

# Enrolled House Bill 3457

Sponsored by Representative OLSON; Representatives ANDERSON, AVAKIAN, BARKER, BERGER, BEYER, BOONE, BOQUIST, BROWN, BURLEY, BUTLER, CAMERON, ESQUIVEL, FARR, FLORES, GARRARD, HANNA, HUNT, KITTS, KOMP, KRIEGER, KROPF, LIM, MINNIS, MORGAN, NELSON, ROBLAN, SCHAUFLE, SCOTT, SUMNER, THATCHER, WHISNANT, WIRTH, Senators BURDICK, DEVLIN, FERRIOLI, GORDLY, JOHNSON, MORRISSETTE, MORSE

CHAPTER .....

## AN ACT

Relating to forfeiture; creating new provisions; amending ORS 133.643, 137.138, 164.864, 164.866, 166.279, 166.660, 167.350, 475A.035, 475A.075, 475A.080, 475A.085, 475A.120, 475A.130, 475A.155 and 475A.160 and sections 35, 36 and 38, chapter 780, Oregon Laws 2001, and section 16a, chapter 801, Oregon Laws 2003; repealing ORS 163.696, 164.879, 165.586 and 167.379 and sections 350 and 351, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261); and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

### CRIMINAL FORFEITURE

**SECTION 1. As used in sections 1 to 18 of this 2005 Act:**

**(1) "Acquiesce in prohibited conduct" means that a person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid the use of the property in the course of prohibited conduct. For purposes of this subsection, "reasonable action under the circumstances" includes, but is not limited to:**

- (a) Reporting the prohibited conduct to a law enforcement agency;**
- (b) Commencing action that will assert the rights of the affiant as to the property interest;**
- (c) Terminating a rental agreement; or**
- (d) Seeking an abatement order under the provisions of ORS 105.505 to 105.520 or 105.550 to 105.600, or under any ordinance or regulation allowing abatement of nuisances.**

**(2) "All persons known to have an interest" means:**

- (a) Any person who has, prior to the time the property is seized for criminal forfeiture, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property that has been seized for criminal forfeiture;**
- (b) Any person from whose custody the property was seized; or**
- (c) Any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.**

**(3) "Attorney fees" has the meaning given that term in ORCP 68 A.**

- (4) "Financial institution" means any person lawfully conducting business as:
- (a) A financial institution or trust company, as those terms are defined in ORS 706.008;
  - (b) A consumer finance company subject to the provisions of ORS chapter 725;
  - (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage servicing company or other mortgage company;
  - (d) An officer, agency, department or instrumentality of the federal government, including but not limited to:
    - (A) The Secretary of Housing and Urban Development;
    - (B) The Federal Housing Administration;
    - (C) The United States Department of Veterans Affairs;
    - (D) The Farmers Home Administration;
    - (E) The Federal National Mortgage Association;
    - (F) The Government National Mortgage Association;
    - (G) The Federal Home Loan Mortgage Association;
    - (H) The Federal Agricultural Mortgage Corporation; and
    - (I) The Small Business Administration;
  - (e) An agency, department or instrumentality of this state, including but not limited to:
    - (A) The Housing and Community Services Department;
    - (B) The Department of Veterans' Affairs; and
    - (C) The Public Employees Retirement System;
  - (f) An agency, department or instrumentality of any municipality in this state, including but not limited to such agencies as the Portland Development Commission;
  - (g) An insurer as defined in ORS 731.106;
  - (h) A private mortgage insurance company;
  - (i) A pension plan or fund or other retirement plan; and
  - (j) A broker-dealer or investment adviser representative as defined in ORS 59.015.
- (5) "Forfeiture counsel" means an attorney designated to represent a seizing agency in criminal forfeiture actions or proceedings.
- (6) "Instrumentality" means property that is used or intended for use in prohibited conduct or that facilitates prohibited conduct.
- (7) "Law enforcement agency" means any agency that employs police officers or prosecutes criminal cases.
- (8) "Official law enforcement use" means a use that may reasonably be expected to result in the identification, apprehension or conviction of criminal offenders.
- (9) "Police officer" has the meaning given that term in ORS 133.525.
- (10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, maintained by or realized through an act or omission that constitutes prohibited conduct, and includes any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.
- (11) "Prohibited conduct" means:
- (a) For purposes of proceeds, a felony or a Class A misdemeanor.
  - (b) For purposes of instrumentalities, any crime listed in section 19 of this 2005 Act.
- (12) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.
- (13) "Seizing agency" means a law enforcement agency that has seized property for criminal forfeiture.
- (14) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, to destroy, defeat or injure a person.

**SECTION 2.** (1) The Legislative Assembly finds that:

(a) Prohibited conduct is undertaken in the course of activities that result in, and are facilitated by, the acquisition, possession or transfer of property subject to criminal forfeiture under sections 1 to 18 of this 2005 Act;

(b) Transactions involving property subject to criminal forfeiture under sections 1 to 18 of this 2005 Act escape taxation;

(c) Perpetrators of crimes should not be allowed to keep the proceeds and instrumentalities of their crimes;

(d) Governments attempting to respond to prohibited conduct require additional resources to meet their needs; and

(e) There is a need to provide for the forfeiture of certain property subject to criminal forfeiture under sections 1 to 18 of this 2005 Act, to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.

(2) Sections 1 to 18 of this 2005 Act do not impair the right of any city or county to enact ordinances providing for the criminal forfeiture of property based upon prohibited conduct if:

(a) The property was used to commit the conduct described in the ordinances, or constitutes proceeds of the conduct; and

(b) The criminal forfeiture is subject to procedures and limitations set forth in sections 1 to 18 of this 2005 Act.

(3) Nothing in sections 1 to 18 of this 2005 Act may be construed to limit or impair any right or remedy that any person or entity may have under ORS 166.715 to 166.735. Criminal forfeiture is a remedy separate and apart from any other criminal penalty and from civil forfeiture or any other civil penalty.

**SECTION 3.** Subject to sections 1 to 18 of this 2005 Act, all right, title and interest in property forfeited under sections 1 to 18 of this 2005 Act vest in the seizing agency upon commission of the prohibited conduct.

**SECTION 4.** The following are subject to criminal forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct;

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;

(3) All property that is used, or intended for use, as a container for property described in subsection (1) or (2) of this section;

(4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to criminal forfeiture under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct; and

(b) No conveyance is subject to criminal forfeiture under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state;

(5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;

(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;

(8) All weapons possessed, used or available for use to facilitate conduct giving rise to criminal forfeiture;

(9) All property described in this section that is intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450; and

(10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

**SECTION 5.** (1) A person who delivers property in obedience to an order or direction to deliver the property under this section is not liable:

(a) To any person on account of obedience to the order or direction; or

(b) For any costs incurred on account of any contamination of the delivered property. This includes, but is not limited to, any disposal costs for any property forfeited under section 4 of this 2005 Act, any hazardous waste or material, any contraband or any other contamination contained in property seized under this section.

(2) In addition to seizures authorized by ORS 133.535, a police officer may seize property without a court order if the police officer has probable cause to believe that the property is subject to criminal forfeiture.

(3) Except as provided in section 6 of this 2005 Act, with regard to cash or other assets that at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the person having control or custody of the property shall deliver the same over to the police officer.

(4)(a) A police officer may seize property pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

(b) Application may be made to any judge as defined in ORS 133.525. The application must be supported by one or more affidavits setting forth the facts and circumstances tending to show where the objects of the seizure are to be found. The court shall issue the order upon a finding of probable cause to believe that the described property is subject to criminal forfeiture. The order may be set out on the face of a search warrant.

(c) Except as provided in section 6 of this 2005 Act, with regard to cash or other assets that at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the order shall direct any person having control or custody of the property to deliver the same over to the seizing agency or to the court to abide judgment.

(5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the public records that impart constructive notice of matters relating to such property. A notice that is filed must include a description of the property that is the subject of the seizure. Real property, including interests arising out of land sale contracts, may be seized only upon recording a notice of seizure containing a legal description of the property in the mortgage records of the county in which the real property is located.

(6) Promptly upon seizure, the officer who seized the property shall make an inventory of the property seized and shall deliver a receipt embodying the inventory to the person from whose possession the property is taken or to the person in apparent control of the property

at the time it is seized. If the property is unoccupied or there is no one present in apparent control, the officer shall leave the receipt suitably affixed to the property. If the property is physically removed from the location of seizure and it is unoccupied or there is no one present in apparent control, then the officer shall promptly file the receipt in the public records of the seizing agency. Every receipt prepared under this subsection shall contain, in addition to an inventory of the property seized, the following information:

(a) The identity of the seizing agency; and

(b) The address and telephone number of the office or other place where the person may obtain further information concerning the criminal forfeiture.

(7) In the event that property is seized from the possession of a person who asserts a possessory lien over such property pursuant to applicable law, notwithstanding any other provision of law, any lien of the person from whom the property was seized remains in effect and is enforceable as fully as though the person had retained possession of the property.

**SECTION 6.** (1)(a) Except as otherwise provided in sections 1 to 18 of this 2005 Act, property seized for criminal forfeiture is not subject to replevin, conveyance, sequestration or attachment. The seizure of property or the commencement of a criminal forfeiture proceeding under sections 1 to 18 of this 2005 Act does not abate, impede or in any way delay the initiation or prosecution of a suit or action by a financial institution for the possession of seized property in which the financial institution has or purports to have a lien or security interest or for the foreclosure of such lien or security interest. A financial institution may proceed with any suit or action involving property in which it has a lien or security interest even though a seizure has occurred and criminal forfeiture proceedings have been or will be commenced. If property that may be subject to criminal forfeiture is sold prior to the conclusion of the forfeiture proceedings, the sheriff, trustee or other person who is conducting the sale and who has actual notice of the forfeiture proceedings shall distribute the sale proceeds as follows:

(A) To the expenses of the sale;

(B) To the payment of the obligations owed to the foreclosing financial institution that are secured by the property and to any other person whose lien or security interest in the property has been foreclosed in the suit or action in the order determined by the court; and

(C) The surplus, if any, shall be distributed to the seizing agency, or to the court in which the forfeiture proceedings are pending.

(b) The sheriff, trustee or other person who distributes the sale proceeds as provided in this subsection is not liable to any person who has or asserts an interest in the property.

(2) Within 30 days following seizure of property for criminal forfeiture, the seizing agency, in consultation with the district attorney of the county in which the property was seized for forfeiture, shall determine whether it will seek the forfeiture of the property. If the seizing agency elects not to seek forfeiture, it shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since its seizure and release the property. The property may be released to a person other than the person from whose custody or control the property was taken if the seizing agency or forfeiture counsel first mails to the last-known addresses of all persons known to have an interest in the property a notice of intent to release the property. The notice must specify the person to whom the property is to be released and must detail the time and place of the release. An agency that complies with the provisions of this subsection by paying costs and expenses of towing and storage, discharging possessory liens, mailing any required notices and releasing the property is not liable for its actions under this subsection or for any consequences thereof.

(3) A seizing agency shall, pending criminal forfeiture and final disposition and subject to the need to retain the property in any criminal proceeding, provide that property in the

physical custody of the seizing agency be serviced or maintained as may be reasonably appropriate to preserve the value of the property.

(4) A seizing agency may, pending criminal forfeiture and final disposition and subject to the need to retain seized property in any criminal proceeding:

(a) Provide that the seized property be transferred for criminal forfeiture to any city, county, state or federal agency with criminal forfeiture authority, provided that no such transfer may have the effect of diminishing or reducing the rights of any third party under sections 1 to 18 of this 2005 Act.

(b) Apply to the court for an order providing that the seized property may be sold, leased, rented or operated in the manner and on the terms that may be specified in the court's order. The court shall deny any application unless the sale, lease, rental or operation of the property will be conducted in a commercially reasonable manner and will not result in a material reduction of the property's value. The court may enter an order only:

(A) After notice and opportunity to be heard is provided to all persons known to have or to claim an interest in the property; and

(B) With the consent of all persons holding security interests of record in the property.

(c) Provide that the seized property be removed to a storage area for safekeeping.

(5) Unless otherwise ordered by the court, the seizing agency shall hold the proceeds of the sale, leasing, renting or operation under subsection (4) of this section and the rights of holders of security interests of record in the property attach to the proceeds of the sale, leasing, renting or operation in the same order of priority as interests attached to the property.

