

A-Engrossed
House Bill 2315

Ordered by the House June 1
Including House Amendments dated June 1

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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.

Modifies references to system designated under federal law to protect and advocate for rights of individuals with disabilities.

[Requires facility that delays or denies access to system to provide written explanation for delay or denial.]

A BILL FOR AN ACT

1
2 Relating to system designated to protect and advocate for rights of individuals with disabilities;
3 creating new provisions; and amending ORS 125.060, 125.320, 146.035, 179.495, 179.505, 183.458,
4 192.515, 192.517, 430.763, 436.255 and 436.335.

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

6 **SECTION 1.** ORS 146.035 is amended to read:

7 146.035. (1) There shall be established within the Department of State Police the State Medical
8 Examiner's office for the purpose of directing and supporting the state death investigation program.

9 (2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's pro-
10 gram.

11 (3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or
12 discharge other personnel of the State Medical Examiner's office.

13 (4) The State Medical Examiner's office shall:

14 (a) File and maintain appropriate reports on all deaths requiring investigation.

15 (b) Maintain an accurate list of all active district medical examiners, assistant district medical
16 examiners and designated pathologists.

17 (c) Transmit monthly to the Department of Transportation a report for the preceding calendar
18 month of all information obtained under ORS 146.113.

19 (5) Any parent, spouse, child or personal representative of the deceased, or any person who may
20 be criminally or civilly liable for the death, or their authorized representatives respectively, may
21 examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report
22 ordered by a medical examiner under ORS 146.117. The system *[designated to protect and advocate*
23 *the rights of individuals with developmental disabilities under part C of the Developmental Disabilities*
24 *Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental*
25 *illness under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.)]*

26 **described in ORS 192.517 (1)** shall have access to reports described in this subsection *[pursuant*

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 to] **as provided in** ORS 192.517.

2 **SECTION 2.** ORS 125.060 is amended to read:

3 125.060. (1) The notices required by this section must be given to all persons whose identities
4 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
5 give the notice.

6 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-
7 tective order must be given by the petitioner to the following persons:

8 (a) The respondent, if the respondent has attained 14 years of age.

9 (b) The spouse, parents and adult children of the respondent.

10 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most
11 closely related to the respondent.

12 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or
13 welfare of the respondent.

14 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
15 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
16 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and
17 any person acting as attorney-in-fact for the respondent under a power of attorney.

18 (f) If the respondent is a minor, the person who has exercised principal responsibility for the
19 care and custody of the respondent during the 60-day period before the filing of the petition.

20 (g) If the respondent is a minor and has no living parents, any person nominated to act as
21 fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

22 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
23 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
24 regional office that has responsibility for the payments to the protected person.

25 (i) If the respondent is receiving moneys paid or payable for public assistance provided under
26 ORS chapter 411, 412, 413 or 414 by the State of Oregon through the Department of Human Services,
27 a representative of the department.

28 (j) If the respondent is committed to the legal and physical custody of the Department of Cor-
29 rections, the Attorney General and the superintendent or other officer in charge of the facility in
30 which the respondent is confined.

31 (k) If the respondent is a foreign national, to the consulate for the respondent's country.

32 (L) Any other person that the court requires.

33 (3) Notice of a motion for the termination of the protective proceedings, for removal of a
34 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's
35 actions or for protective orders in addition to those sought in the petition must be given by the
36 person making the motion to the following persons:

37 (a) The protected person, if the protected person has attained 14 years of age.

38 (b) Any person who has filed a request for notice in the proceedings.

39 (c) Except for a fiduciary who is making a motion, to any fiduciary who has been appointed for
40 the protected person.

41 (d) If the protected person is receiving moneys paid or payable by the United States through the
42 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
43 fairs regional office that has responsibility for the payments to the protected person.

44 (e) If the protected person is committed to the legal and physical custody of the Department of
45 Corrections, the Attorney General and the superintendent or other officer in charge of the facility

1 in which the protected person is confined.

2 (f) Any other person that the court requires.

