

Chapter 179

1983 REPLACEMENT PART

Administration of State Institutions

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DEFINITIONS

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

(1) "Assistant Director" means the Assistant Directors for Mental Health and for Corrections.

(2) "Division" means the division designated by law to operate, control, maintain and supervise any institution, and includes the Mental Health Division and the Corrections Division.

(3) "Institutions" means the institutions listed in ORS 179.321. [Amended by 1969 c.597 §17; 1969 c.706 §62; 1971 c.301 §14]

179.020 [Repealed by 1969 c.199 §59]

179.030 [Amended by 1961 c.271 §1; repealed by 1969 c.199 §59]

DIVISION AUTHORITY

179.040 General powers and duties of divisions. (1) Each division shall:

(a) Govern, manage and administer the affairs of the public institutions and works within the jurisdiction of that division.

(b) Enter into contracts for the planning, erection, completion and furnishings of all new buildings or additions at the institutions.

(c) Subject to any applicable provisions of ORS 279.710 to 279.746 and 283.110 to 283.395, enter into contracts for the purchase of supplies for the institutions.

(d) Make and adopt rules, not inconsistent with law, for the guidance of that division and for the government of the institutions.

(2) Each division may:

(a) Sue and plead in all courts of law and equity.

(b) Perform all legal and peaceful acts requisite and necessary for the successful management and maintenance of the institutions within its jurisdiction. [Amended by 1967 c.419 §57; 1969 c.597 §18; 1969 c.706 §63]

179.045 Reports on convictions; forms; confidentiality. (1) The clerk of a circuit, district or county court shall cause a report to be made to the Corrections Division on each offender convicted of a felony or misdemeanor in the court and on each juvenile found to be within the jurisdiction of the court by reason of a ground set forth in ORS 419.476 (1)(a) or (b).

(2) The Corrections Division shall prescribe forms for the reports required under subsection (1) of this section. Information required may

include the name, age, sex, crime or action and disposition of the offender or juvenile and such other information as the division by rule may require. Such reports are confidential and may not be used in evidence. [1967 c.635 §1; 1969 c.597 §14]

179.050 Divisions may hold property. Each division may receive, take and hold property, both real and personal, for any institution within the jurisdiction of the division. Title shall be taken in the name of the state. [Amended by 1969 c.597 §21; 1971 c.615 §11]

179.055 Disposition of income from property; maintenance of property. (1) The revenue from the rental or lease of property administered by an institution governed or managed by any division, except dormitory and housing rentals at institutions governed by the division, shall be deposited in the division's account for use by the division to pay for the cost of administration, taxes, repairs and improvements on the property.

(2) The division may request the Department of General Services to make necessary repairs and improvements on the property described in subsection (1) of this section to be paid for by the division from the proceeds derived from such rental or lease of the property or from appropriations otherwise available. [1961 c.652 §2(1), (2); 1969 c.597 §22; 1969 c.706 §64; 1971 c.615 §12; 1981 c.106 §10; 1983 c.599 §1]

179.060 [Repealed by 1969 c.597 §281]

179.065 Furnishing utilities for institutions. Each division shall have the same powers with respect to furnishing heat, light, power, sewage, fire protection and communications facilities to institutions under its jurisdiction as is granted to the Department of General Services under ORS 276.210 to 276.228, 276.234 to 276.244, 276.250 and 276.252. The powers shall be exercised in accordance with and subject to the provisions of such sections. [1969 c.597 §20]

179.070 [Repealed by 1969 c.199 §59]

179.080 [Repealed by 1969 c.199 §59]

179.090 [Amended by 1965 c.476 §9; 1967 c.2 §1, repealed by 1969 c.199 §59]

179.100 [Repealed by 1969 c.199 §59]

179.105 Divisions may accept federal or other assistance to carry out general powers and duties; legislative or Emergency Board approval prior to expenditure. (1) For any of the purposes contemplated by ORS 179.040, including aid and support of research in any of the institutions,

each division may in its discretion accept from the United States or any of its agencies financial assistance and grants in the form of money or labor, or from any other source any donation or grant of land or gift of money or any other thing. Any funds accepted in accordance with the provisions of this section and ORS 179.110 shall be deposited with the State Treasurer and subject to subsection (2) of this section, are appropriated to the division and may be expended by it according to the conditions and terms of the grant or donation.

(2) Funds received under subsection (1) of this section or ORS 179.110 shall be expended subject to expenditure limitations imposed on the division by the Legislative Assembly or, in the absence of such limitations, only after approval of the Legislative Assembly or of the Emergency Board, if approval is required during the interim between sessions of the Legislative Assembly.

(3) In any case where prior approval of the authority to expend any funds available under subsection (1) of this section or ORS 179.110 is imposed as a term or condition of receipt of such funds, the Legislative Assembly or the Emergency Board may approve expenditures of such funds prior to their receipt. [1961 c.651 §4; 1967 c.55 §1; 1969 c.597 §23]

179.110 Acceptance of federal grant of funds; cooperation with federal agencies; disposition of balances of appropriations. Subject to the approval of the Director of the Executive Department, each division may accept and receive grants of funds from the United States or any of its agencies for the construction, equipment and betterment of any of the institutions under its jurisdiction and may cooperate with the United States or its agencies in such construction, equipment and betterment. Any balances of appropriations for capital outlay for any institution resulting from the use of funds so received shall be placed in a common fund. Each division is authorized and empowered in its discretion to expend such common fund or any portion thereof in the construction, equipment or betterment of any institution under its jurisdiction. [Amended by 1961 c.651 §1; 1969 c.597 §24]

179.115 [1957 c.602 §2; repealed by 1969 c.199 §59]

179.120 [Amended by 1961 c.651 §2; repealed by 1967 c.55 §2]

179.122 [1959 c.290 §13; 1965 c.616 §87; renumbered 423.070]

179.130 Institutional petty cash fund; creation; reimbursement from appropriation for institution. (1) The executive head of each institution may execute a claim voucher against the Institutional Betterment Fund to the credit of his institution, in favor of himself, in such amount as shall be approved by the Director of the Executive Department, for use by the institution as a cash revolving fund in paying the petty claims and incidental expenses arising in the proper conduct of the institution.