(6)(a) Except as provided in paragraph (b) of this subsection and except for currency with apparent or known intrinsic collector value, all cash seized for criminal forfeiture, together with all cash received from the sale, leasing, renting or operation of the property, must be immediately deposited in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing agency exclusively for this purpose. Cash may be retained as evidence in a criminal proceeding but must be deposited immediately when the need to retain it as evidence is discharged.

(b) Notwithstanding paragraph (a) of this subsection, all cash seized for criminal forfeiture that at the time of seizure is deposited in any form of account in a financial institution may remain in the account in the financial institution. From the time of seizure until the criminal forfeiture proceeding is abandoned, or until a court ultimately enters a judgment granting or denying criminal forfeiture or enters a judgment of dismissal, all deposits except the deposit of interest by the financial institution, withdrawals or other transactions involving the account are prohibited, unless approved by the court.

(c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account or held in an account in a financial institution under this subsection must be disbursed as follows:

(A) If the criminal forfeiture proceeding is abandoned, or if the court ultimately enters a judgment denying criminal forfeiture or a judgment of dismissal, the seizing agency shall pay any interest earned, together with the cash deposited in the forfeiture trust account in connection with the seizure in question, to the person from whom it was seized, and the seizing agency shall release any interest earned, together with the cash deposited in an account in a financial institution, to the person from whom it was seized.

(B) If a judgment of criminal forfeiture is entered, but parties other than the seizing agency establish rights to portions of the amount that are in the aggregate larger than or equal to the cash on deposit plus interest earned thereon, the seizing agency shall disburse the interest, together with the cash on deposit, to the parties in the order of their priority.

(C) If a judgment of criminal forfeiture is entered and the total amount arising out of the seizure that is on deposit in the forfeiture trust account or in an account in a financial institution, including interest earned on moneys deposited, is greater than the aggregate

amount needed to satisfy the established interests of security interest holders, lienholders and other claimants, the seizing agency shall retain the balance remaining after payment by the seizing agency to parties.

(7) If the property seized for criminal forfeiture consists of stocks, bonds, promissory notes or other security or evidence of indebtedness, and the property is held in some form of account in a financial institution, the property may remain in the account pending a final decision in the criminal forfeiture proceedings. Unless otherwise allowed by order of the court, no transactions involving the account may be permitted other than the deposit or reinvestment of dividends or other normally recurring payments on the property. Any accrual to the value of the property during the pendency of criminal forfeiture proceedings must be disbursed in the manner provided for the disbursement of interest under subsection (6) of this section.

(8) When property has been seized for criminal forfeiture or a notice of criminal forfeiture has been filed, an owner of or interest holder in the property may file a motion seeking an order to show cause. The motion must be filed no later than 15 days after the owner or interest holder received notice or actual knowledge of the seizure, whichever is earlier. At the time a person files a motion under this subsection, the person must serve a copy of the motion on the forfeiture counsel and the defendant, if any. When a motion is filed under this subsection, the court shall issue an order to show cause to the seizing agency for a hearing on the sole issue of whether probable cause for criminal forfeiture of the property exists. If the court finds that there is no probable cause for criminal forfeiture of the property, the property seized for criminal forfeiture or subjected to the notice of criminal forfeiture must be released pending the outcome of a judicial proceeding under section 12 of this 2005 Act. As used in this subsection, "owner" or "interest holder" does not include the defendant.

**SECTION 7.** (1) Whenever a seizing agency intends to forfeit any real property under sections 1 to 18 of this 2005 Act, the seizing agency may have recorded by the county clerk or other recorder of deeds of every county in which any part of the premises or real property lies a notice of intent to forfeit real property under ORS 205.246. The notice must contain the legal description of the real property, the common address of the property, if any, and the name of the forfeiture counsel. From the time of recording the notice, and from that time only, the intent to forfeit is notice to purchasers and holders of encumbrances of the rights and equities in the premises of the party filing the notice. The notice must be recorded in the same book and in the same manner in which mortgages are recorded and may be discharged in like manner as mortgages are discharged, either by such party or the attorney signing the notice.

(2) Unless otherwise prescribed by law, a seizing agency recording a notice of intent to forfeit shall use substantially the following form:

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**NOTICE OF INTENT  
TO FORFEIT**

Pursuant to section 7 of this 2005 Act, the undersigned states:

That I, \_\_\_\_\_ do declare that it is my intent to initiate criminal forfeiture proceedings on the following described real property:

1. The description of the real property to be affected is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The common address of the property, if any, is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

This notice of intent to file forfeiture will expire on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, absent future filings.

Name of agency seeking forfeiture

\_\_\_\_\_

Name of Forfeiture Counsel

\_\_\_\_\_

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number

\_\_\_\_\_

State of Oregon            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires \_\_\_\_\_.

(3) The notice of intent to forfeit property expires 30 days after the date of filing absent future filings to perfect.

**SECTION 8.** (1) As soon as practicable after seizure for criminal forfeiture, the seizing agency shall review the inventory prepared by the police officer under section 5 of this 2005 Act. Within 30 days after seizure for criminal forfeiture, the forfeiture counsel shall file a criminal information or an indictment alleging facts sufficient to establish that the property is subject to criminal forfeiture. Within 30 days after seizure for criminal forfeiture, the seizing agency or forfeiture counsel shall prepare a notice of seizure for criminal forfeiture containing a copy of the inventory prepared pursuant to section 5 of this 2005 Act, the identity of the person from whom the property was seized, the name, address and telephone number of the seizing agency and the address and telephone number of the office or other place where further information concerning the seizure and criminal forfeiture may be obtained, and shall make reasonable efforts to serve the notice of seizure for criminal forfeiture on all persons, other than the defendant, known to have an interest in the seized property. A person may be served as provided in ORCP 7 D except that the notice must also include information regarding the right to file a claim under subsection (2) of this section, if applicable, and the deadline for filing the claim. If the property is cash in the amount of \$1,000 or less or if the fair market value of the property is \$1,000 or less, the seizing agency may publish notice of seizure for criminal forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d). In all other cases, the seizing agency shall publish notice of seizure for criminal forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d). The seizing

agency shall provide a copy of the notice, inventory and estimate of value to the forfeiture counsel.

(2) Except as otherwise provided in section 11 (1) to (3) of this 2005 Act, if notice of seizure for criminal forfeiture:

(a) Is given in a manner other than by publication, any person, other than the defendant, claiming an interest in the property must file a claim with the forfeiture counsel within 21 days after service of notice of seizure for criminal forfeiture.

(b) Is published, any person, other than the defendant, claiming an interest in the property must file a claim with the forfeiture counsel within 21 days after the last publication date.

(3) An extension for the filing of a claim under subsection (2) of this section may not be granted. The claim must be signed by the claimant under penalty of perjury and must set forth all of the following:

(a) The true name of the claimant;

(b) The address at which the claimant will accept future mailings from the court or the forfeiture counsel; and

(c) A statement that the claimant has an interest in the seized property.

(4) If a seizing agency publishes notice of seizure for criminal forfeiture in a newspaper in the manner provided by subsection (1) of this section, the agency may include in a single publication as many notices of criminal forfeiture as the agency considers convenient. The publication may contain a single statement of matters from the notices of criminal forfeiture that are common to all of the notices and that would otherwise result in needless repetition. The publication must contain for each notice of criminal forfeiture a separate copy of the inventory prepared pursuant to section 5 of this 2005 Act, and a separate statement of the identity of the person from whose custody the property was seized. The published inventory need not contain estimates of value for the property seized.

**SECTION 9.** (1) A person, other than the defendant, claiming an interest in property seized under sections 1 to 18 of this 2005 Act may file a petition for an expedited hearing within 15 days after notice of seizure for criminal forfeiture or within such further time as the court may allow for good cause shown.

(2) A petition for an expedited hearing must contain a claim if no claim has previously been filed. The petition must reflect whether the petitioner seeks one or more of the following:

(a) A determination at the hearing that the petitioner is a bona fide purchaser for value and did not acquiesce in the prohibited conduct.

(b) An order restoring custody of seized property to the petitioner during the pendency of the proceedings if the court finds, by a preponderance of the evidence, that it is probable that the property will remain available for forfeiture at the completion of the proceedings and that there is a reasonable possibility that the petitioner will ultimately prevail in the proceeding.

(c) Appointment of a receiver.

(3) A person filing a petition under this section shall serve a copy of the petition on all persons known to have an interest. Service must be accomplished as provided in ORCP 7 D. Service by publication is not required prior to an expedited hearing.

(4) The court shall hold a hearing within 15 days after service of all persons known to have an interest or at such later time as the court may allow for good cause shown. The hearing is limited to:

(a) Deciding whether the petitioner can prove that the petitioner is a bona fide purchaser for value and did not acquiesce in the prohibited conduct;

(b) Determining whether an order should be entered directing the return of the seized property to the claimant during the pendency of the hearing; and

(c) Determining whether an order should be entered directing the appointment of a receiver to manage property seized pursuant to sections 1 to 18 of this 2005 Act pending a final determination as to the disposition of the property, if the petitioner or the seizing agency requests that order.

(5) The parties to a proceeding under section 12 of this 2005 Act may at any time stipulate to the entry of an order restoring custody of seized property to a petitioner who claims an interest in the property. The order must comply with the requirements of section 10 (1) of this 2005 Act.

**SECTION 10.** (1) An order restoring custody to a petitioner under section 9 of this 2005 Act shall:

(a) Prohibit the petitioner from using the property in unlawful conduct of any kind, or from allowing the property to be used by any other person in unlawful conduct;

(b) Require the petitioner to service and maintain the property as may be reasonably appropriate to preserve the value of the property; and

(c) Require the petitioner to inform the court of the exact location of the property at the time of any judicial proceeding under section 12 of this 2005 Act and to deliver the property to the seizing agency immediately upon the issuance of a judgment of criminal forfeiture.

(2) An order restoring custody to a petitioner under section 9 of this 2005 Act may include such other requirements as the court finds appropriate pending a final determination as to the disposition of the property.

(3) An order restoring custody to a petitioner under section 9 of this 2005 Act is enforceable by a contempt proceeding brought on the relation of forfeiture counsel, by a further order directing the petitioner to deliver the property to the custody of the seizing agency, by an order awarding to the seizing agency its reasonably incurred attorney fees, costs and investigative expenses, and by such other remedies or relief as the court finds appropriate.

**SECTION 11.** (1)(a) A financial institution holding an interest in property seized under sections 1 to 18 of this 2005 Act shall respond to a notice of seizure for criminal forfeiture by filing an affidavit with the court establishing that the financial institution's interest in the property was acquired:

(A) In the regular course of business as a financial institution;

(B) For valuable consideration;

(C) Without knowledge of the prohibited conduct;

(D) In good faith and without intent to defeat the interest of any potential seizing agency; and

(E) With respect to personal property, prior to the seizure of the property, or with respect to real property, recorded prior to the recording of notice of the seizure of the real property in the mortgage records of the county in which the real property is located.

(b) Failure to file an affidavit constitutes a default. The affidavit must be filed within 30 days from the date of service under section 8 of this 2005 Act.

(2) Notwithstanding the provisions of subsection (1) of this section, any person, other than a financial institution, who transfers or conveys an interest in real property pursuant to a contract for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains an interest in the real property, or any successor in interest, may respond to a notice of seizure for criminal forfeiture by filing an affidavit with the court establishing that the person:

(a) Received the interest in return for valuable consideration or by way of devise or intestate succession;

(b) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

(c) Acted in good faith and without intent to defeat the interest of any potential seizing agency;

(d) Recorded the interest in the mortgage records of the county in which the real property is located prior to the recording of any notice of intent to seize or notice of seizure; and  
(e) Continued to hold the interest without acquiescing in the prohibited conduct.

(3) The affidavit permitted by subsection (2) of this section must be filed within 30 days from the date of service under section 8 of this 2005 Act. Failure to file an affidavit as set forth in subsection (2) of this section constitutes a default.

