

**Enrolled**  
**House Bill 2600**

Sponsored by Representative GELSER (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to adults with developmental disabilities; creating new provisions; and amending ORS 21.010, 30.262, 132.090, 179.478, 179.485, 179.701, 279A.050, 410.040, 410.060, 427.005, 427.007, 427.010, 427.020, 427.061, 427.104, 427.180, 427.205, 427.215, 427.235, 427.245, 427.255, 427.265, 427.270, 427.275, 427.280, 427.285, 427.290, 427.295, 427.300, 427.306, 427.330, 427.335, 430.010, 430.212, 480.225 and 680.205 and section 5, chapter 826, Oregon Laws 2009.

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

**SECTION 1. As used in this section and sections 2 and 3 of this 2011 Act:**

- (1) **“Adult” means an individual who is 18 years of age or older.**
- (2) **“Community living and inclusion supports” means services that may or may not be work-related and includes services designed to develop or maintain the individual’s skills in the following areas:**
  - (a) **Eating, bathing, dressing, personal hygiene, mobility and other personal needs;**
  - (b) **Self-awareness and self-control, social responsiveness, social amenities, interpersonal skills, interpersonal relationships and social connections;**
  - (c) **Community participation, recreation and the ability to use available community services, facilities or businesses;**
  - (d) **Expressive and receptive skills in verbal and nonverbal language, the functional application of acquired reading and writing skills and other communication needs; and**
  - (e) **Planning and preparing meals, budgeting, laundering, housecleaning and other personal environmental needs.**
- (3) **“Comprehensive services” means a package of services, other than support services for adults, that is provided by or under the direction of a community developmental disabilities program and that includes at least one of the following living arrangements licensed or regulated by the Department of Human Services:**
  - (a) **Twenty-four-hour residential care, including but not limited to a group home, a foster home or a supported living program.**
  - (b) **Assistance provided to maintain an individual in the individual’s own home or the home of the individual’s family and that costs more than an amount specified by the department by rule.**
- (4) **“Employment services” means services provided to develop or maintain the skills necessary for an individual to obtain and retain employment, including job assessment, job exploration, job development, job training, job coaching, work skills, and ongoing supports.**
- (5) **“Environmental accessibility adaptations” means physical modifications to an individual’s home that are necessary to ensure the health, welfare and safety of the individ-**

ual in the home, or that enable the individual to function with greater independence in the home.

(6) "Individualized written service plan" means a plan described in ORS 430.210 (1)(a), (b) and (c) that identifies the resources, services and purchases necessary for an individual with a developmental disability to achieve identified personal goals and maximize self-determination.

(7) "Person-centered planning" means an informal or formal process for gathering and organizing information that helps an individual to:

- (a) Enhance self-determination by choosing personal goals and lifestyle preferences;
- (b) Design strategies and networks of support to achieve personal goals and a preferred lifestyle using individual strengths, relationships and resources; and
- (c) Identify, use and strengthen naturally occurring opportunities for support in the home and in the community.

(8) "Self-determination" means empowering individuals to:

(a) Select and plan, together with freely-chosen family members and friends, the support services for adults that are necessary instead of purchasing a predefined program or package of services;

(b) Control the expenditure of available financial assistance in order to purchase support services for adults, with the help of a social support network if needed;

(c) Live an autonomous life in the community, rich in community affiliations, through formal or informal arrangements of resources and personnel; and

(d) Have a valued role in the community through competitive employment, organizational affiliations, personal development and general caring for others in the community, and to be accountable for spending public dollars in ways that are life-enhancing for the individual.

(9)(a) "Specialized medical equipment and supplies" means:

(A) Devices, aids, controls, supplies or appliances that enable individuals:

(i) To increase their ability to perform activities of daily living; or

(ii) To perceive, control or communicate with the environment in which they live;

(B) Items necessary for life support, including ancillary supplies and equipment necessary to the proper functioning of these items; and

(C) Medical equipment not available in the medical assistance program.

(b) "Specialized medical equipment and supplies" does not include items that have no direct medical or remedial benefit to the individual.

(10) "Specialized supports" means treatment, training, consultation or other unique services that are not available through the medical assistance program but are necessary to achieve the goals identified in the individualized written service plan, or other support services for adults prescribed by the department by rule.

(11) "Support service brokerage" means an entity that contracts with the department to provide or to arrange for support services for adults.

(12) "Support services for adults" means the services for adults with developmental disabilities provided by a support service brokerage under sections 2 and 3 of this 2011 Act.

**SECTION 2.** (1) Support services for adults are intended to meet the needs of adults with developmental disabilities and to prevent or delay their need for comprehensive services. The Department of Human Services shall establish by rule the application and eligibility determination processes for support services for adults.

(2) Support services for adults shall be provided through a support service brokerage and pursuant to an individualized written service plan that is developed and reassessed at least annually using a person-centered planning process.

(3) The department shall ensure that each individual receiving support services for adults has an active role in choosing the services, activities and purchases that will best meet the individual's needs and preferences and to express those choices verbally, using sign language or by other appropriate methods of communication.

(4) The services, activities and purchases available as support services for adults include, but are not limited to:

(a) Community living and inclusion supports that facilitate independence and promote community integration by supporting the individual to live as independently as possible;

(b) Employment services;

(c) Environmental accessibility adaptations;

(d) Specialized supports; and

(e) Specialized medical equipment and supplies.

(5) Support services for adults must complement the existing formal and informal supports, services, activities and purchases available to an adult living in the adult's own home or the home of the adult's family.

(6) The department shall ensure that each individual has the opportunity to confirm satisfaction with the support services for adults that the individual receives and to make changes in the services as necessary.

**SECTION 3.** (1) The Department of Human Services shall enter into contracts with support service brokerages to deliver support services for adults in a manner that features regional consolidation, administrative efficiency, cost-effectiveness and strong consumer and family oversight.

(2) Individuals who receive support services for adults and their family members shall have formal, significant, continuing roles in advising the department and support service brokerages regarding the design, implementation and quality assurance of the support services for adults delivery system.

**SECTION 4.** ORS 427.005 is amended to read:

427.005. As used in this chapter:

(1) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(2) "Care" means:

(a) Supportive services, including, but not limited to, provision of room and board;

(b) Supervision;

(c) Protection; and

(d) Assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(3) "Community developmental disabilities program director" means the director of an entity that provides services described in ORS 430.630 to persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities.

(4) "**Developmental disability**" means **intellectual disability, autism, cerebral palsy, epilepsy or other neurological condition diagnosed by a qualified professional that:**

(a) **Originates before an individual is 22 years of age, or 18 years of age for an intellectual disability;**

(b) **Originates in and directly affects the brain and is expected to continue indefinitely;**

(c) **Results in a significant impairment in adaptive behavior as measured by a qualified professional;**

(d) **Is not attributed primarily to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability or attention deficit hyperactivity disorder; and**

(e) **Requires training and support similar to that required by an individual with an intellectual disability.**

[*(4) "Developmental period" means the period of time between birth and the 18th birthday.*]

(5) "Director of the facility" means the superintendent of a state training center, or the person in charge of care, treatment and training programs at other facilities.

(6) "Facility" means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facility or program as the

Department of Human Services approves to provide necessary services to persons with [*mental retardation*] **intellectual disabilities or other developmental disabilities**.

(7) "Incapacitated" means a person is unable, without assistance, to properly manage or take care of personal affairs or is incapable, without assistance, of self-care.

(8) "Independence" means the extent to which persons with [*mental retardation or*] **intellectual disabilities or other developmental disabilities** exert control and choice over their own lives.

