

(Including Amendments to Resolve Conflicts)

## B-Engrossed House Bill 3457

Ordered by the Senate August 4  
Including House Amendments dated June 7 and Senate Amendments  
dated August 4

Sponsored by Representative OLSON; Representatives ANDERSON, AVAKIAN, BARKER, BERGER, BEYER, BOONE, BOQUIST, BROWN, BURLEY, BUTLER, CAMERON, ESQUIVEL, FARR, FLORES, GARRARD, HANNA, HUNT, KITTS, KOMP, KRIEGER, KROPF, LIM, MINNIS, MORGAN, NELSON, ROBLAN, SCHAUFLER, SCOTT, SUMNER, THATCHER, WHISNANT, WIRTH, Senators BURDICK, FERRIOLI, JOHNSON, MORSE

### 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.

*[Provides that forfeiting agency in civil forfeiture proceeding must prove by clear and convincing evidence that real property constitutes proceeds of prohibited conduct or instrumentality of prohibited conduct.]*

*[Provides that default judgment may be entered against fugitive in criminal and civil forfeitures.]*

*[Modifies distribution of proceeds from civil forfeitures.]*

*[Eliminates sunset on criminal forfeiture laws.]*

*[Declares emergency, effective July 31, 2005.]*

**Reenacts laws providing for criminal forfeiture. Allows court to order forfeiture of seized property in criminal forfeiture action when defendant is a fugitive and in default.**

**Requires conviction of crime before civil forfeiture allowed. Allows forfeiture of property of claimant who has not been convicted of crime under certain circumstances. Specifies that standard of proof for civil forfeiture of personal property is preponderance of evidence. Specifies that standard of proof for civil forfeiture of real property is clear and convincing evidence. Allows court to order forfeiture of seized property in civil forfeiture action when defendant is a fugitive and in default.**

**Modifies distribution of proceeds of civil forfeitures.**

**Reenacts certain laws providing for plans to integrate drug treatment services.**

**Declares emergency, effective on passage.**

### A BILL FOR AN ACT

Relating to forfeiture; creating new provisions; amending ORS 133.643, 137.138, 164.864, 164.866, 166.279, 166.660, 167.350, 475A.035, 475A.075, 475A.080, 475A.085, 475A.120, 475A.130, 475A.155 and 475A.160 and sections 35, 36 and 38, chapter 780, Oregon Laws 2001, and section 16a, chapter 801, Oregon Laws 2003; repealing ORS 163.696, 164.879, 165.586 and 167.379 and sections 350 and 351, chapter 22, Oregon Laws 2005 (Enrolled House Bill 2261); and declaring an emergency.

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

### CRIMINAL FORFEITURE

#### **SECTION 1. As used in sections 1 to 18 of this 2005 Act:**

**(1) "Acquiesce in prohibited conduct" means that a person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate**

**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 or avoid the use of the property in the course of prohibited conduct. For purposes of this  
2 subsection, “reasonable action under the circumstances” includes, but is not limited to:

3 (a) Reporting the prohibited conduct to a law enforcement agency;

4 (b) Commencing action that will assert the rights of the affiant as to the property in-  
5 terest;

6 (c) Terminating a rental agreement; or

7 (d) Seeking an abatement order under the provisions of ORS 105.505 to 105.520 or 105.550  
8 to 105.600, or under any ordinance or regulation allowing abatement of nuisances.

9 (2) “All persons known to have an interest” means:

10 (a) Any person who has, prior to the time the property is seized for criminal forfeiture,  
11 filed notice of interest with any public office as may be required or permitted by law to be  
12 filed with respect to the property that has been seized for criminal forfeiture;

13 (b) Any person from whose custody the property was seized; or

14 (c) Any person who has an interest in the property, including all owners and occupants  
15 of the property, whose identity and address is known or is ascertainable upon diligent inquiry  
16 and whose rights and interest in the property may be affected by the action.

17 (3) “Attorney fees” has the meaning given that term in ORCP 68 A.

18 (4) “Financial institution” means any person lawfully conducting business as:

19 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;

20 (b) A consumer finance company subject to the provisions of ORS chapter 725;

21 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840,  
22 a mortgage servicing company or other mortgage company;

23 (d) An officer, agency, department or instrumentality of the federal government, includ-  
24 ing but not limited to:

25 (A) The Secretary of Housing and Urban Development;

26 (B) The Federal Housing Administration;

27 (C) The United States Department of Veterans Affairs;

28 (D) The Farmers Home Administration;

29 (E) The Federal National Mortgage Association;

30 (F) The Government National Mortgage Association;

31 (G) The Federal Home Loan Mortgage Association;

32 (H) The Federal Agricultural Mortgage Corporation; and

33 (I) The Small Business Administration;

34 (e) An agency, department or instrumentality of this state, including but not limited to:

35 (A) The Housing and Community Services Department;

36 (B) The Department of Veterans’ Affairs; and

37 (C) The Public Employees Retirement System;

38 (f) An agency, department or instrumentality of any municipality in this state, including  
39 but not limited to such agencies as the Portland Development Commission;

40 (g) An insurer as defined in ORS 731.106;

41 (h) A private mortgage insurance company;

42 (i) A pension plan or fund or other retirement plan; and

43 (j) A broker-dealer or investment adviser representative as defined in ORS 59.015.

44 (5) “Forfeiture counsel” means an attorney designated to represent a seizing agency in  
45 criminal forfeiture actions or proceedings.

1 (6) "Instrumentality" means property that is used or intended for use in prohibited con-  
2 duct or that facilitates prohibited conduct.

3 (7) "Law enforcement agency" means any agency that employs police officers or prose-  
4 cutes criminal cases.

5 (8) "Official law enforcement use" means a use that may reasonably be expected to result  
6 in the identification, apprehension or conviction of criminal offenders.

7 (9) "Police officer" has the meaning given that term in ORS 133.525.

8 (10) "Proceeds of prohibited conduct" means property derived directly or indirectly from,  
9 maintained by or realized through an act or omission that constitutes prohibited conduct,  
10 and includes any benefit, interest or property of any kind without reduction for expenses of  
11 acquiring or maintaining it or incurred for any other reason.

12 (11) "Prohibited conduct" means:

13 (a) For purposes of proceeds, a felony or a Class A misdemeanor.

14 (b) For purposes of instrumentalities, any crime listed in section 19 of this 2005 Act.

15 (12) "Property" means any interest in anything of value, including the whole of any lot  
16 or tract of land and tangible and intangible personal property, including currency, instru-  
17 ments or securities or any other kind of privilege, interest, claim or right whether due or  
18 to become due.

19 (13) "Seizing agency" means a law enforcement agency that has seized property for  
20 criminal forfeiture.

21 (14) "Weapon" means any instrument of offensive or defensive combat or anything used,  
22 or designed to be used, to destroy, defeat or injure a person.

23 **SECTION 2.** (1) The Legislative Assembly finds that:

24 (a) Prohibited conduct is undertaken in the course of activities that result in, and are  
25 facilitated by, the acquisition, possession or transfer of property subject to criminal forfei-  
26 ture under sections 1 to 18 of this 2005 Act;

27 (b) Transactions involving property subject to criminal forfeiture under sections 1 to 18  
28 of this 2005 Act escape taxation;

29 (c) Perpetrators of crimes should not be allowed to keep the proceeds and instrument-  
30 alities of their crimes;

31 (d) Governments attempting to respond to prohibited conduct require additional re-  
32 sources to meet their needs; and

33 (e) There is a need to provide for the forfeiture of certain property subject to criminal  
34 forfeiture under sections 1 to 18 of this 2005 Act, to provide for the protection of the rights  
35 and interests of affected persons and to provide for uniformity throughout this state with  
36 respect to the laws of this state that pertain to the criminal forfeiture of real and personal  
37 property based upon prohibited conduct.

38 (2) Sections 1 to 18 of this 2005 Act do not impair the right of any city or county to enact  
39 ordinances providing for the criminal forfeiture of property based upon prohibited conduct  
40 if:

41 (a) The property was used to commit the conduct described in the ordinances, or con-  
42 stitutes proceeds of the conduct; and

43 (b) The criminal forfeiture is subject to procedures and limitations set forth in sections  
44 1 to 18 of this 2005 Act.

45 (3) Nothing in sections 1 to 18 of this 2005 Act may be construed to limit or impair any

1 right or remedy that any person or entity may have under ORS 166.715 to 166.735. Criminal  
2 forfeiture is a remedy separate and apart from any other criminal penalty and from civil  
3 forfeiture or any other civil penalty.

4 **SECTION 3.** Subject to sections 1 to 18 of this 2005 Act, all right, title and interest in  
5 property forfeited under sections 1 to 18 of this 2005 Act vest in the seizing agency upon  
6 commission of the prohibited conduct.

7 **SECTION 4.** The following are subject to criminal forfeiture:

8 (1) All controlled substances that have been manufactured, distributed, dispensed, pos-  
9 sessed or acquired in the course of prohibited conduct;

10 (2) All raw materials, products and equipment of any kind that are used, or intended for  
11 use, in providing, manufacturing, compounding, processing, delivering, importing or export-  
12 ing any service or substance in the course of prohibited conduct;

13 (3) All property that is used, or intended for use, as a container for property described  
14 in subsection (1) or (2) of this section;

15 (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are in-  
16 tended for use, to transport or facilitate the transportation, sale, receipt, possession or  
17 concealment of property described in subsection (1) or (2) of this section, and all  
18 conveyances, including aircraft, vehicles and vessels, that are used or intended for use in  
19 prohibited conduct or to facilitate prohibited conduct, except that:

20 (a) No conveyance used by any person as a common carrier in the transaction of business  
21 as a common carrier is subject to criminal forfeiture under the provisions of this section  
22 unless the owner or other person in charge of such conveyance was a consenting party or  
23 knew of and acquiesced in the prohibited conduct; and

24 (b) No conveyance is subject to criminal forfeiture under the provisions of this section  
25 by reason of any act or omission established by the owner thereof to have been committed  
26 or omitted by any person other than such owner while such conveyance was unlawfully in  
27 the possession of a person other than the owner in violation of the criminal laws of the  
28 United States or of any state;

29 (5) All books, records, computers and research, including formulae, microfilm, tapes and  
30 data that are used or intended for use to facilitate prohibited conduct;

31 (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities  
32 or other things of value furnished or intended to be furnished by any person in the course  
33 of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable  
34 instruments, balances in deposit and other accounts and securities used or intended to be  
35 used to facilitate any prohibited conduct;

36 (7) All real property, including any right, title and interest in the whole of any lot or  
37 tract of land and any appurtenances or improvements, that is used or intended to be used  
38 to commit or facilitate the commission of prohibited conduct;

39 (8) All weapons possessed, used or available for use to facilitate conduct giving rise to  
40 criminal forfeiture;

41 (9) All property described in this section that is intended for use in committing or facil-  
42 itating an attempt to commit a crime as described in ORS 161.405, a solicitation as described  
43 in ORS 161.435 or a conspiracy as described in ORS 161.450; and

44 (10) All personal property that is used or intended to be used to commit or facilitate  
45 prohibited conduct.

