



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION
DOC 22-2025
CHAPTER 291
DEPARTMENT OF CORRECTIONS

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NEED FOR THE RULE(S):

Temporary amendments to these rules are necessary for the department to pursue cost of care collections on a case-by-case basis and align the rules with current practice.

JUSTIFICATION OF TEMPORARY FILING:

The Department of Corrections finds that immediate implementation through the temporary rulemaking process is in the public interest because it ensures that the department's practice is in alignment with the rules and consistent with expectations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:

291-203-0010, 291-203-0020, 291-203-0030, 291-203-0040, 291-203-0050, 291-203-0060, 291-203-0070, 291-203-0080, 291-203-0090, 291-203-0100

AMEND: 291-203-0010

RULE TITLE: Authority, Purpose, and Policy

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 179.640, 179.770, 423.020, 423.030, and 423.075.

(2) Purpose: An adult in custody and the personal estate of an adult in custody, or a decedent's estate are liable for the full cost of care. The purpose of these rules is to establish guidelines for:

- (a) Determination of ability to pay;
- (b) Notification to the adult in custody of his/her obligation to pay for the cost of care; and
- (c) Appeal rights and process.

(3) Policy: Within the inherent limitation of resources, the efficient and orderly administration of the Department and its facilities, it is the policy of the Department of Corrections to investigate and pursue reimbursement from adults in custody for the costs of their incarceration and care in accordance with the criteria and procedures established in these rules.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0020

RULE TITLE: Definitions

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody"

RULE TEXT:

- (1) Adult in Custody (AIC): Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.
- (2) Assets: The total value of an adult in custody's (subject to the provisions of ORS 179.640(5)) equity in real and personal property of whatever kind or nature. Assets include, but are not limited to, the adult in custody's stocks, bonds, cash, accounts receivable, moneys due, or any other interests, whether they are self-managed, or held by the individual's authorized representative, or by any other individual or entity on behalf of the adult in custody. Assets held in trust are subject to laws generally applicable to trusts.
- (3) Authorized Representative: An individual or entity appointed under authority of ORS Chapter 125, as guardian or conservator of an adult in custody, who has the ability to control the adult in custody's finances, and any other individual or entity holding funds or receiving benefits or income on behalf of the adult in custody.
- (4) Cash Assets/Liquid Reserves: Cash and cash equivalents, accounts receivable, temporary investments such as CDs or Treasury Bills, money market accounts, and bonds that can be cashed at any time.
- (5) Charges: The amount the Department has determined that the adult in custody is required to pay toward the cost of care.
- (6) Cost of Care: All services including medical care, room, board, administrative costs and other costs not otherwise excluded by law.
- (7) Custody of the Department: The court ordered sentence of an adult in custody to the Department of Corrections to imprison in a Department operated correctional facility or contracted housing through a county, other state, or other jurisdiction.
- (8) Dependents: The individuals for whom an adult in custody has a legal duty to support.
- (9) Distrainment Warrant: A warrant or document issued by the Department directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property which is subject to satisfaction of the recoupment lien.
- (10) Fair Market Value: The cash price a capable and diligent individual could obtain in a reasonable amount of time for an asset.
- (11) Income: All funds received by an adult in custody, or for an adult in custody by an authorized representative from any source, whether earned or unearned, after making applicable deductions for state and federal income taxes. Income includes benefits from life insurance, income protection insurance, or any other form of award to the adult in custody except as prohibited by ORS 179.620(5)(a).
- (12) Personal Estate: All assets including cash, liquid reserves, stocks, bonds, accounts receivable, moneys due, or any other interests, whether they are self-managed, or held by the individual's authorized representative. Personal estate also includes benefits from income protection insurance, governmental retirement or disability insurance, such as Social Security, Veterans, state, federal, and railroad retirement benefits and benefits from life insurance or any other form of award except as prohibited in ORS 179.620(5)(a) and (5)(b).
- (13) Primary Automobile: The automobile, if the person has more than one, which the person would choose to keep if required to sell all but one. If the person has only one, it is the primary personal automobile.
- (14) Primary Person Residence: The home the adult in custody owns, or is purchasing, and in which the adult in custody lived prior to entering the custody of the Department, or in which the adult in custody will live after leaving the custody of the Department.
- (15) Recoupment Liens: A charge or security or encumbrance upon real or personal property that can be used to satisfy the amount due for the adult in custody's cost of care.
- (16) Support for Dependents: The cash necessary to meet the reasonable needs of the dependents, less the amount the

dependent receives from any other source. Support for dependents excludes administratively or judicially ordered child and/or spousal support.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0030