(2) The executive head shall present his claims on the first of each month, with proper vouchers attached, showing the expenditures from the revolving fund during the preceding month. The claims, when approved by the Director of the Executive Department, shall be paid by warrant upon the State Treasurer against the appropriation for that institution, and when so paid shall be used to reimburse the revolving fund of such institution created under subsection (1) of this section. [Amended by 1969 c.597 §15]

179.140 Auditing and paying claims; approval of vouchers. Subject to any applicable provision of ORS 279.710 to 279.746, 283.110 to 283.395 and 291.232 to 291.260, all claims for supplies or materials furnished or services rendered to institutions shall be audited and approved as provided by law, upon the presentation of duly verified vouchers therefor, approved in writing by the assistant director for the division, or his designees. [Amended by 1971 c.63 §1; 1973 c.248 §1]

179.150 Interest in contracts by persons connected with institution prohibited. No officer of the division or officer, employe or other person connected with an institution shall be pecuniarily interested in any contract for supplies or services furnished or rendered to an institution, other than the services of his regular employment. [Amended by 1971 c.63 §2]

179.160 [1955 c.242 §1; subsection (2) enacted as 1961 c.652 §2 (3); 1969 c.597 §25; 1971 c.615 §13; 1981 c.106 §11; repealed by 1983 c.599 §10]

CLAIM FOR INJURY OR DAMAGE

179.210 Claim for injury or damage; rules; standards. (1) The Mental Health and Corrections Divisions and the Superintendent of Public Instruction for facilities operated under ORS 346.010 may audit, allow and pay a claim for injury to persons or damage to property subject to approval by the Director of the Executive Department when such injury or damage

results from an accident occurring in connection with the maintenance or operation, by persons employed or authorized by the institutions or facilities in the performance of official duties or other activity or function of the institutions or facilities. A claim must be filed, established and determined pursuant to rules promulgated by the Executive Department.

(2) No claim shall be paid:

(a) That exceeds, in the aggregate with payments of other claims, the moneys appropriated for such purpose.

(b) To the extent that the person incurring injury or damage has been or may be compensated by liability insurance or otherwise.

(c) If the Executive Department determines the cause or occasion of the accident resulting in injury or damage is chargeable to the conduct or negligence of the party injured or damaged.

(d) If the claim was filed after the time when a suit or an action at law against a private person, on a cause based upon the same facts stated in the claim, would be barred by any applicable statute of limitations.

(e) Unless the claim has been presented to and disapproved by the Executive Department under ORS 293.300. [1965 c.476 §§2, 3; 1967 c.454 §89; 1969 c.597 §29; 1971 c.301 §15]

179.220 Procedure for paying list of claims. A group or number of different claims properly prepared and verified may be listed, accompanied by adequate definition and description to insure identification, and the list may be submitted to the Executive Department for approval. If the director is satisfied as to the correctness and validity of each of the claims, the director may indorse his approval on the list. In that event the director need not sign or indorse each individual claim, but the indorsement on the prepared list shall be sufficient. The Executive Department shall treat the indorsement of the list as an indorsement of each individual claim and proceed under ORS 179.230. [1965 c.476 §4; 1969 c.597 §30]

179.230 Payment of claim; rejection of claim final and not reviewable. (1) If satisfied as to the correctness and validity of a claim, the Executive Department may allow it. When a claim has been allowed and indorsed the Executive Department shall pay a voucher for the claim, signed by the Director of the Executive Department, out of the account under ORS 179.250, subject to the procedure specified in ORS 179.240.

(2) The decision of the Executive Department to reject any claim filed under ORS 179.210 to 179.250 is final, and is not subject to review by any other agency or court. [1965 c.476 §5; 1967 c.454 §90; 1969 c.597 §31]

179.240 Procedure where award due person owing debt to state. (1) If any person owes a debt to this state or a state agency, and the debt has been fixed by final judgment of a court of competent jurisdiction or is no longer subject to judicial review, the division shall deduct the amount of the debt from any award made to that person.

(2) The division shall request the State Treasurer to transfer, from the account from which payment of the claim would be made under ORS 179.250, to the appropriate fund or account to which the debt is owed, an amount equal to the amount deducted from the award under subsection (1) of this section, for use during that biennium in accordance with law by the state agency administering the fund or account to which the debt is owed. The State Treasurer shall evidence the transfer by proper bookkeeping entries. If the division or State Treasurer cannot determine the appropriate fund or account, the amount shall be transferred to the General Fund for general governmental purposes.

(3) Any debt owed by a person to this state or a state agency is satisfied, upon the completion of a transfer made pursuant to subsection (2) of this section, to the extent of the amount so transferred. [1965 c.476 §6]

179.250 Institution Claims Account. There is established in the General Fund of the State Treasury an account to be known as the Institution Claims Account. This account is appropriated continuously and shall be used only for the purposes of ORS 179.210 to 179.250. [1965 c.476 §7; 1969 c.597 §32]

SUPERVISION OF STATE INSTITUTIONS (Superintendent)

179.310 "Superintendent" defined. When used in ORS 179.010 to 179.495, unless the context otherwise requires, "superintendents" means the executive heads of the institutions listed in ORS 179.321.

179.320 [Amended by 1955 c.651 §2; 1955 c.660 §25; 1959 c.588 §17; 1963 c.632 §5; repealed by 1965 c.616 §78 (179.321 enacted in lieu of 179.320)]

179.321 Divisions to supervise state institutions. (1) The Mental Health Division shall operate, control, manage and supervise: Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, F. H. Dammasch State Hospital, Fairview Training Center and Oregon State Hospital.

(2) The Corrections Division shall operate, control, manage and supervise: Oregon State Correctional Institution, Eastern Oregon Correctional Institution and Oregon State Penitentiary. [1965 c.616 §79 (enacted in lieu of 179.320); 1969 c.597 §38; 1971 c.212 §5; 1971 c.301 §16; 1971 c.401 §82; 1983 c.505 §12; 1983 c.740 §43]

179.323 [1967 c.346 §§1, 2; repealed by 1969 c.199 §59]

179.325 Change in use of institution for mentally ill or mentally retarded. The Mental Health Division may order the change, in all or part, of the purpose and use of any state institution being used as an institution for the care and treatment of the mentally ill or mentally retarded in order to care for persons committed to its custody whenever the division determines that a change in purpose and use will better enable the state to meet its responsibilities to the mentally ill and mentally retarded. In determining whether to order the change, the division shall consider changes in the number and source of the admissions of mentally ill and mentally retarded persons. [1965 c.595 §1; 1969 c.597 §39; 1979 c.683 §3]

179.330 [Amended by 1963 c.471 §1; repealed by 1965 c.616 §80 (179.331 enacted in lieu of 179.330)]

179.331 Appointment, suspension and removal of superintendents; merit system status. (1) The superintendents shall be appointed and, whenever the public service requires such action, may be removed, suspended or discharged, as follows:

(a) Superintendents of institutions listed in ORS 179.321 (1), by the Assistant Director for Mental Health.