1       **SECTION 5.** (1) A person who delivers property in obedience to an order or direction to  
2 deliver the property under this section is not liable:

3           (a) To any person on account of obedience to the order or direction; or

4           (b) For any costs incurred on account of any contamination of the delivered property.  
5 This includes, but is not limited to, any disposal costs for any property forfeited under sec-  
6 tion 4 of this 2005 Act, any hazardous waste or material, any contraband or any other con-  
7 tamination contained in property seized under this section.

8       (2) In addition to seizures authorized by ORS 133.535, a police officer may seize property  
9 without a court order if the police officer has probable cause to believe that the property is  
10 subject to criminal forfeiture.

11       (3) Except as provided in section 6 of this 2005 Act, with regard to cash or other assets  
12 that at the time of seizure are held in any form of account in a financial institution, if the  
13 property is in whole or in part intangible, the person having control or custody of the prop-  
14 erty shall deliver the same over to the police officer.

15       (4)(a) A police officer may seize property pursuant to an order of the court. Forfeiture  
16 counsel or a seizing agency may apply for an ex parte order directing seizure of specified  
17 property.

18           (b) Application may be made to any judge as defined in ORS 133.525. The application must  
19 be supported by one or more affidavits setting forth the facts and circumstances tending to  
20 show where the objects of the seizure are to be found. The court shall issue the order upon  
21 a finding of probable cause to believe that the described property is subject to criminal  
22 forfeiture. The order may be set out on the face of a search warrant.

23           (c) Except as provided in section 6 of this 2005 Act, with regard to cash or other assets  
24 that at the time of seizure are held in any form of account in a financial institution, if the  
25 property is in whole or in part intangible, the order shall direct any person having control  
26 or custody of the property to deliver the same over to the seizing agency or to the court to  
27 abide judgment.

28       (5) Property may be constructively seized by posting notice of seizure for criminal  
29 forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending  
30 criminal forfeiture in the public records that impart constructive notice of matters relating  
31 to such property. A notice that is filed must include a description of the property that is the  
32 subject of the seizure. Real property, including interests arising out of land sale contracts,  
33 may be seized only upon recording a notice of seizure containing a legal description of the  
34 property in the mortgage records of the county in which the real property is located.

35       (6) Promptly upon seizure, the officer who seized the property shall make an inventory  
36 of the property seized and shall deliver a receipt embodying the inventory to the person from  
37 whose possession the property is taken or to the person in apparent control of the property  
38 at the time it is seized. If the property is unoccupied or there is no one present in apparent  
39 control, the officer shall leave the receipt suitably affixed to the property. If the property  
40 is physically removed from the location of seizure and it is unoccupied or there is no one  
41 present in apparent control, then the officer shall promptly file the receipt in the public re-  
42 cords of the seizing agency. Every receipt prepared under this subsection shall contain, in  
43 addition to an inventory of the property seized, the following information:

44           (a) The identity of the seizing agency; and

45           (b) The address and telephone number of the office or other place where the person may

1 obtain further information concerning the criminal forfeiture.

2 (7) In the event that property is seized from the possession of a person who asserts a  
3 possessory lien over such property pursuant to applicable law, notwithstanding any other  
4 provision of law, any lien of the person from whom the property was seized remains in effect  
5 and is enforceable as fully as though the person had retained possession of the property.

6 **SECTION 6.** (1)(a) Except as otherwise provided in sections 1 to 18 of this 2005 Act,  
7 property seized for criminal forfeiture is not subject to replevin, conveyance, sequestration  
8 or attachment. The seizure of property or the commencement of a criminal forfeiture pro-  
9 ceeding under sections 1 to 18 of this 2005 Act does not abate, impede or in any way delay  
10 the initiation or prosecution of a suit or action by a financial institution for the possession  
11 of seized property in which the financial institution has or purports to have a lien or security  
12 interest or for the foreclosure of such lien or security interest. A financial institution may  
13 proceed with any suit or action involving property in which it has a lien or security interest  
14 even though a seizure has occurred and criminal forfeiture proceedings have been or will be  
15 commenced. If property that may be subject to criminal forfeiture is sold prior to the con-  
16 clusion of the forfeiture proceedings, the sheriff, trustee or other person who is conducting  
17 the sale and who has actual notice of the forfeiture proceedings shall distribute the sale  
18 proceeds as follows:

19 (A) To the expenses of the sale;

20 (B) To the payment of the obligations owed to the foreclosing financial institution that  
21 are secured by the property and to any other person whose lien or security interest in the  
22 property has been foreclosed in the suit or action in the order determined by the court; and

23 (C) The surplus, if any, shall be distributed to the seizing agency, or to the court in which  
24 the forfeiture proceedings are pending.

25 (b) The sheriff, trustee or other person who distributes the sale proceeds as provided in  
26 this subsection is not liable to any person who has or asserts an interest in the property.

27 (2) Within 30 days following seizure of property for criminal forfeiture, the seizing  
28 agency, in consultation with the district attorney of the county in which the property was  
29 seized for forfeiture, shall determine whether it will seek the forfeiture of the property. If  
30 the seizing agency elects not to seek forfeiture, it shall pay all costs and expenses relating  
31 to towing and storage of the property, and shall cause to be discharged any possessory  
32 chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since its  
33 seizure and release the property. The property may be released to a person other than the  
34 person from whose custody or control the property was taken if the seizing agency or  
35 forfeiture counsel first mails to the last-known addresses of all persons known to have an  
36 interest in the property a notice of intent to release the property. The notice must specify  
37 the person to whom the property is to be released and must detail the time and place of the  
38 release. An agency that complies with the provisions of this subsection by paying costs and  
39 expenses of towing and storage, discharging possessory liens, mailing any required notices  
40 and releasing the property is not liable for its actions under this subsection or for any con-  
41 sequences thereof.

42 (3) A seizing agency shall, pending criminal forfeiture and final disposition and subject  
43 to the need to retain the property in any criminal proceeding, provide that property in the  
44 physical custody of the seizing agency be serviced or maintained as may be reasonably ap-  
45 propriate to preserve the value of the property.

1       **(4) A seizing agency may, pending criminal forfeiture and final disposition and subject to**  
2 **the need to retain seized property in any criminal proceeding:**

3       **(a) Provide that the seized property be transferred for criminal forfeiture to any city,**  
4 **county, state or federal agency with criminal forfeiture authority, provided that no such**  
5 **transfer may have the effect of diminishing or reducing the rights of any third party under**  
6 **sections 1 to 18 of this 2005 Act.**

7       **(b) Apply to the court for an order providing that the seized property may be sold, leased,**  
8 **rented or operated in the manner and on the terms that may be specified in the court's or-**  
9 **der. The court shall deny any application unless the sale, lease, rental or operation of the**  
10 **property will be conducted in a commercially reasonable manner and will not result in a**  
11 **material reduction of the property's value. The court may enter an order only:**

12       **(A) After notice and opportunity to be heard is provided to all persons known to have**  
13 **or to claim an interest in the property; and**

14       **(B) With the consent of all persons holding security interests of record in the property.**

15       **(c) Provide that the seized property be removed to a storage area for safekeeping.**

16       **(5) Unless otherwise ordered by the court, the seizing agency shall hold the proceeds of**  
17 **the sale, leasing, renting or operation under subsection (4) of this section and the rights of**  
18 **holders of security interests of record in the property attach to the proceeds of the sale,**  
19 **leasing, renting or operation in the same order of priority as interests attached to the**  
20 **property.**

21       **(6)(a) Except as provided in paragraph (b) of this subsection and except for currency with**  
22 **apparent or known intrinsic collector value, all cash seized for criminal forfeiture, together**  
23 **with all cash received from the sale, leasing, renting or operation of the property, must be**  
24 **immediately deposited in an insured interest-bearing forfeiture trust account or accounts**  
25 **maintained by the seizing agency exclusively for this purpose. Cash may be retained as evi-**  
26 **dence in a criminal proceeding but must be deposited immediately when the need to retain**  
27 **it as evidence is discharged.**

28       **(b) Notwithstanding paragraph (a) of this subsection, all cash seized for criminal forfei-**  
29 **ture that at the time of seizure is deposited in any form of account in a financial institution**  
30 **may remain in the account in the financial institution. From the time of seizure until the**  
31 **criminal forfeiture proceeding is abandoned, or until a court ultimately enters a judgment**  
32 **granting or denying criminal forfeiture or enters a judgment of dismissal, all deposits except**  
33 **the deposit of interest by the financial institution, withdrawals or other transactions in-**  
34 **volving the account are prohibited, unless approved by the court.**

35       **(c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust**  
36 **account or held in an account in a financial institution under this subsection must be dis-**  
37 **bursed as follows:**

38       **(A) If the criminal forfeiture proceeding is abandoned, or if the court ultimately enters**  
39 **a judgment denying criminal forfeiture or a judgment of dismissal, the seizing agency shall**  
40 **pay any interest earned, together with the cash deposited in the forfeiture trust account in**  
41 **connection with the seizure in question, to the person from whom it was seized, and the**  
42 **seizing agency shall release any interest earned, together with the cash deposited in an ac-**  
43 **count in a financial institution, to the person from whom it was seized.**

44       **(B) If a judgment of criminal forfeiture is entered, but parties other than the seizing**  
45 **agency establish rights to portions of the amount that are in the aggregate larger than or**

1 equal to the cash on deposit plus interest earned thereon, the seizing agency shall disburse  
2 the interest, together with the cash on deposit, to the parties in the order of their priority.

