

CHAPTER 213

AN ACT

HB 3146

Relating to corrections; creating new provisions; and amending ORS 21.682, 21.695, 30.320, 30.642, 30.643, 30.645, 30.646, 30.647, 30.648, 30.650, 34.365, 34.370, 46.405, 51.090, 135.760, 135.763, 135.765, 135.767, 135.770, 135.773, 135.785, 137.124, 138.527, 138.590, 144.035, 144.050, 144.096, 144.098, 144.123, 144.270, 144.275, 144.315, 144.420, 144.450, 144.480, 144.490, 144.522, 161.267, 162.135, 162.175, 163.165, 163.208, 163.452, 163.454, 169.005, 169.042, 169.044, 169.046, 169.053, 169.076, 169.220, 169.760, 179.375, 179.473, 179.478, 179.479, 179.483, 179.486, 179.495, 179.508, 183.315, 183.335, 192.515, 192.577, 238.015, 238A.005, 240.205, 243.650, 283.305, 283.415, 336.057, 341.317, 390.195, 420.525, 421.068, 421.073, 421.081, 421.084, 421.085, 421.105, 421.120, 421.121, 421.125, 421.132, 421.137, 421.142, 421.145, 421.147, 421.166, 421.168, 421.170, 421.185, 421.190, 421.194, 421.205, 421.213, 421.215, 421.220, 421.305, 421.312, 421.354, 421.364, 421.405, 421.412, 421.420, 421.423, 421.437, 421.442, 421.445, 421.450, 421.455, 421.465, 421.467, 421.468, 421.470, 421.476, 421.480, 421.490, 421.651, 421.805, 423.020, 423.076, 423.077, 423.100, 423.105, 423.490, 423.497, 423.600, 423.605, 423.610, 430.380, 438.435, 496.458, 655.505, 655.510, 655.515, 655.520, 655.525, 655.540, 655.545, 655.555, 656.005, 656.041, 656.752, 657.065 and 677.225 and section 2, chapter 5, Oregon Laws 2013, and section 29, chapter 649, Oregon Laws 2013.

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

SECTION 1. ORS 21.682 is amended to read:

21.682. (1) A judge may waive or defer all or part of the fees and court costs payable to the court by a party in a civil action or proceeding, including sheriff's fees under ORS 21.300 (1)(a), if the judge finds that the party is unable to pay all or any part of the fees and costs. Waiver or deferral under this section of the fees or court costs of an *[inmate]* **adult in custody**, as defined in ORS 30.642, is subject to ORS 30.642 to 30.650.

(2) A presiding judge may delegate authority to waive or defer fees and court costs under this section to the court administrator for the court in which the judge serves. A delegation of authority under this subsection must be in writing and must be subject to clear standards. If a delegation is made under this subsection, an applicant may seek review of the court administrator's decision by a judge. If an applicant requests review of a court administrator's decision, the court administrator shall forward the application for waiver or deferral of the fees or court costs to the appropriate judge.

(3) A court may not delay or refuse to enter an order or judgment in an action or proceeding because deferred fees and court costs have not been paid.

(4) The Chief Justice of the Supreme Court by order may provide standards and practices for

waiver or deferral of fees or court costs under ORS 21.680 to 21.698.

SECTION 2. ORS 21.695 is amended to read:

21.695. (1) In a civil action or proceeding, the Supreme Court or the Court of Appeals may waive in whole or in part, defer in whole or in part, or partially waive and partially defer, the expense of preparing a transcript on appeal if:

(a) The party requesting the transcript is unable to pay the expense of preparing the transcript; and

(b) The party requesting the transcript makes a prima facie showing that the transcript is necessary to prosecute the appeal and would reveal reversible error in the action or proceeding.

(2) If the Supreme Court or the Court of Appeals waives or defers any part of the expense of preparing a transcript on appeal, the court shall authorize preparation of only as much of the transcript as is necessary to prosecute the appeal. The State Court Administrator shall pay the unpaid costs of preparing the transcript out of funds appropriated for that purpose.

(3) If the Supreme Court or the Court of Appeals defers payment of any part of the expense of preparing a transcript on appeal and any part of the deferred expense remains unpaid at the conclusion of the appeal, a judgment may be entered for the unpaid amount in the manner provided by ORS 21.692.

(4) If the State Court Administrator pays any costs of preparing a transcript on appeal under subsection (2) of this section and costs on appeal are awarded to the obligor, a money award to the State Court Administrator shall be included in the judgment for all waived or deferred transcript costs paid by the State Court Administrator.

(5) Waiver or deferral under this section of the transcript costs of an *[inmate]* **adult in custody**, as defined in ORS 30.642, is subject to ORS 30.642 to 30.650.

SECTION 3. ORS 30.320 is amended to read:

30.320. A suit or action may be maintained against any county and against the State of Oregon by and through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an *[inmate]* **adult in custody** or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 for an injury to the rights of the plaintiff arising from some act or omission of such other public corporation within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300. An action or suit to quiet title may be maintained against any governmental unit mentioned in ORS 30.310.

SECTION 4. ORS 30.642 is amended to read:
30.642. As used in ORS 30.642 to 30.650:

(1) "Action against a public body" means a civil action, including an action brought in a small claims department, an appeal or a petition for review, that names as a defendant a public body as defined in ORS 30.260 or an officer, employee or agent of a public body. "Action against a public body" does not mean petitions for writs of habeas corpus, petitions for writs of mandamus and petitions for post-conviction relief under ORS 138.510 to 138.680.

(2) "**Adult in custody**" means a person incarcerated or detained in a correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a diversion program.

(2) (3) "Correctional facility" means a Department of Corrections institution or a jail.

(3) "*Inmate*" means a person incarcerated or detained in a correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a diversion program.]

SECTION 5. ORS 30.643 is amended to read:

30.643. (1) If an [*inmate*] **adult in custody** seeks to file an action against a public body, the fees and court costs of the [*inmate*] **adult in custody** may be waived or deferred only in the manner provided by this section.

(2) Any [*inmate*] **adult in custody** seeking waiver or deferral of fees or court costs must submit with the application for waiver or deferral a certified copy of the [*inmate's*] trust account statement of the **adult in custody** for the six-month period immediately preceding the filing of the complaint, petition, notice of appeal or petition for review. The statement must be certified as correct by an official of each correctional facility in which the [*inmate*] **adult in custody** was confined within the six-month period or by an employee of the Department of Corrections charged with the responsibility of overseeing [*inmate*] **adult in custody** trust accounts.

(3) Upon the filing of a statement under subsection (2) of this section, the court shall review the information in the statement relating to deposits in the [*inmate's*] trust account of the **adult in custody** and any other resources available to the [*inmate*] **adult in custody**. The court may only waive the [*inmate's*] fees and court costs of the **adult in custody** if the court determines that the [*inmate*] **adult in custody** has no funds and will not have funds.

(4) If the court makes a determination that an [*inmate*] **adult in custody** has or will have funds to pay fees and court costs, the court shall require full payment of the filing fees and court costs, or, if funds are not immediately available in the [*inmate's*] trust account, shall assess and collect filing fees and court costs as funds become available in the [*inmate's*] trust account.

(5) On its own motion or on the motion of the public body, the court may review the pleadings of the [*inmate*] **adult in custody** in an action against a public body at the time a request for waiver or deferral of filing fees or court costs is made. If the court finds that the pleadings fail to state a claim for which relief may be granted, the court may decline to waive or defer filing fees or court costs. The court shall enter a denial of waiver or deferral of fees and costs under this subsection as a limited judgment. Notwithstanding the time established by statute for the commencement of an action, if a limited judgment is entered under this subsection within 30 days of the expiration of the time allowed for commencing the action, the [*inmate*] **adult in custody** may commence the action not later than 45 days after the judgment is entered. Only one extension of the time allowed for commencing an action may be granted by the court under this section.

(6) Nothing in this section shall be construed as preventing an [*inmate*] **adult in custody** from bringing an action against a public body because the [*inmate*] **adult in custody** has no assets or means by which to pay the initial partial filing fee as provided under this section.

SECTION 6. ORS 30.645 is amended to read:

30.645. (1) Except as provided in subsection (2) of this section, the court may not waive or defer [*an inmate's*] the fees or court costs under ORS 30.643 for an **adult in custody** if the [*inmate*] **adult in custody** has, on three or more prior occasions while incarcerated or detained in any correctional facility, filed an action against a public body in a court of this state that was dismissed on the grounds that the action:

- (a) Was frivolous or malicious;
- (b) Failed to state a claim upon which relief could be granted; or
- (c) Sought monetary relief from a defendant who is immune from a claim for monetary relief.

(2) The court may waive or defer fees or court costs of an [*inmate*] **adult in custody** who would not otherwise be eligible for waiver or deferral under subsection (1) of this section if the [*inmate*] **adult in custody** establishes in the application for waiver or deferral that the [*inmate*] **adult in custody** is in imminent danger of serious physical injury and the action against a public body is needed to seek relief from that danger.

SECTION 7. ORS 30.646 is amended to read:

30.646. (1) If an [*inmate*] **adult in custody** files an action against a public body and a judgment is entered that requires the [*inmate*] **adult in custody** to pay costs to the public body, the [*inmate*] **adult in custody** must pay the full amount of the costs ordered.

(2) Payment for costs under this section shall be made by deductions from the income credited to the [*inmate's*] trust account of the **adult in custody**.

SECTION 8. ORS 30.647 is amended to read:

30.647. (1) If fees or court costs of an *[inmate]* **adult in custody** have been waived or deferred under ORS 30.643, a court shall dismiss the case if at any time the court determines that the *[inmate]* **adult in custody** was in fact able to pay fees and court costs at the time the application for waiver or deferral was made under ORS 21.680 to 21.698.

(2) If *[an inmate's]* **the** fees or court costs have been waived or deferred under ORS 30.643 **for an adult in custody**, a court shall dismiss the case if at any time the court determines that each claim in the action, petition or appeal:

(a) Is frivolous or malicious;

(b) Fails to state a claim upon which relief may be granted, and the court denies leave to amend; or

(c) Seeks monetary relief against a defendant who is immune from a claim for monetary relief.

(3) Upon appeal of any dismissal under this section, the Court of Appeals on its own motion, or on the motion of the respondent, may summarily affirm the judgment of the trial court, with or without submission of briefs and without oral argument, if the Court of Appeals determines that the appeal does not present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge of the Court of Appeals may deny a respondent's motion for summary affirmance under this subsection or may grant the motion if the petitioner does not oppose the motion. A dismissal of an appeal under this subsection constitutes a decision on the merits of the case.

SECTION 9. ORS 30.648 is amended to read:

30.648. (1)(a) An *[inmate]* **adult in custody** who brings an action against a public body in a small claims department must serve the notice and claim and all subsequent filings on the public body. If the public body is the Department of Corrections or another state agency, the *[inmate]* **adult in custody** must also serve the notice and claim and all subsequent filings on the Attorney General.

(b) Notice and claim served under paragraph (a) of this subsection must be served in the manner provided in ORS 46.445 except that the statement required under ORS 46.445 (4) must read "30 DAYS" instead of "14 DAYS."

(2) The public body or Attorney General served under subsection (1) of this section must take action as required under ORS 46.455 except that the public body or Attorney General must admit or deny the claim within 30 days after the date of service.

(3) Notwithstanding ORS 46.405, in an action against a public body brought under this section, the court shall transfer the action to the regular department of the circuit court upon request of the public body or, if the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, upon request of the public body or the Attorney General.

(4) Notwithstanding ORS 46.415, in an action against a public body brought under this section, if the public body is the Department of Corrections or

another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, an attorney or paralegal employed by the Department of Justice may appear and represent the public body.

(5)(a) Notwithstanding ORS 46.475, in an action against a public body brought under this section, notice of intent to apply for an order of default, in the form prescribed by Uniform Trial Court Rule 2.010, must be filed and served on the public body against which an order of default is sought at least 10 days before a court may enter an order of default. If the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, notice must also be served on the Attorney General.

(b) The court may not enter a default judgment in favor of the *[inmate]* **adult in custody** unless the *[inmate]* **adult in custody** submits to the court proof of service by affidavit of the notice and claim required under subsection (1) of this section and the notice of intent to apply for an order of default required under paragraph (a) of this subsection.

SECTION 10. ORS 30.650 is amended to read:

30.650. Noneconomic damages, as defined in ORS 31.710, may not be awarded to an *[inmate]* **adult in custody** in an action against a public body unless the *[inmate]* **adult in custody** has established that the *[inmate]* **adult in custody** suffered economic damages, as defined in ORS 31.710.

SECTION 11. ORS 34.365 is amended to read:

34.365. (1) Any court of the State of Oregon may authorize the filing of a petition for a writ of habeas corpus by or on behalf of any person imprisoned or otherwise restrained of liberty by virtue of a charge or conviction of crime without payment of the filing fees therefor, if such person presents to the court or judge thereof satisfactory proof, by affidavit and as otherwise required by such judge, that the person is unable to pay such fees.

(2) Notwithstanding the fact that a court has authorized the filing of a petition without payment of the filing fee required by ORS 34.340, the fee may be drawn from, or charged against, the plaintiff's trust account if the plaintiff is an *[inmate]* **adult in custody** in a correctional facility.

SECTION 12. ORS 34.370 is amended to read:

34.370. (1) Except as provided in subsection (6) of this section, the judge to whom the petition for a writ of habeas corpus is presented shall, without delay, issue an order directing the defendant to show cause why the writ should not be allowed.

(2) Upon the issuance of a show cause order under subsection (1) of this section, the following shall apply:

(a) The judge shall order that the defendant appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order issues.

(b) The judge shall rule on the show cause order within seven days after either the defendant files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

(A) If the petition is a meritless petition, issue a judgment denying the petition and ordering the plaintiff to pay the cost of attorney fees incurred by the defendant. In no case shall the award of attorney fees exceed \$100. The fees may be drawn from, or charged against, the [inmate's] trust account **of the adult in custody**.

(B) Issue a judgment granting appropriate habeas corpus relief.

(C) Issue a writ of habeas corpus requiring that a return be made.

(3) Entry of a judgment under subsection (2)(b)(A) or subsection (6) of this section shall be without prejudice. The judgment shall explain to the parties the reason for the denial.

(4) If the court has issued a writ of habeas corpus requiring a return under subsection (2)(b)(C) of this section, the parties may stipulate to a hearing as described in ORS 34.670 without the necessity of a return or a replication. If the court accepts the stipulation, it shall set the matter for hearing in an expedited manner.

(5) Issuance of the writ under subsection (2) of this section shall not bind the court with respect to any subsequent rulings related to the pleadings of the parties or the ultimate disposition of the proceeding.

(6) The court may, on its own motion, enter a judgment denying a meritless petition brought under ORS 34.310 to 34.730.

(7) As used in this section, "meritless petition" means one which, when liberally construed, fails to state a claim upon which habeas corpus relief may be granted.

SECTION 13. ORS 46.405 is amended to read:

46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section, an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$10,000.

(4)(a) Class actions may not be commenced and prosecuted in the small claims department.

(b) An action by an [inmate] **adult in custody**, as defined in ORS 30.642, against another [inmate] **adult in custody** may not be commenced and prosecuted in the small claims department.

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the circuit court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) If a circuit court is located in the same city as a justice court, the circuit court need not have a small claims department if the circuit court and the justice court enter into an intergovernmental agreement that provides that only the justice court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the justice court.

SECTION 14. ORS 51.090 is amended to read: 51.090. The jurisdiction conferred by ORS 51.080 does not extend to:

(1) An action in which the title to real property shall come in question.

(2) An action for false imprisonment, libel, slander or malicious prosecution.

(3) An action brought by an [inmate] **adult in custody** as defined in ORS 30.642.

SECTION 15. ORS 135.760 is amended to read:

135.760. (1) Any [inmate] **adult** in the custody of the Department of Corrections or of the supervisory authority of a county pursuant to a commitment under ORS 137.124 (2) against whom there is pending at the time of commitment or against whom there is filed at any time during imprisonment, in any court of this state, an indictment, information or criminal complaint charging the [inmate] **adult in custody** with the commission of a crime, may give written notice to the district attorney of the county in which the [inmate] **adult in custody** is so charged requesting the district attorney to prosecute and bring the [inmate] **adult in custody** to trial on the charge forthwith.

(2) The notice provided for in subsection (1) of this section shall be signed by the [inmate] **adult in custody** and set forth the place and term of imprisonment. A copy of the notice shall be sent to the court in which the [inmate] **adult in custody** has been charged by indictment, information or complaint.

SECTION 16. ORS 135.763 is amended to read:

135.763. (1) The district attorney, after receiving a notice requesting trial under ORS 135.760, shall, within 90 days of receipt of the notice, bring the [inmate] **adult in custody** to trial upon the pending charge.

(2) The court shall grant any reasonable continuance with the consent of the defendant. Notwithstanding the defendant's lack of consent, the court may grant a continuance on motion of the district attorney or on its own motion, for good cause

shown. The fact of imprisonment is not good cause for the purposes of this subsection.

SECTION 17. ORS 135.765 is amended to read:

135.765. (1) On motion of the defendant or the counsel of the defendant, or on its own motion, the court shall dismiss any criminal proceeding not brought to trial in accordance with ORS 135.763.

(2) This section shall not apply:

(a) When failure to bring the *[inmate]* **adult in custody** to trial within 90 days after the district attorney receives notice under ORS 135.760 was the result of motions filed on behalf of the *[inmate]* **adult in custody**, or of a grant by the court of a continuance on motion of the district attorney or on its own motion, for good cause shown; or

(b) When the *[inmate]* **adult in custody** is unavailable for trial, other than by imprisonment, or because of other pending criminal proceedings against the *[inmate]* **adult in custody**.

SECTION 18. ORS 135.767 is amended to read:

135.767. (1) Whenever the presence of an *[inmate]* **adult** in the custody of the Department of Corrections or of the supervisory authority of a county pursuant to a commitment under ORS 137.124 (2) is necessary in any criminal proceeding under ORS 135.760 to 135.773, the court wherein the *[inmate]* **adult in custody** is charged with the commission of a crime may:

(a) Issue an order directing the Director of the Department of Corrections or the supervisory authority of a county to surrender the *[inmate]* **adult in custody** to the sheriff of the county where the *[inmate]* **adult in custody** is to be tried; or

(b) Ensure that arrangements for the *[inmate]* **adult in custody** to appear by simultaneous electronic transmission as described in ORS 131.045 have been made.

(2) The county where an *[inmate]* **adult in custody** is charged with commission of a crime shall pay the costs of:

(a) Transportation and maintenance of the *[inmate]* **adult in custody** removed under this section; or

(b) Providing for the *[inmate]* **adult in custody** to appear by simultaneous electronic transmission.

(3) If an *[inmate]* **adult in custody** is transported under this section for a criminal proceeding under ORS 135.760 to 135.773, at the conclusion of the proceeding, notwithstanding the provisions of ORS 137.167, the *[inmate]* **adult in custody** shall be returned by the sheriff to the custody of the Department of Corrections or the supervisory authority of the county in which the *[inmate]* **adult in custody** is imprisoned.

(4) The time during which an *[inmate]* **adult** is in the custody of the sheriff under this section is part of and shall be counted as time served under the original sentence.

SECTION 19. ORS 135.770 is amended to read:

135.770. No *[inmate]* **adult** in the custody of a sheriff under ORS 135.767 shall be released pending a criminal proceeding under ORS 135.760 to 135.773 or any appeal therefrom.

SECTION 20. ORS 135.773 is amended to read:

135.773. The district attorney shall, in all proceedings against *[inmates]* **adults in custody** under ORS 135.760 to 135.773, obtain for and furnish to the court a certified copy of the judgment, sentence or commitment order pursuant to which the *[inmate]* **adult in custody** is imprisoned.

SECTION 21. ORS 135.785 is amended to read:

135.785. The official in charge of a Department of Corrections institution in this state shall give over the person of any *[inmate]* **adult in custody** thereof whenever so required by the operation of the Agreement on Detainers.

SECTION 22. ORS 137.124 is amended to read:

137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that exceeds 12 months:

(a) The court shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Department of Corrections; and

(b) If the judgment provides that the term of incarceration be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this state upon conviction of a felony, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department of Corrections.

(2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the supervisory authority of the county in which the crime of conviction occurred.

(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the Department of Corrections if the court orders that the term of incarceration be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court of this state upon conviction of a felony.