(9) "Integration" means:

(a) Use by persons with [*mental retardation or*] **intellectual disabilities or other developmental disabilities** of the same community resources that are used by and available to other persons;

(b) Participation by persons with [*mental retardation or*] **intellectual disabilities or other developmental disabilities** in the same community activities in which persons without disabilities participate, together with regular contact with persons without disabilities; and

(c) Residence by persons with **intellectual disabilities or other developmental disabilities** in homes or in home-like settings that are in proximity to community resources, together with regular contact with persons without disabilities in their community.

(10)(a) "**Intellectual disability**" means **significantly subaverage general intellectual functioning, defined as intelligence quotients under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior, that is manifested before the individual reaches 18 years of age.**

(b) **An individual with intelligence quotients of 70 through 75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior, as diagnosed and measured by a qualified professional.**

(c) **The impairment in adaptive behavior must be directly related to the intellectual disability.**

(d) **Intellectual disability is synonymous with mental retardation.**

[(10)] (11) "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

[(11) "*Mental retardation*" means *significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency. Mental retardation is synonymous with mental deficiency.*]

(12) "Minor" means an unmarried person under 18 years of age.

(13) "Physician" means a person licensed by the Oregon Medical Board to practice medicine and surgery.

(14) "Productivity" means engagement in income-producing work by a person with [*mental retardation*] **an intellectual disability** or [*a*] **another developmental disability** which is measured through improvements in income level, employment status or job advancement or engagement by a person with [*mental retardation*] **an intellectual disability** or [*a*] **another developmental disability** in work contributing to a household or community.

(15) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the department.

(16) "Significantly subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(17) "State training center" means [*Eastern Oregon Training Center and any other*] **a facility operated by the department for the care, treatment and training of persons with [*mental retardation*] intellectual disabilities or other developmental disabilities.**

(18) "Training" means:

(a) The systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or

(b) The planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual and social growth.

(19) "Treatment" means the provision of specific physical, mental, social interventions and therapies which halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions.

**SECTION 5.** ORS 427.007 is amended to read:

427.007. (1) The Legislative Assembly finds and declares that a significant number of persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities currently reside in state-operated hospitals and training centers or lack needed services simply because appropriate community-based services, including residential facilities, day programs, home care and other support, care and training programs, do not exist. The Legislative Assembly further finds that families are the major providers of support, care, training and other services to their members with [*mental retardation*] **intellectual disabilities** or other developmental disabilities who live at home, and many of these families experience exceptionally high financial outlays and extraordinary physical and emotional challenges due to the unavailability of appropriate family support services. Such services pertain to the needs of the person with a disability, the needs of other family members related to their care-giving and nurturing capacity, and specialized needs for environmental accommodation to reduce dependency of the family member with [*mental retardation*] **an intellectual disability** or another developmental disability. Therefore, the Department of Human Services is directed to facilitate the development of appropriate community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, in an orderly and systematic manner. The role of state-operated hospitals and training centers in Oregon shall be as specialized back-up facilities to a primary system of community-based services for persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities.

(2) In carrying out the directive in subsection (1) of this section, the department shall develop a biennial plan in conjunction with the budgeting process for review by each Legislative Assembly. In developing this plan, the department shall meet with and consider the input of representatives from the following constituencies: Consumer organizations, parent-family organizations, advocacy organizations, unions representing workers in state-operated hospitals and training centers, community provider organizations, state and local education officials and community mental health departments or programs. Such plans shall include, where appropriate:

(a) Proposals for the decrease in the number of persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities to be served in state-operated hospitals and training centers at a steady and planned rate until such time that the Legislative Assembly shall determine that each person served in programs or facilities operated or supported by the department is being served according to the best contemporary professional practices in the least restrictive environment, with preference given to the community-based setting over the institutional. However, no person shall be moved from any facility until a comprehensive assessment of the person's medical, treatment, training and support service needs has been completed, the move determined to be in the person's best interest and appropriate service alternatives procured.

(b) Proposals for the orderly development of community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, to accommodate persons coming out of state-operated hospitals and training centers and to serve persons already in the community waiting for services. The proposals shall include services developed for persons in the community waiting for services that are at least equal in number to those services developed for those coming out of state-operated hospitals and training centers, and shall include services for all persons who are leaving the public education system, in order to further prevent unnecessary institutionalization of persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities. Funding for these services shall be commensurate with individual need. These proposals may include provisions for an array of both publicly and privately

operated services and shall include specific implementation plans requiring that new services developed are designed to significantly increase the independence, productivity and integration into the community of persons with [*mental retardation or*] **intellectual disabilities or other** developmental disabilities.

(c) Proposals for the location of community-based services for persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities in proximity to family, friends, supportive services and home communities whenever possible.

(3) In further carrying out the directive in subsection (1) of this section, the department shall develop monitoring and evaluation systems which ensure competent management, program quality and cost-effectiveness of community-based services. Such systems shall include, where appropriate:

(a) A comprehensive system of case management which assures an orderly movement of persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities from state-operated hospitals and training centers to community-based services, and between community-based service alternatives, and assures an effective system of service delivery to persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities living in the community, based on individualized planning and close cooperation with consumers, families and guardians.

(b) An annual progress assessment of every person with [*mental retardation*] **an intellectual disability** or another developmental disability served in programs or facilities operated or supported by the department. This assessment shall measure the degree to which a family with a member with [*mental retardation*] **an intellectual disability** or another developmental disability demonstrates enhanced care-giving and nurturing capacities, and the degree to which the independence, productivity and integration into the community of each person with [*mental retardation*] **an intellectual disability** or another developmental disability has been increased as a result of receiving such services. The overall results of these assessments shall annually be aggregated and analyzed for each program or facility operated or supported by the department, and shall be made available for public inspection and review by the Legislative Assembly.

(c) The development of specific standards for each component within the array of services, for persons with [*mental retardation*] **intellectual disabilities** or other developmental disabilities, either operated or supported by the department and assure the competent management, program quality and cost-effectiveness of such services.

(4) Subject to available funds, the department shall ensure that each family with a member with [*mental retardation*] **an intellectual disability** or another developmental disability has access to family support services, and that each person with [*mental retardation*] **an intellectual disability** or [*a*] **another** developmental disability living in the community, including those leaving the public education system, has access to community-based services necessary to enable the person to strive to achieve independence, productivity and integration. Specific services proposed for the person shall be identified in an individual habilitation plan or in a family support service plan.

(5) Subject to available funds, the department shall determine the content of individual habilitation plans and family support service plans, and the process whereby such plans are developed and updated.

(6) The department shall establish grievance procedures for mediation of disputes concerning eligibility for or appropriateness of services in individual cases.

**SECTION 6.** ORS 427.010 is amended to read:

427.010. (1) Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Eastern Oregon Training Center in Pendleton, Umatilla County, shall be used for the care, treatment and training of persons with [*mental retardation*] **intellectual disabilities** who are assigned to the care of the institution by the department according to procedures defined in ORS 427.185 or who were residents on October 3, 1979.

(2) Upon receipt of an application approved by the department or its designee, pursuant to its rules, a person with [*mental retardation*] **an intellectual disability** may be entitled to admission to the state training center for emergency, respite or part-time care. Part-time care means presence of the person at the facility less than 24 hours per day and may include day or night care. Admission

for emergency care or respite care may not exceed 90 days. Admission for part-time care may exceed 90 days. The fee schedule for such care, training and treatment in the training center shall be established by the department in the same manner as for other residents. The fees shall be charged and collected by the department in the same manner as charges are collected under ORS 179.610 to 179.770.