3 (C) If a judgment of criminal forfeiture is entered and the total amount arising out of the  
4 seizure that is on deposit in the forfeiture trust account or in an account in a financial in-  
5 stitution, including interest earned on moneys deposited, is greater than the aggregate  
6 amount needed to satisfy the established interests of security interest holders, lienholders  
7 and other claimants, the seizing agency shall retain the balance remaining after payment by  
8 the seizing agency to parties.

9 (7) If the property seized for criminal forfeiture consists of stocks, bonds, promissory  
10 notes or other security or evidence of indebtedness, and the property is held in some form  
11 of account in a financial institution, the property may remain in the account pending a final  
12 decision in the criminal forfeiture proceedings. Unless otherwise allowed by order of the  
13 court, no transactions involving the account may be permitted other than the deposit or  
14 reinvestment of dividends or other normally recurring payments on the property. Any ac-  
15 crual to the value of the property during the pendency of criminal forfeiture proceedings  
16 must be disbursed in the manner provided for the disbursement of interest under subsection  
17 (6) of this section.

18 (8) When property has been seized for criminal forfeiture or a notice of criminal forfei-  
19 ture has been filed, an owner of or interest holder in the property may file a motion seeking  
20 an order to show cause. The motion must be filed no later than 15 days after the owner or  
21 interest holder received notice or actual knowledge of the seizure, whichever is earlier. At  
22 the time a person files a motion under this subsection, the person must serve a copy of the  
23 motion on the forfeiture counsel and the defendant, if any. When a motion is filed under this  
24 subsection, the court shall issue an order to show cause to the seizing agency for a hearing  
25 on the sole issue of whether probable cause for criminal forfeiture of the property exists. If  
26 the court finds that there is no probable cause for criminal forfeiture of the property, the  
27 property seized for criminal forfeiture or subjected to the notice of criminal forfeiture must  
28 be released pending the outcome of a judicial proceeding under section 12 of this 2005 Act.  
29 As used in this subsection, "owner" or "interest holder" does not include the defendant.

30 **SECTION 7.** (1) Whenever a seizing agency intends to forfeit any real property under  
31 sections 1 to 18 of this 2005 Act, the seizing agency may have recorded by the county clerk  
32 or other recorder of deeds of every county in which any part of the premises or real property  
33 lies a notice of intent to forfeit real property under ORS 205.246. The notice must contain  
34 the legal description of the real property, the common address of the property, if any, and  
35 the name of the forfeiture counsel. From the time of recording the notice, and from that  
36 time only, the intent to forfeit is notice to purchasers and holders of encumbrances of the  
37 rights and equities in the premises of the party filing the notice. The notice must be recorded  
38 in the same book and in the same manner in which mortgages are recorded and may be  
39 discharged in like manner as mortgages are discharged, either by such party or the attorney  
40 signing the notice.

41 (2) Unless otherwise prescribed by law, a seizing agency recording a notice of intent to  
42 forfeit shall use substantially the following form:

43 \_\_\_\_\_  
44  
45 NOTICE OF INTENT

**TO FORFEIT**

Pursuant to section 7 of this 2005 Act, the undersigned states:

That I, \_\_\_\_\_ do declare that it is my intent to initiate criminal forfeiture proceedings on the following described real property:

1. The description of the real property to be affected is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The common address of the property, if any, is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

This notice of intent to file forfeiture will expire on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, absent future filings.

Name of agency seeking forfeiture

\_\_\_\_\_

Name of Forfeiture Counsel

\_\_\_\_\_

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number

\_\_\_\_\_

State of Oregon )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

My commission expires \_\_\_\_\_.

(3) The notice of intent to forfeit property expires 30 days after the date of filing absent future filings to perfect.

1       **SECTION 8.** (1) As soon as practicable after seizure for criminal forfeiture, the seizing  
2 agency shall review the inventory prepared by the police officer under section 5 of this 2005  
3 Act. Within 30 days after seizure for criminal forfeiture, the forfeiture counsel shall file a  
4 criminal information or an indictment alleging facts sufficient to establish that the property  
5 is subject to criminal forfeiture. Within 30 days after seizure for criminal forfeiture, the  
6 seizing agency or forfeiture counsel shall prepare a notice of seizure for criminal forfeiture  
7 containing a copy of the inventory prepared pursuant to section 5 of this 2005 Act, the  
8 identity of the person from whom the property was seized, the name, address and telephone  
9 number of the seizing agency and the address and telephone number of the office or other  
10 place where further information concerning the seizure and criminal forfeiture may be ob-  
11 tained, and shall make reasonable efforts to serve the notice of seizure for criminal forfei-  
12 ture on all persons, other than the defendant, known to have an interest in the seized  
13 property. A person may be served as provided in ORCP 7 D except that the notice must also  
14 include information regarding the right to file a claim under subsection (2) of this section,  
15 if applicable, and the deadline for filing the claim. If the property is cash in the amount of  
16 \$1,000 or less or if the fair market value of the property is \$1,000 or less, the seizing agency  
17 may publish notice of seizure for criminal forfeiture in a newspaper as provided in ORCP 7  
18 D(6)(b) to D(6)(d). In all other cases, the seizing agency shall publish notice of seizure for  
19 criminal forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to D(6)(d). The seizing  
20 agency shall provide a copy of the notice, inventory and estimate of value to the forfeiture  
21 counsel.

22       (2) Except as otherwise provided in section 11 (1) to (3) of this 2005 Act, if notice of sei-  
23 zure for criminal forfeiture:

24       (a) Is given in a manner other than by publication, any person, other than the defendant,  
25 claiming an interest in the property must file a claim with the forfeiture counsel within 21  
26 days after service of notice of seizure for criminal forfeiture.

27       (b) Is published, any person, other than the defendant, claiming an interest in the prop-  
28 erty must file a claim with the forfeiture counsel within 21 days after the last publication  
29 date.

30       (3) An extension for the filing of a claim under subsection (2) of this section may not be  
31 granted. The claim must be signed by the claimant under penalty of perjury and must set  
32 forth all of the following:

33       (a) The true name of the claimant;

34       (b) The address at which the claimant will accept future mailings from the court or the  
35 forfeiture counsel; and

36       (c) A statement that the claimant has an interest in the seized property.

37       (4) If a seizing agency publishes notice of seizure for criminal forfeiture in a newspaper  
38 in the manner provided by subsection (1) of this section, the agency may include in a single  
39 publication as many notices of criminal forfeiture as the agency considers convenient. The  
40 publication may contain a single statement of matters from the notices of criminal forfeiture  
41 that are common to all of the notices and that would otherwise result in needless repetition.  
42 The publication must contain for each notice of criminal forfeiture a separate copy of the  
43 inventory prepared pursuant to section 5 of this 2005 Act, and a separate statement of the  
44 identity of the person from whose custody the property was seized. The published inventory  
45 need not contain estimates of value for the property seized.

1       **SECTION 9.** (1) A person, other than the defendant, claiming an interest in property  
2 seized under sections 1 to 18 of this 2005 Act may file a petition for an expedited hearing  
3 within 15 days after notice of seizure for criminal forfeiture or within such further time as  
4 the court may allow for good cause shown.

5       (2) A petition for an expedited hearing must contain a claim if no claim has previously  
6 been filed. The petition must reflect whether the petitioner seeks one or more of the fol-  
7 lowing:

8       (a) A determination at the hearing that the petitioner is a bona fide purchaser for value  
9 and did not acquiesce in the prohibited conduct.

10       (b) An order restoring custody of seized property to the petitioner during the pendency  
11 of the proceedings if the court finds, by a preponderance of the evidence, that it is probable  
12 that the property will remain available for forfeiture at the completion of the proceedings  
13 and that there is a reasonable possibility that the petitioner will ultimately prevail in the  
14 proceeding.

15       (c) Appointment of a receiver.

16       (3) A person filing a petition under this section shall serve a copy of the petition on all  
17 persons known to have an interest. Service must be accomplished as provided in ORCP 7  
18 D. Service by publication is not required prior to an expedited hearing.

19       (4) The court shall hold a hearing within 15 days after service of all persons known to  
20 have an interest or at such later time as the court may allow for good cause shown. The  
21 hearing is limited to:

22       (a) Deciding whether the petitioner can prove that the petitioner is a bona fide purchaser  
23 for value and did not acquiesce in the prohibited conduct;

24       (b) Determining whether an order should be entered directing the return of the seized  
25 property to the claimant during the pendency of the hearing; and

26       (c) Determining whether an order should be entered directing the appointment of a re-  
27 ceiver to manage property seized pursuant to sections 1 to 18 of this 2005 Act pending a final  
28 determination as to the disposition of the property, if the petitioner or the seizing agency  
29 requests that order.

30       (5) The parties to a proceeding under section 12 of this 2005 Act may at any time stipu-  
31 late to the entry of an order restoring custody of seized property to a petitioner who claims  
32 an interest in the property. The order must comply with the requirements of section 10 (1)  
33 of this 2005 Act.

34       **SECTION 10.** (1) An order restoring custody to a petitioner under section 9 of this 2005  
35 Act shall:

36       (a) Prohibit the petitioner from using the property in unlawful conduct of any kind, or  
37 from allowing the property to be used by any other person in unlawful conduct;

38       (b) Require the petitioner to service and maintain the property as may be reasonably  
39 appropriate to preserve the value of the property; and

40       (c) Require the petitioner to inform the court of the exact location of the property at the  
41 time of any judicial proceeding under section 12 of this 2005 Act and to deliver the property  
42 to the seizing agency immediately upon the issuance of a judgment of criminal forfeiture.

43       (2) An order restoring custody to a petitioner under section 9 of this 2005 Act may in-  
44 clude such other requirements as the court finds appropriate pending a final determination  
45 as to the disposition of the property.

1           (3) An order restoring custody to a petitioner under section 9 of this 2005 Act is en-  
2 forceable by a contempt proceeding brought on the relation of forfeiture counsel, by a fur-  
3 ther order directing the petitioner to deliver the property to the custody of the seizing  
4 agency, by an order awarding to the seizing agency its reasonably incurred attorney fees,  
5 costs and investigative expenses, and by such other remedies or relief as the court finds  
6 appropriate.

