

Chapter 421

1989 EDITION

Department of Corrections Institutions; Compacts

SITING OF MEDIUM SECURITY FACILITIES

(Temporary provisions relating to siting of medium security facilities are compiled as notes preceding ORS 421.005.)

SITING OF MINIMUM SECURITY FACILITIES

(Temporary provisions relating to siting of minimum security facilities are compiled as notes preceding ORS 421.005.)

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SITING OF MEDIUM SECURITY FACILITIES

Note: Sections 1 to 13, chapter 789, Oregon Laws 1989, provide:

Sec. 1. The Legislative Assembly finds that:

(1) The 1987 Legislative Assembly, through enactment of chapter 321, Oregon Laws 1987, directed the Governor's Task Force on Corrections Planning to develop a state-wide strategic corrections plan that would review and evaluate the state's corrections facilities and programs and propose changes to increase the overall efficiency and effectiveness of the state corrections system. Among other things, the task force was directed to set forth the need for additional corrections facilities and recommended changes in corrections facility siting procedures.

(2) In August 1988, the task force issued its plan setting forth a considerable need for additional prison space during the coming decade and making recommendations for changes in both short-term and long-term corrections facility siting procedures. In the short-term, the task force recommended retention and modification of the siting procedures contained in chapter 321, Oregon Laws 1987, until such time as the recommended long term changes can be implemented.

(3) The long-term changes recommended by the task force will take several years to implement fully. There is an immediate need to construct and operate a corrections facility capable of accommodating at least 500 medium security inmates. [1989 c 789 §1]

Sec. 2. As used in this Act, unless the context otherwise requires:

(1) "Authority" means the Emergency Corrections Facilities Siting Authority as established in section 7, chapter 321, Oregon Laws 1987.

(2) "Corrections facility" means the facility described in section 3 of this Act.

(3) "Department" means the Department of Corrections. [1989 c 789 §2]

Sec. 3. (1) The Department of Corrections shall determine two locations for corrections facilities pursuant to the provisions of this Act.

(2) The department shall establish, by rule, mandatory and desirable criteria to be used in the nominations made under section 4 of this Act. [1989 c 789 §3]

Sec. 4. Within 105 days after the effective date of this Act [July 24, 1989], the department shall:

(1) Nominate no more than five sites in the state, based on the criteria established by the department pursuant to chapter 262, Oregon Laws 1989, and the following criteria.

(a) The interest demonstrated by local jurisdictions in having a site selected for a corrections facility within their jurisdiction.

(b) The availability or the ability of the local jurisdictions to provide adequate infrastructure to serve the facility.

(c) Natural features that allow design to promote compatibility with surroundings.

(d) The availability of or ability to provide local support facilities.

(e) The cost of developing the proposed facility, including but not limited to:

(A) The cost of land acquisition and construction including the availability of land or facilities owned by the State of Oregon.

(B) The cost of operating the facility.

(f) The location and dispersal of social service residential facilities and other corrections facilities.

(2) Publish an initial report stating the conclusions of the department with regard to each site nominated.

(3) Provide copies of the report to:

(a) Each of the county commissioners in the county where any of the nominated sites are located;

(b) Each of the city council members where that site is located if any one of the sites is in a city;

(c) Governmental agencies which may be called upon to provide services to the facility at any of the sites, including police, fire, water, sewage, roads and public transit; and

(d) Any member of the public who requests a copy and pays a fee as set by the department.

(4) Notify any affected neighborhood association of the site study, but such notice shall not provide any property right to such association or its members.

(5) Provide media notice regarding the process and the sites nominated, including but not limited to publication in a newspaper of general circulation in the county or counties where the sites are located. [1989 c.789 §4]

Sec. 5. Within 105 days after the effective date of this Act [July 24, 1989], the department shall hold a meeting or multiple meetings with the elected local government officials involved to discuss the site selections, the onsite and off site improvements needed at each site and the site preferences of the local governments. [1989 c.789 §5]

Sec. 6. (1) The Emergency Corrections Facilities Siting Authority established pursuant to section 7, chapter 321, Oregon Laws 1987, is continued for the purposes set forth in this Act.

(2) The authority shall:

(a) Direct such staff as assigned to it by the department,

(b) Consult with the department, local government officials and others as it deems necessary;

(c) Hold hearings, and

(d) Make decisions on the siting of corrections facilities, as set forth in section 7 of this Act. [1989 c 789 §6]

Sec. 7. (1) Within 30 days after nomination of sites as set forth in section 4 of this Act, the authority shall hold a hearing within the region where each nominated site is located to receive department, local government, neighborhood, law enforcement and public testimony regarding the sites nominated and conditions proposed therefor.

(2) Not later than 10 days before the hearing held by the authority as required by subsection (1) of this section, any affected local government or any person may submit proposed conditions to the authority. Each proposed condition shall:

(a) Be stated separately;

(b) Be in writing;

(c) Identify the site to which the condition, if approved, would attach,

(d) Be specific;

(e) Directly relate to any site or its proposed development, infrastructure, access thereto or physical condition on or in the immediate vicinity of such site, and

(f) Be supported by a statement of the need or reasons therefor.

(3) Within 45 days after nomination of the sites as set forth in section 4 of this Act, the authority shall select and rank in order of preference two sites and specify site development conditions for each site, based on substantial evidence in the record as a whole and

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supported by findings, which findings shall address only:

(a) The criteria specified by the department pursuant to chapter 262, Oregon Laws 1989 (Enrolled House Bill 3496), and in section 4 of this Act.

(b) The reasons for not adopting any of the proposed conditions that were submitted in accordance with subsection (2) of this section for the selected sites

(4) If one or more of the nominated sites meets the mandatory criteria established by the department pursuant to section 3 of this Act and the local jurisdiction demonstrates interest as described in subsection (5) of this section, and the authority selects a site that has not demonstrated interest as described under subsection (5) of this section, the authority shall make findings that demonstrate why it selected the site in which the local jurisdiction did not demonstrate interest

(5) A local jurisdiction may demonstrate interest by presenting to the site nomination committee a resolution that sets forth such interest no later than 30 days from the effective date of this Act. [1989 c 789 §7]

Sec. 8. (1) As soon as practicable after making the siting decisions, the authority shall notify the Governor and shall make available for the Governor's review any documents or materials which the Governor may request.

(2) Within 15 days after receiving the notification required by subsection (1) of this section, the Governor shall approve or disapprove the two sites as selected and ranked by the authority.

(3) If the Governor disapproves one or both of the sites, within 10 days the authority shall make and rank an additional selection or selections, as appropriate, from the nominated sites and notify the Governor of the selection. Within 15 days of receiving the new selection, the Governor shall approve or disapprove the two sites as selected and ranked by the authority.

(4) One site may be developed up to a capacity to accommodate 1,500 inmates and, after the approval of the Legislative Assembly, up to a capacity to accommodate 3,000 inmates. A facility sited under this Act may include minimum security inmates provided that at least two-thirds of the facility is capable of accommodating medium security inmates. [1989 c.789 §8]

Sec. 9. (1) Notwithstanding ORS 169.690, 197.180, 215.130 (4) and 227.286 or any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, the decisions of the authority, if approved by the Governor, shall bind the state and all counties, cities and political subdivisions in this state as to the approval of the sites and the construction and operation of the proposed corrections facilities. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary for construction and operation of the facilities, subject only to the conditions of the siting decisions.

(2) Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(3) Nothing in this Act expands or alters the obligations of cities, counties and political subdivisions to pay for infrastructure improvements for the proposed corrections facilities. [1989 c 789 §9]

Sec. 10. (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825 or any other law, exclusive jurisdiction for review of any decision relating to the establishment, addition to, remodeling or siting of a corrections facility including the establishment of criteria under section 4 of this Act, the nomination of sites under section 4 of this Act, or any actions under section 7 or 8 of this Act is conferred upon the Supreme Court.

(2) Proceedings for review shall be instituted when any person or local government adversely affected files a petition with the Supreme Court that meets the following requirements

(a) The petition shall be filed within 21 days of issuance of the specific decision on which the petition is based, except that a petition based on a decision to issue criteria pursuant to chapter 262, Oregon Laws 1989 (Enrolled House Bill 3496), shall be filed within 21 days of the issuance of the criteria or 21 days after the effective date of this Act, whichever is later. Notwithstanding the ranking of a site as provided in this Act, a decision made pursuant to section 7 or 8 of this Act with respect to any site may be reviewed by the Supreme Court as provided in this Act

(b) The petition shall state the nature of the decision the petitioner desires reviewed, in what manner the decision below rejected the position raised by the petitioner below and shall state, by supporting affidavit, the facts showing how the petitioner is adversely affected. In the case of a decision by the authority, the petitioner is adversely affected only when the petitioner can establish by clear and convincing evidence in the affidavit that:

(A) The petitioner participated before the authority;

(B) The petitioner will be within sight or sound of the facility or is affected economically in excess of \$5,000 in value; and

(C) The petitioner proposed conditions as required by subsection (2) of section 7 of this Act, which were rejected by the authority.