(3) The superintendent of the training center named in subsection (1) of this section shall be a person the department considers qualified to administer the training center. If the superintendent of the training center is a physician licensed by the Oregon Medical Board, the superintendent shall serve as chief medical officer. If not a physician, the superintendent shall designate a physician to serve as chief medical officer. The designated chief medical officer may be an appointed state employee in the unclassified service, a self-employed contractor or an employee of a public or private entity that contracts with the department to provide chief medical officer services. Unless the designated chief medical officer is specifically appointed as a state employee in the unclassified service, the designated chief medical officer shall not be deemed a state employee for purposes of any state statute, rule or policy.

(4)(a) Notwithstanding any other provision of law, the designated chief medical officer may supervise physicians who are employed by the training center or who provide services at the training center pursuant to a contract.

(b) The designated chief medical officer may delegate all or part of the authority to supervise other physicians at the training center to a physician who is employed by the state, a self-employed contractor or an employee of a public or private entity that contracts with the department to provide physician services.

**SECTION 7.** ORS 427.020 is amended to read:

427.020. (1) State training centers shall annually review the plan of care for each resident and certify the resident's eligibility and need for continued residential care and training and shall present each certification with clear and convincing justification for continued residential care and training to the State Training Center Review Board for review and action pursuant to this section. If the board does not approve of the certification or, if the resident objects to continued residential care and training, the resident shall be released pursuant to ORS 427.300 or, if the Department of Human Services considers release not to be in the best interest of the resident, the superintendent of the state training center where the person is a resident shall initiate commitment proceedings pursuant to ORS 427.235 to [427.270, 427.280 and 427.285] **427.290**. The board may require the physical presence of any resident during the review. However, the board shall require the physical presence of each resident at least once every three years of residence in a state training center.

(2) The plan of care for each resident shall include, but not be limited to, the following:

- (a) Current diagnosis;
- (b) Level of functioning;
- (c) Current habilitation and health programs in which the resident is participating;
- (d) Statement as to continued eligibility and continued need for residential care;
- (e) Statement of long-term and short-term goals for the resident; and
- (f) Verification that the person has been advised of the facility's statement of rights and the policies governing the immediate living area of the person.

(3) The state training center shall notify the resident orally. In addition, the resident, the resident's parent, guardian or person entitled to custody shall be notified by certified mail of the intent to certify the need for the resident's continued commitment. The notification shall include the following:

- (a) Time, place and location of the hearing of the State Training Center Review Board;
- (b) Explanation of the possible consequences of the proceedings; and
- (c) Explanation of the resident's right to appear before the board on the resident's own behalf or to be represented at the proceeding by the resident's parent, guardian, the person entitled to custody or other person, including counsel, of the resident's choosing.

(4) In the event the resident, because of severe disability, is unable to receive and acknowledge the communication required by subsection (3) of this section, that fact shall be documented in the resident's record and conveyed to the board.

**SECTION 8.** ORS 427.061 is amended to read:

427.061. (1) If any [*mentally retarded*] person **with an intellectual disability** is admitted to and detained in a state training center under ORS 427.255, the Department of Human Services shall charge to and collect from appropriate persons the costs in the same manner as it would for other residents of the state training center under the provisions of ORS 179.610 to 179.770.

(2) If any person is adjudged [*mentally retarded*] **to be in need of commitment for residential care, treatment and training** as provided by ORS 427.255, and the person receives care, treatment and training in a state training center, the person, or other persons or agencies legally responsible for the support of the person, may be required to pay the cost of the care of the person at the state training center, as provided by ORS 179.610 to 179.770.

**SECTION 9.** ORS 427.104 is amended to read:

427.104. The Department of Human Services with funds appropriated for that purpose by the legislature, shall establish and operate a Developmental Disability Diagnosis and Evaluation Service for people with [*mental retardation or*] **intellectual disabilities or other** developmental disabilities. The Developmental Disability Diagnosis and Evaluation Service shall provide all or part of diagnostic evaluations, as defined in ORS 427.105, when complete evaluations are not available through community developmental disabilities programs, and the Developmental Disability Diagnosis and Evaluation Service shall:

(1) Provide consultation and training to community developmental disabilities programs in the development of local diagnosis and evaluation services;

(2) Develop and periodically revise department standards and procedures for diagnosis and evaluation services;

(3) Coordinate diagnostic evaluations statewide to minimize duplication of tests and examinations;

(4) Approve applications for admission to [*the*] **a state** training center;

(5) Provide necessary information to the State Training Center Review Board when a decision of the Developmental Disability Diagnosis and Evaluation Service regarding admission to [*the*] **a** state training center is appealed by the person, the parents or legal guardian of the person;

(6) Provide consultation to appropriate agencies and individuals regarding persons evaluated; and

(7) Process and coordinate all placements of residents from [*the*] state training [*center*] **centers.**

**SECTION 10.** ORS 427.180 is amended to read:

427.180. (1) A person shall be admitted to a state training center only after:

(a) The person has either been committed to the Department of Human Services as a [*mentally retarded*] person **with an intellectual disability** under ORS 427.290, or an application for admission has been filed either by the person or by another in the manner set forth in ORS 427.185;

(b) The person has undergone a diagnostic evaluation as defined in ORS 427.105 and the completed evaluation has been provided to the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104; and

(c) Either the Developmental Disability Diagnosis and Evaluation Service or, upon appeal, the Director of Human Services finds that the person meets the requirements set out in subsection (2) of this section and approves the person for admission.

(2) A person shall be approved for admission under subsection (1)(c) of this section if the following conditions exist:

(a) The person [*is mentally retarded*] **has an intellectual disability;**

(b) Programs and services needed by the person are available in a **state** training center and comparable services are not available in community developmental disabilities programs or other human service agencies;



(c) Admission to a state training center is the best available plan and in the best interest of the person, family of the person and the community; and

(d) Space is available or may become available within a reasonable time in an appropriate unit of a state training center.

**SECTION 11.** ORS 427.205 is amended to read:

427.205. (1) The Director of Human Services shall appoint a State Training Center Review Board composed of three members. The Arc of Oregon, the Fairview Parents Association and the Oregon Council on Developmental Disabilities or their successor organizations may each recommend three persons to the director. The director may select one person from each list to serve as a member of the board. Each board member shall have had at least five years of involvement and active interest in programs for persons with *[mental retardation]* **intellectual disabilities**. A board member may not be an employee of the Department of Human Services.

(2) The term of office of each member is two years. The director may remove any member for misconduct or neglect of duty. Replacement of board members shall be accomplished by the same procedure as that used in subsection (1) of this section for selection. The director shall request a new list of three persons from the organization whose nominee for board member is to be replaced.

(3) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole and Post-Prison Supervision for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred by the member in the performance of official duties.

(4) The board shall perform the following duties:

(a) Review decisions of the Developmental Disability Diagnosis and Evaluation Service regarding admissions to **state** training centers that have been appealed by the applicant or, if a minor or incapacitated person, by the person applying on the behalf of the minor or incapacitated person and advise the director regarding the appropriateness for the admission.

(b) Review decisions of the department pursuant to ORS 427.300 (2) when the resident, parent of the resident, guardian or person entitled to custody has appealed the decision and advised the director regarding the appropriateness of the decision.

(c) Annually review state training center plans for continuing residential care and training of residents pursuant to ORS 427.020.

(5) The board shall operate pursuant to rules adopted by the department.