7           **SECTION 11.** (1)(a) A financial institution holding an interest in property seized under  
8 sections 1 to 18 of this 2005 Act shall respond to a notice of seizure for criminal forfeiture  
9 by filing an affidavit with the court establishing that the financial institution's interest in  
10 the property was acquired:

11           (A) In the regular course of business as a financial institution;

12           (B) For valuable consideration;

13           (C) Without knowledge of the prohibited conduct;

14           (D) In good faith and without intent to defeat the interest of any potential seizing agency;  
15 and

16           (E) With respect to personal property, prior to the seizure of the property, or with re-  
17 spect to real property, recorded prior to the recording of notice of the seizure of the real  
18 property in the mortgage records of the county in which the real property is located.

19           (b) Failure to file an affidavit constitutes a default. The affidavit must be filed within 30  
20 days from the date of service under section 8 of this 2005 Act.

21           (2) Notwithstanding the provisions of subsection (1) of this section, any person, other  
22 than a financial institution, who transfers or conveys an interest in real property pursuant  
23 to a contract for transfer or conveyance of an interest in real property as defined in ORS  
24 93.905 and who retains an interest in the real property, or any successor in interest, may  
25 respond to a notice of seizure for criminal forfeiture by filing an affidavit with the court  
26 establishing that the person:

27           (a) Received the interest in return for valuable consideration or by way of devise or  
28 intestate succession;

29           (b) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

30           (c) Acted in good faith and without intent to defeat the interest of any potential seizing  
31 agency;

32           (d) Recorded the interest in the mortgage records of the county in which the real prop-  
33 erty is located prior to the recording of any notice of intent to seize or notice of seizure; and

34           (e) Continued to hold the interest without acquiescing in the prohibited conduct.

35           (3) The affidavit permitted by subsection (2) of this section must be filed within 30 days  
36 from the date of service under section 8 of this 2005 Act. Failure to file an affidavit as set  
37 forth in subsection (2) of this section constitutes a default.

38           (4) In response to an affidavit filed under subsection (2) of this section, the seizing agency  
39 may controvert any or all of the assertions made in the affidavit. The affidavit of the seizing  
40 agency must be filed with the court within 20 days after the date the affidavit is filed under  
41 subsection (2) of this section. The transferor, conveyor or successor in interest may respond,  
42 within five days after the filing of the affidavit of the seizing agency, with a supplemental  
43 affidavit limited to the matters stated in the affidavit of the seizing agency. If the seizing  
44 agency does not file an affidavit within the time allowed, the transferor, conveyor or suc-  
45 cessor in interest is considered to be a financial institution for all purposes under sections

1 1 to 18 of this 2005 Act.

2 (5) If the seizing agency files an affidavit under subsection (4) of this section, the court  
3 shall decide the issues raised in the affidavit in a proceeding under section 12 of this 2005  
4 Act.

5 **SECTION 12.** (1) If a district attorney decides to proceed with a criminal forfeiture, the  
6 district attorney must present the criminal forfeiture to the grand jury for indictment. The  
7 indictment must allege facts sufficient to establish that the property is subject to criminal  
8 forfeiture and must comply with ORS 132.510, 132.540, 132.550, 132.557, 132.560 and 132.580.

9 (2) If the grand jury returns an indictment for criminal forfeiture, the defendant may  
10 admit or deny that the property is subject to criminal forfeiture. If the defendant fails to  
11 admit or deny that the property is subject to forfeiture, the court shall enter a denial on  
12 behalf of the defendant.

13 (3) When the underlying criminal conduct is a Class A misdemeanor, a city or county  
14 attorney may prosecute a criminal forfeiture by filing an information in the municipal or  
15 justice court.

16 (4) A criminal forfeiture proceeding and the underlying criminal case must be tried in the  
17 same proceeding.

18 (5) The criminal procedure laws of this state apply to criminal forfeiture proceedings.

19 (6) The court shall enter a judgment of criminal forfeiture if the forfeiture counsel proves  
20 beyond a reasonable doubt that the property for which forfeiture is sought is an  
21 instrumentality or the proceeds of the crime of conviction or past prohibited conduct that  
22 is similar to the crime of conviction.

23 (7) Forfeiture counsel may move the court at any time for an order finding that the de-  
24 fendant is a fugitive and in default. The court may enter an order finding the defendant in  
25 default under this subsection and enter a judgment of criminal forfeiture if the court finds  
26 that the defendant is not confined or held in custody by another jurisdiction, and that the  
27 defendant, after notice or knowledge of the fact that a warrant has been issued for the de-  
28 fendant:

- 29 (a) Purposely left the state to avoid prosecution;
- 30 (b) Declines to return to the state and allow execution of the warrant; or
- 31 (c) Otherwise evades the jurisdiction of the court issuing the warrant.

32 (8) No later than 21 days after the entry of a judgment of criminal forfeiture under this  
33 section, the forfeiture counsel shall notify by mail all persons who filed claims under section  
34 8 of this 2005 Act or affidavits under section 11 of this 2005 Act of the judgment of criminal  
35 forfeiture. The notice must inform the person of the requirements of subsection (9) of this  
36 section.

37 (9) If a person who receives notice under subsection (8) of this section wishes to assert  
38 the person's interest in the property but was not eligible to file an affidavit under section  
39 11 of this 2005 Act, the person must file an affidavit with the trial court, and must serve the  
40 forfeiture counsel with a copy of the affidavit, no later than 21 days after the date the notice  
41 required by subsection (8) of this section was mailed. The person must allege facts in an af-  
42 fidavit filed under this subsection that if true would prove that the person took the property  
43 or the interest that the person holds in the property:

- 44 (a)(A) Before it was seized for criminal forfeiture; and
- 45 (B) In good faith and without intent to defeat the interest of any seizing agency; or

1 (b) As a bona fide purchaser for value without acquiescing in the prohibited conduct.

2 (10)(a) If an affidavit is timely filed under subsection (9) of this section and the forfeiture  
3 counsel:

4 (A) Does not contest the affidavit, the forfeiture counsel shall submit a form of judgment  
5 to the court for entry under section 14 of this 2005 Act.

6 (B) Does contest the affidavit, the forfeiture counsel shall request a hearing with the  
7 trial court no later than 21 days after receiving the affidavit.

8 (b) If no affidavit is filed under subsection (9) of this section but the seizing agency filed  
9 an affidavit under section 11 (4) of this 2005 Act, the forfeiture counsel shall request a  
10 hearing with the trial court no later than 21 days after the last date for receiving affidavits  
11 under subsection (9) of this section.

12 (11)(a) A hearing pursuant to subsection (10) of this section is an ancillary proceeding  
13 and the Oregon Rules of Civil Procedure apply. At the hearing:

14 (A) Forfeiture counsel has the burden of proving by a preponderance of the evidence that  
15 the person claiming an interest in the property:

16 (i) Took the property with the intent to defeat the interest of a seizing agency; or

17 (ii) Is not a bona fide purchaser for value or acquiesced in the prohibited conduct.

18 (B) Forfeiture counsel may present evidence and witnesses and cross-examine witnesses  
19 who appear at the hearing.

20 (C) The person claiming an interest in the property may testify, present evidence and  
21 witnesses and cross-examine witnesses who appear at the hearing.

22 (b) In addition to testimony and evidence presented at the hearing, the court shall con-  
23 sider relevant portions of the record of the criminal case that resulted in the judgment of  
24 criminal forfeiture.

25 (c) The court shall amend the judgment of criminal forfeiture in accordance with its de-  
26 termination if, after the hearing, the court determines that the claimant:

27 (A) Did take the property before it was seized for criminal forfeiture and in good faith  
28 and without intent to defeat the interest of the seizing agency; or

29 (B) Is a bona fide purchaser for value of the right, title or interest in the property and  
30 did not acquiesce in the prohibited conduct.

31 (d) Notwithstanding ORS 19.255 (1), a person may file a notice of appeal within 30 days  
32 after entry in the register of an order disposing of the matters at issue in the ancillary  
33 proceeding. An appeal under this paragraph is governed by the provisions of ORS chapter 19  
34 relating to appeals in civil actions.

35 (12) When a court enters a judgment of criminal forfeiture under this section, the juris-  
36 diction of the court continues for purposes of subsection (11) of this section and the property  
37 continues to be subject to the court's jurisdiction.

38 **SECTION 13.** (1) The court shall enter judgment to the extent that the property is pro-  
39 ceeds of the crime of conviction or of past prohibited conduct that is similar to the crime  
40 of conviction.

41 (2) With respect to property that is an instrumentality of the crime of conviction or of  
42 past prohibited conduct that is similar to the crime of conviction, the court shall consider:

43 (a) Whether the property constitutes the defendant's lawful livelihood or means of  
44 earning a living.

45 (b) Whether the property is the defendant's residence.

1 (c) The degree of relationship between the property and the prohibited conduct, including  
2 the extent to which the property facilitated the prohibited conduct or could facilitate future  
3 prohibited conduct.

4 (d) The monetary value of the property in relation to the risk of injury to the public from  
5 the prohibited conduct.

6 (e) The monetary value of the property in relation to the actual injury to the public from  
7 the prohibited conduct.

8 (f) The monetary value of the property in relation to objective measures of the potential  
9 or actual criminal culpability of the person or persons engaging in the prohibited conduct,  
10 including:

11 (A) The inherent gravity of the prohibited conduct;

12 (B) The potential sentence for similar prohibited conduct under Oregon law;

13 (C) The defendant's prior criminal history; and

14 (D) The sentence actually imposed on the defendant.

15 (g) Any additional relevant evidence.

16 **SECTION 14.** (1) If no financial institution has filed the affidavit described in section 11  
17 (1) of this 2005 Act, and if the court has failed to uphold the claim or affidavit of any other  
18 person claiming an interest in the property, the effect of the judgment is that:

19 (a) Title to the property passes to the seizing agency free of any interest or encumbrance  
20 thereon in favor of any person who has been given notice;

21 (b) The seizing agency may transfer good and sufficient title to any subsequent purchaser  
22 or transferee, and all courts, the state and the departments and agencies of this state, and  
23 any political subdivision shall recognize the title. In the case of real property, the seizing  
24 agency shall warrant the title against constitutional defect. A warranty under this paragraph  
25 is limited to the purchase price of the real property; and

26 (c) Any department, agency or officer of this state or any political subdivision whose of-  
27 ficial functions include the issuance of certificates or other evidence of title is immune from  
28 civil or criminal liability when such issuance is pursuant to a judgment of criminal forfeiture.