(c) Copies of the petition shall be served by registered or certified mail upon the department

(d) Within 30 days after service of the petition, the department shall transmit to the Supreme Court, or a special master it designates, the original or a certified copy of the entire record and any findings that may have been made. The court shall not substitute its judgment for that of the Governor, the department or the authority as to any issue of fact or issue within executive branch discretion.

(3) If the petition is for review of a decision made by the siting authority, the record shall include only

(a) The report of the authority.

(b) The conditions, if any, on the nomination.

(c) The transcript of the hearing before the authority

(d) The transcript of the decision-making meeting of the authority

(e) The authority findings and decision.

(4) Upon review, the Supreme Court may reverse or remand the decision if the Supreme Court finds the department, the authority or the Governor:

(a) Exceeded the statutory or constitutional authority of the decision-maker, or

(b) Made a decision not supported by substantial evidence. For purposes of this subsection and subsection (5) of this section, "substantial evidence" means evidence which, taken in isolation, a reasonable mind could accept as adequate to support a conclusion. The substantiality of the evidence shall not be evaluated by considering the whole record

(5) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court. [1989 c.789 §10]

Sec. 11. After a corrections facility is sited and all appeals are exhausted, the authority shall cease to exist. [1989 c.789 §11]

Sec. 12. The Legislative Assembly declares that in order to assure the health, safety and welfare of the people in this state, it is necessary to provide, in land

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use goals and regulations and comprehensive plans and land use regulations, for adequate opportunities for siting of prison facilities in this state. [1989 c.789 §12]

Sec. 13. (1) The Land Conservation and Development Commission shall amend the land use planning goals, and rules, adopted under ORS chapter 197, to establish streamlined siting procedures for corrections facilities

(2) The commission shall report on its plan to meet the requirements of subsection (1) of this section by a report to the Joint Legislative Committee on Land Use and the Governor by September 30, 1990. [1989 c.789 §13]

SITING OF MINIMUM SECURITY FACILITIES

Note: Sections 2 to 10 and 12, chapter 321, Oregon Laws 1987, provide

Sec. 2. The Legislative Assembly finds that.

(1) There is a shortage of minimum and medium security corrections facilities in this state. Immediate corrections facility planning and siting requires an expedited process. An emergency need exists to site an additional 1,000 minimum security beds throughout this state. There is no state-wide strategic corrections plan to meet these needs.

(2) The state-wide land use planning goals do not adequately address the need to site corrections facilities

(3) Because the need for additional corrections facilities was not apparent when the state-wide land use planning goals were developed and when many of the comprehensive land use plans were acknowledged, siting of such facilities could involve prolonged proceedings to obtain related plan amendments and zoning approvals. Because of the lack of an overall siting program, local comprehensive plans and regulations are not equipped to deal with an expedited siting program.

(4) The uncoordinated planning and development of corrections facilities threatens the stability of the justice and corrections processes of this state. Once emergency needs are met, the promotion of coordinated corrections planning requires the development of a state-wide strategic corrections plan.

(5) Once the emergency has been met, it is the intent of the Legislative Assembly that the state-wide strategic corrections plan will be the determinant for developing any corrections facilities in the future. [1987 c.321 §2]

Sec. 3. As used in this Act, unless the context otherwise requires:

(1) "Authority" means the Emergency Corrections Facilities Siting Authority as established in section 7 of this Act.

(2) "Certification" means an emergency need as established by subsection (6) of section 6 of this Act.

(3) "Committee" means the site nomination committee established under subsection (2) of section 8 of this Act.

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

(5) "Emergency plan" means the emergency facilities siting plan developed by the task force under section 4 of this Act and adopted by the Governor under section 6 of this Act.

(6) "Strategic corrections plan" means the plan specified under section 12 of this Act.

(7) "Task force" means the task force on corrections planning created by Governor's Executive Order No. EO-87-01 [1987 c.321 §3]

Sec. 4. The task force shall develop the emergency plan for the siting of not more than 1,000 additional

minimum security corrections beds in this state. The emergency plan developed by the task force shall

(1) Set forth the nature of the need for additional minimum security beds;

(2) Identify by county or multicounty area the geographic location of each additional facility needed;

(3) Set forth the number of beds to be available at each facility;

(4) Set forth the specific use contemplated and the population needs to be served by each facility; and

(5) Establish a list of mandatory and desirable criteria to be used in siting each facility including the level of security to be maintained at the facility. [1987 c.321 §4]

Sec. 5. (1) Notwithstanding any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, approval is hereby given for the siting, construction and operation of a 761-bed expansion of the Eastern Oregon Correctional Institution, in addition to the beds described in section 4 of this Act. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary for construction and operation of the facility.

(2) Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate. [1987 c.321 §5]

Sec. 6. (1) The task force shall publish notice of the proposed emergency plan in the bulletin of the Secretary of State and in a newspaper of general circulation in each county where a need for a minimum security correctional facility is identified as soon after July 1, 1987, as practical, but no later than August 5, 1987.

(2) The notices required by subsection (1) of this section shall include a statement of the right of any person to submit comments in writing. The task force may, in its discretion, hold hearings and accept oral comment.

(3) The task force shall consider the comments received under subsection (2) of this section and revise the proposed emergency plan as it deems appropriate.

(4) The task force shall submit the proposed emergency plan to the Governor by September 30, 1987.

(5) The Governor shall review the proposed emergency plan and shall adopt an emergency corrections facility siting plan by executive order on or before October 30, 1987.

(6) Prior to October 1, 1989, the Governor may issue one or more certificates of emergency need for a corrections facility which shall include any mandatory or desirable criteria to be used in siting the facility.

(7) Any appeal of the provisions of the executive order issued pursuant to subsection (5) of this section shall be made pursuant to the provisions of section 10 of this Act. [1987 c.321 §6]

Sec. 7. (1) There is established an Emergency Corrections Facilities Siting Authority. Subject to the approval of the Governor, the authority shall make corrections facility site selection decisions as set forth in section 9 of this Act. The authority shall consist of five persons, to be appointed by the Governor and to serve at the Governor's pleasure. The Governor shall appoint one of its members as chair.

(2) A majority of the authority members constitutes a quorum for the transaction of business. Members of the authority are entitled to compensation and expenses as provided in ORS 292.495. Any vacancy shall be filled by the Governor.

(3) The authority shall cease to exist when all the siting decisions required by sections 7 to 10 of this Act

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have been made and the time for all appeals is exhausted or by July 1, 1990, whichever occurs first

(4) The authority shall

(a) Direct such staff as assigned to it by the department;

(b) Consult with the site nomination committees, local government officials and others as it deems necessary;

(c) Hold hearings, and

(d) Make decisions on the emergency siting of minimum security corrections facilities.

(5) As soon as practicable after making a siting decision, the authority shall notify the Governor and shall make available for the Governor's review any documents or materials which the Governor may request. [1987 c 321 §7]

Sec. 8. (1) Within 10 days after receiving a certification, the department shall establish a site nomination committee for that certification.

(2) A site nomination committee shall consist of

(a) A representative of the department;

(b) A representative of the county, multicounty area or city in which the facility is to be located, and

(c) The county sheriff or a representative of the county sheriff from the multicounty area in which the facility is to be located

(3) The department shall provide clerical, technical and support staff to each committee from its own personnel or by contract with an appropriate provider.

(4) Not more than 70 days after issuance of the certification, the committee shall

(a) Nominate three sites in the county or multicounty area based on the criteria set out in the certificate of emergency need and the following criteria

(A) The availability or the ability of the local jurisdictions to provide adequate infrastructure to serve the facility,

(B) Natural features that allow design to promote compatibility with surroundings;

(C) The availability of local support facilities,

(D) The location and dispersal of facilities; and

(E) If the facility will involve new construction, state-wide land use planning goals that address

(i) Agricultural lands, unless the facility will be substantially devoted to agricultural uses;

(ii) Forest lands, unless the facility will be substantially devoted to forest uses;

(iii) Open spaces, scenic and historic areas and natural resources,

(iv) Areas subject to natural disasters and hazards, and

(v) Coastal shorelands

(b) Publish an initial report stating the conclusions of the committee with regard to each of the sites nominated

(c) Provide copies of the report to:

(A) Each of the county commissioners in the county where any of the nominated sites are located;

(B) If any one of the sites is in a city, each of the city council members where that site is located,

(C) Governmental agencies which may be called upon to provide services to the facility at any of the sites, including police, fire, water, sewage, roads and public transit; and

(D) Any member of the public who requests a copy and pays a fee as set by the department.

(d) Notify any affected neighborhood association of the site study, but such notice shall not provide any property right to such association or its members.

(c) Provide media notice regarding the process and the sites nominated, including, but not limited to, publication in a newspaper of general circulation in the county or counties where the sites are located

(5) Within 90 days after certification, the department shall hold a meeting or multiple meetings with the elected local government officials involved to discuss the site selections, the on and off site improvements needed at each site and the site preferences of the local governments

(6) Not later than 10 days before the hearing held by the authority as required by subsection (7) of this section, any affected local government or any person may submit proposed conditions to the authority. Each proposed condition shall:

(a) Be stated separately,

(b) Be in writing,

(c) Identify the site to which the condition, if approved, would attach,

(d) Be specific;

(e) Directly relate to any site or its proposed development, infrastructure, access thereto or physical condition on or in the immediate vicinity of such site, and

(f) Be supported by a statement of the need or reasons therefor

(7) Within 120 days after certification, the authority shall hold a hearing within the county or multicounty area where the three nominated sites are located to receive department, local government, neighborhood, law enforcement and public testimony regarding the sites nominated and conditions proposed therefor.