**SECTION 12.** ORS 427.215 is amended to read:

427.215. *[As used in]* **For the purposes of** ORS 427.061 and 427.235 to 427.290, *[unless the context requires otherwise, "mentally retarded person" applies only to a person who, because of mental retardation, is or is alleged to be]* **a person with an intellectual disability is in need of commitment for residential care, treatment and training if the person is** either:

(1) Dangerous to self or others; or

(2) Unable to provide for **the person's** basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person.

**SECTION 13.** ORS 427.235 is amended to read:

427.235. (1) Any two persons may notify the *[judge of the]* court having probate jurisdiction for the county or the circuit court, if it is not the probate court but its jurisdiction has been extended to include commitment of *[the mentally retarded]* **a person with an intellectual disability** under ORS 3.275, that a person within the county *[is a mentally retarded person]* **has an intellectual disability and is** in need of commitment for residential care, treatment and training. Such notice shall be in writing and sworn to before an officer qualified to administer an oath and shall set forth the facts sufficient to show the need for investigation. The circuit court shall forward notice to the community developmental disabilities program director in the county if it finds the notice sufficient to show the need for investigation. The director or the designee of the director shall immediately

investigate to determine whether the person [*is in fact a mentally retarded person*] **has an intellectual disability and is in need of commitment for residential care, treatment and training.** However, if the petition for commitment is from a state training center, the duties of the community developmental disabilities program director under ORS 427.235 to [427.270, 427.280 and 427.285] **427.290** shall be the responsibility of the superintendent of the state training center or the designee of the superintendent.

(2) Any person who acts in good faith shall not be held civilly liable for making of the notification under subsection (1) of this section.

(3) Any investigation conducted by the community developmental disabilities program director or the designee of the director under subsection (1) of this section shall commence with an interview or examination of the [*allegedly mentally retarded*] person **alleged to have an intellectual disability**, where possible, in the home of the [*allegedly mentally retarded*] person or other place familiar to the [*allegedly mentally retarded*] person. Further investigation if warranted shall include a diagnostic evaluation as defined in ORS 427.105 and may also include interviews with the [*allegedly mentally retarded*] person's relatives, neighbors, teachers and physician. The investigation shall also determine if any alternatives to commitment are available. The investigator shall also determine and recommend to the court whether the person is incapacitated and in need of a guardian or conservator.

(4) The investigation report shall be submitted to the court within 30 days of receipt of notice from the court. A copy of the investigation report and diagnostic evaluation, if any, shall also be made available to the Developmental Disability Diagnosis and Evaluation Service and to the [*allegedly mentally retarded*] person **alleged to have an intellectual disability** and, [*where the allegedly mentally retarded*] **if the** person is a minor or incapacitated, to the parents **or guardian** of the [*allegedly mentally retarded*] person [*or guardian*] as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.

(5) Any person conducting an evaluation or investigation under this section shall in no way be held civilly liable for conducting the investigation or performing the diagnostic evaluation.

(6) If requested by a person conducting an investigation under this section, a physician who has examined the [*allegedly mentally retarded*] person **alleged to have an intellectual disability** may, with patient authorization or in response to a court order, provide any relevant information the physician has regarding the [*allegedly mentally retarded*] person **alleged to have an intellectual disability.**

**SECTION 14.** ORS 427.245 is amended to read:

427.245. (1) If the court, following receipt of an investigation report under ORS 427.235, concludes that there is probable cause to believe that the subject of the investigation [*is in fact a mentally retarded person*] **has an intellectual disability and is in need of commitment for residential care, treatment and training,** it shall, through the issuance of a citation as provided in subsection (2) of this section, cause the person to be brought before it at such time and place as it may direct for a hearing to determine whether the person [*is mentally retarded*] **has an intellectual disability and is in need of commitment for residential care, treatment and training.** The person shall be given the opportunity to appear at the hearing. If the person is detained pursuant to ORS 427.255, the court shall hold the hearing within seven judicial days.

(2) Upon a determination under subsection (1) of this section that probable cause exists to believe that the person [*is in fact a mentally retarded person*] **has an intellectual disability and is in need of commitment for residential care, treatment and training,** the [*judge*] **court** shall cause a citation to issue to the person or, if the person is a minor or incapacitated, to the parent or legal guardian of the person. The citation shall state the specific reasons the person is believed to [*be mentally retarded*] **be in need of commitment for residential care, treatment and training.** The citation shall also contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, the right to have legal counsel appointed immediately if so requested, the right to subpoena witnesses in behalf of the person to testify at the hearing, the right to cross-examine all witnesses

and such other information as the court may direct. The citation shall be served on the person by the community developmental disabilities program director or the designee of the director delivering a duly certified copy of the original to the person prior to the hearing. The person, the parents of the person or the legal guardian of the person shall have the opportunity to consult with legal counsel prior to being brought before the court. The community developmental disabilities program director or the designee of the director shall advise the person of the purpose of the citation and the possible consequences of the proceeding.

**SECTION 15.** ORS 427.255 is amended to read:

427.255. (1) If the court finds that there is probable cause to believe that **the** failure to take *[an allegedly mentally retarded]* **into custody pending an investigation or hearing** a person *[into custody pending an investigation or hearing]* **alleged to have an intellectual disability and be in need of commitment for residential care, treatment and training** would pose an imminent and serious danger to the person or to others, the *[judge]* **court** may issue a warrant of detention to either the community developmental disabilities program director or the sheriff of the county directing that the *[person]* **director, the sheriff** or the designee of the *[person]* **director or sheriff** take the *[allegedly mentally retarded]* person into custody and produce the *[mentally retarded]* person at the time and place stated in the warrant. At the time the person is taken into custody, the *[person taking the person into custody]* **custodian** shall advise the *[allegedly mentally retarded]* person or, if the *[allegedly mentally retarded]* person is incapacitated or a minor, the parents or guardian of the *[allegedly mentally retarded]* person of the person's right to counsel, to have legal counsel appointed if the *[allegedly mentally retarded]* person is unable to afford legal counsel, and, if requested, to have legal counsel appointed immediately.

(2) A person taken into custody under subsection (1) of this section shall be provided all care, custody, evaluation and treatment required for the mental and physical health and safety of the person and the director of the facility retaining custody shall report any care, custody, evaluation or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation performed on such person shall be consistent with Department of Human Services rules and ORS 427.105. Any prescription or administration of drugs shall be the sole responsibility of the treating physician. The *[allegedly mentally retarded]* person shall have the right to the least hazardous treatment procedures while in custody, and the treating physician shall be notified immediately of the use of any mechanical restraints on the person. A note of each use of mechanical restraint and the reasons therefor shall be made a part of the person's clinical record over the signature of the treating physician.

**SECTION 16.** ORS 427.265 is amended to read:

427.265. (1) At the time *[the allegedly mentally retarded]* **that a person who is alleged to have an intellectual disability and to be in need of commitment for residential care, treatment and training** is brought before the court, the court shall advise the person of the reason for being brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the *[allegedly mentally retarded]* person of the right to subpoena witnesses and to suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and that if the person does not have funds with which to retain suitable legal counsel, the court shall appoint such legal counsel to represent the person. If the *[allegedly mentally retarded]* person does not request legal counsel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of the person.

(2) If no request for legal counsel is made, the court shall appoint suitable legal counsel.

(3) If the person is unable to afford legal counsel, the court, if the matter is before a county or justice court, or the public defense services executive director, if the matter is before the circuit court, shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed by a county court shall be paid by the county of residence of the *[allegedly mentally retarded]* person. The expenses and compensation determined by the public defense services executive director shall be paid by the

public defense services executive director from funds available for the purpose. In all cases legal counsel shall be present at the hearing and may examine all witnesses offering testimony, and otherwise represent the person.

