such interest.

(b) The availability or the ability of local jurisdictions to provide adequate infrastructure to serve the complex.

(c) Natural features that allow design features to promote compatibility with surroundings.

(d) The availability of the site by purchase, condemnation, exchange or otherwise.

(e) The sufficiency of the size and shape of the site to accommodate the complex.

(f) Whether the site is located in an area designated as a 100-year floodplain on a current map of the Federal Emergency Management Agency.

(g) Whether the site is located in a tsunami inundation zone.

(h) Whether the site either has infrastructure available on-site or the infrastructure otherwise can be provided and maintained. For purposes of this paragraph, "infrastructure" includes but is not limited to:

(A) Water for domestic use, fire protection and irrigation;

(B) Sanitary sewer collection and treatment;

(C) Surface drainage storm water collection and disposal; and

(D) Electricity, natural gas, oil or propane and telecommunications.

(i) Whether the site is served by a road or highway system capable of supporting the complex. New roadway improvements should be able to be constructed and available at the time the complex is scheduled to open.

(2) Publish an initial report stating the conclusions of the department with regard to the proposed site.

(3) Provide copies of the report to:

(a) Each of the county commissioners in the county where the proposed site is located;

(b) Each of the city council members where the proposed site is located if the site is in a city;

(c) Governmental agencies that may be called upon to provide services to the complex, including police, fire, water, sewage, roads and public transit; and

(d) Any member of the public who requests a copy and pays a fee as set by the department.

(4) Provide media notice regarding the process and the proposed site, including but not limited to publication in a newspaper of general circulation in the county or counties where the site is located. [1999 c.982 §3]

421.639 Exclusion of F. H. Dammasch State Hospital as department facility. Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to 421.630, and notwithstanding ORS 421.637, 421.641 and 421.643, the real property known as the F. H. Dammasch State Hospital shall not be used as a Department of Corrections facility. [1999 c.982 §6]

421.641 Hearings in region where proposed site located; report. (1) Within 21 days after a site is proposed under ORS 421.637, the Director of the Department of Corrections shall hold a hearing within the region where the proposed site is located to receive Department of Corrections, local government, neighborhood, law enforcement and public testimony regarding the proposed site.

(2) Not later than seven days before the hearing held under subsection (1) of this section, any affected local government or any person may submit proposed conditions to the director. Each proposed condition shall:

(a) Be stated separately;

(b) Be in writing;

(c) Be specific;

(d) Directly relate to the site and the criteria described in ORS 421.637 (1); and

(e) Be supported by a statement of the need or reasons therefor.

(3) Within seven days following the hearing required under subsection (1) of this section, the director shall issue a final report regarding the proposed site. If the director recommends that the proposed site be used for the construction and operation of a women's correctional facility and intake center complex, the director shall specify in the report those conditions the director deems necessary and appropriate for the site.

(4) If the director recommends a site for which the local government did not express interest as described in ORS 421.637 (1)(a), the director shall make findings that demonstrate why the director selected the site. [1999 c.982 §4]

421.643 Notice to Governor regarding proposed site. Within 30 days of the date of the executive order described in ORS 421.637, the Director of the Department of Corrections shall notify the Governor of the site proposed for the construction and operation of a women's correctional facility and intake center complex. The director shall make available for the Governor's review the final report required under ORS 421.641 and any other documents or materials that the Governor may request. The Governor shall approve or disapprove the site as the Governor deems necessary or advisable. [1999 c.982 §5]

421.645 Issuing permits necessary for construction and operation of facility; rules. (1) Notwithstanding ORS 195.025, 197.175, 197.180, 215.130 (4), 227.286, 455.148 or 455.150 or any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, the Director of the Department of Consumer and Business Services, through the Building Codes Division, shall exercise authority for the issuance of all permits required under the state building code for the construction and operation of the women's correctional facility and intake center complex approved under ORS 421.643.

(2) All other state agencies, including but not limited to the Department of Environ-

mental Quality, shall issue such permits within the authority of the agency as may be necessary for the construction and operation of the complex.

(3) Within the authority of the city, county or political subdivision, each city, county and political subdivision shall issue the appropriate permits, licenses and certificates not issued under subsections (1) and (2) of this section, including all necessary construction permits over public rights of way, and enter into any intergovernmental agreements as may be necessary for the construction and operation of the complex.

(4) A state agency or local government that issues a permit, license or certificate under subsections (1) to (7) of this section shall continue to exercise enforcement authority over the permit, license or certificate.

(5) Except as provided in ORS 421.649, nothing in ORS 421.635 to 421.657 expands or otherwise alters the obligations of a city, county or political subdivision to pay for infrastructure improvements for the complex.

(6)(a) State agencies and local governments shall issue any permit, license or certificate required under subsections (1) to (3) of this section within 60 days of receiving a completed application for the permit, license or certificate from the Department of Corrections or a person acting on behalf of the department. A state agency or local government may impose reasonable conditions on any permit, license or certificate but may not deny the permit, license or certificate unless denial is required under federal law.