RULE TITLE: Requirements for Obtaining Financial Information

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

- (1) The department may require the adult in custody and/or the adult in custody's representative to submit financial information on forms provided by the department.
- (2) The department may obtain financial information regarding the adult in custody from other sources the department considers reliable. These sources may include, but are not limited to, the Social Security and Veterans Administration, Oregon Department of Revenue, and other State of Oregon agencies.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0040

RULE TITLE: Ability to Pay Order

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody" and to remove the requirement for the department to establish an ability to pay for each AIC.

RULE TEXT:

- (1) An adult in custody and the personal estate of an adult in custody, or a decedent's estate, is liable for the full cost of care as established in ORS 179.701. The Department may collect charges in advance for adults in custody with determinate sentences.
- (2) The Department may make a determination of the adult in custody's ability to pay which is set forth in the Ability to Pay Order. The two types of Ability to Pay Orders are: determination of charges and a modification of charges. Each order shall be given one of these titles to identify the type of determination it sets forth, based on the factors and criteria described in the following sections.
- (3) The adult in custody's ability to pay will be investigated and an Ability to Pay Order may be issued when the Department is aware of an adult in custody or the adult in custody's representative with cash assets or liquid reserves in excess of the current biennial cost of care or \$55,000 whichever is greater. This Ability to Pay threshold is applicable only to the determination of who will be reviewed for an Ability to Pay Order. (ORS 179.640(1)(b)).
- (4) The determination of the ability to pay may be assessed at intake or any time during the adult in custody's sentence, based on notification by sources the Department considers reliable. These sources include, but are not limited to, the District Attorney's Office, the Social Security and Veterans Administration, Oregon Department of Revenue, State of Oregon agencies, or any other sources the Department deems credible.
- (5) When determining an adult in custody's ability to pay, in addition to other relevant factors, the Department will consider the adult in custody's personal estate, the adult in custody's need for funds for personal support after release, and the availability of third-party benefits such as, but not limited to, Medicare or private insurance.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0050

RULE TITLE: Determination of Charges

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

- (1) The amount determined by the Department to be the adult in custody's charges shall not exceed the full cost of care for the dates covered by the Ability to Pay Order, less payments and/or credits from any other sources the Department has received, or reasonably anticipates receiving.
- (2) Charges will be assessed using the adult in custody's equity in all assets whether the asset is controlled by the person, or by the person's authorized representative.
 - (a) Any asset may be liquidated in a lump sum to pay charges assessed the adult in custody in the Ability to Pay Order.
 - (b) Equity in each asset will be determined from the fair market value of the asset less any bona fide encumbrance against the asset.
 - (c) When assets are used as the basis for ongoing charges, the Department will estimate the length of time the assets are expected to last. During the final 60 days of that time period, the Department will review the adult in custody's financial circumstances for modifying the adult in custody's charges.
- (3) Charges will be assessed using the total amount of all income received either by the adult in custody or for the adult in custody by the adult in custody's authorized representative.
- (4) Charges may be assessed using the adult in custody's equity in a primary personal residence only if:
 - (a) The adult in custody is sentenced to death or to life without possibility of parole; and
 - (b) None of the following individuals reside in the residence:
 - (A) The adult in custody's spouse.
 - (B) The adult in custody's child or children under age 21, or blind or disabled children over 21.
 - (C) The adult in custody's sibling or siblings who own an interest in the residence, and who lived in the residence for at least one year immediately prior to the adult in custody becoming the custody of the Department.
 - (D) The adult in custody's parents or emancipated children who are unable to work to maintain themselves as declared in ORS 109.010.
- (5) Charges may be assessed using the adult in custody's equity in an automobile only if it is not the adult in custody's primary personal automobile.
- (6) Deductions: The Department may allow a deduction from the adult in custody's assets and income for the following:
 - (a) Legal Obligations: Legal obligations, other than administratively or judicially ordered child or spousal support, as determined by the Department.
 - (A) Funds set aside as legal obligations may not be accumulated by, or on behalf of the adult in custody, or used for purposes other than that for which it was approved.
 - (B) The adult in custody must have demonstrated an intent to pay the obligation. The Department may request verification of actual payments.
 - (C) Any deduction allowed for the financial support of dependents must be used to provide current support. It may not be accumulated by, or on behalf of the adult in custody, and it may not be used for other purposes.
 - (b) Personal Support Following Release: Based on a showing of need, the Department may allow a deduction for the adult in custody's transitional support following his/her release from an ODOC institution for reasonable expenses to live in the community for six months, including rent, utilities, food, public transportation, supervision fees, and miscellaneous expenses.
 - (c) Personal Support While in Custody of the Department:
 - (A) Based on a showing of need, the Department may allow a deduction for an adult in custody's miscellaneous personal expenses while in the custody of the Department that are not provided by the Department and are available for purchase from the institution commissary. These include, but are not limited to, expenses for personal grooming and hygiene items; books, newspapers, or other publications; or snacks or refreshments.