(4) In response to an affidavit filed under subsection (2) of this section, the seizing agency may controvert any or all of the assertions made in the affidavit. The affidavit of the seizing agency must be filed with the court within 20 days after the date the affidavit is filed under subsection (2) of this section. The transferor, conveyer or successor in interest may respond, within five days after the filing of the affidavit of the seizing agency, with a supplemental affidavit limited to the matters stated in the affidavit of the seizing agency. If the seizing agency does not file an affidavit within the time allowed, the transferor, conveyer or successor in interest is considered to be a financial institution for all purposes under sections 1 to 18 of this 2005 Act.

(5) If the seizing agency files an affidavit under subsection (4) of this section, the court shall decide the issues raised in the affidavit in a proceeding under section 12 of this 2005 Act.

**SECTION 12.** (1) If a district attorney decides to proceed with a criminal forfeiture, the district attorney must present the criminal forfeiture to the grand jury for indictment. The indictment must allege facts sufficient to establish that the property is subject to criminal forfeiture and must comply with ORS 132.510, 132.540, 132.550, 132.557, 132.560 and 132.580.

(2) If the grand jury returns an indictment for criminal forfeiture, the defendant may admit or deny that the property is subject to criminal forfeiture. If the defendant fails to admit or deny that the property is subject to forfeiture, the court shall enter a denial on behalf of the defendant.

(3) When the underlying criminal conduct is a Class A misdemeanor, a city or county attorney may prosecute a criminal forfeiture by filing an information in the municipal or justice court.

(4) A criminal forfeiture proceeding and the underlying criminal case must be tried in the same proceeding.

(5) The criminal procedure laws of this state apply to criminal forfeiture proceedings.

(6) The court shall enter a judgment of criminal forfeiture if the forfeiture counsel proves beyond a reasonable doubt that the property for which forfeiture is sought is an instrumentality or the proceeds of the crime of conviction or past prohibited conduct that is similar to the crime of conviction.

(7) Forfeiture counsel may move the court at any time for an order finding that the defendant is a fugitive and in default. The court may enter an order finding the defendant in default under this subsection and enter a judgment of criminal forfeiture if the court finds that the defendant is not confined or held in custody by another jurisdiction, and that the defendant, after notice or knowledge of the fact that a warrant has been issued for the defendant:

- (a) Purposely left the state to avoid prosecution;
- (b) Declines to return to the state and allow execution of the warrant; or
- (c) Otherwise evades the jurisdiction of the court issuing the warrant.

(8) No later than 21 days after the entry of a judgment of criminal forfeiture under this section, the forfeiture counsel shall notify by mail all persons who filed claims under section 8 of this 2005 Act or affidavits under section 11 of this 2005 Act of the judgment of criminal forfeiture. The notice must inform the person of the requirements of subsection (9) of this section.

(9) If a person who receives notice under subsection (8) of this section wishes to assert the person's interest in the property but was not eligible to file an affidavit under section

11 of this 2005 Act, the person must file an affidavit with the trial court, and must serve the forfeiture counsel with a copy of the affidavit, no later than 21 days after the date the notice required by subsection (8) of this section was mailed. The person must allege facts in an affidavit filed under this subsection that if true would prove that the person took the property or the interest that the person holds in the property:

(a)(A) Before it was seized for criminal forfeiture; and

(B) In good faith and without intent to defeat the interest of any seizing agency; or

(b) As a bona fide purchaser for value without acquiescing in the prohibited conduct.

(10)(a) If an affidavit is timely filed under subsection (9) of this section and the forfeiture counsel:

(A) Does not contest the affidavit, the forfeiture counsel shall submit a form of judgment to the court for entry under section 14 of this 2005 Act.

(B) Does contest the affidavit, the forfeiture counsel shall request a hearing with the trial court no later than 21 days after receiving the affidavit.

(b) If no affidavit is filed under subsection (9) of this section but the seizing agency filed an affidavit under section 11 (4) of this 2005 Act, the forfeiture counsel shall request a hearing with the trial court no later than 21 days after the last date for receiving affidavits under subsection (9) of this section.

(11)(a) A hearing pursuant to subsection (10) of this section is an ancillary proceeding and the Oregon Rules of Civil Procedure apply. At the hearing:

(A) Forfeiture counsel has the burden of proving by a preponderance of the evidence that the person claiming an interest in the property:

(i) Took the property with the intent to defeat the interest of a seizing agency; or

(ii) Is not a bona fide purchaser for value or acquiesced in the prohibited conduct.

(B) Forfeiture counsel may present evidence and witnesses and cross-examine witnesses who appear at the hearing.

(C) The person claiming an interest in the property may testify, present evidence and witnesses and cross-examine witnesses who appear at the hearing.

(b) In addition to testimony and evidence presented at the hearing, the court shall consider relevant portions of the record of the criminal case that resulted in the judgment of criminal forfeiture.

(c) The court shall amend the judgment of criminal forfeiture in accordance with its determination if, after the hearing, the court determines that the claimant:

(A) Did take the property before it was seized for criminal forfeiture and in good faith and without intent to defeat the interest of the seizing agency; or

(B) Is a bona fide purchaser for value of the right, title or interest in the property and did not acquiesce in the prohibited conduct.

(d) Notwithstanding ORS 19.255 (1), a person may file a notice of appeal within 30 days after entry in the register of an order disposing of the matters at issue in the ancillary proceeding. An appeal under this paragraph is governed by the provisions of ORS chapter 19 relating to appeals in civil actions.

(12) When a court enters a judgment of criminal forfeiture under this section, the jurisdiction of the court continues for purposes of subsection (11) of this section and the property continues to be subject to the court's jurisdiction.

**SECTION 13.** (1) The court shall enter judgment to the extent that the property is proceeds of the crime of conviction or of past prohibited conduct that is similar to the crime of conviction.

(2) With respect to property that is an instrumentality of the crime of conviction or of past prohibited conduct that is similar to the crime of conviction, the court shall consider:

(a) Whether the property constitutes the defendant's lawful livelihood or means of earning a living.

(b) Whether the property is the defendant's residence.

(c) The degree of relationship between the property and the prohibited conduct, including the extent to which the property facilitated the prohibited conduct or could facilitate future prohibited conduct.

(d) The monetary value of the property in relation to the risk of injury to the public from the prohibited conduct.

(e) The monetary value of the property in relation to the actual injury to the public from the prohibited conduct.

(f) The monetary value of the property in relation to objective measures of the potential or actual criminal culpability of the person or persons engaging in the prohibited conduct, including:

(A) The inherent gravity of the prohibited conduct;

(B) The potential sentence for similar prohibited conduct under Oregon law;

(C) The defendant's prior criminal history; and

(D) The sentence actually imposed on the defendant.

(g) Any additional relevant evidence.

**SECTION 14.** (1) If no financial institution has filed the affidavit described in section 11 (1) of this 2005 Act, and if the court has failed to uphold the claim or affidavit of any other person claiming an interest in the property, the effect of the judgment is that:

(a) Title to the property passes to the seizing agency free of any interest or encumbrance thereon in favor of any person who has been given notice;

(b) The seizing agency may transfer good and sufficient title to any subsequent purchaser or transferee, and all courts, the state and the departments and agencies of this state, and any political subdivision shall recognize the title. In the case of real property, the seizing agency shall warrant the title against constitutional defect. A warranty under this paragraph is limited to the purchase price of the real property; and

(c) Any department, agency or officer of this state or any political subdivision whose official functions include the issuance of certificates or other evidence of title is immune from civil or criminal liability when such issuance is pursuant to a judgment of criminal forfeiture.

(2) If an affidavit is filed by a financial institution under section 11 (1) of this 2005 Act, or if a person files an affidavit under section 11 (2) of this 2005 Act:

(a) The court shall foreclose all security interests, liens and vendor's interests of financial institutions and claimants as to which the court determines that there is a legal or equitable basis for foreclosure; and

(b) All other interests applicable to the property that are not foreclosed or otherwise eliminated through a judgment of foreclosure, if and to the extent that they are valid and subsisting, remain in effect and the property remains subject to them upon completion of the criminal forfeiture proceeding.

(3) Notwithstanding any other provision of law, if a financial institution or other person has filed an affidavit described in section 11 of this 2005 Act, or if the court has upheld the claim of any claimant, then as to each item of property seized:

(a) If the court has determined that the property should not be forfeited and has not foreclosed the security interests, liens or other interests covering the property, the court shall render judgment in favor of the owner of the property, the property must be returned to the owner and all security interests, liens and other interests applicable to the property remain in effect as though the property had never been seized. Upon the return of the property to the owner, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure.

(b) If the court has determined that the property should not be forfeited and has foreclosed one or more interests covering the property, including security interests or liens covering the property or contracts for the transfer or conveyance of the property, the seiz-

ing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court within such time as may be prescribed by the court following entry of the judgment. If any interests covering the property have not been foreclosed, including any liens or security interests of a claimant whose claim has been upheld, or of a financial institution that has filed the affidavit described in section 11 of this 2005 Act, the property must be sold subject to those interests. The judgment shall order the proceeds of the sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their priority; and

(C) The excess, if any, to the owner of the property.

(c) If the court has determined that the property should be forfeited and has foreclosed one or more security interests, liens, contracts or other interests covering the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed by a financial institution or other claimant and the interest was upheld but not foreclosed, the property must be sold subject to the interest. The sale of the property must be held within such time as may be prescribed by the court following entry of the judgment. The judgment shall also order the proceeds of such sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in the order of their priority; and

(C) The excess, if any, to the seizing agency to be disposed of as provided in section 16 or 17 of this 2005 Act.

(d) If the court has determined that the property should be forfeited and has not foreclosed the interests of any party in the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure. The court shall enter a judgment awarding the property to the seizing agency, subject to the interests of any claimants whose claims or affidavits were upheld by the court, and subject to the interests of any financial institutions that filed affidavits under section 11 (1) of this 2005 Act, that remain in full force and effect.

(4) The court may include in the judgment of criminal forfeiture an order that directs the seizing agency to distribute to the victim of the crime of conviction a portion of any proceeds from property received by the seizing agency if:

(a) The crime of conviction was a person felony or person Class A misdemeanor as those terms are defined by rule of the Oregon Criminal Justice Commission; and

(b) The court included an order of restitution in the criminal judgment.

(5) The seizing agency is not liable to any person as a consequence of obedience to a judgment directing conveyance to a financial institution.

(6) The forfeiture counsel shall send a copy of the judgment to the Asset Forfeiture Oversight Advisory Committee.

(7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under sections 1 to 18 of this 2005 Act, unless the court has foreclosed one or more security interests, liens or other interests covering the property, the property or interest in property must be returned or conveyed immediately to the claimant designated by the court.

(b) If it appears that there was reasonable suspicion that the property was subject to criminal forfeiture, the court shall cause a finding to be entered and no claimant or financial institution is entitled to damages nor is the person who made the seizure, the seizing agency or forfeiture counsel liable to suit or judgment on account of the seizure or action. An order directing seizure issued under section 5 of this 2005 Act constitutes a finding of reasonable suspicion that the property was subject to criminal forfeiture.

(8) Nothing in this section prevents a claimant or financial institution from obtaining any deficiency to which the claimant or financial institution would otherwise be entitled.

(9) Nothing in this section or in section 6 of this 2005 Act prevents a seizing agency from entering into an agreement with a claimant or other person for the reimbursement of the seizing agency for the costs and expenses relating to towing and storage of property or the cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property in the period between the seizure of the property and the release or criminal forfeiture of the property.

**SECTION 15.** Distribution of property or proceeds in accordance with sections 1 to 18 of this 2005 Act must be made equitably and may be made pursuant to intergovernmental agreement under ORS chapter 190. Intergovernmental agreements providing for such distributions and in effect on the effective date of this 2005 Act remain valid unless changed by the parties. The equitable distribution of proceeds targeted for law enforcement must involve sharing the proceeds between the seizing agency and forfeiture counsel.

**SECTION 16.** (1) After the seizing agency distributes property under section 14 of this 2005 Act, and when the seizing agency is not the state, the seizing agency shall dispose of and distribute property as follows:

(a) The seizing agency shall pay costs first from the property or its proceeds. As used in this subsection, "costs" includes the expenses of publication, service of notices, towing, storage and servicing or maintaining the seized property under section 6 of this 2005 Act.

(b) After costs have been paid, the seizing agency shall distribute to the victim any amount the seizing agency was ordered to distribute under section 14 (4) of this 2005 Act.