3 (4) A request for notice under subsection (3)(b) of this section must be in writing and include
4 the name, address and phone number of the person requesting notice. A copy of the request must
5 be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has
6 been appointed. The original request must be filed with the court. The person filing the request must
7 pay the fee specified by ORS 21.310 (5).

8 (5) A person who files a request for notice in the proceedings in the manner provided by sub-
9 section (4) of this section is entitled to receive notice from the fiduciary of any motion specified in
10 subsection (3) of this section and of any other matter to which a person listed in subsection (2) of
11 this section is entitled to receive notice under a specific provision of this chapter.

12 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting
13 to the adoption of a minor, the notice provided for in this section must also be given to the minor's
14 brothers, sisters, aunts, uncles and grandparents.

15 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-
16 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be
17 given by the petitioner to the following persons:

18 (a) Any attorney who is representing the respondent in any capacity.

19 (b) If the respondent is a resident of a nursing home or residential facility, or if the person
20 nominated to act as fiduciary intends to place the respondent in a nursing home or residential fa-
21 cility, the office of the Long Term Care Ombudsman.

22 (c) If the respondent is a resident of a mental health treatment facility or a residential facility
23 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends
24 to place the respondent in such a facility, the system [*designated to protect and advocate the rights*
25 *of individuals with developmental disabilities as*] described in ORS 192.517 (1).

26 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding
27 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this
28 section must be given by the person making the motion to the following persons:

29 (a) Any attorney who represented the protected person at any time during the protective pro-
30 ceeding.

31 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion
32 seeks authority to place the protected person in a nursing home or residential facility, the office of
33 the Long Term Care Ombudsman.

34 (c) If the protected person is a resident of a mental health treatment facility or a residential
35 facility for individuals with developmental disabilities, or if the motion seeks authority to place the
36 protected person in such a facility, the system [*designated to protect and advocate the rights of indi-*
37 *viduals with developmental disabilities as*] described in ORS 192.517 (1).

38 (9) A respondent or protected person may not waive the notice required under this section.

39 (10) The requirement that notice be served on an attorney for a respondent or protected person
40 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney
41 receiving the notice to represent the respondent or protected person in the protective proceeding.

42 **SECTION 3.** ORS 125.320 is amended to read:

43 125.320. (1) A guardian may not authorize the sterilization of the protected person.

44 (2) A guardian may not use funds from the protected person's estate for room and board that
45 the guardian or guardian's spouse, parent or child have furnished the protected person unless the

1 charge for the service is approved by order of the court before the payment is made.

2 (3)(a) Before a guardian may place an adult protected person in a mental health treatment fa-
3 cility, a nursing home or other residential facility, the guardian must file a statement with the court
4 informing the court that the guardian intends to make the placement.

5 (b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 to
6 the persons specified in ORS 125.060 (3).

7 (c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement
8 of intent must be given in the manner provided by ORS 125.065 by the guardian to the following
9 persons:

10 (A) Any attorney who represented the protected person at any time during the protective pro-
11 ceeding.

12 (B) If the protected person is a resident of a nursing home or residential facility, or if the notice
13 states the intention to place the protected person in a nursing home or residential facility, the office
14 of the Long Term Care Ombudsman.

15 (C) If the protected person is a resident of a mental health treatment facility or a residential
16 facility for individuals with developmental disabilities, or if the notice states the intention to place
17 the protected person in such a facility, the system [*designated to protect and advocate the rights of*
18 *individuals with developmental disabilities and individuals with mental illness as*] described in ORS
19 192.517 (1).

20 (d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person
21 must clearly indicate the manner in which the protected person may object to the proposed place-
22 ment.

23 (e) The guardian may thereafter place the adult protected person in a mental health treatment
24 facility, a nursing home or other residential facility without further court order. If an objection is
25 made in the manner provided by ORS 125.075, the court shall schedule a hearing on the objection
26 as soon as practicable.

27 (f) The requirement that notice be served on an attorney for a protected person under paragraph
28 (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to
29 represent the protected person in the protective proceeding.