(8) Within 135 days after certification, the authority shall select a site and specify site development conditions, based on substantial evidence in the record as a whole and supported by findings, which findings shall address only

(a) The criteria specified in the certificate and in paragraph (a) of subsection (4) of this section

(b) The reasons for not adopting any of the proposed conditions that were submitted in accordance with subsection (7) of this section for the selected site. [1987 c 321 §8]

Sec. 9. (1) Within 15 days after receiving the notification required by subsection (5) of section 7 of this Act, the Governor shall approve or disapprove the site selected by the authority. Notwithstanding ORS 169.690, 197.180, 215.130 (4) and 227.286, or any other provision of law, including but not limited to statutes, ordinances, regulations and charter provisions, the decision of the authority, if approved by the Governor, shall bind the state and all counties, cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed corrections facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the facility, subject only to the conditions of the siting decision.

(2) Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(3) Nothing in this Act expands or alters the obligations of cities, counties and political subdivisions to pay for infrastructure improvements for the proposed corrections facilities [1987 c 321 §9]

Sec. 10. (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825 or any other law, exclusive jurisdic-

tion for review of any decision relating to the emergency plan adopted under section 6 of this Act, the establishment, addition to, remodeling or siting of a correctional facility, any findings made under section 8 of this Act or any decisions or actions under section 9 of this Act, is conferred upon the Supreme Court.

(2) Proceedings for review shall be instituted when any person or local government adversely affected files a petition with the Supreme Court which meets the following requirements:

(a) The petition shall be filed within 21 days of issuance of the decision on which the petition is based.

(b) The petition shall state the nature of the decision the petitioner desires reviewed, in what manner the decision below rejected the position raised by the petitioner below, and shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected. In the case of a decision by the authority, the petitioner is adversely affected only when the petitioner can establish by clear and convincing evidence in the affidavit that

(A) The petitioner participated before the authority;

(B) The petitioner will be within sight or sound of the facility or is affected economically in excess of \$5,000 in value, and

(C) The petitioner proposed conditions as required by subsection (7) of section 8 of this Act, which were rejected by the authority.

(c) Copies of the petition shall be served by registered or certified mail upon the department.

(d) Within 30 days after service of the petition, the department shall transmit to the Supreme Court or a special master it designates the original or a certified copy of the entire record and any findings that may have been made. If the petition is for review of a decision by the authority, the record shall include only the certificate of need, the report of the site nomination committee, the notice, the conditions, the transcript of the hearing, the transcript of the decision-making meeting, the decision and the findings. The court shall not substitute its judgment for that of the Governor or the authority as to any issue of fact or issue within executive branch discretion.

(e) Upon review, the Supreme Court may affirm, reverse or remand the decision of the authority only if the court finds that the decision is not supported by any evidence in the record.

(f) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court [1987 c 321 §10]

Sec. 12. (1) The task force shall develop a state-wide strategic corrections plan that reviews and evaluates the state's corrections facilities and programs and proposes changes to increase the overall efficiency and effectiveness of the state corrections system. The task force shall submit this plan to the Governor no later than September 1, 1988, and to the Sixty-fifth Legislative Assembly.

(2) The task force shall establish procedures to insure public input into the development of the plan, which shall include public hearings at such times and places as the task force shall determine.

(3) The plan developed by the task force shall.

(a) Set forth the need for.

(A) All types of corrections facilities, including minimum, medium and maximum security facilities to serve specific purposes or population needs; and

(B) Alternatives to incarceration.

(b) Identify the responsibilities that should be borne by the state, counties, cities and other units of government with respect to corrections facilities and programs.

(c) Recommend changes in legislation bearing on corrections and the criminal justice system, to the extent the task force concludes that changes are advisable.

(d) Recommend changes in corrections facility siting procedures, including procedures mandated by the land use planning process, to the extent that the task force concludes that changes are advisable.

(e) Identify corrections data collection systems presently available in this state and recommend changes to the extent that the task force concludes that changes are advisable.

(f) Define the existing responsibilities and relationships between the department, the Criminal Justice Council, the Community Corrections Advisory Board, and local governmental units and recommend changes to the extent that the task force concludes that changes are advisable.

(g) Address such other issues as the Legislative Assembly and the Governor from time to time may request [1987 c.321 §12]

DEFINITIONS

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

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

(2) "Department of Corrections institutions" means those Department of Corrections facilities used for the incarceration of persons sentenced to the custody of the Department of Corrections, and includes the satellites, camps or branches of those facilities.

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

(4) "Discharge" means any lawful release from a state correctional institution pursuant to the expiration of a judicial sentence or other incarcerative sanction.

(5) "Release authority" means an entity having authority to grant release in a particular case. [Amended by 1959 c 637 §6, 1965 c 616 §47, 1969 c.502 §8; 1971 c 212 §1, 1983 c 505 §7; 1987 c 320 §7, 1989 c 790 §55]

ADMINISTRATION

421.010 [Renumbered 421 605]

421.012 [Formerly 421.086, repealed by 1969 c.502 §27]

421.015 [Amended by 1953 c.476 §5, repealed by 1965 c.616 §48 (421.016 enacted in lieu of 421 015)]

421.016 [1965 c 616 §49 (enacted in lieu of 421 015); 1969 c 502 §1, 1971 c 212 §2; repealed by 1987 c 320 §246]

421.020 [Amended by 1953 c.476 §5; repealed by 1965 c.616 §101]

421.025 [Amended by 1953 c.476 §5; repealed by 1959 c.80 §2]

421.030 [Renumbered 421 615]

421.035 [Amended by 1955 c.660 §28, repealed by 1963 c.554 §3]

421.055 Cost-accounting system. The Director of the Department of Corrections may set up in the Department of Corrections

institutions a cost-accounting system in connection with the manufacture or production of all goods, wares or merchandise in those institutions. The system shall take into consideration a reasonable compensation to be set aside for the labor of any inmate employed in any industry in those institutions. This compensation shall be held for the benefit of the inmate or be remitted to the dependents of the inmate. [Amended by 1965 c 616 §50, 1987 c 320 §160]

421.060 Penitentiary-Correctional Institution Revolving Fund. (1) There is created a fund to be known as the Penitentiary-Correctional Institution Revolving Fund. All moneys accruing to the revolving fund from the sources mentioned in subsection (2) of this section shall constitute a continuing appropriation from the General Fund of the State Treasury and all sums so accruing to the revolving fund shall be credited to the revolving fund as they are deposited in the State Treasury.

(2) All funds received from the sale of products under ORS 421.325 shall be deposited in the State Treasury, to be credited and become part of the Penitentiary-Correctional Institution Revolving Fund. [Amended by 1959 c 687 §7]

421.065 Use of revolving fund; limitations. (1) The Penitentiary-Correctional Institution Revolving Fund shall be available for:

(a) The purchase of all necessary machinery and equipment for establishing, equipping and enlarging any industry in a Department of Corrections institution.

(b) The purchase of raw materials, the payment of salaries and wages and all other expenses necessary and proper in the judgment of the director in the conduct and operation of industries in each institution.

(c) Transfers to the Inmate Injury Fund created by ORS 655.540 for the payment of expenses therefrom authorized by law.

(2) No part of the fund shall be expended for maintenance, repairs, construction or reconstruction, or general or special expenses of a Department of Corrections institution, other than the industrial plants.

(3) The transfers referred to in paragraph (c) of subsection (1) of this section may be authorized by the Legislative Assembly, or the Emergency Board if the Legislative Assembly is not in session, whenever it appears to the Legislative Assembly or the board, as the case may be, that there are insufficient moneys in the Inmate Injury Fund for the payment of expenses therefrom authorized by law. [Amended by 1959 c.687 §8, 1965 c.616 §51; 1975 c.631 §2; 1987 c.320 §161]

421.070 [Amended by 1959 c.687 §9, repealed by 1965 c.616 §101]

421.075 [Amended by 1955 c.389 §1; 1959 c.687 §10; 1965 c.616 §52, 1969 c.597 §132, repealed by 1983 c.574 §5]

421.077 [1975 c.443 §1; repealed by 1979 c.204 §1]

421.080 [1955 c.660 §1; renumbered 421.705]

421.082 Joint Corrections Education Planning and Development Team; membership; duties and powers; report to Emergency Board. (1) A Joint Corrections Education Planning and Development Team shall be established, with membership to consist of staff from the Office of Community College Services of the Department of Education and the Department of Corrections. The membership shall include individuals with professional experience in correctional education.

(a) Department of Education staff shall be appointed by the Commissioner for Community College Services, who shall retain administrative control and accountability for the work of that staff.

(b) Department of Corrections staff shall be appointed by the director, who shall retain administrative control and accountability for the work of that staff.

(c) The chairperson of the team shall be the Administrator of Correctional Education.