(c) After costs have been paid and distributions under paragraph (b) of this subsection have been made, the seizing agency shall distribute the rest of the property to the general fund of the political subdivision that operates the seizing agency.

(2) Of the property distributed under subsection (1)(c) of this section, the political subdivision shall distribute:

(a) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;

(b) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 for the purposes specified in ORS 475.495 (5); and

(c) Ten percent to the state General Fund.

(3) Of the property distributed under subsection (1)(c) of this section that remains in the general fund of the political subdivision after the distributions required by subsection (2) of this section have been made:

(a) Fifty percent must be for official law enforcement use; and

(b) Fifty percent must be used for substance abuse treatment pursuant to a plan developed under section 43 of this 2005 Act.

(4) Except as otherwise provided by intergovernmental agreement, the seizing agency may:

(a) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law enforcement agency or district attorney.

(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain the property.

(d) With written authorization from the district attorney for the seizing agency's jurisdiction, destroy any firearms or controlled substances.

(5) A political subdivision may sell as much property as may be needed to make the distributions required by subsections (1) and (2) of this section. A political subdivision shall make distributions to the Asset Forfeiture Oversight Account, the Illegal Drug Cleanup Fund and the state General Fund that are required by subsection (2) of this section once every three months. The distributions are due within 20 days of the end of each quarter. Interest does not accrue on amounts that are paid within the period specified by this subsection.

(6) A seizing agency may donate growing equipment and laboratory equipment that was used, or intended for use, in manufacturing of controlled substances to a public school, community college or state institution of higher education.

(7) This section applies only to criminal forfeiture proceeds arising out of prohibited conduct.

**SECTION 17.** (1) After the seizing agency distributes property under section 14 of this 2005 Act, and when the seizing agency is the state or when the state is the recipient of property forfeited under sections 1 to 18 of this 2005 Act, the seizing agency shall dispose of and distribute property as follows:

(a) The seizing agency shall pay costs first from the property or its proceeds. As used in this subsection, "costs" includes the expenses of publication, service of notices, towing, storage and servicing or maintaining the seized property under section 6 of this 2005 Act.

(b) After costs have been paid, the seizing agency shall distribute to the victim any amount the seizing agency was ordered to distribute under section 14 (4) of this 2005 Act.

(c) Of the property remaining after costs have been paid under paragraph (a) of this subsection and distributions have been made under paragraph (b) of this subsection, the seizing agency shall distribute:

(A) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;

(B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 for the purposes specified in ORS 475.495 (5);

(C) Ten percent to the state General Fund;

(D) Subject to subsection (5) of this section, 40 percent to the Department of State Police or the Department of Justice for official law enforcement use; and

(E) Forty percent to the Drug Prevention and Education Fund established in section 46 of this 2005 Act.

(2)(a) Any amount paid to or retained by the Department of Justice under subsection (1) of this section must be deposited in the Criminal Justice Revolving Account in the State Treasury.

(b) Any amount paid to or retained by the Department of State Police under subsection (1) of this section must be deposited in the State Police Account.

(3) The state may:

(a) With written authorization from the district attorney for the jurisdiction in which the property was seized, destroy any firearms or controlled substances.

(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain any vehicles, firearms or other equipment usable for law enforcement purposes, for official law enforcement use directly by the state.

(d) Lend or transfer any vehicles, firearms or other equipment usable for law enforcement purposes to any federal, state or local law enforcement agency or district attorney for official law enforcement use directly by the transferee entity.

(4) When the state has entered into an intergovernmental agreement with one or more political subdivisions under section 15 of this 2005 Act, or when a law enforcement agency of this state has entered into an agreement with another law enforcement agency of this state, an equitable portion of the forfeited property distributed under subsection (1)(c)(D) of

this section must be distributed to each agency participating in the seizure or criminal forfeiture as provided by the agreement.

(5) The property distributed under subsection (1)(c)(D) of this section, including any proceeds received by the state under an intergovernmental agreement or under an agreement between state law enforcement agencies, must be divided as follows:

(a) When no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, or when the Department of Justice has entered into an agreement under subsection (4) of this section, the property must be deposited in the Criminal Justice Revolving Account.

(b) When no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, or when the Department of State Police has entered into an agreement under subsection (4) of this section, the property must be deposited in the State Police Account.

(6) The seizing agency may sell as much property as may be needed to make the distributions required by subsection (1) of this section. The seizing agency shall make distributions to the Asset Forfeiture Oversight Account and the Illegal Drug Cleanup Fund that are required by subsection (1) of this section once every three months. The distributions are due within 20 days of the end of each quarter. Interest does not accrue on amounts that are paid within the period specified by this subsection.

**SECTION 18.** (1) A seizing agency and any agency that receives forfeited property or proceeds from the sale of forfeited property under sections 1 to 18 of this 2005 Act shall maintain written documentation of each sale, decision to retain, transfer or other disposition of forfeited property.

(2) Forfeiture counsel shall report each criminal forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of criminal forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under section 14 of this 2005 Act. The committee shall develop and make available forms for the purpose of reporting criminal forfeitures.

(3) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (2) of this section.

(4) Political subdivisions of this state that receive forfeiture proceeds under section 16 of this 2005 Act shall submit a report to the committee for any year in which those proceeds are received. The committee shall develop and make available forms for the purpose of those reports. The forms must require the political subdivision to report how proceeds received by the political subdivision have been or will be used and any other information requested by the committee. A political subdivision shall submit a report required by this subsection by December 15 for the last ending fiscal year of the political subdivision.

**SECTION 19.** The crimes to which section 1 (11)(b) of this 2005 Act applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Custodial interference in the second degree, as defined in ORS 163.245.
- (9) Custodial interference in the first degree, as defined in ORS 163.257.
- (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

- (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (16) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- (17) Theft in the second degree, as defined in ORS 164.045.
- (18) Theft in the first degree, as defined in ORS 164.055.
- (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- (20) Theft by extortion, as defined in ORS 164.075.
- (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- (26) Laundering a monetary instrument, as defined in ORS 164.170.
- (27) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.
- (28) Burglary in the second degree, as defined in ORS 164.215.
- (29) Burglary in the first degree, as defined in ORS 164.225.
- (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- (32) Arson in the second degree, as defined in ORS 164.315.
- (33) Arson in the first degree, as defined in ORS 164.325.
- (34) Computer crime, as defined in ORS 164.377.
- (35) Robbery in the third degree, as defined in ORS 164.395.
- (36) Robbery in the second degree, as defined in ORS 164.405.
- (37) Robbery in the first degree, as defined in ORS 164.415.
- (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- (41) A violation of ORS 164.877.
- (42) Endangering aircraft, as defined in ORS 164.885.
- (43) Interference with agricultural operations, as defined in ORS 164.887.
- (44) Forgery in the second degree, as defined in ORS 165.007.
- (45) Forgery in the first degree, as defined in ORS 165.013.
- (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- (49) Criminal simulation, as defined in ORS 165.037.
- (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- (52) Negotiating a bad check, as defined in ORS 165.065.
- (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- (55) Falsifying business records, as defined in ORS 165.080.
- (56) Sports bribery, as defined in ORS 165.085.
- (57) Sports bribe receiving, as defined in ORS 165.090.

- (58) Misapplication of entrusted property, as defined in ORS 165.095.
- (59) Issuing a false financial statement, as defined in ORS 165.100.
- (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- (61) A violation of ORS 165.543.
- (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (65) Identity theft, as defined in ORS 165.800.
- (66) A violation of ORS 166.190.
- (67) Unlawful use of a weapon, as defined in ORS 166.220.
- (68) A violation of ORS 166.240.
- (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- (70) A violation of ORS 166.270.
- (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (72) A violation of ORS 166.275.
- (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (74) A violation of ORS 166.370.
- (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- (78) A violation of ORS 166.410.
- (79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (80) Improperly transferring a firearm, as defined in ORS 166.418.
- (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (82) A violation of ORS 166.429.
- (83) A violation of ORS 166.470.
- (84) A violation of ORS 166.480.
- (85) A violation of ORS 166.635.
- (86) A violation of ORS 166.638.
- (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- (88) A violation of ORS 166.720.
- (89) Prostitution, as defined in ORS 167.007.
- (90) Promoting prostitution, as defined in ORS 167.012.
- (91) Compelling prostitution, as defined in ORS 167.017.
- (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (97) Possession of a gambling device, as defined in ORS 167.147.
- (98) Possession of a gray machine, as defined in ORS 167.164.
- (99) Cheating, as defined in ORS 167.167.
- (100) Tampering with drug records, as defined in ORS 167.212.
- (101) A violation of ORS 167.262.
- (102) Research and animal interference, as defined in ORS 167.312.
- (103) Animal abuse in the first degree, as defined in ORS 167.320.
- (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (105) Animal neglect in the first degree, as defined in ORS 167.330.
- (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.

- (107) Involvement in animal fighting, as defined in ORS 167.355.
- (108) Dogfighting, as defined in ORS 167.365.
- (109) Participation in dogfighting, as defined in ORS 167.370.
- (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (111) Interference with livestock production, as defined in ORS 167.388.
- (112) A violation of ORS 167.390.
- (113) A violation of ORS 471.410.
- (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- (115) Illegally selling drug equipment, as defined in ORS 475.960.
- (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- (120) A violation of ORS 475.994.
- (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.999 (1), if the violation is a felony.
- (123) Misuse of an identification card, as defined in ORS 807.430.
- (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.
- (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- (126) Using an invalid license, as defined in ORS 807.580.
- (127) Permitting misuse of a license, as defined in ORS 807.590.
- (128) Using another's license, as defined in ORS 807.600.
- (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.
- (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.
- (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- (132) A violation of ORS 180.440 (2).
- (133) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (132) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

**SECTION 19a.** If Senate Bill 907 becomes law, section 19 of this 2005 Act is amended to read:

**Sec. 19.** The crimes to which section 1 (11)(b) of this 2005 Act applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Custodial interference in the second degree, as defined in ORS 163.245.
- (9) Custodial interference in the first degree, as defined in ORS 163.257.
- (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.

- (16) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- (17) Theft in the second degree, as defined in ORS 164.045.
- (18) Theft in the first degree, as defined in ORS 164.055.
- (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- (20) Theft by extortion, as defined in ORS 164.075.
- (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- (26) Laundering a monetary instrument, as defined in ORS 164.170.
- (27) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.
- (28) Burglary in the second degree, as defined in ORS 164.215.
- (29) Burglary in the first degree, as defined in ORS 164.225.
- (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- (32) Arson in the second degree, as defined in ORS 164.315.
- (33) Arson in the first degree, as defined in ORS 164.325.
- (34) Computer crime, as defined in ORS 164.377.
- (35) Robbery in the third degree, as defined in ORS 164.395.
- (36) Robbery in the second degree, as defined in ORS 164.405.
- (37) Robbery in the first degree, as defined in ORS 164.415.
- (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- (41) A violation of ORS 164.877.
- (42) Endangering aircraft, as defined in ORS 164.885.
- (43) Interference with agricultural operations, as defined in ORS 164.887.
- (44) Forgery in the second degree, as defined in ORS 165.007.
- (45) Forgery in the first degree, as defined in ORS 165.013.
- (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- (49) Criminal simulation, as defined in ORS 165.037.
- (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- (52) Negotiating a bad check, as defined in ORS 165.065.
- (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- (55) Falsifying business records, as defined in ORS 165.080.
- (56) Sports bribery, as defined in ORS 165.085.
- (57) Sports bribe receiving, as defined in ORS 165.090.
- (58) Misapplication of entrusted property, as defined in ORS 165.095.
- (59) Issuing a false financial statement, as defined in ORS 165.100.
- (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- (61) A violation of ORS 165.543.
- (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (65) Identity theft, as defined in ORS 165.800.