(b) Superintendents of institutions listed in ORS 179.321 (2), by the Assistant Director for Corrections.

(2) For purposes of the State Personnel Relations Law, the superintendents are assigned to the unclassified service. [1965 c.616 §81 (enacted in lieu of 179.330); 1969 c.597 §26; 1971 c.301 §17]

179.340 Salaries and expenses of superintendents. (1) The annual salaries of the superintendents shall be fixed, within the respective appropriations therefor and the limi-

tations otherwise fixed by law by their respective appointing authorities.

(2) The superintendents shall receive no fees, emoluments or compensation other than salaries fixed under subsection (1) of this section, but shall receive their actual traveling expenses when traveling in the service of the state. [Amended by 1963 c.471 §2; 1965 c.616 §82; 1969 c.597 §27]

179.350 Oath and bond of superintendents. (1) Before assuming the duties of his position, each superintendent shall take and subscribe to an oath that he will support the Constitution and laws of the United States and the State of Oregon.

(2) Each superintendent shall give an official bond, the premium payable from funds appropriated to the division, running to the State of Oregon, for the faithful performance of his duties as superintendent and the accounting of all property coming into his hands in that capacity, in the amount fixed in each instance by the assistant director for the division having jurisdiction over the institution of which he is superintendent. [Amended by 1969 c.597 §28]

179.360 Powers and duties of superintendents. (1) Each superintendent shall:

(a) Have custody of the residents of the institution under his jurisdiction.

(b) Direct the care, custody and training of the residents unless otherwise directed by law or by rule of the division.

(c) Adopt sanitary measures for the health and comfort of the residents.

(d) Promote the mental, moral and physical welfare and development of the residents.

(e) Enjoy the other powers and privileges and perform the other duties that are prescribed by law or by rule of the division or that naturally attach themselves to the position of superintendent.

(f) Designate a physician licensed by the Board of Medical Examiners for the State of Oregon to serve as chief medical officer as provided in ORS 426.020 and 427.010, who will be directly responsible to the superintendent for administration of the medical treatment programs at the institution and assume such other responsibilities as are assigned by the superintendent.

(2) The assistant director shall prescribe:

(a) The duties of the superintendents where the duties are not prescribed by law.

(b) The additional duties, beyond those prescribed by law, that the assistant director considers necessary for the good of the public service. [Amended by 1969 c.391 §14; 1969 c.597 §34; 1979 c.683 §4]

179.370 Residence of superintendents at institutions. The assistant director may require that a superintendent reside in state-provided housing at the institution under his jurisdiction. The rental shall be determined pursuant to ORS 182.425. [Amended by 1959 c.80 §1; 1969 c.597 §35; 1977 c.583 §1]

(Staff)

179.375 Chaplaincy services. (1) The division shall insure that adequate chaplaincy services, including but not limited to Protestant and Roman Catholic, are available at all state institutions administered by the division.

(2) Chaplains serving the various institutions shall, with respect to the inmates 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. [1963 c.554 §2]

179.380 Divisions to authorize employment of staff; oaths and bonds. (1) Each division shall authorize the employment of all necessary physicians, matrons, attendants, nurses, engineers, watchmen, messengers, clerks, guards, cooks, waiters and other officers and employes not specifically authorized by law and necessary to the successful maintenance of the institutions under its jurisdiction. The amounts expended for the services of such officers and employes shall not exceed the amounts provided therefor in the biennial appropriations for the institution.

(2) The division shall designate in its rules which employes shall be officers, and shall require all officers to take and subscribe to an oath of office and, if the circumstances require it, to furnish bonds. [Amended by 1969 c.597 §36]

179.385 Scholarship programs to train personnel for institutions. The division may establish scholarship programs to provide assistance in securing qualified personnel at state institutions governed by the division. Scholarships authorized by this section shall be granted in accordance with rules and regulations adopted by the division. [1961 c.363 §2]

179.390 Appointment, suspension, removal and salaries of assistants, officers and employes. (1) The superintendent of institutions other than those within the jurisdiction of the Mental Health Division shall, subject to the approval of the assistant director, appoint in the manner provided by law all assistants, officers and other employes at the institution under his jurisdiction. The superintendent may suspend or remove an assistant, officer or other employe in the manner provided by law, reporting all acts of suspension or removal to the assistant director for approval or disapproval. The assistant director shall fix the salaries of assistants, officers and employes where their salary is not fixed by law. The assistant director shall, subject to any applicable provisions of the State Personnel Relations Law, suspend or discharge any subordinate of a superintendent when public service requires such action.

(2) The Assistant Director for Mental Health or his designees at each facility under jurisdiction of the division shall, as provided by law, appoint, suspend or discharge an employe of the division. The assistant director may designate up to three employes at each facility to act in his name in accordance with ORS 240.400. [Amended by 1969 c.597 §37; 1973 c.807 §1]

179.400 Officers and employes may be furnished board and lodging at institution. The superintendent of an institution may rent state-provided housing located at the institution under his jurisdiction to state officers and employes or others. The rental shall be determined pursuant to ORS 182.425. [Amended by 1977 c.583 §2]

179.410 [Repealed by 1969 c.597 §281]

179.420 [Repealed by 1969 c.597 §281]

179.430 [Repealed by 1969 c.597 §281]

(Work at Institution)

179.440 Work in production of articles and performance of labor for state. In order to minimize the cost of maintaining the institutions, all wards of the state who are capable of a reasonable amount of work without physical or mental injury to themselves shall be used as fully as possible in the production and manufacture of articles for the use of the state and in the performance of labor for the state.

