

House Bill 2168

Sponsored by Representatives BUCKLEY, ESQUIVEL, Senator BATES; Representative RICHARDSON (Presession filed.)

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**.

Requires counties to assume responsibility for felony offenders already in custody who, at time sentence is imposed, have 12 months or less of term of incarceration to serve.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to county responsibility for offenders convicted of felonies; amending ORS 137.124, 169.053,
3 423.475, 423.478, 423.525 and 423.540; and declaring an emergency.

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

5 **SECTION 1.** ORS 423.475 is amended to read:

6 423.475. The Legislative Assembly finds and declares that:

7 (1) Passage by the voters of chapter 2, Oregon Laws 1995, has created mandatory minimum
8 penalties for certain violent offenses, and the probable effect thereof will be a significant increase
9 in the demands placed on state secure facilities.

10 (2) These demands are a shared responsibility of the State of Oregon and its county govern-
11 ments. The state recognizes that it is in a better position than counties to assume responsibility for
12 serious violent offenders and career property offenders.

13 (3) Counties are willing, in the context of a partnership with the state, to assume responsibility
14 for felony offenders **who are** sentenced to a term of incarceration [of] **and who have, at the time**
15 **the sentence is imposed, 12 months or less of the term to serve.**

16 (4) Under the terms of the partnership agreement, the counties agree to assume responsibility
17 for the offenders described in subsection (3) of this section, subject to the state agreeing to provide
18 adequate funding to the counties for this responsibility.

19 [(5) *The amendments to statutes made by sections 1a to 5, 7, 8, 9a, 9b, 9c, 10 to 14, 17 to 19 and*
20 *22 to 29, chapter 423, Oregon Laws 1995, and the provisions of ORS 423.478, 423.483 and 423.549 and*
21 *section 5a, chapter 423, Oregon Laws 1995, are intended to acknowledge and implement the terms of*
22 *the partnership between the state and the counties.*]

23 **SECTION 2.** ORS 423.478 is amended to read:

24 423.478. (1) The Department of Corrections shall:

25 (a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

26 (b) Provide central information and data services sufficient to:

27 (A) Allow tracking of offenders; and

28 (B) Permit analysis of correlations between sanctions, supervision, services and programs, and
29 future criminal conduct; and

30 (c) Provide interstate compact administration and jail inspections.

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 (2) Subject to ORS 423.483, *[the]* a county, in partnership with the department, shall assume re-
 2 sponsibility for community-based supervision, sanctions and services for offenders convicted of felo-
 3 nies who are:

4 (a) On parole;

5 (b) On probation;

6 (c) On post-prison supervision;

7 (d) Sentenced~~[, on or after January 1, 1997,]~~ to a **term of incarceration and who have, at the**
 8 **time the sentence is imposed**, 12 months or less *[incarceration]* of the term to serve;

9 (e) Sanctioned~~[, on or after January 1, 1997,]~~ by a court or the State Board of Parole and Post-
 10 Prison Supervision to 12 months or less incarceration for violation of a condition of parole, pro-
 11 bation or post-prison supervision; and

12 (f) On conditional release under ORS 420A.206.

13 (3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration,
 14 when an offender is committed to the custody of the supervisory authority of a county under ORS
 15 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other
 16 than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority
 17 releases a person from custody under this subsection and the person is required to report as a sex
 18 offender under ORS 181.595, the supervisory authority, as a condition of release, shall order the
 19 person to report to the Department of State Police, a city police department or a county sheriff's
 20 office or to the supervising agency, if any:

21 (a) When the person is released;

22 (b) Within 10 days of a change of residence;

23 (c) Once each year within 10 days of the person's birth date;

24 (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an
 25 institution of higher education; and

26 (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher
 27 education.

28 (4) As used in this section, "attends," "**carries on a vocation,**" "institution of higher
 29 education[.]" **and** "works" *[and "carries on a vocation"]* have the meanings given those terms in ORS
 30 181.594.