30 **SECTION 4.** ORS 179.495 is amended to read:

31 179.495. (1) Written accounts of the inmates of any Department of Corrections institution as
32 defined in ORS 421.005, maintained in the institution by the officers or employees of the institution
33 who are authorized to maintain written accounts within the official scope of their duties, are not
34 subject to disclosure unless the disclosure is permitted or authorized by the Department of Cor-
35 rections in compliance with ORS 179.505 (3), (4), (6), (7), (9), (11), (12), (14), (15), (16) or (17) or
36 179.508 or upon order of a court of competent jurisdiction. The restriction contained in this section
37 does not apply to disclosure of written accounts made under ORS 179.505 (3) with the [*consent*] **au-**
38 **thorization** of the individual or a personal representative of the individual.

39 (2) Except as authorized under subsection (1) of this section, any person who discloses or any
40 person who knowingly obtains information from a written account referred to in subsection (1) of
41 this section commits a Class B violation.

42 (3) As used in this section, “disclosure,” “personal representative” and “written account” have
43 the meanings given those terms in ORS 179.505.

44 **SECTION 5.** ORS 179.505 is amended to read:

45 179.505. (1) As used in this section:

1 (a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any
2 other manner of information outside the health care services provider holding the information.

3 (b) "Health care services provider" means:

4 (A) Medical personnel or other staff employed by or under contract with a public provider to
5 provide health care or maintain written accounts of health care provided to individuals; or

6 (B) Units, programs or services designated, operated or maintained by a public provider to pro-
7 vide health care or maintain written accounts of health care provided to individuals.

8 (c) "Individually identifiable health information" means any health information that is:

9 (A) Created or received by a health care services provider; and

10 (B) Identifiable to an individual, including demographic information that identifies the individual,
11 or for which there is a reasonable basis to believe the information can be used to identify an indi-
12 vidual, and that relates to:

13 (i) The past, present or future physical or mental health or condition of an individual;

14 (ii) The provision of health care to an individual; or

15 (iii) The past, present or future payment for the provision of health care to an individual.

16 (d) "Personal representative" includes but is not limited to:

17 (A) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
18 authority to make medical and health care decisions;

19 (B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-
20 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment
21 decisions; and

22 (C) A person appointed as a personal representative under ORS chapter 113.

23 (e) "Psychotherapy notes" means notes recorded in any medium:

24 (A) By a mental health professional, in the performance of the official duties of the mental
25 health professional;

26 (B) Documenting or analyzing the contents of conversation during a counseling session; and

27 (C) That are maintained separately from the rest of the individual's record.

28 (f) "Psychotherapy notes" does not mean notes documenting:

29 (A) Medication prescription and monitoring;

30 (B) Counseling session start and stop times;

31 (C) Modalities and frequencies of treatment furnished;

32 (D) Results of clinical tests; or

33 (E) Any summary of the following items:

34 (i) Diagnosis;

35 (ii) Functional status;

36 (iii) Treatment plan;

37 (iv) Symptoms;

38 (v) Prognosis; or

39 (vi) Progress to date.

40 (g) "Public provider" means:

41 (A) The state institutions for the care and treatment of individuals with mental illness or de-
42 velopmental disabilities operated by the Department of Human Services;

43 (B) Department of Corrections institutions as defined in ORS 421.005;

44 (C) A contractor of the Department of Human Services or the Department of Corrections that
45 provides health care to individuals residing in a state institution operated by the Department of

1 Human Services or the Department of Corrections;

2 (D) A community mental health and developmental disabilities program as described in ORS
3 430.610 to 430.695 and the public and private entities with which it contracts to provide mental
4 health or developmental disabilities programs or services;

5 (E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;

6 (F) A program or service licensed, approved, established, maintained or operated by or con-
7 tracted with the Department of Human Services under ORS 430.630 for individuals with develop-
8 mental disabilities and individuals with mental or emotional disturbances;

9 (G) A program or facility providing an organized full-day or part-day program of treatment that
10 is licensed, approved, established, maintained or operated by or contracted with the Department of
11 Human Services for alcoholism, drug addiction or mental or emotional disturbance; or

12 (H) A program or service providing treatment by appointment that is licensed, approved, estab-
13 lished, maintained or operated by or contracted with the Department of Human Services for
14 alcoholism, drug addiction or mental or emotional disturbance.