179.450 Work on state-owned land. The division may direct the employment of able-bodied persons at the state penitentiary, the Oregon State Correctional Institution or an

institution for the mentally ill or mentally deficient, in the performance of useful work upon land owned by the state if it does not compete with free labor. No work shall be performed upon any such land except by consent and approval of the agency of the state having management of the land. [Amended by 1955 c.660 §26; 1965 c.616 §86]

179.460 Sale and exchange of surplus products of institutions; State Institutional Betterment Fund. (1) In order to encourage industry and thereby increase productivity in the institutions, the division shall prescribe rules and regulations for the sale and exchange of surplus products of each.

(2) The funds derived from the sale of the surplus products shall be paid into the State Treasury and become a part of a fund to be known as the State Institutional Betterment Fund, which fund shall be expended by the divisions for the benefit of the institutions in proportion to the amount earned by each.

(3) The provisions of this section apply to facilities operated under ORS 346.010. [Amended by 1971 c.301 §18]

179.470 [Repealed by 1969 c.597 §281]

(Transfer Procedures)

179.473 Transfers from institution to institution. (1) Whenever the health and welfare of the person and the efficient administration of the institution requires the transfer of an inmate of the Oregon State Penitentiary, Oregon State Correctional Institution or Oregon Women's Correctional Center, or a student of MacLaren School or Hillcrest School to another institution:

(a) The Corrections Division or Children's Services Division, with the consent of the Mental Health Division, may transfer a person at any institution under its jurisdiction to an institution for the mentally ill or mentally retarded, or, with the consent of the center, to the Oregon Health Sciences University.

(b) Except as provided in subsection (2) of this section, a division may make a transfer of a person from any institution under the jurisdiction of that division to any other institution under the jurisdiction of that same division.

(2) A student of a juvenile training school may not be transferred to the Oregon State Penitentiary, Oregon State Correctional Institution or Oregon Women's Correctional Center under subsection (1) of this section. A student of a juvenile training school who has been transferred to another institution may not be trans-

ferred from such other institution to the Oregon State Penitentiary, Oregon State Correctional Institution or Oregon Women's Correctional Center. [1965 c.616 §84 (enacted in lieu of 179.474); 1969 c.597 §40; 1975 c.662 §1; 1977 c.601 §1]

179.474 [1957 c.160 §1; repealed by 1965 c.616 §83 (179.473 enacted in lieu of 179.474)]

179.475 Transfers to mental hospital; duration of stay in hospital; parole; release. (1) An inmate of the Oregon State Penitentiary, Oregon State Correctional Institution or Oregon Women's Correctional Center or a student of MacLaren School or Hillcrest School may be transferred to a state mental hospital listed in ORS 426.010, subject to rules of the Mental Health Division, for up to 15 days for evaluation or treatment at the request of the superintendent of the referring institution. The inmate may remain in the state mental hospital for up to the duration of his sentence or the student may remain in the state mental hospital for up to the duration of his commitment to the juvenile training school if:

(a) The superintendent of the state mental hospital recommends retention of the inmate or student for treatment of a mental or emotional disturbance or alcohol or drug problem;

(b) The inmate or student gives informed consent to the transfer; and

(c) The superintendent of the referring correctional institution or juvenile training school approves the proposed treatment plan and continued transfer.

(2) An inmate or student who has been transferred to a state mental hospital under this section may be transferred back to the referring institution if, in the opinion of the hospital superintendent, he fails to meet the conditions of the treatment plan or if he has received maximum benefit from hospitalization.

(3) If an inmate who demonstrates satisfactory progress while in a state mental hospital becomes eligible for parole, he may be considered for parole by the State Board of Parole without prior transfer back to the referring correctional institution. If it is in the best interest of the inmate and society, the inmate may be placed from the hospital to a local correctional or mental health program.

(4) A student who demonstrates satisfactory progress while in a state mental hospital and is eligible for release from the juvenile training school may, with the approval of the juvenile training school, be placed in the community without prior return to the referring juvenile training school. [1977 c.601 §3]

179.476 [1957 c.160 §2; 1965 c.616 §85; 1969 c.597 §41; 1975 c.662 §2; repealed by 1977 c.601 §8]

179.477 Commitment hearing after transfer; conduct of hearing; duration of commitment; return to referring institution. (1) If, in the opinion of the superintendent of the state mental hospital, an inmate or student transferred to the state mental hospital under ORS 179.475 (1) is mentally ill, as defined in ORS 426.005, and would benefit from the program of the state mental hospital, but the inmate or student is unable or unwilling to authorize continued treatment in the state mental hospital, the superintendent may petition the court in the county where the hospital is located for a commitment hearing pursuant to ORS 426.070. The hospital shall provide the court an investigation report comparable to that required under ORS 426.070. Hospital staff shall not serve as examiners of this person for the court under ORS 426.110. The inmate or student shall have the same rights as an allegedly mentally ill person under ORS 426.070 to 426.170. If the person is determined not to be mentally ill, the inmate or student shall be returned to the referring institution forthwith. If the inmate or student is determined to be mentally ill by clear and convincing evidence, the person shall be committed to the Mental Health Division for up to 180 days, with continued commitment subject to the provisions of ORS 426.301 to 426.307. Any time spent on commitment under ORS 426.130 or 426.307 or in a state mental hospital shall be applied against the duration of the sentence to a correctional institution or the commitment to a juvenile training school. The Mental Health Division shall receive approval of the Corrections Division and State Board of Parole prior to placing an inmate on trial visit under ORS 426.280. The Mental Health Division shall receive approval of the juvenile training school prior to placing a student on trial visit under ORS 426.280.

(2) If, at any time, the inmate or student is determined by the hospital superintendent or by the court pursuant to ORS 426.307 to no longer be mentally ill, the person shall be promptly returned to the referring institution and the commitment for mental illness terminated. [1977 c.601 §4; 1979 c.408 §6]

179.478 Examination for mental retardation; commitment hearing; transfer to hospital or training center for mentally retarded; termination of sentence. (1) If the person, a relative, guardian or friend, or institution staff have probable cause to believe that an inmate or student is mentally retarded to

such a degree that he cannot adjust to or benefit from the correctional institution or juvenile training school, the superintendent of the institution shall request that a diagnostic assessment be performed by the Mental Health Division or its designee. If there is probable cause to believe that the inmate or student is mentally retarded and otherwise eligible for admission to a state hospital and training center for the mentally retarded pursuant to ORS 427.010 and other applicable statutes and rules of the Mental Health Division, the person shall be entitled to a commitment hearing.