(B) When a deduction is made by the Department for this purpose, the Department shall establish an allowance to reflect a reasonable monthly spending limit for the adult in custody for purchase from the institution commissary, consistent with the Department's rule on Trust Accounts (AIC), OAR 291-158.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0060

RULE TITLE: Modification of Charges

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

A modification of charges sets forth, in a new Ability to Pay Order, a change to the adult in custody's charges established by a prior Ability to Pay Order. When issuing a modification to charges, the department will consider the same factors as described in OAR 291-203-050. A modification to charges may be made to reflect:

- (1) A change in the adult in custody's financial circumstances that affects the adult in custody's ability to pay ongoing monthly charges; or
- (2) A reduction in the cost of care amount due to a change in the previously scheduled release date.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 – 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0070

RULE TITLE: Notice of Ability to Pay

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

The department shall provide actual notice to the adult in custody and any authorized representative, where known, of the adult in custody's ability to pay.

(1) The notice shall include the adult in custody's full liability, a description of the person's appeal rights under a contested case hearing, the date those rights terminate, and the address where a request for hearing may be mailed or delivered.

(2) If the adult in custody has an authorized representative, the original Ability to Pay Order shall be delivered to the representative, and a copy shall be delivered to the adult in custody. Any Ability to Pay Order delivered to an authorized representative shall include an explanation of the department's right to demand payment of the charges assessed by the order, and the consequences to the authorized representative of failing to comply, as provided by ORS 179.653(3).

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 – 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0080

RULE TITLE: Waiver of Collection Action

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

The department may issue a waiver to the collection of all or part of an adult in custody's unpaid charges based upon the best interest of the adult in custody or the department. Charges may be reassessed at a later time by a new Ability to Pay Order if the basis for waiver under this section ceases to exist.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0090

