

Senate Bill 265

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes presiding judge of circuit court to establish mental health court program. Provides that individuals before circuit court may receive mental health treatment and other services under program. Allows court to require program participant to pay fees for treatment and other program services.

Authorizes disbursement of portion of forfeiture proceeds to mental health court programs.

A BILL FOR AN ACT

1
2 Relating to mental health court programs; creating new provisions; and amending ORS 137.656,
3 167.350, 475A.120 and 475A.126.

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

5 **SECTION 1. (1) The presiding judge of any circuit court may establish a mental health**
6 **court program. Under the program, individuals who are before the circuit court may obtain**
7 **mental health treatment and other program services and must report regularly to the court**
8 **on the progress of their treatment. If a program is established, the presiding judge shall**
9 **appoint a local mental health court team, consisting of the court, mental health agencies and**
10 **treatment and service providers. The team shall monitor the individuals' participation in**
11 **treatment and ensure accountability.**

12 (2)(a) The governing body of a county or a treatment provider may establish fees that
13 individuals participating in a mental health court program may be required to pay for
14 treatment and other program services.

15 (b) A court may order an individual to pay fees for participation in a mental health court
16 program. Fees imposed under this subsection may not be paid to the court.

17 (3) Circuit court records that are maintained specifically for the purpose of a mental
18 health court program:

19 (a) Must be maintained separately from other circuit court records; and

20 (b) Are confidential and may not be disclosed except in accordance with regulations
21 adopted under 42 U.S.C. 290dd-2 or as provided in subsections (4) to (7) of this section.

22 (4) If the individual who is the subject of a record described in subsection (3) of this
23 section gives written consent, the record may be disclosed to members of the local mental
24 health court team in order to develop treatment plans, monitor progress in treatment and
25 determine outcomes of the individual's participation in the mental health court program.

26 (5) A record described in subsection (3) of this section may not be introduced into evi-
27 dence in any legal proceeding other than the mental health court program unless:

28 (a) The individual who is the subject of the record gives written consent for introduction

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of the record; or

2 (b) The court finds good cause for introduction.

3 (6) In determining whether good cause exists for purposes of subsection (5)(b) of this
 4 section, the court shall weigh the public interest and the need for disclosure against the
 5 potential injury caused by the disclosure to:

6 (a) The individual who is the subject of the record;

7 (b) Any physician-patient relationship; and

8 (c) The treatment services being provided to the individual who is the subject of the re-
 9 cord.

10 (7) A court, the State Court Administrator or the Oregon Criminal Justice Commission
 11 may use records described in subsection (3) of this section and other mental health court
 12 program information to track and develop statistics about the effectiveness, costs and other
 13 areas of public interest concerning mental health court programs. A court, the State Court
 14 Administrator or the Oregon Criminal Justice Commission may release statistics developed
 15 under this subsection and analyses based on the statistics to the public. Statistics and ana-
 16 lyses released under this subsection may not contain any information that identifies an in-
 17 dividual participant in a mental health court program.

18 **SECTION 2.** ORS 137.656 is amended to read:

19 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-
 20 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
 21 impartial forum for statewide policy development and planning.

22 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
 23 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
 24 public safety, offender accountability, crime reduction and prevention and offender treatment and
 25 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

26 (a) Capacity, utilization and type of state and local prison and jail facilities;

27 (b) Implementation of community corrections programs;

28 (c) Alternatives to the use of prison and jail facilities;

29 (d) Appropriate use of existing facilities and programs;

30 (e) Whether additional or different facilities and programs are necessary;

31 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
 32 and sanctions in reducing future criminal conduct by juvenile and adult offenders;

33 (g) Methods of reducing the risk of future criminal conduct; and

34 (h) The effective utilization of local public safety coordinating councils.

35 (3) Other duties of the commission are:

36 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
 37 any matter within the jurisdiction of the commission.

38 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
 39 and to serve as a clearinghouse and information center for the collection, preparation, analysis and
 40 dissemination of information on state and local sentencing practices.

41 (c) To provide technical assistance and support to local public safety coordinating councils.

42 (d) To receive grant applications to start or expand drug court programs as defined in ORS
 43 3.450, to *make* **adopt** rules to govern the grant process and to award grant funds according to the
 44 rules.

45 (e) To receive grant applications to establish or expand mental health court programs

1 **described in section 1 of this 2009 Act, to adopt rules to govern the grant process and to**
 2 **award grant funds according to the rules.**

3 (4) The commission shall establish by rule the information that must be submitted under ORS
 4 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
 5 must be approved by the Chief Justice of the Supreme Court before it takes effect.

6 **SECTION 3.** ORS 167.350 is amended to read:

7 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-
 8 quire a defendant convicted under ORS 167.315 to 167.333 or 167.340 to forfeit any rights of the
 9 defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by
 10 any person or agency prior to judgment in caring for each animal subjected to the violation.