31 **SECTION 3.** ORS 423.525 is amended to read:

32 423.525. (1) A county, group of counties or intergovernmental corrections entity shall apply to
 33 the Director of the Department of Corrections in a manner and form prescribed by the director for
 34 funding made available under ORS 423.500 to 423.560. The application shall include a community
 35 corrections plan. The Department of Corrections shall provide consultation and technical assistance
 36 to counties to aid in the development and implementation of community corrections plans.

37 *[(2)(a) From July 1, 1995, until June 30, 1999, a county, group of counties or intergovernmental*
 38 *corrections entity may make application requesting funding for the construction, acquisition, expansion*
 39 *or remodeling of correctional facilities to serve the county, group of counties or intergovernmental cor-*
 40 *rections entity. The department shall review the application for funding of correctional facilities in*
 41 *accordance with criteria that consider design, cost, capacity, need, operating efficiency and viability*
 42 *based on the county's, group of counties' or intergovernmental corrections entity's ability to provide for*
 43 *ongoing operations.]*

44 *[(b)(A) If the application is approved, the department shall present the application with a request*
 45 *to finance the facility with financing agreements to the State Treasurer and the Director of the Oregon*

1 *Department of Administrative Services. Except as otherwise provided in subparagraph (B) of this par-*
 2 *agraph, upon approval of the request by the State Treasurer and the Director of the Oregon Department*
 3 *of Administrative Services, the facility may be financed with financing agreements, and certificates of*
 4 *participation issued pursuant thereto, as provided in ORS 283.085 to 283.092. All decisions approving*
 5 *or denying applications and requests for financing under this section are final. No such decision is*
 6 *subject to judicial review of any kind.]*

7 *[(B) If requests to finance county correctional facility projects are submitted after February 22,*
 8 *1996, and the requests have not been approved by the department on the date a session of the Legisla-*
 9 *tive Assembly convenes, the requests are also subject to the approval of the Legislative Assembly.]*

10 *[(c) After approval but prior to the solicitation of bids or proposals for the construction of a project,*
 11 *the county, group of counties or intergovernmental corrections entity and the department shall enter into*
 12 *a written agreement that determines the procedures, and the parties responsible, for the awarding of*
 13 *contracts and the administration of the construction project for the approved correctional facility. If the*
 14 *parties are unable to agree on the terms of the written agreement, the Governor shall decide the terms*
 15 *of the agreement. The Governor's decision is final.]*

16 *[(d) After approval of a construction project, the administration of the project shall be conducted*
 17 *as provided in the agreement required by paragraph (c) of this subsection. The agreement must require*
 18 *at a minimum that the county, group of counties or intergovernmental corrections entity shall submit*
 19 *to the department any change order or alteration of the design of the project that, singly or in the ag-*
 20 *gregate, reduces the capacity of the correctional facility or materially changes the services or functions*
 21 *of the project. The change order or alteration is not effective until approved by the department. In re-*
 22 *viewing the change order or alteration, the department shall consider whether the implementation of the*
 23 *change order or alteration will have any material adverse impact on the parties to any financing*
 24 *agreements or the holders of any certificates of participation issued to fund county correctional facilities*
 25 *under this section. In making its decision, the department may rely on the opinions of the Department*
 26 *of Justice, bond counsel or professional financial advisers.]*

27 **[(3)] (2)** Notwithstanding ORS 283.085, for purposes of this section, “financing agreement” means
 28 a lease purchase agreement, an installment sale agreement, a loan agreement or any other agree-
 29 ment to finance a correctional facility described in this section, or to refinance a previously exe-
 30 cuted financing agreement for the financing of a correctional facility. The state is not required to
 31 own or operate a correctional facility in order to finance it under ORS 283.085 to 283.092 and this
 32 section. The state, an intergovernmental corrections entity, county or group of counties may enter
 33 into any agreements, including, but not limited to, leases and subleases, that are reasonably neces-
 34 sary or generally accepted by the financial community for purposes of acquiring or securing fi-
 35 nancing as authorized by this section. In financing county correctional facilities under this section,
 36 “property rights” as used in ORS 283.085 includes leasehold mortgages of the state’s rights under
 37 leases of correctional facilities from counties.

