

House Bill 2768

Sponsored by Representatives SCHOUTEN, DOHERTY, PILUSO, KENY-GUYER; Representatives HERNANDEZ, NOSSE, POWER, SANCHEZ, WILLIAMS

SUMMARY

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

Requires incarceration facilities to provide tampons, sanitary napkins and undergarments to female persons in custody at no charge.

Requires local correctional facilities to maintain barrier between male and female confined detainees and prisoners.

Imposes restrictions on restraint of pregnant persons in custody.

Requires release of certain pregnant persons to participate in residential substance abuse treatment program.

Allows deduction from term of sentence for days of participation in substance abuse treatment program and certain acts of extraordinary merit.

A BILL FOR AN ACT

1
2 Relating to incarceration; creating new provisions; and amending ORS 169.076, 169.077, 169.110,
3 420A.010 and 423.020.

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

5 **SECTION 1.** ORS 169.076 is amended to read:

6 169.076. Each local correctional facility shall:

7 (1) Provide sufficient staff to perform all audio and visual functions involving security, control,
8 custody and supervision of all confined detainees and prisoners, with personal inspection at least
9 once each hour. The supervision may include the use of electronic monitoring equipment when ap-
10 proved by the Department of Corrections and the governing body of the jurisdiction in which the
11 facility is located.

12 (2) Have a comprehensive written policy with respect to:

13 (a) Legal confinement authority.

14 (b) Denial of admission.

15 (c) Telephone calls.

16 (d) Admission and release medical procedures.

17 (e) Medication and prescriptions.

18 (f) Personal property accountability [*which*] **that** complies with ORS 133.455.

19 (g) Vermin and communicable disease control.

20 (h) Release process to include authority, identification and return of personal property.

21 (i) Rules of the facility governing correspondence and visitations.

22 (3) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, re-
23 bellions and other types of emergencies[;], and regulations for the operation of the facility.

24 (4) Not administer any physical punishment to any prisoner at any time.

25 (5) Provide for emergency medical and dental health, having written policies providing for:

26 (a) Review of the facility's medical and dental plans by a licensed physician, physician assistant,
27 naturopathic physician or nurse practitioner.

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

1 (b) The security of medication and medical supplies.

2 (c) A medical and dental record system to include request for medical and dental attention,
3 treatment prescribed, prescriptions, special diets and other services provided.

4 (d) First aid supplies and staff first aid training.

5 (6) Prohibit firearms from the security area of the facility except in times of emergency as de-
6 termined by the administrator of the facility.

7 (7) Ensure that confined detainees and prisoners:

8 (a) Will be fed daily at least three meals served at regular times, with no more than 14 hours
9 between meals except when routinely absent from the facility for work or other purposes.

10 (b) Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered
11 dietitian or the Oregon Health Authority.

12 (c) Be provided special diets as prescribed by the facility's designated physician, physician as-
13 sistant, naturopathic physician or nurse practitioner.

14 (d) Shall have food procured, stored, prepared, distributed and served under sanitary conditions,
15 as defined by the authority under ORS 624.041.

16 (8) Ensure that the facility be clean, and provide each confined detainee or prisoner:

17 (a) Materials to maintain personal hygiene.

18 (b) Clean clothing twice weekly.

19 (c) Mattresses and blankets that are clean and fire-retardant.

20 (9) Require each prisoner to shower at least twice weekly.

21 (10) Forward, without examination or censorship, each prisoner's outgoing written communi-
22 cations to the Governor, jail administrator, Attorney General, judge, Department of Corrections or
23 the attorney of the prisoner.

24 (11) Keep the facility safe and secure in accordance with the State of Oregon Structural Spe-
25 cialty Code and Fire and Life Safety Code.

26 (12) Have and provide each prisoner with written rules for inmate conduct and disciplinary
27 procedures. If a prisoner cannot read or is unable to understand the written rules, the information
28 shall be conveyed to the prisoner orally.

29 (13) Not restrict the free exercise of religion unless failure to impose the restriction will cause
30 a threat to facility or order.

31 (14) Safeguard and ensure that the prisoner's legal rights to access to legal materials are pro-
32 tected.