(b) If a permit, license or certificate required under subsections (1) to (7) of this section is not issued within 60 days of receiving a completed application, the Department of Corrections may file a petition for a writ of mandamus in the circuit court for the jurisdiction of the affected local government to compel issuance of the permit, license or certificate. The writ shall issue unless the local government can demonstrate by clear and convincing evidence that issuing the permit, license or certificate would violate a substantive provision of the state building code, exceed the local government's statutory authority or violate federal law.

(c) Proceedings on a petition for a writ of mandamus under this subsection shall comply with the applicable provisions of ORS chapter 34.

(7) The issuance of any permit, license or certificate under subsections (1) to (7) of this section and any construction or development undertaken pursuant to such permit, license or certificate shall not be considered in support of or in opposition to an application for a land use decision under ORS chapter 197, 215 or 227.

(8) In accordance with the applicable provisions of ORS chapter 183 and notwithstanding ORS 455.035, the Director of the Department of Consumer and Business Services shall adopt such rules as the director determines necessary to implement the provisions of subsections (1) to (7) of this section. [1999 c.982 §§7,8(1); 2001 c.573 §4]

421.647 Review of decision relating to permits. (1) Notwithstanding ORS 183.400, 183.482, 183.484 or 197.825 or any other law, review of any decision or action relating to the issuance or denial of a permit, license or certificate under ORS 421.645 (1) to (7) is as described in this section.

(2) A person or governmental entity adversely affected by a decision or action may institute a proceeding for review by filing a petition in Marion County Circuit Court that meets the following requirements:

(a) The petition must be filed within 21 days of issuance of the specific decision or action on which the petition is based.

(b) The petition must include the following:

(A) A statement of the nature of the decision or action the petitioner desires to be reviewed.

(B) A statement of the constitutional, statutory or other legal provision providing a basis for the challenge.

(C) A statement of whether the validity of the decision or action depends on factual findings and whether it is necessary to create a record in order to review the challenge.

(D) A statement and supporting affidavit showing how the petitioner is adversely affected by the decision or action.

(c) The petitioner shall serve a copy of the petition by registered or certified mail upon the Department of Corrections and the Attorney General.

(3) The court may affirm, reverse or remand the decision or action. The court shall reverse or remand the decision or action if the court finds that the entity making the decision or taking the action:

(a) Exceeded its statutory or constitutional authority; or

(b) Made a decision or took an action, the validity of which depends on the existence of one or more facts, when the requisite fact or facts do not exist.

(4) As to any decision or action, the validity of which depends on the existence of a particular fact:

(a) The court shall first decide whether any claims of error require fact-finding be-

cause the challenged decision or action depends on the existence of one or more facts. If the court determines that the claim of error requires fact-finding, the court shall decide whether additional evidence is required in order to determine whether the necessary fact exists. To be considered by the court, the evidence, if required, need not have been before the decision maker at the time of making the decision or taking the action.

(b) In determining the existence of a necessary fact, the fact shall be deemed to exist if the court finds, based on the record presented to or made before it, that there is evidence, taken in isolation, from which a reasonable person could conclude that the fact exists.

(5) If the court determines that the claim of error may be resolved without taking additional evidence, the court shall certify the matter to the Supreme Court and the Supreme Court shall accept the certification. The Supreme Court shall conduct its review as provided in subsections (3) and (4) of this section.

(6) Any party to the proceedings before the court may appeal from the judgment of that court to the Supreme Court by filing a petition meeting the criteria set forth in subsection (2) of this section. The petition must be filed within 21 days after the entry of the judgment. The Supreme Court shall conduct its review as provided in subsections (3) and (4) of this section. [1999 c.982 §9]

421.649 Provision of public services. (1) The Department of Corrections shall obtain public services necessary for the construction and operation of a women's correctional facility and intake center complex in the manner provided under ORS 421.628 (4) to (15).

(2) Regardless of the territorial limits of the public body providing public services to the complex, and notwithstanding any other law, upon request or application from the department, the public body shall provide any public service necessary for the construction and operation of the complex. During the pendency of any mediation, arbitration or judicial review proceeding under this section, the public body shall provide any public service necessary for the continued construction and operation of the complex, as requested by the department.

(3) The existence of a public service provided to the complex shall not be a consideration in support of or in opposition to an application for a land use decision, limited land use decision or expedited land division under ORS chapter 197, 215 or 227. [1999 c.982 §10]

421.651 Prison Advisory Committee; duties. (1) Within 60 days after August 20, 1999, the Director of the Department of Corrections shall form a Prison Advisory Committee. The committee shall meet to discuss, and make recommendations to the director about, potential construction and operational impacts of the women's correctional facility and intake center complex. Impacts may include plans for buffering, lighting and noise mitigation to minimize intrusion into the privacy of surrounding residences. The director shall consider the recommendations and shall adopt such recommendations as practicable, considering safety, security and operational needs of the complex.

(2) The Department of Corrections shall maintain a policy or plan for notifying local jurisdictions and surrounding residents of inmate escapes and other incidents that, in the director's judgment, may raise local safety concerns.