38 **[(4)] (3)** Notwithstanding any other provision of state law, county charter or ordinance, a county
 39 may convey **title to interests in** or lease to the State of Oregon, acting by and through the De-
 40 partment of Corrections, [*title to interests in, or a lease of,*] any real property, facilities or personal
 41 property owned by the county for the purpose of financing the construction, acquisition, expansion
 42 or remodeling of a correctional facility. Upon the payment of all principal and interest on, or upon
 43 any other satisfaction of, the financing agreement used to finance the construction, acquisition, ex-
 44 pansion or remodeling of a correctional facility, the state shall reconvey its interest in, or terminate
 45 and surrender its leasehold of, the property or facilities, including the financed construction, acqui-

1 sition, expansion or remodeling, to the county. In addition to any authority granted by ORS 283.089,
 2 for the purposes of obtaining financing, the state may enter into agreements under which the state
 3 may grant to trustees or lenders leases, subleases and other security interests in county property
 4 conveyed or leased to the state under this subsection and in the property or facilities financed by
 5 financing agreements.

6 [(5)] (4) In connection with the financing of correctional facilities, the Director of the Oregon
 7 Department of Administrative Services may bill the Department of Corrections, and the Department
 8 of Corrections shall pay the amounts billed, in the same manner as provided in ORS 283.089. As
 9 required by ORS 283.091, the Department of Corrections and the Oregon Department of Adminis-
 10 trative Services shall include in the Governor's budget request to the Legislative Assembly all
 11 amounts that will be due in each fiscal period under financing agreements for correctional facilities.
 12 Amounts payable by the state under a financing agreement for the construction, acquisition, ex-
 13 pansion or remodeling of a correctional facility are limited to available funds as defined in ORS
 14 283.085, and no lender, trustee, certificate holder or county has any claim or recourse against any
 15 funds of the state other than available funds.

16 [(6)] (5) The director shall adopt rules that may be necessary for the administration, evaluation
 17 and implementation of ORS 423.500 to 423.560. The standards shall be sufficiently flexible to foster
 18 the development of new and improved supervision or rehabilitative practices and maximize local
 19 control.

20 [(7)] (6) When a county assumes responsibility under ORS 423.500 to 423.560 for correctional
 21 services previously provided by the department, the county and the department shall enter into an
 22 intergovernmental agreement that includes a local community corrections plan consisting of pro-
 23 gram descriptions, budget allocation, performance objectives and methods of evaluating each
 24 correctional service to be provided by the county. The performance objectives must include in
 25 dominant part reducing future criminal conduct. The methods of evaluating services must include,
 26 to the extent of available information systems resources, the collection and analysis of data suffi-
 27 cient to determine the apparent effect of the services on future criminal conduct.

28 [(8)] (7) All community corrections plans shall comply with rules adopted pursuant to ORS
 29 423.500 to 423.560, and shall include but need not be limited to an outline of the basic structure and
 30 the supervision, services and local sanctions to be applied to offenders convicted of felonies who are:

- 31 (a) On parole;
- 32 (b) On probation;
- 33 (c) On post-prison supervision;
- 34 (d) Sentenced[, *on or after January 1, 1997,*] to a **term of incarceration and who have, at the**
 35 **time the sentence is imposed, 12 months or less [*incarceration*] of the term to serve;**
- 36 (e) Sanctioned[, *on or after January 1, 1997,*] by a court or the State Board of Parole and Post-
 37 Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, pro-
 38 bation or post-prison supervision; and
- 39 (f) On conditional release under ORS 420A.206.

40 [(9)] (8) All community corrections plans shall designate a community corrections manager of
 41 the county or counties and shall provide that the administration of community corrections under
 42 ORS 423.500 to 423.560 shall be under such manager.

43 [(10)] (9) No amendment to or modification of a county-approved community corrections plan
 44 shall be placed in effect without prior notice to the director for purposes of statewide data collection
 45 and reporting.