33 **(15) Ensure that there is a physical barrier between male and female confined detainees**
34 **or prisoners.**

35 **(16) In addition to the items listed in subsection (8) of this section, provide tampons,**
36 **sanitary napkins and undergarments to all female confined detainees or prisoners at no cost.**
37 **Facilities shall maintain a sufficient supply of tampons, sanitary napkins and undergarments**
38 **for female confined detainees or prisoners, which shall be stored, dispensed and disposed of**
39 **in a sanitary manner.**

40 **SECTION 2.** ORS 169.077 is amended to read:

41 169.077. Each lockup facility shall:

42 (1) Maintain 24-hour supervision when persons are confined. The supervision may include the
43 use of electronic monitoring equipment when approved by the Department of Corrections and the
44 governing body of the jurisdiction in which the facility is located.

45 (2) Make a personal inspection of each person confined at least once each hour.

1 (3) Prohibit firearms from the security area of the facility except in times of emergency as de-
 2 termined by the administrator of the facility.

3 (4) Ensure that confined detainees and prisoners will be fed daily at least three nutritionally
 4 adequate meals served at regular times, with no more than 14 hours between meals except when
 5 routinely absent from the facility for work or other such purposes.

6 (5) Forward, without examination or censorship, each prisoner's outgoing written communi-
 7 cations to the Governor, jail administrator, Attorney General, judge, Department of Corrections or
 8 the attorney of the prisoner.

9 (6) Provide rules of the facility governing correspondence and visitations.

10 (7) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty
 11 Code and Fire and Life Safety Code.

12 (8) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, re-
 13 bellions and other types of emergencies[;], and policies and regulations for the operation of the fa-
 14 cility.

15 (9) Ensure that the facility be clean, provide mattresses and blankets that are clean and fire-
 16 retardant, and furnish materials to maintain personal hygiene.

17 (10) Provide for emergency medical and dental health, having written policies providing for re-
 18 view of the facility's medical and dental plans by a licensed physician, physician assistant,
 19 naturopathic physician or nurse practitioner.

20 **(11) In addition to the items listed in subsection (9) of this section, provide tampons,**
 21 **sanitary napkins and undergarments to all female confined detainees or prisoners at no cost.**
 22 **Facilities shall maintain a sufficient supply of tampons, sanitary napkins and undergarments**
 23 **for female detainees or prisoners, which shall be stored, dispensed and disposed of in a san-**
 24 **itary manner.**

25 **SECTION 3. Section 4 of this 2019 Act is added to and made a part of ORS 169.610 to**
 26 **169.677.**

27 **SECTION 4. Regional correctional facilities shall provide tampons, sanitary napkins and**
 28 **undergarments to all female detainees or prisoners at no cost. Facilities shall maintain a**
 29 **sufficient supply of tampons, sanitary napkins and undergarments for female detainees or**
 30 **prisoners, which shall be stored, dispensed and disposed of in a sanitary manner.**

31 **SECTION 5. ORS 420A.010 is amended to read:**

32 420A.010. (1) The Oregon Youth Authority is established. The youth authority shall:

33 (a) Supervise the management and administration of youth correction facilities, state parole and
 34 probation services, community out-of-home placement for youth offenders committed to its legal
 35 custody and other functions related to state programs for youth corrections;

36 (b) Provide capital improvements and capital construction necessary for the implementation of
 37 all youth correction facilities;

38 (c) Carry out dispositions of youth offenders committed to its legal custody;

39 (d) Exercise custody and supervision over those youth offenders committed to the youth au-
 40 thority by order of the juvenile court and persons placed in the physical custody of the youth au-
 41 thority under ORS 137.124 or other statute until the time that a lawful release authority authorizes
 42 release or terminates the commitment or placement;

43 (e) Provide adequate food, clothing, health and medical care, sanitation and security for confined
 44 youth offenders and others in youth authority custody;

45 (f) Provide youth offenders and others in youth authority custody with opportunities for self-

1 improvement and work; [and]

