

Chapter 423

1987 REPLACEMENT PART

Corrections and Crime Control Administration and Programs

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GENERAL PROVISIONS

423.010 Definitions for ORS 423.010 to 423.070. As used in ORS 423 010 to 423 070, unless the context requires otherwise

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

(2) "Department" means the Department of Corrections

(3) "Juvenile training school" means the Hillcrest School of Oregon, the MacLaren School for Boys and any other school established by law for similar purposes, and includes any camps maintained under ORS chapter 420 for students of such schools

(4) "Department of Corrections institutions" has the meaning found in ORS 421 005 [1965 c 616 §1, 1969 c 597 §96, 1983 c 505 §13, 1987 c 320 §210]

423.020 Department of Corrections; duties and powers. (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 state-wide 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 Resources shall continue to jointly develop and implement needed social and rehabilitative services, including services for inmates housed in regional minimum security facilities

(3) The Department of Corrections shall be the recipient of all federal funds paid or to be paid to the state to enable the state to provide corrections programs and services assigned to the Department of Human Resources before June 15, 1987 [1965 c 616 §2, 1967 c 352 §1, 1967 c 585 §6, 1969 c 597 §98, 1971 c 401 §107, 1987 c 320 §1]

Note The Legislative Counsel has not, pursuant to 173 160, undertaken to substitute specific ORS references for the words "this Act" in ORS chapter 423 Chapter 320, Oregon Laws 1987, enacted into law and amended the ORS sections which may be found by referring to the 1987 Comparative Section Table located in Volume 6A of Oregon Revised Statutes

423 025 [1969 c 597 §97, 137, repealed by 1971 c 319 §11]

423 027 [1969 c 597 §111, 1975 c 605 §21, repealed by 1985 c 565 §66]

423.030 Department not limited by ORS 423.020. The enumeration of duties, functions and powers in ORS 423 020 is not exclusive nor intended as a limitation on the powers and authority vested in the Department of Corrections by other provisions of law [1965 c 616 §3, 1969 c 597 §99, 1987 c 320 §211]

423.035 Application of ORS 184.883 (1). ORS 184 883 (1) applies to the Department of Corrections [1987 c 781 §2]

Note 423 035 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 423 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

423 040 [1965 c 616 §4, 1967 c 7 §39, 1969 c 597 §100, 1971 c 319 §7, repealed by 1987 c 320 §246]

423 050 [1965 c 616 §5, repealed by 1987 c 320 §246]

423 060 [1965 c 616 §6, 1969 c 597 §101, repealed by 1987 c 320 §246]

423.070 Deposit and disbursement of funds received under Western Interstate Corrections Compact. All funds received by this state or by the Department of Corrections under a lawful contract with another party to the Western Interstate Corrections Compact made in

compliance with Article III thereof, shall be paid into the State Treasury. The Director of the Department of Corrections shall expend these funds in compliance with the contract. [Formerly 179 122, 1987 c 320 §212]

423.075 Director; appointment; duties.

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

(2) The Governor shall appoint the director for a term of four years, but the director may be removed at any time during such term at the pleasure of the Governor. The appointment of the director is subject to confirmation by the Senate in the manner provided in ORS 171 562 and 171 565.

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

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

(5) The Director of the Department of Corrections shall

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

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

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

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

Note 423 075 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 423 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

423 080 [1967 c 564 §§8, 9, repealed by 1969 c 597 §281]

423.085 Coordinator of institutional education programs as unclassified employe. The Director of the Department of Corrections may appoint an unclassified employe to coordinate institutional education programs. [1977 c 435 §7, 1987 c 320 §213]

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

423.100 Revolving fund. (1) On written request of the Department of Corrections, the Executive Department 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 employes of the department and for any consultants or advisors for whom payment of travel expenses is authorized by law, or advances therefor,

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

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

(d) Emergency expenses of indigent inmates released on temporary 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 Executive Department upon the verified claims of the department charged against the appropriate fund or account. [1973 c 818 §5, 1974 s s c 13 §6, 1987 c 320 §215]

423 205 [1969 c 177 §7, repealed by 1985 c 44 §2 and 1985 c 558 §9]

423 210 [1967 c 572 §1, 1969 c 177 §4, repealed by 1985 c 44 §2 and 1985 c 558 §9]

423 220 [1967 c 572 §2, 1969 c 177 §1, 1973 c 212 §1, 1973 c 792 §15, repealed by 1985 c 44 §2 and 1985 c 558 §9]

423 230 [1967 c 572 §3, 1969 c 177 §2, repealed by 1985 c 44 §2 and 1985 c 558 §9]

423 240 [1967 c 572 §4, 1969 c 177 §3, repealed by 1985 c 44 §2 and 1985 c 558 §9]

423 280 [1967 c 572 §5, repealed by 1985 c 44 §2 and 1985 c 558 §9]

COURT SERVICES

423.310 Administering court services. In administering court services, as defined in ORS 3.250, the Juvenile Services Commission shall