(2) If the inmate or student is by clear and convincing evidence determined by the court to be mentally retarded, the person shall be committed and transferred to a hospital and training center designated by the Mental Health Division as soon as space in an appropriate unit is available, and any sentence to the correctional institution or commitment to the juvenile training school shall be terminated. The Children's Services Division may retain general wardship of the student, as it would for other minors placed in its custody. [1977 c.601 §5; 1979 c.683 §35]

179.479 Conveyance of inmates from institution to physician or hospital for treatment; rules. (1) The superintendent or other chief executive officer of an institution listed in ORS 179.321 may, when authorized by regulation or direction of the division having jurisdiction over the institution, convey an inmate to a physician, clinic or hospital, including the Oregon Health Sciences University, for medical, surgical or dental treatment when such treatment cannot satisfactorily be provided at the institution. An inmate conveyed for treatment pursuant to this section shall be kept in the custody of the institution from which he is conveyed.

(2) Each division shall prescribe rules and regulations governing conveyances authorized by this section. [1957 c.160 §3; 1969 c.597 §42; 1975 c.693 §1]

179.480 [Amended by 1955 c.86 §1; repealed by 1957 c.160 §6]

179.483 Time spent pursuant to transfer or conveyance counted as part of sentence. Any time spent by an inmate of a penal or correctional institution pursuant to a transfer or conveyance shall be counted as part of the sentence being served by him. [1957 c.160 §4]

179.485 Rights of person transferred to institution for mentally ill or mentally retarded. Persons transferred to a state institution for the mentally ill or the mentally retarded

under ORS 179.473 to 179.478, 179.485 and 420.505 shall be entitled to the same legal rights as any other persons admitted to those institutions. [1977 c.601 §6]

179.486 Payment of costs in connection with transfers and conveyances; medical reports to accompany certain inmates. (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.

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

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

(2) An inmate transferred or conveyed to the Oregon Health Sciences University shall be accompanied by a report made by the physician in charge of the institution from which the transfer or conveyance is made, or by another physician designated by him. 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. [1957 c 160 §5]

(Medical Care)

179.490 Authorization and payment of cost of emergency and necessary operations. In the case of a necessary or emergency operation, requiring the services of a specialist, and where the relatives or guardians, in the judgment of the division, are unable to pay a part or the whole cost of the operation, the division, in its discretion, may have the operation performed, the cost of the operation to be payable from the funds of the institution concerned.

(Records)

179.495 Inspection of inmate records; consent; penalty. (1) Medical case histories, clinical records, X-rays, treatment charts, progress reports and other similar written accounts of the inmates of any state corrections institution listed in ORS 179.321, maintained in such institution by the officers or employes thereof who are authorized to maintain such histories, records, X-rays, charts, reports and other ac-

counts within the official scope of their duties, shall not be subject to inspection except upon permission given by the Corrections Division in compliance with ORS 179.505 (3), (4), (6), (7), (9), (10), (12) or (13), or upon order of a court of competent jurisdiction. The restriction contained in this section shall not apply to inspection of written accounts made under ORS 179.505 (3) with the consent of the individual concerned, or in case of his incompetence, by his legal guardian.

(2) Except as authorized under subsection (1) of this section, any person who releases or any person who knowingly obtains information from any record referred to in subsection (1) of this section commits a violation. [1955 c.452 §1; 1969 c.597 §44; 1973 c.736 §3; 1977 c.812 §5]

179.500 [Repealed by 1969 c.597 §281]

179.505 Inspection of patient records; consent; exceptions; scope of use; release to others; penalty. (1) "Provider," as used in this section, means any public agency or publicly operated institution licensed or operated under this chapter or ORS chapter 426, 427, or ORS 430.010 to 430.180, 430.260 to 430.565 and 430.610 to 430.880 or ORS 431.035 to 431.530 and 431.705 to 431.990 that provides health care services or maintains written accounts of health care services provided to individuals.

(2) Except as provided in subsections (3), (4), (6), (7), (9), (10), (12) and (13) of this section, case histories, clinical records, X-rays, treatment charts, progress reports and other similar written accounts of the patients of any provider maintained in or by the provider by the officers or employes thereof who are authorized to maintain such histories, records, X-rays, reports, charts and other accounts within the official scope of their duties shall not be subject to inspection. This subsection applies to written accounts maintained in or by facilities of the Corrections Division only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Corrections Division.

(3) If the patient, or in the case of incompetence, the legal guardian, gives voluntary and informed consent, the content of any written account referred to in subsection (2) of this section shall be released accordingly, if the consent is in writing and is signed and dated by the patient or guardian and sets forth with specificity the following:

(a) Name of the provider directed to make the disclosure, except when the consent is given by recipients of or applicants for public assis-

tance to a governmental entity for purposes of determining eligibility for benefits or investigating for fraud;

(b) Name or title of the persons or organizations to which the information is to be disclosed or that information may be released to the public;

(c) Name of the patient;

(d) Extent or nature of the information to be disclosed; and

(e) Statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it will expire without express revocation. However, no revocation of a consent is valid with respect to inspection or records necessary to validate expenditures by or on behalf of governmental entities.

(4) The content of any written account referred to in subsection (2) of this section may be released without consent:

(a) To any person to the extent necessary to meet a medical emergency.

(b) At the discretion of the responsible officer of the provider, which in the case of any Mental Health Division facility or community mental health program shall be the Assistant Director for Mental Health, to persons engaged in scientific research, program evaluation, peer review and fiscal audits. However, patient identities shall not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit or when the disclosure benefits the provider or patient.

(c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the patient.

(5) When a patient's identity is disclosed under subsection (4) of this section, a provider shall prepare, and include in the permanent records of the provider, a written statement indicating the reasons for the disclosure, the written accounts disclosed and the recipients of the disclosure.

(6) The content of any written account referred to in subsection (2) of this section and held by a provider currently engaged in the treatment of a patient may be released to officers or employes of that provider, its agents or cooperating providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating a patient when such written account is to be used in the course of diagnosing or treating the patient. Nothing in

this subsection shall prevent the transfer of written accounts referred to in subsection (2) of this section among providers of the Mental Health Division, the Corrections Division or a community mental health program when the transfer is necessary or beneficial to the treatment of a patient.

