

Chapter 179

1989 EDITION

Administration of State Institutions

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STATE EXECUTIVE DEPARTMENT AND ORGANIZATION

DEFINITIONS

179.010 Definitions. As used in this chapter and sections 2 and 12, chapter 321, Oregon Laws 1987, unless the context requires otherwise:

(1) "Assistant Director" means the Assistant Director for the Mental Health and Developmental Disability Services Division.

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

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

(4) "Division" means the Mental Health and Developmental Disability Services Division.

(5) "Institutions" means the institutions designated in ORS 179.321.

(6) "Local government" means any county, city or special district.

(7) "Plan" means the state-wide strategic corrections plan developed under section 12, chapter 321, Oregon Laws 1987. [Amended by 1969 c.597 §17; 1969 c.706 §62, 1971 c.301 §14, 1987 c.320 §106; 1987 c.321 §11]

179.020 [Repealed by 1969 c.199 §59]

179.030 [Amended by 1961 c.271 §1; repealed by 1969 c.199 §59]

GENERAL AUTHORITY

179.040 General powers and duties. (1) The Department of Corrections and the Mental Health and Developmental Disability Services Division shall:

(a) Govern, manage and administer the affairs of the public institutions and works within their respective jurisdictions.

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

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

(2) The department and the division, respectively, 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 their respective jurisdictions. [Amended by 1967 c.419 §57; 1969 c.597 §18; 1969 c.706 §63; 1987 c.320 §107]

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 Department of Corrections 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 Department of Corrections 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 department by rule may require. Such reports are confidential and may not be used in evidence. [1967 c.635 §1; 1969 c.597 §14; 1987 c.320 §108]

179.050 Authority to hold property. The Department of Corrections and the Mental Health and Developmental Disability Services Division may receive, take and hold property, both real and personal, for any institution within their respective jurisdictions. Title shall be taken in the name of the state. [Amended by 1969 c.597 §21, 1971 c.615 §11; 1987 c.320 §109]

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 the Department of Corrections or the Mental Health and Developmental Disability Services Division, except dormitory and housing rentals at institutions governed by the department or division, shall be deposited in the account of the department or division for use by the department or division to pay for the cost of administration, taxes, repairs and improvements on the property.

(2) The department or 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 department or 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; 1987 c.320 §110]

179.060 [Repealed by 1969 c.597 §281]

179.065 Furnishing utilities for institutions. The Department of Corrections and the Mental Health and Developmental Disability Services Division shall have the same powers with respect to furnishing heat, light, power, sewage, fire protection and communications facilities to institutions under their respective jurisdictions 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; 1987 c.320 §111]

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 Acceptance of 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, the Department of Corrections and the Mental Health and Developmental Disability Services Division may in their respective discretions 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 department or 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 department or 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; 1987 c.320 §112]

179.110 Use of federal grants; cooperation with federal agencies; disposition of balances of appropriations. Subject to the approval of the Director of the Executive Department, the Department of Corrections and the Mental Health and Developmental Disability Services Division, respectively, 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. The department and the division are authorized and empowered in their 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; 1987 c.320 §113]

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 the institution, in favor of the executive head of the institution, 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 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 Director of the Department of Corrections or by the Assistant Director for the Mental Health and Developmental Disability Services Division, or by their designees. [Amended by 1971 c.63 §1; 1973 c.248 §1; 1987 c.320 §114]

179.150 Interest in contracts prohibited. No officer of the Department of Corrections or the Mental Health and Developmental Disability Services Division or officer, employee 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 regular employment. (Amended by 1971 c.63 §2; 1987 c.320 §115)

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 Developmental Disability Services Division and Department of Corrections 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; 1987 c.320 §116]

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 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 or from funds appropriated for the purpose of reimbursing such claims, 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; 1987 c.410 §6]

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 Department of Corrections or the Mental Health and Developmental Disability Services Division shall deduct the amount of the debt from any award made to that person.