(1) Assist and maintain liaison with counties and circuit courts in developing plans and programs relating to court services

(2) Assist in locating qualified applicants and in making their names available to persons responsible for administering court services in the counties [1967 c 534 §7, 1971 c 401 §108, 1981 c 171 §3]

423.315 Policy. It is declared to be the legislative policy of the State of Oregon to recognize county juvenile courts and departments as a basic foundation for the provision of services to children and their families and, with the limited amount of funds available, to assist counties in financing certain juvenile court-related services on a continuing basis. The purpose of ORS 423 310 to 423 350 is to provide basic grants to juvenile departments to assist them in the administration of court services as defined in ORS 3 250 [1981 c 171 §2]

423 320 [1967 c 534 §8, 1971 c 401 §109, repealed by 1981 c 171 §7]

423.330 Definitions for ORS 423.330 to 423.350. As used in ORS 423 330 to 423 350, "state contribution" means the amount of money to which each county is entitled from the funds appropriated for the purposes of carrying out the provisions of ORS 423 330 to 423 350 [1969 c 498 §2, 1971 c 429 §2, 1981 c 171 §4]

423.340 Financial aid to counties for court services. (1) The state shall provide financial assistance to the counties which apply therefor by January 1 of the fiscal year from funds appropriated for that purpose for court services, as defined in ORS 3 250

(2) Prior to April 1 of each odd-numbered year, the Juvenile Services Commission shall determine each county's estimated percentage share of the amount to be appropriated for the purposes of this subsection. Such determination

shall be based upon each county's respective share of resident juveniles under the age of 18

(3) The numbers of resident juveniles under the age of 18 for each county shall be certified to the Juvenile Services Commission by January 1 of each odd-numbered year by the Center for Population Research and Census [1969 c 498 §3, 1971 c 429 §3, 1981 c 171 §5]

423.350 Court to comply with fiscal reporting procedures. Any court with juvenile court jurisdiction that receives financial assistance under ORS 423 310 to 423 350 shall comply with fiscal reporting procedures as developed and approved by the Juvenile Services Commission [1969 c 498 §4, 1971 c 401 §110, 1971 c 429 §1, 1981 c 171 §6]

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

CORRECTIONS OMBUDSMAN

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

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

(2) No person while serving as Corrections Ombudsman shall

(a) Be actively involved in political party activities,

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

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

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

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

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

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

(2) To adopt rules required for the discharge of the duties of office, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, not inconsistent with ORS 423 400 to 423 450,

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

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

(5) To subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably material to an inquiry,

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

(7) To bring suit in the Circuit Court for Marion County to enforce ORS 423.400 to 423 450,

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

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

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

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

(b) Based on mistaken facts or irrelevant considerations,

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

(d) Inefficiently performed, or

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

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

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

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

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

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

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

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

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

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

(a) Consider the matter further;

(b) Modify or cancel any action,

(c) Alter a rule, practice or ruling;

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

(e) Rectify an omission, or

(f) Take any other action

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

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

423.440 Letters between ombudsman and persons in custody; immunity of complainants and ombudsman; privilege against giving evidence or testifying. (1) A letter to the Corrections Ombudsman from a person held in custody, including by detention, incarceration and hospitalization, by the Depart-

ment of Corrections shall be forwarded immediately, unopened to the Corrections Ombudsman. A letter from the Corrections Ombudsman to such person shall be immediately delivered, unopened to the person.

(2) No person who files a complaint pursuant to ORS 423 400 to 423 450 shall be subject to any penalties, sanctions or restrictions because of such complaint.

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

(4) The Corrections Ombudsman and the staff of the ombudsman shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce ORS 423 400 to 423 450 [1977 c 378 §9, 1987 c 320 §219].

423.445 Witness rights; fees; expenses of state agency personnel. (1) Any person required to testify under ORS 423 400 to 423 450 shall be accorded the same privileges and immunities, receive the same fees and mileage and be subject to the same penalties provided in ORS 183 440.

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

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

423.450 Contempt proceedings against person interfering with ombudsman. If any person wilfully obstructs or hinders the proper and lawful exercise of the Corrections Ombudsman's powers, or wilfully misleads or attempts to mislead the Corrections Ombudsman in inquiries under ORS 423 400 to 423 450, the judge of the Circuit Court for Marion County, on application of the ombudsman, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1977 c 378 §11]

COMMUNITY CORRECTIONS

423.500 Definitions for ORS 423.500 to 423.560. As used in ORS 423 500 to 423 560, unless the context requires otherwise:

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

(2) "Advisory board" means the Community Corrections Advisory Board created by ORS 423 510.

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

(4) "Plan" means the comprehensive community corrections plan required by ORS 423 535.

(5) "Program" means those programs and services described in ORS 423 525 [1977 c 412 §1a, 1979 c 160 §2, 1987 c 320 §220].