(7) The copy of any written account referred to in subsection (2) of this section, upon written request of the patient, or in the case of incompetence, the legal guardian, shall be released to the patient or the guardian within a reasonable time not to exceed five working days. The patient, or in the case of incompetence, the legal guardian, shall have the right to immediate inspection of any written accounts.

(a) If the release of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the patient, disclosure may be denied, if medically contraindicated by the attending physician in the medical record of the patient.

(b) The Corrections Division may withhold psychiatric or psychological information if:

(A) The information relates to an individual other than the individual seeking it.

(B) Release of the information would constitute a danger to another individual.

(C) Release of the information would compromise the privacy of a confidential source.

(c) However, a written statement of the denial under paragraph (b) of this subsection and the reasons therefor shall be entered in the individual's record.

(8) A provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, a patient shall not be denied access to written accounts concerning the patient because of inability to pay.

(9) No written account referred to in subsection (2) of this section may be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the patient or to conduct any investigations of the patient. If the patient, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be released for use in the proceeding.

(10) Information obtained in the course of diagnosis, evaluation or treatment of a patient which, in the professional judgment of the provider indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection shall not subject the provider to any civil liability. Nothing in this subsection shall be construed to alter the provisions of ORS 146.750, 146.760 and 418.750 to 418.762 and 418.765 to 418.775.

(11) The prohibitions of this section shall apply to written accounts concerning any individual who has been treated by any provider irrespective of whether or when the individual ceases to receive treatment.

(12) Persons other than the patient who are granted access under this section to the contents of a written account referred to in subsection (2) of this section shall not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(13) Nothing in this section shall prevent the Children's Services Division from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed. [1973 c.736 §2; 1977 c.812 §3; 1981 c.326 §2]

179.507 Enforcement of ORS 179.495 and 179.505; actions; venue; damages. (1) Any patient or, in the case of incompetence of a patient, the legal guardian of the patient may commence an action for equitable relief in the circuit court for the county in which the patient resides or in which the written accounts referred to in ORS 179.505 (2) are kept for the purpose of requiring compliance with ORS 179.495 and 179.505. In an action brought under this section, the court shall order payment of reasonable attorney fees at trial and on appeal and actual costs and disbursements to the prevailing party.

(2) Any patient or, in the case of incompetence of a patient, the legal guardian of the patient may commence an action in the circuit court for the county in which the patient resides or in which the written accounts referred to in ORS 179.505 (2) are kept for damages for any violation of ORS 179.495 or 179.505 and to restrain future violations. If a violation of ORS 179.495 or 179.505 is proven, the person commencing the action shall recover actual damages or \$500, whichever is greater. Upon a showing of an intentional violation of ORS 179.495 or 179.505, the patient may receive punitive damages. The prevailing party in an action brought under this subsection shall receive reasonable attorney fees at trial and on appeal and costs and

disbursements actually incurred. [1977 c.812 §4; 1979 c.284 §120; 1981 c.897 §39]

(Funds of Inmates or Patients)

179.510 Definitions; deposit of funds of institution residents with State Treasurer. (1) The superintendent of each institution that has in his possession or under his control in a bank account or otherwise, funds that are the property of the residents of such institutions or that have been deposited for their use or for expenditure in their behalf shall deposit such funds, as they are received, together with any such funds as heretofore have accumulated, with the State Treasurer as a trust account.

(2) The word "funds" as used in ORS 179.510 to 179.530 shall include, but shall not be limited to, moneys deposited with the superintendents for medical care or assistance of residents, moneys derived from athletic activities, contributions for athletic, health, or recreation projects, and any other moneys received by the superintendents that are not required by law to be credited to other state funds or accounts.

[Formerly 179.710; 1969 c.597 §46; 1979 c.683 §5]

179.520 Superintendents authorized to receive funds of wards; separate accounts. The said superintendents are authorized to receive any of the funds referred to in ORS 179.510 to 179.530. The State Treasurer shall carry such funds in separate accounts for such institutions, but he shall not credit such funds or any part thereof to any state fund for governmental purposes. [Formerly 179.720]

179.530 Disbursements from accounts; superintendents accountable. Disbursements from the said accounts for the purposes for which the contributions or payments were made, and for payment to persons lawfully entitled thereto, may be made by the superintendent of the institution by which the funds were deposited, by checks or orders drawn upon the State Treasurer. The said superintendents shall be accountable for the proper handling of said account. [Formerly 179.730]

179.540 Escheat of money or property deposited with institution on death, escape or parole of inmate; notice and publication. All money, certificates of deposit, securities, assets or other personal property which have been or shall be taken charge of by the officials of the state institutions listed in ORS 179.321, belonging to patients or inmates committed to any of such institutions and who die inmates thereof or escape or who are paroled

therefrom, and which is not claimed by such person, or by the heirs or personal representative of such person within one year after such death, escape or parole, escheats to the state, and without other or further proceeding shall be paid or turned over by the officials of the above institutions to the Division of State Lands, which shall issue therefor receipts in duplicate. One of the receipts shall be filed in the office of the Secretary of State. However, if such escheated money, certificates of deposit, securities or other personal property exceeds the sum of \$50, a notice of such escheated property shall be published under direction of the Division of State Lands in a newspaper of general circulation within the county in which such institution paying or turning over the same is situated, and also in a newspaper in the county from which the inmate was committed, once each week for not less than three consecutive weeks. The expense of such publication shall be paid out of the proceeds of the escheated property. [Formerly 120.210]

179.545 Collection and disposition by Division of State Lands. The money, certificates of deposit, securities or other personal property mentioned in ORS 179.540 shall be collected or liquidated by the Division of State Lands, and the division may sell, indorse and collect all such money, certificates of deposit, securities or other personal property and place the proceeds thereof in the State Treasury. [Formerly 120.220]

179.550 Owners' and representatives' rights to reclaim property; limitation. The money or the proceeds of the certificates of deposit, securities or other personal property which have escheated to the state under ORS 179.540, may be reclaimed by the original owner, or by his heirs or personal representatives, at any time within 10 years after such escheat, in the same manner as property belonging to estates of deceased persons which have escheated to the state. [Formerly 120.230]

RESPONSIBILITY FOR COST OF CARE OF PERSONS IN STATE INSTITUTIONS

179.610 Definitions for ORS 179.610 to 179.770. As used in ORS 179.610 to 179.770, unless the context requires otherwise:

(1) "Division" means the Mental Health Division of the Department of Human Resources.