29 (2) If an affidavit is filed by a financial institution under section 11 (1) of this 2005 Act,  
30 or if a person files an affidavit under section 11 (2) of this 2005 Act:

31 (a) The court shall foreclose all security interests, liens and vendor's interests of finan-  
32 cial institutions and claimants as to which the court determines that there is a legal or eq-  
33 uitable basis for foreclosure; and

34 (b) All other interests applicable to the property that are not foreclosed or otherwise  
35 eliminated through a judgment of foreclosure, if and to the extent that they are valid and  
36 subsisting, remain in effect and the property remains subject to them upon completion of the  
37 criminal forfeiture proceeding.

38 (3) Notwithstanding any other provision of law, if a financial institution or other person  
39 has filed an affidavit described in section 11 of this 2005 Act, or if the court has upheld the  
40 claim of any claimant, then as to each item of property seized:

41 (a) If the court has determined that the property should not be forfeited and has not  
42 foreclosed the security interests, liens or other interests covering the property, the court  
43 shall render judgment in favor of the owner of the property, the property must be returned  
44 to the owner and all security interests, liens and other interests applicable to the property  
45 remain in effect as though the property had never been seized. Upon the return of the

1 property to the owner, the seizing agency shall pay all costs and expenses relating to towing  
2 and storage of the property and shall cause to be discharged any possessory chattel liens on  
3 the property arising under ORS 87.152 to 87.162 that have attached to the property since the  
4 seizure.

5 (b) If the court has determined that the property should not be forfeited and has fore-  
6 closed one or more interests covering the property, including security interests or liens  
7 covering the property or contracts for the transfer or conveyance of the property, the seiz-  
8 ing agency shall pay all costs and expenses relating to towing and storage of the property  
9 and shall cause to be discharged any possessory chattel liens on the property arising under  
10 ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall  
11 order the property sold pursuant to a sheriff's sale or other sale authorized by the court  
12 within such time as may be prescribed by the court following entry of the judgment. If any  
13 interests covering the property have not been foreclosed, including any liens or security in-  
14 terests of a claimant whose claim has been upheld, or of a financial institution that has filed  
15 the affidavit described in section 11 of this 2005 Act, the property must be sold subject to  
16 those interests. The judgment shall order the proceeds of the sale applied in the following  
17 order:

18 (A) To the payment of the costs of the sale;

19 (B) To the satisfaction of the foreclosed liens, security interests and contracts in order  
20 of their priority; and

21 (C) The excess, if any, to the owner of the property.

22 (c) If the court has determined that the property should be forfeited and has foreclosed  
23 one or more security interests, liens, contracts or other interests covering the property, the  
24 seizing agency shall pay all costs and expenses relating to towing and storage of the property  
25 and shall cause to be discharged any possessory chattel liens on the property arising under  
26 ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall  
27 order the property sold pursuant to a sheriff's sale or other sale authorized by the court. If  
28 any interest in the property was claimed by a financial institution or other claimant and the  
29 interest was upheld but not foreclosed, the property must be sold subject to the interest. The  
30 sale of the property must be held within such time as may be prescribed by the court fol-  
31 lowing entry of the judgment. The judgment shall also order the proceeds of such sale applied  
32 in the following order:

33 (A) To the payment of the costs of the sale;

34 (B) To the satisfaction of the foreclosed liens, security interests and contracts in the  
35 order of their priority; and

36 (C) The excess, if any, to the seizing agency to be disposed of as provided in section 16  
37 or 17 of this 2005 Act.

38 (d) If the court has determined that the property should be forfeited and has not fore-  
39 closed the interests of any party in the property, the seizing agency shall pay all costs and  
40 expenses relating to towing and storage of the property and shall cause to be discharged any  
41 possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have at-  
42 tached to the property since the seizure. The court shall enter a judgment awarding the  
43 property to the seizing agency, subject to the interests of any claimants whose claims or  
44 affidavits were upheld by the court, and subject to the interests of any financial institutions  
45 that filed affidavits under section 11 (1) of this 2005 Act, that remain in full force and effect.

1 (4) The court may include in the judgment of criminal forfeiture an order that directs  
2 the seizing agency to distribute to the victim of the crime of conviction a portion of any  
3 proceeds from property received by the seizing agency if:

4 (a) The crime of conviction was a person felony or person Class A misdemeanor as those  
5 terms are defined by rule of the Oregon Criminal Justice Commission; and

6 (b) The court included an order of restitution in the criminal judgment.

7 (5) The seizing agency is not liable to any person as a consequence of obedience to a  
8 judgment directing conveyance to a financial institution.

9 (6) The forfeiture counsel shall send a copy of the judgment to the Asset Forfeiture  
10 Oversight Advisory Committee.

11 (7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under  
12 sections 1 to 18 of this 2005 Act, unless the court has foreclosed one or more security in-  
13 terests, liens or other interests covering the property, the property or interest in property  
14 must be returned or conveyed immediately to the claimant designated by the court.

15 (b) If it appears that there was reasonable suspicion that the property was subject to  
16 criminal forfeiture, the court shall cause a finding to be entered and no claimant or financial  
17 institution is entitled to damages nor is the person who made the seizure, the seizing agency  
18 or forfeiture counsel liable to suit or judgment on account of the seizure or action. An order  
19 directing seizure issued under section 5 of this 2005 Act constitutes a finding of reasonable  
20 suspicion that the property was subject to criminal forfeiture.

21 (8) Nothing in this section prevents a claimant or financial institution from obtaining any  
22 deficiency to which the claimant or financial institution would otherwise be entitled.

23 (9) Nothing in this section or in section 6 of this 2005 Act prevents a seizing agency from  
24 entering into an agreement with a claimant or other person for the reimbursement of the  
25 seizing agency for the costs and expenses relating to towing and storage of property or the  
26 cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to  
27 87.162 that attached to the property in the period between the seizure of the property and  
28 the release or criminal forfeiture of the property.

29 SECTION 15. Distribution of property or proceeds in accordance with sections 1 to 18 of  
30 this 2005 Act must be made equitably and may be made pursuant to intergovernmental  
31 agreement under ORS chapter 190. Intergovernmental agreements providing for such dis-  
32 tributions and in effect on the effective date of this 2005 Act remain valid unless changed  
33 by the parties. The equitable distribution of proceeds targeted for law enforcement must in-  
34 volve sharing the proceeds between the seizing agency and forfeiture counsel.

35 SECTION 16. (1) After the seizing agency distributes property under section 14 of this  
36 2005 Act, and when the seizing agency is not the state, the seizing agency shall dispose of  
37 and distribute property as follows:

38 (a) The seizing agency shall pay costs first from the property or its proceeds. As used in  
39 this subsection, "costs" includes the expenses of publication, service of notices, towing,  
40 storage and servicing or maintaining the seized property under section 6 of this 2005 Act.

41 (b) After costs have been paid, the seizing agency shall distribute to the victim any  
42 amount the seizing agency was ordered to distribute under section 14 (4) of this 2005 Act.

43 (c) After costs have been paid and distributions under paragraph (b) of this subsection  
44 have been made, the seizing agency shall distribute the rest of the property to the general  
45 fund of the political subdivision that operates the seizing agency.

1       **(2) Of the property distributed under subsection (1)(c) of this section, the political sub-**  
2 **division shall distribute:**

3       **(a) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;**

4       **(b) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 for the**  
5 **purposes specified in ORS 475.495 (5); and**

6       **(c) Ten percent to the state General Fund.**

7       **(3) Of the property distributed under subsection (1)(c) of this section that remains in the**  
8 **general fund of the political subdivision after the distributions required by subsection (2) of**  
9 **this section have been made:**

10       **(a) Fifty percent must be for official law enforcement use; and**

11       **(b) Fifty percent must be used for substance abuse treatment pursuant to a plan devel-**  
12 **oped under section 43 of this 2005 Act.**

13       **(4) Except as otherwise provided by intergovernmental agreement, the seizing agency**  
14 **may:**

15       **(a) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law**  
16 **enforcement agency or district attorney.**

17       **(b) Sell the forfeited property by public or other commercially reasonable sale and pay**  
18 **from the proceeds the expenses of keeping and selling the property.**

19       **(c) Retain the property.**

20       **(d) With written authorization from the district attorney for the seizing agency's juris-**  
21 **isdiction, destroy any firearms or controlled substances.**

22       **(5) A political subdivision may sell as much property as may be needed to make the dis-**  
23 **tributions required by subsections (1) and (2) of this section. A political subdivision shall**  
24 **make distributions to the Asset Forfeiture Oversight Account, the Illegal Drug Cleanup Fund**  
25 **and the state General Fund that are required by subsection (2) of this section once every**  
26 **three months. The distributions are due within 20 days of the end of each quarter. Interest**  
27 **does not accrue on amounts that are paid within the period specified by this subsection.**

28       **(6) A seizing agency may donate growing equipment and laboratory equipment that was**  
29 **used, or intended for use, in manufacturing of controlled substances to a public school,**  
30 **community college or state institution of higher education.**

31       **(7) This section applies only to criminal forfeiture proceeds arising out of prohibited**  
32 **conduct.**

33       **SECTION 17. (1) After the seizing agency distributes property under section 14 of this**  
34 **2005 Act, and when the seizing agency is the state or when the state is the recipient of**  
35 **property forfeited under sections 1 to 18 of this 2005 Act, the seizing agency shall dispose of**  
36 **and distribute property as follows:**

37       **(a) The seizing agency shall pay costs first from the property or its proceeds. As used in**  
38 **this subsection, "costs" includes the expenses of publication, service of notices, towing,**  
39 **storage and servicing or maintaining the seized property under section 6 of this 2005 Act.**

40       **(b) After costs have been paid, the seizing agency shall distribute to the victim any**  
41 **amount the seizing agency was ordered to distribute under section 14 (4) of this 2005 Act.**

42       **(c) Of the property remaining after costs have been paid under paragraph (a) of this**  
43 **subsection and distributions have been made under paragraph (b) of this subsection, the**  
44 **seizing agency shall distribute:**

45       **(A) Three percent to the Asset Forfeiture Oversight Account established in ORS**

1 475A.160;

2 (B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 for the  
3 purposes specified in ORS 475.495 (5);

4 (C) Ten percent to the state General Fund;

5 (D) Subject to subsection (5) of this section, 40 percent to the Department of State Police  
6 or the Department of Justice for official law enforcement use; and

7 (E) Forty percent to the Drug Prevention and Education Fund established in section 46  
8 of this 2005 Act.