423.505 Legislative policy on program funding. It is declared to be the legislative policy of this state to establish and finance with appropriations from the General Fund state-wide community correction programs on a continuing basis. The intended purpose of this program is to provide appropriate sentencing alternatives and to provide improved local services for persons charged with criminal offenses with the goal of reducing the occurrence of repeat criminal offenses [1977 c 412 §1].

423.510 Community Corrections Advisory Board; qualifications; terms; removal; compensation and expenses. (1) There is hereby established the Community Corrections Advisory Board consisting of 15 members appointed by the Governor. The board shall be composed of:

- (a) Three persons representing community corrections agencies,
- (b) Two persons representing state agencies;
- (c) Two persons representing private agencies,
- (d) Four lay citizens,
- (e) A member of the judiciary,
- (f) A law enforcement officer,
- (g) One district attorney, and
- (h) One member of a county governing body.

(2) Members of the board shall serve for a period of four years at the pleasure of the Governor provided they continue to hold the office, position or description required by subsection (1) of this section. The Governor may at any time remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of the member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment.

to become immediately effective, for the unexpired term

(3) A member of the board shall receive no compensation for service as a member, but all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or rule under ORS 292 220 to 292 250 [1977 c 412 §2, 1985 c 44 §3, 1985 c 558 §7]

423.515 Duties and powers of Community Corrections Advisory Board. The Community Corrections Advisory Board shall

(1) Advise the Director of the Department of Corrections in the participation of the division in ORS 423 500 to 423 560,

(2) Advise the director in the formulation of standards and the adoption of rules for the establishment, operation and evaluation of community corrections,

(3) Review plans of counties for participation under ORS 423 500 to 423 560 and make recommendations thereon to the local corrections advisory committee established pursuant to ORS 423 560,

(4) Provide advice and assistance to the director in establishing the requisite qualifications to the managers of community corrections programs, and

(5) Provide advice and assistance to the director in all other matters related to ORS 423 500 to 423 560 [1977 c 412 §4, 1987 c 320 §220a]

423.520 Financial grants to counties from Department of Corrections. The Department of Corrections shall make grants to assist counties in the implementation and operation of community corrections including, but not limited to, preventive or diversionary correctional programs, probation, parole, work release, and community corrections centers for the care and treatment of criminal defendants [1977, c 412 §5, 1987 c 320 §221]

423.525 Application for financial aid; rules for program evaluation; use of funds; community corrections manager; modification of plan. (1) A county may apply to the Director of the Department of Corrections in a manner and form prescribed by the director for financial aid made available under ORS 423 500 to 423 560 The application shall include a community corrections plan The director shall provide consultation and technical assistance to counties to aid in the development and implementation of community corrections plans

(2) The director, with the advice of the Community Corrections Advisory Board, shall adopt

rules prescribing minimum standards for the establishment, operation and evaluation of community corrections under a community corrections plan and other rules as may be necessary for the administration and implementation of ORS 423 500 to 423 560 The standards shall be sufficiently flexible to foster the development of new and improved supervision or rehabilitative practices

(3) All community corrections plans shall comply with rules adopted pursuant to ORS 423 500 to 423 560, and shall include but need not be limited to

(a) Proposals for correctional programs that demonstrate the need for the program, its purpose, objective, administrative structure, staffing, staff training, proposed budget, evaluation process, degree of community involvement, client participation and duration of the program,

(b) A provision that the correctional program shall be available only to misdemeanants, to parolees, to probationers and to persons convicted of other than murder, treason or Class A felonies,

(c) The location and description of facilities that will be used by the county pursuant to ORS 423 500 to 423 560, including but not limited to halfway houses, work release centers and jails,

(d) The manner that probation, parole and other correctional services will be provided Consideration shall be given to contracting with proven private correctional agencies,

(e) The manner in which counties that jointly apply for participation under ORS 423 500 to 423 560 will operate a coordinated community corrections program,

(f) Correctional services that will be made available to persons who are confined in local correctional facilities, and

(g) The manner in which the local corrections advisory committee will participate in community corrections

(4) All community corrections plans shall provide that an adequate amount of the financial aid received under ORS 423 500 to 423 560 shall be used for staff training and that an adequate amount of the financial aid shall be used for evaluation of county correctional programs The plan shall specify the manner in which these requirements shall be met

(5) All community corrections plans shall designate a community corrections manager of the county and shall provide that the administration of community corrections under ORS 423 500 to 423 560 shall be under such manager

(6) No amendment to or modification of an approved community corrections plan shall be placed in effect without prior approval of the director [1977 c 412 §6, 1987 c 320 §222]

423.530 Procedure for determining amount of financial aid. (1) Financial aid for community corrections pursuant to ORS 423 500 to 423 560 shall consist of

(a) Payments from moneys appropriated to the Department of Corrections for the purposes of supervising parolees and probationers. The department shall determine, prior to July 1 of each odd-numbered year each county's percentage share of the amount appropriated for the purposes of this subsection. Such determination shall be adopted by rule, and shall be based upon each county's respective share of persons under felon probation and parole supervision in accordance with rules adopted by the department.