(3) After assuming custody of the convicted person the Department of Corrections may transfer *[inmates]* **adults in custody** from one correctional facility to another such facility for the purposes of diagnosis and study, rehabilitation and treatment, as best seems to fit the needs of the *[inmate]* **adult in custody** and for the protection and welfare of the community and the *[inmate]* **adult in custody**.

(4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall

commit the defendant to the custody of the supervisory authority of the county in which the crime of conviction occurred.

(5)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS 137.707, the Department of Corrections shall transfer the physical custody of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

(A) The person will complete the sentence imposed before the person attains 25 years of age;

(B) The Department of Corrections and the Oregon Youth Authority determine that, because of the person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the person should not be incarcerated initially in a Department of Corrections institution; or

(C) The person is under 18 years of age at the time of sentencing and commitment.

(b) A person placed in the custody of the Oregon Youth Authority under this subsection who is at least 18 years of age shall be returned to the physical custody of the Department of Corrections whenever the Director of the Oregon Youth Authority, after consultation with the Department of Corrections, determines that the conditions or circumstances that warranted the transfer of custody under this subsection are no longer present.

(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections. As part of the agreement with the Department of Corrections, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(6)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections or the supervisory authority of a county transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections or supervisory authority of the county. As part

of the agreement with the Department of Corrections or supervisory authority of the county, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility for physical custody as provided in ORS 420.011 (3).

(7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of Corrections or the supervisory authority of a county shall transfer the physical custody of a person committed to the Department of Corrections or the supervisory authority of the county under subsection (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:

(a) The person was at least 18 years of age but under 20 years of age at the time of committing the felony for which the person is being sentenced to a term of incarceration;

(b) The person is under 20 years of age at the time of commitment to the Department of Corrections or the supervisory authority of the county;

(c) The person has not been committed previously to the legal and physical custody of the Department of Corrections or the supervisory authority of a county;

(d) The person has not been convicted and sentenced to a term of incarceration for the commission of a felony in any other state;

(e) The person will complete the term of incarceration imposed before the person attains 25 years of age;

(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment programs administered by the Oregon Youth Authority;

(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons in the custody of the Oregon Youth Authority; and

(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of the Oregon Youth Authority under this subsection.

(8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department or the supervisory authority of a county may not transfer the physical custody of the person under subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after consultation with the Department of Corrections or the supervisory authority of a county, determines that, because of the person's age, mental or emotional condition or risk of physical harm to other persons, the person should not be incarcerated in a youth correction facility.

(9) Notwithstanding any other provision of this section, under no circumstances may a person under

18 years of age be incarcerated in a Department of Corrections institution.

SECTION 23. ORS 138.527 is amended to read:

138.527. (1) In addition to any other relief a court may grant or order under ORS 138.510 to 138.680, the court shall award attorney fees to the prevailing party if the court finds that the other party's petition or response was frivolous.

(2) An award of attorney fees under this section may not exceed \$100.

(3) If the party required to pay attorney fees is an [inmate] **adult in the custody** of a correctional institution, the fees may be drawn from, or charged against, the [inmate's] trust account **of the adult in custody**.

SECTION 24. ORS 138.590 is amended to read:

138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS 138.510 to 138.680 or to employ suitable counsel possessing skills and experience commensurate with the nature of the conviction and complexity of the case for the proceeding may proceed as a financially eligible person pursuant to this section upon order of the circuit court in which the petition is filed.

(2) If the petitioner wishes to proceed as a financially eligible person, the person shall file with the petition an affidavit stating inability to pay the expenses of a proceeding pursuant to ORS 138.510 to 138.680, including, but not limited to, the filing fee required by ORS 138.560, or to employ suitable counsel for such a proceeding. The affidavit shall contain a brief statement of the petitioner's assets and liabilities and income during the previous year. If the circuit court is satisfied that the petitioner is unable to pay such expenses or to employ suitable counsel, it shall order that the petitioner proceed as a financially eligible person. If the court finds that a petitioner who has been sentenced to death is not competent to decide whether to accept or reject the appointment of counsel, the court shall appoint counsel to represent the petitioner. However, when a circuit court orders petitioner's case transferred to another circuit court as provided in ORS 138.560 (4), the matter of petitioner's proceeding as a financially eligible person shall be determined by the latter court.

(3) If a petitioner who has been sentenced to death qualifies for the appointment of counsel under this section but rejects the appointment, the court shall determine, after a hearing if necessary, whether the petitioner rejected the offer of counsel and made the decision with an understanding of its legal consequences. The court shall make appropriate findings on the record.

(4) In the order to proceed as a financially eligible person, the circuit court shall appoint suitable counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout the proceedings in the circuit court. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and

guidelines of the Public Defense Services Commission.

(5) If counsel appointed by the circuit court determines that the petition as filed by petitioner is defective, either in form or in substance, or both, counsel may move to amend the petition within 15 days following counsel's appointment, or within a further period as the court may allow. The amendment shall be permitted as of right at any time during this period. If appointed counsel believes that the original petition cannot be construed to state a ground for relief under ORS 138.510 to 138.680, and cannot be amended to state a ground for relief, counsel shall, in lieu of moving to amend the petition, inform the petitioner and notify the circuit court of counsel's belief by filing an affidavit stating the belief and the reasons therefor with the clerk of the circuit court. This affidavit does not constitute a ground for denying the petition prior to a hearing upon its sufficiency, but the circuit court may consider the affidavit in deciding upon the sufficiency of the petition at the hearing.

(6) When a petitioner has been ordered to proceed as a financially eligible person, the expenses which are necessary for the proceedings upon the petition in the circuit court and the compensation to appointed counsel for petitioner as provided in this subsection shall be paid by the public defense services executive director from funds available for the purpose. At the conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680, the public defense services executive director shall determine and pay, as provided by the policies, procedures, standards and guidelines of the Public Defense Services Commission, the amount of expenses of petitioner and compensation for the services of appointed counsel in the proceedings in the circuit court.

(7) If the public defense services executive director denies, in whole or in part, expenses and compensation submitted for review and payment, the person who submitted the payment request may appeal the decision to the presiding judge of the circuit court. The presiding judge or the designee of the presiding judge shall review the public defense services executive director's decision for abuse of discretion. The decision of the presiding judge or the designee of the presiding judge is final.

(8)(a) When a petitioner has been authorized to proceed as a financially eligible person, all court fees in the circuit court, except for the filing fee required by ORS 138.560, are waived.

(b) When a petitioner is allowed to file a petition without payment of the fee required by ORS 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against, the petitioner's trust account if the petitioner is an [inmate] **adult in custody** in a correctional facility.

(9) Notwithstanding any other provision of this chapter, a court may not appoint as counsel for a petitioner who has been sentenced to death a counsel who previously represented the petitioner at trial or on automatic and direct review in the case re-

sulting in the death sentence unless the petitioner and the counsel expressly request continued representation.

SECTION 25. ORS 144.050 is amended to read:

144.050. Subject to applicable laws, the State Board of Parole and Post-Prison Supervision may authorize any *[inmate]* **adult in custody**, who is committed to the legal and physical custody of the Department of Corrections for an offense committed prior to November 1, 1989, to go upon parole subject to being arrested and detained under written order of the board or as provided in ORS 144.350. The state board may establish rules applicable to parole.

SECTION 26. ORS 144.096 is amended to read:

144.096. (1)(a) The Department of Corrections shall prepare a proposed release plan for an *[inmate]* **adult in custody** and submit the proposed release plan to the State Board of Parole and Post-Prison Supervision prior to the *[inmate's]* release.

(b) If the proposed release plan is not approved by the board, the board shall return the plan to the department with its recommended modifications. The department shall submit a revised plan to the board prior to the *[inmate's]* release.

(c) If the revised plan is not acceptable to the board, the board shall determine the provisions of the final plan prior to the *[inmate's]* release.

(d) The department, in consultation with the board, shall by rule establish deadlines by which a proposed release plan described in paragraph (a) of this subsection and a revised plan described in paragraph (b) of this subsection must be submitted to the board prior to *[an inmate's]* release.

(e) If an *[inmate]* **adult in custody** was sentenced under section 29, chapter 649, Oregon Laws 2013, and the release plan recommends that the *[inmate]* **adult in custody** participate in a reentry court, the board shall provide a copy of the release plan to the reentry court.

(2) The local supervisory authority that is responsible for correctional services for an *[inmate]* **adult in custody** shall prepare a proposed release plan for the *[inmate]* **adult in custody** prior to the *[inmate's]* release from jail. The local supervisory authority shall approve the release plan under its rules. If the *[inmate]* **adult in custody** was sentenced under section 29, chapter 649, Oregon Laws 2013, and the supervisory authority recommends that the *[inmate]* **adult in custody** participate in a reentry court, the supervisory authority shall provide a copy of the release plan to the reentry court.

(3) A release plan prepared under subsection (1) or (2) of this section must include:

(a) A description of support services and program opportunities available to the *[inmate]* **adult in custody**, including any transitional housing or treatment programs to which the *[inmate]* **adult in custody** has been accepted;

(b) The recommended conditions of post-prison supervision;

(c) The level of supervision that shall be consistent with the *[inmate's]* risk assessment classification **of the adult in custody**;

(d) Any other conditions and requirements as may be necessary to promote public safety;

(e) For all *[inmates]* **adults in custody** whose sentence to make restitution under ORS 137.106 has been suspended for the term of imprisonment, a restitution payment schedule; and

(f) Any conditions necessary to assist the reformation of the *[inmate]* **adult in custody**.

SECTION 27. ORS 144.096, as amended by section 35, chapter 649, Oregon Laws 2013, section 2, chapter 40, Oregon Laws 2017, and section 2, chapter 438, Oregon Laws 2017, is amended to read:

144.096. (1)(a) The Department of Corrections shall prepare a proposed release plan for an *[inmate]* **adult in custody** and submit the proposed release plan to the State Board of Parole and Post-Prison Supervision prior to the *[inmate's]* release.

(b) If the proposed release plan is not approved by the board, the board shall return the plan to the department with its recommended modifications. The department shall submit a revised plan to the board prior to the *[inmate's]* release.

(c) If the revised plan is not acceptable to the board, the board shall determine the provisions of the final plan prior to the *[inmate's]* release.

(d) The department, in consultation with the board, shall by rule establish deadlines by which a proposed release plan described in paragraph (a) of this subsection and a revised plan described in paragraph (b) of this subsection must be submitted to the board prior to *[an inmate's]* release.

(2) The local supervisory authority that is responsible for correctional services for an *[inmate]* **adult in custody** shall prepare a proposed release plan for the *[inmate]* **adult in custody** prior to the *[inmate's]* release from jail. The local supervisory authority shall approve the release plan under its rules.

(3) A release plan prepared under subsection (1) or (2) of this section must include:

(a) A description of support services and program opportunities available to the *[inmate]* **adult in custody**, including any transitional housing or treatment programs to which the *[inmate]* **adult in custody** has been accepted;

(b) The recommended conditions of post-prison supervision;

(c) The level of supervision that shall be consistent with the *[inmate's]* risk assessment classification **of the adult in custody**;

(d) Any other conditions and requirements as may be necessary to promote public safety;

(e) For all *[inmates]* **adults in custody** whose sentence to make restitution under ORS 137.106 has been suspended for the term of imprisonment, a restitution payment schedule; and

(f) Any conditions necessary to assist the reformation of the *[inmate]* **adult in custody**.

SECTION 28. ORS 144.098 is amended to read:

144.098. (1) When the State Board of Parole and Post-Prison Supervision or a local supervisory authority responsible for correctional services for an [inmate] **adult in custody** reviews [an inmate's] the release plan prior to approval of the plan as required by ORS 144.096, it may interview the [inmate] **adult in custody** and may review the following information:

(a) Reports of any physical, psychiatric or psychological examinations of the [inmate] **adult in custody**;

(b) The presentence investigation report specified by ORS 144.791 or, if no such report has been prepared, a report of similar content prepared by institutional staff;

(c) The record of the [inmate's] conduct **of the adult in custody** during confinement; and

(d) Any other information relevant to the [inmate's] reintegration **of the adult in custody** into the community that may be submitted by the [inmate] **adult in custody**, the [inmate's] attorney **of the adult in custody**, the victim of the crime, the Department of Corrections, local corrections agencies or any other person.

(2) If the board reviews a release plan, the board must attempt to notify the victim before the review of the release plan by sending written notice to the victim if the victim requests to be notified and furnishes the board with a current address. The notice must inform the victim that the victim may submit information concerning the [inmate] **adult in custody** and the crime to the board for the board's consideration.

(3) The department or local corrections agency shall provide to the board or local supervisory authority reviewing the release plan any psychiatric or psychological reports held by the department or local corrections agency regarding the [inmate] **adult in custody**. However, if the psychiatrist or psychologist who prepared the report or any treating psychiatrist or psychologist determines that disclosure to the [inmate] **adult in custody** of the contents of the report would be detrimental to the [inmate's] mental or emotional health **of the adult in custody**, the psychiatrist or psychologist may indorse upon the report a recommendation that it not be disclosed to the [inmate] **adult in custody**. The department or local corrections agency may withhold from the board or supervisory authority reviewing the plan any report so indorsed.

SECTION 29. ORS 144.123 is amended to read:

144.123. When appearing before the State Board of Parole and Post-Prison Supervision an [inmate] **adult in custody** shall have the right to be accompanied by a person [of the inmate's choice] **chosen by the adult in custody** pursuant to rule promulgated jointly by the State Board of Parole and Post-Prison Supervision and the Department of Corrections.

SECTION 30. ORS 144.270 is amended to read:

144.270. (1) The State Board of Parole and Post-Prison Supervision, in releasing a person on parole, shall specify in writing the conditions of the parole. A copy of the conditions must be given to the person paroled.

(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the person paroled must:

(a) Accept the parole granted subject to all terms and conditions specified by the board.

(b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the board or the parole officer.

(d) Report to the parole officer as directed by the board or parole officer.

(e) Not own, possess or be in control of a weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the board may, in its discretion, suspend or revoke parole if it determines that the parole is not in the best interest of the person paroled or of society.

(3) If the person paroled is required to report as a sex offender under ORS 163A.010, the board shall include as a condition of parole that the person report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:

(a) When supervision begins;

(b) Within 10 days of a change in residence;

(c) Once each year within 10 days of the person's date of birth;

(d) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(e) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(4)(a) The board may establish special conditions that it considers necessary because of the individual circumstances of the person paroled.

(b) If the person is on parole following conviction of a sex crime, as defined in ORS 163A.005, the board shall include all of the following as special conditions of the person's parole:

(A) Agreement to comply with a curfew set by the board or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground

or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against direct or indirect contact with the victim, unless approved by the victim, the person's treatment provider and the board or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board if the representative has reasonable grounds to believe that evidence of a violation of a condition of parole will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of parole.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board or supervising officer.

(M) A prohibition against residing in a dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety.

(c)(A) If the person is on parole following conviction of a sex crime, as defined in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board, if requested by the victim, shall include as a special condition of the person's parole that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is re-

quired to reside in that county under subsection (6) of this section;

(ii) The person demonstrates to the board by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the parole; or

(iv) The person resides in a halfway house.

(B) A victim may request imposition of the special condition of parole described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board imposes the special condition of parole described in this paragraph and if at any time during the period of parole the victim moves to within three miles of the parolee's residence, the board may not require the parolee to change the parolee's residence in order to comply with the special condition of parole.

(5) It is not a cause for revocation of parole that the person paroled failed to apply for or accept employment at a workplace where there is a labor dispute in progress.

(6)(a) When the board grants a person parole from the custody of the Department of Corrections, the board shall order, as a condition of parole, that the person reside for the first six months in the county that last supervised the person, if the person was on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment.

(b) If the person paroled was not on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment, the board shall order as a condition of parole that the person reside for the first six months in the county where the person resided at the time of the offense that resulted in the imprisonment.

(c) For purposes of paragraph (b) of this subsection:

(A) The board shall determine the county where the person resided at the time of the offense by examining records such as:

(i) An Oregon driver license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police;

(iv) Records maintained by the Department of Human Services;

(v) Records maintained by the Department of Corrections; and

(vi) Records maintained by the Oregon Health Authority.

(B) If the person did not have an identifiable address at the time of the offense, or the address can-

not be determined, the person is considered to have resided in the county where the offense occurred.

(C) If the person is serving multiple sentences, the county of residence is determined according to the date of the last arrest resulting in a conviction.

(D) If the person is being rereleased after revocation of parole, the county of residence shall be determined according to the date of the arrest resulting in a conviction of the underlying offense.

(E) In determining the person's county of residence, a conviction for an offense that the [inmate] **adult in custody** committed while incarcerated in a state correctional institution may not be considered.

(d) Upon motion of the board, the supervisory authority, the person paroled, a victim or a district attorney, the board may waive the residency condition under paragraph (b) of this subsection only after making a finding that one of the following conditions has been met:

(A) The person provides proof of employment with no set ending date in a county other than the county of residence determined under paragraph (c) of this section;

(B) The person is found to pose a significant danger to a victim of the person's crime residing in the county of residence, or a victim or victim's family residing in the county of residence is found to pose a significant danger to the person;

(C) The person has a spouse or biological or adoptive family residing in a county other than the county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the parole;

(D) As another condition of parole, the person is required to participate in a treatment program that is not available or located in the county of residence;

(E) The person requests to be paroled to another state; or

(F) The board finds other good cause for the waiver.

(7) As used in this section:

(a) "Attends," "carries on a vocation," "institution of higher education" and "works" have the meanings given those terms in ORS 163A.005.

(b)(A) "Dwelling" has the meaning given that term in ORS 469B.100.

(B) "Dwelling" does not mean a residential treatment facility or a halfway house.

(c) "Halfway house" means a residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "Labor dispute" has the meaning given that term in ORS 662.010.

SECTION 31. ORS 144.275 is amended to read:

144.275. Whenever the State Board of Parole and Post-Prison Supervision orders the release on parole of an [inmate] **adult in custody** who has been ordered to pay compensatory fines pursuant to ORS 137.101 or to make restitution pursuant to ORS 137.106, but with respect to whom payment of all or

a portion of the fine or restitution was suspended until the release of the [inmate] **adult in custody** from imprisonment, the board may establish a schedule by which payment of the compensatory fine or restitution shall be resumed. In fixing the schedule and supervising the [paroled inmate's] performance **of the paroled adult in custody** thereunder, the board shall consider the factors specified in ORS 137.106 (4). The board shall provide to the sentencing court a copy of the schedule and any modifications thereof.

SECTION 32. ORS 144.315 is amended to read:

144.315. Evidence may be received in proceedings conducted by the State Board of Parole and Post-Prison Supervision even though inadmissible under rules of evidence applicable to court procedure and the board shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and method of taking and furnishing the same in order to afford the [inmate] **adult in custody** a reasonable opportunity for a fair hearing. The procedures shall include the means of determining good cause not to allow confrontation of witnesses or disclosure of the identity of informants who would be subject to risk of harm if their identity is disclosed.

SECTION 33. ORS 144.420 is amended to read:

144.420. (1) The Department of Corrections shall establish and administer a work release program in which a misdemeanor or felon may participate, and if confined, be authorized to leave assigned quarters for the purpose of:

(a) Participating in an [inmate] **adult in custody** work program approved by the Director of the Department of Corrections, including work with public or private agencies or persons, with or without compensation.

(b) Obtaining in this state additional education, including but not limited to vocational, technical and general education.

(c) Participating in alcohol or drug treatment programs.

(d) Participating in mental health programs.

(e) Specific treatment to develop independent living skills.

(2) The Department of Corrections is responsible for the quartering and supervision of persons enrolled in the work release program. The Department of Corrections may house for rehabilitative purposes, in a work release facility, a parolee under the jurisdiction of the State Board of Parole and Post-Prison Supervision, with the written consent of the parolee and the approval of the board, in accordance with procedures established by the department and the board.

SECTION 34. ORS 144.450 is amended to read:

144.450. (1) The Director of the Department of Corrections shall approve or reject each recommendation under ORS 144.440 or 421.170 for enrollment in the work release program. Rejection by the di-

rector of a recommendation does not preclude submission under ORS 421.170 of subsequent recommendations regarding enrollment of the same person.

(2) An *[inmate]* **adult in custody** may be assigned by the Department of Corrections to participate in an *[inmate]* **adult in custody** work program, or in education, alcohol and drug treatment or mental health or other specific treatment program to develop independent living skills, without the *[inmate's]* consent **of the adult in custody**.