2 (g) Conduct investigations and prepare reports for release authorities[.]; and

3 **(h) In addition to the items listed in paragraph (e) of this subsection, provide tampons,**
 4 **sanitary napkins and undergarments to all female youth offenders in youth authority custody**
 5 **at no cost. Facilities shall maintain a sufficient supply of tampons, sanitary napkins and**
 6 **undergarments for female youth offenders, which shall be stored, dispensed and disposed of**
 7 **in a sanitary manner.**

8 (2) To meet the individual circumstances of each person committed to its custody, the youth
 9 authority shall:

10 (a) Develop a flexible fee-for-service provider system that can respond quickly to each person's
 11 identified and changing circumstances; and

12 (b) Develop a process for joint state and county review of contracts entered into under sub-
 13 section (6)(b) of this section and paragraph (a) of this subsection based on:

14 (A) Measurable outcomes, which must include in dominant part the reduction of future criminal
 15 or antisocial conduct and which also must include:

16 (i) Academic progress;

17 (ii) Social adjustments;

18 (iii) Behavioral improvements;

19 (iv) Rearrests; and

20 (v) Other measurements as determined by the youth authority;

21 (B) Performance measurements including:

22 (i) Fiscal accountability;

23 (ii) Compliance with state and federal regulations;

24 (iii) Record keeping, including data collection and management; and

25 (iv) Reporting; and

26 (C) Provision of services identified under the reformation plan.

27 (3) In order to measure performance as required in subsection (2) of this section, the youth au-
 28 thority shall require parties to the contracts to compile, manage and exchange data to the extent
 29 of available information systems resources to facilitate the measurement of outcomes including, but
 30 not limited to, reduction in future criminal or antisocial conduct.

31 (4) The youth authority may administer a program of state assistance to counties for the con-
 32 struction and operation of local youth detention facilities or to purchase detention services.

33 (5) The youth authority shall accept and exercise legal or physical custody of youth offenders
 34 and others 12 years of age and over and under 25 years of age who are committed to, or placed with,
 35 the youth authority pursuant to:

36 (a) A juvenile court adjudication and disposition under ORS chapter 419C; or

37 (b) ORS 137.124.

38 (6)(a) The youth authority shall cooperate with and assist county governments and juvenile de-
 39 partments in carrying out the principles and purposes of the juvenile justice system as provided in
 40 ORS 419C.001.

41 (b) The youth authority is authorized to contract with counties, groups of counties or private
 42 providers to administer juvenile corrections programs and services as provided in ORS 420.017,
 43 420.019, 420A.145 and 420A.155 (1) to (4).

44 (c) The youth authority may provide consultation services related to the juvenile justice system
 45 to local or statewide public or private agencies, groups and individuals or may initiate such con-

1 sultation services. Consultation services include, but are not limited to, conducting studies and
 2 surveys, sponsoring or participating in educational programs and providing advice and assistance.
 3 Nothing in ORS 419C.001 and 420A.005 to 420A.155 is intended to diminish the state's efforts to plan,
 4 evaluate and deliver effective human services programs to youth offenders, either in a youth cor-
 5 rection facility or on probation or parole. Therefore, the Oregon Youth Authority and the Depart-
 6 ment of Human Services shall jointly develop and implement needed social and rehabilitative
 7 services.

8 (7) The youth authority is the recipient of all federal funds paid or to be paid to the state to
 9 enable the state to provide youth correction programs and services assigned to the Department of
 10 Human Services prior to January 1, 1996.

11 (8) The youth authority shall report its progress in implementing the provisions of chapter 422,
 12 Oregon Laws 1995, to the Legislative Assembly at each odd-numbered year regular session.

13 (9) The equal access provisions of ORS 417.270 apply to the youth authority's development and
 14 administration of youth correction facilities, programs and services, including the development and
 15 implementation of the statewide diversion plan described in ORS 420.017.

16 (10) The youth authority shall:

17 (a) Be cognizant of and sensitive to the issue of overrepresentation of minority youth offenders
 18 in youth correction facilities;

19 (b) Endeavor to develop and operate, and require its subcontractors to develop and operate,
 20 culturally appropriate programs for youth offenders; and

21 (c) Keep data reflecting the ethnicity and gender of all youth offenders committed to its care.