(b) Enhancement grants from the department for the purpose of providing community corrections services. The department shall determine, prior to July 1 of each odd-numbered year, each county's percentage share of the amount appropriated for the purposes of this subsection. Such determination shall be adopted by rule and shall be based upon state-wide crime and demographic data certified by a state agency other than the Department of Corrections.

(2)(a) Commencing with the beginning of the county's second biennium of participation, each participating county shall be assessed a charge of \$3,000 for each person sentenced for a Class C felony to the custody of the Department of Corrections up to the limit of the county's enhancement grant or until a ceiling figure is reached, whichever is less. The ceiling shall be based on the county's average number of Class C felony commitments to the custody of the Department of Corrections for the most recent two calendar years. Irrespective of sentence or term, each such reimbursement shall continue for one year.

(b) Moneys paid by the county shall be credited to the General Fund and continuously appropriated to the Department of Corrections to be disbursed by the director, with the advice of the Community Corrections Advisory Board and to participating counties in response to requests for special funding of programs for reduction of felony commitments to state institutions. Disbursements under this subsection are contingent upon Department of Corrections approval of the program upon which the disbursement is to be spent. The special funding shall not be considered part of a county's percentage share of regular enhancement grants.

(3) The department shall by rule provide for computation of each county's entitlement in each biennial period in the event participation by the county is for less than a biennial period. Such computation shall be based upon any actions approved by the Legislative Assembly relative to the timing of expenditures with respect to appropriations for purposes of paragraphs (a) and (b) of subsection (1) of this section [1977 c 412 §7, 1979 c 160 §1, 1985 c 708 §1, 1987 c 320 §223]

423.535 Notice to director to participate in program; plan approval; contract for service by Department of Corrections.

(1) To receive moneys for the operation of the community corrections program authorized by ORS 423 500 to 423 560, the county must notify the director of the Department of Corrections 90 days prior to the proposed beginning date of participation. Such notification shall be by resolution of the appropriate board or boards of county commissioners.

(2) Prior to participation in the program, the county shall have a comprehensive community corrections plan approved by the department.

(3) The Department of Corrections, in consultation with the respective board of county commissioners, may use moneys which would have been made available to the county pursuant to ORS 423 530 (1)(b) and (3) to provide the community corrections services described therein. In providing such services, the department may contract with public or private agencies for the provision of services to convicted felons. Any agreement to reimburse counties for the cost of providing services for felons shall include a provision that the department shall deduct from such reimbursement the cost incurred by the department of supervising misdemeanor probationers [1977 c 412 §13, 1987 c 320 §224]

423.540 Program performance review by Director of Department of Corrections; standards; effect of failure to comply; prohibited use of program financial aid. (1) The Director of the Department of Corrections shall periodically review the performance of counties participating under ORS 423 500 to 423 560. A county must substantially comply with the provisions of its community corrections plan and the operating standards established pursuant to ORS 423 525 (2) to remain eligible to participate. If the director determines that there are reasonable grounds to believe that a county is not in substantial compliance with the plan or operating standards, the director shall, after giving the county not less than 30 days' notice, conduct a hearing to ascertain whether there is substantial compliance.

or satisfactory progress being made toward compliance After the hearing, the director, with the advice of the Community Corrections Advisory Board, may suspend any portion of financial aid made available to the county under ORS 423 500 to 423 560 until the required compliance occurs

(2) Financial aid received by a county pursuant to ORS 423 530 shall not be used to replace moneys, other than federal or state funds, currently being used by the county for existing correctional programs for misdemeanants and shall not be used to develop, build or improve local correctional facilities as defined by ORS 169 005 (3) [1977 c 412 §8, 1979 c 487 §14, 1987 c 320 §225]

423.545 Obligations of counties accepting financial aid; manner of terminating participation; effect of termination. (1) A county that accepts financial aid under ORS 423 500 to 423 560 shall assume responsibility for those correctional services, other than the operation of state institutions, presently planned or provided in the county by the Department of Corrections

(2) Any county that receives financial aid under ORS 423 500 to 423 560 may terminate its participation at the end of any month by delivering a resolution of its board of commissioners to the Director of the Department of Corrections not less than 180 days before the termination date

(3) If a county terminates its participation under ORS 423 500 to 423 560

(a) The responsibility for correctional services transferred to the county pursuant to subsection (1) of this section and the remaining portion of the financial aid made available to the county under ORS 423 530 shall revert to the Department of Corrections

(b) The facilities renovated or constructed with moneys made available under ORS 423 500 to 423 560 shall revert to the Department of Corrections, unless the county has participated for 20 continuous years in ORS 423 500 to 423 560 since the facilities were renovated or constructed The county and the department may agree to permit the county to retain ownership in the facility in exchange for an agreement that the county will house specified persons under the jurisdiction of the department [1977 c 412 §9, 1987 c 320 §226]