(3) The director shall promulgate rules for carrying out ORS 144.410 to 144.525 and 421.170.

(4) In approving a recommendation and enrolling a person in the work release program, or in assigning an *[inmate]* **adult in custody** to participate in an *[inmate]* **adult in custody** work program or in education, alcohol and drug treatment or mental health or other specific treatment program to develop independent living skills, the director may prescribe any specific conditions that the director finds appropriate to assure compliance by the person with the general procedures and objectives of the work release program.

(5) ORS 183.410 to 183.500 do not apply to actions taken under this section.

SECTION 35. ORS 144.480 is amended to read:

144.480. (1) Persons assigned to participate in an *[inmate]* **adult in custody** work program established under ORS 144.420 may be enrolled in an apprenticeship or training program under ORS 660.002 to 660.210 and are entitled to the protection and benefits of ORS 660.002 to 660.210 to the same extent as other employees of their employer, except that the Director of the Department of Corrections shall establish by rule any compensation paid to such persons and the compensation is not subject to any provision establishing or requiring a minimum or prevailing wage unless required to comply with federal law.

(2) Persons assigned to participate in an *[inmate]* **adult in custody** work program established under ORS 144.420 are entitled to the protection and benefits of ORS 655.505 to 655.555.

(3) Persons enrolled, or assigned to participate, in a work release program are not entitled to benefits:

- (a) Under ORS chapter 656; or
- (b) Under ORS chapter 657 during their enrollment.

SECTION 36. ORS 144.490 is amended to read:

144.490. (1) A person enrolled, or assigned to participate, in the work release program is not an agent, employee or servant of a Department of Corrections institution, the department or this state:

(a) While working, seeking gainful employment or otherwise participating, in an *[inmate]* **adult in custody** work program; or

(b) While going to the place of such employment or work assignment from the place where the person is quartered, or while returning therefrom.

(2) For purposes of this chapter, a person enrolled, or assigned to participate, in the work release program established under ORS 144.420 is considered to be an *[inmate of]* **adult in custody** in a Department of Corrections institution.

SECTION 37. ORS 144.522 is amended to read:

144.522. (1) The Department of Corrections may request in writing the Oregon Department of Administrative Services to, and when so requested the Oregon Department of Administrative Services shall, draw a warrant on the amount available under section 6 or 7, chapter 678, Oregon Laws 1969, in favor of the department for use by the department as a revolving fund. The warrant or warrants drawn to establish or increase the revolving fund, rather than to reimburse it, shall not exceed the aggregate sum of \$20,000. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department for the purpose of making loans to any *[inmate]* **adult in custody** enrolled in the work release program under ORS 144.410 to 144.525, at a rate of interest prescribed by the department, to pay costs of necessary clothing, tools, transportation and other items from the time of initial enrollment to the time the *[inmate]* **adult in custody** receives sufficient income to repay the loan. A loan from the revolving fund shall be made only when other resources available to the enrollee to pay the costs described in this subsection are inadequate.

(3) The Department of Corrections shall enforce repayment of loans under this section by any lawful means. However, the Director of the Department of Corrections may proceed under ORS 293.235 to 293.245 to write off uncollectible debts arising out of such loans.

(4) All repayments of loans from the revolving fund shall be credited to the fund. Interest earnings realized upon any loan from the revolving fund shall be credited to the fund.

SECTION 38. ORS 161.267 is amended to read:

161.267. (1) As used in this section:

(a) "Colocated minimum security facility" means a Department of Corrections institution that has been designated by the Department of Corrections as a minimum security facility and has been located by the department on the grounds of a medium or higher security Department of Corrections institution.

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

(c) "Stand-alone minimum security facility" means a Department of Corrections institution that has been designated by the department as a minimum security facility and that has been located by the department separate and apart from other Department of Corrections institutions.

(2) A corrections officer or other official employed by the Department of Corrections is justified

in using physical force, including deadly physical force, when and to the extent that the officer or official reasonably believes it necessary to:

(a) Prevent the escape of an *[inmate]* **adult in custody** from a Department of Corrections institution, including the grounds of the institution, or from custody;

(b) Maintain or restore order and discipline in a Department of Corrections institution, or any part of the institution, in the event of a riot, disturbance or other occurrence that threatens the safety of *[inmates]* **adults in custody**, department employees or other persons; or

(c) Prevent serious physical injury to or the death of the officer, official or another person.

(3) Notwithstanding subsection (2)(a) of this section, a corrections officer or other official employed by the department may not use deadly physical force to prevent the escape of an *[inmate]* **adult in custody** from:

(a) A stand-alone minimum security facility;

(b) A colocated minimum security facility, if the corrections officer or other official knows that the *[inmate]* **adult in custody** has been classified by the department as minimum custody; or

(c) Custody outside of a Department of Corrections institution:

(A) While the *[inmate]* **adult in custody** is assigned to an *[inmate]* **adult in custody** work crew; or

(B) During transport or other supervised activity, if the *[inmate]* **adult in custody** is classified by the department as minimum custody and the *[inmate]* **adult in custody** is not being transported or supervised with an *[inmate]* **adult in custody** who has been classified by the department as medium or higher custody.

(4) Nothing in this section limits the authority of a person to use physical force under ORS 161.205 (2) or 161.265.

SECTION 39. ORS 162.135 is amended to read: 162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

(1)(a) "Contraband" means:

(A) Controlled substances as defined in ORS 475.005;

(B) Drug paraphernalia as defined in ORS 475.525;

(C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or in the control of an *[inmate]* **adult in custody** confined in a correctional facility; or

(D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.

(b) "Contraband" does not include authorized currency possessed by an *[inmate]* **adult in custody** in a work release facility.

(2) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. "Correctional facility" applies to a state hospital or a secure intensive community inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(3) "Currency" means paper money and coins that are within the correctional institution.

(4) "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.

(5) "Escape" means the unlawful departure of a person from custody or a correctional facility. "Escape" includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351. "Escape" does not include failure to comply with provisions of a conditional release in ORS 135.245.

(6) "Youth correction facility" means:

(a) A youth correction facility as defined in ORS 420.005; and

(b) A detention facility as defined in ORS 419A.004.

(7) "State hospital" means the Oregon State Hospital and any other hospital established by law for similar purposes.

(8) "Unauthorized departure" means the unauthorized departure of a person confined by court order in a youth correction facility or a state hospital that, because of the nature of the court order, is not a correctional facility as defined in this section, or the failure to return to custody after any form of temporary release or transitional leave from a correctional facility.

SECTION 40. ORS 162.175 is amended to read: 162.175. (1) A person commits the crime of unauthorized departure if:

(a) The person makes an unauthorized departure; or

(b) Not being an *[inmate]* **adult in custody** therein, the person aids another in making or attempting to make an unauthorized departure.

(2) Unauthorized departure is a Class A misdemeanor.

SECTION 41. ORS 163.452 is amended to read: 163.452. (1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or oral or anal sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

(A) In the custody of a law enforcement agency following arrest;

(B) Confined or detained in a correctional facility;

(C) Participating in an *[inmate]* **adult in custody** or offender work crew or work release program; or

(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

(A) Employs the officer who arrested the other person;

(B) Operates the correctional facility in which the other person is confined or detained;

(C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or

(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual intercourse, oral or anal sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class C felony.

SECTION 42. ORS 163.454 is amended to read:

163.454. (1) A person commits the crime of custodial sexual misconduct in the second degree if the person:

(a) Engages in sexual contact with another person knowing that the other person is:

(A) In the custody of a law enforcement agency following arrest;

(B) Confined or detained in a correctional facility;

(C) Participating in an *[inmate]* **adult in custody** or offender work crew or work release program; or

(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

(A) Employs the officer who arrested the other person;

(B) Operates the correctional facility in which the other person is confined or detained;

(C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or

(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor.

SECTION 43. ORS 169.005 is amended to read:

169.005. As used in ORS 169.005 to 169.677 and 169.730 to 169.800, unless the context requires otherwise:

(1) "Detainee" means a person held with no criminal charges.

(2) "Forced release" means temporary freedom of an *[inmate]* **adult in custody** from lawful custody before judgment of conviction due to a county jail population emergency under ORS 169.046.

(3) "Juvenile detention facility" means a facility as described in ORS 419A.050 and 419A.052.

(4) "Local correctional facility" means a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(5) "Lockup" means a facility for the temporary detention of arrested persons held up to 36 hours, excluding holidays, Saturdays and Sundays, but the period in lockup shall not exceed 96 hours after booking.

(6) "Month" means a period of 30 days.

(7) "Prisoner" means a person held with criminal charges or sentenced to the facility.

(8) "Temporary hold" means a facility, the principal purpose of which is the temporary detention of a prisoner for four or less hours while awaiting court appearance or transportation to a local correctional facility.

SECTION 44. ORS 169.046 is amended to read:

169.046. (1) If a county court or board adopts a jail capacity limit under ORS 169.044 and the number of *[inmates]* **adults in custody** in its local correctional facility exceeds that capacity limit so that a county jail population emergency exists, the sheriff shall notify the presiding circuit judge, each municipal court judge and justice of the peace in the county, the district attorney for the county, the county counsel, the chief law enforcement officer for each city located in the county and the county court or board of commissioners that the number of *[inmates]* **adults in custody** in the local correctional facility has exceeded capacity and that a county jail population emergency exists.

(2) If the county court or board has adopted a jail capacity limit and action plan under ORS 169.044 and if a county jail population emergency occurs under the terms of the plan, the county court or board and the county sheriff may carry out the steps of the plan. This includes any authorization, under the plan, for the sheriff to order *[inmates]*

adults in custody released in order to reduce the jail population. A sheriff shall be immune from criminal or civil liability for any good faith release of *[inmates]* **adults in custody** under ORS 169.042 to 169.046.

(3) If it becomes necessary to order *[inmates]* **adults in custody** released under ORS 169.042 to 169.046, or if it appears to the sheriff that release of *[inmates]* **adults in custody** is likely to become necessary in the near future, the sheriff shall immediately notify all police agencies in the county to make maximum use of citations in lieu of custody pursuant to ORS 133.055 to 133.076 until further notice.

(4) If it becomes necessary to order the release of *[inmates]* **adults in custody** under ORS 169.042 to 169.046, the sheriff may place *[inmates]* **adults in custody** on forced release subject to a forced release agreement. A forced release agreement must be in writing and be signed by the sheriff and the *[inmate]* **adult in custody** and must include:

(a) The date of the next court appearance of the *[inmate]* **adult in custody**;

(b) A statement that the *[inmate]* **adult in custody** is required to appear at the next court appearance; and

(c) A statement that failure of the *[inmate]* **adult in custody** to appear at the next court appearance is subject to prosecution under ORS 162.195 or 162.205.

SECTION 45. ORS 169.053 is amended to read:

169.053. (1) A county may enter into an agreement with one or more other counties of this state under ORS 190.010 for the confinement and detention of offenders subject to the legal and physical custody of the county. The agreement may provide for the reception, detention, care and maintenance, and work assignment of:

- (a) Pretrial detainees;
- (b) Offenders convicted of a misdemeanor; and
- (c) Offenders convicted of a felony who are:

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

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

(2) A county may enter into an agreement with the Department of Corrections under ORS 190.110 for the confinement and detention of offenders subject to the legal and physical custody of the county. The agreement may provide for the reception, detention, care and maintenance, and work assignment of:

- (a) Offenders convicted of a misdemeanor; and
- (b) Offenders convicted of a felony who are:

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

(B) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for a

violation of a condition of parole, probation or post-prison supervision.

(3) An agreement entered into under ORS 190.110 and subsection (2) of this section shall include a provision that the county reimburse the Department of Corrections for its costs incurred in confining the county *[inmate]* **adult in custody**. Reimbursement shall be made on a per diem basis at a rate determined by the department to be its average daily incarceration cost per *[inmate]* **adult in custody**. In lieu of reimbursement, the department and county may enter into an agreement providing for the comparable exchange of *[inmates]* **adults in custody** as determined by the department.

SECTION 46. ORS 169.076 is amended to read: 169.076. Each local correctional facility shall:

(1) Provide sufficient staff to perform all audio and visual functions involving security, control, custody and supervision of all confined detainees and prisoners, with personal inspection at least once each hour. The supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the jurisdiction in which the facility is located.

(2) Have a comprehensive written policy with respect to:

- (a) Legal confinement authority.
- (b) Denial of admission.
- (c) Telephone calls.
- (d) Admission and release medical procedures.
- (e) Medication and prescriptions.
- (f) Personal property accountability which complies with ORS 133.455.

(g) Vermin and communicable disease control.

(h) Release process to include authority, identification and return of personal property.

(i) Rules of the facility governing correspondence and visitations.

(3) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and regulations for the operation of the facility.

(4) Not administer any physical punishment to any prisoner at any time.

(5) Provide for emergency medical and dental health, having written policies providing for:

(a) Review of the facility's medical and dental plans by a licensed physician, physician assistant, naturopathic physician or nurse practitioner.

(b) The security of medication and medical supplies.

(c) A medical and dental record system to include request for medical and dental attention, treatment prescribed, prescriptions, special diets and other services provided.

(d) First aid supplies and staff first aid training.

(6) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.

(7) Ensure that confined detainees and prisoners:

(a) Will be fed daily at least three meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other purposes.

(b) Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered dietitian or the Oregon Health Authority.

(c) Be provided special diets as prescribed by the facility's designated physician, physician assistant, naturopathic physician or nurse practitioner.

(d) Shall have food procured, stored, prepared, distributed and served under sanitary conditions, as defined by the authority under ORS 624.041.

(8) Ensure that the facility be clean, and provide each confined detainee or prisoner:

(a) Materials to maintain personal hygiene.

(b) Clean clothing twice weekly.

(c) Mattresses and blankets that are clean and fire-retardant.

(9) Require each prisoner to shower at least twice weekly.

(10) Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.

(11) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.

(12) Have and provide each prisoner with written rules for *[inmate]* **prisoner** conduct and disciplinary procedures. If a prisoner cannot read or is unable to understand the written rules, the information shall be conveyed to the prisoner orally.

(13) Not restrict the free exercise of religion unless failure to impose the restriction will cause a threat to facility or order.

(14) Safeguard and ensure that the prisoner's legal rights to access to legal materials are protected.

SECTION 47. ORS 169.760 is amended to read:

169.760. All juvenile detention facilities, within six months following November 1, 1981, shall have established comprehensive written policies providing for the least restrictive alternative consistent with the safety and security of the facility, ORS 169.076, 169.078, 169.740 and 169.750, with respect to:

(1) The admission and release of juveniles to and from the facility and proper notification of the juvenile's parent, guardian or other person responsible for the juvenile;

(2) The use of physical restraints, physical force, chemical agents, internal searches and isolation of or upon a detained juvenile;

(3) A detained juvenile's access to medical and dental treatment, education, counseling and exercise;

(4) Access to the facility by the public and news media;

(5) Access to reading materials for detained juveniles;

(6) Dress and groom code which will allow for individual identity of detained juveniles;

(7) Access to visitation and telephone calls for a detained juvenile with family and friends;

(8) Sanctions for violating rules of *[inmate]* **prisoner** conduct made pursuant to ORS 169.076 (12) and procedures for fact-finding and imposition of discipline or punishment; and

(9) Access to records and grievance procedures for complaints by the detained juvenile, the attorney of the detained juvenile, parent or guardian or other interested person as provided for in ORS 419A.255.

SECTION 48. ORS 179.473 is amended to read:

179.473. (1) Whenever the health and welfare of the person and the efficient administration of the institution require the transfer of an *[inmate of]* **adult in custody in** a Department of Corrections institution or a youth offender in a youth correction facility to another institution or facility:

(a) The Department of Corrections or the Oregon Youth Authority, with the consent of the Department of Human Services, may transfer a person at any institution under its jurisdiction to a residential facility for persons with intellectual disabilities or, with the consent of the Oregon Health and Science University, to the Oregon Health and Science University.

(b) The Department of Corrections may transfer an *[inmate of]* **adult in custody in** a Department of Corrections institution to a state hospital listed in ORS 426.010 for evaluation and treatment pursuant to rules adopted jointly by the Department of Corrections and the Oregon Health Authority.

(c) The Oregon Youth Authority may transfer a youth offender or other person confined in a youth correction facility to a hospital or facility designated by the Oregon Health Authority for evaluation and treatment pursuant to rules adopted jointly by the Oregon Youth Authority and the Oregon Health Authority.

(d) Except as provided in subsection (2) of this section, the Department of Corrections or the Oregon Youth Authority may make a transfer of a person from any institution under the jurisdiction of the department or the Oregon Youth Authority to any other institution under the jurisdiction of the department or authority.

(2) A youth offender in a youth correction facility may not be transferred to a Department of Corrections institution under subsection (1) of this section. A youth offender in a youth correction facility who has been transferred to another institution may not be transferred from such other institution to a Department of Corrections institution.

(3) The rules adopted under subsection (1)(b) and (c) of this section must:

(a) Provide the *[inmate]* **adult in custody** or youth offender with the rights to which persons are entitled under ORS 179.485.

(b) Provide that a transfer of an *[inmate]* **adult in custody** or a youth offender to the Oregon Health Authority for stabilization and evaluation for treatment may not exceed 30 days unless the trans-

fer is extended pursuant to a hearing required by paragraph (c) of this subsection.

(c) Provide for an administrative commitment hearing if:

(A) The Oregon Health Authority determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the authority needs more than 30 days to stabilize or evaluate the *[inmate]* **adult in custody** or youth offender for treatment; and

(B) The *[inmate]* **adult in custody** or youth offender does not consent to the administrative commitment or an extension of the transfer.

(d) Provide for, at a minimum, all of the following for the administrative commitment hearing process:

(A) Written notice to the *[inmate]* **adult in custody** or youth offender that an administrative commitment to a state hospital listed in ORS 426.010 or a hospital or facility designated by the Oregon Health Authority or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the *[inmate]* **adult in custody** or youth offender to prepare for the hearing.

(B) Disclosure to the *[inmate]* **adult in custody** or youth offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the *[inmate]* **adult in custody** or youth offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the *[inmate]* **adult in custody** or youth offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the *[inmate]* **adult in custody** or youth offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the *[inmate]* **adult in custody** or youth offender or extending the transfer.

(G) A qualified and independent assistant for the *[inmate]* **adult in custody** or youth offender to be provided by the state if the *[inmate]* **adult in custody** or youth offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this paragraph.

(e) Provide that an *[inmate]* **adult in custody** or a youth offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the *[inmate]* **adult in custody** or youth offender is

a person with mental illness as defined in ORS 426.005.

(f) Provide that the duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing. Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the *[inmate]* **adult in custody** was sentenced or beyond the period of time that the youth offender may be placed in a youth correction facility.

SECTION 49. ORS 179.478 is amended to read:

179.478. (1) If an *[inmate]* **adult in custody** or youth offender, a relative, guardian or friend of an *[inmate]* **adult in custody** or youth offender, or institution staff have probable cause to believe that an *[inmate]* **adult in custody** or youth offender is a person with an intellectual disability to such a degree that the *[inmate]* **adult in custody** or youth offender cannot adjust to or benefit from the Department of Corrections institution or youth correction facility, the superintendent of the institution shall request that a diagnostic evaluation described in ORS 427.105 be performed by the Department of Human Services or its designee. If there is probable cause to believe that the *[inmate]* **adult in custody** or youth offender is a person with an intellectual disability and is in need of commitment for residential care, treatment and training pursuant to ORS 427.235 to 427.290, the *[inmate]* **adult in custody** or youth offender shall be entitled to a commitment hearing.

(2) If the *[inmate]* **adult in custody** or youth offender is by clear and convincing evidence determined by the court to be a person with an intellectual disability and is in need of commitment for residential care, treatment and training, the person shall be committed to the Department of Human Services and transferred to a facility designated by the department as soon as space in an appropriate facility is available, and any sentence to a Department of Corrections institution or commitment to the youth correction facility shall be terminated.

SECTION 50. ORS 179.483 is amended to read:

179.483. Any time spent by an *[inmate of]* **adult in custody in** a Department of Corrections institution pursuant to a transfer or conveyance shall be counted as part of the sentence being served by the *[inmate]* **adult in custody**.

SECTION 51. ORS 179.486 is amended to read:

179.486. (1) The institution from which a transfer or conveyance is made shall pay from its appropriation the cost of such of the following items as may be incurred in a particular case:

(a) Transportation and other expenses incidental to the transfer or conveyance, including the expenses of attendants where an attendant is directed to accompany the *[inmate]* **adult in custody**.