RULE TITLE: Hearing/Appeal Rights, Effect of Final Order

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

- (1) If an adult in custody or the adult in custody's authorized representative disagrees with any Ability-to-Pay Order issued by the department, the adult in custody or the adult in custody's authorized representative may request a contested case hearing. The request must be postmarked within 60 days from the date of the mailing of the Ability-to-Pay Order.
- (2) If the adult in custody or the adult in custody's authorized representative makes a timely request for a contested case hearing, the hearing and any appeal of the final hearing order shall be governed by ORS 183.413 to 183.497. If the adult in custody or the adult in custody's authorized representative fails to make a timely request for a contested case hearing, the Ability-to-Pay Order shall be final and not subject to judicial review, except as subsequently modified by the department as provided in 179.640(5).
- (3) On appeal, regardless of other information presented, payment of the full cost of care may be ordered if the adult in custody or the adult in custody's authorized representative refuses to produce financial information that the hearings officer determines is relevant and must be produced.
- (4) Effect of Order on Authorized Representatives:
 - (a) An authorized representative who has not had an opportunity to request a contested case hearing, either because the authorized representative was not appointed at the time of the Ability-to-Pay Order became final, or was not given notice of the Ability-to-Pay Order as required by ORS 179.640(4), shall not be bound by the department's order. To bind the authorized representative, the department must reissue the Ability-to-Pay Order and provide notice to the authorized representative as required by 179.640(4).
 - (b) The authorized representative shall have the same appeal rights as if the order had originally been issued to the authorized representative.
 - (c) After the order becomes final, the authorized representative shall be bound by the order as provided in ORS 179.653.
 - (d) The department will not issue an execution of a lien or foreclose against property held by or in the control of the authorized representative until the authorized representative is bound by the department's order as provided in ORS 179.653.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 – 179.770, 423.020, 423.030, 423.075

AMEND: 291-203-0100

RULE TITLE: Enforcement of Lien

RULE SUMMARY: Amends rule to change the term "inmate" to "adult in custody".

RULE TEXT:

If an adult in custody refuses to pay for the cost of care, the unpaid amount plus interest shall be a lien in favor of the State of Oregon. The lien shall be upon the title to and interest in the real and personal property of the personal estate.

(1) If any amount due the department for the cost of care of an adult in custody is not paid within 30 days after it becomes due, and no provision is made to secure the payment by bond, deposit or otherwise, pursuant to these rules, the department may enforce its recoupment lien created by ORS 179.653 by issuance of a Distrainment warrant in the manner provided in 179.655.

(2) Any warrant issued by the department pursuant to ORS 179.655 shall clearly provide that the sheriff or other person executing the warrant shall not levy upon and sell any real or personal property that would be exempt under Oregon law from execution pursuant to a judgment. However, the department shall not issue a warrant pursuant to 179.655 where:

- (a) The amount due the department for the cost of care of an adult in custody is not at least 30 days over due;
- (b) Provision has been made to secure the payment by bond or deposit or otherwise in conformation with this rule;
- (c) The adult in custody has exercised the right to appeal the Ability to Pay Order pursuant to OAR 291-203-0090;
- (d) Sixty-one days have not passed since the issuance of the Ability to Pay Order; or
- (e) The adult in custody or the adult in custody's authorized representative has not been given at least ten days prior notice that the department intends to issue such a warrant.

(3) Securing Satisfaction of Ability to Pay Order:

(a) The issuance of a warrant to the sheriff to enforce collection of delinquent money will be stayed either by paying the amount due and accrued interest after it becomes due or by securing payment of that amount by bond or deposit.

(b) The bond given by the adult in custody to an adult in custody's authorized representative must be for an amount not less than the amount due, plus interest for a reasonable period of time as determined by the department.

(A) The bond must be executed by a surety company that is registered with, and under the supervision of, the insurance commissioner of the State of Oregon.

(B) The department may allow more than two sureties to justify several amounts less than that expressed in the undertaking, if the whole justification is equivalent to that of two sufficient undertakings.

(C) Any one of the following items or combination of items acceptable to the department, equal to the amount due, plus accrued interest thereon, may be deposited with the department:

- (i) A deposit of money;
- (ii) A certified check or checks on any state or national bank within the State of Oregon payable to the department;
- (iii) Satisfactory bonds negotiable by delivery, or obligations by the U. S. Government negotiable by delivery; or
- (iv) Any other security satisfactory to the department.

(c) The department may require additional security whenever, in its opinion, the value of the security pledged is no longer sufficient to adequately secure the payment of the amount due, plus accrued interest thereon.

(d) Release of Tax Lien and Clouds on Title: When such a warrant is not in fact a lien on title to the real property, but merely a cloud on the title, a request for release of a warrant shall include the reason why the warrant does not constitute a lien and a copy of the current title report. The department may require other documentary proof showing the present condition of the title to the property in question.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 179.640, 179.770, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075