1 [(11)] (10) The obligation of the state to provide funding and the scheduling for providing funding
 2 of a project approved under this section is dependent upon the ability of the state to access public
 3 security markets to sell financing agreements.

4 [(12)] (11) No later than January 1 of each odd-numbered year, the Department of Corrections
 5 shall:

6 (a) Evaluate the community corrections policy established in ORS 423.475, 423.478, 423.483 and
 7 423.500 to 423.560; and

8 (b) Assess the effectiveness of local revocation options.

9 **SECTION 4.** ORS 423.540 is amended to read:

10 423.540. The Director of the Department of Corrections shall annually review a county's com-
 11 pliance with the intergovernmental agreement under ORS 423.500 to 423.560. A county must sub-
 12 stantially comply with the provisions of its community corrections intergovernmental agreement and
 13 plan established pursuant to ORS 423.525 [(7)] (6). If the director determines that there are reason-
 14 able grounds to believe that a county is not in substantial compliance with the intergovernmental
 15 agreement or plan, the director shall contact the county regarding the alleged noncompliance and
 16 offer technical assistance to reach compliance. If the county does not resolve the alleged noncom-
 17 pliance, the director shall, after giving the county not less than 30 days' notice, conduct a hearing
 18 to ascertain whether there is substantial compliance or satisfactory progress being made toward
 19 compliance. After technical assistance is provided and the hearing occurs, the director may suspend
 20 any portion of the funding made available to the county under ORS 423.500 to 423.560 until the re-
 21 quired compliance occurs.

22 **SECTION 5.** ORS 137.124 is amended to read:

23 137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of
 24 incarceration that exceeds 12 months:

25 (a) The court shall not designate the correctional facility in which the defendant is to be con-
 26 fined but shall commit the defendant to the legal and physical custody of the Department of Cor-
 27 rections; and

28 (b) If the judgment provides that the term of incarceration be served consecutively to a term
 29 of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this
 30 state upon conviction of a felony, the defendant shall serve any remaining part of the previously
 31 imposed term of incarceration in the legal and physical custody of the Department of Corrections.

32 (2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of
 33 incarceration [*that is*] **and, at the time the sentence is imposed, the defendant has** 12 months
 34 or less **of the term to serve**, the court shall commit the defendant to the legal and physical custody
 35 of the supervisory authority of the county in which the crime of conviction occurred.

36 (b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon
 37 conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall
 38 commit the defendant to the legal and physical custody of the Department of Corrections if the court
 39 orders that the term of incarceration be served consecutively to a term of incarceration that ex-
 40 ceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court
 41 of this state upon conviction of a felony.

42 (3) After assuming custody of the convicted person the Department of Corrections may transfer
 43 inmates from one correctional facility to another such facility for the purposes of diagnosis and
 44 study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the pro-
 45 tection and welfare of the community and the inmate.

1 (4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall
2 commit the defendant to the custody of the supervisory authority of the county in which the crime
3 of conviction occurred.

4 (5)(a) When a person under 18 years of age at the time of committing the offense and under 20
5 years of age at the time of sentencing is committed to the Department of Corrections under ORS
6 137.707, the Department of Corrections shall transfer the physical custody of the person to the
7 Oregon Youth Authority as provided in ORS 420.011 if:

8 (A) The person will complete the sentence imposed before the person attains 25 years of age;
9 or

10 (B) The Department of Corrections and the Oregon Youth Authority determine that, because of
11 the person's age, immaturity, mental or emotional condition or risk of physical harm to the person,
12 the person should not be incarcerated initially in a Department of Corrections institution.

13 (b) A person placed in the custody of the Oregon Youth Authority under this subsection shall
14 be returned to the physical custody of the Department of Corrections whenever the Director of the
15 Oregon Youth Authority, after consultation with the Department of Corrections, determines that the
16 conditions or circumstances that warranted the transfer of custody under this subsection are no
17 longer present.