(b) Hospital expenses incurred at the Oregon Health and Science University.

(c) Examination, treatment and hospital expenses incurred in favor of a physician, naturopathic physician, clinic or hospital, other than the Oregon Health and Science University.

(2) An *[inmate]* **adult in custody** transferred or conveyed to the Oregon Health and Science University shall be accompanied by a report made by the physician or naturopathic physician in charge of the institution from which the transfer or conveyance is made, or by another physician or naturopathic physician designated by the physician or naturopathic physician in charge. The report shall contain the history of the case and the information required by blanks prepared by the School of Medicine or School of Dentistry, as the case may be.

SECTION 52. ORS 179.495 is amended to read:

179.495. (1) Written accounts of the *[inmates]* **adults in custody** of any Department of Corrections institution as defined in ORS 421.005, maintained in the institution by the officers or employees of the institution who are authorized to maintain written accounts within the official scope of their duties, are not subject to disclosure unless the disclosure is permitted or authorized by the Department of Corrections in compliance with ORS 179.505 (3), (4), (6), (7), (9), (11), (12), (14), (15), (16) or (17) or 179.508 or upon order of a court of competent jurisdiction. The restriction contained in this section does not apply to disclosure of written accounts made under ORS 179.505 (3) with the authorization of the individual or a personal representative of the individual.

(2) Except as authorized under subsection (1) of this section, any person who discloses or any person who knowingly obtains information from a written account referred to in subsection (1) of this section commits a Class B violation.

(3) As used in this section, “disclosure,” “personal representative” and “written account” have the meanings given those terms in ORS 179.505.

SECTION 53. ORS 179.508 is amended to read:

179.508. (1) The Department of Corrections may disclose individually identifiable health information without obtaining an authorization from an *[inmate]* **adult in custody** or a personal representative of the *[inmate]* **adult in custody** if disclosure of the information is necessary for:

(a) The provision of health care to the *[inmate]* **adult in custody**;

(b) The health and safety of the *[inmate]* **adult in custody** or other *[inmates]* **adults in custody**;

(c) The health and safety of the officers or employees of or others at the Department of Corrections institution as defined in ORS 421.005 where the *[inmate]* **adult in custody** is incarcerated;

(d) The health and safety of the *[inmate]* **adult in custody** or officers or other persons responsible for transporting or transferring *[inmates]* **adults in custody** from one setting to another;

(e) Law enforcement purposes on the premises of the correctional institution; or

(f) The administration and maintenance of the safety, security and good order of the correctional institution.

(2) As used in this section, “disclosure,” “individually identifiable health information” and “personal representative” have the meanings given those terms in ORS 179.505.

SECTION 54. ORS 183.315 is amended to read:

183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, State Board of Parole and Post-Prison Supervision or Psychiatric Security Review Board with respect to its functions under ORS 161.315 to 161.351.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state’s law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an *[inmate]* **adult in custody** confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Except as provided in ORS 774.180, judicial review of an order issued by the commission in a contested case may be sought only by a party to the contested case.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

SECTION 55. ORS 192.515 is amended to read:

192.515. As used in this section and ORS 179.505 and 192.517:

(1) "Facilities" includes, but is not limited to, hospitals, nursing homes, facilities defined in ORS 430.205, board and care homes, homeless shelters, juvenile training schools, youth care centers, juvenile detention centers, jails and prisons.

(2) "Individual" means:

(a) An individual with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15002) as in effect on January 1, 2003;

(b) An individual with mental illness as defined in the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10802) as in effect on January 1, 2003; or

(c) An individual with disabilities as described in 29 U.S.C. 794e as in effect on January 1, 2006, other than:

(A) An *[inmate]* **adult in custody** in a facility operated by the Department of Corrections whose only disability is drug or alcohol addiction; and

(B) A person confined in a youth correction facility, as that term is defined in ORS 420.005, whose only disability is drug or alcohol addiction.

(3)(a) "Other legal representative" means a person who has been granted or retains legal authority to exercise an individual's power to permit access to the individual's records.

(b) "Other legal representative" does not include a legal guardian, the state or a political subdivision of this state.

(4) "Records" includes, but is not limited to, reports prepared or received by any staff of a facility rendering care or treatment, any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner, reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury or death occurring at the facility that describe such incidents and the steps taken to investigate the incidents and discharge planning records or any information to which the individual would be entitled access, if capable.

SECTION 56. ORS 192.577 is amended to read:

192.577. (1) A health care provider shall disclose protected health information concerning an *[inmate]* **adult in custody** of a Department of Corrections facility to the physician of an employee of the department or of Oregon Corrections Enterprises, without an authorization from the *[inmate]* **adult in custody** or a personal representative of the *[inmate]* **adult in custody**, if:

(a) The employee, in the performance of the employee's official duties, was directly exposed to the bodily fluids of the *[inmate]* **adult in custody**; and

(b) The *[inmate]* **adult in custody** has tested positive for HIV or hepatitis B or C or other communicable disease that may be transmitted through an individual's bodily fluids.

(2) A disclosure under subsection (1) of this section must be limited to the minimum necessary to inform the physician of possible exposure to HIV, hepatitis B or C or other communicable disease.

SECTION 57. ORS 238.015 is amended to read:

238.015. (1) No person may become a member of the system unless that person is in the service of a public employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period. Every employee of a participating employer shall become a member of the system at the beginning of the first full pay period of the employee following the six months' period. Contributions for new members shall first be made for those wages that are attributable to services performed by the employee during the first full pay period following the six months' period, without regard to when those wages are considered earned for other purposes under this chapter. All public employers participating in the Public Employees Retirement System established by chapter 401, Oregon Laws 1945, as amended, at the time of repeal of that chapter, and all school districts of the state, shall participate in, and their employees shall be members of, the system, except as otherwise specifically provided by law.

(2) Any active member of the Public Employees Retirement System who, through the annexation of a political subdivision employing the member or by change of employment, becomes the employee of another political subdivision which is participating in the Public Employees Retirement System and has also a separate retirement system for its employees, shall remain an active member of the Public Employees Retirement System unless, within 60 days after the effective date of the annexation or change of employment or April 8, 1953, the member shall by written notice to the Public Employees Retirement Board and to the administrative body of the new public employer elect to relinquish membership in the Public Employees Retirement System and become a member of the separate retirement system of the employer, if eligible for membership in that retirement system, and the member shall be so carried by the new employer. Immediately upon such annexation of any political subdivision or such change of employment, the new public employer shall inform such employee in writing of the right of the employee to exercise an election as in this section provided.

(3) A political subdivision (other than a school district) not participating in the retirement system established by chapter 401, Oregon Laws 1945, as amended, which employs one or more employees, each of whose position requires 600 hours of service per year, or an agency created by two or more political subdivisions to provide themselves governmental services, which employs one or more employees, each of whose position requires 600 hours of service per year, may, through its governing body, notify the board in writing, that it elects to include its employees in the system hereby established. Such

public employer may request the board to make a study and estimate of the cost of including it and its eligible employees, other than volunteer firefighters, in the system, which the board thereupon shall cause to be made and the cost of which the employer shall bear. Upon completion of the study and estimate the employer may apply for admission to the system, whereupon it shall begin to participate therein and its eligible employees other than volunteer firefighters shall become members of the system. If the employer is an agency created by two or more political subdivisions to provide themselves governmental services and ceases thereafter to transmit to the board contributions for any of its eligible employees, the benefits based upon employer contributions to which such employees would otherwise be entitled shall be reduced accordingly.

(4) No *[inmate of]* **adult in custody** in a state institution or an alien on a training or educational visa working for any participating employer, even though the *[inmate]* **adult in custody** or alien received compensation from a participating employer, shall be eligible to become a member of the system. No person employed by a participating employer and defined by such employer as a student employee is eligible to become a member of the system for such student employment.

(5) A person holding an elective office or an appointive office with a fixed term or an office as head of a department to which the person is appointed by the Governor may become a member of the system by giving the board written notice of desire to do so within 30 days after taking the office or, in the event that the officer is not eligible to become a member of the system at the time of taking the office, within 30 days after becoming so eligible. Membership so established shall not be discontinued during the appointive or elective term of the officer except upon separation of the officer from service.

(6) A public employer employing volunteer firefighters may apply to the board at any time for them to become members of the system. Upon receiving the application the board shall fix a wage at which, for purposes of this chapter only, they shall be considered to be employed and which shall be the basis for computing the amounts of the contributions, if any, which they pay into, and of the benefits which they and their beneficiaries receive from, the fund; and if the wage so fixed is satisfactory to the employer, shall include the firefighters in the system.

(7)(a) In the event that an employee enters the service of a public employer which is participating in or later begins to participate in the system and in the event that at the time of entering that service or at the time that the employer begins to participate in the system the employee has commenced to purchase and is continuing to purchase a retirement annuity, if the employer deems the annuity adequate for the purposes of this chapter, it may enter into an agreement with the employee and the board pursuant to which the employee may be exempted from contributing to the Public Employees Retirement Fund, and, if no public funds are being used to pur-

chase the annuity or a corresponding pension, the employer, in lieu of the contributions which it otherwise would make to the fund on account of the employee, may make contributions toward the cost of purchasing the annuity. Such employee otherwise shall be subject to the provisions of this chapter, except that neither the employee nor any person claiming under the employee shall receive any payments from the retirement fund as service or disability allowance.

(b) An employee who enters into an agreement under paragraph (a) of this subsection may elect at any time thereafter to start to participate in the system by giving written notice of desire to participate to the board and to the employer. The employee shall receive no retirement credit for the period during which the employee was exempted from contributing to the fund under the agreement, but the employee shall be considered to have completed the six months' service required for membership in the system. When the employee starts to participate in the system the employer shall start to contribute to the fund on account of the employee in the same manner as the employer contributes on account of other employees who are active members of the system and the employer shall stop making contributions toward the cost of purchasing the retirement annuity.

(8)(a) All new appointees in the Federal Cooperative Extension Service or in any other service in which participation in the Federal Civil Service retirement program is mandatory, who receive a federal appointment on or after July 1, 1955, may participate in the Public Employees Retirement System only by giving written notice of their election to so participate to the Public Employees Retirement Board within six months after the effective date of their appointment.

(b) All persons employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, who are under federal appointment as of July 1, 1955, and who are members of the state retirement system, shall continue such membership unless, prior to February 1, 1956, they give written notice to the Public Employees Retirement Board of their desire to cancel their membership.

(c) Any person who is an active member of the Public Employees Retirement System, who, on or after July 1, 1955, is employed by the Federal Cooperative Extension Service or by any other service in which participation in the Federal Civil Service retirement program is mandatory, and who is given a federal appointment, shall continue such membership in the Public Employees Retirement System unless, within six months after the effective date of the appointment, the person gives written notice to the Public Employees Retirement Board of the desire to cancel membership.

(d) A cancellation of membership under paragraph (b) or (c) of this subsection terminates membership in the Public Employees Retirement System

and cancels the right to any benefits from, or claims against, that system. Such cancellation prevents the withdrawing member from claiming thereafter any retirement credit for any period of employment before the cancellation. Upon receipt of a notice of cancellation, the Public Employees Retirement Board shall refund the member account of the withdrawing member, regardless of the age of the withdrawing member.

(9) Employees, including managers, of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g) shall not be members of the system. However, any person who is an active member of the system immediately before becoming an employee of a foreign trade office shall continue to be a member of the system during the period of time the person serves as an employee of the foreign trade office.

(10) An employee who is participating in an alternative retirement program established pursuant to ORS 353.250 or an optional retirement plan established pursuant to ORS 341.551 may not be an active member of the Public Employees Retirement System.

SECTION 58. ORS 238A.005, as amended by section 5, chapter 54, Oregon Laws 2018, and section 2, chapter 101, Oregon Laws 2018, is amended to read:

238A.005. For the purposes of this chapter:

(1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.

(2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.

(3) "Board" means the Public Employees Retirement Board.

(4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:

(a) Persons engaged as independent contractors;

(b) Aliens working under a training or educational visa;

(c) Persons provided sheltered employment or make-work by a public employer;

(d) Persons categorized by a participating public employer as student employees;

(e) Any person who is [*an inmate of*] **in custody in** a state institution;

(f) Employees of foreign trade offices of the Oregon Business Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);

(g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;

(h) Employees of a public university listed in ORS 352.002 who are actively participating in an optional retirement plan offered under ORS 243.800;

(i) Persons employed in positions classified as post-doctoral scholar positions by a public university listed in ORS 352.002, or by the Oregon Health and Science University, under ORS 350.370;

(j) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;

(k) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(L) Any person who is retired under ORS 238A.100 to 238A.250 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(m) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals; and

(c) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.

(6) "Fund" means the Public Employees Retirement Fund.

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the

Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Institution of higher education" means a public university listed in ORS 352.002, the Oregon Health and Science University or a community college, as defined in ORS 341.005.

(11) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has not been terminated under ORS 238A.110 or 238A.310.

(12) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(13) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(14) "Police officer" means a police officer as described in ORS 238.005.

(15) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(16) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(17)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. "Salary" includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

(B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the employee.

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on December 31, 2017.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on December 31, 2017.

(E) Retroactive payments described in ORS 238.008.

(F) The amount of an employee contribution to the individual account program that is paid by the employer and deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(a).

(G) The amount of an employee contribution to the individual account program that is not paid by the employer under ORS 238A.335.

(H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS 652.190.

(c) "Salary" does not include the following amounts:

(A) Travel or any other expenses incidental to employer's business which is reimbursed by the employer.

(B) Payments made on account of an employee's death.

(C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid leave.

(D) Any severance payment, accelerated payment of an employment contract for a future period or advance against future wages.

(E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

(F) Payment for a leave of absence after the date the employer and employee have agreed that no future services in a qualifying position will be performed.

(G) Payments for instructional services rendered to public universities listed in ORS 352.002 or the Oregon Health and Science University when those services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months covered by the contract.

(H) The amount of an employee contribution to the individual account program that is paid by the employer and is not deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

(I) Compensation described and authorized under ORS 341.556 that is not paid by the community college employing the faculty member.

(J) Compensation described and authorized under ORS 352.232 that is not paid by the public university employing the officer or employee.

(K) Compensation described and authorized under ORS 353.270 that is not paid by Oregon Health and Science University.

(L) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(18) "System" means the Public Employees Retirement System.

(19) "Workers' compensation benefits" means:

- (a) Payments made under ORS chapter 656; or
- (b) Payments provided in lieu of workers' compensation benefits under ORS 656.027 (6).

SECTION 59. ORS 240.205 is amended to read: 240.205. The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. "Deputy" means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) The director, principals, instructors and teachers in the school operated under ORS 346.010.

(7) Apprentice trainees only during the prescribed length of their course of training.

(8) Licensed physicians and dentists employed in their professional capacities and student nurses, interns, and patient or *[inmate]* **adult in custody** help in state institutions.

(9) Lawyers employed in their professional capacities.

(10) All members of the Oregon State Police appointed under ORS 181A.050.

(11) The Deputy Superintendent of Public Instruction appointed under ORS 326.300 and associate superintendents in the Department of Education.

(12) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(13) Any individual employed and paid from federal funds received under a federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employees for purposes of ORS 243.650 to 243.782.

(14) Managers, department heads, directors, producers and announcers of the state radio and television network.

(15) Employees, including managers, of the foreign trade offices of the Oregon Business Development Department located outside the country.

(16) Any other position designated by law as unclassified.

SECTION 60. ORS 283.305 is amended to read: 283.305. As used in ORS 283.305 to 283.350:

(1) "Alternative fuel" means natural gas, liquefied petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.

(2) "Authorized driver" means any of the following who has a valid driver license and an acceptable driving record:

(a) A salaried state employee, including an agent of the state;

(b) A volunteer, appointed in writing, whose written description of duties includes driving motor vehicles;

(c) An agency client required to drive motor vehicles as part of a rehabilitation or treatment program authorized by law;

(d) Any personnel of any unit of government whose use of motor vehicles is permitted by an authorized intergovernmental agreement; and

(e) An *[inmate of]* **adult in custody** in a correctional institution with specific Department of Corrections approval who is accompanied by a supervising correctional institution employee or who is performing a specific work assignment driving a special purpose vehicle required for that assignment and within the visual range of a supervising correctional institution employee who is at the work assignment site or who is part of the transport caravan.

(3) "Motor vehicles" includes state-owned, leased or otherwise controlled motor vehicles and the supplies, parts and equipment for the operation, maintenance or repair of such motor vehicles.

(4) "Official state business" means activity conducted by a state agency that advances the lawful policies of the agency as specified by the Oregon Department of Administrative Services by rule.

(5) "Standard passenger vehicle" means a motor vehicle that is commonly known as a sedan or a station wagon and that is not equipped with special or unusual equipment.

(6) "State agency" or "agency" includes the Legislative Assembly, at its option, or any of its statutory, standing, special or interim committees, at the option of such committee.

SECTION 61. ORS 390.195 is amended to read:

390.195. (1) The State Parks and Recreation Department shall use state correctional institution *[inmate]* **adult in custody** labor to improve, maintain and repair buildings and property at state parks and recreation areas whenever feasible. The provisions of ORS 279.835 to 279.855 and ORS chapters 279A,

279B and 279C do not apply to the use of state correctional institution [*inmate*] **adult in custody** labor under this section.

(2) The State Parks and Recreation Director shall assign and supervise the work of the state [*inmates*] **adults in custody** who are performing the work described in subsection (1) of this section.

(3) Nothing in this section is intended to exempt the State Parks and Recreation Department from the provisions of ORS 279.835 to 279.855 for any purpose other than the use of state correctional institution [*inmate*] **adult in custody** labor.

SECTION 62. ORS 420.525 is amended to read:

420.525. The costs of the hearings held under ORS 179.473, 419B.328, 419B.331, 419B.334, 419B.337, 419B.343, 419B.346, 419B.349, 419C.446, 419C.450, 419C.478, 419C.481, 419C.486, 419C.489, 419C.492, 419C.498 and 420.500 to 420.525 and the fees for physicians and other qualified persons appointed under ORS 179.473, 419B.328, 419B.331, 419B.334, 419B.337, 419B.343, 419B.346, 419B.349, 419C.446, 419C.450, 419C.478, 419C.481, 419C.486, 419C.489, 419C.492, 419C.498 and 420.500 to 420.525 shall be charged to the county of the youth's residence prior to the initial commitment of the youth to a youth correction facility or to the county of the [*inmate's*] **adult's** residence prior to the initial commitment of the [*inmate*] **adult in custody** to a penal or correctional institution. Attorney fees may also be charged to that county if the youth or [*inmate*] **adult in custody** has no separate estate or if the parents of the youth refuse or are unable to provide an attorney.

SECTION 63. ORS 421.068 is amended to read:

421.068. (1) Revenues, less operating expenses, from the following sources shall be deposited into an account established by the Department of Corrections:

(a) Operation of correctional institution canteens;

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

(c) Operation of [*inmate*] telephones **for adults in custody** in correctional institutions;

(d) Funds confiscated from the [*inmates*] **adults in custody** under existing disciplinary procedures; and

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

(2) Moneys in the account are continuously appropriated to the Department of Corrections for uses benefiting the general [*inmate*] population of **adults in custody**, enhancing [*inmate*] activities and programs including education programs and providing for offender reentry programs and support.

SECTION 64. ORS 421.085 is amended to read:

421.085. (1) As used in this section:

(a) "Medical experimentation or research" includes, but is not limited to, the testing and use of

drugs and medication, medical and surgical procedures, exposure to substances or conditions or physical manipulation to ascertain their nontherapeutic effect on human beings, and any substance, condition, drug, medication, treatment, or procedure that is not generally recognized and accepted as therapeutic in the medical profession.

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

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

(3) Notwithstanding ORS 137.260, an [*inmate*] **adult in custody** in any Department of Corrections institution is entitled to maintain an action to restrain any violation of this section or to maintain an action to recover damages caused by a violation of this section.

SECTION 65. ORS 421.105 is amended to read:

421.105. (1) The superintendent may enforce obedience to the rules for the government of the [*inmates*] **adults in custody** in the institution under the supervision of the superintendent by appropriate punishment but neither the superintendent nor any other prison official or employee may strike or inflict physical violence except in self-defense, or inflict any cruel or unusual punishment.