423.550 Contract by counties for parole and probation supervision service; transfer of state personnel to county employment; reentry of transferred

employes. (1) When a county pursuant to ORS 423 500 to 423 560 assumes responsibility for correctional services previously provided by the Department of Corrections, the county may contract with the department for the provision of parole and probation supervision services The county shall pay the department for such services on an actual cost basis

(2) Any state correctional field officer, immediate supervisor of such correctional officer or any supporting clerical personnel whose job involves rendering services assumed by the county may transfer to employment by the county or may remain in the employment of the department and provide field services to the county under the terms of a contract for services between the county and the department The county shall pay the department for any services rendered by such employes on an actual cost basis Any such employe transferring to county employment under this section shall not suffer any reduction in salary or loss of employe benefits as a result of the transfer

(3) Any such employe who transfers employment pursuant to subsection (1) of this section shall be entitled to reenter state employment within 30 days if the county to which the employe has transferred withdraws from participation under ORS 423 500 to 423 560 or if funds are not appropriated to carry out the purposes of ORS 423 500 to 423 560 [1977 c 412 §10, 1987 c 320 §227]

423.555 State-wide program evaluation and information system. The Department of Corrections shall establish and operate a state-wide evaluation and information system to monitor the effectiveness of correctional services provided to criminal defendants under ORS 423 500 to 423 560 [1977 c 412 §11, 1987 c 320 §228]

423.560 Local corrections advisory committee; qualifications; duties (1) The board or boards of county commissioners of a county that is participating under ORS 423 500 to 423 560 shall designate a local corrections advisory committee The committee shall include

- (a) A law enforcement officer,
- (b) A district attorney,
- (c) A circuit court judge,
- (d) A public defender or defense attorney,
- (e) A probation or parole officer,
- (f) A representative of a private correctional agency, if a suitable agency exists in the county,
- (g) A county commissioner from each county,
- (h) Seven lay citizens, one of which shall be a member of a minority ethnic group if such a group exists in the county, and

(1) An ex-offender

(2) The committee shall actively participate in the design of the county's community corrections plan and application for financial aid, observe the operation of community corrections in the county, make an annual report and develop appropriate recommendations for improvement or modification to the county commissioners or community corrections manager of the county [1977 c 412 §12]

423.570 Monthly fee payable by person on supervised release; use; payment as condition of release; waiver. (1) A person placed by an authority on probation, parole or other form of release, subject to supervision by either the Department of Corrections or, directly or indirectly, by a community corrections program established under ORS 423 500 to 423 560, shall be required to pay a monthly fee to offset costs of supervising the probation, parole or other supervised release

(2) A person placed by an authority on probation, parole or other form of release, subject to supervision other than by either the Department of Corrections or a community corrections program established under ORS 423 500 to 423 560, may be required by the releasing authority to pay a monthly fee to offset costs of supervising the probation, parole or other supervised release

(3) When a fee is required under subsection (1) of this section, the fee shall be determined and fixed by the releasing authority but shall be at least \$10, and if the releasing authority fails to establish the amount of a released person's required fee, the fee shall be \$10

(4) Fees are payable one month following the commencement of probation, parole or other supervised release and at one-month intervals thereafter. Fees shall be collected as follows

(a) If the released person is supervised under county authority, other than by the Department of Corrections, the county shall collect or provide by contract for the collection of the fee from the released person and shall retain the fee to be used by the county for funding of its community corrections program or, if it has no community corrections program, then for general governmental purposes

(b) If the released person is supervised by the Department of Corrections, the department shall collect or provide by contract for the collection of the fee from the released person and shall retain the fee. Moneys received by the Department of Corrections are continuously appropriated to the Department of Corrections for use in financing department field services

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

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

(a) The community corrections program director or the Director of the Department of Corrections, whichever is appropriate, or the designee thereof, may waive the payment of the fee in whole or in part

(b) The sentencing court may waive payment of the fee in whole or in part for any person whom the court has placed on probation. If any of the fee requirement is waived by the court, only the court may restore the requirement [1981 c 169 §1, 1983 c 252 §1, 1987 c 320 §229]

RESPONSIBILITY FOR INCARCERATION OF PERSONS

Note Sections 1 to 3, chapter 470, Oregon Laws 1987, provide

Sec 1 It is hereby declared to be the policy of the State of Oregon that to the extent practicable, the state shall be responsible for the incarceration of persons convicted of crimes defined as felonies, except that if the court imposes a punishment that makes the crime a misdemeanor, then it is the policy of the state that the county and not the state shall be responsible for incarceration resulting from the conviction [1987 c 470 §1]

Sec 2 (1) The Governor shall study the state policy set forth in section 1 of this Act and its fiscal impact on the budget of the Department of Corrections

(2) The Governor shall present a report to the Sixty-fifth Legislative Assembly which report shall contain the following