(4) *[If the allegedly mentally retarded person, the legal counsel, parent, guardian, an examiner or the court requests,]* The court may, for good cause, postpone the hearing for not more than 72 hours *[in order]* to allow preparation for the hearing. *The court may, for good cause,]* **and** order the continuation of detention authorized under ORS 427.255[,] during a postponement, **if requested by the person, the legal counsel, parent or guardian of the person, an examiner or on the court's own motion.**

**SECTION 17.** ORS 427.270 is amended to read:

427.270. (1) The examining facility conducting the diagnostic evaluation shall make its report in writing to the court. Where components of the diagnostic evaluation have been performed within the previous year according to Department of Human Services rules and ORS 427.105, and the records of the evaluation are available to the examining facility pursuant to ORS 179.505 and department rules, the results of such evaluation may be introduced in court in lieu of repetition of those components by the examining facility. If the facility finds, and shows by its report, that the person examined *[is a mentally retarded person]* **has an intellectual disability and is in need of commitment for residential care, treatment and training,** the report shall include a recommendation as to the type of treatment or training facility *[best calculated to habilitate]* **most suitable for** the person. The report shall also advise the court whether in the opinion of the examining facility the *[mentally retarded]* person and, if the *[mentally retarded]* person is a minor or incapacitated, the parents or legal guardian of the *[mentally retarded]* person would cooperate with voluntary treatment or training and whether the person would benefit either from voluntary treatment or training or from appointment of a legal guardian or conservator.

(2) *[If the allegedly mentally retarded]* **Upon request by the** person or the parent, legal guardian or legal counsel of the *[allegedly mentally retarded]* person *[requests],* the *[judge]* **court** shall appoint an additional physician or psychologist, or both, to examine the person and make separate reports in writing to the court. However, the court shall not appoint more than one additional physician and one additional psychologist to examine the person.

**SECTION 18.** ORS 427.275 is amended to read:

427.275. (1) Any physician or psychologist employed by the *[judge]* **court** to make a diagnostic evaluation of a person alleged to *[be mentally retarded]* **have an intellectual disability and to be in need of commitment for residential care, treatment and training,** shall be allowed a fee as the court in its discretion determines reasonable for the evaluation. The costs of the evaluation shall be paid by the county of residence of the person or, if the person has no residence within the state, by the county in which the person is taken into custody. The county shall not be held responsible for the costs of prior examinations or tests reported to the court, or of diagnostic evaluations performed or arranged by the community developmental disabilities program or Department of Human Services.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of *[an allegedly mentally retarded]* **a** person who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055.

**SECTION 19.** ORS 427.280 is amended to read:

427.280. The *[court shall be fully advised by the]* community developmental disabilities program director or, *[when the]* **if** a person has been detained under ORS 427.255, *[by]* the director of the facility retaining custody of **a person alleged to be in need of commitment for residential care,**

**treatment and training shall fully advise the court of** all treatment known to have been administered to the [*allegedly mentally retarded*] person after a citation has been issued to the person.

**SECTION 20.** ORS 427.285 is amended to read:

427.285. The investigator and other appropriate persons or professionals as necessary shall appear at the hearing and present the evidence. The [*allegedly mentally retarded*] person **alleged to have an intellectual disability and to be in need of commitment for residential care, treatment and training** shall have the right to cross-examine all witnesses, the investigator and the representative.

**SECTION 21.** ORS 427.290 is amended to read:

427.290. After hearing all of the evidence, and reviewing the findings of the investigation and other examiners, the court shall determine whether the person [*is mentally retarded*] **has an intellectual disability** and because of [*mental retardation*] **the intellectual disability** is either dangerous to self or others or is unable to provide for the personal needs of the person and is not receiving care as is necessary for the health, safety or habilitation of the person. If in the opinion of the court the person [*is not mentally retarded*] **in not in need of commitment for residential care, treatment and training**, the person shall be discharged [*forthwith*]. If in the opinion of the court the person [*is*] **has**, by clear and convincing evidence, [*mentally retarded*] **an intellectual disability and is in need of commitment for residential care, treatment and training**, the court may order as follows:

(1) If the [*mentally retarded*] person can give informed consent and is willing and able to participate in treatment and training on a voluntary basis, and the court finds that the person will do so, the court shall order release of the person and dismiss the case.

(2) If a relative, a friend or legal guardian of the [*mentally retarded*] person requests that the relative, friend or legal guardian be allowed to care for the [*mentally retarded*] person for a period of one year in a place satisfactory to the [*judge*] **court** and shows that the relative, friend or legal guardian is able to care for the [*mentally retarded*] person and that there are adequate financial resources available for the care of the [*mentally retarded*] person, the court may commit the [*mentally retarded*] person and order that the [*mentally retarded*] person be conditionally released and placed in the care and custody of the relative, friend or legal guardian. The order may be revoked and the [*mentally retarded*] person committed to the Department of Human Services for the balance of the year whenever, in the opinion of the court, it is in the best interest of the [*mentally retarded*] person.

(3) If in the opinion of the court voluntary treatment and training or conditional release is not in the best interest of the [*mentally retarded*] person, the court may order the commitment of the person to the department for care, treatment or training. The commitment shall be for a period not to exceed one year with provisions for continuing commitment pursuant to ORS 427.020.

(4) If in the opinion of the court the [*mentally retarded*] person may be incapacitated, the court may appoint a legal guardian or conservator pursuant to ORS chapter 125. The appointment of a guardian or conservator shall be a separate order from the order of commitment.

**SECTION 22.** ORS 427.295 is amended to read:

427.295. If a person [*determined by a court to be mentally retarded appeals the determination or disposition based thereon, and is determined to be financially eligible for appointed counsel at state expense*] **appeals a commitment order issued under ORS 427.290**, the court, upon request of the person or upon its own motion **and upon finding that the person is financially eligible for appointed counsel at state expense**, shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the public defense services executive director as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500.

**SECTION 23.** ORS 427.300 is amended to read:

427.300. (1) The Department of Human Services may, at its discretion, direct any [*court-committed mentally retarded*] person **with an intellectual disability who has been committed under ORS 427.290** to the facility best able to treat and train the person. The authority of the department on such matters shall be final.

(2) At any time, for good cause and in the best interest of the [*mentally retarded*] person, the department may decide to transfer a resident from one facility to another or discharge a resident as no longer in need of residential care, treatment or training in a state training center. Fifteen days prior to department action, the department shall notify the resident and the parent, guardian or person entitled to custody of the resident by certified mail of its decision. The notice shall indicate the right of the aforementioned parties to appeal this decision to the State Training Center Review Board in writing within 10 days after receipt of notice. Within 30 days from the date the appeal is received by the department, the State Training Center Review Board shall hold a hearing at which the department and the person having filed the appeal shall present their case and shall communicate its recommendation to the Director of Human Services pursuant to ORS 427.205 (4)(b); and the director shall communicate the decision of the director by certified mail to the appealing party.

(3) The department, pursuant to its rules, may delegate to a community developmental disabilities program director the responsibility for assignment of [*mentally retarded*] persons **with intellectual disabilities** to suitable facilities or transfer between such facilities under conditions which the department may define. Any voluntary client or resident shall be released from the treating or training facility within 15 business days of the request of the client or resident for release, unless commitment procedures are initiated under ORS 427.235.

**SECTION 24.** ORS 427.306 is amended to read:

427.306. (1) [*No*] **A person, not incarcerated upon a criminal charge, who has been alleged or adjudged [*a mentally retarded person shall*] to have an intellectual disability and to be in need of commitment for residential care, treatment and training, may not** be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated.