(2) The Joint Corrections Education Planning and Development Team shall be charged with designing and developing an educational delivery system which can be operated by the Department of Corrections within the existing correctional institutions, in community-based programs and through other agencies and institutions, both public and private, to provide a full range of educational services and programs for inmates, parolees and probationers.

(a) In designing the delivery system, the team shall consider results of the State Corrections Education Commission report dated September 30, 1974, the First Annual Joint Planning and Development Team Report dated January 1977, the Northwest Regional Lab Report dated 1986 and the Institution for Economic and Policy Studies, Inc. report dated April 26, 1988.

(b) Following a planning phase, an operational program shall be undertaken by the Department of Corrections in the first year and continue through the biennium.

(c) A report on the planning and initial implementation shall be prepared by the team and presented jointly to the Emergency Board. The report shall include a cost benefit evaluation of educational programs in the corrections system.

(3) The Chancellor of the State Board of Higher Education may name a staff member

to the Joint Corrections Education Planning and Development Team. If appointed, the staff member shall serve as a full member of the Joint Corrections Education Planning and Development Team and the Chancellor shall retain administrative control and accountability for the work of the staff member. [1975 c 443 §2; 1987 c 320 §162, 1989 c.363 §1]

421.083 [1955 c 660 §2; renumbered 421.710]

421.084 Inmate functional literacy program; contents. (1) The Joint Corrections Education Planning and Development Team shall develop, and the Administrator of Correctional Education shall design a functional literacy program for all individuals under the supervision of the Department of Corrections. The program shall:

(a) Test individuals for functional literacy level. Testing for basic intelligence, learning disabilities, developmental disabilities and adaptive behavior skills shall be administered as needed except that the administrator may accept equivalent test results from other sources;

(b) Be available to all individuals testing below a functional literacy level which is defined as a score of 225 on the Oregon Basic Adult Skills Inventory System functional literacy test or a 7.0 grade equivalency on other standardized tests;

(c) Consist of a minimum of three hours of day or evening instruction in functional literacy per week and provide progress testing and certification;

(d) Provide strong incentives for entering and completing the program; and

(e) Maintain records of an individual's achievement in the program and make those records available to the State Board of Parole and Post-Prison Supervision.

(2) For the purposes of this section, "functional literacy" means those educational skills necessary to function independently in society, including but not limited to, reading, writing, comprehension and arithmetic computation. [1989 c 363 §3]

Note: Section 5, chapter 363, Oregon Laws 1989, provides:

Sec. 5. The functional literacy program required to be designed and developed under section 3 of this Act [421 084] shall be operative by July 1, 1991. [1989 c 363 §5]

INMATE RIGHTS

421.085 Experimentation on inmates prohibited; inmate's right to judicial restraint of violation; action for damages.

(1) As used in this section:

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

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

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

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

(3) Notwithstanding ORS 137.260, an inmate in any Department of Corrections institution is entitled to maintain an action to restrain any violation of this section or to maintain an action to recover damages caused by a violation of this section. [1973 c.371 §2; 1987 c.320 §163]

421.086 [1955 c 660 §11; renumbered 421 012]

421.095 Right of inmate to patent or copyright; right to dispose of and proceeds from patented or copyrighted material. (1) Any inventions, manuscripts or compositions prepared by an inmate of any Department of Corrections institution may be patented or copyrighted by the inmate. Any inmate shall be entitled to publish, exhibit, sell or otherwise dispose of any of these inventions, manuscripts, compositions or any rights pertaining thereto in accordance with rules to be determined by the Director of the Department of Corrections.

(2) While an inmate is imprisoned, any proceeds resulting from any rights acquired pursuant to this section shall be deposited in the account of the inmate. [1973 c 210 §2, 1987 c.320 §164]

Note: Section 1, chapter 486, Oregon Laws 1987, provides:

Sec. 1. (1) A person who while an inmate of a penal or correctional institution in this state was subjected to radiation as part of a study on the effects of radiation conducted under the auspices of the Pacific Northwest Research Foundation between the dates of 1963 and 1973 is entitled to:

(a) Receive an annual evaluation of the consequences of the radiation experiments and care or treatment for any condition directly related to such experiments;

(b) Have evaluation and care or treatments described in paragraph (a) of this subsection provided by qualified professionals of the Oregon Health Sciences University or by other qualified professionals not employed by the Department of Corrections; and

(c) Maintain an action to obtain the services identified under this section without any limitation of time when the action must be commenced

(2) The examination, care and treatment required under subsection (1) of this section shall be without expense to the person. Costs shall be paid by the Department of Corrections. [1987 c.486 §1]

CUSTODY OF INMATES

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

(2) The person of an inmate sentenced to imprisonment in the Department of Corrections institution is under the protection of the law and the inmate shall not be injured except as authorized by law. [Amended by 1953 c 476 §5, 1969 c.502 §9; 1987 c 158 §75; 1987 c 320 §165]

421.110 [Amended by 1955 c.532 §1, subsection (3) of 1959 Replacement Part enacted as 1955 c.485 §2, 1961 c.412 §2, renumbered 137 240]

421.112 [1955 c 660 §10; 1961 c 412 §3; renumbered 137 250]

421.115 [Repealed by 1955 c 532 §3]

421.120 Reduction in term of sentence of inmates; rules. (1) Each inmate confined in execution of the judgment of sentence upon any conviction in the Department of Corrections institution, for any term other than life, and whose record of conduct shows that the inmate faithfully has observed the rules of the institution, shall be entitled to a deduction from the term of sentence to be computed as follows:

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

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

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

tional activity certified after the first year to and including the fifth year of prison employment or educational activity certified, and one day for every six days of such work actually performed or educational activity certified after the fifth year of prison employment.

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

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

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

(g) In this subsection, "prison employment" includes actual work in prison industry, meritorious work in connection with prison maintenance and operation, actual work in agriculture and actual work at work camp.

(h) The Department of Corrections shall develop pursuant to the rulemaking provisions of ORS 183.310 to 183.550 a uniform procedure for granting, retracting and restoring deductions allowed in paragraphs (a) to (g) of this subsection.

(2) When a paroled inmate violates any condition of parole, no deduction from the term of sentence, as provided in subsection (1) of this section, shall be made for service by such inmate in the Department of Corrections institution prior to acceptance and release on parole, except when authorized by the State Board of Parole and Post-Prison Supervision upon recommendation of the superintendent thereof.

(3) The provisions of this section shall apply only to offenders sentenced for felonies committed prior to November 1, 1989. [Amended by 1953 c 560 §2, 1955 c.505 §1, 1957 c 686 §1, 1969 c 502 §10, 1973 c 562 §1; 1975 c 264 §1; 1977 c.374 §2; 1981 c.425 §2, 1985 c.53 §1, 1987 c.320 §166, 1989 c.790 §56]

421.121 Reduction in term of incarceration; rules. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the department for felonies committed on or after November 1, 1989, shall be eligible for a reduction in the term of incarceration for appropriate institutional behav-

ior, as defined by rule of the Department of Corrections.

(2) The maximum amount of time credits earned for appropriate institutional behavior shall not exceed 20 percent of the total term of incarceration in a Department of Corrections institution.

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

(4) The department shall adopt rules pursuant to the rulemaking provisions of ORS 183.310 to 183.550 to establish a process for granting, retracting and restoring the time credits earned by the offender as allowed in subsections (1) to (3) of this section. [1989 c 790 §§60, 61]

421.122 Status of time enrolled in work release. For purposes of ORS 421.120, the time that a person is enrolled in good standing in the work release program is considered to be part of the sentence of the person actually served in the Department of Corrections institution. Employment performed by an enrollee while so enrolled is considered to be prison employment and shall qualify for the reduction in sentence authorized under ORS 421.120 (1)(d) in addition to any other reduction for which the enrollee may qualify. [1965 c.463 §15; 1969 c 361 §1, 1987 c 320 §167]

421.125 Clothing and money for released inmate; inmate moneys. (1) Upon the discharge or parole of any inmate from the Department of Corrections, the department shall see that such discharged or paroled inmate is properly clothed.

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

(a) Safeguard inmate moneys, whether such moneys are from earnings of the inmate while in a Department of Corrections facility, or from other sources, and to provide for disbursement of such moneys to the inmate following the inmate's release from imprisonment;

(b) Establish, within appropriations provided for this purpose, a program of release funds to be provided for those inmates who have not been able to accumulate sufficient moneys to accommodate their release needs;

(c) Assess fees to the inmate for self-improvement programs, services and assistance provided by the department when the inmate has moneys to pay for such programs, services and assistance;

(d) Permit inmates to purchase elective programs, services or assistance which are approved by, but are not provided by, the department; and

(e) Assess the inmate for damages or destruction caused by wilful misconduct of the inmate.