(a) A proposal for implementation of the state policy set forth under section 1 of this Act, including a plan for any necessary phasing in of the implementation, and

(b) The estimated cost to the Department of Corrections and other affected state agencies of implementing such state policy

(3) The Governor shall submit to the Sixty-fifth Legislative Assembly a request for such appropriations to state agencies as the Governor determines necessary for implementation of the state policy as described in the Governor's report under this section

(4) The Governor may delegate to an appropriate task force or state agency the responsibility for performing the requirements of this section [1987 c 470 §2]

Sec 3 If House Bill 2715 (1987) becomes law, the Oregon Criminal Justice Council shall submit to the Sixty-fifth Legislative Assembly, as part of its sentencing guidelines proposal, recommendations as to how the policy set forth in section 1 of this Act may be implemented as part of a revised sentencing system, including but not limited to, recommendations as to the responsibilities, respectively, of the state and local governments [1987 c 470 §3]

OREGON CRIMINAL JUSTICE COUNCIL

Note Sections 1 to 6 and 10, chapter 558, Oregon Laws 1985, provide

Sec 1 As used in sections 1 to 3 of this Act, "criminal justice system" includes all activities and agencies, whether state or local, public or private, pertaining to the prevention, prosecution and defense of offenses, or to the disposition of offenders under the criminal law. The "criminal justice system" includes police, public prosecutors, defense counsel, courts, correction systems, mental health agencies and all public and private agencies providing services in connection with those elements whether voluntarily, contractually or by order of a court [1985 c 558 §1]

Sec 2 (1) There is established the Oregon Criminal Justice Council consisting of 20 members

(2) The Oregon Criminal Justice Council shall be composed as follows

(a) The following shall be members by virtue of their office

(A) The Attorney General,

(B) The Director of the Department of Corrections,

(C) The chairperson of the State Board of Parole,

(D) The chairperson of the Psychiatric Security Review Board,

(E) The administrator of the Mental Health Division, and

(F) The director of the State Council on Crime and Delinquency

(b) The Chief Justice of the Supreme Court shall appoint two judges to the council. One appointee shall be a judge of the Supreme Court or the Court of Appeals, and one shall be a trial judge of the circuit or district court. Senior judges, as provided under ORS 1 300, are eligible for appointment

(c) At the beginning of each regular session of the Legislative Assembly, the President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the council to serve until the commencement of the regular session of the Legislative Assembly next following. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker. The members are eligible for reappointment

(d) The Governor shall appoint eight members to the council as follows

(A) One district attorney,

(B) One attorney a substantial proportion of whose employment is spent in criminal defense,

(C) One county sheriff,

(D) One county commissioner, and

(E) Four public members not employed in prosecution, criminal defense or law enforcement

(3) The term of office of each member of the council appointed by the Chief Justice or Governor is three years, but such members serve at the pleasure of the Chief Justice or Governor, whichever shall have appointed the member. A member appointed by the Chief Justice or Governor is eligible for reappointment, but shall serve no more than two consecutive terms. When a person is appointed under subsection (4) of this section to serve an unexpired term, the unexpired term shall not be considered for purposes of the limitation to two consecutive terms of service. Before the expiration of the term of the member, the Chief Justice or Governor, as the case may be, shall appoint a successor whose term shall begin on July 1 next following

(4) If there is a vacancy for any cause in an appointed position, the appointing authority shall make an appointment to become immediately effective for the unexpired term

(5) The Governor shall appoint the chairperson of the Oregon Criminal Justice Council from among its members not holding elective office. The chairperson shall serve at the pleasure of the Governor

(6) The members of the Oregon Criminal Justice Council shall elect from among their members a vice-chairperson who shall preside and exercise the functions of chairperson during absence or disability of the chairperson

(7) The chairperson shall appoint, subject to approval of the majority of the council, an executive committee composed of the chairperson, the vice-chairperson and three other members of the council to exercise the powers and responsibilities of the council between meetings of the council. However, all action taken by the executive committee not previously authorized shall be submitted to the council at its next regular or special meeting for approval. The chairperson may also appoint such committees within the council as the chairperson may think necessary

(8) Regular meetings of the council shall be held at least once every three months at a place, day and hour determined by the council. Special meetings shall be held at such other times as the chairperson may designate. If 10 or more members of the council request in writing that the chairperson designate a time for a special meeting, the chairperson shall designate a time as requested

(9) Members of the council are entitled to expenses as provided under ORS 292 495 (2). Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171 072, payable from funds appropriated to the Legislative Assembly

(10) The council is subject to the provisions of ORS 291 202 to 291 222 and 291 232 to 291 260 [1985 c 558 §2, 1987 c 879 §18]

Sec 2a (1) Notwithstanding the term of office specified by subsection (3) of section 2 of this Act and the limitation therein to two consecutive terms of service

(a) Of the members first appointed by the Chief Justice, one shall serve for a term ending June 30, 1987, and