(2) [*No*] **A person alleged or adjudged [*a mentally retarded person,*] to have an intellectual disability and to be in need of commitment for residential care, treatment and training, who is** not incarcerated on a criminal charge, [*shall*] **may not** be confined without an attendant in charge of the person. If **the person is** not confined in a community hospital, the community developmental disabilities program director or sheriff having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person. The person shall be detained in the least restrictive setting consistent with the person's emotional and physical needs and the protection of others.

**SECTION 25.** ORS 427.330 is amended to read:

427.330. As used in ORS 427.330 to 427.345:

(1) "Care provider" means an individual, family member or entity that provides care.

(2)(a) "Community housing" includes:

(A) Real property, including but not limited to buildings, structures, improvements to real property and related equipment, that is used or could be used to house and provide care for individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities; and

(B) A single-family home or multiple-unit residential housing that an individual with [*mental retardation*] **an intellectual disability** or other developmental disability shares with other inhabitants, including but not limited to family members, care providers or friends.

(b) "Community housing" does not include the Eastern Oregon Training Center.

(3) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes to install equipment and to prepare a site.

[*(4) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological handicapping condition or severe physical impairment that requires training similar to that required by persons with mental retardation, and the disability:*]

[*(a) Originates before the person attains the age of 22 years;*]

[*(b) Has continued or can be expected to continue indefinitely; and*]

[*(c) Constitutes a substantial handicap to the ability of the person to function in society.*]

[*(5)*] (4) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or can be used to provide care in community housing.

[*(6)*] (5) "Family member" means an individual who is related by blood or marriage to an individual with [*mental retardation*] **an intellectual disability** or other developmental disability.

[*(7)*] (6) "Financial assistance" means a grant or loan to pay expenses incurred to provide community housing.

[*(8)*] (7) "Housing provider" means an individual or entity that provides community housing.

**SECTION 26.** ORS 427.335 is amended to read:

427.335. (1) The Department of Human Services may, through contract or otherwise, acquire, purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of providing care to individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities.

(2) The department may dispose of community housing acquired under subsection (1) of this section in a public or private sale, upon such terms and conditions as the department considers advisable to increase the quality and quantity of community housing for individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities. The department may include in any instrument conveying fee title to community housing language that restricts the use of the community housing to provide care for individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities. Such restriction is not a violation of ORS 93.270. Any instrument conveying fee title to community housing under this subsection shall provide that equipment in the community housing is a part of and shall remain with the real property unless such equipment was modified or designed specifically for an individual's use, in which case such equipment shall follow the individual.

(3) The department may provide financial assistance to a housing provider or a care provider that wishes to provide community housing for individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities under rules promulgated by the department.

(4) The department may transfer its ownership of equipment to care providers.

(5) When exercising the authority granted to the department under this section, the department is not subject to ORS 276.900 to 276.915 or 279A.250 to 279A.290 or ORS chapters 270 and 273.

**SECTION 27.** ORS 430.010 is amended to read:

430.010. As used in ORS 430.010 to 430.050, 430.140 to 430.170, 430.265, 430.270 and 430.610 to 430.695:

(1) "Authority" means the Oregon Health Authority.

(2) "Department" means the Department of Human Services.

(3) "Health facility" means a facility licensed as required by ORS 441.015 or a facility accredited by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed to admit persons requiring 24-hour nursing care.

(4) **"Mental retardation" is synonymous with "intellectual disability" as defined in ORS 427.005.**

[*(4)*] (5) "Residential facility" or "day or partial hospitalization program" means a program or facility providing an organized full-day or part-day program of treatment. Such a program or facility shall be licensed, approved, established, maintained, contracted with or operated by the authority under:

(a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(c) ORS 430.610 to 430.880 for mental or emotional disturbances.

[*(5)*] (6) "Outpatient service" means:

(a) A program or service providing treatment by appointment and by:

(A) Medical or osteopathic physicians licensed by the Oregon Medical Board under ORS 677.010 to 677.450;

(B) Psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010 to 675.150;

(C) Nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010 to 678.410;

(D) Regulated social workers authorized to practice regulated social work by the State Board of Licensed Social Workers under ORS 675.510 to 675.600; or

(E) Professional counselors or marriage and family therapists licensed by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715 to 675.835; or

(b) A program or service providing treatment by appointment that is licensed, approved, established, maintained, contracted with or operated by the authority under:

(A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(C) ORS 430.610 to 430.880 for mental or emotional disturbances.

**SECTION 28.** ORS 21.010 is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$154. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay \$154 for each additional person named as an appellant or petitioner. The respondent in such case, and any other person appearing in the appeal, shall pay \$154 to the State Court Administrator for each additional person named as a respondent. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid. The Chief Justice by order may provide for exemptions from the fees established by this subsection if exemptions are needed for the equitable imposition of those fees.

(3) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200 and the involuntary commitment of persons determined to be mentally ill under ORS 426.135 or persons determined to [*be mentally retarded*] **have an intellectual disability** under ORS 427.295, or on judicial review of orders of the Psychiatric Security Review Board under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision.

(4) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(5) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

**SECTION 29.** ORS 21.010, as amended by section 30, chapter 659, Oregon Laws 2009, and section 37f, chapter 885, Oregon Laws 2009, is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$154. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200 and the involuntary commitment of persons determined to be mentally ill under ORS



426.135 or persons determined to [*be mentally retarded*] **have an intellectual disability** under ORS 427.295, or on judicial review of orders of the Psychiatric Security Review Board under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision.

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

**SECTION 30.** ORS 30.262 is amended to read:

30.262. (1) The following facilities and training homes are public bodies for the purposes of ORS 30.260 to 30.300:

(a) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives more than 50 percent of its funding from the state or a political subdivision of the state for the purpose of providing residential or vocational services to individuals with [*mental retardation or*] **intellectual or other** developmental disabilities.

(b) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives less than 50 percent of its funding from the state or a political subdivision of the state but that provides residential or vocational services to individuals with [*mental retardation or*] **intellectual or other** developmental disabilities, more than half of whom are eligible for funding for services by the Department of Human Services under criteria established by the department.

(2) The provisions of this section apply only to a nonprofit residential training facility, nonprofit residential training home or nonprofit facility that provides services to individuals with [*mental retardation or*] **intellectual or other** developmental disabilities under a contract with:

(a) The Department of Human Services; or

(b) A community mental health and developmental disabilities program established pursuant to ORS 430.620.

**SECTION 31.** ORS 132.090 is amended to read:

132.090. (1) Except as provided in subsections (2) and (3) of this section, no person other than the district attorney or a witness actually under examination shall be present during the sittings of the grand jury.

(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may appoint a reporter who shall attend the sittings of the grand jury to take and report the testimony in any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate person 18 years of age or older to accompany any child 12 years of age or younger, or any person with mental retardation, during an appearance before the grand jury. The circuit judge, upon the district attorney's showing to the court that it is necessary for the proper examination of a witness appearing before the grand jury, may appoint a guard, medical or other special attendant or nurse, who shall be present in the grand jury room and shall attend such sittings.

(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to interpret the testimony of witnesses appearing before the grand jury. The district attorney may designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a certified interpreter is not available and that the person designated by the district attorney is a qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may be present in the grand jury room and attend the sittings of the grand jury.

(4) No person other than members of the grand jury shall be present when the grand jury is deliberating or voting upon a matter before it.

(5) As used in this section, “mental retardation” has the meaning given that term in ORS [427.005] **430.010**. Mental retardation may be shown by attaching to the motion of the district attorney:

(a) Documentary evidence of intellectual functioning; or

(b) The affidavit of a qualified person familiar with the person with mental retardation. “Qualified person” includes, but is not limited to, a teacher, therapist or physician.