- (66) A violation of ORS 166.190.
- (67) Unlawful use of a weapon, as defined in ORS 166.220.
- (68) A violation of ORS 166.240.
- (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- (70) A violation of ORS 166.270.
- (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (72) A violation of ORS 166.275.
- (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (74) A violation of ORS 166.370.
- (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- (78) A violation of ORS 166.410.
- (79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (80) Improperly transferring a firearm, as defined in ORS 166.418.
- (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (82) A violation of ORS 166.429.
- (83) A violation of ORS 166.470.
- (84) A violation of ORS 166.480.
- (85) A violation of ORS 166.635.
- (86) A violation of ORS 166.638.
- (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- (88) A violation of ORS 166.720.
- (89) Prostitution, as defined in ORS 167.007.
- (90) Promoting prostitution, as defined in ORS 167.012.
- (91) Compelling prostitution, as defined in ORS 167.017.
- (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (97) Possession of a gambling device, as defined in ORS 167.147.
- (98) Possession of a gray machine, as defined in ORS 167.164.
- (99) Cheating, as defined in ORS 167.167.
- (100) Tampering with drug records, as defined in ORS 167.212.
- (101) A violation of ORS 167.262.
- (102) Research and animal interference, as defined in ORS 167.312.
- (103) Animal abuse in the first degree, as defined in ORS 167.320.
- (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (105) Animal neglect in the first degree, as defined in ORS 167.330.
- (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (107) Involvement in animal fighting, as defined in ORS 167.355.
- (108) Dogfighting, as defined in ORS 167.365.
- (109) Participation in dogfighting, as defined in ORS 167.370.
- (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (111) Interference with livestock production, as defined in ORS 167.388.
- (112) A violation of ORS 167.390.
- (113) A violation of ORS 471.410.
- (114) Failure to report missing precursor substances, as defined in ORS 475.955.

- (115) Illegally selling drug equipment, as defined in ORS 475.960.
- (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- (120) A violation of ORS 475.994.
- (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.999 (2) [(1), if the violation is a felony].
- (123) Misuse of an identification card, as defined in ORS 807.430.
- (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.
- (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- (126) Using an invalid license, as defined in ORS 807.580.
- (127) Permitting misuse of a license, as defined in ORS 807.590.
- (128) Using another's license, as defined in ORS 807.600.
- (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.
- (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.
- (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- (132) A violation of ORS 180.440 (2).

**(133) A violation described in sections 14 to 38, chapter \_\_\_, Oregon Laws 2005 (Enrolled Senate Bill 907), if it is a felony.**

[(133)] (134) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to [(132)] (133) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

**SECTION 20.** ORS 133.643, as amended by section 23, chapter 666, Oregon Laws 2001, is amended to read:

133.643. A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

- (1) The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor;
- (2) The things seized were not in fact subject to seizure under ORS 133.525 to 133.703 **or sections 1 to 18 of this 2005 Act**;
- (3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure under ORS 133.525 to 133.703;
- (4) Although the things seized were subject to seizure under ORS 133.525 to 133.703, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or
- (5) The parties in the case have stipulated that the things seized may be returned to the movant.

**SECTION 21.** ORS 137.138, as amended by section 39, chapter 666, Oregon Laws 2001, is amended to read:

137.138. (1) In addition to and not in lieu of any other sentence it may impose, a court shall require a defendant convicted under ORS 164.365, 166.663, 167.315, [167.320, 167.322,] 498.056 or 498.146 or other state, county or municipal laws, for an act involving or connected with injuring, damaging, mistreating or killing a livestock animal, to forfeit any rights in weapons used in connection with the act underlying the conviction.

(2) In addition to and not in lieu of any other sentence it may impose, a court shall revoke any hunting license possessed by a defendant convicted as described in subsection (1) of this section.

(3) The State Fish and Wildlife Director shall refuse to issue a hunting license to a defendant convicted as described under subsection (1) of this section for a period of two years following the conviction.

(4) As used in this section, "livestock animal" has the meaning given in ORS 164.055.

**SECTION 22.** ORS 164.864, as amended by section 42, chapter 666, Oregon Laws 2001, is amended to read:

164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873[,] **and** 164.875 [*and* 164.879] and this section, unless the context requires otherwise:

(1) "Commercial enterprise" means a business operating in intrastate or interstate commerce for profit. "Commercial enterprise" does not include:

- (a) Activities by schools, libraries or religious organizations;
- (b) Activities incidental to a bona fide scholastic or critical endeavor;
- (c) Activities incidental to the marketing or sale of recording devices; and
- (d) Activities involving the recording of school or religious events or activities.

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration.

(3) "Live performance" means a recitation, rendering or playing of musical instruments or vocal arrangements in an audible sequence in a public performance.

(4) "Manufacturer" means the entity authorizing the duplication of a specific recording, but shall not include the manufacturer of the cartridge or casing itself.

(5) "Master recording" means the master disk, master tape, master film or other device used for reproducing recorded sound from which a sound recording is directly or indirectly derived.

(6) "Motion picture" includes any motion picture, regardless of length or content, that is exhibited in a motion picture theater to paying customers, exhibited on television to paying customers or under the sponsorship of a paying advertiser or produced and exhibited for scientific research or educational purposes. "Motion picture" does not include motion pictures exhibited at home or movies or amateur films that are shown free or at cost to friends, neighbors or civic groups.

(7) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disk, master tape, master film or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(8) "Recording" means a tangible medium on which information, sounds or images, or any combination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an original phonograph record, disk, tape, audio or video cassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(9) "Sound recording" means any reproduction of a master recording.

(10) "Videotape" means a reel of tape upon which a motion picture is electronically or magnetically imprinted by means of an electronic video recorder and which may be used in video playback equipment to project or display the motion picture on a television screen.

**SECTION 23.** ORS 164.866, as amended by section 43, chapter 666, Oregon Laws 2001, is amended to read:

164.866. Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873[,] **or** 164.875 [*or* 164.879] or this section limits or impairs the right of a person injured by the criminal acts of a defendant to sue and recover damages from the defendant in a civil action.

**SECTION 24.** ORS 166.279 is amended to read:

166.279. (1) **Except as provided in subsection (4) of this section, sections 1 to 18 of this 2005 Act do not apply to the forfeiture of a firearm or other deadly weapon that was possessed, used or available for use to facilitate a criminal offense.**

[(1)] (2) Except as provided in subsection [(2)] (3) of this section, at the time of sentencing for any criminal offense in which a firearm or other deadly weapon was possessed, used or available for use to facilitate the offense, the court shall declare the weapon to be contraband and order that the weapon be forfeited.

[2] (3) If a firearm or other deadly weapon that was possessed, used or available for use to facilitate a criminal offense was stolen from its lawful owner and was recovered from a person other than the lawful owner, the court may not order that the weapon be forfeited but shall order that the weapon be restored to the lawful owner as soon as the weapon is no longer needed for evidentiary purposes.

[3] *The court shall release a firearm or other deadly weapon forfeited under subsection (1) of this section to the law enforcement agency that seized the weapon. The law enforcement agency may destroy or sell the weapon, use the weapon as a service weapon or use the weapon for training, identification or demonstration purposes. When a weapon is sold pursuant to this subsection, the law enforcement agency shall pay the proceeds from the sale, less the costs of the sale, as follows:*

[a] *When the seizing agency is not the state:*

[A] *Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;*

[B] *Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;*

[C] *Ten percent to the state General Fund;*

[D] *Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS 430.380; and*

[E] *Forty percent to the general fund of the political subdivision that operates the law enforcement agency, to be used for law enforcement purposes; or*

[b] *When the seizing agency is the state:*

[A] *Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;*

[B] *Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;*

[C] *Ten percent to the state General Fund;*

[D] *Forty percent to be distributed equitably between the agencies that participated in the seizure, to be used by those agencies for law enforcement purposes; and*

[E] *Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS 430.380.]*

**(4) The court shall release a firearm or other deadly weapon forfeited under subsection (2) of this section to the law enforcement agency that seized the weapon. The law enforcement agency may destroy or sell the weapon, use the weapon as a service weapon or use the weapon for training, identification or demonstration purposes. When a weapon is sold pursuant to this subsection, the law enforcement agency shall pay the proceeds from the sale, less the costs of the sale, as provided in sections 16 and 17 of this 2005 Act.**

[4] (5) As used in this section, “deadly weapon” has the meaning given that term in ORS 161.015.

**NOTE:** Sections 25 through 26 were deleted by amendment. Subsequent sections were not re-numbered.

**SECTION 27.** ORS 166.660, as amended by section 38, chapter 666, Oregon Laws 2001, is amended to read:

166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer’s official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful

activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony. [*In addition to any other penalty imposed pursuant to this section, the court may order forfeited to the State of Oregon for the benefit of the Common School Fund any firearm or explosive or incendiary device used in any activity in violation of this section.*]

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless black powder and which is readily capable of use as a weapon.

(c) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(d) "Law enforcement officer" means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties.

**SECTION 28.** ORS 167.350, as amended by section 14b, chapter 926, Oregon Laws 2001, is amended to read:

167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may require a defendant convicted under ORS 167.315 to 167.333 or 167.340 to forfeit any rights of the defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to the violation.

(2) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection does not limit the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership.

(3) In addition to and not in lieu of any other sentence it may impose, a court may order the owner or person having custody of an animal to repay the reasonable costs incurred by any person or agency in providing minimum care to the animal.

(4) A court may order a person convicted under ORS 167.315 to 167.333 or 167.340 to participate in available animal cruelty prevention programs or education programs, or both, or to obtain psychological counseling for treatment of mental health disorders that, in the court's judgment, contributed to the commission of the crime. The person shall bear any costs incurred by the person for participation in counseling or treatment programs under this subsection.

**(5) Sections 1 to 18 of this 2005 Act do not apply to the forfeiture of an animal subjected to a violation of ORS 167.315 to 167.333 or 167.340. Any such animal is subject to forfeiture as provided in subsections (1) to (3) of this section.**

**SECTION 29.** Section 16a, chapter 801, Oregon Laws 2003, is amended to read:

**Sec. 16a.** Notwithstanding sections 16 and 17[, *chapter 666, Oregon Laws 2001*] **of this 2005 Act**, if property forfeited under sections 1 to 18[, *chapter 666, Oregon Laws 2001,*] **of this 2005 Act** consists of cigarettes forfeited because of a violation of [*section 11 (2) of this 2003 Act*] **ORS 180.440 (2)**, the seizing agency shall destroy the cigarettes.

## STANDARD OF PROOF IN CIVIL FORFEITURE

**SECTION 30.** ORS 475A.080, as amended by section 9a, chapter 780, Oregon Laws 2001, is amended to read:

475A.080. [*In all actions brought for forfeiture, the burden of persuasion shall lie upon the claimant, provided that probable cause to believe that the property is subject to forfeiture shall first be shown by the forfeiting agency.*]

**(1) Except as provided in subsection (2) of this section, in all civil forfeiture actions the forfeiting agency must prove that the claimant of the property has been convicted of a crime that constitutes prohibited conduct, and that the property to be forfeited is:**

**(a) Proceeds of the crime for which the claimant has been convicted;**

**(b) Instrumental in committing or facilitating the crime for which the claimant has been convicted;**

**(c) Proceeds of one or more other crimes similar to the crime for which the claimant was convicted; or**

**(d) Instrumental in committing or facilitating one or more other crimes similar to the crime for which the claimant was convicted.**

**(2) A forfeiting agency may bring an action for civil forfeiture of property of a claimant who has not been convicted of a crime if the forfeiting agency proves all elements of subsection (1) of this section with respect to another person and:**

**(a) That the claimant took the property with the intent to defeat forfeiture of the property;**

**(b) That the claimant knew or should have known that the property was proceeds of prohibited conduct; or**

**(c) That the claimant acquiesced in the prohibited conduct.**

**(3) If the property to be forfeited in a civil forfeiture action is personal property, the forfeiting agency must prove the elements specified in subsection (1) or (2) of this section by a preponderance of the evidence. If the property to be forfeited in a civil forfeiture action is real property, the forfeiting agency must prove the elements specified in subsection (1) or (2) of this section by clear and convincing evidence.**

**(4) For the purposes of subsection (2)(c) of this section, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and failed to take reasonable action under the circumstances to terminate the prohibited conduct or prevent use of the seized property to facilitate the prohibited conduct.**

**SECTION 31.** ORS 475A.035, as amended by section 5a, chapter 780, Oregon Laws 2001, is amended to read:

475A.035. Property may be seized for forfeiture as provided in this section.