(2) The department or 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 department, 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; 1987 c.320 §117]

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 Responsibility to supervise state institutions. (1) The Mental Health and Developmental Disability Services 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 Department of Corrections shall operate, control, manage and supervise those institutions defined as Department of Corrections institutions in ORS 421.005. [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; 1987 c.320 §118]

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 and Developmental Disability Services 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 described in ORS 179.321 (1), by the Assistant Director for Mental Health and Developmental Disability Services.

(b) Superintendents of institutions described in ORS 179.321 (2), by the Director of the Department of Corrections.

(2) For purposes of the State Personnel Relations Law, the superintendents are as-

signed to the unclassified service. [1965 c.616 §81 (enacted in lieu of 179.330); 1969 c.597 §26, 1971 c.301 §17; 1987 c.320 §119]

179.340 Salaries and expenses of superintendents. (1) The annual salaries of the superintendents shall be fixed, within the respective appropriations therefor and the limitations 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 [Amended by 1969 c.597 §28; repealed by 1987 c.320 §246]

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

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

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

(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 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 Director of the Department of Corrections or the Assistant Director for Mental Health and Developmental Disability Services, as the case may be, 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 director or 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; 1987 c.320 §120]

179.370 Residence of superintendents at institutions. The Director of the Department of Corrections or the Director of Hu-

man Resources may require that a superintendent reside in state-provided housing at the institution under the jurisdiction of the superintendent. The rental shall be determined pursuant to ORS 182.425. [Amended by 1959 c.80 §1; 1969 c.597 §35; 1977 c.583 §1; 1987 c.320 §120a; 1989 c.171 §21]

(Staff)

179.375 Chaplaincy services. (1) The Department of Corrections and the Mental Health and Developmental Disability Services Division shall insure that adequate chaplaincy services, including but not limited to Protestant and Roman Catholic, are available at their respective institutions.

(2) Chaplains serving the various institutions shall, with respect to the inmates 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; 1987 c.320 §121]

179.380 Employment of staff; oaths and bonds. (1) The Department of Corrections and the Mental Health and Developmental Disability Services Division shall authorize the employment of all necessary physicians, matrons, attendants, nurses, engineers, watchmen, messengers, clerks, guards, cooks, waiters and other officers and employees not specifically authorized by law and necessary to the successful maintenance of their respective institutions. The amounts expended for the services of such officers and employees shall not exceed the amounts provided therefor in the biennial appropriations for the institution.

(2) The department and division shall designate in their respective rules which employees 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; 1987 c.320 §122]

179.385 Scholarship programs to train personnel for institutions. The Department of Corrections and the Mental Health and Developmental Disability Services Division, respectively, may establish scholarship programs to provide assistance in securing qualified personnel at state institutions governed by them. Scholarships authorized by this section shall be granted in accordance with rules and regulations adopted respectively by the department or division. [1961 c.363 §2; 1987 c.320 §123]

179.390 Appointment, suspension, removal and salaries of assistants, officers and employees; contract services. (1) The superintendent of institutions other than those within the jurisdiction of the Mental Health and Developmental Disability Services Division shall, subject to the approval of the assistant director or the Director of the Department of Corrections, appoint in the manner provided by law all assistants, officers and other employees at the institution under the jurisdiction of the superintendent. The superintendent may suspend or remove an assistant, officer or other employee in the manner provided by law, reporting all acts of suspension or removal to the assistant director or director for corrections for approval or disapproval. The assistant director or director for corrections shall fix the salaries of assistants, officers and employees where their salary is not fixed by law. The assistant director of a division or director of corrections 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 and Developmental Services or the designees of the Assistant Director for Mental Health and Developmental Services at each facility under jurisdiction of the division shall, as provided by law, appoint, suspend or discharge an employee of the division. The assistant director may designate up to three employees at each facility to act in the name of the assistant director in accordance with ORS 240.400.