9 (2)(a) Any amount paid to or retained by the Department of Justice under subsection (1)  
10 of this section must be deposited in the Criminal Justice Revolving Account in the State  
11 Treasury.

12 (b) Any amount paid to or retained by the Department of State Police under subsection  
13 (1) of this section must be deposited in the State Police Account.

14 (3) The state may:

15 (a) With written authorization from the district attorney for the jurisdiction in which the  
16 property was seized, destroy any firearms or controlled substances.

17 (b) Sell the forfeited property by public or other commercially reasonable sale and pay  
18 from the proceeds the expenses of keeping and selling the property.

19 (c) Retain any vehicles, firearms or other equipment usable for law enforcement pur-  
20 poses, for official law enforcement use directly by the state.

21 (d) Lend or transfer any vehicles, firearms or other equipment usable for law enforce-  
22 ment purposes to any federal, state or local law enforcement agency or district attorney for  
23 official law enforcement use directly by the transferee entity.

24 (4) When the state has entered into an intergovernmental agreement with one or more  
25 political subdivisions under section 15 of this 2005 Act, or when a law enforcement agency  
26 of this state has entered into an agreement with another law enforcement agency of this  
27 state, an equitable portion of the forfeited property distributed under subsection (1)(c)(D) of  
28 this section must be distributed to each agency participating in the seizure or criminal  
29 forfeiture as provided by the agreement.

30 (5) The property distributed under subsection (1)(c)(D) of this section, including any  
31 proceeds received by the state under an intergovernmental agreement or under an agree-  
32 ment between state law enforcement agencies, must be divided as follows:

33 (a) When no law enforcement agency other than the Department of Justice participated  
34 in the seizure or forfeiture, or when the Department of Justice has entered into an agree-  
35 ment under subsection (4) of this section, the property must be deposited in the Criminal  
36 Justice Revolving Account.

37 (b) When no law enforcement agency other than the Department of State Police partic-  
38 ipated in the seizure or forfeiture, or when the Department of State Police has entered into  
39 an agreement under subsection (4) of this section, the property must be deposited in the  
40 State Police Account.

41 (6) The seizing agency may sell as much property as may be needed to make the dis-  
42 tributions required by subsection (1) of this section. The seizing agency shall make distrib-  
43 utions to the Asset Forfeiture Oversight Account and the Illegal Drug Cleanup Fund that  
44 are required by subsection (1) of this section once every three months. The distributions are  
45 due within 20 days of the end of each quarter. Interest does not accrue on amounts that are

1 paid within the period specified by this subsection.

2 **SECTION 18.** (1) A seizing agency and any agency that receives forfeited property or  
3 proceeds from the sale of forfeited property under sections 1 to 18 of this 2005 Act shall  
4 maintain written documentation of each sale, decision to retain, transfer or other disposition  
5 of forfeited property.

6 (2) Forfeiture counsel shall report each criminal forfeiture to the Asset Forfeiture  
7 Oversight Advisory Committee as soon as reasonably possible after the conclusion of crimi-  
8 nal forfeiture proceedings, whether or not the forfeiture results in an entry of judgment  
9 under section 14 of this 2005 Act. The committee shall develop and make available forms for  
10 the purpose of reporting criminal forfeitures.

11 (3) Law enforcement agencies shall supply to forfeiture counsel all information requested  
12 by forfeiture counsel necessary for the preparation of the report required by subsection (2)  
13 of this section.

14 (4) Political subdivisions of this state that receive forfeiture proceeds under section 16  
15 of this 2005 Act shall submit a report to the committee for any year in which those proceeds  
16 are received. The committee shall develop and make available forms for the purpose of those  
17 reports. The forms must require the political subdivision to report how proceeds received by  
18 the political subdivision have been or will be used and any other information requested by  
19 the committee. A political subdivision shall submit a report required by this subsection by  
20 December 15 for the last ending fiscal year of the political subdivision.

21 **SECTION 19.** The crimes to which section 1 (11)(b) of this 2005 Act applies are:

22 (1) Bribe giving, as defined in ORS 162.015.

23 (2) Bribe receiving, as defined in ORS 162.025.

24 (3) Public investment fraud, as defined in ORS 162.117.

25 (4) Bribing a witness, as defined in ORS 162.265.

26 (5) Bribe receiving by a witness, as defined in ORS 162.275.

27 (6) Simulating legal process, as defined in ORS 162.355.

28 (7) Official misconduct in the first degree, as defined in ORS 162.415.

29 (8) Custodial interference in the second degree, as defined in ORS 163.245.

30 (9) Custodial interference in the first degree, as defined in ORS 163.257.

31 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

32 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

33 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

34 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

35 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

36 (15) Possession of materials depicting sexually explicit conduct of a child in the first de-  
37 gree, as defined in ORS 163.688.

38 (16) Possession of materials depicting sexually explicit conduct of a child in the second  
39 degree, as defined in ORS 163.689.

40 (17) Theft in the second degree, as defined in ORS 164.045.

41 (18) Theft in the first degree, as defined in ORS 164.055.

42 (19) Aggravated theft in the first degree, as defined in ORS 164.057.

43 (20) Theft by extortion, as defined in ORS 164.075.

44 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A  
45 misdemeanor.

- 1       **(22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A**  
2 **misdemeanor.**
- 3       **(23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A**  
4 **misdemeanor.**
- 5       **(24) Unauthorized use of a vehicle, as defined in ORS 164.135.**
- 6       **(25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.**
- 7       **(26) Laundering a monetary instrument, as defined in ORS 164.170.**
- 8       **(27) Engaging in a financial transaction in property derived from unlawful activity, as**  
9 **defined in ORS 164.172.**
- 10       **(28) Burglary in the second degree, as defined in ORS 164.215.**
- 11       **(29) Burglary in the first degree, as defined in ORS 164.225.**
- 12       **(30) Possession of a burglary tool or theft device, as defined in ORS 164.235.**
- 13       **(31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.**
- 14       **(32) Arson in the second degree, as defined in ORS 164.315.**
- 15       **(33) Arson in the first degree, as defined in ORS 164.325.**
- 16       **(34) Computer crime, as defined in ORS 164.377.**
- 17       **(35) Robbery in the third degree, as defined in ORS 164.395.**
- 18       **(36) Robbery in the second degree, as defined in ORS 164.405.**
- 19       **(37) Robbery in the first degree, as defined in ORS 164.415.**
- 20       **(38) Unlawful labeling of a sound recording, as defined in ORS 164.868.**
- 21       **(39) Unlawful recording of a live performance, as defined in ORS 164.869.**
- 22       **(40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.**
- 23       **(41) A violation of ORS 164.877.**
- 24       **(42) Endangering aircraft, as defined in ORS 164.885.**
- 25       **(43) Interference with agricultural operations, as defined in ORS 164.887.**
- 26       **(44) Forgery in the second degree, as defined in ORS 165.007.**
- 27       **(45) Forgery in the first degree, as defined in ORS 165.013.**
- 28       **(46) Criminal possession of a forged instrument in the second degree, as defined in ORS**  
29 **165.017.**
- 30       **(47) Criminal possession of a forged instrument in the first degree, as defined in ORS**  
31 **165.022.**
- 32       **(48) Criminal possession of a forgery device, as defined in ORS 165.032.**
- 33       **(49) Criminal simulation, as defined in ORS 165.037.**
- 34       **(50) Fraudulently obtaining a signature, as defined in ORS 165.042.**
- 35       **(51) Fraudulent use of a credit card, as defined in ORS 165.055.**
- 36       **(52) Negotiating a bad check, as defined in ORS 165.065.**
- 37       **(53) Possessing a fraudulent communications device, as defined in ORS 165.070.**
- 38       **(54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.**
- 39       **(55) Falsifying business records, as defined in ORS 165.080.**
- 40       **(56) Sports bribery, as defined in ORS 165.085.**
- 41       **(57) Sports bribe receiving, as defined in ORS 165.090.**
- 42       **(58) Misapplication of entrusted property, as defined in ORS 165.095.**
- 43       **(59) Issuing a false financial statement, as defined in ORS 165.100.**
- 44       **(60) Obtaining execution of documents by deception, as defined in ORS 165.102.**
- 45       **(61) A violation of ORS 165.543.**

- 1 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 2 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 3 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 4 (65) Identity theft, as defined in ORS 165.800.
- 5 (66) A violation of ORS 166.190.
- 6 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 7 (68) A violation of ORS 166.240.
- 8 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 9 (70) A violation of ORS 166.270.
- 10 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun
- 11 or firearms silencer, as defined in ORS 166.272.
- 12 (72) A violation of ORS 166.275.
- 13 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 14 (74) A violation of ORS 166.370.
- 15 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 16 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 17 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 18 (78) A violation of ORS 166.410.
- 19 (79) Providing false information in connection with a transfer of a firearm, as defined in
- 20 ORS 166.416.
- 21 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 22 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 23 (82) A violation of ORS 166.429.
- 24 (83) A violation of ORS 166.470.
- 25 (84) A violation of ORS 166.480.
- 26 (85) A violation of ORS 166.635.
- 27 (86) A violation of ORS 166.638.
- 28 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 29 (88) A violation of ORS 166.720.
- 30 (89) Prostitution, as defined in ORS 167.007.
- 31 (90) Promoting prostitution, as defined in ORS 167.012.
- 32 (91) Compelling prostitution, as defined in ORS 167.017.
- 33 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 34 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 35 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 36 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 37 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 38 (97) Possession of a gambling device, as defined in ORS 167.147.
- 39 (98) Possession of a gray machine, as defined in ORS 167.164.
- 40 (99) Cheating, as defined in ORS 167.167.
- 41 (100) Tampering with drug records, as defined in ORS 167.212.
- 42 (101) A violation of ORS 167.262.
- 43 (102) Research and animal interference, as defined in ORS 167.312.
- 44 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 45 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.