(2) The person of an [*inmate*] **adult in custody** sentenced to imprisonment in the Department of Corrections institution is under the protection of the law and the [*inmate*] **adult in custody** shall not be injured except as authorized by law.

SECTION 66. ORS 421.120 is amended to read:

421.120. (1) As used in this section, "prison employment" includes actual work in prison industry, meritorious work in connection with prison maintenance and operation, actual work in agriculture and actual work at work camp.

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

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

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

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

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

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

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

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

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

(6) The provisions of this section shall apply only to offenders sentenced for felonies committed prior to November 1, 1989.

SECTION 67. ORS 421.121 is amended to read:

421.121. (1) Except as provided in ORS 137.635, 137.700, 137.707, 163.105 and 163.115, each [inmate] **adult in custody** sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a reduction in the term of incarceration for:

(a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

(b) Participation in the adult basic skills development program described in ORS 421.084.

(2) The maximum amount of time credits earned for appropriate institutional behavior or for partic-

ipation in the adult basic skills development program described in ORS 421.084 may not exceed 20 percent of the total term of incarceration in a Department of Corrections institution.

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

(4) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183 to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in subsections (1) to (3) of this section.

SECTION 68. ORS 421.125 is amended to read:

421.125. (1) Upon the discharge or parole of an [inmate] **adult in custody** from the Department of Corrections, the department shall:

(a) Ensure that the discharged or paroled [inmate] **adult in custody** is properly clothed; and

(b) Provide the discharged or paroled [inmate] **adult in custody** with the following documents:

(A) Verification of [the inmate's] work history while in the custody of the department.

(B) Certification of any educational programs completed by the [inmate] **adult in custody** while in the custody of the department.

(C) Certification of any treatment programs completed by the [inmate] **adult in custody** while in the custody of the department.

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

(a) Safeguard [inmate] **adult in custody** moneys, whether the moneys are from earnings of the [inmate] **adult in custody** while in a Department of Corrections institution, or from other sources, and to provide for disbursement of the moneys to the [inmate] **adult in custody** following [the inmate's] release from imprisonment;

(b) Establish, within appropriations provided for this purpose, a program of release funds to be provided for [inmates] **adults in custody** who have not been able to accumulate sufficient moneys to accommodate the [inmates'] release needs **of the adult in custody**;

(c) Assess and collect fees for self-improvement programs, services and assistance provided by the department to [inmates] **adults in custody** who have sufficient moneys to pay for the programs, services and assistance;

(d) Permit [inmates] **adults in custody** to purchase elective programs, services or assistance that are approved but not provided by the department;

(e) Assess and collect disciplinary fines and restitution from [inmates] **adults in custody** for damages or destruction caused by willful misconduct of the [inmates] **adults in custody**; and

(f) Assess and collect fees from [inmates] **adults in custody** from funds to be credited to, or received

for deposit in, *[inmate]* **adult in custody** trust accounts, not to exceed five percent of the amount of the credit or deposit, to offset the costs of administering *[inmate]* **adult in custody** trust accounts.

(3)(a) An *[inmate]* **adult in custody** sentenced to the custody of the Department of Corrections by an Oregon court is eligible to apply for release funds for a period up to 90 days following the release of the *[inmate]* **adult in custody** from the Department of Corrections institution by parole or discharge, including a release to the legal custody of another authority in this state.

(b) Notwithstanding paragraph (a) of this subsection, *[inmates]* **adults in custody** released to the legal custody of another authority in this state for ultimate transfer to the custody of a law enforcement or corrections agency in another state are not eligible to apply for release funds until released by the other authority in this state.

SECTION 69. ORS 421.137 is amended to read:

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

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

SECTION 70. ORS 421.142 is amended to read:

421.142. (1) The Department of Corrections may establish a program to allow the manufacture of small articles of handiwork by the *[inmates of]* **adults in custody** in Department of Corrections institutions, out of raw materials purchased by the *[inmates]* **adults in custody** with their own funds, which articles may be sold to the public. State-owned property may not be sold or given to *[inmates]* **adults in custody** under this section.

(2) The department may provide that all or a part of the sales price of the articles be deposited to the account of the *[inmate]* **adults in custody** manufacturing the article.

SECTION 71. ORS 421.145 is amended to read:

421.145. [No] Moneys obtained from the sale of the products of any *[inmate's]* labor of an **adult in custody** *[shall]* **may not** be applied toward the maintenance of the *[inmate]* **adult in custody** or the support of the dependents of the *[inmate]* **adult in custody**, or shall become a part of the betterment fund of the Department of Corrections institution,

until all the cost of operation, maintenance, depreciation and other expenses in connection with the plant of the Department of Corrections institution industry in which the *[inmate]* **adult in custody** is employed are fully paid from the fund arising from the sale of such products.

SECTION 72. ORS 421.147 is amended to read:

421.147. Notwithstanding ORS 98.302 to 98.436, the Department of Corrections shall determine and direct the disposition of the unclaimed or abandoned tangible property of an *[inmate of]* **adult in custody** in a Department of Corrections institution held by the department. The department shall adopt rules to carry out the duties imposed by this section.

SECTION 73. ORS 421.166 is amended to read:

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

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

(2) To visit a gravely ill or injured child of the *[inmate]* **adult in custody** if the child lives within the state.

(3) To attend the funeral of a member of the *[inmate's]* **adult's** immediate family if the funeral is in the state.

SECTION 74. ORS 421.168 is amended to read:

421.168. (1) The Department of Corrections shall establish a short-term transitional leave program. The program shall provide *[inmates]* **adults in custody** with an opportunity to secure appropriate transitional support when necessary for successful reintegration into the community prior to the *[inmate's]* **adult's** discharge to post-prison supervision.

(2) The Department of Corrections shall identify each *[inmate]* **adult in custody** who is eligible for the short-term transitional leave program and shall, in conjunction with the supervisory authority for the county to which the *[inmate]* **adult in custody** will be released, assist each eligible *[inmate]* **adult in custody** in preparing a transition plan and in identifying and applying for an employment, educational or other transitional opportunity in the community.

(3) If the *[inmate's]* transition plan **for the adult in custody** is approved by the department and is an essential part of *[the inmate's]* successful reintegration into the community, the department may grant a transitional leave no more than 120 days *[prior to]* **before** the *[inmate's]* discharge date **of the adult in custody**.

(4) An *[inmate]* **adult in custody** is not eligible for transitional leave before having served six months of prison incarceration.

(5) The department shall adopt rules to carry out the provisions of this section. The rules must include a set of release conditions for *[inmates]* **adults in**

custody released on transitional leave status. An *[inmate]* **adult in custody** on transitional leave status is subject to immediate return to prison for any violation of the conditions of release.

(6) The provisions of this section do not apply to *[inmates]* **adults in custody** whose sentences were imposed under ORS 137.635, 137.690, 137.700, 137.707, 164.061, 475.907, 475.925, 475.930 or 813.011 or under a provision of law that prohibits release on any form of temporary leave from custody.

SECTION 75. ORS 421.170 is amended to read:
421.170. The superintendent of the Department of Corrections institution in which an *[inmate]* **adult in custody** is confined may recommend to the Director of the Department of Corrections that an *[inmate of]* **adult in custody** in the Department of Corrections institution be enrolled in the work release program established under ORS 144.420. If the *[inmate]* **adult in custody** has not served at least one-fourth of the maximum term of the sentence, the superintendent must, prior to making a recommendation, consider the original recommendation, if any, of the sentencing court.

SECTION 76. ORS 421.185 is amended to read:
421.185. The procedures adopted pursuant to ORS 421.180 shall provide that an *[inmate]* **adult in custody** shall be entitled to assistance and representation under terms and conditions established by the Department of Corrections. Nothing in this section shall be construed to limit the authority of the department to designate persons eligible to assist and represent the *[inmate]* **adult in custody**.

SECTION 77. ORS 421.190 is amended to read:
421.190. Evidence may be received at disciplinary hearings even though inadmissible under rules of evidence applicable to court procedure and the department shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to afford the *[inmate]* **adult in custody** a reasonable opportunity for a fair hearing.

SECTION 78. ORS 421.194 is amended to read:
421.194. (1) Disciplinary orders of the Department of Corrections issued under procedures adopted pursuant to ORS 421.180 are not subject to judicial review by any court of this state.

(2) This section does not affect any right that an *[inmate]* **adult in custody** may have to prosecute a writ of habeas corpus.

SECTION 79. ORS 421.213 is amended to read:
421.213. Whenever an *[inmate]* **adult in custody** serving a sentence imposed by a court of this state is transferred from a Department of Corrections institution under this chapter, the superintendent of the Department of Corrections institution in which the *[inmate]* **adult in custody** was confined shall retain a record of the transfer and shall make such information available to law enforcement agencies

and the courts upon request. The Department of Corrections shall adopt rules governing the release of this information to other interested parties under ORS 192.311 to 192.478.

SECTION 80. ORS 421.215 is amended to read:
421.215. If the presence of any *[inmate]* **adult in custody** confined in a county jail or in the institution of another state or the federal government, is required in any judicial proceeding of this state, the superintendent in charge of the institution from which the *[inmate]* **adult in custody** was conveyed, upon being so directed by the Director of the Department of Corrections or upon the written order or direction of any court of competent jurisdiction or of a judge thereof, shall procure such *[inmate]* **adult in custody**, bring the *[inmate]* **adult in custody** to the place directed in such order and hold the *[inmate]* **adult** in custody subject to the further order and direction of the director, or of the court or of a judge thereof, until the *[inmate]* **adult in custody** is lawfully discharged from custody. The superintendent shall, by direction of the director or of the court or a judge thereof, deliver such *[inmate]* **adult** into the custody of the sheriff of the county in which the *[inmate]* **adult in custody** was convicted, and shall, by like order, return such *[inmate]* **adult in custody** to the institution from which the *[inmate]* **adult in custody** was taken.

SECTION 81. ORS 421.305 is amended to read:
421.305. (1) Subject to the authority of the Director of the Department of Corrections over care, custody and control of *[inmates]* **adults in custody** and of corrections institutions, in carrying out the powers and duties generally described by ORS 421.354, Oregon Corrections Enterprises may:

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

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

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

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

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

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

(g) Appoint and employ any instructional, administrative, professional, trade, occupational and other personnel as are necessary or appropriate to carry out the duties and missions of Oregon Corrections Enterprises, and prescribe their compensation and terms of office or employment.

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

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

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

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

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

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

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

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

trator considers appropriate and as may be consistent with the obligations of Oregon Corrections Enterprises under any such lease or other agreement.

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

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

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

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

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

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

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

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

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

adopt rules providing for the disposition of any compensation earned under this section.

SECTION 82. ORS 421.354 is amended to read:

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

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

(a) Accomplishing the production and marketing of products or services produced or performed by *[inmates]* **adults in custody**;

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

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

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

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

SECTION 83. ORS 421.364 is amended to read:

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

SECTION 84. ORS 421.405 is amended to read:

421.405. (1) Except as provided in subsection (2) of this section, no officer or employee of this state shall receive the use or profit of the labor or services of any *[inmate]* **adult in custody** of a Department of Corrections institution, or be directly or indirectly interested in any contract or work upon which *[inmates]* **adults in custody** are employed. However, this subsection does not prohibit *[inmates]* **adults in custody** from doing work or services:

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

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

(c) Contemplated under ORS 421.455 to 421.480.

(2) Subsection (1) of this section does not prohibit *[inmates]* **adults in custody** from performing work or services as apprentices or trainees in a program conducted pursuant to ORS 660.002 to 660.210 for any officer or employee of this state who does not exercise direct Department of Corrections institution supervisory authority over the *[inmates]* **adults in custody**.

SECTION 85. ORS 421.412 is amended to read:

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

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

(3) This section authorizes use of *[inmate]* labor **by adults in custody** for cultivating, clearing, grading, draining, restoring riparian areas and other improvement of private or public land, or any contract or agreement therefor.

SECTION 86. ORS 421.420 is amended to read:

421.420. The Department of Corrections may enter into a contract with any person whom it considers advisable in connection with a Department of Corrections institution for employment of *[inmates]* **adults in custody** therein in clearing unimproved land in the state.

SECTION 87. ORS 421.423 is amended to read:

421.423. Notwithstanding any other law, an *[inmate]* **adult** in the custody of the Department of Corrections may not perform electrical or plumbing work unless under the direct supervision of a licensed electrician or plumber who is a regular status employee of the department or of Oregon Corrections Enterprises. An *[inmate]* **adult in cus-**

ody may perform electrical or plumbing work only at a facility owned, leased or operated by the department.

SECTION 88. ORS 421.437 is amended to read:

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

- (a) Instill [*in inmates*] a viable work ethic;
- (b) Emulate private gainful employment;
- (c) Encourage productivity; or
- (d) Maintain the safe, secure and orderly operation and management of department facilities.

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

SECTION 89. ORS 421.442 is amended to read:

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

(2) Oregon Corrections Enterprises may create accounts and subaccounts as reasonably required to discharge the functions and duties prescribed by section 41, Article I of the Oregon Constitution, and ORS 192.355, 421.305, 421.312, 421.344 to 421.367, 421.412, 421.444 and 421.445 and this section, including accounts and subaccounts for the deposit of income generated from prison work programs. All moneys collected or received by Oregon Corrections Enterprises shall be deposited into an account or subaccounts established by Oregon Corrections En-

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

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

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

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

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

(c) Department transfers to the [*inmate*] **adult in custody** injury component of the Insurance Fund from the payment of expenses authorized by law.

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

(6) The transfers referred to in subsections (1) and (4)(c) of this section may be authorized by the Legislative Assembly, or the Emergency Board if the Legislative Assembly is not in session, whenever it appears to the Legislative Assembly or the board, as the case may be, that there are insufficient moneys in the [*inmate*] **adult in custody** injury component of the Insurance Fund for the payment of expenses authorized by law.

SECTION 90. ORS 421.450 is amended to read:

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

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

(2) “State *[inmate]* **adult in custody**” means an *[inmate]* **adult in custody** of a Department of Corrections institution.

SECTION 91. ORS 421.455 is amended to read:

421.455. (1) The Director of the Department of Corrections shall establish at places in state forests recommended by the State Board of Forestry one or more forest work camps at which state *[inmates]* **adults in custody** and local *[inmates]* **adults in custody** may be employed. Only such state *[inmates]* **adults in custody** as are determined by the Department of Corrections to require minimum security may be placed at a forest work camp, but the Department of Corrections shall not place an *[inmate]* **adult in custody** at a forest work camp if the department is aware that the *[inmate]* **adult in custody** has ever been convicted, of:

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

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

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

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

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

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

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

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

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

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

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

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

(2) The State Board of Forestry may make contracts with any other state agency in order to effectuate the purposes of ORS 421.455, 421.465, 421.470 and 421.476.

SECTION 92. ORS 421.465 is amended to read:

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

(2) Before a state *[inmate]* **adult in custody** is sent to any forest work camp, the superintendent of the institution in which the *[inmate]* **adult in custody** is confined shall cause the *[inmate]* **adult in**

custody to be given such inoculations as are necessary in the public interest.

(3) While a state *[inmate]* **adult in custody** is at a forest work camp, the superintendent of the institution in which the *[inmate]* **adult in custody** was confined is responsible for the custody and care of the *[inmate]* **adult in custody**.

SECTION 93. ORS 421.467 is amended to read:

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

(2) Before a local *[inmate]* **adult in custody** is sent to a forest work camp, the governing body of the county or city shall cause the local *[inmate]* **adult in custody** to be given such inoculations as are necessary in the public interest, and must submit to the Department of Corrections a certificate, signed by a physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390 that the local *[inmate]* **adult in custody** is physically and mentally able to perform the work described in ORS 421.470, and is free from communicable disease.

SECTION 94. ORS 421.468 is amended to read:

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

(2) While employed at a forest work camp established under ORS 421.455 to 421.480, a local *[inmate]* **adult in custody** is temporarily within the custody of the Director of the Department of Corrections and subject to rules promulgated by the director governing such custody and employment, but remains subject to the jurisdiction of the county or city.

SECTION 95. ORS 421.470 is amended to read:

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

(2) The State Forester shall assign and supervise the work of the state *[inmates]* **adults in custody** and local *[inmates]* **adults in custody**, which work shall be:

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

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

(3) Moneys for the cost of custody of the state *[inmates]* **adults in custody** and local *[inmates]* **adults in custody**, and for the labor done by them under this section, shall be paid from funds appropriated and made available to the State Board of Forestry. Moneys for the cost of care of each local *[inmate]* **adult in custody** shall be paid by the county or city from which the local *[inmate]* **adult in custody** was transferred under ORS 421.467, but not to exceed \$2 a day for each local *[inmate]* **adult in custody**. Additional moneys required for the cost of care of local *[inmates]* **adults in custody** shall be paid from funds appropriated and made available to the State Board of Forestry. All such moneys shall be collected by the Director of the Department of Corrections who shall deposit such funds to the credit of the State Prison Work Programs Account.

SECTION 96. ORS 421.480 is amended to read:

421.480. When the need for the labor of a state *[inmate]* **adult in custody** or local *[inmate]* **adult in custody** transferred to a forest work camp has ceased or when the *[inmate]* **adult in custody** is guilty of any violation of the rules of the Director of the Department of Corrections, the director may return the *[inmate]* **adult in custody** to the institution, county or city from which the *[inmate]* **adult in custody** was transferred.

SECTION 97. ORS 421.651 is amended to read:

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

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

(3) Any decision made or action taken under this section is final and is not subject to judicial review.

SECTION 98. ORS 423.076 is amended to read:

423.076. (1) The Director of the Department of Corrections may grant to an individual corrections officer or classification of corrections officer all the powers and authority of a peace officer over *[inmates]* **adults in custody**.

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

(a) Prevent an escape from the grounds of a correctional facility by an *[inmate]* **adult in custody**; and

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

(A) Pursue an *[inmate]* **adult in custody** if the *[inmate]* **adult in custody** is in the act of escaping from a correctional facility;

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

(C) Recapture an *[inmate]* **adult in custody** if the *[inmate]* **adult in custody** is in the act of escaping from a correctional facility.

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

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

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

SECTION 99. ORS 423.105, as amended by section 8, chapter 120, Oregon Laws 2018, is amended to read:

423.105. (1) As used in this section:

(a) "**Adult in custody**" means a person who is at least 18 years of age and in the physical custody of the Department of Corrections. "**Adult in custody**" does not include:

(A) A person on leave from prison due to participation in an alternative incarceration program established under ORS 421.504 or short-term transitional leave under ORS 421.168.

(B) A person transferred into or out of department custody pursuant to an interstate corrections compact.

(C) A person in the physical custody of the Oregon Youth Authority.

(D) A person in the physical custody of a county jail or other county detention facility.

[(a)] (b) "Collected moneys" means moneys that have been collected from an *[inmate]* **adult in cus-**

tody trust account by the Department of Corrections pursuant to this section.

[(b)] (c) “Court-ordered financial obligation” means:

(A) A compensatory fine imposed pursuant to ORS 137.101, an award of restitution as defined in ORS 137.103 or any other fines, fees or court-appointed attorney fees imposed in a criminal action;

(B) A child support obligation;

(C) A civil judgment including a money award for a crime victim entered against an [inmate] **adult in custody** resulting from a crime committed by the [inmate] **adult in custody**; or

(D) A civil judgment including a money award entered against an [inmate] **adult in custody** resulting from an action for the [inmate’s] assault or battery of a Department of Corrections or Oregon Corrections Enterprises employee.

[(c)] (d) “Eligible moneys” means moneys deposited in an [inmate] **adult in custody** trust account that are subject to collection under this section, including but not limited to [inmate] **adult in custody** performance monetary awards and moneys received from [an inmate’s] family members or friends of the **adult in custody**. “Eligible moneys” does not include protected moneys.

[(d)] *“Inmate” means a person who is at least 18 years of age and in the physical custody of the Department of Corrections. “Inmate” does not include:]*

[(A)] *A person on leave from prison due to participation in an alternative incarceration program established under ORS 421.504 or short-term transitional leave under ORS 421.168.]*

[(B)] *A person transferred into or out of department custody pursuant to an interstate corrections compact.]*

[(C)] *A person in the physical custody of the Oregon Youth Authority.]*

[(D)] *A person in the physical custody of a county jail or other county detention facility.]*

(e) “Protected moneys” means moneys deposited in an [inmate] **adult in custody** trust account that are not subject to collection under state or federal law or under this section including but not limited to:

(A) Disability benefits for veterans;

(B) Moneys received from a Native American tribe or tribal government;

(C) Moneys dedicated for medical, dental or optical expenses or emergency trips;

(D) Railroad retirement benefits; or

(E) Moneys paid as compensation to an [inmate] **adult in custody** in a prison work program established under the Prison Industries Enhancement Certification Program, or a successor program designated by the United States Director of the Bureau of Justice Assistance pursuant to 18 U.S.C. 1761.