(3) Any decision made or action taken under this section is final and is not subject to judicial review. [1999 c.982 §11]

421.653 Judicial review. (1) Except as provided in ORS 421.647 and notwithstanding ORS 183.400, 183.482, 183.484 or 197.825 or any other law, exclusive jurisdiction for review of the constitutionality of ORS 421.635 to 421.651 and any decision relating to the siting of a women's correctional facility and intake center complex under ORS 421.637, 421.641, 421.643, 421.645 (8), 421.649 and 421.651 and section 8 (2), chapter 982, Oregon Laws 1999, is conferred upon the Supreme Court.

(2) A person or local government adversely affected by ORS 421.635 to 421.651 may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition for review of the constitutionality of ORS 421.635 to 421.657 and section 8 (2), chapter 982, Oregon Laws 1999, must be filed within 21 days after August 20, 1999. The petition must include the following:

(A) A statement of the constitutional provision providing a basis for the challenge.

(B) A statement and supporting affidavit showing how the petitioner is adversely affected.

(b) A petition for review of a decision made under ORS 421.637, 421.641, 421.643, 421.645 (8), 421.649 and 421.651 and section 8 (2), chapter 982, Oregon Laws 1999, shall be filed within 21 days of issuance of the specific decision on which the petition is based.

(3) The petitioner shall serve a copy of the petition by registered or certified mail upon the Department of Corrections and the Attorney General.

(4) A petition filed under subsection (2)(b) of this section shall state the nature of the decision the petitioner desires reviewed and in what manner the decision below rejected the position raised by the petitioner.

(5) Within 30 days after service of the petition under subsection (2)(a) of this section, the department shall transmit to the Supreme Court, or a special master it designates, the original or a certified copy of the entire record and any findings that may have been made. The court shall not substitute its judgment for that of the Governor or the Director of the Department of Corrections as to any issue of fact or issue within executive branch discretion.

(6) If the petition is filed under subsection (2)(b) of this section, the record shall include only:

(a) The director's final report prepared under ORS 421.641.

(b) The conditions, if any, on the proposed site.

(c) The transcript of the hearing before the department. However, on motion of the director, the Supreme Court may limit the transcript to those matters in which the petitioner is interested as provided in subsection (2)(b) of this section.

(d) Evidence submitted by the petitioner to the director, but on motion of any party to the judicial review, the Supreme Court may supplement the record with additional materials from the hearing before the director.

(7) Upon review, the Supreme Court may reverse or remand a decision made under ORS 421.637, 421.641, 421.643, 421.645 (8), 421.649 and 421.651 and section 8 (2), chapter 982, Oregon Laws 1999, if the Supreme Court finds the director, Department of Corrections or the Governor:

(a) Exceeded the statutory or constitutional authority of the decision maker; or

(b) Made a decision not supported by substantial evidence. For purposes of this subsection, "substantial evidence" means evidence that, taken in isolation, a reasonable mind could accept as adequate to support a conclusion. The substantiality of the evidence shall not be evaluated by considering the whole record.

(8) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court. [1999 c.982 §12]

421.655 Proceedings for review; consolidation; priority. (1) To the extent practicable, the appropriate court shall consolidate any proceedings for review under ORS 421.635 to 421.657.

(2) A circuit court, the Court of Appeals and the Supreme Court shall give proceedings for review under ORS 421.635 to 421.657, and all appeals therefrom, priority over all other matters before the court.

(3) Except for proceedings on a petition for a writ of mandamus under ORS 421.645 (1) to (7), the circuit court may not issue an injunction or a stay in a proceeding under ORS 421.635 to 421.657. [1999 c.982 §13]

421.657 Condemnation of property. The condemnation of any real property required under ORS 421.635 to 421.657 and section 8 (2), chapter 982, Oregon Laws 1999, by the Department of Corrections, or on behalf of the department, shall be conducted according to the applicable provisions of ORS chapter 35. Amounts paid in just compensation for condemned real property shall be determined according to ORS 35.346. [1999 c.982 §14]

421.705 [Formerly 421.080; 1965 c.616 §75; 1983 c.505 §8; repealed by 1987 c.320 §246]

421.710 [Formerly 421.083; 1983 c.505 §9; repealed by 1987 c.320 §246]

BRANCH INSTITUTIONS

421.805 Siting of branch institutions. The Department of Corrections may establish and operate institutions, other domiciliary facilities or branches of existing Department of Corrections institutions or domiciliary facilities. Siting of such institutions, branches or domiciliary facilities must be done in accordance with statutes governing the siting or locating of correctional institutions. The institutions, branches or facilities shall be used for the care and custody of inmates assigned thereto and shall be operated to facilitate the return of the inmates to society. [1969 c.580 §2; 1983 c.740 §148; 1987 c.320 §209]

Note: 421.805 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

421.990 Penalties. (1) Violation of ORS 421.340 is punishable upon conviction by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding one year, or both.

(2) Violation of ORS 421.105 (2) is punishable in the same manner as if the individual injured unlawfully was not convicted or sentenced.

[Amended by 1965 c.616 §76; 1981 c.380 §3; 1997 c.851 §13; 1999 c.955 §25]

CHAPTER 422

[Reserved for expansion]