22 (11) The youth authority is a designated agency as defined in ORS 181A.010.

23 **SECTION 6.** ORS 423.020 is amended to read:

24 423.020. (1) The Department of Corrections is created. The department shall:

25 (a) Supervise the management and administration of the Department of Corrections institutions,
 26 parole and probation services, community corrections and other functions related to state programs
 27 for corrections;

28 (b) Carry out legally mandated sanctions for the punishment of persons committed to its juris-
 29 diction by the courts of this state;

30 (c) Exercise custody over those persons sentenced to a period of incarceration until such time
 31 as a lawful release authority authorizes their release;

32 (d) Provide adequate food, clothing, health and medical care, sanitation and security for persons
 33 confined;

34 (e) Provide persons who are motivated, capable and cooperative with opportunities for self-
 35 improvement and work;

36 (f) Conduct investigations and prepare reports for release authorities; *[and]*

37 (g) Supervise persons sentenced or placed in the community for the period of time specified and
 38 in accordance with conditions of supervision ordered by the release authority[.]; **and**

39 **(h) In addition to the items listed in paragraph (d) of this subsection, provide tampons,**
 40 **sanitary napkins and undergarments to all females confined in a department institution at**
 41 **no cost. Facilities shall maintain a sufficient supply of tampons and sanitary napkins, which**
 42 **shall be stored, dispensed and disposed of in a sanitary manner.**

43 (2) The Department of Corrections may provide consultation services related to the criminal
 44 justice system to local or statewide public or private agencies, groups, and individuals, or initiate
 45 such consultation services. Consultation services shall include, but not be limited to, conducting

1 studies and surveys, sponsoring or participating in educational programs, and advising and assisting
 2 these agencies, groups or individuals. Nothing in chapter 320, Oregon Laws 1987, is intended to di-
 3 minish the state's efforts to plan, evaluate and deliver effective human services programs to
 4 offenders, either in an institution or on probation or parole. Therefore, the Department of Cor-
 5 rections and the Department of Human Services shall continue to jointly develop and implement
 6 needed social and rehabilitative services, including services for inmates housed in regional minimum
 7 security facilities.

8 (3) The Department of Corrections shall be the recipient of all federal funds paid or to be paid
 9 to the state to enable the state to provide corrections programs and services assigned to the De-
 10 partment of Human Services before June 15, 1987.

11 (4) Notwithstanding any other provision of law, the department may charge a person confined
 12 in a Department of Corrections institution a reasonable health care fee for any health care services,
 13 medications and equipment provided the person during the person's confinement if the department:

14 (a) Provides necessary medical care regardless of the person's ability to pay;

15 (b) Provides equal treatment to all persons confined in a department institution regardless of a
 16 person's ability to pay;

17 (c) Establishes a system that notifies the person of the fees and what services are covered; and

18 (d) Establishes a grievance system that allows a person to challenge the deduction of a fee from
 19 the person's account.

20 (5) The department may provide ordinary medical, dental, psychiatric, psychological, hygienic
 21 or other remedial care and treatment for a person under 18 years of age who is confined in a De-
 22 partment of Corrections institution and, in an emergency in which the safety of the person appears
 23 urgently to require it, may authorize surgery or other extraordinary care.

24 **SECTION 7. Section 8 of this 2019 Act is added to and made a part of ORS 169.005 to**
 25 **169.677.**

26 **SECTION 8. (1) Except as provided in subsection (2) of this section, a prisoner or detainee**
 27 **who is known to be pregnant may be restrained solely with handcuffs in front of the**
 28 **prisoner's or detainee's body unless further restraint is required to protect the prisoner or**
 29 **detainee or others.**

30 **(2)(a) Except in an extraordinary circumstance, a prisoner or detainee who is known to**
 31 **be pregnant may not be restrained during labor, during transport to a medical facility or**
 32 **birthing center for delivery or during postpartum recovery.**

33 **(b) As used in this subsection, "extraordinary circumstance" means that reasonable**
 34 **grounds exist to believe the prisoner or detainee presents an immediate and credible:**