(2)(a) The Department of Corrections shall collect eligible moneys from an [inmate] **adult in custody** trust account if the [inmate] **adult in custody** owes court-ordered financial obligations as described in this section.

(b) Notwithstanding any other provision of this section, the department may deduct a fixed percentage of each [inmate] **adult in custody** performance monetary award made to an [inmate] **adult in custody**, to be credited to a general victims assistance fund, before crediting the remainder of the award to the [inmate] **adult in custody** trust account.

(3)(a) The Department of Justice and the Judicial Department shall provide an accounting to the Department of Corrections of court-ordered financial obligations, if any, owed by each [inmate] **adult in custody**. The accounting records may be provided electronically in a format agreed upon by the departments.

(b) Upon receipt of the accounting records described in paragraph (a) of this subsection, the Department of Corrections shall collect a portion of eligible moneys from the [inmate] **adult in custody** trust account of each [inmate] **adult in custody** as follows:

(A) Until an [inmate] **adult in custody** not sentenced to death or to life imprisonment without the possibility of release or parole has \$500 in a transitional fund to facilitate reentry after release, 10 percent of eligible moneys shall be collected for court-ordered financial obligations and five percent of eligible moneys shall be collected and transferred to the [inmate’s] transitional fund.

(B) After the [inmate] **adult in custody** has at least \$500 in the transitional fund, or if the [inmate] **adult in custody** has been sentenced to death or to life imprisonment without the possibility of release or parole, the department shall collect 15 percent of eligible moneys for court-ordered financial obligations.

(C) After court-ordered financial obligations have been paid, an [inmate] **adult in custody** not sentenced to death or to life imprisonment without the possibility of release or parole may elect to continue to transfer five percent of eligible moneys into the transitional fund.

(c) Notwithstanding ORS 18.615 or any other provision of law, while moneys held in [an inmate’s] a transitional fund described in this subsection remain within the custody or control of the Department of Corrections, those moneys are neither assignable nor subject to execution, garnishment, attachment or any other process.

(4) There are three levels of priority for the application of collected moneys to court-ordered financial obligations, with Level I obligations having the highest priority and Level III obligations having the lowest priority. The levels are as follows:

(a) Level I obligations are compensatory fines imposed pursuant to ORS 137.101, awards of restitution defined in ORS 137.103 and fines, fees or court-appointed attorney fees imposed in a criminal action.

(b) Level II obligations are child support obligations and civil judgments including a money award for a crime victim entered against an [inmate] **adult in custody** resulting from a crime committed by the [inmate] **adult in custody**.

(c) Level III obligations are civil judgments including a money award entered against an *[inmate]* **adult in custody** resulting from an action for the *[inmate's]* assault or battery of a Department of Corrections or Oregon Corrections Enterprises employee.

(5)(a) After receiving the accounting records described in subsection (3) of this section, the Department of Corrections shall disburse the collected moneys for court-ordered financial obligations to the Department of Justice and the Judicial Department.

(b) The Department of Justice and the Judicial Department shall apply the collected moneys received from the Department of Corrections under this subsection to *[an inmate's]* **the court-ordered financial obligations of an adult in custody** according to the priority levels of the obligations.

(6)(a) The Department of Justice may create a subaccount in which to deposit the collected moneys received from the Department of Corrections under this section.

(b) The Judicial Department may create a subaccount in which to deposit the collected moneys received from the Department of Corrections under this section.

(c) The Department of Corrections may create subaccounts for the purposes of storing collected moneys prior to disbursement under this section.

(7) The Department of Corrections, the Department of Justice and the Judicial Department may adopt rules to implement this section.

SECTION 100. ORS 423.497 is amended to read:

423.497. (1) During the intake process, each county shall conduct a national criminal history check on every person incarcerated in the county correctional facility.

(2) The county shall develop policies and procedures to ensure that the results of the national criminal history check are received before an *[inmate]* **adult in custody** is released.

(3) The state shall reimburse each county for the costs of conducting the national criminal history checks.

SECTION 101. ORS 423.605 is amended to read:

423.605. As used in ORS 423.600 to 423.610, "facilitated dialogue and responsibility letter bank program communications" means all communications by a victim, survivor or *[inmate]* **adult in custody**, or by a program facilitator, advisory committee member or staff person, that are made in the course of or in connection with a facilitated dialogue or responsibility letter bank program conducted pursuant to Department of Corrections rules. The communications include but are not limited to:

(1) All memoranda, assessment and evaluation forms, documents and other materials, including letters that are prepared for or submitted in connection with a facilitated dialogue;

(2) All communications, whether oral, written or recorded, made during the intake of a case, during preparations for a facilitated dialogue, during any

joint in-person meetings or telephone calls, and during any post-dialogue meetings or conversations; and

(3) All materials or recordings submitted in connection with a responsibility letter bank program by a victim, survivor or *[inmate]* **adult in custody** or by another person on behalf of a victim, survivor or *[inmate]* **adult in custody**.

SECTION 102. ORS 423.610 is amended to read:

423.610. (1) Facilitated dialogue and responsibility letter bank program facilitators, advisory committee members and staff persons shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any facilitated dialogue or responsibility letter bank program communication, except as required under rules established pursuant to ORS 423.615.

(2) Facilitated dialogue and responsibility letter bank program facilitators, advisory committee members and staff persons are not civilly liable for any act or omission done or made while engaged in efforts to assist a victim, survivor or *[inmate]* **adult in custody** in the course of or in connection with a facilitated dialogue or responsibility letter bank program conducted pursuant to rules adopted by the Department of Corrections, unless the facilitator, member or person acted or made an omission in bad faith, with malicious intent or in a manner that exhibited a willful or wanton disregard of the rights, safety or property of another person.

(3) Facilitated dialogue and responsibility letter bank program communications are confidential and may not be disclosed to any other person, except as permitted under rules established pursuant to ORS 423.615.

(4) Facilitated dialogue and responsibility letter bank program communications are not admissible as evidence in any subsequent administrative, judicial or arbitration proceeding, except as permitted under rules established pursuant to ORS 423.615.

SECTION 103. ORS 438.435 is amended to read:

438.435. (1) In addition to duties which a clinical laboratory may perform under ORS 438.010 to 438.510, a laboratory is authorized to perform appropriate tests, examinations or analyses on materials derived from the human body for the purpose of detecting substances of abuse in the body. All laboratories performing the tests, examinations or analyses must be licensed under the provisions of ORS 438.010 to 438.510 and must employ qualified technical personnel to perform the tests, examinations and analyses.

(2) In order to perform such tests, examinations or analyses, the laboratory may examine specimens submitted by persons other than those described in ORS 438.430 (1) and shall report the result of any test, examination or analysis to the person who submitted the specimen. When the substance of abuse test is for nonmedical employment or pre-employment purposes, and a written request is provided, the test result shall be reported to the person from whom the specimen was originally obtained.

(3) When the specimen of a person tested for substances of abuse is submitted to the laboratory and the test result is positive, the laboratory shall perform a confirming test which has been designated by rule of the Oregon Health Authority as the best available technology for use to determine whether or not the substance of abuse identified by the first test is present in the specimen prior to reporting the test results.

(4) The authority by rule shall set standards for special category laboratories that engage only in the initial testing for substances of abuse in the body, including registration procedures for such laboratories and personnel.

(5) The operator of a substances of abuse on-site screening facility may use substances of abuse on-site screening tests if the test results are not for use in diagnosing or preventing disease and are not for use by physicians, dentists or other licensed health care professionals in treating humans. Any entity using the test shall pay a yearly filing fee, not to exceed \$50, and file a registration form as provided by rule of the authority that:

(a) States the current name and address of the entity, the telephone number of the entity, if any, and the name of a contact individual at each on-site facility operated by the entity; and

(b) Certifies that:

(A) The tests are being administered according to the federal Food and Drug Administration package insert that accompanies the test;

(B) The tests are being administered according to the instructions of the manufacturer;

(C) Custody chain procedures are being followed;

(D) Operators of the substances of abuse on-site screening facility are trained in the use of the substances of abuse on-site screening tests by the manufacturer; and

(E) If the substances of abuse on-site screening facility obtains a positive test result on a specimen and the entity indicates that the test result is to be used to deny or deprive any person of employment or any benefit, or may otherwise result in adverse employment action, the same specimen shall be submitted to a clinical laboratory licensed under ORS 438.110 and 438.150 or an equivalent out-of-state facility and the presence of a substance of abuse confirmed prior to release of the on-site test result.

(6) The authority by rule shall set reasonable standards for the screening by correctional agencies of *[inmates]* **adults in custody** within state and local correctional facilities and offenders on parole, probation or post-prison supervision for substances of abuse. The standards shall include, but not be limited to, the establishment of written procedures and protocols, the qualifications and training of individuals who perform screening tests, the approval of specific technologies and the minimum requirements for record keeping, quality control and confirmation of positive screening results.

(7) If an initial test by a special category laboratory under subsection (4) of this section or a special category screening under subsection (6) of this

section shows a result indicating the presence of a substance of abuse in the body, a confirmatory test shall be conducted in a licensed clinical laboratory if the results are to be used to deprive or deny any person of any employment or benefit. If a screening test of an *[inmate of]* **adult in custody** in a state or local correctional facility is positive for a substance of abuse, the *[inmate]* **adult in custody** may be held in a secure facility pending the outcome of the confirmatory test. If the confirmatory test is positive, the *[inmate]* **adult in custody** may be held in a secure facility pending the outcome of any hearing to determine what action will be taken.

(8) If any test for substances of abuse is performed outside this state the results of which are to be used to deprive or deny any person any employment or any benefit, the person desiring to use the test shall have the burden to show that the testing procedure used meets or exceeds the testing standards of this state.

SECTION 104. ORS 496.458 is amended to read:

496.458. (1) The State Fish and Wildlife Commission shall develop and implement a remote hatchbox program.

(2) To implement the remote hatchbox program required under subsection (1) of this section, the commission shall:

(a) Identify sites in tributaries that are suitable for remote hatchboxes;

(b) Adopt rules necessary to implement the remote hatchbox program;

(c) Investigate the potential of producing remote hatchboxes through an *[inmate]* **adult in custody** work program of the Department of Corrections; and

(d) Report annually to the Legislative Assembly on the progress of the remote hatchbox program. The report shall include but need not be limited to the sites the commission has chosen, a copy of rules the commission has adopted and findings on the extent to which the commission is utilizing labor, supplies or services provided by an *[inmate]* **adult in custody** work program.

(3) Rules adopted by the commission under subsection (2) of this section shall:

(a) Ensure that the program is scientifically sound;

(b) Be consistent with the goals of the Oregon Plan, as described in ORS 541.898; and

(c) Identify protocols for determining when the use of remote hatchboxes is an appropriate activity under the Oregon Plan.

SECTION 105. ORS 655.505 is amended to read: 655.505. As used in ORS 655.505 to 655.555:

(1) **“Adult in custody” means a person committed to the physical and legal custody of the Department of Corrections.**

[(1)] (2) **“Attending practitioner”** means Department of Corrections or Oregon Youth Authority medical staff, or specialists assisting Department of Corrections or Oregon Youth Authority medical staff, while the *[inmate]* **adult in custody** is com-

mitted to the physical and legal custody of the Department of Corrections. At all other times, "attending practitioner" means a person licensed in Oregon or another state as a doctor of medicine, doctor of osteopathic medicine, doctor of optometry, doctor of dentistry or nurse practitioner who provides services within the scope of the license.

[(2)] (3) "Authorized work or occupational training assignment" means the work assignment of an *[inmate]* **adult in custody**:

- (a) As authorized by ORS 421.305 and 421.312;
- (b) As authorized by ORS 421.450 to 421.480;
- (c) As authorized by ORS 144.410 to 144.525;
- (d) As authorized by ORS 420.011;
- (e) As authorized by ORS 420.240 to 420.265; or
- (f) In any other *[inmate]* **adult in custody** activity or program, including, but not limited to, on-the-job training established by the Department of Corrections under section 41, Article I, Oregon Constitution, whether or not compensation has been established by the Director of the Department of Corrections for participation in the activity or program.

[(3)] (4) "Department" means the Oregon Department of Administrative Services.

[(4)] (5) "Injury" means:

(a) An accidental injury or accidental injury to prosthetic devices occurring in the course of, and caused in major part by, an authorized work or occupational training assignment requiring medical services and resulting in disability or death; or

(b) Any disease or infection that:

(A) Arises out of, and in the course of, an authorized work or occupational training assignment;

(B) Is caused in major part by ingestion, absorption or inhalation of, or contact with, dust, fumes, vapors, gases, radiation or other substances to which a worker who is not an *[inmate]* **adult in custody** is not ordinarily subjected or exposed while working;

(C) Requires medical services; and

(D) Results in disability or death.

[(5)] "Inmate" means a person committed to the physical and legal custody of the Department of Corrections.]

(6) "Medical services" means reasonable and necessary services prescribed by an attending practitioner for conditions resulting from injury for a period that the nature of the injury or the process of recovery requires. "Medical services" includes medical, surgical, hospital, nursing, ambulance and other related services, drugs, medicine, crutches and prosthetic appliances, braces and supports and, when necessary, physical restorative services.

(7) "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment or the passage of time.

(8) The terms "beneficiary," "child" and "dependent" have the meanings given those terms in ORS 656.005.

SECTION 106. ORS 655.510 is amended to read: 655.510. (1) Every *[inmate]* **adult in custody** shall receive benefits as provided in ORS 655.505 to

655.555 for injury sustained in an authorized work or occupational training assignment if the injury:

(a) Is proximately caused by or received in the course of the authorized work or occupational training assignment, with or without negligence of the *[inmate]* **adult in custody**;

(b) Is not intentionally self-inflicted;

(c) Is not a result of a willful violation of work rules or rules regulating *[inmate]* **adult in custody** conduct or premises security; and

(d) Does not occur to an active participant in an assault or combat that is not connected to the job assignment and that constitutes a deviation from customary duties.

(2) An injury must be established by medical evidence supported by objective findings. The medical evidence must be substantiated by verifiable pathological indication of injury that includes, but is not limited to, range of motion, atrophy, muscle strength, palpable muscle spasm and diagnostic evidence substantiated by clinical findings. Objective findings do not include physical findings or subjective responses to physical examinations that are not consistently reproducible, measurable or observable, or do not fit an anatomical pattern and that cannot be demonstrated after reasonable medical evaluation. A claimant's statement to a physician or other party does not constitute objective medical evidence sufficient to substantiate an injury.

(3) The following circumstances do not constitute a basis for establishing an injury:

(a) Compulsion to participate in employment or training;

(b) Disciplinary action taken by the Department of Corrections or the Oregon Youth Authority;

(c) Action taken by the Department of Corrections or the Oregon Youth Authority, to protect the safety of persons or to maintain order; or

(d) Actions of other *[inmates]* **adults in custody** or youth offenders as defined in ORS 419A.004.

(4) The filing of claims for benefits under ORS 655.505 to 655.555 is the exclusive remedy of an *[inmate]* **adult in custody** or beneficiary of the *[inmate]* **adult in custody** for injuries compensable under ORS 655.505 to 655.555 against the state or its political subdivisions or any person or entity that contracts with the Department of Corrections or the Oregon Youth Authority for the services of *[inmate]* **adult in custody** labor, any person or entity that employs an *[inmate]* **adult in custody** in a work release program established under ORS 144.420 or 420.240 or any owner or manager of premises where authorized work or occupational training assignments occur, regardless of negligence. This section applies to any work-related injury to, or conditions of, an *[inmate]* **adult in custody** whether or not the injury or conditions are determined to be compensable under ORS 655.505 to 655.555.

SECTION 107. ORS 655.515 is amended to read: 655.515. If an *[inmate]* **adult in custody** sustains an injury as described in ORS 655.510, benefits shall be delivered in a manner similar to that provided for

injured workers under the workers' compensation laws of this state, except that:

(1) No benefits, except medical services and any occupational training or rehabilitation services provided by the Department of Corrections or the Oregon Youth Authority, shall accrue to the *[inmate]* **adult in custody** until the date of release from confinement and shall be based upon the condition of the *[inmate]* **adult in custody** at that time.

(2) Benefits shall be discontinued during any subsequent period of reconfinement in a penal institution.

(3) Costs of rehabilitation services to *[inmates]* **adults in custody** with disabilities shall be paid out of the Insurance Fund established under ORS 278.425 in an amount approved by the Oregon Department of Administrative Services, which shall be the reasonable and necessary cost of such services.

(4) Medical services when the *[inmate]* **adult in custody** is confined in a Department of Corrections facility shall be those provided by the Department of Corrections, and medical services when the *[inmate]* **adult in custody** is confined in a youth correction facility as defined in ORS 420.005 shall be those provided by the Oregon Youth Authority. After release, medical services shall be paid only if necessary to the process of recovery and as prescribed by the attending practitioner. No medical services may be paid after the attending practitioner has determined that the *[inmate]* **adult in custody** is medically stationary other than for reasonable, periodic repair or replacement of prosthetic appliances. The department, by rule, may require that medical and rehabilitation services after release must be provided directly by the state or its contracted coordinated care organization.

SECTION 108. ORS 655.520 is amended to read: 655.520. (1) Claims for entitlement to benefits under ORS 655.505 to 655.555 shall be filed by application with the Oregon Department of Administrative Services as provided by rules adopted by the department, to the extent not inconsistent with ORS 655.505 to 655.555. Such claims shall be filed within the required periods after the injury even though actual benefits may not accrue until release of the *[inmate]* **adult in custody** from confinement. The department may, before acting upon a claim, require further information for determination of eligibility under ORS 655.505 to 655.555.

(2) When a claim is approved, the department shall make an initial estimate of award conditioned as provided in ORS 655.515. Upon release of the *[inmate]* **adult in custody** from confinement, the *[inmate]* **adult in custody** shall apply for an award and the department shall reaffirm or modify its initial award in a manner appropriate to the condition of the *[inmate]* **adult in custody** upon release.

(3) The rights to benefits under ORS 655.505 to 655.555 shall be barred unless written claim is filed with the department within 90 days after the injury, or if death results therefrom, within 90 days after death. However, if death occurs more than one year

after the injury, the right shall be barred unless prior written claim based on the injury has been timely filed. The *[inmate]* **adult in custody** must make written application for an award no later than 180 days following the release of the *[inmate]* **adult in custody** from confinement. The requirements of this subsection may be waived by the department on the ground that, for good and sufficient reason, the claim could not be filed on time.

SECTION 109. ORS 655.525 is amended to read: 655.525. Except as otherwise provided by rule of the Oregon Department of Administrative Services, an *[inmate]* **adult in custody** or the beneficiary of the *[inmate]* **adult in custody** may obtain review of action taken on the claim as provided in ORS 656.283 to 656.304.

SECTION 110. ORS 655.540 is amended to read: 655.540. (1) The assessments paid to the Oregon Department of Administrative Services by the Department of Corrections or the Oregon Youth Authority shall be credited as a component of the Insurance Fund pursuant to ORS 278.425 and 278.435.

(2) Funds credited to the *[inmate]* **adult in custody** injury component of the Insurance Fund for the purposes of ORS 655.505 to 655.555 may be used to effect insurance or reinsurance with any authority or instrumentality, public or private, or otherwise to distribute the liability for compensation payable to persons entitled to recover under ORS 655.505 to 655.555.

SECTION 111. ORS 655.545 is amended to read: 655.545. Liability of the Oregon Department of Administrative Services or the Insurance Fund for the payment of benefits under ORS 655.505 to 655.555 is contingent upon and limited by the availability of reserves in the *[inmate]* **adult in custody** injury component of the Insurance Fund. In the event that the reserves in the *[inmate]* **adult in custody** injury component of the Insurance Fund are not sufficient to meet the benefit payments and administration cost for a given period, the expenses of the department shall have precedence over all other claims. Thereafter, priority among claimants is determined according to the time of filing of the claim.