**(1) Any person who delivers property in obedience to an order or direction to deliver the property under this section shall not be liable:**

**(a) To any person on account of obedience to the order or direction; or**

**(b) For any costs incurred on account of any contamination of the delivered property. This includes, but is not limited to, any disposal costs for any property forfeited under ORS 475A.020, any**

hazardous waste or material, any contraband or any other contamination contained in property seized under this section.

(2) Property may be seized by any police officer without a court order if:

(a) The property has been the subject of an earlier judgment in favor of any forfeiting agency in an earlier civil in rem proceeding under this chapter;

(b) There is probable cause to believe that property is subject to forfeiture, provided that the property may constitutionally be seized without a warrant;

(c) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or search, and there is probable cause to believe that the property is subject to forfeiture;

(d) The property is directly or indirectly dangerous to the health or safety of any person; or

(e) An owner consents to the seizure.

(3) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the person having control or custody of the property shall deliver the same over to the police officer.

(4)(a) Property may be seized by any police officer pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

(b) Application shall be made to any judge as defined in ORS 133.525. The application shall be supported by one or more affidavits setting forth the facts and circumstances tending to show where the objects of the seizure are to be found. The court shall issue the order upon a finding of probable cause to believe that the described property is subject to forfeiture. The order may be set out on the face of a search warrant.

(c) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the order shall direct any person having control or custody of the property to deliver the same over to the seizing agency or to the court to abide judgment.

(5) Property may be constructively seized by posting notice of seizure for forfeiture on it or by filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart constructive notice of matters relating to such property. A notice which is filed must include a description of the property that is the subject of the seizure. Real property, including interests arising out of land sale contracts, shall be seized only upon recording notice of seizure containing a legal description of the property in the mortgage records of the county in which the real property is located.

(6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis for forfeiture under this chapter is sustained by evidence which is not the fruit of the unconstitutional seizure.

(7) Promptly upon seizure, the officer who seized the property shall make an inventory of the property seized and shall deliver a receipt embodying the inventory to the person from whose possession they are taken or to the person in apparent control of the property at the time it is seized. The officer may, in addition, provide an estimate of the value of the property seized and information on the right to file a claim under ORS 475A.055 (2), and the deadline for filing that claim. If the property is unoccupied or there is no one present in apparent control, the officer shall leave the receipt suitably affixed to the property. If the property is physically removed from the location of seizure and it is unoccupied or there is no one present in apparent control, then the officer shall promptly file the receipt in the public records of the forfeiting agency. Every receipt prepared under this subsection shall contain, in addition to an inventory of the property seized, the following information:

(a) The identity of the seizing agency; and

(b) The address and telephone number of the office or other place where the person may obtain further information concerning the forfeiture.

(8) *[In determining probable cause or reasonable suspicion for seizure, evidence that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities*

*of prohibited conduct gives rise to an inference that the cash, weapons or negotiable instruments are subject to forfeiture. This inference is sufficient in itself to carry the forfeiting agency's initial burden under ORS 475A.080.] A police officer has probable cause to believe that cash, weapons or negotiable instruments are subject to forfeiture if the cash, weapons or negotiable instruments are found in close proximity to controlled substances or to instrumentalities of prohibited conduct. Notwithstanding ORS 475A.080, if the forfeiting agency establishes in a forfeiture action that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities of prohibited conduct, the burden is on any person claiming the cash, weapons or negotiable instruments to prove by a preponderance of the evidence that the cash, weapons or negotiable instruments are not proceeds of prohibited conduct or an instrumentality of prohibited conduct.*

(9) In the event that property is seized from the possession of a person who asserts a possessory lien over such property pursuant to applicable law, notwithstanding any other provision of law, any lien of the person from whom the property was seized shall remain in effect and shall be enforceable as fully as though the person had retained possession of the property.

**SECTION 32.** ORS 475A.085, as amended by section 10a, chapter 780, Oregon Laws 2001, and section 310, chapter 14, Oregon Laws 2003, is amended to read:

475A.085. *[(1) A claimant may plead as an affirmative defense that the claimant took the property or the interest which the claimant holds therein:]*

*[(a)(A) Before it was seized for forfeiture;]*

*[(B) In good faith and without intent to defeat the interest of any forfeiting agency; and]*

*[(C) Continued to hold the property or interest without acquiescing in the prohibited conduct; or]*

*[(b) By coownership or cotenancy taken in good faith, without intent to defeat the interest of any forfeiting agency and continued to hold the property or interest without acquiescing in the prohibited conduct.]*

*[(2)] (1) A claimant may plead as an affirmative defense that the property was seized in violation of ORS 475A.025.*

*[(3)] (2) In any action brought against property subject to forfeiture under ORS 475A.020 (7), a claimant may plead as an affirmative defense that the controlled substance was solely for personal use.*

*[(4)] (3) If, by a preponderance of the evidence, the claimant proves a defense under this section, then judgment shall be entered for the claimant as provided in ORS 475A.110 (7).*

*[(5)] (4) This defense may not be asserted by a financial institution [which] that holds a security interest in the property.*

*[(6) For the purposes of subsection (1) of this section, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct.]*

**NOTE:** Section 33 was deleted by amendment. Subsequent sections were not renumbered.

## **DEFAULT JUDGMENT AGAINST FUGITIVES**

**SECTION 34.** ORS 475A.075, as amended by section 8a, chapter 780, Oregon Laws 2001, is amended to read:

475A.075. A civil action in rem may be brought as provided in this section in any case in which forfeiture is sought. A civil action in rem must be brought if the property is real property, the property is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a floating home as defined in ORS 830.700 or [if] the property is subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct.

(1) If a forfeiting agency has commenced proceedings under ORS 475A.055, then an action shall be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have been commenced under ORS 475A.055, then the action shall be commenced by forfeiture counsel

within 30 days of seizure. The property may be released by forfeiture counsel as provided in ORS 475A.045 (2).

(2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the following procedure:

(a) A person claiming an interest in the property shall respond as provided in the Oregon Rules of Civil Procedure and, if a claim has not previously been filed, by filing a claim in the form set forth in ORS 475A.055 (3) with the court and posting a bond with the court. The bond shall be a cash bond in an amount equal to 10 percent of the value of the interest claimed by the person in the property. Upon good cause shown by motion and affidavit filed with the initial appearance, the court may waive or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default. The bond shall be returned to the claimant upon the entry of a final determination on the claim.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution holding an interest in the seized property shall respond to a complaint with an affidavit establishing that the financial institution's interest in the property was acquired:

(A) In the regular course of business as a financial institution;

(B) For valuable consideration;

(C) Without knowledge of the prohibited conduct;

(D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and

(E) With respect to personal property, prior to the seizure of the property, or with respect to real property, recorded prior to the recording of notice of the seizure of the real property in the mortgage records of the county in which the real property is located. Failure to file an affidavit shall constitute a default. The affidavit shall be filed within 30 days from the date of service.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than a financial institution, who transfers or conveys an interest in real property pursuant to a contract for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains an interest in the real property, or any successor in interest, may respond to a complaint with an affidavit establishing that the person:

(A) Received the interest in return for valuable consideration or by way of devise or intestate succession;

(B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

(C) Acted in good faith and without intent to defeat the interest of any potential forfeiting agency;

(D) Recorded the interest in the mortgage records of the county in which the real property is located prior to the recording of any notice of intent to seize or notice of seizure; and

(E) Continued to hold the interest without acquiescing in the prohibited conduct.

(d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct. For purposes of this section, "reasonable action under the circumstances" includes, but is not limited to:

(A) Reporting the prohibited conduct to a police agency;

(B) Commencing action that will assert the rights of the affiant as to the property interest;

(C) Terminating a rental agreement; or

(D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the provisions of ORS 105.550 to 105.600, or under any ordinance or regulation allowing abatement of nuisances.

(e) The affidavit permitted by paragraph (c) of this subsection shall be filed within 30 days from the date of service of the summons and complaint. Failure to file an affidavit or to respond as set forth in paragraph (a) of this subsection shall constitute a default.

(f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting agency may controvert any or all of the assertions made in the affidavit. The affidavit of the for-

feiting agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of this subsection. The transferor, conveyer or successor in interest may respond, within five days of the filing of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the matters stated in the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit within the time allowed, the transferor, conveyer or successor in interest shall be considered a financial institution for all purposes under this chapter.

(g)(A) If the forfeiting agency files an affidavit under paragraph (f) of this subsection, the court shall determine from the affidavits whether there is a genuine issue of material fact with respect to the assertions of the transferor, conveyer or successor in interest.

(B) If the court determines that there is no genuine issue of material fact as to the truth of the assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyer or successor in interest shall be considered a financial institution for all purposes under this chapter. The court shall order the forfeiting agency to pay the costs and disbursements, including attorney fees, of the prevailing transferor, conveyer or successor in interest if the forfeiting agency does not prevail.

(C) If the court determines that there is a genuine issue of material fact as to the truth of the assertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyer or successor in interest shall, within 15 days, respond as provided in paragraph (a) of this subsection. The court may order the transferor, conveyer or successor in interest to pay the attorney fees of the forfeiting agency that were incurred in contesting the affidavit of the transferor, conveyer or successor in interest if the court determines that the affidavit of the transferor, conveyer or successor in interest was frivolous.

(3) All persons known to have an interest in the property, including any claimant, shall be served with a true copy of the inventory of the property prepared pursuant to ORS 475A.035 and 475A.055, the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall be published as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in accordance with ORS 475A.055 (1). In the event that a forfeiture involves a vehicle, and the notices required by this statute have been given, and substitute service on the claimant is required because personal service cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be sufficient to establish jurisdiction over a registered owner or operator of a vehicle. If the property is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting agency shall, in addition to serving all persons known to have an interest in the property, record a notice of seizure containing a description of the manufactured dwelling or floating home in all public offices maintaining records that impart constructive notice of matters relating to manufactured dwellings or floating homes.

**(4) Forfeiture counsel may move the court at any time after a response is made as provided in subsection (2)(a) of this section for an order finding that the defendant is a fugitive and in default. The court may enter an order finding the defendant in default under this subsection and enter a judgment of civil forfeiture if the court finds that the defendant is not confined or held in custody by another jurisdiction, and that the defendant, after notice or knowledge of the fact that a warrant has been issued for the defendant:**

- (a) Purposely left the state to avoid prosecution;**
- (b) Declines to return to the state and allow execution of the warrant; or**
- (c) Otherwise evades the jurisdiction of the court issuing the warrant.**

[(4)] (5) All judicial proceedings under this chapter shall be governed by the Oregon Rules of Civil Procedure to the extent that they do not conflict with specific provisions of this chapter.

[(5)(a)] (6)(a) The filing of criminal charges related to any civil proceeding for forfeiture may, upon motion of forfeiture counsel or the district attorney or upon motion on behalf of defendant in a related criminal proceeding, stay the civil forfeiture proceeding until the trial, plea or dismissal of the related criminal proceeding. A motion for stay on behalf of the defendant in a related criminal proceeding shall constitute a waiver of double jeopardy by the defendant as to the civil forfeiture proceeding and any related criminal proceeding. Pursuant to subsection [(6)] (7) of this section, a

civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other resolution with any related criminal proceeding.

(b) The court may stay the civil forfeiture proceeding upon motion of a party and good cause shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could be prosecuted for conduct arising out of the same factual situation which gave rise to the seizure of property. Pursuant to subsection [(6)] (7) of this section, a civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other resolution with any related criminal proceeding.

[(6)] (7) Notwithstanding any stay entered pursuant to subsection [(5)(a)] (6)(a) or (b) of this section, an action pursuant to this section may be consolidated with any other action pursuant to this section relating to the same property or parties on motion by any party in any related action. Upon motion by the state or a political subdivision of the state, or any criminal defendant who is also a claimant, a civil forfeiture proceeding under this section may be consolidated for trial or other resolution with any related criminal proceeding. Trial or other resolution of the civil forfeiture action shall immediately follow the related criminal trial or other resolution, shall be part of the same proceeding and shall be heard by the same trier of fact. Any objection by the defendant to the consolidation or any motion by the defendant to sever the related criminal case from the civil proceeding for forfeiture shall constitute a waiver of double jeopardy as to any related criminal action and the civil forfeiture proceeding.