35 **(A) Serious threat of hurting self, staff or others; or**

36 **(B) Risk of escape that cannot be reasonably minimized through any method other than**
 37 **restraints.**

38 **SECTION 9. (1) Except as provided in subsection (2) of this section, a person confined in**
 39 **a department institution who is known to be pregnant may be restrained solely with**
 40 **handcuffs in front of the person's body unless further restraint is required to protect the**
 41 **person or others.**

42 **(2)(a) Except in an extraordinary circumstance, a person confined in a department insti-**
 43 **tution who is known to be pregnant may not be restrained during labor, during transport to**
 44 **a medical facility or birthing center for delivery or during postpartum recovery.**

45 **(b) As used in this subsection, "extraordinary circumstance" means that reasonable**

1 **grounds exist to believe the person confined in a department institution presents an imme-**
 2 **diate and credible:**

3 **(A) Serious threat of hurting the person, staff or others; or**

4 **(B) Risk of escape that cannot be reasonably minimized through any method other than**
 5 **restraints.**

6 **SECTION 10. Section 11 of this 2019 Act is added to and made a part of ORS 135.230 to**
 7 **135.290.**

8 **SECTION 11. (1) As used in this section, “eligible person” means a person who is:**

9 **(a) Pregnant;**

10 **(b) Reasonably believed by the court to have a substance use disorder;**

11 **(c) Not charged or convicted of a person felony as that term is defined in the rules of the**
 12 **Oregon Criminal Justice Commission; and**

13 **(d) Not charged or convicted of a sex crime as defined in ORS 163A.005 or a crime under**
 14 **ORS 163.525, 167.002 to 167.027 or 167.262.**

15 **(2) Notwithstanding ORS 135.242, when an eligible person is charged or convicted of any**
 16 **violation of ORS 475.005 to 475.285 or 475.752 to 475.980, the person shall be released from**
 17 **custody on personal recognizance if the person agrees to participate in inpatient residential**
 18 **substance abuse treatment.**

19 **SECTION 12. ORS 169.110 is amended to read:**

20 **169.110. (1) Each prisoner convicted of an offense against the laws of this state, who is confined,**
 21 **in execution of the judgment or sentence upon conviction, including confinement imposed as a con-**
 22 **dition of probation pursuant to ORS 137.540, in a county local correctional facility in this state for**
 23 **a definite term, whose record of conduct shows that the prisoner has faithfully observed all the rules**
 24 **of the facility, is entitled, in the discretion of the sheriff or other officer having custody of such**
 25 **prisoner, to a deduction from the term of the sentence of the prisoner to be calculated as follows,**
 26 **commencing on the first day of the arrival of the prisoner at the facility to serve the sentence of**
 27 **the prisoner:**

28 **(a) Upon a sentence of not less than 10 or more than 30 days, one day for each 10 days.**

29 **(b) Upon a sentence of more than 30 days but not more than 90 days, three days for each 30-day**
 30 **period.**

31 **(c) Upon a sentence of more than 90 days but not more than 180 days, four days for each 30-day**
 32 **period.**

33 **(d) Upon a sentence of more than 180 days but not more than 270 days, five days for each 30-day**
 34 **period.**

35 **(e) Upon a sentence of more than 270 days, six days for each 30-day period.**

36 **(f) One day for each day of participation in a substance abuse program offered by the**
 37 **facility.**

38 **(g) Up to seven days for each act of exceptionally meritorious service, act of outstanding**
 39 **importance in connection with the operation of the facility or its programs or act of excep-**
 40 **tional service during times of emergency, as determined by the administrator of the facility.**

41 **(2)(a) Deductions under this section may be allowed for time served in an alternative sentencing**
 42 **facility operated pursuant to a community corrections plan if the county governing body authorizes**
 43 **the allowing of deductions.**

44 **(b) For purposes of calculating deductions allowable under paragraph (a) of this subsection, each**
 45 **day served in the facility is counted as a day of confinement.**

1 **SECTION 13.** The amendments to ORS 169.110 by section 12 of this 2019 Act apply to
2 sentences imposed on or after the effective date of this 2019 Act.
3 _____