11 (2) When the court orders the defendant's rights in the animal to be forfeited, the court may
 12 further order that those rights be given over to an appropriate person or agency demonstrating a
 13 willingness to accept and care for the animal or to the county or an appropriate animal care agency
 14 for further disposition in accordance with accepted practices for humane treatment of animals. This
 15 subsection does not limit the right of the person or agency to whom rights are granted to resell or
 16 otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a
 17 transfer of ownership.

18 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the
 19 owner or person having custody of an animal to repay the reasonable costs incurred by any person
 20 or agency in providing minimum care to the animal.

21 (4)(a) A court may order a person convicted under ORS 167.315 to 167.333 or 167.340 to:

22 (A) Participate in available animal cruelty prevention programs or education programs, or
 23 both;[, or to]

24 (B) Obtain psychological counseling for treatment of mental health disorders that, in the court's
 25 judgment, contributed to the commission of the crime; **or**[.]

26 (C) **Participate in a mental health court program under section 1 of this 2009 Act.**

27 (b) The person shall bear any costs incurred by the person for participation in counseling or
 28 treatment programs under this subsection.

29 (5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal subjected to a violation
 30 of ORS 167.315 to 167.333 or 167.340. Any such animal is subject to forfeiture as provided in sub-
 31 sections (1) to (3) of this section.

32 **SECTION 4.** ORS 475A.120 is amended to read:

33 475A.120. (1) The provisions of this section apply to a forfeiting agency other than the state.

34 (2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting
 35 agency may:

36 (a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement
 37 agency or district attorney.

38 (b) Sell forfeited property by public or other commercially reasonable sale and pay from the
 39 proceeds the expenses of keeping and selling the property.

40 (c) Retain forfeited property.

41 (d) With written authorization from the district attorney for the county in which the property
 42 was seized, destroy any forfeited firearms or controlled substances.

43 (3) If the forfeiting agency is a political subdivision other than a county, the political subdivision
 44 shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion of
 45 the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing

1 for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless
2 changed by the parties.

3 (4) A forfeiting agency shall distribute forfeiture proceeds as follows:

4 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP
5 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or
6 forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay
7 expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the pro-
8 visions of this paragraph. The forfeiting agency may not pay expenditures made in connection with
9 the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of
10 this paragraph.

11 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

12 (A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Il-
13 legal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

14 (B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset
15 Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS
16 475A.155;

17 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the
18 Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to
19 drug court programs [as] described in ORS 3.450 **and mental health court programs described in**
20 **section 1 of this 2009 Act;** and

21 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State
22 Commission on Children and Families Account established by ORS 417.733 for disbursement to relief
23 nurseries as described in ORS 417.788.

24 (c) If the forfeiting agency has entered into an agreement with a county under subsection (3)
25 of this section, after paying costs under paragraph (a) of this subsection and making the deductions
26 required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts
27 required by the agreement.

28 (d) After making all payments and deductions required by paragraphs (a) to (c) of this sub-
29 section, the forfeiting agency may use forfeiture proceeds, including amounts received by a county
30 under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into
31 under ORS 475A.115, only for:

32 (A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful
33 delivery, distribution, manufacture or possession of controlled substances;

34 (B) Cash for use in law enforcement activities;

35 (C) Drug awareness and drug education programs offered in middle schools and high schools;

36 (D) The expenses of a forfeiting agency in operating joint narcotic operations with other for-
37 feiting agencies pursuant to the terms of an intergovernmental agreement, including paying for
38 rental space, utilities and office equipment; and

39 (E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution,
40 manufacture or possession of controlled substances, as determined through intergovernmental
41 agreement between the forfeiting agency and the district attorney.

42 (5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment
43 seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled
44 substances may be donated to a public school, community college or institution of higher education.

45 (6) A political subdivision shall sell as much property as may be needed to make the distrib-

1 utions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this
2 section must be made once every three months and are due within 20 days of the end of each
3 quarter. No interest shall accrue on amounts that are paid within the period specified by this sub-
4 section.

5 (7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the
6 sale of forfeited property, shall maintain written documentation of each sale, decision to retain,
7 transfer or other disposition.

8 (8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory
9 Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or
10 not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop
11 and make available forms for the purpose of reporting forfeitures.

12 (9) Law enforcement agencies shall supply to forfeiture counsel all information requested by
13 forfeiture counsel necessary for the preparation of the report required by subsection (8) of this
14 section.

15 (10) Political subdivisions of the state who receive forfeiture proceeds under this section shall
16 submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those
17 proceeds are received. The committee shall develop and make available forms for the purpose of
18 those reports. The forms shall require the political subdivision to report on how proceeds received
19 by the political subdivision have been or will be used, and such other information as may be re-
20 quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal
21 year of the political subdivision.