- 1 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 2 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined
- 3 in ORS 167.352.
- 4 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 5 (108) Dogfighting, as defined in ORS 167.365.
- 6 (109) Participation in dogfighting, as defined in ORS 167.370.
- 7 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 8 (111) Interference with livestock production, as defined in ORS 167.388.
- 9 (112) A violation of ORS 167.390.
- 10 (113) A violation of ORS 471.410.
- 11 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 12 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 13 (116) Providing false information on a precursor substances report, as defined in ORS
- 14 475.965.
- 15 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- 16 (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- 17 (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- 18 (120) A violation of ORS 475.994.
- 19 (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- 20 (122) A violation of ORS 475.999 (1), if the violation is a felony.
- 21 (123) Misuse of an identification card, as defined in ORS 807.430.
- 22 (124) Unlawful production of identification cards, licenses, permits, forms or camera
- 23 cards, as defined in ORS 807.500.
- 24 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS
- 25 807.510.
- 26 (126) Using an invalid license, as defined in ORS 807.580.
- 27 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 28 (128) Using another's license, as defined in ORS 807.600.
- 29 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is
- 30 a felony.
- 31 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it
- 32 is a felony.
- 33 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 34 (132) A violation of ORS 180.440 (2).
- 35 (133) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (132)
- 36 of this section if the attempt, conspiracy or solicitation is a felony or a Class A
- 37 misdemeanor.
- 38 **SECTION 19a.** If Senate Bill 907 becomes law, section 19 of this 2005 Act is amended to read:
- 39 **Sec. 19.** The crimes to which section 1 (11)(b) of this 2005 Act applies are:
- 40 (1) Bribe giving, as defined in ORS 162.015.
- 41 (2) Bribe receiving, as defined in ORS 162.025.
- 42 (3) Public investment fraud, as defined in ORS 162.117.
- 43 (4) Bribing a witness, as defined in ORS 162.265.
- 44 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 45 (6) Simulating legal process, as defined in ORS 162.355.

- 1 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 2 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 3 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 4 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 5 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 6 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 7 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 8 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 9 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as  
10 defined in ORS 163.688.
- 11 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,  
12 as defined in ORS 163.689.
- 13 (17) Theft in the second degree, as defined in ORS 164.045.
- 14 (18) Theft in the first degree, as defined in ORS 164.055.
- 15 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 16 (20) Theft by extortion, as defined in ORS 164.075.
- 17 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 18 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 19 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 20 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 21 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 22 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 23 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined  
24 in ORS 164.172.
- 25 (28) Burglary in the second degree, as defined in ORS 164.215.
- 26 (29) Burglary in the first degree, as defined in ORS 164.225.
- 27 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 28 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 29 (32) Arson in the second degree, as defined in ORS 164.315.
- 30 (33) Arson in the first degree, as defined in ORS 164.325.
- 31 (34) Computer crime, as defined in ORS 164.377.
- 32 (35) Robbery in the third degree, as defined in ORS 164.395.
- 33 (36) Robbery in the second degree, as defined in ORS 164.405.
- 34 (37) Robbery in the first degree, as defined in ORS 164.415.
- 35 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 36 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 37 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 38 (41) A violation of ORS 164.877.
- 39 (42) Endangering aircraft, as defined in ORS 164.885.
- 40 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 41 (44) Forgery in the second degree, as defined in ORS 165.007.
- 42 (45) Forgery in the first degree, as defined in ORS 165.013.
- 43 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 44 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 45 (48) Criminal possession of a forgery device, as defined in ORS 165.032.

- 1 (49) Criminal simulation, as defined in ORS 165.037.
- 2 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 3 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 4 (52) Negotiating a bad check, as defined in ORS 165.065.
- 5 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 6 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 7 (55) Falsifying business records, as defined in ORS 165.080.
- 8 (56) Sports bribery, as defined in ORS 165.085.
- 9 (57) Sports bribe receiving, as defined in ORS 165.090.
- 10 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 11 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 12 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 13 (61) A violation of ORS 165.543.
- 14 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 15 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 16 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 17 (65) Identity theft, as defined in ORS 165.800.
- 18 (66) A violation of ORS 166.190.
- 19 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 20 (68) A violation of ORS 166.240.
- 21 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 22 (70) A violation of ORS 166.270.
- 23 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or  
24 firearms silencer, as defined in ORS 166.272.
- 25 (72) A violation of ORS 166.275.
- 26 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 27 (74) A violation of ORS 166.370.
- 28 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 29 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 30 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 31 (78) A violation of ORS 166.410.
- 32 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS  
33 166.416.
- 34 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 35 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 36 (82) A violation of ORS 166.429.
- 37 (83) A violation of ORS 166.470.
- 38 (84) A violation of ORS 166.480.
- 39 (85) A violation of ORS 166.635.
- 40 (86) A violation of ORS 166.638.
- 41 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 42 (88) A violation of ORS 166.720.
- 43 (89) Prostitution, as defined in ORS 167.007.
- 44 (90) Promoting prostitution, as defined in ORS 167.012.
- 45 (91) Compelling prostitution, as defined in ORS 167.017.

- 1 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 2 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 3 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 4 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 5 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 6 (97) Possession of a gambling device, as defined in ORS 167.147.
- 7 (98) Possession of a gray machine, as defined in ORS 167.164.
- 8 (99) Cheating, as defined in ORS 167.167.
- 9 (100) Tampering with drug records, as defined in ORS 167.212.
- 10 (101) A violation of ORS 167.262.
- 11 (102) Research and animal interference, as defined in ORS 167.312.
- 12 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 13 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 14 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 15 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS  
16 167.352.
- 17 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 18 (108) Dogfighting, as defined in ORS 167.365.
- 19 (109) Participation in dogfighting, as defined in ORS 167.370.
- 20 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 21 (111) Interference with livestock production, as defined in ORS 167.388.
- 22 (112) A violation of ORS 167.390.
- 23 (113) A violation of ORS 471.410.
- 24 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 25 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 26 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 27 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- 28 (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- 29 (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- 30 (120) A violation of ORS 475.994.
- 31 (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- 32 (122) A violation of ORS 475.999 **(2)** [(1), if the violation is a felony].
- 33 (123) Misuse of an identification card, as defined in ORS 807.430.
- 34 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as  
35 defined in ORS 807.500.
- 36 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 37 (126) Using an invalid license, as defined in ORS 807.580.
- 38 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 39 (128) Using another's license, as defined in ORS 807.600.
- 40 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-  
41 ony.
- 42 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a  
43 felony.
- 44 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 45 (132) A violation of ORS 180.440 (2).

1       **(133) A violation described in sections 14 to 38, chapter \_\_\_, Oregon Laws 2005 (Enrolled**  
2 **Senate Bill 907), if it is a felony.**

3       [(133)] **(134)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to  
4 [(132)] **(133)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A  
5 misdemeanor.

6       **SECTION 20.** ORS 133.643, as amended by section 23, chapter 666, Oregon Laws 2001, is  
7 amended to read:

8       133.643. A motion for the return or restoration of things seized shall be based on the ground that  
9 the movant has a valid claim to rightful possession thereof, because:

10       (1) The things had been stolen or otherwise converted, and the movant is the owner or rightful  
11 possessor;

12       (2) The things seized were not in fact subject to seizure under ORS 133.525 to 133.703 **or**  
13 **sections 1 to 18 of this 2005 Act;**

14       (3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject  
15 to seizure under ORS 133.525 to 133.703;

16       (4) Although the things seized were subject to seizure under ORS 133.525 to 133.703, the movant  
17 is or will be entitled to their return or restoration upon the court's determination that they are no  
18 longer needed for evidentiary purposes; or

19       (5) The parties in the case have stipulated that the things seized may be returned to the movant.

20       **SECTION 21.** ORS 137.138, as amended by section 39, chapter 666, Oregon Laws 2001, is  
21 amended to read:

22       137.138. (1) In addition to and not in lieu of any other sentence it may impose, a court shall  
23 require a defendant convicted under ORS 164.365, 166.663, 167.315, [167.320, 167.322,] 498.056 or  
24 498.146 or other state, county or municipal laws, for an act involving or connected with injuring,  
25 damaging, mistreating or killing a livestock animal, to forfeit any rights in weapons used in con-  
26 nection with the act underlying the conviction.

27       (2) In addition to and not in lieu of any other sentence it may impose, a court shall revoke any  
28 hunting license possessed by a defendant convicted as described in subsection (1) of this section.

29       (3) The State Fish and Wildlife Director shall refuse to issue a hunting license to a defendant  
30 convicted as described under subsection (1) of this section for a period of two years following the  
31 conviction.

32       (4) As used in this section, "livestock animal" has the meaning given in ORS 164.055.

33       **SECTION 22.** ORS 164.864, as amended by section 42, chapter 666, Oregon Laws 2001, is  
34 amended to read:

35       164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873[,] **and** 164.875 [*and*  
36 *164.879*] and this section, unless the context requires otherwise:

37       (1) "Commercial enterprise" means a business operating in intrastate or interstate commerce for  
38 profit. "Commercial enterprise" does not include:

39       (a) Activities by schools, libraries or religious organizations;

40       (b) Activities incidental to a bona fide scholastic or critical endeavor;

41       (c) Activities incidental to the marketing or sale of recording devices; and

42       (d) Activities involving the recording of school or religious events or activities.

43       (2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under  
44 the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit  
45 it to be perceived, reproduced or otherwise communicated for a period of more than transitory du-

1 ration.

2 (3) "Live performance" means a recitation, rendering or playing of musical instruments or vocal  
3 arrangements in an audible sequence in a public performance.

4 (4) "Manufacturer" means the entity authorizing the duplication of a specific recording, but  
5 shall not include the manufacturer of the cartridge or casing itself.

6 (5) "Master recording" means the master disk, master tape, master film or other device used for  
7 reproducing recorded sound from which a sound recording is directly or indirectly derived.

8 (6) "Motion picture" includes any motion picture, regardless of length or content, that is ex-  
9 hibited in a motion picture theater to paying customers, exhibited on television to paying customers  
10 or under the sponsorship of a paying advertiser or produced and exhibited for scientific research  
11 or educational purposes. "Motion picture" does not include motion pictures exhibited at home or  
12 movies or amateur films that are shown free or at cost to friends, neighbors or civic groups.

13 (7) "Owner" means a person who owns the sounds fixed in a master phonograph record, master  
14 disk, master tape, master film or other recording on which sound is or can be recorded and from  
15 which the transferred recorded sounds are directly or indirectly derived.