(2) "Person in a state institution" or "person at a state institution," or any similar phrase, means:

(a) A patient at a state institution for the mentally ill.

(b) A resident at a state institution for the mentally deficient.

(c) A patient at a state tuberculosis hospital.

(d) A patient at the Columbia Park Hospital and Training Center. [Subsections (1) and (2) enacted as 1959 c.652 §1; subsection (3) enacted as 1959 c.652 §3 (2); 1969 c.597 §43; 1971 c.411 §2, 1973 c.546 §1; 1973 c.806 §1; 1977 c.384 §4]

179.620 Liability of person or estate for cost of care. (1) If a person at a state institution is possessed of an income sufficient to pay the expenses of care and maintenance, the person at the state institution is required to reimburse the State of Oregon for the cost of the care and maintenance during the person's stay at the state institution.

(2) A person at a state institution is liable for the payment of the monthly charge fixed as provided in ORS 179.701 for care and maintenance according to the person's ability to pay determined as provided in ORS 179.610 to 179.770.

(3) Upon the death of any person who is or has been a person at a state institution, the estate of the person shall be liable for the cost of care and maintenance of the person as computed under ORS 179.701. The liability of the person's estate is limited to the cost of care and maintenance incurred on or after July 24, 1979. For purposes of this section and ORS 179.740, the person's estate shall not include assets placed in trust for the person by other persons. [1959 c.652 §2; 1961 c.501 §1; 1973 c.823 §§122, 158; 1979 c.684 §2]

179.630 [1959 c.652 §3 (1); 1963 c.598 §1; 1967 c.549 §3; repealed by 1973 c.546 §13]

179.635 [1969 c.257 §§2, 3, 4, 5; 1971 c.750 §3; repealed by 1973 c.546 §13 and 1973 c.806 §2a; amended by 1973 c.827 §22]

179.640 Determination of ability to pay. (1) The division shall determine by order whether the person at the state institution or his estate is financially able to pay for the care and maintenance at the state institution as required by ORS 179.610 to 179.770. If the division determines the person or his estate is able to pay, in whole or in part, for the care and maintenance at the state institution, the division shall make its order fixing the extent of the liability. The division in determining the ability of the patient to pay for cost of care shall consider the needs of

the patient for funds for his support after release. Thereafter, from time to time or within three years from the date of discharge the division may modify its order made under this subsection to recognize a change in the ability of the person to pay. Where the person refuses to disclose fully the information needed by the division to make a determination of ability to pay, the division may use the best information available, including personal income tax returns.

(2) If the person is discharged from the institution before the determination of the extent of liability can be made by the division, the division may make its determination after the person's discharge. Orders entered under subsection (1) of this section shall be limited to 36 months after the date of discharge. The division may collect beyond the 36-month period amounts which became due within the 36-month period. Any remaining balance for full cost of care shall be collected as provided in ORS 179.620.

(3) If any person against whom the division has an order or a modified order under subsection (1) or (2) of this section desires a hearing before the division, he shall make a request to the division in writing within 60 days from the date of the mailing of the order. The request shall state the grounds upon which the petitioner believes the division's determination of liability or ability to pay is in error. A hearing shall be held in the county in which the petitioner resides or in a county agreed upon by both the petitioner and division. If no hearing is requested, the order made under subsection (1) or (2) of this section is final, unless subsequently modified by the division as provided in subsection (1) of this section.

(4) The division may direct subpoenas to be issued to any witness to appear and adduce evidence and produce records for the purpose of determining the financial ability of the person at the state institution or his estate to pay. [1959 c.652 §4; 1961 c.501 §2; 1967 c.549 §4, 1973 c.806 §3a; 1973 c.823 §§123, 159]

179.643 Guidelines in determining ability to pay. The division shall establish guidelines for determinations under ORS 179.640 and, in addition to other relevant factors, may consider the probable duration of residency at a state institution as a factor in determining the ability of the person in a state institution or his estate to pay, in whole or in part, for his care and maintenance. [1969 c.257 §8; 1973 c.546 §4]

179.645 [1967 c.534 §32; repealed by 1973 c.806 §14]

179.650 Appeal from order declaring financial ability; order effective until modified. (1) An appeal may be taken to the circuit court from an order of the division made after a hearing under ORS 179.640 (3), within 60 days after the date of the making of the order, and from the circuit court to the Court of Appeals in the manner provided by law for appeals from the circuit court.

(2) An order declaring the financial ability of the person at the state institution or his estate to pay for his care and maintenance under ORS 179.640 shall remain in full force and effect, unless modified by subsequent court or division orders. [1959 c.652 §5; 1967 c.549 §5; 1969 c.591 §295; 1973 c.546 §5; 1973 c.806 §5a]

179.653 Unpaid costs as lien on property. If any person at a state institution or his estate refuses to pay for the cost of that person as ordered by the division under ORS 179.640, the amount unpaid and interest thereon shall be a lien in favor of the State of Oregon upon the property and rights to the property, whether real or personal, belonging to the person. The lien shall arise as each payment is due under the order and shall continue until the liability with interest is satisfied. [1973 c.806 §9a]

Note: 179.653 and 179.655 were enacted into law by the Legislative Assembly and made a part of ORS chapter 179 but not any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

179.655 Enforcement of lien. (1) If any amount due the division for the cost of care of a person at a state institution is not paid within 30 days after it becomes due, and no provision is made to secure the payment by bond, deposit or otherwise pursuant to rules adopted by the division, the division shall issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount due, with interest, collection charge and the sheriff's cost of executing the warrant, and to return the warrant to the division and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the person mentioned in the warrant, and the amount for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so

recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the division a warrant of like terms, force and effect may be issued and directed to any agent of the division, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the division shall have the same remedies to enforce the claim as if the people of the state had recovered judgment against the person for the amount due. [1973 c.806 §§10, 11, 12; 1983 c.696 §8]

Note: See note under 179.653.