(3) In addition to or in lieu of employing physicians, the Director of the Department of Corrections or the designee thereof may contract for the personal services of physicians licensed to practice medicine by the Board of Medical Examiners for the State of Oregon to serve as medical advisors for the division. Advisors under such contracts shall be directly responsible for administration of medical treatment programs at penal and correctional institutions, as defined in ORS 421.005. [Amended by 1969 c.597 §37; 1973 c.807 §1; 1987 c.78 §1; 1987 c.320 §123a]

179.400 Rentals to officers and employees at institution. The superintendent of an institution may rent state-provided housing located at the institution under the jurisdiction of the superintendent to state officers and employees 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 department may direct the employment of able-bodied persons at the Department of Corrections institutions and the Mental Health and Developmental Disability Services Division may direct the employment of able-bodied persons at institutions 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, 1987 c.320 §124]

179.460 Sale and exchange of surplus products of institutions; State Institutional Betterment Fund. (1) In order to encourage industry and thereby increase productiveness in the institutions, the Department of Corrections and the Mental Health and Developmental Disability Services 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 department and division, respectively, 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; 1987 c 320 §125]

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 a Department of Corrections institution or a student of MacLaren School or Hillcrest School to another institution:

(a) The Department of Corrections or Children's Services Division, with the consent of the Mental Health and Develop-

mental Disability Services 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 Oregon Health Sciences University, to the Oregon Health Sciences University.

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

(2) A student of a juvenile training school may not be transferred to a Department of Corrections institution under subsection (1) of this section. A student of a juvenile training school who has been transferred to another institution may not be transferred from such other institution to a Department of Corrections institution. [1965 c.616 §84 (enacted in lieu of 179.474); 1969 c.597 §40, 1975 c.662 §1; 1977 c.601 §1; 1987 c.320 §126]

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 a Department of Corrections institution 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 and Developmental Disability Services 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 the sentence or the student may remain in the state mental hospital for up to the duration of the 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 Department of Corrections 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, the inmate or student fails to meet the conditions of the treatment plan or if the inmate or student has received maximum benefit from hospitalization.

(3) If an inmate who demonstrates satisfactory progress while in a state mental hospital becomes eligible for parole, the inmate may be considered for parole by the State Board of Parole and Post-Prison Supervision without prior transfer back to the referring Department of Corrections 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; 1987 c.320 §127]

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 and Developmental Disability Services 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 the custody of the Department of Corrections or the commitment to a juvenile training school. The Mental Health and Developmental Disability Services Division shall receive approval of the Department of Corrections and State Board of Parole and Post-Prison Supervision prior to placing an inmate on trial visit un-

der ORS 426.273 and 426.275. The Mental Health and Developmental Disability Services Division shall receive approval of the juvenile training school prior to placing a student on trial visit under ORS 426.273 and 426.275.

(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; 1985 c.242 §6; 1987 c.320 §128]

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 the inmate or student cannot adjust to or benefit from the Department of Corrections institution or juvenile training school, the superintendent of the institution shall request that a diagnostic assessment be performed by the Mental Health and Developmental Disability Services 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 and Developmental Disability Services 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 and Developmental Disability Services Division as soon as space in an appropriate unit is available, and any sentence to a Department of Corrections 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; 1987 c.320 §129]

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 described in ORS 179.321 may, when authorized by regulation or direction of the Department of Corrections or division having jurisdiction over the institution, convey an inmate to a physician, clinic or hospital, including the Oregon Health Sciences Univer-

sity, 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 the inmate is conveyed.

(2) The Department of Corrections and division, respectively shall prescribe rules and regulations governing conveyances authorized by this section. [1957 c.160 §3; 1969 c.597 §42; 1975 c.693 §1; 1987 c.320 §130]

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 Department of Corrections institution pursuant to a transfer or conveyance shall be counted as part of the sentence being served by the inmate. [1957 c.160 §4; 1987 c.320 §131]

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 the physician in charge. The report shall contain the history of the case and the information required by blanks prepared by the School of Medicine or School of Dentistry, as the case may be. [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 department or division, are unable to pay a part or the whole cost of the operation, the department or division, in its discretion, may have the operation performed, the cost of the operation to be payable from the funds of the institution concerned. [Amended by 1987 c.320 §132]

(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 Department of Corrections institution described in ORS 179.321, maintained in such institution by the officers or employees thereof who are authorized to maintain such histories, records, X-rays, charts, reports and other accounts within the official scope of their duties, shall not be subject to inspection except upon permission given by the Department of Corrections 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 the incompetence of the inmate, by the legal guardian of the inmate.