(3) An inmate sentenced to the custody of the Department of Corrections by an Oregon court is eligible to apply for release funds for a period up to 90 days following the release of the inmate from the Department of Corrections facility by parole or discharge, including a release to the legal custody of another authority in this state. However, inmates eligible to apply for release funds do not include inmates released to the legal custody of another authority in this state for ultimate transfer to the custody of a law enforcement or corrections agency in another state. An inmate released to the legal custody of another authority in this state is not eligible to apply for release funds so long as the person is imprisoned under such authority. [Amended by 1955 c 265 §1, 1967 c 612 §1, 1969 c.502 §11, 1969 c 597 §122b; 1969 c 678 §3, 1983 c 447 §1; 1987 c.320 §168]

421.130 [Repealed by 1959 c.687 §24]

421.135 [Renumbered 421 625]

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

(2) The balance of any proceeds from the sale of any goods, wares or merchandise made by an inmate made as part of a hobby or recreation program or on the inmate's own time, after deducting any amount that has been distributed to the inmate as spending money in accordance with rules made by the Director of the Department of Corrections, shall be paid to the inmate upon release. [1971 c 275 §2, 1987 c.320 §169]

421.140 [Renumbered 421.408]

421.142 Manufacture and sale of handiwork; disposition of sale price. (1) The superintendent of the Department of Corrections institution hereby is vested with authority, in the discretion of the superintendent, to allow the manufacture of small articles of handiwork by the inmates of the Department of Corrections institution, out of raw materials purchased by the inmates with their own funds, which articles may be sold to the public at the Department of Corrections institution. State-owned property

shall not be sold or given to inmates under this section.

(2) The superintendent of the Department of Corrections institution in which the inmate manufacturing the article is confined may provide that all or a part of the sales price of the articles be deposited to the account of the inmate manufacturing the article. [1953 c.537 §1; 1969 c.502 §12, 1987 c.320 §170]

421.145 Disposition of moneys earned by inmates. No moneys obtained from the sale of the products of any inmate's labor shall be applied toward the maintenance of the inmate or the support of the dependents of the inmate, or shall become a part of the betterment fund of the Department of Corrections institution, until all the cost of operation, maintenance, depreciation and other expenses in connection with the plant of the Department of Corrections institution industry in which the inmate is employed are fully paid from the fund arising from the sale of such products. [Amended by 1959 c.687 §11, 1987 c.320 §171]

421.150 Custody of federal prisoners. Whenever the proper authorities of the United States desire that United States prisoners be imprisoned in a Department of Corrections institution, the Department of Corrections may make arrangements for the custody of the prisoners upon terms that will be just to both this state and the United States. [Formerly 421.230, 1987 c.320 §172]

421.155 Dangerous offenders to be observed and treated. Any person sentenced under ORS 161.725 and 161.735, shall be given such physical, mental and psychiatric observation and treatment as is available and may tend to rehabilitate such person and make possible the earliest possible release from the Department of Corrections institution in which such person is confined, with the least possible danger to the health and safety of others. [Formerly 421.232; 1971 c.743 §364, 1987 c.320 §173]

421.160 Written report concerning conduct of dangerous offenders. The executive officer of the Department of Corrections institution in which a person sentenced under ORS 161.725 and 161.735 is confined, shall make the reports required by ORS 144.228 (2). All such reports shall be made available to the Director of the Department of Corrections. [Formerly 421.233, 1969 c.597 §133; 1971 c.743 §365, 1987 c.320 §174]

421.165 [Formerly 421.239, 1963 c.269 §1; 1967 c.354 §2; 1969 c.502 §13, 1969 c.597 §134; 1980 c.9 §1; 1983 c.516 §1, 1987 c.320 §175, 1989 c.790 §57; 1989 c.1024 §1, repealed by 1989 c.790 §58]

Note: ORS 421.165 is repealed on November 1, 1990. See section 58, chapter 790, Oregon Laws 1989. The text is set forth for the users' convenience.

421.165 (1) As used in this section, "temporary leave" means a leave of absence from a Department of Corrections institution.

(2) Temporary leave may be granted to allow an inmate to visit a specifically designated place or places:

(a) For a period not to exceed 30 days for the purpose of visiting the family of the inmate or a seriously ill relative, attending the funeral of a relative, obtaining medical services not otherwise available, contacting prospective employers, or for any other reason consistent with approved rehabilitation and corrections practices.

(b) For a period not to exceed 90 days preceding an established parole release or discharge date.

(3) The Department of Corrections shall adopt rules to permit an inmate confined in a Department of Corrections institution to be granted temporary leave from the institution.

(4) Upon determining that circumstances are suitable for an inmate to be granted temporary leave, the superintendent of the Department of Corrections institution in which the inmate is confined may grant leave to the inmate and fix the duration and conditions of the leave.

(5)(a) When the Department of Corrections grants an inmate temporary leave which exceeds 30 days, the Department of Corrections shall require, as a condition of leave, that the inmate reside during the period of temporary leave in the county where the inmate resided at the time of the offense that resulted in the imprisonment.

(b) Upon request of the inmate, victim, district attorney or superintendent of the institution in which the inmate is confined, the Department of Corrections may waive the residency requirement if it finds that one of the following conditions exists:

(A) The inmate provides proof of a job with no set ending date in a county other than the county of residence,

(B) The inmate poses a significant danger to the victim of the inmate's crime, or the victim or victim's family poses a significant danger to the inmate if the inmate resides in the county of residence;

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

(D) The inmate is required, as another condition of leave, to participate in a treatment program that is not available in the county of residence;

(E) The inmate requests to take the temporary leave in another state, or

(F) The Department of Corrections finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) For purposes of this section, "residency" means the last address of record at the time of the offense, as established in the following order of preference.

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

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police, Bureau of Criminal Identification; or

(iv) Records maintained by the Department of Human Resources

(B) When an inmate did not have one identifiable address of record at the time of the offense, the inmate shall be considered to have resided in the county where the offense occurred.

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

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

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

421.166 Emergency leave. The director shall establish by rule an emergency leave program. An inmate may be granted emergency leave not to exceed 10 days in length for the following purposes:

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

(2) To visit a gravely ill or injured child of the inmate if the child lives within the state.

(3) To attend the funeral of a member of the inmate's immediate family if the funeral is in the state. [1989 c.790 §62]

421.168 Transitional leave. (1) The director shall establish by rule a short-term transitional leave program. The program shall provide inmates with an opportunity to secure appropriate transitional support when necessary for successful reintegration into the community prior to the inmate's discharge to post-prison supervision.

(2) An inmate may submit a transition plan to the department. The plan shall indicate that the inmate has secured an employment, educational or other transitional opportunity in the community to which the offender will be released and that a leave of up to 30 days is an essential part of the offender's successful reintegration into the community.

(3) Upon verification of the inmate's transition plan, the department may grant a transitional leave no more than 30 days prior to the inmate's discharge date.

(4) No inmate shall be eligible for transitional leave before having served six months of prison incarceration.

(5) The department shall establish by rule a set of release conditions for offenders released on transitional leave status. An offender on transitional leave status shall be subject to immediate return to prison for any violation of the conditions of release.

(6) The provisions of this section do not apply to inmates whose sentences were imposed under ORS 137.635. [1989 c.790 §63]

421.170 Enrollment of inmate in work release program. The superintendent of the Department of Corrections institution in which an inmate is confined may recommend to the Director of the Department of Cor-

rections that an inmate of the Department of Corrections institution be enrolled in the work release program established under ORS 144.420. If the inmate has not served at least one-fourth of the maximum term of the sentence, the superintendent must, prior to making a recommendation, consider the original recommendation, if any, of the sentencing court. [1965 c.463 §6, 1969 c.502 §14; 1987 c.320 §176]

INMATE DISCIPLINE

421.180 Disciplinary procedures. The Department of Corrections by rule shall adopt procedures to be utilized in disciplining persons committed to the physical and legal custody of the department. [1973 c.621 §4, 1983 c.211 §1; 1987 c.320 §177]

421.185 Assistance and representation in disciplinary procedures. The procedures adopted pursuant to ORS 421.180 shall provide that an inmate shall be entitled to assistance and representation under terms and conditions established by the department. Nothing in this section shall be construed to limit the authority of the department to designate persons eligible to assist and represent the inmate. [1973 c.621 §5, 1987 c.320 §178]

421.190 Admissible evidence at disciplinary hearing. Evidence may be received at disciplinary hearings even though inadmissible under rules of evidence applicable to court procedure and the department shall establish procedures to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to afford the inmate a reasonable opportunity for a fair hearing. [1973 c.621 §6; 1987 c.320 §179]

421.195 Judicial review of certain disciplinary orders. If an order places an inmate in segregation or isolation status for more than seven days, institutionally transfers the inmate for disciplinary reasons or provides for nondeduction from the term of the sentence under ORS 421.120 (1)(a) and (b), the order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 30 days of the order for which review is sought. The department shall transmit to the court the record of the proceeding, or, if the inmate agrees, a shortened record. A copy of the record transmitted shall be delivered to the inmate by the department. The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482. The filing of the petition shall not stay the department's order, but the department may do so, or the court may order a stay upon application on such terms as it deems proper. [1973 c.621 §7; 1977 c.323 §1, 1977 c.374 §4, 1983 c.740 §144; 1987 c.320 §180]

TRANSFER OF INMATES

421.205 Contracts with Federal Government, other states or counties, or other agencies for detention and care of inmates. (1) The Department of Corrections may enter into contracts or arrangements with the authorities of the Federal Government, of any state having a reformatory or prison for the confinement and detention of inmates that is not a party to the Interstate Corrections Compact under ORS 421.245 or the Western Interstate Corrections Compact under ORS 421.284, or of any county in this state. This contract may provide for the reception, detention, care, maintenance and employment of persons convicted of felony in the courts of this state and sentenced to a term of imprisonment therefor.