179.660 Guardian or conservator for estate of person in certain institutions. If a guardian or conservator of the estate has not been appointed for the person mentioned in ORS 179.640 who has been committed or who has been admitted to an institution for the mentally ill or mentally deficient, the division shall request, and the district attorney of the county of which the person is a resident, or was a resident at the time of commitment or admittance, shall institute proper proceedings in the court having probate jurisdiction, for the appointment of a guardian or a conservator for the estate of the person if necessary. [1959 c.652 §6; 1973 c.823 §124]

179.670 [1959 c.652 §7; 1969 c.591 §296; 1973 c.546 §6; repealed by 1973 c.806 §14]

179.680 [1959 c.652 §8; 1967 c.549 §6; 1973 c.546 §7; repealed by 1973 c.806 §14]

179.690 [1959 c.652 §9; repealed by 1973 c.546 §13]

179.700 [1959 c.652 §10; 1961 c.639 §1; 1965 c.182 §1; repealed by 1967 c.549 §1 (179.701 enacted in lieu of 179.700)]

179.701 Determination of reimbursement rates. The reimbursement rates for care of persons in state institutions shall be determined by the Mental Health Division of the Department of Human Resources and shall be established so that the rates are reasonably related to current costs of the institutions. Current costs shall exclude costs not directly related

to the cost of care of persons at state institutions and costs of operating educational programs and outpatient services at state institutions. [1967 c.549 §2 (enacted in lieu of 179.700); 1973 c.806 §6]

179.710 [1955 c.5 §1; renumbered 179.510]

179.711 Remittance of amounts due; refunds. (1) Remittance of amounts due for care and maintenance of persons at state institutions as provided in ORS 179.610 to 179.700 shall be made to the director of the division in accordance with rules established by the division.

(2) The division shall authorize the refund of any unearned advance payments for the care and maintenance of persons at any of the state institutions in those cases where payments have been made in advance and the person has died or is discharged or paroled before the end of the month for which such payment is made. Any authorized refund shall be paid to the person who had been institutionalized or to the estate of the person if the person has died. All claims for refunds approved by the division shall be paid as provided in ORS 293.295 to 293.462. The Executive Department shall draw a warrant on the State Treasurer in payment thereof in favor of the person entitled thereto, payable from the General Fund of the State Treasury. Such amounts as are determined to be necessary for the payment of such refunds are appropriated from the money collected under the provisions of ORS 179.610 to 179.770. [1959 c.652 §11; 1963 c.193 §1; 1973 c.546 §8; 1983 c.740 §44]

179.720 [1955 c.5 §2; renumbered 179.520]

179.721 Collection of delinquent amounts due. In all cases where an order is entered by the division or the court against the person at a state institution or his estate under the provisions of ORS 179.610 to 179.770, and delinquency in the payment of any amounts due the State of Oregon under such order continues for a period of more than 30 days, upon notification of any such delinquency, by the division, the district attorney of the county wherein the judgment is entered or, in the case of a division order, the district attorney of the county where the responsible person resides shall proceed to collect the amounts due by appropriate proceedings. The funds so collected by the district attorney shall be forwarded by him at once to the director of the division, together with a statement showing by whom paid and for what person at a state institution. [1959 c.652 §13; 1973 c.546 §9]

179.730 [1955 c.5 §3; renumbered 179.530]

179.731 Waiver of collection of amounts payable. In any case where the division determines that collection of the amounts payable under ORS 179.610 to 179.770 for the care and maintenance of a person at a state institution would be detrimental to the best interests of the person or the division, the division, in its discretion, may waive the collection in whole or in part of the amount otherwise payable under ORS 179.610 to 179.770. [1959 c.652 §§16, 17, 18; 1961 c.501 §3; 1973 c.546 §10; 1973 c.806 §7a]

179.740 Collection of amounts due from estates. (1) The division may present and file a claim for any support money under ORS 179.620 (3) in a proceeding upon the administration of the estate of any deceased person who was at a state institution in like manner as other claims of creditors are filed and with such priorities as are provided in ORS 115.125.

(2) The division may petition any court of competent jurisdiction for the issuance of letters of administration or testamentary in the estate of any such person who was at a state institution who did not pay the full amount of cost of care and maintenance as determined by ORS 179.701 and under the laws applicable to prior years. However, the division shall not file a petition under this subsection until at least 90 days after the death of the person who was at the state institution and then only in the event that the person's estate is not otherwise being probated.

(3) The division may compromise any claim against the estate of a deceased person who was at a state institution during the pendency of the probate proceeding by accepting other security therefor or in any other manner deemed equitable. The division may waive payment of any such claim in a case in which it finds that the enforcement thereof in whole or in part would be inequitable.

(4) The division is not entitled under ORS 179.610 to 179.770 to recover amounts which exceed, in the aggregate, the total cost of care and maintenance of the deceased person as computed under ORS 179.701 and under the laws applicable to prior years.

(5) The division is not entitled under this section or under ORS 179.620 (3) to recover from assets placed in trust for the person by

other persons. [1959 c.652 §§16, 17, 18; 1961 c.501 §4; 1969 c.591 §297; 1973 c.546 §11; 1979 c.684 §4]

DISCRIMINATION PROHIBITED

179.750 Equal care and services for persons in state institutions. (1) No discrimination shall be made in the admission, accommodation, care, education or treatment of any person in a state institution because of the fact that the person does or does not contribute to the cost of his care and maintenance in whole or in part.

(2) No discrimination shall be made in the provision of or access to educational facilities and services and recreational facilities and services to any person in the state institutions enumerated in ORS 179.321 (2) or 420.005 (3) on the basis of race, religion, sex, marital status or national origin of the person. This subsection shall not require combined domiciliary facilities at the state institutions to which it applies. [1959 c.652 §19; 1973 c.546 §12; 1977 c.363 §1; 1979 c.141 §1]

179.760 [1959 c.652 §15; repealed by 1973 c.546 §13]

RULES

179.770 Adoption of rules; employment of personnel; deposit of moneys. (1) In accordance with any applicable provisions of ORS 183.310 to 183.550, the division may make such rules and regulations as are necessary to carry out the provisions of ORS 179.610 to 179.770.

(2) Subject to any applicable provision of the State Personnel Relations Law, the division may employ such persons as are necessary to carry out the provisions of ORS 179.610 to 179.770.

(3) All money received by the assistant director for the division under the provisions of ORS 179.610 to 179.770 shall be deposited daily with the State Treasurer for credit to the General Fund. [Subsections (1) and (2) enacted as 1959 c.652 §20; subsection (3) as 1959 c.652 §12]