**SECTION 32.** Section 5, chapter 826, Oregon Laws 2009, as amended by sections 18 and 18a, chapter 826, Oregon Laws 2009, is amended to read:

**Sec. 5.** Relief from certain prohibitions against transporting, shipping, possessing or receiving firearm. (1) A person barred from transporting, shipping, possessing or receiving a firearm may file a petition with the Psychiatric Security Review Board for relief from the bar if:

(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(D) or (E);

(b) The person is barred from receiving a firearm under ORS 166.470 (1)(e) or (f); or

(c) The person is barred from possessing, receiving, shipping or transporting a firearm under 18 U.S.C. 922(d)(4) or (g)(4) as the result of a state mental health determination.

(2) The petitioner shall serve a copy of the petition on:

(a) The Department of Human Services and the Oregon Health Authority; and

(b) The district attorney in each county in which:

(A) The person was committed by a court to the Oregon Health Authority, or adjudicated by a court as mentally ill, under ORS 426.130;

(B) The person was committed by a court to the Department of Human Services, or adjudicated by a court as [*mentally retarded*] **in need of commitment for residential care, treatment and training**, under ORS 427.290;

(C) The person was found guilty except for insanity under ORS 161.295;

(D) The person was found responsible except for insanity under ORS 419C.411; or

(E) The person was found by a court to lack fitness to proceed under ORS 161.370.

(3) Following receipt of the petition, the board shall conduct a contested case hearing, make written findings of fact and conclusions of law on the issues before the board and issue a final order.

(4) The state and any person or entity described in subsection (2) of this section may appear and object to and present evidence relevant to the relief sought by the petitioner.

(5) The board shall grant the relief requested in the petition if the petitioner demonstrates, based on the petitioner’s reputation, the petitioner’s record, the circumstances surrounding the firearm disability and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

(6) If the board grants the relief requested in the petition, the board shall provide to the Department of State Police the minimum information necessary, as defined in [*section 1 of this 2009 Act*] **ORS 181.740**, to enable the department to:

(a) Maintain the information and transmit the information to the federal government as required under federal law; and

(b) Maintain a record of the person’s relief from the disqualification to possess or receive a firearm under ORS 166.250 (1)(c)(D) or (E) or 166.470 (1)(e) or (f).

(7) The petitioner may petition for judicial review of a final order of the board. The petition shall be filed in the circuit court of a county described in subsection (2)(b) of this section. The review shall be conducted de novo and without a jury.

(8) A petitioner may take an appeal from the circuit court to the Court of Appeals. Review by the Court of Appeals shall be conducted in accordance with ORS 183.500.

(9) A person may file a petition for relief under this section no more than once every two years.

(10) The board shall adopt procedural rules to carry out the provisions of this section.

(11) As used in this section, “state mental health determination” means:

(a) A finding by a court that a person lacks fitness to proceed under ORS 161.370;

(b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 or responsible except for insanity of an act under ORS 419C.411 or any determination by the Psychiatric Security Review Board thereafter;

(c) A commitment by a court to the Oregon Health Authority, or an adjudication by a court that a person is mentally ill, under ORS 426.130; or

(d) A commitment by a court to the Department of Human Services, or an adjudication by a court that a person is [*mentally retarded*] **in need of commitment for residential care, treatment and training**, under ORS 427.290.

**SECTION 33.** ORS 179.478 is amended to read:

179.478. (1) If the person, a relative, guardian or friend, or institution staff have probable cause to believe that an inmate or youth offender is a person with [*mental retardation*] **an intellectual disability** to such a degree that the inmate or youth offender cannot adjust to or benefit from the Department of Corrections institution or youth correction facility, the superintendent of the institution shall request that a diagnostic assessment be performed by the Department of Human Services or its designee. If there is probable cause to believe that the inmate or youth offender is a person with [*mental retardation*] **an intellectual disability** and otherwise eligible for admission to a state training center pursuant to ORS 427.010 and other applicable statutes and rules of the Department of Human Services, the person shall be entitled to a commitment hearing.

(2) If the inmate or youth offender is by clear and convincing evidence determined by the court to be a person with [*mental retardation*] **an intellectual disability**, the person shall be committed and transferred to a training center designated by the Department of Human Services as soon as space in an appropriate unit is available, and any sentence to a Department of Corrections institution or commitment to the youth correction facility shall be terminated.

**SECTION 34.** ORS 179.485 is amended to read:

179.485. Persons transferred to a state institution for persons with mental illness or [*mental retardation*] **intellectual disabilities** under ORS 179.473, 179.478 and 420.505 shall be entitled to the same legal rights as any other persons admitted to those institutions.

**SECTION 35.** ORS 179.701 is amended to read:

179.701. The cost-of-care rates for a person shall be determined by the Department of Corrections, the Department of Human Services or the Oregon Health Authority, as appropriate. The rates established shall be reasonably related to current costs of the institutions as described in ORS 179.321. Current costs shall exclude costs of outpatient services as defined in ORS 430.010 [(5)] and any other costs not directly related to the care for a person at a state institution.

**SECTION 36.** ORS 279A.050 is amended to read:

279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing for the purpose of providing care to individuals with [*mental retardation*] **intellectual disabilities** or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the authority's institutions and the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing for persons with chronic mental illness, subject to applicable provisions of ORS 426.504;

(c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

(d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;

(e) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

(f) The Oregon Business Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

(h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

(k) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

(L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology relating to student assessment; and

(m) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates this authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6)(a) to (k) of this section under which more than one state agency may order goods, services or personal services and all state agency information technology contracts. This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to (k) of this section may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director if the director has established a price agreement for the goods, services or personal services.

**SECTION 37.** ORS 410.040 is amended to read:

410.040. As used in ORS 409.010, 410.040 to 410.320, 411.159 and 441.630:

(1) "Appropriate living arrangement" means any arrangement for an elderly person or a person with a disability in a residential setting which is appropriate for the person considering, in order of priority, the following criteria:

(a) The desires and goals of the person;

(b) The right of the person to live as independently as possible, in the least restrictive environment; and

(c) The cost of the living arrangement compared to other types of living arrangements, based on the criteria in paragraphs (a) and (b) of this subsection.

(2) "Area agency" means:

(a) An established or proposed type A or type B Area Agency on Aging within a planning and service area designated under Section 305 of the Older Americans Act; or

(b) Any public or nonprofit private agency which is designated as a type A or type B Area Agency on Aging under Section 305 of the Older Americans Act.

(3) "Area agency board" means the local policy-making board which directs the actions of the area agency within state and federal laws and regulations.

(4) "Department" means the Department of Human Services.

(5) "Elderly person" means a person who is served by a type A area agency or type B area agency or by the department and who is 60 years of age or older.

(6) "Local government" means a political subdivision of the state whose authority is general or a combination of units of general purpose local governments.

(7) "Person with a disability" means a person with a physical or mental disability:

(a) Who is eligible for Supplemental Security Income or for general assistance; and

(b) Who meets one of the following criteria:

(A) Has [*mental retardation or*] a developmental disability or is mentally or emotionally disturbed, and resides in or needs placement in a residential program administered by the department.

(B) Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the department.

(C) Has a physical or mental disability other than those described in subparagraphs (A) and (B) of this paragraph.

(8) "Preadmission screening" means a professional program within the department or type B area agencies, with staff that includes registered nurses and social workers, that assesses the needs of clients and recommends appropriate placements in residential programs administered by the department or type B area agencies.