(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; 1987 c.320 §133]

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, 431.705 to 431.990 and sections 2 and 12, chapter 321, Oregon Laws 1987, 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), (13) and (14) 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 employees 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 Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

(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 assistance 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 and Developmental Disability Services Division facility or community mental health and developmental disabilities program shall be the Assistant Director for Mental Health and Developmental Disability Services, 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 employees 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 and Developmental Disability Services Division, the Department of Corrections, a local correctional facility or a community mental health and developmental disabilities 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 Department of Corrections 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.

(14) The officially designated protection and advocacy system for developmentally

disabled and mentally ill persons in the state under 42 U.S.C. §6012 shall be granted access to:

(a) The records necessary to investigate and resolve a complaint regarding a person who is receiving services in a facility or in a specified portion of a facility designed primarily for the delivery of one or more services to persons with developmental disabilities. Such access shall be granted under the following conditions:

(A) The complaint is specific to a named person being served;

(B) Written notice describing the complaint is given to the facility and the applicable local community mental health program, if any;

(C) The complaint is received from or on behalf of a person who does not have a legal guardian, or the state or its designee is the legal guardian; and

(D) The complaint relates to the treatment, training or habilitation of the person receiving the services of the facility.

(b) All records necessary to investigate and resolve a complaint or a case in which there is probable cause to believe that a person has been subject to abuse or neglect in a facility providing the person care and treatment or within 90 days of the person's discharge from such facility. Such access shall be granted under the following conditions:

(A) The person has been determined to have a significant mental illness or emotional impairment by a mental health professional qualified under the laws and regulations of the state;

(B) The person is unable to authorize the system to have such access by reason of mental or physical condition; and

(C) The person does not have a legal guardian, conservator or other legal representative, or for whom the legal guardian is the state or its designee. [1973 c.736 §2; 1977 c.812 §3, 1981 c.326 §2; 1985 c.219 §1; 1987 c.320 §134; 1987 c.322 §1; 1989 c.81 §1]

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]

179.509 Reports on deaths at institutions; compilation submitted to President and Speaker. (1) The superintendent of each state institution shall submit quarterly reports on the number of deaths, including the ages of the deceased, the causes of death and the disposition of the remains, within the institution to the division in the Department of Human Resources or to the Department of Corrections, as the case may be, having jurisdiction over the institution.

(2) The division having jurisdiction or the Department of Corrections shall compile the reports described in subsection (1) of this section and submit them quarterly to the offices of the President of the Senate and of the Speaker of the House of Representatives. [1985 c.207 §26; 1987 c.320 §135]

(Funds of Inmates or Patients)

179.510 Definitions; deposit of funds of institution residents with State Treasurer. (1) The superintendent who possesses or controls 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, separate and distinct from the General Fund. Interest earned by the account shall be credited to the 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; 1989 c.966 §3]

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 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 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 the heirs or personal representatives of the original owner, 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) "Authorized representative" means an individual or entity appointed under authority of ORS 126.103 and 126.157, as guardian or conservator of a person, who has the ability to control the person's finances, and any other individual or entity holding funds or receiving benefits or income on behalf of any person.

(2) "Care" means all services rendered by the state institutions as described in ORS 179.321 or by the Mental Health and Developmental Disability Services Division on behalf of those institutions. These services include, but are not limited to, such items as medical care, room, board, administrative costs and other costs not otherwise excluded by law.

(3) "Decedent's estate" has the meaning given "estate" in ORS 111.005 (15).

(4) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Resources.

(5) "Person," "person in a state institution" or "person at a state institution," or any similar phrase, means an individual who is or has been at a state institution described in ORS 179.321.

(6) "Personal estate" means all income and benefits as well as all assets, including all personal and real property of a living person, and includes assets held by the person's authorized representative and all other assets held by any other individual or entity holding funds or receiving benefits or income on behalf of any person: [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; 1989 c.348 §1]

179.620 Liability of person or estate for cost of care. (1) A person and the personal estate of the person, or a decedent's estate, is liable for the full cost of care. Full cost of care is established according to ORS 179.701.