(2) The Department of Corrections may enter into contracts or arrangements with the Federal Government and with states that are not parties to the Interstate Corrections Compact under ORS 421.245 or the Western Interstate Corrections Compact under ORS 421.284 to receive, detain, care for, maintain and employ persons convicted of felony by the Federal Government or in such other states, on such basis as it may agree with the authorities of the Federal Government or of each state. [Amended by 1959 c 290 §9, 1971 c 242 §1, 1973 c 444 §1; 1979 c.486 §4, 1987 c 320 §181]

421.210 Transfer of inmates to contract institutions; term of confinement. After the making of a contract under ORS 421.205, persons convicted of felony in the courts of this state and sentenced to the legal and physical custody of the Department of Corrections, including those who, at the date of entering into the contract, are in the legal and physical custody of the Department of Corrections, may be conveyed, as provided by law, by the Department of Corrections to the jurisdiction named in the contract. They shall be delivered to the authorities of said jurisdiction, there to be confined until their respective sentences have expired or until they are otherwise discharged by law. [Amended by 1959 c 290 §10, 1969 c.502 §15, 1973 c 444 §2; 1987 c.320 §182]

421.211 [1955 c 309 §2; 1959 c 290 §11; 1959 c 687 §12; 1969 c 502 §16, repealed by 1973 c 444 §3]

421.213 Records of transfer; availability of information. Whenever an inmate serving a sentence imposed by a court of this state is transferred from a Department of Corrections institution under this chapter, the superintendent of the Department of Corrections institution in which the inmate was confined shall retain a record of the transfer and shall make such information available to law enforcement agencies and the courts upon request. The Department of Corrections shall adopt rules governing the

release of this information to other interested parties under ORS 192.410 to 192.505. [1955 c 309 §7; 1959 c 687 §13, 1967 c.471 §5, 1969 c.502 §17, 1983 c 248 §1; 1987 c.320 §183]

421.215 Procurement of transferred inmates when required for judicial proceedings. If the presence of any inmate confined in a county jail or in the institution of another state or the Federal Government, is required in any judicial proceeding of this state, the superintendent in charge of the institution from which the inmate was conveyed, upon being so directed by the Director of the Department of Corrections or upon the written order or direction of any court of competent jurisdiction or of a judge thereof, shall procure such inmate, bring the inmate to the place directed in such order and hold the inmate in custody subject to the further order and direction of the director, or of the court or of a judge thereof, until the inmate is lawfully discharged from custody. The superintendent shall, by direction of the director or of the court or a judge thereof, deliver such inmate into the custody of the sheriff of the county in which the inmate was convicted, and shall, by like order, return such inmate to the institution from which the inmate was taken. [Amended by 1955 c.309 §3, 1959 c.687 §14; 1965 c 616 §53, 1969 c.502 §18, 1983 c 740 §145, 1987 c.320 §184]

421.220 Return of transferred inmates. Upon the expiration of any contract entered into under ORS 421.205, all inmates of this state confined in such institution or jail shall be returned by the Department of Corrections to department custody, or delivered to such other institution as the Department of Corrections has contracted with under ORS 421.205. [Amended by 1955 c 309 §4, 1959 c.687 §15, 1965 c 616 §54, 1969 c 502 §19, 1983 c 740 §146, 1987 c 320 §155]

421.225 Expenses of superintendents. The superintendents shall be allowed and paid all their necessary expenses and disbursements incurred while performing any duty required of them by ORS 421.205 to 421.210 and 421.215 and 421.220. [Amended by 1955 c.309 §5, 1959 c.687 §16; 1969 c 502 §20]

421.229 Transfer of foreign inmates; authority of Governor; written approval of inmate. When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted criminal offender who is a citizen or national of a foreign country to the foreign country of which the offender is a citizen or national, the Governor is authorized to act, in accordance with the treaty, on behalf of the State of Oregon and to approve the transfer of the convicted criminal offender, provided that such offender approves of the transfer in writing. [1979 c.486 §5]

Note: 421.229 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.230 [Amended by 1959 c.687 §17; renumbered 421.150]

421.232 [1955 c.636 §4; 1961 c.424 §7; renumbered 421.155]

421.233 [1955 c.636 §8, 1961 c.424 §8, renumbered 421.160]

421.235 [Repealed by 1957 c.160 §6]

421.237 [1955 c.254 §2, repealed by 1957 c.160 §6]

421.239 [1955 c.59 §1, 1959 c.687 §18, renumbered 421.165]

421.240 [Amended by 1953 c.111 §3, renumbered 421.270]

INTERSTATE CORRECTIONS COMPACT

421.245 Interstate Corrections Compact. The Interstate Corrections Compact is enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(1) "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico.

(2) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(3) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(4) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(5) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (4) of this Article may lawfully be confined.

ARTICLE III CONTRACTS

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) Its duration.

(b) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(c) Participation in programs of inmate employment, if any, the disposition or crediting of any payments received by inmates on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom.

(d) Delivery and retaking of inmates.

(e) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(2) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV PROCEDURES AND RIGHTS

(1) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the

hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the status of the inmate changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V ACTS NOT REVIEWABLE IN RECEIVING STATE; EXTRADITION

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the

state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained in this compact shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided, that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a

party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1979 c 486 §1]

Note: 421.245 to 421.254 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.250 Powers of Governor; delegation of authority. The Governor is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and the Governor may in the discretion of the Governor delegate this authority to the Director of the Department of Corrections. [1979 c 486 §2; 1987 c.320 §186]

Note: See note under 421.245.

421.254 Priority of corrections compacts. Whenever any state that is a party to the Western Interstate Corrections Compact becomes a party to the Interstate Corrections Compact, this state will perform its duty toward that state under the Interstate Corrections Compact instead of under the Western Interstate Corrections Compact in so far as the two compacts conflict. [1979 c.486 §3]

Note: See note under 421.245

421.255 [1955 c.660 §6; 1959 c.550 §1; repealed by 1965 c.616 §101]

421.260 [1955 c.660 §7; 1959 c.550 §2; repealed by 1965 c.616 §101]

421.265 [1955 c.660 §8; 1959 c.550 §3; repealed by 1965 c.616 §101]

421.270 [Formerly 421.240, repealed by 1959 c 550 §4]

WESTERN INTERSTATE CORRECTIONS COMPACT

421.282 Definitions for ORS 421.282 to 421.294. As used in ORS 421.282 to 421.294, unless the context requires otherwise:

(1) "Compact" means the Western Interstate Corrections Compact as set forth in ORS 421.284.

(2) "Inmate," "institution" and "state" have the meanings defined in Article II of the compact. [1959 c.290 §2]

421.284 Western Interstate Corrections Compact. The Western Interstate Corrections Compact hereby is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in instalments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV PROCEDURES AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory

of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending

state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the status of the inmate changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V ACTS NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged

from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the state so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1959 c 290 §3]

421.286 Commitments or transfers of inmates to institution in another state. Any court, agency or officer of this state having power to commit or transfer an inmate to an institution for confinement may commit or transfer the inmate to any institution in another state if this state has entered into a contract for the confinement of inmates in an institution of the other state pursuant to Article III of the compact. [1959 c 290 §4]

421.288 Enforcing and administering compact. All courts, agencies and officers of this state or any political subdivision therein shall enforce the compact and carry out its provisions including, but not limited to, making and submitting such reports as the compact requires. [1959 c.290 §5]

421.290 Hearings by director. (1) The Director of the Department of Corrections shall hold such hearings as are requested by another state pursuant to Article IV (f) of the compact. ORS 183.310 to 183.550 do not apply to these hearings, which shall be conducted in compliance with Article IV (f) of the compact.

(2) The cost of any hearing conducted under subsection (1) of this section shall be paid out of the Department of Corrections Revolving Fund. Reimbursements received from the state that requested the hearing shall be paid into the revolving fund. [1959 c.290 §6, 1965 c.616 §55, 1969 c.597 §135, 1987 c.320 §187]

421.292 Hearings in another state. (1) The State Board of Parole and Post-Prison Supervision may hold hearings in another state in connection with the case of an inmate confined in an institution of another state that is a party to the compact, or may request a hearing to be held by officers of the other state under Article IV (f) of the compact.

(2) The cost of any hearing conducted under subsection (1) of this section shall be paid by the Department of Corrections out of money appropriated to the department for the purpose of paying lawful expenses of the department. [1959 c.290 §7; 1969 c.597 §136; 1983 c.740 §147, 1987 c.320 §188]

421.294 Contracts to implement compact. The Department of Corrections may enter into such contracts on behalf of this state, not prohibited by any law of this state, as it considers appropriate to implement the participation of this state in the compact pursuant to Article III thereof. However, the department shall not enter into any contract:

(1) Relating to commitments or transfers of children who are under 12 years of age;

(2) Providing for commitments or transfers of inmates from another state who are 19 years of age or older to either the McLaren School for Boys or the Hillcrest School of Oregon; or

(3) Providing for commitments or transfers of youths in this state who are under 19 years of age to an institution in another state if any of the inmates in that institution are 21 years of age or older. [1959 c.290 §8, 1987 c.320 §189]

INMATE INDUSTRIES AND COMMODITIES

421.305 Establishment of industries in institutions. (1) The Director of the Department of Corrections, in accordance with rules adopted by the board of directors established in ORS 421.310, may:

(a) Install and equip plants in any of the Department of Corrections institutions for the employment of any of the inmates therein in forms of industry and employment not inconsistent with ORS 421.305 to 421.340 and 421.410.