(9) "Protective services" means a service to be provided by the department directly or through type B area agencies, in response to the need for protection from harm or neglect to elderly persons and persons with disabilities.

(10) "Title XIX" means long term care and health services programs in Title XIX of the Social Security Act available to elderly persons and persons with disabilities.

(11) "Type A area agency" means an area agency:

(a) For which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX; and

(b) That provides a service to elderly persons.

(12) "Type B area agency" means an area agency:

(a) For which the local government agrees to accept local administrative responsibility for Title XIX;

(b) That provides a service to elderly persons or to elderly persons and persons with disabilities who require services similar to those required by elderly persons; and

(c) That uses the term "disabled services" or "disability services" in its title to communicate the fact that it provides services to both populations described in paragraph (b) of this subsection.

**SECTION 38.** ORS 410.060 is amended to read:

410.060. (1) It is the policy of the State of Oregon that persons with disabilities served by the Department of Human Services shall also receive necessary services, as appropriate for their needs, from other state agencies.

(2) In carrying out the provisions in subsection (1) of this section, the Department of Human Services shall negotiate interagency agreements and coordinate services with the Employment Department and the Department of Education for the provision of appropriate services to clients of the Department of Human Services who have disabilities.

(3)(a) Prior to approval of an appropriate living arrangement, as defined in ORS 410.040, administered by the Department of Human Services, all persons with disabilities shall be assessed by preadmission screening to ensure the appropriateness of the living arrangement.

(b) If a person with a disability is diagnosed as, or is reasonably believed to be, a person with [*mental retardation or*] a developmental disability, preadmission screening shall include an assessment by the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104.

(4) The Department of Human Services in coordination with the Department of Education shall work with nursing homes that have one or more residents under 18 years of age to develop a program appropriate to the needs of those residents.

**SECTION 39.** ORS 430.212 is amended to read:

430.212. (1) The Department of Human Services shall establish a process by rule that implements the reconnection of family members with an individual with a developmental disability as defined in ORS [427.330] **427.005**.

(2) The rules adopted under subsection (1) of this section shall include a process that provides guidance for the release of information about the individual to family members when:

(a) The individual is incapable of providing consent for the release of information;

(b) The individual does not have a guardian or any representative designated by the individual who is authorized to release information; and

(c) The release of information is in the best interests of the individual as determined by the department.

**SECTION 40.** ORS 480.225 is amended to read:

480.225. (1) A person is eligible for a certificate of possession under ORS 480.235 if:

(a) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of a misdemeanor involving violence, as defined in ORS 166.470, within the previous four years. A person who has been so convicted is eligible under this subsection following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(b) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of, and is not under indictment for, any felony.

(c) The person is not a fugitive from justice, has no outstanding warrants for arrest and is not free on any form of pretrial release for any offenses listed in paragraphs (a) and (b) of this subsection.

(d) The person has not been determined to be mentally ill under ORS 426.130 and 430.397 to 430.401 or [*mentally retarded*] **to have an intellectual disability** under ORS 427.290. A person who previously has been so determined is eligible under this subsection if, at the time of application for such a certificate, the person produces a certified copy of a full discharge from the proper state hospital. The Oregon Health Authority shall provide the State Fire Marshal with direct electronic access to the authority's database of information identifying persons meeting the criteria of this section who were committed or subject to an order under ORS 426.130. The State Fire Marshal and the authority shall enter into an agreement describing the access to information under this subsection.

(e) The person is at least 21 years of age.

(f) The person does not use a fictitious name or make a material misrepresentation in application for such a certificate.

(g)(A) The person has not been convicted of, and is not under indictment for, a criminal offense involving a controlled substance as defined in ORS 475.005, other than the offense of driving under the influence of intoxicants.

(B) Notwithstanding subparagraph (A) of this paragraph, a person who has had a certificate denied or revoked due to conviction of a criminal offense involving a controlled substance is eligible under this section following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(h) The person has been discharged from the jurisdiction of the juvenile court for more than four years for an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470.

(i) The person is not the subject of a restraining order that alleges the person's possession of explosives presents a credible threat to another person.

(j) The person has passed an examination administered by the State Fire Marshal that assesses the person's knowledge of safety in the transportation and storage of explosives as required under federal and state laws and regulations pertaining to explosives. The State Fire Marshal shall examine each applicant prior to issuance of a certificate of possession to the applicant. The State Fire Marshal may by rule establish and collect an examination fee in an amount necessary to cover the cost of administering the examination.

(k) The person certifies on the application for a certificate of possession that all explosives in the person's possession will be used, stored and transported in accordance with federal, state and local requirements.

(L) The person certifies that all explosives will be possessed, used, stored and transported in accordance with federal, state and local requirements.

(2) Subsection (1)(a) and (b) of this section does not apply to a conviction or indictment that has been expunged from a person's record under the laws of this state or equivalent laws of another jurisdiction.

**SECTION 41.** ORS 680.205 is amended to read:

680.205. (1) A dental hygienist issued a permit to act as a limited access permit dental hygienist under ORS 680.200 shall be authorized to render all services within the scope of practice of dental

hygiene, as defined in ORS 679.010, without the supervision of a dentist and as authorized by the limited access permit to:

(a) Patients or residents of the following facilities or programs who, due to age, infirmity or disability, are unable to receive regular dental hygiene treatment:

(A) Nursing homes as defined in ORS 678.710;

(B) Adult foster homes as defined in ORS 443.705;

(C) Residential care facilities as defined in ORS 443.400;

(D) Adult congregate living facilities as defined in ORS 441.525;

(E) Mental health residential programs administered by the Oregon Health Authority;

(F) Facilities for mentally ill persons, as those terms are defined in ORS 426.005;

(G) Facilities for persons with [*mental retardation*] **developmental disabilities**, as those terms are defined in ORS 427.005;

(H) Local correctional facilities and juvenile detention facilities as those terms are defined in ORS 169.005, regional correctional facilities as defined in ORS 169.620, youth correction facilities as defined in ORS 420.005, youth care centers as defined in ORS 420.855, and Department of Corrections institutions as defined in ORS 421.005; or

(I) Public and nonprofit community health clinics.

(b) Adults who are homebound.

(c) Students or enrollees of nursery schools and day care programs and their siblings under 18 years of age, Job Corps and other similar employment training facilities, primary and secondary schools, including private schools and public charter schools, and persons entitled to benefits under the Women, Infants and Children Program.

(d) Patients in hospitals, medical clinics, medical offices or offices operated or staffed by nurse practitioners, physician assistants or midwives.

(2) The Oregon Board of Dentistry may authorize the provision of dental hygiene services by a limited access permit dental hygienist at locations or to populations that are underserved or lack access to dental hygiene services.

(3) At least once each calendar year, a dental hygienist issued a permit to act as a limited access permit dental hygienist shall refer each patient or resident to a dentist who is available to treat the patient or resident.

(4) This section does not authorize a limited access permit dental hygienist to administer local anesthesia or temporary restorations except under the general supervision of a dentist licensed under ORS chapter 679, or to administer nitrous oxide except under the indirect supervision of a dentist licensed under ORS chapter 679.

(5) A limited access permit dental hygienist may assess the need for and appropriateness of sealants, apply sealants and write prescriptions for all applications of fluoride in which fluoride is applied or supplied to patients.

(6) A person granted a limited access permit under ORS 680.200 shall also procure all other permits or certificates required by the board under ORS 679.250.

**SECTION 42. Sections 1 to 3 of this 2011 Act and ORS 427.007 and 430.218 are added to and made a part of ORS chapter 427.**

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**Passed by House June 14, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 20, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State