15 (h) "Written account" means records containing only individually identifiable health information.

16 (2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of
17 this section or unless otherwise permitted or required by state or federal law or by order of the
18 court, written accounts of the individuals served by any health care services provider maintained
19 in or by the health care services provider by the officers or employees thereof who are authorized
20 to maintain written accounts within the official scope of their duties are not subject to access and
21 may not be disclosed. This subsection applies to written accounts maintained in or by facilities of
22 the Department of Corrections only to the extent that the written accounts concern the medical,
23 dental or psychiatric treatment as patients of those under the jurisdiction of the Department of
24 Corrections.

25 (3) If the individual or a personal representative of the individual provides an authorization, the
26 content of any written account referred to in subsection (2) of this section must be disclosed ac-
27 cordingly, if the authorization is in writing and is signed and dated by the individual or the personal
28 representative of the individual and sets forth with specificity the following:

29 (a) Name of the health care services provider authorized to make the disclosure, except when
30 the authorization is provided by recipients of or applicants for public assistance to a governmental
31 entity for purposes of determining eligibility for benefits or investigating for fraud;

32 (b) Name or title of the persons or organizations to which the information is to be disclosed or
33 that information may be disclosed to the public;

34 (c) Name of the individual;

35 (d) Extent or nature of the information to be disclosed; and

36 (e) Statement that the authorization is subject to revocation at any time except to the extent
37 that action has been taken in reliance thereon, and a specification of the date, event or condition
38 upon which it expires without express revocation. However, a revocation of an authorization is not
39 valid with respect to inspection or records necessary to validate expenditures by or on behalf of
40 governmental entities.

41 (4) The content of any written account referred to in subsection (2) of this section may be dis-
42 closed without an authorization:

43 (a) To any person to the extent necessary to meet a medical emergency.

44 (b) At the discretion of the responsible officer of the health care services provider, which in the
45 case of any Department of Human Services facility or community mental health and developmental

1 disabilities program shall be the Director of Human Services, to persons engaged in scientific re-
2 search, program evaluation, peer review and fiscal audits. However, individual identities may not
3 be disclosed to such persons, except when the disclosure is essential to the research, evaluation,
4 review or audit and is consistent with state and federal law.

5 (c) To governmental agencies when necessary to secure compensation for services rendered in
6 the treatment of the individual.

7 (5) When an individual's identity is disclosed under subsection (4) of this section, a health care
8 services provider shall prepare, and include in the permanent records of the health care services
9 provider, a written statement indicating the reasons for the disclosure, the written accounts dis-
10 closed and the recipients of the disclosure.

11 (6) The content of any written account referred to in subsection (2) of this section and held by
12 a health care services provider currently engaged in the treatment of an individual may be disclosed
13 to officers or employees of that provider, its agents or cooperating health care services providers
14 who are currently acting within the official scope of their duties to evaluate treatment programs,
15 to diagnose or treat or to assist in diagnosing or treating an individual when the written account
16 is to be used in the course of diagnosing or treating the individual. Nothing in this subsection
17 prevents the transfer of written accounts referred to in subsection (2) of this section among health
18 care services providers, the Department of Human Services, the Department of Corrections or a lo-
19 cal correctional facility when the transfer is necessary or beneficial to the treatment of an individ-
20 ual.

21 (7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240
22 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or
23 treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or
24 an institution operated by the department, nothing in this section prohibits the disclosure of any
25 written account referred to in subsection (2) of this section to the Department of Justice, Oregon
26 Department of Administrative Services, or their agents, upon request, or the subsequent disclosure
27 to a court, administrative hearings officer, arbitrator or other administrative decision maker.

28 (8)(a) When an action, suit, claim, arbitration or proceeding involves the Department of Human
29 Services or an institution operated by the department, nothing in this section prohibits the disclo-
30 sure of any written account referred to in subsection (2) of this section to the Department of Justice,
31 Oregon Department of Administrative Services, or their agents.