22 (11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined
23 by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct.

24 **SECTION 5.** ORS 475A.126 is amended to read:

25 475A.126. (1) The provisions of this section apply only when the forfeiting agency is the state.

26 (2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting
27 agency may:

28 (a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement
29 agency or district attorney.

30 (b) Sell forfeited property by public or other commercially reasonable sale and pay from the
31 proceeds the expenses of keeping and selling the property.

32 (c) Retain forfeited property.

33 (d) With written authorization from the district attorney for the county in which the property
34 was seized, destroy any forfeited firearms or controlled substances.

35 (3) The forfeiting agency shall distribute forfeiture proceeds as follows:

36 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP
37 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or
38 forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay
39 expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the pro-
40 visions of this paragraph. The forfeiting agency may not pay expenditures made in connection with
41 the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of
42 this paragraph. Any amount paid to or retained by the Department of Justice under this paragraph
43 shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount
44 paid to or retained by the Oregon State Police under this paragraph shall be deposited in the State
45 Police Account.

1 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

2 (A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the Illegal
3 Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

4 (B) Deduct an amount equal to three percent of the proceeds, not to exceed \$50,000 in a
5 biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS
6 475A.160 for the purposes specified in ORS 475A.155;

7 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the
8 Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to
9 drug court programs [as] described in ORS 3.450 **and mental health court programs described in**
10 **section 1 of this 2009 Act;** and

11 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State
12 Commission on Children and Families Account established by ORS 417.733 for disbursement to relief
13 nurseries as described in ORS 417.788.

14 (c) If the forfeiting agency has entered into an intergovernmental agreement with a political
15 subdivision under ORS 475A.115, or has entered into an agreement with any other law enforcement
16 agency of the state relating to distribution of forfeiture proceeds, after paying costs under paragraph
17 (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the
18 forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency partic-
19 ipating in the seizure or forfeiture as provided by the agreement.

20 (d) After making all payments and deductions required by paragraphs (a) to (c) of this sub-
21 section, the forfeiting agency shall distribute the remaining proceeds as follows:

22 (A) If no law enforcement agency other than the Department of Justice participated in the sei-
23 zure or forfeiture, the remaining proceeds, and proceeds received by the Department of Justice un-
24 der paragraph (c) of this subsection, shall be divided between the Criminal Justice Revolving
25 Account and the Special Crime and Forfeiture Account established by ORS 475A.130 according to
26 the following schedule:

27 (i) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal
28 Justice Revolving Account.

29 (ii) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving
30 Account and the balance in the Special Crime and Forfeiture Account.

31 (iii) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Ac-
32 count and the balance in the Special Crime and Forfeiture Account.

33 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving
34 Account and the balance in the Special Crime and Forfeiture Account.

35 (v) One hundred percent of all additional sums shall be deposited in the Special Crime and
36 Forfeiture Account.

37 (B) If no law enforcement agency other than the Department of State Police participated in the
38 seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State
39 Police under paragraph (c) of this subsection, shall be divided between the State Police Account and
40 the Special Crime and Forfeiture Account according to the following schedule:

41 (i) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police
42 Account.

43 (ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and
44 the balance in the Special Crime and Forfeiture Account.

45 (iii) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the

1 balance in the Special Crime and Forfeiture Account.

2 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and
 3 the balance in the Special Crime and Forfeiture Account.

4 (v) One hundred percent of all additional sums shall be deposited in the Special Crime and
 5 Forfeiture Account.

6 (4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used only for:

7 (a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful
 8 delivery, distribution, manufacture or possession of controlled substances;

9 (b) Cash for use in law enforcement activities;

10 (c) Drug awareness and drug education programs offered in middle schools and high schools; and

11 (d) The expenses of a forfeiting agency in operating joint narcotic operations with other for-
 12 feiting agencies pursuant to the terms of an intergovernmental agreement, including paying for
 13 rental space, utilities and office equipment.

14 (5) A forfeiting agency shall sell as much property as may be needed to make the distributions
 15 required by subsection (3) of this section. Distributions required under subsection (3)(b) of this sec-
 16 tion must be made once every three months and are due within 20 days of the end of each quarter.
 17 No interest shall accrue on amounts that are paid within the period specified by this subsection.

18 (6) The forfeiting agency, and any agency that receives forfeited property or proceeds from the
 19 sale of forfeited property, shall maintain written documentation of each sale, decision to retain,
 20 transfer or other disposition of the property or proceeds.

21 (7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory
 22 Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or
 23 not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop
 24 and make available forms for the purpose of reporting forfeitures.

25 (8) Law enforcement agencies shall supply to forfeiture counsel all information requested by
 26 forfeiture counsel necessary for the preparation of the report required by subsection (7) of this
 27 section.

28 _____