SECTION 112. ORS 655.555 is amended to read: 655.555. The Oregon Department of Administrative Services, with the approval of the Department of Corrections and the Oregon Youth Authority, shall adopt rules necessary to administer the *[inmate]* **adult in custody** injury fund. The rules may provide for procedures, benefits and coverage that vary from the workers' compensation system.

SECTION 113. ORS 656.005 is amended to read: 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year

preceding the fiscal year in which the injury occurred.

(2)(a) “Beneficiary” means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter.

(b) “Beneficiary” does not include:

(A) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(B) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers’ Compensation Board.

(4) “Carrier-insured employer” means an employer who provides workers’ compensation coverage with the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in this state.

(5) “Child” means a child of an injured worker, including:

(a) A posthumous child;

(b) A child legally adopted before the injury;

(c) A child toward whom the worker stands in loco parentis;

(d) A child born out of wedlock;

(e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent upon the worker for support; and

(f) A child of any age who was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support.

(6) “Claim” means a written request for compensation from a subject worker or someone on the worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

(7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

(A) No injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major con-

tributing cause of the need for treatment of the combined condition.

(b) “Compensable injury” does not include:

(A) Injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker’s personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker’s consumption of alcoholic beverages or cannabis or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.

(c) A “disabling compensable injury” is an injury which entitles the worker to compensation for disability or death. An injury is not disabling if no temporary benefits are due and payable, unless there is a reasonable expectation that permanent disability will result from the injury.

(d) A “nondisabling compensable injury” is any injury which requires medical services only.

(8) “Compensation” includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pursuant to this chapter.

(9) “Department” means the Department of Consumer and Business Services.

(10)(a) “Dependent” means any of the following relatives of the worker who, at the time of an accident, depended in whole or in part for the relative’s support on the earnings of a worker who dies as a result of an injury:

(A) A parent, grandparent or stepparent;

(B) A grandson or granddaughter;

(C) A brother or sister or half-brother or half-sister; and

(D) A niece or nephew.

(b) “Dependent” does not include an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

(11) “Director” means the Director of the Department of Consumer and Business Services.

(12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the healing arts in any country or in any state, territory or possession of the United States within the limits of the license of the licentiate.

(b) Except as otherwise provided for workers subject to a managed care contract, “attending physician” means a doctor, physician or physician assistant who is primarily responsible for the treatment of a worker’s compensable injury and who is:

(A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician and surgeon licensed under ORS 677.805

to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative total of 18 visits, whichever occurs first, to any of the medical service providers listed in this subparagraph, a:

(i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States;

(ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States; or

(iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

(c) Except as otherwise provided for workers subject to a managed care contract, "attending physician" does not include a physician who provides care in a hospital emergency room and refers the injured worker to a primary care physician for follow-up care and treatment.

(d) "Consulting physician" means a doctor or physician who examines a worker or the worker's medical record to advise the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 regarding treatment of a worker's compensable injury.

(13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.

(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of a temporary service provider is not the employer of temporary workers provided by the temporary service provider.

(c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning for that term provided in ORS 656.850.

(14) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state or an assigned claims agent selected by the director under ORS 656.054.

(15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

(16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

(17) "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment, or the passage of time.

(18) "Noncomplying employer" means a subject employer who has failed to comply with ORS 656.017.

(19) "Objective findings" in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. "Objective findings" does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

(20) "Palliative care" means medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition.

(21) "Party" means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of such employer.

(22) "Payroll" means a record of wages payable to workers for their services and includes commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. However, "payroll" does not include overtime pay, vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices. Bonus pay is limited to payments which are not anticipated under the contract of employment and which are paid at the sole discretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe working practices is only for the purpose of calculations based on payroll to determine premium for workers' compensation insurance, and does not affect any other calculation or determination based on payroll for the purposes of this chapter.

(23) "Person" includes partnership, joint venture, association, limited liability company and corporation.

(24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment, provided that:

(A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the worker has been diagnosed with such condition, or has obtained medical services for the symptoms of the condition regardless of diagnosis; and

(B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes the initial injury;

(ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the new medical condition; or

(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment precedes the onset of the worsened condition.

(b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim for worsening in such claims pursuant to ORS 656.273 or 656.278.

(c) For the purposes of industrial injury claims, a condition does not contribute to disability or need for treatment if the condition merely renders the worker more susceptible to the injury.

(25) "Self-insured employer" means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out by ORS 656.407.

(26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident Insurance Fund Corporation created under ORS 656.752.

(27) "Subject employer" means an employer who is subject to this chapter as provided by ORS 656.023.

(28) "Subject worker" means a worker who is subject to this chapter as provided by ORS 656.027.

(29) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and includes the amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips reported, whichever amount is greater. The State Accident Insurance Fund Corporation may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the premium of the employer.

(30) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an *[inmate]* **adult in custody** or ward of a state institution or as part of the eligibility requirements for a general or public assistance grant. For the purpose of determining entitlement to temporary disability benefits or permanent total disability benefits under this chapter, "worker" does not include a person who has withdrawn from the workforce during the period for which such benefits are sought.

(31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

SECTION 114. ORS 657.065 is amended to read:

657.065. (1) "Employment" does not include service performed in the employ of the United States Government or any instrumentality of the United States, except that if the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, then, to the extent permitted by Congress, and after the date such permission becomes effective, this chapter shall be effective as to such instrumentalities and as to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. However, if this state is not certified by the Secretary of Labor under section 3304(c) of title 26, United States Code, for any year, then the payments required of such instrumentalities with respect to such year shall be deemed to have been erroneously collected within the meaning of ORS 657.510 and shall be refunded by the Director of the Employment Department from the fund in accordance with ORS 657.510.

(2) "Employment" does not include services that are performed in the employ of the state, any political subdivision or instrumentality of the state or an Indian tribe:

(a) As an elected public official.

(b) In a position that, under or pursuant to laws of this state or tribal laws, is designated as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(c) As an employee serving on a temporary basis in case of fire, storm, earthquake, flood or similar emergency.

(d) As a member of a legislative body or a member of the judiciary.

(e) By an *[inmate of]* **adult in custody** in a custodial or penal institution when such services are performed for the custodial or penal institution in which the *[inmate]* **adult in custody** is confined.

(f) As a member of the Oregon Army National Guard or Oregon Air National Guard.

(3) The provisions of ORS 657.425 permitting election of coverage for services that do not constitute "employment" do not apply to services performed as an elected public or tribal official.

(4) Notwithstanding the provisions of ORS 657.025, "employer" means any state government, political subdivision or Indian tribe employing unit.

SECTION 115. ORS 677.225 is amended to read:

677.225. (1) A person's license issued under this chapter is suspended automatically if:

(a) The licensee is adjudged to be a person with mental illness under ORS 426.130 or is admitted on a voluntary basis to a treatment facility for mental illness that affects the ability of the licensee to safely practice medicine and if the licensee's residence in the hospital exceeds 25 consecutive days; or

(b) The licensee is an *[inmate]* **adult in custody** in a penal institution.

(2)(a) The clerk of the court ordering commitment or incarceration under subsection (1)(a) or (b) of this section shall cause to be mailed to the Oregon Medical Board, as soon as possible, a certified copy of the court order. No fees are chargeable by the clerk for performing the duties prescribed by this paragraph.

(b) The administrator of the hospital to which a person with a license issued under this chapter has voluntarily applied for admission shall cause to be mailed to the board as soon as possible, a certified copy of the record of the voluntary admission of such person.

(c) Written evidence received from the supervisory authority of a penal or mental institution that the licensee is an *[inmate]* **adult in custody** or patient therein is prima facie evidence for the purpose of subsection (1)(a) or (b) of this section.

(3) A suspension under this section may be terminated by the board when:

(a)(A) The board receives evidence satisfactory to the board that the licensee is not a person with mental illness as defined in ORS 426.005; or

(B) The board receives evidence satisfactory to the board that the licensee is no longer incarcerated; and

(b) The board is satisfied, with due regard for the public interest, that the licensee's privilege to practice may be restored.

SECTION 116. Section 2, chapter 5, Oregon Laws 2013, is amended to read:

Sec. 2. (1)(a) When an adverse health care incident occurs in a health care facility or a location operated by a health care facility, the health care facility may file a notice of adverse health care incident with the Oregon Patient Safety Commission in the form and manner provided by the commission by rule.

(b) If a health care facility files a notice of adverse health care incident under this subsection, the health care facility shall provide a copy of the notice to the patient.

(c) A notice filed under this subsection may not include the name of a health care provider, but the health care facility filing the notice shall notify any health care providers involved in the adverse health care incident of the notice.

(2)(a) When an adverse health care incident occurs outside of a health care facility or a location operated by a health care facility, the health care provider treating the patient or the employer of the health care provider may file a notice of adverse health care incident with the commission in the form and manner provided by the commission by rule.

(b) If a health care provider or employer files a notice of adverse health care incident under this subsection, the health care provider or employer shall provide a copy of the notice to the patient.

(c) If an employer files the notice under this subsection, the notice may not include the name of the health care provider, but the employer shall notify each health care provider involved in the adverse health care incident of the notice.

(3) A patient may file a notice of adverse health care incident with the commission in the form and manner provided by the commission by rule. When the commission receives a notice of adverse health care incident from a patient under this subsection, the commission shall notify all health care facilities and health care providers named in the notice within seven days after receiving the notice.

(4) A notice of adverse health care incident filed under this section is not:

(a) A written claim or demand for payment.

(b) A claim for purposes of ORS 742.400.

(5) The filing of a notice of adverse health care incident as provided in this section satisfies the notice requirements of ORS 30.275.

(6) An *[inmate]* **adult in custody** as defined in ORS 30.642 may not file a notice of adverse health care incident under this section.

SECTION 117. ORS 144.035 is amended to read:

144.035. (1) In hearings conducted by the State Board of Parole and Post-Prison Supervision, the board may sit together or in panels.

(2) Panels may consist of one or two board members or of one member and one hearings officer, appointed by the chairperson as a designated representative of the board. A panel consisting of one member or of one member and one hearings officer shall be used only when considering *[inmates]* **adults in custody** convicted of non person-to-person crimes as defined in the rules of the Oregon Criminal Justice Commission. The chairperson of the board from time to time shall make assignments of members to the panels. The chairperson of the board may participate on any panel.

(3) The chairperson shall apportion matters for decision to the panels. Each panel shall have the authority to hear and determine all questions before it. However:

(a) If there is a division in the panel so that a decision is not unanimous, another member shall vote after administrative review of the record.

(b) In case of a panel consisting of one board member, another member shall vote after administrative review of the record.

(c) If the original panel was made up of one board member and the member voting after administrative review of the record disagrees with the decision, the matter shall be reassigned to a panel made up of the remaining board members. If this second panel agrees with neither member of the original panel, the matter will be referred to a hearing before the full board.

(4) The provisions of subsections (1) to (3) of this section shall not apply to a decision to release a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the prisoner only upon affirmative vote of a majority of three board mem-

bers or, if the chairperson requires all voting members to participate, a majority of all voting members.

(5) The chairperson may elect to conduct the hearings described in this section by conference call with the prisoner.

SECTION 118. Section 29, chapter 649, Oregon Laws 2013, is amended to read:

Sec. 29. (1) When a circuit court in a participating county sentences a person to a term of imprisonment, the court may order that the person participate in a reentry court, subject to admission under subsection (3) of this section, as a condition of post-prison supervision.

(2) At any time prior to the termination of post-prison supervision, the supervisory authority may provide a report to the reentry court recommending that a person sentenced under subsection (1) of this section be admitted into the reentry court.

(3) When a reentry court receives a report described in subsection (2) of this section, or an *[in-mate]* **adult in custody** release plan prepared under ORS 144.096, that recommends the admission of a person sentenced under subsection (1) of this section into a reentry court, the court may enter an order admitting the person into the reentry court.

(4) Notwithstanding ORS 137.124 and 423.478 and any other provision of law, when a court enters an order admitting a person into a reentry court, the court may:

(a) Issue a warrant and cause the person to be arrested for violating a condition of post-prison supervision.

(b) Appoint counsel to represent the person in accordance with ORS 135.050, if the person is financially eligible.

(c) Determine whether the conditions of post-prison supervision have been violated and impose sanctions for the violations.

(5)(a) When the court conducts a post-prison supervision violation hearing under this section, the person may admit or deny alleged violations of conditions of post-prison supervision. The person and the state may present evidence at the hearing.

(b) If the court determines by a preponderance of the evidence that a person admitted into a reentry court has violated the conditions of post-prison supervision, the court may impose sanctions for the violations that are consistent with the rules adopted under ORS 144.106 and 144.107, except that the court may not impose a sanction of imprisonment in a correctional facility that exceeds 12 months.

(6)(a) When a court issues a warrant under this section and causes a person admitted into a reentry court to be arrested and taken into custody for violating a condition of post-prison supervision, the person shall be brought before a magistrate during the first 36 hours in custody, excluding Saturdays, Sundays and holidays. The magistrate may order the person held pending a violation hearing or transferred to the county in which the reentry court is located, or may release the person upon the condition that the person appear in court at a later date

for a post-prison violation hearing. If the person is held on an out-of-county warrant, the magistrate may order the person released subject to an additional order that the person report within seven calendar days to the reentry court.

(b) Except for good cause shown, if the person is held in custody and the violation hearing is not held within 14 calendar days following the person's arrest, the person shall be released from custody.

(7) As used in this section, "participating county" means a county:

(a) That has applied for and received a grant under section 53, **chapter 649, Oregon Laws 2013**, *[of this 2013 Act]* to administer a reentry court; and

(b) For which the presiding judge of the judicial district in which the county is located issues an order establishing a reentry court steering committee consisting of:

(A) A circuit court judge;

(B) A district attorney;

(C) A criminal defense attorney;

(D) A parole and probation officer;

(E) A representative of the business community;

(F) A representative of the education community;

and

(G) Any other person the presiding judge determines is appropriate.

SECTION 119. ORS 163.165 is amended to read:

163.165. (1) A person commits the crime of assault in the third degree if the person:

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS 166.116;

(e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

(f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;

(g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in ORS 682.025, while the emergency medical services provider is performing official duties;

(h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;

(i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi; or

(j) Intentionally, knowingly or recklessly causes physical injury to a flagger or a highway worker while the flagger or highway worker is performing official duties.

(2)(a) Assault in the third degree is a Class C felony.

(b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under subsection (1)(a) or (b) of this section is a Class B felony if:

(A) The assault resulted from the operation of a motor vehicle; and

(B) The defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.

(3) As used in this section:

(a) “Flagger” has the meaning given that term in ORS 811.230.

(b) “Highway worker” has the meaning given that term in ORS 811.230.

(c) “Staff member” means:

(A) A corrections officer as defined in ORS 181A.355, a youth correction officer, a youth correction facility staff member, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, *[inmates]* **adults in custody**, youth or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, *[inmates]* **adults in custody**, youth or youth offenders.

(d) “Youth correction facility” has the meaning given that term in ORS 162.135.

SECTION 120. ORS 163.208 is amended to read:

163.208. (1) A person commits the crime of assaulting a public safety officer if the person intentionally or knowingly causes physical injury to the other person, knowing the other person to be a peace officer, corrections officer, youth correction officer, parole and probation officer, animal control officer, firefighter or staff member, and while the other person is acting in the course of official duty.

(2) Assaulting a public safety officer is a Class C felony.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection, a person convicted under this section shall be sentenced to not less than seven days of imprisonment and shall not be granted bench parole or suspension of sentence nor released on a sentence of probation before serving at least seven days of the sentence of confinement.

(b) A person convicted under this section shall be sentenced to not less than 14 days of imprisonment and shall not be granted bench parole or suspension of sentence nor released on a sentence of

probation before serving at least 14 days of the sentence of confinement if the victim is a peace officer.

(4) As used in this section:

(a) “Animal control officer” has the meaning given that term in ORS 609.500; and

(b) “Staff member” means:

(A) A corrections officer as defined in ORS 181A.355, a youth correction officer, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, *[inmates]* **adults in custody** or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, *[inmates]* **adults in custody** or youth offenders.

SECTION 121. ORS 169.042 is amended to read:

169.042. The county court or board of commissioners of a county may institute an examination of the county’s local correctional facility for the purpose of obtaining a recommendation regarding the maximum number of *[inmates]* **adults in custody** that should be held in the facility. This recommendation shall be based on consideration of the following:

(1) The advice of the district attorney, county counsel and sheriff concerning prevailing constitutional standards relating to conditions of incarceration;

(2) The design capacity of the local correctional facility;

(3) The physical condition of the local correctional facility; and

(4) The programs provided for *[inmates]* **adults in custody** of the local correctional facility.

SECTION 122. ORS 169.044 is amended to read:

169.044. When the county court or board has received a recommendation pursuant to ORS 169.042, it shall either:

(1) Reject the recommendation and decline to adopt a limit on the number of *[inmates]* **adults in custody** that may be held in the local correctional facility; or

(2) Adopt the recommendation and, after consultation with the officials listed in ORS 169.046 (1), issue an order establishing the maximum allowable number of *[inmates]* **adults in custody** that may be held in the local correctional facility. This shall include specific standards for determining a county jail population emergency and a specific plan for resolving the emergency.

SECTION 123. ORS 169.220 is amended to read:

169.220. All persons lawfully confined in a county local correctional facility, or as prisoners engaged in work under the custody and jurisdiction of a county, shall be fed and maintained at actual cost to the county. All persons confined in a county local correctional facility shall be given three meals per day. An accurate account of each meal furnished

to others than [inmates] **adults in custody** of local correctional facilities, together with the names of the recipients thereof, whether facility employees or otherwise, shall be kept and reported by the sheriff each month to the county court or board of county commissioners. The county court or board of county commissioners shall furnish the sheriff with adequate equipment and supplies for carrying out the provisions of this section. The sheriff has authority to employ such assistance therefor as may be necessary. All supplies and equipment needed to feed and maintain such persons as provided in this section shall be purchased by the county court or board of county commissioners upon requisitions duly verified and presented by the sheriff to the county court or board of county commissioners. All supplies so purchased shall be paid for by warrant drawn upon the general fund of the county, upon presentation of vouchers containing itemized statements of all supplies so furnished, duly verified by the sheriff and by the person selling the same, each of whom shall certify that the supplies were actually furnished and received in the quantities represented and were of good quality, and that the price charged therefor was reasonable and just.

SECTION 124. ORS 179.375 is amended to read:

179.375. (1) The Department of Corrections and the Oregon Health Authority shall ensure that adequate chaplaincy services, including but not limited to Protestant and Roman Catholic, are available at their respective institutions.

(2) Chaplains serving the various institutions shall, with respect to the [inmates] **adults in custody** or patients at such institutions:

(a) Provide for and attend to their spiritual needs.

(b) Visit them for the purpose of giving religious and moral instruction.

(c) Participate in the rehabilitation programs affecting them.

SECTION 125. ORS 179.479 is amended to read:

179.479. (1) The superintendent or other chief executive officer of an institution described in ORS 179.321 may, when authorized by regulation or direction of the Department of Corrections or the Oregon Health Authority, convey an [inmate] **adult in custody** to a physician, clinic or hospital, including the Oregon Health and Science University, for medical, surgical or dental treatment when such treatment cannot satisfactorily be provided at the institution. An [inmate] **adult in custody** conveyed for treatment pursuant to this section shall be kept in the custody of the institution from which the [inmate] **adult in custody** is conveyed.

(2) The Department of Corrections and the Oregon Health Authority shall prescribe rules and regulations governing conveyances authorized by this section.

SECTION 126. ORS 183.335 is amended to read:

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State

Board of Parole and Post-Prison Supervision may adopt rules limiting participation by *[inmates]* **adults in custody** in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) If requested by at least five persons before the earliest date that the rule could become effective after the agency gives notice pursuant to subsection (1) of this section, the agency shall provide a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective.

(e) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Any public comment received in response to the request made under subsection (2)(b)(G) of this section and the agency's response to that comment.

(D) Any statements provided by the agency under paragraph (d) of this subsection.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;

(c) Correcting spelling;

(d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;

(e) Correcting statutory or rule references; or

(f) Correcting addresses or telephone numbers referred to in the rules.

(8)(a) Any person may request in writing that an agency send to the person copies of the agency's notices of intended action issued under subsection (1) of this section. The person must provide an address where the person elects to receive notices. The address provided may be a postal mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing address.

(b) A request under this subsection must indicate that the person requests one of the following:

(A) The person may request that the agency mail paper copies of the proposed rule and other information required by subsection (2) of this section to the postal mailing address.