32 (b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is
33 limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750
34 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed
35 under this paragraph.

36 (c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel
37 action taken against staff is limited to written accounts directly relating to alleged action or in-
38 action by staff for which the personnel action was imposed.

39 (9)(a) The copy of any written account referred to in subsection (2) of this section, upon written
40 request of the individual or a personal representative of the individual, shall be disclosed to the
41 individual or the personal representative of the individual within a reasonable time not to exceed
42 five working days. The individual or the personal representative of the individual shall have the
43 right to timely access to any written accounts.

44 (b) If the disclosure of psychiatric or psychological information contained in the written account
45 would constitute an immediate and grave detriment to the treatment of the individual, disclosure

1 may be denied, if medically contraindicated by the treating physician or a licensed health care
2 professional in the written account of the individual.

3 (c) The Department of Corrections may withhold psychiatric or psychological information if:

4 (A) The information relates to an individual other than the individual seeking it.

5 (B) Disclosure of the information would constitute a danger to another individual.

6 (C) Disclosure of the information would compromise the privacy of a confidential source.

7 (d) However, a written statement of the denial under paragraph (c) of this subsection and the
8 reasons therefor must be entered in the written account.

9 (10) A health care services provider may require a person requesting disclosure of the contents
10 of a written account under this section to reimburse the provider for the reasonable costs incurred
11 in searching files, abstracting if requested and copying if requested. However, an individual or a
12 personal representative of the individual may not be denied access to written accounts concerning
13 the individual because of inability to pay.

14 (11) A written account referred to in subsection (2) of this section may not be used to initiate
15 or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by
16 federal, state or local authorities against the individual or to conduct any investigations of the in-
17 dividual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily
18 produces evidence regarding an issue to which a written account referred to in subsection (2) of this
19 section would be relevant, the contents of that written account may be disclosed for use in the
20 proceeding.

21 (12) Information obtained in the course of diagnosis, evaluation or treatment of an individual
22 that, in the professional judgment of the health care services provider, indicates a clear and imme-
23 diate danger to others or to society may be reported to the appropriate authority. A decision not
24 to disclose information under this subsection does not subject the provider to any civil liability.
25 Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760,
26 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

27 (13) The prohibitions of this section apply to written accounts concerning any individual who
28 has been treated by any health care services provider irrespective of whether or when the individual
29 ceases to receive treatment.

30 (14) Persons other than the individual or the personal representative of the individual who are
31 granted access under this section to the contents of a written account referred to in subsection (2)
32 of this section may not disclose the contents of the written account to any other person except in
33 accordance with the provisions of this section.

34 (15) Nothing in this section prevents the Department of Human Services from disclosing the
35 contents of written accounts in its possession to individuals or agencies with whom children in its
36 custody are placed.

37 (16) The system [*designated under*] **described in** ORS 192.517 (1) shall have access to records,
38 as defined in ORS 192.515, as provided in ORS 192.517.

39 (17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider
40 must obtain an authorization from an individual or a personal representative of the individual to
41 disclose psychotherapy notes.

42 (b) A health care services provider may use or disclose psychotherapy notes without obtaining
43 an authorization from the individual or a personal representative of the individual to carry out the
44 following treatment, payment and health care operations:

45 (A) Use by the originator of the psychotherapy notes for treatment;

1 (B) Disclosure by the health care services provider for its own training program in which stu-
2 dents, trainees or practitioners in mental health learn under supervision to practice or improve their
3 skills in group, joint, family or individual counseling; or

4 (C) Disclosure by the health care services provider to defend itself in a legal action or other
5 proceeding brought by the individual or a personal representative of the individual.

6 (c) An authorization for the disclosure of psychotherapy notes may not be combined with an
7 authorization for a disclosure of any other individually identifiable health information, but may be
8 combined with another authorization for a disclosure of psychotherapy notes.