[(7)] (8) The action shall be commenced and tried:

(a) In the case of real property, in the circuit court in a county in which the property is situated; or

(b) In all other cases, in the circuit court of the county in which the property was seized or the county in which any part of the prohibited conduct took place.

## **DISTRIBUTIONS OF CIVIL FORFEITURE PROCEEDS**

**SECTION 35.** ORS 475A.120, as amended by section 14a, chapter 780, Oregon Laws 2001, is amended to read:

475A.120. [(1) *After the forfeiture counsel distributes property under ORS 475A.110, the forfeiture counsel shall dispose of and distribute property when the forfeiting agency is not the state as follows:*]

[(a) *Costs shall first be paid from the property or, if the property is sold, from its proceeds. "Costs" as used in this section includes costs, disbursements and attorney fees as defined in ORCP 68 A and those special expenses, including hourly investigative costs and the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. "Costs" as used in this section also includes any expenses of servicing or maintaining the seized property under the provisions of ORS 475A.045 (3). These costs shall not include the expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency.*]

[(b) *The balance of the property shall be credited to the general fund of the political jurisdiction that operates the forfeiting agency.*]

[(c) *Forfeiture proceeds received by a political subdivision, including amounts received under an intergovernmental agreement pursuant to the provisions of section 38 (3), chapter 780, Oregon Laws 2001, shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs. Except as specifically provided by this paragraph, forfeiture proceeds under this paragraph may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before August 23, 1993, and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:*]

*[(A) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.]*

*[(B) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.]*

*[(C) Payments to counties in the manner specified in paragraph (d) of this subsection.]*

*[(D) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

*[(d) If the political subdivision is not a county, the political subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion for prosecution from these funds. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.]*

*[(e) Except as otherwise provided by intergovernmental agreement, the forfeiting agency may:]*

*[(A) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law enforcement agency or district attorney.]*

*[(B) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.]*

*[(C) Retain the property.]*

*[(D) With written authorization from the district attorney for the forfeiting agency's jurisdiction, destroy any firearms or controlled substances.]*

*[(f) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this subsection, the political subdivision shall deduct an amount equal to five percent of the proceeds credited to the general fund of the political subdivision under paragraph (b) of this subsection and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5). The political subdivision shall sell as much property as may be needed to meet the requirements of this paragraph. Deposits to the Illegal Drug Cleanup Fund under this paragraph shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this paragraph.]*

*[(g) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this subsection, the political subdivision shall deduct an amount equal to 2.5 percent of the proceeds credited to the general fund of the political subdivision under paragraph (b) of this subsection and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160. The political subdivision shall sell as much property as may be needed to meet the requirements of this paragraph. Deposits to the Asset Forfeiture Oversight Account under this paragraph shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this paragraph.]*

*[(h) Notwithstanding paragraphs (c) and (d) of this subsection, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in manufacturing of controlled substances, may be donated to a public school, community college or institution of higher education.]*

**(1) The provisions of this section apply to a forfeiting agency other than the state.**

**(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:**

**(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.**

**(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.**

**(c) Retain forfeited property.**

**(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.**

**(3) If the forfeiting agency is a political subdivision other than a county, the political subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to**

provide a portion of the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.

(4) A forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the Judicial Department Operating Account established by ORS 1.009 for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an agreement with a county under subsection (3) of this section, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts required by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency may use forfeiture proceeds, including amounts received by a county under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into under ORS 475A.115, only for:

(A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(B) Cash for use in law enforcement activities;

(C) Drug awareness and drug education programs offered in middle schools and high schools;

(D) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment; and

(E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution, manufacture or possession of controlled substances, as determined through intergovernmental agreement between the forfeiting agency and the district attorney.

(5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled substances may be donated to a public school, community college or institution of higher education.

(6) A political subdivision shall sell as much property as may be needed to make the distributions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this section must be made once every three months and are due within 20

**days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.**

[2] (7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition.

[3] (8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

[4] (9) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection [(3)] (8) of this section.

[5] (10) Political subdivisions of the state who receive forfeiture proceeds under this section shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those proceeds are received. The committee shall develop and make available forms for the purpose of those reports. The forms shall require the political subdivision to report on how proceeds received by the political subdivision have been or will be used, and such other information as may be requested by the committee. Reports shall be submitted each December 15 for the last ending fiscal year of the political subdivision.

[6] (11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct.

**SECTION 36.** If House Bill 2485 becomes law, ORS 475A.120, as amended by section 14a, chapter 780, Oregon Laws 2001, and section 35 of this 2005 Act, is amended to read:

475A.120. (1) The provisions of this section apply to a forfeiting agency other than the state.

(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:

(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.

(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain forfeited property.

(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.

(3) If the forfeiting agency is a political subdivision other than a county, the political subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion of the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.

(4) A forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the [*Judicial Department Operating Account established by ORS 1.009*] **Oregon Criminal Justice Commission Account established under ORS 137.662** for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an agreement with a county under subsection (3) of this section, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts required by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency may use forfeiture proceeds, including amounts received by a county under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into under ORS 475A.115, only for:

(A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(B) Cash for use in law enforcement activities;

(C) Drug awareness and drug education programs offered in middle schools and high schools;

(D) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment; and

(E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution, manufacture or possession of controlled substances, as determined through intergovernmental agreement between the forfeiting agency and the district attorney.

(5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled substances may be donated to a public school, community college or institution of higher education.

(6) A political subdivision shall sell as much property as may be needed to make the distributions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

(7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition.

(8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(9) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (8) of this section.

(10) Political subdivisions of the state who receive forfeiture proceeds under this section shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those proceeds are received. The committee shall develop and make available forms for the purpose of those reports. The forms shall require the political subdivision to report on how proceeds received by the political subdivision have been or will be used, and such other information as may be re-

quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal year of the political subdivision.

(11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct.

**SECTION 37.** Section 38, chapter 780, Oregon Laws 2001, is amended to read:

**Sec. 38.** *[After the forfeiture counsel distributes payments under ORS 475A.110, the forfeiture counsel shall disburse and distribute payment as follows when the forfeiting agency is the state or when the state is the recipient of property forfeited under this chapter:]*

*[(1)(a) Costs shall first be paid from the property or, if the property is sold, from its proceeds. As used in this section, "costs" includes attorney fees, costs and disbursements, and those special expenses, including hourly investigative costs and including the provision of lawful currency, incurred by any seizing agency or other agency of the state in investigating and prosecuting a specific case. "Costs" as used in this section also includes any expenses of servicing or maintaining the seized property under the provisions of ORS 475A.045 (3). These costs shall not otherwise include the expenditures made in connection with the ordinary maintenance and operation of the seizing agency.]*

*[(b) Any amount paid to or retained by the Department of Justice under this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.]*

*[(c) Any amount paid to or retained by the Oregon State Police under this subsection shall be deposited in the State Police Account.]*

*[(2) The state may:]*

*[(a) With written authorization from the district attorney for the jurisdiction in which the property was seized, destroy any firearms or controlled substances.]*

*[(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.]*

*[(c) Retain any vehicles, firearms or other equipment usable for law enforcement purposes, for official law enforcement use directly by the state.]*

*[(d) Lend or transfer any vehicles, firearms or other equipment usable for law enforcement purposes, to any federal, state or local law enforcement agency or district attorney for official law enforcement use directly by the transferee entity.]*

*[(3) When the state has entered into an intergovernmental agreement with one or more political subdivisions under ORS 475A.115, or when a law enforcement agency of the state has entered into an agreement with another law enforcement agency of the state, an equitable portion of the forfeited property shall be distributed to each agency participating in the seizure or forfeiture as provided by the agreement.]*

*[(4) The balance of the property, including the balance of any proceeds received by the state under an intergovernmental agreement or under an agreement between state law enforcement agencies, shall be divided as follows:]*

*[(a) When no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, or when the Department of Justice has entered into an agreement under subsection (3) of this section, the property shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account created in ORS 475A.130, according to the following schedule:]*

*[(A) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.]*

*[(B) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.]*

*[(C) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.]*

*[(D) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.]*

*[(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.]*

*[(b) When no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, or when the Department of State Police has entered into an agreement under subsection (3) of this section, the property shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:]*

*[(A) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police Account.]*

*[(B) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.]*

*[(C) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.]*

*[(D) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.]*

*[(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.]*

*[(5) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection (3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the state shall deduct an amount equal to 10 percent of the proceeds from the property, but not to exceed \$250,000 in any biennium, and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5). The state shall sell as much property as may be needed to meet the requirements of this section. Deposits to the Illegal Drug Cleanup Fund under this subsection shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.]*

*[(6) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection (3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the state shall deduct an amount equal to three percent of the proceeds from the property, but not to exceed \$50,000 in any biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155. The state shall sell as much property as may be needed to meet the requirements of this section. Deposits to the Asset Forfeiture Oversight Account under this subsection shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.]*

*[(7) Forfeiture proceeds received by the Department of Justice and the Department of State Police shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs. Except as specifically provided by this subsection, forfeiture proceeds under this subsection may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before August 23, 1993, and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:]*

*[(a) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.]*

*[(b) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.]*

*[(c) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

**(1) The provisions of this section apply only when the forfeiting agency is the state.**

**(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:**

**(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.**

(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain forfeited property.

(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.

(3) The forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph. Any amount paid to or retained by the Department of Justice under this paragraph shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon State Police under this paragraph shall be deposited in the State Police Account.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to three percent of the proceeds, not to exceed \$50,000 in a biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the Judicial Department Operating Account established by ORS 1.009 for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an intergovernmental agreement with a political subdivision under ORS 475A.115, or has entered into an agreement with any other law enforcement agency of the state relating to distribution of forfeiture proceeds, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency shall distribute the remaining proceeds as follows:

(A) If no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of Justice under paragraph (c) of this subsection, shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account established by ORS 475A.130 according to the following schedule:

(i) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(ii) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(B) If no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State Police under paragraph (c) of this subsection, shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(i) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police Account.

(ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used only for:

(a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(b) Cash for use in law enforcement activities;

(c) Drug awareness and drug education programs offered in middle schools and high schools; and

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment.

(5) A forfeiting agency shall sell as much property as may be needed to make the distributions required by subsection (3) of this section. Distributions required under subsection (3)(b) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

[(8)] (6) The forfeiting agency, and any agency that receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition of the property or proceeds.

[(9)] (7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

[(10)] (8) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection [(9)] (7) of this section.

**SECTION 38.** If House Bill 2485 becomes law, section 38, chapter 780, Oregon Laws 2001, as amended by section 37 of this 2005 Act, is amended to read:

**Sec. 38.** (1) The provisions of this section apply only when the forfeiting agency is the state.

(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:

(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.

(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain forfeited property.

(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.

(3) The forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph. Any amount paid to or retained by the Department of Justice under this paragraph shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon State Police under this paragraph shall be deposited in the State Police Account.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to three percent of the proceeds, not to exceed \$50,000 in a biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the [*Judicial Department Operating Account established by ORS 1.009*] **Oregon Criminal Justice Commission Account established under ORS 137.662** for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an intergovernmental agreement with a political subdivision under ORS 475A.115, or has entered into an agreement with any other law enforcement agency of the state relating to distribution of forfeiture proceeds, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency shall distribute the remaining proceeds as follows:

(A) If no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of Justice under paragraph (c) of this subsection, shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account established by ORS 475A.130 according to the following schedule:

(i) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(ii) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(B) If no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State

Police under paragraph (c) of this subsection, shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(i) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police Account.

(ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used only for:

(a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(b) Cash for use in law enforcement activities;

(c) Drug awareness and drug education programs offered in middle schools and high schools; and

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment.

(5) A forfeiting agency shall sell as much property as may be needed to make the distributions required by subsection (3) of this section. Distributions required under subsection (3)(b) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

(6) The forfeiting agency, and any agency that receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition of the property or proceeds.

(7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(8) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (7) of this section.

**SECTION 39.** ORS 475A.130, as amended by section 9a, chapter 834, Oregon Laws 2001, is amended to read:

475A.130. The Special Crime and Forfeiture Account is established in the General Fund of the State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies of the state under this chapter, except as otherwise provided by section 38, chapter 780, Oregon Laws 2001. All moneys in the account are continuously appropriated **to the Department of Justice** and [shall] **may** be used **only** for [enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs] **the purposes specified in section 38 (4), chapter 780, Oregon Laws 2001.** [Except as specifically provided by this section, forfeiture proceeds in the Special Crime and Forfeiture Account may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before August 23, 1993, and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:]

[(1) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.]