(2) While the person is liable for the full cost of care, the maximum amount a person is required to pay toward the full cost of care shall be determined according to the person's ability to pay. Ability to pay is determined as provided in ORS 179.640.

(3) Upon the death of a person, the decedent's estate shall be liable for any unpaid cost of care. The liability of the decedent's estate is limited to the cost of care incurred on or after July 24, 1979. The decedent's estate shall not include assets placed in trust for the person by other persons. Collection of any amount from a decedent's estate shall be pursuant to ORS 179.740.

(4) Regardless of subsection (1) of this section and ORS 179.610 (6), assets held in trust by a trustee for a person are subject to laws generally applicable to trusts. [1959 c.652 §2; 1961 c.501 §1; 1973 c.823 §§122, 158; 1979 c.684 §2; 1989 c.348 §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; financial information; notice; order; hearing; appeal. (1) The Mental Health and Developmental Disability Services Division shall establish rules for determining ability to pay. The rules shall require, in addition to other relevant factors, consideration of the personal estate, the person's need for funds for personal support after release, and the availability of third-party benefits such as, but not limited to, Medicare or private insurance. The division may also consider the probable length of stay at the state institution.

(2) A person and the authorized representative of the person; if any, shall provide all financial information requested by the division which is necessary to determine the person's ability to pay. To determine ability to pay, the division may use any information available to the division, including information provided by the Department of Revenue from personal income tax returns pursuant to ORS 314.840, and homeowner and renter refund program returns. Upon request, the Department of Revenue shall release copies of tax returns to the division. Where the person or the person's authorized representative fails to provide evidence to demonstrate an inability to pay full cost of care,

the division may determine the person has the ability to pay the full cost of care.

(3) The division shall provide actual notice to the person and any authorized representative, if known to the division, of its determination by issuing an ability-to-pay order. The order shall state the person's full liability and the person's determined ability to pay. Actual notice means receipt by the person and the authorized representative of notice. The notice shall include a copy of the ability-to-pay order, a description of the person's appeal rights and the date upon which appeal rights terminate and state the address where a request for hearing may be mailed or delivered. At any time, the division may reissue an ability-to-pay order to notify an authorized representative as provided by ORS 179.653 (4).

(4) At any time during the person's stay at the state institution or within 36 months from the date the person is released, if the division receives new financial information which shows a change in the person's financial circumstances, the division shall consider the changed circumstances, and shall issue a new ability-to-pay order.

(5) Orders issued after the person is released shall not require the person to make payments toward the cost of care for more than 36 consecutive months following release. However, the division may collect beyond the 36-month period any payments which became due but were not paid within the 36 months following release. Any remaining balance of full cost of care shall be collected as provided in ORS 179.740.

(6) If a person or authorized representative disagrees with any ability-to-pay order issued pursuant to this section, the person or authorized representative may request a contested case hearing. To the extent practical, the hearing will be held at a location convenient to the person or the authorized representative. The request must be post-marked within 60 days from the date of the mailing of the ability-to-pay order. If the person or the authorized representative makes a timely request for a contested case hearing, the hearing and any appeal of the final hearing order shall be governed by ORS 183.413 to 183.497. If the person or the authorized representative fails to make a timely request for a contested case hearing, the ability-to-pay order shall be final and not subject to judicial review, except as subsequently modified by the division as provided in subsection (4) of this section.

(7) On appeal, regardless of other information presented, payment of the full cost of care can be ordered if the person or the authorized representative refuses to produce financial information which the Hearings

Officer determines is relevant and must be produced. [1959 c.652 §4; 1961 c.501 §2; 1967 c.549 §4, 1973 c.806 §3a; 1973 c.823 §§123, 159; 1989 c.348 §3]

179.643 [1969 c.257 §8, 1973 c.546 §4; repealed by 1989 c.348 §16]

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

179.650 [1959 c.652 §5; 1967 c.549 §5; 1969 c.591 §295; 1973 c.546 §5; 1973 c.806 §5a; repealed by 1989 c.348 §16]

179.653 Unpaid costs as lien on property; order; when appealable. (1) If any person or authorized representative refuses to pay for the cost of care as ordered by the division under ORS 179.640, the amount unpaid plus interest shall be a lien in favor of the State of Oregon. The lien shall arise as each payment is due under the order and shall continue until the liability with interest is satisfied. The lien shall be upon the title to and interest in the real and personal property of the personal estate.