9 **SECTION 6.** ORS 183.458 is amended to read:

10 183.458. (1) Notwithstanding any other provision of law, in any contested case hearing before a
11 state agency involving child support or public assistance as defined in ORS 411.010, a party may be
12 represented by any of the following persons:

13 (a) An authorized representative who is an employee of a nonprofit legal services program that
14 receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an
15 attorney also employed by a legal services program.

16 (b) An authorized representative who is an employee of the system [*designated to protect and*
17 *advocate the rights of individuals with developmental disabilities under part C of the Developmental*
18 *Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals*
19 *with mental illness under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C.*
20 *10801 et seq.)*] **described in ORS 192.517 (1).** The authorized representative must be supervised by
21 an attorney also employed by the system.

22 (2) In any contested case hearing before a state agency involving child support, a party may be
23 represented by a law student who is:

24 (a) Handling the child support matter as part of a law school clinical program in which the
25 student is enrolled; and

26 (b) Supervised by an attorney employed by the program.

27 (3) A person authorized to represent a party under this section may present evidence in the
28 proceeding, examine and cross-examine witnesses and present factual and legal arguments in the
29 proceeding.

30 **SECTION 7.** ORS 192.515 is amended to read:

31 192.515. As used in **this section and** ORS 179.505[, 192.515] and 192.517:

32 (1) "Facilities" includes, but is not limited to, hospitals, nursing homes, facilities defined in ORS
33 430.205, board and care homes, homeless shelters, juvenile training schools, youth care centers, ju-
34 venile detention centers, jails and prisons.

35 (2) "Individual" means:

36 (a) [*A person*] **An individual** with a developmental disability as defined in the Developmental
37 Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15002) as in effect on January 1, 2003; [*or*]

38 (b) An individual with mental illness as defined in the Protection and Advocacy for Mentally Ill
39 Individuals Act (42 U.S.C. 10802) as in effect on January 1, 2003[.]; **or**

40 (c) **An individual with disabilities as described in 29 U.S.C. 794e as in effect on the effec-**
41 **tive date of this 2005 Act, other than:**

42 (A) **An inmate in a facility operated by the Department of Corrections whose only disa-**
43 **bility is drug or alcohol addiction; and**

44 (B) **A person confined in a youth correction facility, as that term is defined in ORS**
45 **420.005, whose only disability is drug or alcohol addiction.**

1 (3)(a) "Other legal representative" means a person[, *other than a legal guardian,*] who has been
2 granted or retains legal authority to exercise an individual's power to permit access to the individ-
3 ual's records.

4 (b) "**Other legal representative**" does not include a legal guardian, the state or a political
5 subdivision of this state.

6 (4) "Records" includes, but is not limited to, reports prepared or received by any staff of a fa-
7 cility rendering care or treatment, any medical examiner's report, autopsy report or laboratory test
8 report ordered by a medical examiner, reports prepared by an agency or staff person charged with
9 investigating reports of incidents of abuse, neglect, injury or death occurring at the facility that
10 describe such incidents and the steps taken to investigate the incidents and discharge planning re-
11 cords or any information to which the individual would be entitled access, if capable.

12 **SECTION 8.** ORS 192.517 is amended to read:

13 192.517. (1) The system designated to protect and advocate **for** the rights of individuals [*with*
14 *developmental disabilities under 42 U.S.C.A. 15041 et seq. as in effect on January 1, 2003, and the*
15 *rights of individuals with mental illness under 42 U.S.C. 10801 et seq. as in effect on January 1,*
16 *2003,*] shall have access to all records of:

17 (a) Any individual who is a client of the system if the individual or the legal guardian or other
18 legal representative of the individual has authorized the system to have such access;

19 (b) Any individual, including an individual who has died or whose whereabouts are unknown:

20 (A) If the individual by reason of the individual's mental or physical condition or age is unable
21 to authorize such access;

22 (B) If the individual does not have a legal guardian or other legal representative, or the state
23 **or a political subdivision of this state** is the legal guardian of the individual; and

24 (C) If a complaint regarding the rights or safety of the individual has been received by the sys-
25 tem or if, as a result of monitoring or other activities which result from a complaint or other evi-
26 dence, there is probable cause to believe that the individual has been subject to abuse or neglect;
27 and

28 (c) Any individual who has a legal guardian or other legal representative, who is the subject
29 of a complaint of abuse or neglect received by the system, or whose health and safety is believed
30 with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal
31 representative:

32 (A) Has been contacted by the system upon receipt of the name and address of the legal
33 guardian or other legal representative;

34 (B) Has been offered assistance by the system to resolve the situation; and

35 (C) Has failed or refused to act on behalf of the individual.