*[(2) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.]*

*[(3) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

**SECTION 39a.** ORS 475A.155, as amended by section 21, chapter 666, Oregon Laws 2001, is amended to read:

475A.155. *[(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee consists of 12 members to be appointed as follows:]*

*[(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six legislators to the committee. Three shall be Senators appointed by the President. Three shall be Representatives appointed by the Speaker.]*

*[(b) The Governor shall appoint three members to the committee.]*

*[(c) The Attorney General shall appoint three members to the committee.]*

*[(2) The term of a legislative member of the committee shall be two years. The term of all other members shall be four years. Members of the committee may be reappointed. If a vacancy occurs on the committee for any reason during the term of membership, the official who appointed the member to the vacant position shall appoint a new member to serve the remainder of the term. A member of the committee may be removed from the committee at any time by the official who appointed the member.]*

*[(3)(a) The members of the committee shall select from among themselves a chairperson and vice chairperson.]*

*[(b) The committee shall meet at such times and places as determined by the chairperson.]*

*[(4) Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.]*

*[(5) The committee shall:]*

*[(a) Prepare reports detailing the number and nature of forfeitures carried out under this chapter, including the disposition and use of the proceeds from the forfeitures. The reports shall be submitted on or before March 31 of each year to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor.]*

*[(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required from forfeiture counsel and political subdivisions to ensure that information necessary for oversight is being obtained and is gathered in an efficient and effective manner.]*

*[(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and efficiency of forfeiture actions brought under this chapter.]*

*[(d) Make any recommendations for additional legislation governing forfeiture actions brought under this chapter.]*

*[(e) Conduct studies or other activities as necessary to accomplish the purposes of this subsection.]*

*[(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the committee with staff, subject to funds available for that purpose.]*

**(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee consists of 12 members to be appointed as follows:**

**(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six legislators to the committee. Three shall be Senators appointed by the President. Three shall be Representatives appointed by the Speaker.**

**(b) The Governor shall appoint three members to the committee.**

**(c) The Attorney General shall appoint three members to the committee.**

**(2) The term of a legislative member of the committee shall be two years. The term of all other members shall be four years. Members of the committee may be reappointed. If a vacancy occurs on the committee for any reason during the term of membership, the official who appointed the member to the vacant position shall appoint a new member to serve the remainder of the term. A member of the committee may be removed from the committee at any time by the official who appointed the member.**

(3)(a) The members of the committee shall select from among themselves a chairperson and vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Prepare reports detailing the number and nature of forfeitures carried out under this chapter and sections 1 to 18 of this 2005 Act including the disposition and use of the proceeds from the forfeitures. The reports shall be submitted on or before March 31 of each year to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor.

(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required from forfeiture counsel and political subdivisions to ensure that information necessary for oversight is being obtained and is gathered in an efficient and effective manner.

(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and efficiency of forfeiture actions brought under this chapter and sections 1 to 18 of this 2005 Act.

(d) Make any recommendations for additional legislation governing forfeiture actions brought under this chapter and sections 1 to 18 of this 2005 Act.

(e) Conduct studies or other activities as necessary to accomplish the purposes of this subsection.

(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the committee with staff, subject to funds available for that purpose.

(7) For purposes of this section, "forfeiture counsel" includes forfeiture counsel as defined in section 1 of this 2005 Act.

**SECTION 40.** ORS 475A.160, as amended by section 16a, chapter 780, Oregon Laws 2001, is amended to read:

475A.160. (1) The Asset Forfeiture Oversight Account is established in the State Treasury separate and distinct from the General Fund.

(2) The following moneys shall be deposited into the State Treasury and credited to the Asset Forfeiture Oversight Account:

(a) Moneys received from a state agency or political subdivision under the provisions of ORS 475A.120 and section 38, chapter 780, Oregon Laws 2001; and

(b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.

(3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture Oversight Account in the manner provided by law. Interest earned by the account shall be credited to the account.

(4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the Oregon Criminal Justice Commission to be used for the purposes specified in ORS 475A.155.

(5) If at the end of a biennium the Asset Forfeiture Oversight Account has received amounts under the provisions of ORS 475A.120 [(1)(g)] (4)(b) and section 38 [(6)] (3)(b), chapter 780, Oregon Laws 2001, that are in excess of 115 percent of the biennial expenditure limitation established for expenditures from the account, the Oregon Criminal Justice Commission shall refund to each state agency or political subdivision that made payment into the account during the biennium a pro rata share of the amounts that are in excess of 115 percent of the expenditure limitation for the account, based on the amount of forfeiture proceeds paid into the account by the state agency or political subdivision. The commission is not required to issue any refund under this subsection if the amount of the refund is less than \$25.

**SECTION 41.** Section 35, chapter 780, Oregon Laws 2001, as amended by section 254, chapter 576, Oregon Laws 2003, is amended to read:

**Sec. 35.** (1) If it has been determined in an action brought under the provisions of ORS 475A.075 that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve on the claimant a proposed judgment of forfeiture and a statement of costs as [defined] **described** in ORS 475A.120 [(1)(a)] (4) and [475A.125 (1)(a) (1999 Edition)] **section 38 (3), chapter 780, Oregon Laws 2001.**

(2)(a) A claimant who has filed a claim to seized property, appeared in the action, and part or all of whose interest in the claimed property is forfeited under the terms of the proposed judgment may file a motion for a mitigation hearing[.].

[(a)] (b) A motion under this section must list all evidence not previously received that is relevant to the determination to be made by the court under ORS 475A.100. Every argument that the claimant wishes to raise in mitigation must be set out in specific detail in the motion.

[(b)] (c) Before filing a motion for mitigation, the claimant and the plaintiff must make a good faith effort to confer with one another concerning any issues in dispute. The claimant must file a certificate of compliance with the requirements of this paragraph before the time set for hearing on the motion. The certificate is sufficient if the certificate states that the parties conferred or the certificate contains facts showing good cause for not conferring.

[(c)] (d) A motion under this section may [only] be filed **only** after the service of a proposed judgment on the claimants. If a motion for a mitigation hearing is not filed with the court within 14 days after the date the plaintiff serves the proposed judgment on the claimant, the court shall enter judgment.

(3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion of the proposed judgment is excessive in the manner provided by ORS 475A.100.

(4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

(5) The court may make such orders[,] as may be necessary to [insure] **ensure** that the forfeiture is not excessive, including but not limited to the following orders:

(a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale distributed between the litigants.

(b) An order directing that the claimant make available to the court other assets, not named as defendants in the forfeiture action, for the purpose of fashioning a judgment that is not excessive.

(6) The court shall make written findings of fact and shall enter written conclusions of law in proceedings under the provisions of this section.

**SECTION 41a. If House Bill 2261 becomes law, section 350, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261) (amending section 35, chapter 780, Oregon Laws 2001), is repealed.**

**SECTION 42.** Section 36, chapter 780, Oregon Laws 2001, is amended to read:

**Sec. 36.** (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting agency at least [so] **as** much of the defendant property as may be required to pay the forfeiting agency's costs as [defined] **described** in ORS 475A.120 [(1)(a)] (4) and [475A.125 (1)(a) (1999 Edition)] **section 38 (3), chapter 780, Oregon Laws 2001.**

(2) At least 10 days before a trial under ORS 475A.075, a claimant may serve upon the forfeiting agency an offer to allow judgment to be given against all or part of the defendant property for a specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer, the forfeiting agency must file a written acceptance with the clerk of the court within three days after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed with the court within three days after the time the offer was served upon the forfeiting agency, the offer shall be considered withdrawn, and [shall] **may** not be given in evidence on the trial. If the forfeiting agency fails to obtain a judgment after trial that is more favorable than the offer made by the claimant, the court shall award to the claimant costs and disbursements as defined in ORCP 68, and the court may enter a judgment that forfeits to the forfeiting agency less of the defendant property than may be required to pay the forfeiting agency's costs as [defined] **described** in ORS

475A.120 [(1)(a)] (4) and [475A.125 (1)(a) (1999 Edition)] section 38 (3), chapter 780, Oregon Laws 2001.

**SECTION 42a.** If House Bill 2261 becomes law, section 351, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261) (amending section 36, chapter 780, Oregon Laws 2001), is repealed.

## **DRUG TREATMENT**

**SECTION 43.** (1) In collaboration with local seizing agencies, the district attorney, the local public safety coordinating council and the local mental health advisory committee, a local alcoholism planning committee appointed or designated pursuant to ORS 430.342 shall develop a plan to integrate drug treatment services into the criminal justice system for offenders who commit nonviolent felony drug possession offenses. The plan may also include property offenders as provided for under ORS 475.245. The plan developed under this subsection must be incorporated into the local coordinated comprehensive plan required by ORS 417.775.

(2)(a) A plan may include, but need not be limited to, programs that occur before adjudication, after adjudication as part of a sentence of probation or as part of a conditional discharge.

(b) A plan must include, but need not be limited to:

(A) A description of local criminal justice and treatment coordination efforts;

(B) A description of the method by which local, state and federal treatment resources are prioritized and allocated to meet the needs of the drug abusing offender population;

(C) The principles that guide criminal justice strategies for supervision and treatment of drug abusing offenders and the purchase of treatment services from local community providers;

(D) The desired outcomes for criminal justice strategies for supervision and treatment of drug abusing offenders and the provision of treatment services and identification of a method for monitoring and reporting the outcomes; and

(E) Consistent standards for measuring the success of criminal justice strategies for supervision and treatment of drug abusing offenders and the provision of treatment.

(3) A program must include, but need not be limited to:

(a) Ongoing oversight of the participant;

(b) Frequent monitoring to determine whether a participant is using controlled substances unlawfully; and

(c) A coordinated strategy governing responses to a participant's compliance or non-compliance with the program.

(4) The local alcoholism planning committee shall submit the plan to the Department of Human Services and shall provide the county board of commissioners with a copy of the plan.

**SECTION 44.** The Department of Human Services shall distribute moneys in the Drug Prevention and Education Fund established in section 46 of this 2005 Act based on a review of the plans submitted to the office under section 43 of this 2005 Act. Funding criteria include, but need not be limited to, whether the plan includes the existence or development of a drug treatment court or a drug diversion program.

**SECTION 45.** (1) The Department of Human Services shall adopt rules necessary to carry out the provisions of sections 43 to 46 of this 2005 Act.

(2) The department may accept gifts, grants and donations from any source, public or private. Moneys accepted under this section must be deposited in the Drug Prevention and Education Fund to be used for the purposes for which the fund is established.

**SECTION 46.** The Drug Prevention and Education Fund is established separate and distinct from the General Fund. The Drug Prevention and Education Fund consists of moneys deposited in the fund under sections 17 and 45 of this 2005 Act, and other moneys as may be appropriated to the fund by law. The moneys in the Drug Prevention and Education Fund

are continuously appropriated to the Department of Human Services for the purpose of assisting counties in paying the costs incurred by the counties in providing drug treatment services pursuant to plans submitted under section 43 of this 2005 Act.

**SECTION 47.** Any funds in the Drug Prevention and Education Fund established by section 4, chapter 834, Oregon Laws 2001, on the effective date of this 2005 Act are transferred to the Drug Prevention and Education Fund established by section 46 of this 2005 Act.

**REPEALS**

**SECTION 48.** ORS 163.696, 164.879, 165.586 and 167.379 are repealed.

**MISCELLANEOUS**

**SECTION 49.** Sections 1 to 18 of this 2005 Act apply to property seized for criminal forfeiture on or after January 1, 2002.

**SECTION 50.** The unit captions used in this 2005 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2005 Act.

**SECTION 51.** This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House June 10, 2005

Received by Governor:

Repassed by House August 4, 2005

.....M.,....., 2005

Approved:

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Chief Clerk of House

.....M.,....., 2005

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Speaker of House

.....  
Governor

Passed by Senate August 4, 2005

Filed in Office of Secretary of State:

.....M.,....., 2005

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President of Senate

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Secretary of State