(2) Prior to the filing of a distraint warrant as provided in ORS 179.655 (2), the lien shall only be valid against:

(a) Property of the person;

(b) Assets held by any authorized representative bound by the ability-to-pay order; and

(c) Assets subject to lien held by any person or entity having actual knowledge of the ability-to-pay order or the lien.

(3) Regardless of any other provision of law or statute which provides a procedure for establishing obligations, including the claim and payment provisions of ORS chapter 126, an authorized representative who has received notice and had an opportunity to request a contested case hearing shall comply with an ability-to-pay order upon demand by the Mental Health and Developmental Disability Services Division. The division may issue the demand any time after the order becomes final.

(4) An authorized representative who has not had an opportunity to request a contested case hearing, either because the authorized representative was not appointed at the time the ability-to-pay order became final, or was not given notice of the ability-to-pay order as required by ORS 179.640 (3), shall not be bound by the order of the division. To bind the authorized representative, the ability-to-pay order must be reissued and notice provided to the authorized representative pursuant to ORS 179.640 (3). The authorized representative shall have the same appeal rights as if the order had originally been issued to the authorized representative. After the order becomes final, the authorized representative shall be bound as provided in subsection (3) of this section. The division shall not issue an execution of a lien or foreclose against property held by or in the

control of the authorized representative until the authorized representative is bound by the order of the division.

(5) An authorized representative who is a trustee shall only be bound to the extent that the final order specifically finds that the trust assets of a trust fund are subject to claim by the division.

(6) If the authorized representative does not comply with the demand, the division may file with the probate court a motion to require the authorized representative to comply. If the authorized representative is a conservator or guardian appointed under ORS chapter 126, the motion shall be filed in that proceeding. The motion shall be accompanied by an affidavit stating that the order is final, that demand has been made on the authorized representative and that the order has not been complied with.

(7) The authorized representative may object to the motion only on grounds that the order is not final, the order is not binding on the authorized representative as provided in this section or that all required payments have been made. The objection must be by affidavit.

(8) If the authorized representative objects by affidavit, the court shall hear the motion. If the court determines that the ability-to-pay order is final and binding on the authorized representative and that all required payments have not been made, the court shall order the authorized representative to comply with the ability-to-pay order.

(9) If the authorized representative fails to object by affidavit within 15 days of the filing of the motion, the court shall order the authorized representative to comply with the order. An authorized representative who wilfully fails or refuses to comply may be found in contempt of court and may be held personally responsible.

(10) Nothing in this section shall affect the requirement that the division issue a new order in accordance with ORS 179.640 (4) if financial circumstances have changed. [1973 c.806 §9a; 1989 c.348 §4]

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; distraint warrant. (1) If any amount due the Mental Health and Developmental Disability Services Division for the cost of care of a person 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 may issue a distraint warrant directed to any county of the state.

(2) After the receipt of the distraint warrant, the clerk of the county shall enter in the County Clerk Lien Record the name of the person, the amount for which the distraint warrant is issued and the date the distraint warrant is recorded. The amount of the distraint warrant shall become a lien upon the title to and interest in any property owned or later acquired by the debtor against whom it is issued, and it may be enforced by the division in the same manner as a judgment of the circuit court.

(3) In the event that an ability-to-pay order issued pursuant to ORS 179.640 (3) or (4) becomes final, and supersedes a previous final ability-to-pay order on which a distraint warrant had been issued, the division shall issue a new distraint warrant superseding the previous distraint warrant, and the lien shall conform to the new order.

(4) The division may direct a copy of the distraint warrant 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 fee. The sheriff shall return the distraint warrant to the division and pay to it the money collected not less than 60 days from the date the copy of the distraint warrant was directed to the sheriff.