36 (2) The system shall have access to the name, address and telephone number of any legal
37 guardian or other legal representative of an individual.

38 (3) The system that obtains access to records under this section shall maintain the
39 confidentiality of the records to the same extent as is required of the provider of the services, except
40 as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806)
41 as in effect on January 1, 2003.

42 (4) The system shall have reasonable access to facilities, including the residents and staff of the
43 facilities.

44 (5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 (9).

45 **SECTION 9.** ORS 430.763 is amended to read:

1 430.763. Notwithstanding the provisions of ORS 192.410 to 192.505, the names of persons who
 2 made reports of abuse, witnesses of alleged abuse and the affected adults and materials under ORS
 3 430.747 maintained under the provisions of ORS 430.757 are confidential and are not accessible for
 4 public inspection. However, the Department of Human Services shall make this information and any
 5 investigative report available to any law enforcement agency, to any public agency that licenses or
 6 certifies facilities or licenses or certifies the persons practicing therein and to any public agency
 7 providing protective services for the adult, if appropriate. The department shall also make this in-
 8 formation and any investigative report available to any private agency providing protective services
 9 for the adult and to the [*protection and advocacy system for the affected adults designated pursuant*
 10 *to 42 U.S.C.A. 15041 et seq*] **system described in ORS 192.517 (1)**. When this information and any
 11 investigative report is made available to a private agency, the confidentiality requirements of this
 12 section apply to the private agency.

13 **SECTION 10.** ORS 436.255 is amended to read:

14 436.255. (1) Upon such a petition for determination of ability to give informed consent, the court
 15 shall assign a time, not later than 30 days thereafter, and a place for hearing the petition.

16 (2) The court may, at its discretion, hold a hearing on the petition at a place other than the
 17 courtroom if it would facilitate the presence of the respondent. The court shall cause a copy of the
 18 petition and notice of the hearing to be served on the respondent and the respondent's parent, legal
 19 guardian or conservator, if any, at least 14 days prior to the hearing date. Notice is also required
 20 to the following:

21 (a) The spouse of the respondent, if any;

22 (b) The sibling of the respondent if there are no living parents;

23 (c) The [*officially designated State Office of Protection and Advocacy under 42 U.S.C.A. 15041 et*
 24 *seq.*] **system described in ORS 192.517 (1)**; and

25 (d) Such other persons as the court may determine have an interest in the respondent.

26 (3) If the parent or legal guardian of the respondent is not a resident of this state, notice may
 27 be served by registered mail or by certified mail with return receipt. If the residence of the re-
 28 spondent's parent or legal guardian is unknown, an affidavit so stating shall be filed in lieu of ser-
 29 vice.

30 **SECTION 11.** ORS 436.335 is amended to read:

31 436.335. (1) The disposition of all cases under this chapter shall be reported to the State Court
 32 Administrator. The State Court Administrator shall forward any reported information to the [*offi-*
 33 *cially designated State Office of Protection and Advocacy under 42 U.S.C.A. 15041 et seq*] **system**
 34 **described in ORS 192.517 (1)**.

35 (2) The [*officially designated State Office of Protection and Advocacy under 42 U.S.C.A. 15041 et*
 36 *seq.*] **system described in ORS 192.517 (1)** shall review biennially all cases pertaining to
 37 sterilization under this chapter and shall report to the Legislative Assembly its assessment of the
 38 need for any changes in the procedures or standards set forth in this chapter.

39 **SECTION 12.** **The amendments to ORS 192.517 by section 8 of this 2005 Act apply to re-**
 40 **quests for access to facilities made on or after the effective date of this 2005 Act.**