(b) Of the members first appointed by the Governor

(A) The sheriff and one public member shall serve for terms ending June 30, 1986

(B) The defense attorney, the county commissioner and one public member shall serve for terms ending June 30 1987

(C) The district attorney and two public members shall serve for terms ending June 30 1988

(2) The initial terms of less than three years referred to in this section shall not be considered for purposes of the limitation to two consecutive terms of service [1985 c 558 §2a]

Sec 3 The Oregon Criminal Justice Council shall

(1) Study and make recommendations concerning the functioning of the various parts of the criminal justice system, including study and recommendations concerning implementation of community corrections programs,

(2) Study and make recommendations concerning the coordination of the various parts of the criminal justice system,

(3) Conduct research and evaluation of programs, methods and techniques employed by the several components of the criminal justice system,

(4) Study and make recommendations concerning the capacity, utilization and type of state and local prison and jail facilities, and alternatives to the same including the appropriate use of existing facilities and programs, and the desirability of additional or different facilities and programs,

(5) Study and make recommendations concerning methods of reducing risk of future criminal conduct by offenders,

(6) Collect, evaluate and coordinate information and data related to or produced by all parts of the criminal justice system,

(7) Accept gifts and grants and disburse them in the performance of its responsibilities, and

(8) Report annually to the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives and the Governor [1985 c 558 §3]

Sec 4 The Oregon Criminal Justice Council shall study and make recommendations on the assessment of risk of future criminal conduct by offenders for use in prosecution, sentencing, institutional management and probation and parole, and shall report the studies and recommendations to the Sixty-fourth Legislative Assembly [1985 c 558 §4]

Sec 5 The Oregon Criminal Justice Council may conduct joint studies by agreement with other state agencies, boards or commissions on any matters within its jurisdiction [1985 c 558 §5]

Sec 6. All officers, boards, commissions and other agencies of the State of Oregon shall cooperate with the Oregon Criminal Justice Council to accomplish the purposes of this Act [1985 c 558 §6]

Sec 10 The Oregon Criminal Justice Council established by section 2 of this Act shall cease to exist on July 1, 1989, unless the Sixty-fifth Legislative Assembly by law extends its existence. In the event of such expiration, all data

gathered by the council in the performance of its studies shall be delivered to the State Archives [1985 c 558 §10]

Note Sections 2 to 9, chapter 619, Oregon Laws 1987, which were added to and made a part of chapter 558, Oregon Laws 1985, provide

Sec 2 (1) The Oregon Criminal Justice Council shall develop sentencing guidelines applicable to persons convicted of felonies and other offenses punishable by imprisonment in state prisons in this state and shall propose those guidelines to the State Sentencing Guidelines Board prior to November 1, 1988. The guidelines shall provide in each case for a sentence within the range of sanctions provided by law for the crime or crimes involved. The council shall design the guidelines to control commitment to state and local correctional facilities, the term or range of confinement, the requirement and duration of parole, the imposition and duration of probation subject to condition and the revocation of probation and subsequent incarceration

(2) In developing sentencing guidelines the council shall take into consideration that

(a) The primary function of sentencing in this state is to punish each criminal offender appropriately and insure the security of the public in person and property,

(b) Factors relevant to appropriate sentencing include severity of the offense, criminal history of the offender, aggravating and mitigating circumstances of the offense, performance under probationary supervision, deterrence, reformation, prevention of recidivism, effective capacity of state and local corrections facilities and other sentencing sanctions available,

(c) Sentencing guidelines are intended to guide and coordinate, but not diminish, the importance of judicial discretion in sentencing, and

(d) Efficient use of correctional resources requires use of the least restrictive appropriate criminal sanction necessary to achieve the purposes of the sentence

(3) In developing the sentencing guidelines the council shall take into consideration factors relevant to establishment of appropriate sentences, including severity of the offense, criminal history of the offender, aggravating and mitigating circumstances, performance under probationary supervision, prevention of recidivism, possibility of reformation or deterrence and the effective capacity of state and local correctional facilities and other sentencing sanctions available [1987 c 619 §2]

Sec 3 (1) There is created the State Sentencing Guidelines Board

(2) Those members of the Oregon Criminal Justice Council who serve by virtue of their respective offices in the Executive Branch of the state government and those members appointed to the council by the Governor shall constitute the State Sentencing Guidelines Board

(3) The Attorney General shall be the chair of the board and the Executive Director of the Oregon Criminal Justice Council shall provide staff services to the board [1987 c 619 §3]

Sec 4 (1) On or before January 1, 1989, and on or before January 1 of each succeeding odd-numbered year, the State Sentencing Guidelines Board shall adopt by majority

vote of all its members sentencing guidelines for all offenses punishable by imprisonment in state prisons. The board shall submit the guidelines as adopted, and any amendments which may be adopted from time to time, to the Legislative Assembly at the beginning of each regular session. The guidelines and amendments shall become effective on September 1 following the close of that session unless the Legislative Assembly shall provide a different effective date. The Legislative Assembly may by statute amend, repeal or supplement any of the guidelines.