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

(c) Enter into contracts or agreements with private business concerns or government agencies to accomplish the marketing of products or services produced by inmates or the production of goods, wares or services by inmates on behalf of the business concern or agency.

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

(3) Plants may be installed or equipped for purposes of this section at such locations as the director may determine, whether on or off the premises of a Department of Corrections institution.

(4) Compensation to inmates employed pursuant to this section shall not be subject to ORS 421.408, but shall be fixed by the board of directors described in ORS 421.310 (2), taking into consideration the individual inmate's experience and productivity. The prevailing wage paid in the marketplace for the work performed shall be paid to workers, other than inmates, who are employed to operate the industry provided for in this section.

(5) The board shall adopt rules reasonably to insure that products and services provided under this section:

(a) Do not adversely affect existing production or delivery of such products or services by private industry within the state; and

(b) Are not introduced or perpetuated in any work area where the unemployment rate in the industry providing the products or services exceeds the average state-wide unemployment rate in that industry.

(6) The director may provide, in accordance with accepted correctional practice,

that all or a part of an inmate's compensation under this section be set aside for eventual payment upon release or for disbursement to pay restitution, fines, family expenses or other financial obligations of the inmate while incarcerated. [Amended by 1965 c 616 §57, 1983 c 574 §1; 1987 c 320 §190]

421.310 Rules for conduct of industries; board to oversee operation. (1) The board of directors appointed under subsection (2) of this section shall make such rules governing the conduct of industries in the Department of Corrections institutions as will:

(a) Result in the manufacture, mining, production or providing of only such goods, wares, merchandise or services as may be used or needed:

(A) To fulfill the requirements of any interagency agreement.

(B) To fulfill the requirements of any contract or agreement entered into pursuant to ORS 421.305 or 421.312.

(b) Provide as wide a variety of products and services as practicable to diversify the institution products and services.

(2) In furtherance of the purposes of the corrections industries and the provisions of subsection (1) of this section, the Governor shall appoint a board of directors to oversee the operation of corrections industries and to monitor the compliance of the industries with applicable laws and administrative rules. The board shall consist of 10 members, with three members representing business and industry, three members representing labor and three members representing the general public. One of the 10 members shall be a representative of the purchasing division of the Department of General Services. In addition, the Director of the Department of Corrections or the designee thereof shall serve as an ex officio nonvoting member of the board. However, the director shall have final authority on all matters pertaining to the assignment and control of inmates and security of the industries operations. Appointments to the board are for three years and may be renewed. Members shall serve without compensation except for actual expenses incurred in the course of official board business, and these expenses will be chargeable to the corrections industries appropriation. Board members shall elect a chairperson. Meetings shall be held in accordance with rules to be adopted by the board but no less often than twice annually.

(3) The Director of the Department of Corrections shall appoint a manager, who shall be in the unclassified service, to be directly in charge of the corrections industries. The director shall consult with the board

prior to appointing or discharging the manager. The manager shall provide to the board all such information regarding the industries as the board may request. [Amended by 1955 c 55 §3, 1965 c 616 §58, 1969 c 349 §4, 1981 c 380 §1, 1983 c 574 §2; 1987 c 153 §2, 1987 c 320 §191, 1989 c 89 §1]

421.312 Contracts with Federal Government for producing goods or furnishing services of inmates during national emergency authorized. (1) The Department of Corrections may enter into contracts or agreements with any agency of the Federal Government providing for the sale to such agency of goods, wares or merchandise manufactured, mined or produced in any of the Department of Corrections institutions of this state, or providing for the furnishing of the labor or services of inmates of any such institutions to such agency, or containing both such provisions, when the President of the United States has, by official action, recognized the existence of a national emergency.

(2) A contract or agreement made pursuant to subsection (1) of this section may authorize the use of the facilities of any Department of Corrections institution in conjunction with:

(a) The manufacturing, mining or producing of any goods, wares or merchandise being sold to an agency of the Federal Government.

(b) The furnishing of the labor or services of inmates of any Department of Corrections institution to any agency of the Federal Government. [1955 c 55 §2, 1965 c 616 §59; 1957 c 320 §192]

421.315 [Amended by 1955 c 55 §4, 1965 c 616 §60, repealed by 1981 c 380 §4]

421.320 [Amended by 1965 c 616 §61; repealed by 1981 c 380 §4]

421.325 Sale of products and services. The products and services of corrections industries shall be sold pursuant to rules and regulations made by the board of directors established in ORS 421.310 for the sale thereof. They shall be sold for cash or on such terms as are approved by the board of directors. [Amended by 1959 c 687 §19, 1983 c 574 §4, 1987 c 320 §193]

421.330 [Amended by 1965 c 616 §62, repealed by 1981 c 380 §4]

421.335 [Amended by 1965 c 616 §63; 1969 c 349 §5; repealed by 1981 c 380 §4]

421.340 Rules for exchange of products among institutions. The Department of Corrections and such officials as may direct or control the management of penal, correctional, custodial and charitable institutions of the state or its political subdivisions, and the juvenile training schools, shall jointly annually promulgate rules to authorize the purchase by such institutions of the products

to be manufactured by inmates in the Department of Corrections institutions of this state. [Amended by 1965 c.616 §64, 1987 c.320 §194]

421.343 Corrections industries petty cash fund. (1) The Director of the Department of Corrections shall establish a petty cash account from the appropriation for carrying out the functions of the department in the amount of \$2,000 for use by corrections industries for travel and purchases under \$50.

(2) The business manager for corrections industries shall:

(a) Designate custodians for this account; and

(b) Establish administrative guidelines for the management and auditing of the petty cash fund.

(3) Subject to rule established by the Executive Department:

(a) The designated custodians may make disbursements as authorized by subsection (1) of this section.

(b) The designated custodians may hold petty cash funds in cash or may deposit them in the State Treasury, or may hold part in cash and deposit the remainder, or may draw warrants against the designated funds for reimbursement purposes. [1989 c.82 §1]

Note: 421.343 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.345 [Amended by 1955 c.445 §1, repealed by 1965 c.616 §101]

421.350 [Amended by 1965 c.616 §65; repealed by 1981 c.380 §4]

421.355 [Amended by 1965 c.616 §66, repealed by 1981 c.380 §4]

421.360 [Repealed by 1981 c.380 §4]

421.365 [Repealed by 1981 c.380 §4]

INMATE LABOR GENERALLY

421.400 Goals; programs; rules. (1) It shall be the goal of the Department of Corrections that all inmates confined in a Department of Corrections institution, except such as are precluded by the terms of the judgment and sentence under which the inmate is confined, shall perform labor under rules prescribed by the department. Within resources available, there shall be sufficient work, education and treatment programs to insure that every eligible inmate is productively involved in one or more programs. These programs shall include:

(a) Drug and alcohol treatment programs for inmates diagnosed as addicted to drugs or alcohol;

(b) Educational programs leading to a high school diploma or its equivalent or other appropriate educational programs; and

(c) Work programs appropriate to the job market.

(2) No later than January 1, 1991, the Director of the Department of Corrections shall prepare and submit to the Legislative Assembly a comprehensive management plan outlining the department's plan to meet this goal. The plan shall include:

(a) A cost-effective analysis of current inmate industries programs.

(b) A study on the feasibility of expanding inmate industries programs, particularly in regard to programs that:

(A) Are not capital intensive;

(B) Do not compete with existing Oregon industry;

(C) Are labor intensive;

(D) Emphasize service industry jobs;

(E) Use inmate labor on public lands, forests and parks; and

(F) Are designed to increase the motivation, develop the work capabilities and foster the cooperation of the inmates. [1989 c.855 §1]

Note: 421.400 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

421.405 Use of inmate labor for benefit of officials prohibited; exceptions. (1) Except as provided in subsection (2) of this section, no officer or employee of this state shall receive the use or profit of the labor or services of any inmate of a Department of Corrections institution, or be directly or indirectly interested in any contract or work upon which inmates are employed. However, this subsection does not prohibit inmates from doing work or services:

(a) As janitors or gardeners in or about the institutional premises.

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

(c) Contemplated under ORS 421.455 to 421.480.