(B) If the agency posts notices of intended action on a website, the person may request that the agency mail the information required by subsection (2)(a) of this section to the postal mailing address with a reference to the website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(C) The person may request that the agency electronically mail the information required by subsection (2)(a) of this section to the electronic mailing address, and either provide electronic copies of the proposed rule and other information required by subsection (2) of this section or provide a reference to a website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(c) Upon receipt of any request under this subsection, the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing the mail-

ing lists and keeping the mailing lists current. Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of the lists.

(d) Members of the Legislative Assembly who receive notices under subsection (15) of this section may request that an agency furnish paper copies of the notices.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection (1) of this section is delivered to the Secretary of State for the purpose of publication in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule other than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and 183.715.

(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule.

(b) An agency may use an amended filing to correct a failure to include a fiscal impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS 183.333.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not

consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochair of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochair of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal.

SECTION 127. ORS 243.650 is amended to read: 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" does not include subjects that the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

(d) "Employment relations" does not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, "employment relations" excludes class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, requirements for expressing milk under ORS 653.077, and any other

subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the Department of Corrections who have direct contact with [inmates] **adults in custody**, “employment relations” includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.

(g) For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, “employment relations” excludes staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(8) “Exclusive representative” means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit.

(9) “Fact-finding” means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(10) “Fair-share agreement” means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor the union security agreement, the board shall certify deauthorization of the agreement. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election may be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) “Final offer” means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) “Labor dispute” means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) “Labor organization” means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) “Last best offer package” means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) “Legislative body” means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) “Managerial employee” means an employee of the State of Oregon or a public university listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or who represents management’s interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A “managerial employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, “managerial employee” does not include faculty members at a community college, college or university.

(17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment must be equivalent to regular union dues and assessments, if any, or must be an amount agreed upon by the public employer and the exclusive representative of the employees.

(19) “Public employee” means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(20) “Public employer” means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or mu-

municipal corporations and public and quasi-public corporations.

(21) "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(22) "Strike" means a public employee's refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(23)(a) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation.

(b) "Supervisory employee" includes a faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who:

(A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, assistant dean, head or equivalent position; or

(B) Is employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.

(c) "Supervisory employee" does not include:

(A) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory;

(B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the work of other employees but does not have the authority to hire, discharge or impose economic discipline on those employees; or

(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who is not a faculty member described in paragraph (b) of this subsection.

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute

mutually agree to submit their differences to a third party for a final and binding decision.

SECTION 128. ORS 283.415 is amended to read: 283.415. The Legislative Assembly finds and declares that:

(1) Asbestos has been found to be a human carcinogen. There is no known safe level for human exposure to asbestos. Ailments caused by asbestos can become manifest many years after exposure.

(2) In a decayed or damaged state, asbestos can pose a health risk to employees, *[inmates]* **adults in custody**, patients or residents of state institutions. This state does not know where asbestos-containing materials exist in its buildings nor in what condition those materials are to be found.

(3) It is the goal of the Legislative Assembly to assure that state facilities are safely maintained and operated. It is, therefore, the policy of the Legislative Assembly that:

(a) A Master Asbestos Management Plan be developed that will assure orderly well-reasoned asbestos control and abatement.

(b) As any conditions of immediate hazard to health become known, they be acted on promptly in accordance with the Master Asbestos Management Plan.

(c) The plan include standards for employee awareness and training.

(d) The Oregon Department of Administrative Services be the agency to develop and centrally manage the plan for this state.

(e) Each agency cooperate fully in carrying out the plan.

(f) The State of Oregon engage in a long-term commitment to control the asbestos hazard in state facilities through control and abatement.

SECTION 129. ORS 336.057 is amended to read: 336.057. In all public schools, courses of instruction shall be given in the Constitution of the United States and in the history of the United States. These courses shall:

(1) Begin not later than the opening of the eighth grade and shall continue in grades 9 through 12.

(2) Be required in all public universities listed in ORS 352.002 and in all state and local institutions that provide education for patients or *[inmates]* **adults in custody** to an extent to be determined by the Superintendent of Public Instruction.

SECTION 130. ORS 341.317 is amended to read: 341.317. (1) Reimbursement from the Community College Support Fund established in ORS 341.620 may be made available to community colleges that deliver educational services to *[inmates]* **adults in custody** confined to the state-operated correctional facilities and to locally operated correctional facilities. The reimbursement shall be distributed as directed in ORS 341.626 and the rules of the Higher Education Coordinating Commission.

(2) The commission shall review and approve services to correctional institutions at least once biennially.

(3) The enrollment limitation, as provided by ORS 341.022, does not apply to persons receiving services under this section.

(4) Reimbursement from the Community College Support Fund established in ORS 341.620 may not be made available to community colleges for delivering educational services to *[inmates]* **adults in custody** confined in federal prisons. Neither shall local property taxes be used to support the services. A host community college shall support the services through a contractual arrangement with the federal government.

SECTION 131. ORS 421.073 is amended to read: 421.073. The Housing of *[Inmates]* **Adults in Custody** from Other Jurisdictions Account is created within the General Fund. Moneys credited to the account are continuously appropriated to the Department of Corrections for costs of incarceration. The Department of Corrections shall deposit all moneys received by the department as reimbursement under ORS 169.053 (3) into the account.

SECTION 132. The Housing of Adults in Custody from Other Jurisdictions Account is a continuation of the Housing of Inmates from Other Jurisdictions Account established by ORS 421.073. Moneys contained in the Housing of Inmates from Other Jurisdictions Account on the effective date of this 2019 Act are considered to be moneys in the Housing of Adults in Custody from Other Jurisdictions Account.

SECTION 133. ORS 421.081 is amended to read: 421.081. (1) The Administrator of Correctional Education shall plan, design and implement a correctional education system that can be operated within the existing correctional institutions for *[inmates]* **adults in custody** of those institutions.

(2)(a) The primary objective of the correctional education system is the adult basic skills development program described in ORS 421.084.

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

SECTION 134. ORS 421.084 is amended to read: 421.084. (1) The Administrator of Correctional Education shall administer an adult basic skills development program for all individuals in the custody of the Department of Corrections. The program shall:

(a) Test individuals for basic reading and mathematics skills or, for individuals with limited English language proficiency, English speaking skills. Testing for basic intelligence, learning disabilities,

developmental disabilities and adaptive behavior skills shall be administered as needed except that the administrator may accept equivalent test results from other sources.

(b) Except as provided in subsection (2) of this section, be mandatory for all individuals testing below a 8.0 grade equivalency on a standardized reading test approved by the National Reporting System for Adult Education of the United States Department of Education and by the Adult Basic Skills Program of the Office of Community Colleges and Workforce Development.

(c) Provide progress testing and certification.

(d) Provide strong incentives for entering the program and for achieving the minimum reading level and, for those individuals with demonstrated ability, provide incentives for making progress toward earning a certificate for passing an approved high school equivalency test such as the General Educational Development (GED) test.

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

(2) Testing for basic skills and participation in the adult basic skills development program are not required for *[inmates]* **adults in custody**:

(a) Sentenced to or otherwise confined by the department for less than one year;

(b) Sentenced to life imprisonment without parole;

(c) Sentenced to death;

(d) With developmental disabilities; or

(e) Who are specifically exempted by the Department of Corrections for security or health reasons.

SECTION 135. ORS 421.132 is amended to read:

421.132. (1) The Department of Corrections may charge and collect fees for serving process and other documents on *[inmates]* **adults in custody** of Department of Corrections institutions as defined in ORS 421.005 and officials and employees of the department.

(2) Before charging fees pursuant to subsection (1) of this section, the department shall adopt rules establishing a fee schedule. Fees charged by the department may not exceed fees collected by sheriffs for service of process in civil actions, suits and proceedings pursuant to ORS 21.300.

SECTION 136. ORS 421.205 is amended to read:

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

of this state and sentenced to a term of imprisonment therefor.

(2) The Department of Corrections may enter into contracts or arrangements with the federal government and with states that are not parties to the Interstate Corrections Compact under ORS 421.245 or the Western Interstate Corrections Compact under ORS 421.284 to receive, detain, care for, maintain and employ persons convicted of felony by the federal government or in such other states, on such basis as it may agree with the authorities of the federal government or of each state.

SECTION 137. ORS 421.220 is amended to read:

421.220. Upon the expiration of any contract entered into under ORS 421.205, all *[inmates]* **adults in custody** of this state confined in such institution or jail shall be returned by the Department of Corrections to department custody, or delivered to such other institution as the Department of Corrections has contracted with under ORS 421.205.

SECTION 138. ORS 421.312 is amended to read:

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

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

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

(b) The furnishing of the labor or services of *[inmates]* **adults in custody** of any Department of Corrections institution to any agency of the federal government.

SECTION 139. ORS 421.445 is amended to read:

421.445. (1) Notwithstanding any other law, *[inmates]* **adults in custody** participating in a program operated by the Department of Corrections or Oregon Corrections Enterprises may be supervised by an employee or agent of a local, state or federal governmental agency pursuant to an agreement between the agency and the department or the agency and Oregon Corrections Enterprises. An agreement entered into under this section must require that the person exercising custodial supervision over *[inmates]* **adults in custody** receive security training approved and provided by the department.

(2) As used in this section, "local, state or federal governmental agency" includes Oregon Corrections Enterprises if the agreement under this section is entered into between Oregon Corrections Enterprises and the department.

SECTION 140. ORS 421.476 is amended to read: 421.476. The Director of the Department of Corrections shall determine and establish compensation, if any, to be paid to *[inmates]* **adults in custody** assigned to work in forest work camps. The director shall adopt rules providing for the disposition of any compensation earned under this section.

SECTION 141. ORS 421.490 is amended to read: 421.490. In addition to camps established under ORS 421.455 to 421.480 the Department of Corrections may execute agreements for the establishment and operation of work camps for **adults in custody in** minimum custody *[inmates]* of Department of Corrections institutions in cooperation with all public agencies.

SECTION 142. ORS 421.805 is amended to read: 421.805. The Department of Corrections may establish and operate institutions, other domiciliary facilities or branches of existing Department of Corrections institutions or domiciliary facilities. Siting of such institutions, branches or domiciliary facilities must be done in accordance with statutes governing the siting or locating of correctional institutions. The institutions, branches or facilities shall be used for the care and custody of *[inmates]* **adults in custody** assigned thereto and shall be operated to facilitate the return of the *[inmates]* **adults in custody** to society.

SECTION 143. ORS 423.020 is amended to read: 423.020. (1) The Department of Corrections is created. The department shall:

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

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

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

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

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

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

(g) Supervise persons sentenced or placed in the community for the period of time specified and in

accordance with conditions of supervision ordered by the release authority.

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

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

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

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

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

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

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

(5) The department may provide ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for a person under 18 years of age who is confined in a Department of Corrections institution and, in an emergency in which the safety of the person appears urgently to require it, may authorize surgery or other extraordinary care.

SECTION 144. ORS 423.077 is amended to read:

423.077. (1) The Department of Corrections may certify employees of the department to provide mental health services to *[inmates]* **adults in custody** in Department of Corrections institutions in accordance with standards established by the department by rule.

(2) As used in this section, "Department of Corrections institutions" has the meaning given that term in ORS 421.005.

SECTION 145. ORS 423.100 is amended to read:

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

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

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

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

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

(d) Emergency expenses of indigent *[inmates]* **adults in custody** released on any form of temporary release or transitional leave; or

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

(3) The revolving fund shall be reimbursed by warrants drawn by the Oregon Department of Administrative Services upon the verified claims of the department charged against the appropriate fund or account.

SECTION 146. ORS 423.490 is amended to read:

423.490. (1) The Legislative Assembly finds and declares that:

(a) In November of 2010, the voters enacted ORS 813.011, which directed the state to fully reimburse counties for the costs of incarcerating persons sentenced under ORS 813.011, including the costs of pretrial incarceration.

(b) Different counties incur different costs of incarceration and many counties incur different costs for different *[inmates]* **adults in custody** within the same facility.

(c) The Legislative Assembly intends to honor the direction given by the voters while also creating an efficient and effective means by which to do so.

(d) Counties and the Department of Corrections have previously agreed that the calculated rate at which the department provides moneys to counties under ORS 423.530 for persons sentenced to 12 months or less incarceration is an efficient and effective means by which to reimburse counties for the costs of their incarceration.

(2) The department shall reimburse counties for the costs of incarcerating persons sentenced under ORS 813.011, including the costs of pretrial incarceration.

(3) The department shall adopt rules prescribing the manner in which a county may submit a claim for reimbursement under this section. The reimbursement shall be calculated using the rate at which the department provides moneys to counties

under ORS 423.530 for persons sentenced to 12 months or less incarceration.

(4) Reimbursements made to counties under this section must be made from moneys appropriated to the department for that purpose.

SECTION 147. ORS 423.600 is amended to read: 423.600. The Legislative Assembly finds and declares that:

(1) Restorative justice programs, including facilitated dialogues and responsibility letter banks, can promote justice and healing for crime victims and survivors and can aid *[inmates]* **adults in custody** in the process of rehabilitation;

(2) A facilitated dialogue or responsibility letter bank program is most successful when the participants are able to communicate openly and honestly about the crime and its impact, knowing that the participants' communication will not be disclosed to other people or used against them later; and

(3) It is the policy and purpose of ORS 423.600 to 423.610 that Department of Corrections facilitated dialogue and responsibility letter bank program communications are confidential, and should not be admissible in any administrative, judicial or arbitration proceeding, except pursuant to limited exceptions established by the Department of Corrections by rule.

SECTION 148. ORS 430.380 is amended to read: 430.380. (1) There is established in the General Fund of the State Treasury an account to be known as the Mental Health Alcoholism and Drug Services Account. Moneys deposited in the account are continuously appropriated for the purposes of ORS 430.345 to 430.380 and to provide funding for sobering facilities registered under ORS 430.262. Moneys deposited in the account may be invested in the manner prescribed in ORS 293.701 to 293.857.

(2) Forty percent of the moneys in the Mental Health Alcoholism and Drug Services Account shall be continuously appropriated to the counties on the basis of population. The counties must use the moneys for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services and for local matching funds under ORS 430.345 to 430.380. The counties may use up to 10 percent of the moneys appropriated under this subsection to provide funds for sobering facilities registered under ORS 430.262.

(3) Forty percent of the moneys shall be continuously appropriated to the Oregon Health Authority to be used for state matching funds to counties for alcohol and drug abuse prevention, early intervention and treatment services pursuant to ORS 430.345 to 430.380. The authority may use up to 10 percent of the moneys appropriated under this subsection for matching funds to counties for sobering facilities registered under ORS 430.262.

(4) Twenty percent of the moneys shall be continuously appropriated to the Oregon Health Authority to be used for alcohol and drug abuse prevention, early intervention and treatment ser-

vices for *[inmates]* **adults in custody** of correctional and penal institutions and for parolees therefrom and for probationers as provided pursuant to rules of the authority. However, prior to expenditure of moneys under this subsection, the authority must present its program plans for approval to the appropriate legislative body which is either the Joint Ways and Means Committee during a session of the Legislative Assembly or the Emergency Board during the interim between sessions.

(5) Counties and state agencies:

(a) May not use moneys appropriated to counties and state agencies under subsections (1) to (4) of this section for alcohol and drug prevention and treatment services that do not meet or exceed minimum standards established under ORS 430.357; and

(b) Shall include in all grants and contracts with providers of alcohol and drug prevention and treatment services a contract provision that the grant or contract may be terminated by the county or state agency if the provider does not meet or exceed the minimum standards adopted by the Oregon Health Authority pursuant to ORS 430.357. A county or state agency may not be penalized and is not liable for the termination of a contract under this section.

SECTION 149. ORS 656.041 is amended to read: 656.041. (1) As used in this section, unless the context requires otherwise:

(a) **“Adult in custody” means a person sentenced by any court or legal authority, whether in default of the payment of a fine or committed for a definite number of days, to serve sentence in a city or county jail or other place of incarceration except state and federal institutions. “Adult in custody” includes a person who performs community service pursuant to ORS 137.128, whether or not the person is incarcerated.**

[(a)] (b) “Authorized employment” means the employment of an [inmate] adult in custody on work authorized by the governing body of a city or county.

[(b) “Inmate” means a person sentenced by any court or legal authority, whether in default of the payment of a fine or committed for a definite number of days, to serve sentence in a city or county jail or other place of incarceration except state and federal institutions. “Inmate” includes a person who performs community service pursuant to ORS 137.128, whether or not the person is incarcerated.]

(2) A city or county may elect to have *[inmates]* **adults in custody** performing authorized employment considered as subject workers of the city or county for purposes of this chapter. Such election shall be made by a written application to the insurer, or in the case of a self-insured employer, the Director of the Department of Consumer and Business Services, that includes a resolution of the governing body declaring its intent to cover *[inmates]* **adults in custody** as provided in this section and a description of the work to be performed by such *[inmates]* **adults in custody**. The application shall also

state the estimated total number of *[inmates]* **adults in custody** for which coverage is requested. The county or city shall notify the insurer or director of changes in the estimated total number of *[inmates]* **adults in custody** performing authorized employment.

(3) Upon receiving the written application the insurer or self-insured employer may fix assumed wage rates for the *[inmates]* **adults in custody**, which may be used only for purposes of computations under this chapter, and shall require the regular payment of premiums or assessments based upon the estimated total number of such *[inmates]* **adults in custody** for which coverage is requested. The self-insured employer shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The city or county shall maintain a separate list of *[inmates]* **adults in custody** performing authorized employment. A certified copy of the list shall be furnished the insurer or director upon request. *[Inmates]* **Adults in custody** covered under this section are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their participation in the authorized employment, provided the duties being performed are among those described on the application of the city or county.

(5) The filing of claims for benefits under this section is the exclusive remedy of an *[inmate]* **adult in custody** or a beneficiary of the *[inmate]* **adult in custody** for injuries compensable under this chapter against a city or county and its officers and employees, regardless of negligence.

SECTION 150. ORS 656.752 is amended to read:

656.752. (1) The State Accident Insurance Fund Corporation is created for the purpose of transacting workers' compensation insurance and reinsurance business. The State Accident Insurance Fund Corporation also may insure an Oregon employer against any liability such employer may have on account of bodily injury to a worker of the employer arising out of and in the course of employment as fully as any private insurance carrier.

(2) The functions of the State Accident Insurance Fund Corporation shall be:

(a) To confer with and solicit employers and to determine, handle, audit and enforce collection of premiums, assessments and fees of insured employers insured with the State Accident Insurance Fund Corporation;

(b) To make insurance available to as many Oregon employers as inexpensively as may be consistent with the overall integrity of the Industrial Accident Fund, in accordance with ORS 656.634 and sound principles of insurance;

(c) To receive and handle and process the claims of workers and beneficiaries of workers injured in the employ of insured employers insured with the State Accident Insurance Fund Corporation; and

(d) To perform all other functions which the laws of this state specifically authorize or which are necessary or appropriate to carry out the functions expressly authorized.

(3) The State Accident Insurance Fund Corporation in its name may sue and be sued.

(4) The State Accident Insurance Fund Corporation may authorize self-insured employers or other insurers to use any physical rehabilitation center operated by the State Accident Insurance Fund Corporation on such terms as the State Accident Insurance Fund Corporation deems reasonable.

(5) The State Accident Insurance Fund Corporation in its own name, may acquire, lease, rent, own and manage real property. It may construct, equip and furnish buildings or other structures as are necessary to accommodate its needs. It may purchase, rent, lease or otherwise acquire for its use all supplies, materials, equipment and services necessary to carry out its functions. It may sell or otherwise dispose of any property acquired under this subsection.

(6) Any real property acquired and owned by the State Accident Insurance Fund Corporation under this section shall be subject to ad valorem taxation.

(7) The State Accident Insurance Fund Corporation may furnish advice, services and excess workers' compensation and employer liability insurance to any employer qualified as a self-insured employer under the provisions of ORS 656.407, on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable.

(8) With the approval of the Director of the Department of Consumer and Business Services, the State Accident Insurance Fund Corporation may provide reinsurance coverage to Oregon employers on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable.

(9) The State Accident Insurance Fund Corporation may contract with the Oregon Department of Administrative Services to provide claim management services for claims filed under ORS 655.505 to 655.555 by *[inmates]* **adults in custody** of institutions of the Department of Corrections.

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