18 (6)(a) When a person under 18 years of age at the time of committing the offense and under 20
19 years of age at the time of sentencing is committed to the legal and physical custody of the De-
20 partment of Corrections or the supervisory authority of a county following waiver under ORS
21 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or
22 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the
23 person to the physical custody of the Oregon Youth Authority for placement as provided in ORS
24 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS
25 420A.200 to 420A.206.

26 (b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or
27 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall
28 transfer the person to a youth correction facility for physical custody as provided in ORS 420.011
29 (3).

30 (7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of
31 Corrections or the supervisory authority of a county shall transfer the physical custody of a person
32 committed to the Department of Corrections or the supervisory authority of the county under sub-
33 section (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:

34 (a) The person was at least 18 years of age but under 20 years of age at the time of committing
35 the felony for which the person is being sentenced to a term of incarceration;

36 (b) The person is under 20 years of age at the time of commitment to the Department of Cor-
37 rections or the supervisory authority of the county;

38 (c) The person has not been committed previously to the legal and physical custody of the De-
39 partment of Corrections or the supervisory authority of a county;

40 (d) The person has not been convicted and sentenced to a term of incarceration for the com-
41 mission of a felony in any other state;

42 (e) The person will complete the term of incarceration imposed before the person attains 25
43 years of age;

44 (f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment
45 programs administered by the Oregon Youth Authority;

1 (g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons
 2 in the custody of the Oregon Youth Authority; and

3 (h) At the time of the proposed transfer, no more than 50 persons are in the physical custody
 4 of the Oregon Youth Authority under this subsection.

5 (8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department
 6 or the supervisory authority of a county may not transfer the physical custody of the person under
 7 subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after con-
 8 sultation with the Department of Corrections or the supervisory authority of a county, determines
 9 that, because of the person's age, mental or emotional condition or risk of physical harm to other
 10 persons, the person should not be incarcerated in a youth correction facility.

11 **SECTION 6.** ORS 169.053 is amended to read:

12 169.053. (1) A county may enter into an agreement with one or more other counties of this state
 13 under ORS 190.010 for the confinement and detention of offenders subject to the legal and physical
 14 custody of the county. The agreement may provide for the reception, detention, care and mainte-
 15 nance, and work assignment of:

- 16 (a) Pretrial detainees;
- 17 (b) Offenders convicted of a misdemeanor; and
- 18 (c) Offenders convicted of a felony who are:

19 (A) Sentenced[, *on or after January 1, 1997,*] to a **term of incarceration and who have, at the**
 20 **time the sentence is imposed**, 12 months or less [*incarceration*] **of the term to serve**; or

21 (B) Sanctioned[, *on or after January 1, 1997,*] by a court or the State Board of Parole and Post-
 22 Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, pro-
 23 bation or post-prison supervision.

24 (2) A county may enter into an agreement with the Department of Corrections under ORS
 25 190.110 for the confinement and detention of offenders subject to the legal and physical custody of
 26 the county. The agreement may provide for the reception, detention, care and maintenance, and
 27 work assignment of:

- 28 (a) Offenders convicted of a misdemeanor; and
- 29 (b) Offenders convicted of a felony who are:

30 (A) Sentenced[, *on or after January 1, 1997,*] to a **term of incarceration and who have, at the**
 31 **time the sentence is imposed**, 12 months or less [*incarceration*] **of the term to serve**; or

32 (B) Sanctioned[, *on or after January 1, 1997,*] by a court or the State Board of Parole and Post-
 33 Prison Supervision to 12 months or less incarceration for a violation of a condition of parole, pro-
 34 bation or post-prison supervision.

35 (3) An agreement entered into under ORS 190.110 and subsection (2) of this section shall include
 36 a provision that the county reimburse the Department of Corrections for its costs incurred in con-
 37 fining the county inmate. Reimbursement shall be made on a per diem basis at a rate determined
 38 by the department to be its average daily incarceration cost per inmate. In lieu of reimbursement,
 39 the department and county may enter into an agreement providing for the comparable exchange of
 40 inmates as determined by the department.

41 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
 42 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 43 **on its passage.**