(2) Subsection (1) of this section does not prohibit inmates from performing work or services as apprentices or trainees in a program conducted pursuant to ORS chapter 660 for any officer or employee of this state who does not exercise direct Department of Corrections institution supervisory authority over the inmates. [Amended by 1959 c.687 §20, 1961 c.213 §1; 1965 c.616 §67; 1969 c.502 §21; 1979 c.68 §1; 1987 c.320 §195]

421.408 Inmate compensation; disposition of compensation. The Director of the Department of Corrections may fix reasonable compensation, not to exceed \$3 per day, for such labor as the superintendent of the Department of Corrections institution in which the inmate is confined may lawfully require inmates to perform. The superintendent shall credit such compensation to the account of each laborer. In carrying out this section the superintendent shall be governed by the rules of the director. [Formerly 421.140; 1965 c.616 §68, 1969 c.502 §22, 1969 c.570 §1, 1987 c.320 §196]

421.410 When contract for labor of inmates prohibited. (1) It is unlawful for the state, its officers, agencies or its political subdivisions to enter into any agreement or contract with any private person for the labor of any inmate of a Department of Corrections institution. However, this section does not apply to:

(a) Fire-fighting labor designated in ORS 421.470 (2)(b);

(b) Persons enrolled in the work release program established under ORS 144.420 or assigned to work camps established under this chapter;

(c) Apprentices or trainees in a program conducted pursuant to ORS chapter 660; or

(d) Persons employed in plants or under contracts established pursuant to ORS 421.305.

(2) Nothing in this section is intended to prevent the sale of products or services provided, produced or manufactured by the industries established in the Department of Corrections institutions under ORS 421.305. [Amended by 1957 c.343 §1, 1961 c.213 §2, 1965 c.463 §20, 1965 c.616 §69, 1979 c.68 §2, 1981 c.380 §2, 1983 c.574 §3, 1987 c.320 §197]

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

(2) Notwithstanding any other provision of law, the superintendent of a Department of Corrections institution, in compliance with the rules of the department, may use

inmates from the institution under the supervision of the superintendent for the purpose of harvesting, loading and transporting the fruit, vegetables or other crops which are the subject matter of a contract made under subsection (1) of this section.

(3) This section does not authorize using inmate labor for sharecropping, cultivating, clearing, grading, draining or other improvement of private land, or any contract or agreement therefor. [1955 c.253 §2, 1959 c.687 §21; 1965 c.616 §70, 1969 c.502 §23; 1987 c.320 §198]

421.415 [Amended by 1959 c.687 §22; repealed by 1965 c.616 §101]

421.420 Use of inmate labor to clear unimproved land. The Department of Corrections may enter into a contract with any person whom it considers advisable in connection with a Department of Corrections institution for employment of inmates therein in clearing unimproved land in the state. [Amended by 1959 c.687 §23, 1965 c.616 §71, 1987 c.320 §199]

421.425 [Renumbered 421.620]

421.430 [Repealed by 1959 c.687 §24]

421.435 [Repealed by 1959 c.687 §24]

FOREST AND WORK CAMPS

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

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

(2) "State inmate" means an inmate of a Department of Corrections institution. [1967 c.504 §2, 1987 c.320 §200]

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

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

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

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

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

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

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

(g) Sexual penetration with a foreign object in the first degree, as described in ORS 163.411.

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

(i) Sexual abuse in the first degree, as described in ORS 163.425.

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

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

(2) The State Board of Forestry may make contracts with any other state agency in order to effectuate the purposes of ORS 421.455, 421.465, 421.470 and 421.475. [Amended by 1965 c.616 §72, 1967 c.504 §5; 1987 c.320 §201; 1987 c.478 §1]

421.460 [Amended by 1961 c.656 §2, repealed by 1965 c.616 §101]

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

(2) Before a state inmate is sent to any forest work camp, the superintendent of the institution in which the inmate is confined shall cause the inmate to be given such inoculations as are necessary in the public interest.

(3) While a state inmate is at a forest work camp, the superintendent of the institution in which the inmate was confined is responsible for the custody and care of the inmate. [Amended by 1961 c.656 §3; 1965 c.616 §73, 1967 c.504 §6; 1969 c.502 §24, 1987 c.320 §202]

421.467 Transfer of local inmates to forest work camp; limitations and conditions. (1) Subject to ORS 421.468, the governing body of a county or city in this state may transfer a local inmate to the temporary custody of the Department of Corrections solely for employment at a forest work camp established under ORS 421.455 to 421.480. The county or city transferring the local inmate shall pay the cost of transportation and other expenses incidental to the local in-

mate's conveyance to the forest work camp and the return of the local inmate to the county or city, including the expenses of law enforcement officers accompanying the local inmate, and is responsible for costs of any medical treatment of the local inmate while the local inmate is employed at the forest work camp not compensated under ORS 655.505 to 655.550.

(2) Before a local inmate is sent to a forest work camp, the governing body of the county or city shall cause the local inmate to be given such inoculations as are necessary in the public interest, and must submit to the Department of Corrections a certificate, signed by a physician licensed under ORS chapter 677, that the local inmate is physically and mentally able to perform the work described in ORS 421.470, and is free from communicable disease. [1967 c.504 §3; 1987 c.320 §203]

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

(2) While employed at a forest work camp established under ORS 421.455 to 421.480, a local inmate is temporarily within the custody of the Director of the Department of Corrections and subject to rules promulgated by the director governing such custody and employment, but remains subject to the jurisdiction of the county or city. [1967 c.504 §4; 1987 c.320 §204]

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

(2) The State Forester shall assign and supervise the work of the state inmates and local inmates, which work shall be:

(a) Manual labor, as far as possible, of the type contemplated by ORS 530.210 to 530.290.

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

(3) Moneys for the cost of custody of the state inmates and local inmates, and for the labor done by them under this section, shall be paid from funds appropriated and made available to the State Board of Forestry. Moneys for the cost of care of each local in-

mate shall be paid by the county or city from which the local inmate was transferred under ORS 421.467, but not to exceed \$2 a day for each local inmate. Additional moneys required for the cost of care of local inmates shall be paid from funds appropriated and made available to the State Board of Forestry. All such moneys shall be collected by the Director of the Department of Corrections who shall deposit such funds to the credit of the miscellaneous receipts account of the Department of Corrections. [Amended by 1961 c.213 §3; 1961 c.656 §4; 1965 c.253 §142; 1967 c.504 §7, 1987 c.320 §205]

421.475 Payment of inmates for labor at forest camps. The Director of the Department of Corrections shall pay each state inmate and local inmate, from the moneys paid by the State Board of Forestry, a wage of not more than \$3 for each day of work performed. After deducting from an inmate's earnings under this section any amount that has been distributed to the inmate as spending money in accordance with rules made by the director, the payment to the inmate of any balance remaining due shall be made to the inmate upon release. [Amended by 1955 c.433 §1, 1961 c.656 §5, 1965 c.616 §74, 1967 c.504 §8; 1969 c.570 §2, 1987 c.320 §206]

421.480 Return of inmate to institution. When the need for the labor of a state inmate or local inmate transferred to a forest work camp has ceased or when the inmate is guilty of any violation of the rules of the Director of the Department of Corrections, the director may return the inmate to the institution, county or city from which the inmate was transferred. [Amended by 1961 c.656 §6, 1967 c.504 §9, 1987 c.320 §207]

421.490 Work camps. In addition to camps established under ORS 421.455 to 421.480 the Department of Corrections may execute agreements for the establishment and operation of work camps for minimum custody inmates of Department of Corrections institutions in cooperation with all public agencies. [1963 c.157 §2; 1987 c.320 §208]

STATE PENITENTIARY

421.605 Location and use of penitentiary. The Oregon State Penitentiary, located in Salem, Marion County, shall be used as a Department of Corrections institution for the imprisonment of male persons committed to the custody of the Department of Cor-

rections. [Formerly 421.010, 1971 c.212 §3; 1987 c.320 §208a]

421.610 [1961 c.491 §1, 1971 c.212 §4; repealed by 1987 c.320 §246]

421.615 [Formerly 421.030, 1969 c.502 §25, repealed by 1971 c.212 §6]

421.620 [Formerly 421.425; repealed by 1965 c.616 §101]

421.625 [Formerly 421.135; repealed by 1965 c.616 §101]

421.705 [Formerly 421.080, 1965 c.616 §75, 1983 c.505 §8, repealed by 1987 c.320 §246]

421.710 [Formerly 421.083, 1983 c.505 §9, repealed by 1987 c.320 §246]

BRANCH INSTITUTIONS

421.805 Siting of branch institutions. The Department of Corrections may establish and operate institutions, other domiciliary facilities or branches of existing Department of Corrections institutions or domiciliary facilities. Siting of such institutions, branches or domiciliary facilities must be done in accordance with statutes governing the siting or locating of correctional institutions. The institutions, branches or facilities shall be used for the care and custody of inmates assigned thereto and shall be operated to facilitate the return of the inmates to society. [1969 c.580 §2; 1983 c.740 §148, 1987 c.320 §209]

Note: 421.805 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 421 by legislative action. See Preface to Oregon Revised Statutes for further explanation

PENALTIES

421.990 Penalties. (1) Violation of ORS 421.055, 421.325, 421.340 or 421.410 is punishable upon conviction by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding one year, or both.

(2) Violation of ORS 421.105 (2) is punishable in the same manner as if the individual injured unlawfully was not convicted or sentenced. [Amended by 1965 c.616 §76, 1981 c.380 §3]

CHAPTER 422

[Reserved for expansion]