(5) The division may issue the directive provided in subsection (4) of this section to any agent of the division. In executing the distraint warrant, the agent shall have the same powers conferred by law upon sheriffs. However, the agent is not entitled to any fee or compensation in excess of actual expenses incurred in the performance of this duty. [1973 c.806 §§10, 11, 12; 1983 c.696 §8; 1989 c.348 §5]

Note: See note under 179.653.

179.660 Guardian or conservator for estate of person in institution. If the Mental Health and Developmental Disability Services Division believes a person at a state institution needs a guardian or conservator, or both, and one has not been appointed, the division may request that the district attorney institute proper proceedings for this appointment in the court having probate jurisdiction. The county of which the person is a resident, or was a resident at the time of admittance, shall be the basis for determining the appropriate district attorney to be contacted. [1959 c.652 §6; 1973 c.823 §124; 1989 c.348 §6]

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 cost-of-care rates. The cost-of-care rates for a person shall be determined by the division. The rates established shall be reasonably related to current costs of the institutions as described in ORS 179.321. Current costs shall exclude costs of outpatient services as defined in ORS 430.010 (4) and any other costs not directly related to the care for a person at a state institution. [1967 c.549 §2 (enacted in lieu of 179.700), 1973 c.806 §6; 1989 c.348 §7]

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

179.711 Remittance of amounts due; refunds. (1) Remittance of amounts due for care of persons at state institutions as provided in ORS 179.610 to 179.770 shall be made to the Mental Health and Developmental Disability Services Division.

(2) The division shall refund any unearned payment for the care of a person at a state institution where payment has been made in advance and the person dies or is discharged before the end of the period for which payment was made. Any refund shall be paid to the person, to the authorized representative of the person or to the decedent's estate 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. Any amounts necessary for payment of 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; 1989 c.348 §8]

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

179.721 [1959 c.652 §13; 1973 c.546 §9; repealed by 1989 c.348 §16]

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

179.731 Waiver of collection of amount payable. If the division determines that collection of the amount payable under ORS 179.610 to 179.770 for the cost of care of a person would be detrimental to the best interests of the person or the division, the division may waive the collection of part or all of the amount otherwise payable. [1959 c.652 §§16, 17, 18, 1961 c.501 §3, 1973 c.546 §10; 1973 c.806 §7a; 1989 c.348 §9]

179.740 Collection from estates; settlement. (1) The division may file a claim against the decedent's estate for any unpaid charges under ORS 179.620 (3). This shall be done in the same manner as claims of creditors and with the priorities provided in ORS 115.125.

(2) If, within 90 days following the person's death, the person's estate is not otherwise being probated, the division may

petition any court of competent jurisdiction for the issuance of letters of administration or testamentary. This action would be for the purpose of collecting the full amount of unpaid cost of care as determined by ORS 179.701 and limited by ORS 179.620 (3). 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 settle any claim against the decedent's estate during the pendency of the probate proceeding by accepting other security or in any other equitable manner. The division may waive all or part of the claim if it finds collection of this amount due to be inequitable.

(4) The division shall not recover amounts which exceed the total cost of care of the deceased person as computed under ORS 179.701 and limited by ORS 179.620 (3). [1959 c.652 §§16, 17, 18; 1961 c.501 §4, 1969 c.591 §297; 1973 c.546 §11; 1979 c.684 §4; 1989 c.348 §10]

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 the person does or does not contribute to the cost of the care.

(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; 1989 c.348 §11]

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

RULES

179.770 Adoption of rules; employees.

(1) In accordance with any applicable provisions of ORS 183.310 to 183.550, the division may adopt any rules necessary to carry out ORS 179.610 to 179.770.

(2) Subject to any applicable provision of the State Personnel Relations Law, the division may employ employees necessary to carry out ORS 179.610 to 179.770. [Subsections (1) and (2) enacted as 1959 c.652 §20; subsection (3) as 1959 c.652 §12; 1989 c.348 §12]

STATE EXECUTIVE DEPARTMENT AND ORGANIZATION