(2) In adopting the guidelines the board shall consider the guidelines proposed by the Oregon Criminal Justice Council, but is not bound by such proposals and shall exercise its own independent judgment. The board shall, however, in adopting guidelines under this section, be subject to the same considerations that apply to the Oregon Criminal Justice Council under section 2 of this 1987 Act in developing their proposals [1987 c 619 §4]

Sec 5 The guidelines adopted by the State Sentencing Guidelines Board under section 4 of this 1987 Act, together with any amendments, supplements or repealing provisions enacted by the Legislative Assembly, shall control the sentences for all crimes committed after the effective date of such guidelines. Except as provided in section 6 of this 1987 Act, the incarcerative guidelines and any other guidelines so designated by the board shall be mandatory and constitute presumptive sentences [1987 c 619 §5]

Sec 6 (1) The court may impose a sentence outside the presumptive sentence or sentence range made presumptive under section 5 of this 1987 Act for a specific offense if it finds considering the purposes of this 1987 Act there are substantial and compelling reasons justifying a deviation from the presumptive sentence.

(2) Whenever the court imposes a sentence outside the presumptive sentence it shall set forth the reasons for its decision by written opinion [1987 c 619 §6]

Sec 7 (1) The Oregon Criminal Justice Council shall submit to the Sixty-fifth Legislative Assembly a list of those statutes which, in its judgment, should be amended or repealed in connection with adoption of sentencing guidelines as provided in this 1987 Act together with a draft of such proposed legislation and an explanation of the reasons therefor. The council shall note the effective date necessary for such amendment or repeal of statutes in order to align such amendment or repeal with the effective date of the sentencing guidelines.

(2) After the State Sentencing Guidelines Board has developed guidelines in accordance with the purpose and criteria set forth in section 2 of this Act, if the council finds in its judgment that correctional resources, including state and local correctional facilities are insufficient to meet the criteria set forth in section 2 of this 1987 Act and therefore inappropriately limit the guidelines, the council shall report such and recommend needed changes to the correctional resources to the Sixty-fifth Legislative Assembly [1987 c 619 §7]

Sec 8 The Oregon Criminal Justice Council will study the feasibility, method of approach and possible scope of sentencing guidelines in misdemeanor cases and will report its preliminary conclusions to the Sixty-fifth Legislative Assembly, together with enabling legislation directing development

of guidelines in the 1989-1991 biennium adaptable to misdemeanor cases [1987 c 619 §8]

Sec 9 (1) The Oregon Criminal Justice Council shall serve as a clearinghouse and information center for the collection, preparation and analysis and dissemination of information on state and local sentencing practices. The council shall assess the impact of the guidelines.

(2) The council shall make recommendations to the Legislative Assembly regarding proposed changes in the criminal code, criminal procedures, and any aspects of sentencing that may impede the implementation and effectiveness of the sanction guidelines [1987 c 619 §9]

Note Sections 2 and 3, chapter 590 Oregon Laws 1987, which were added to and made a part of chapter 558, Oregon Laws 1985 provide

Sec 2 The Oregon Criminal Justice Council shall develop uniform standards for use by magistrates pretrial release assistance officers and deputies in making release decisions under ORS 135 230 to 135 290. These standards shall be developed substantially as follows:

(1) The council shall identify factors generally available at the time release decisions are made which reasonably predict that a defendant will

(a) Fail to appear as required for future criminal proceedings, or

(b) Engage in violent criminal conduct while on release.

(2) The council shall organize the pretrial release options permitted under existing statutory provisions for citation in lieu of custody, personal recognizance release, conditional release and security release according to the degree in which the conditions of each option restrict the freedom of the defendant and according to the degree in which they insure the appearance of the defendant at future proceedings and inhibit the likelihood that the defendant will engage in violent criminal conduct while on release if there appears to be a reasonably foreseeable risk of the same.

(3) The council shall correlate risk factors with appropriate release options to insure that the conditions of release take into account the risks presented by the particular defendant.

(4) The standards for release shall provide for judicial discretion in the following circumstances:

(a) In individual cases the court may depart from the standards by making express written findings that the circumstances of the case require such departure in the interest of justice and the security of the community.

(b) In a judicial district where the presiding judge makes express written findings that the custodial resources of the community are insufficient to meet the state-wide standards at the time in question [1987 c 590 §2]

Sec 3 (1) The council shall develop and approve the standards referred to in section 2 of this 1987 Act by September 1, 1988.

(2) The council shall submit the standards to the Sixty-fifth Legislative Assembly as proposed legislation unless the judicial department has adopted the same or substantially similar standards by administrative order prior to January 1, 1989 [1987 c 590 §3]

CHAPTERS 424 AND 425

[Reserved for expansion]