16 (8) "Recording" means a tangible medium on which information, sounds or images, or any com-  
17 bination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an ori-  
18 ginal phonograph record, disk, tape, audio or video cassette, wire, film or other medium now existing  
19 or developed later on which sounds, images or both are or can be recorded or otherwise stored or  
20 a copy or reproduction that duplicates in whole or in part the original.

21 (9) "Sound recording" means any reproduction of a master recording.

22 (10) "Videotape" means a reel of tape upon which a motion picture is electronically or magnet-  
23 ically imprinted by means of an electronic video recorder and which may be used in video playback  
24 equipment to project or display the motion picture on a television screen.

25 **SECTION 23.** ORS 164.866, as amended by section 43, chapter 666, Oregon Laws 2001, is  
26 amended to read:

27 164.866. Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873[,] **or** 164.875 [*or*  
28 *164.879*] or this section limits or impairs the right of a person injured by the criminal acts of a de-  
29 fendant to sue and recover damages from the defendant in a civil action.

30 **SECTION 24.** ORS 166.279 is amended to read:

31 166.279. (1) **Except as provided in subsection (4) of this section, sections 1 to 18 of this**  
32 **2005 Act do not apply to the forfeiture of a firearm or other deadly weapon that was pos-**  
33 **sessed, used or available for use to facilitate a criminal offense.**

34 [(1)] (2) Except as provided in subsection [(2)] (3) of this section, at the time of sentencing for  
35 any criminal offense in which a firearm or other deadly weapon was possessed, used or available for  
36 use to facilitate the offense, the court shall declare the weapon to be contraband and order that the  
37 weapon be forfeited.

38 [(2)] (3) If a firearm or other deadly weapon that was possessed, used or available for use to  
39 facilitate a criminal offense was stolen from its lawful owner and was recovered from a person other  
40 than the lawful owner, the court may not order that the weapon be forfeited but shall order that the  
41 weapon be restored to the lawful owner as soon as the weapon is no longer needed for evidentiary  
42 purposes.

43 [(3)] *The court shall release a firearm or other deadly weapon forfeited under subsection (1) of this*  
44 *section to the law enforcement agency that seized the weapon. The law enforcement agency may destroy*  
45 *or sell the weapon, use the weapon as a service weapon or use the weapon for training, identification*

1 or demonstration purposes. When a weapon is sold pursuant to this subsection, the law enforcement  
2 agency shall pay the proceeds from the sale, less the costs of the sale, as follows:]

3 [(a) When the seizing agency is not the state:]

4 [(A) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;]

5 [(B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;]

6 [(C) Ten percent to the state General Fund;]

7 [(D) Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS  
8 430.380; and]

9 [(E) Forty percent to the general fund of the political subdivision that operates the law enforcement  
10 agency, to be used for law enforcement purposes; or]

11 [(b) When the seizing agency is the state:]

12 [(A) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;]

13 [(B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;]

14 [(C) Ten percent to the state General Fund;]

15 [(D) Forty percent to be distributed equitably between the agencies that participated in the seizure,  
16 to be used by those agencies for law enforcement purposes; and]

17 [(E) Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS  
18 430.380.]

19 **(4) The court shall release a firearm or other deadly weapon forfeited under subsection**  
20 **(2) of this section to the law enforcement agency that seized the weapon. The law enforce-**  
21 **ment agency may destroy or sell the weapon, use the weapon as a service weapon or use the**  
22 **weapon for training, identification or demonstration purposes. When a weapon is sold pur-**  
23 **suant to this subsection, the law enforcement agency shall pay the proceeds from the sale,**  
24 **less the costs of the sale, as provided in sections 16 and 17 of this 2005 Act.**

25 [(4)] (5) As used in this section, “deadly weapon” has the meaning given that term in ORS  
26 161.015.

27 **NOTE:** Sections 25 through 26 were deleted by amendment. Subsequent sections were not re-  
28 numbered.

29 **SECTION 27.** ORS 166.660, as amended by section 38, chapter 666, Oregon Laws 2001, is  
30 amended to read:

31 166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

32 (a) Exhibits, displays or demonstrates to another person the use, application or making of any  
33 firearm, explosive or incendiary device or any technique capable of causing injury or death to per-  
34 sons and intends or knows that such firearm, explosive or incendiary device or technique will be  
35 unlawfully employed for use in a civil disorder; or

36 (b) Assembles with one or more other persons for the purpose of training with, practicing with  
37 or being instructed in the use of any firearm, explosive or incendiary device or technique capable  
38 of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive  
39 or incendiary device or technique in a civil disorder.

40 (2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed  
41 in the otherwise lawful performance of the officer’s official duties.

42 (b) Nothing in this section makes unlawful any activity of the State Department of Fish and  
43 Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such  
44 as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful  
45 activity related to firearms instruction and training intended to teach the safe handling and use of

1 firearms, or any other lawful sports or activities related to the individual recreational use or pos-  
2 session of firearms, including but not limited to hunting activities, target shooting, self-defense,  
3 firearms collection or any organized activity including, but not limited to any hunting club, rifle  
4 club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450  
5 or the knowledge of or the intent to cause or further a civil disorder.

6 (3) Unlawful paramilitary activity is a Class C felony. *[In addition to any other penalty imposed*  
7 *pursuant to this section, the court may order forfeited to the State of Oregon for the benefit of the*  
8 *Common School Fund any firearm or explosive or incendiary device used in any activity in violation*  
9 *of this section.]*

10 (4) As used in this section:

11 (a) "Civil disorder" means acts of physical violence by assemblages of three or more persons  
12 which cause damage or injury, or immediate danger thereof, to the person or property of any other  
13 individual.

14 (b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile  
15 by the action of black powder or smokeless black powder and which is readily capable of use as a  
16 weapon.

17 (c) "Explosive" means a chemical compound, mixture or device that is commonly used or in-  
18 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous  
19 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,  
20 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,  
21 smokeless powder, small arms ammunition and small arms ammunition primers.

22 (d) "Law enforcement officer" means any duly constituted police officer of the United States,  
23 any state, any political subdivision of a state or the District of Columbia, and also includes members  
24 of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the or-  
25 ganized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or  
26 the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C.  
27 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS  
28 161.015 (4) when in the performance of official duties.

29 **SECTION 28.** ORS 167.350, as amended by section 14b, chapter 926, Oregon Laws 2001, is  
30 amended to read:

31 167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may re-  
32 quire a defendant convicted under ORS 167.315 to 167.333 or 167.340 to forfeit any rights of the  
33 defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by  
34 any person or agency prior to judgment in caring for each animal subjected to the violation.

35 (2) When the court orders the defendant's rights in the animal to be forfeited, the court may  
36 further order that those rights be given over to an appropriate person or agency demonstrating a  
37 willingness to accept and care for the animal or to the county or an appropriate animal care agency  
38 for further disposition in accordance with accepted practices for humane treatment of animals. This  
39 subsection does not limit the right of the person or agency to whom rights are granted to resell or  
40 otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a  
41 transfer of ownership.

42 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the  
43 owner or person having custody of an animal to repay the reasonable costs incurred by any person  
44 or agency in providing minimum care to the animal.

45 (4) A court may order a person convicted under ORS 167.315 to 167.333 or 167.340 to participate

1 in available animal cruelty prevention programs or education programs, or both, or to obtain psy-  
2 chological counseling for treatment of mental health disorders that, in the court's judgment, con-  
3 tributed to the commission of the crime. The person shall bear any costs incurred by the person for  
4 participation in counseling or treatment programs under this subsection.

5 **(5) Sections 1 to 18 of this 2005 Act do not apply to the forfeiture of an animal subjected**  
6 **to a violation of ORS 167.315 to 167.333 or 167.340. Any such animal is subject to forfeiture**  
7 **as provided in subsections (1) to (3) of this section.**

8 **SECTION 29.** Section 16a, chapter 801, Oregon Laws 2003, is amended to read:

9 **Sec. 16a.** Notwithstanding sections 16 and 17[, *chapter 666, Oregon Laws 2001*] **of this 2005**  
10 **Act**, if property forfeited under sections 1 to 18[, *chapter 666, Oregon Laws 2001,*] **of this 2005 Act**  
11 consists of cigarettes forfeited because of a violation of [*section 11 (2) of this 2003 Act*] **ORS 180.440**  
12 **(2)**, the seizing agency shall destroy the cigarettes.

13  
14 **STANDARD OF PROOF IN CIVIL FORFEITURE**

15  
16 **SECTION 30.** ORS 475A.080, as amended by section 9a, chapter 780, Oregon Laws 2001, is  
17 amended to read:

18 475A.080. [*In all actions brought for forfeiture, the burden of persuasion shall lie upon the claim-*  
19 *ant, provided that probable cause to believe that the property is subject to forfeiture shall first be shown*  
20 *by the forfeiting agency.*]

21 **(1) Except as provided in subsection (2) of this section, in all civil forfeiture actions the**  
22 **forfeiting agency must prove that the claimant of the property has been convicted of a crime**  
23 **that constitutes prohibited conduct, and that the property to be forfeited is:**

24 **(a) Proceeds of the crime for which the claimant has been convicted;**

25 **(b) Instrumental in committing or facilitating the crime for which the claimant has been**  
26 **convicted;**

27 **(c) Proceeds of one or more other crimes similar to the crime for which the claimant**  
28 **was convicted; or**

29 **(d) Instrumental in committing or facilitating one or more other crimes similar to the**  
30 **crime for which the claimant was convicted.**

31 **(2) A forfeiting agency may bring an action for civil forfeiture of property of a claimant**  
32 **who has not been convicted of a crime if the forfeiting agency proves all elements of sub-**  
33 **section (1) of this section with respect to another person and:**

34 **(a) That the claimant took the property with the intent to defeat forfeiture of the prop-**  
35 **erty;**

36 **(b) That the claimant knew or should have known that the property was proceeds of**  
37 **prohibited conduct; or**

38 **(c) That the claimant acquiesced in the prohibited conduct.**

39 **(3) If the property to be forfeited in a civil forfeiture action is personal property, the**  
40 **forfeiting agency must prove the elements specified in subsection (1) or (2) of this section**  
41 **by a preponderance of the evidence. If the property to be forfeited in a civil forfeiture action**  
42 **is real property, the forfeiting agency must prove the elements specified in subsection (1) or**  
43 **(2) of this section by clear and convincing evidence.**

44 **(4) For the purposes of subsection (2)(c) of this section, a person shall be considered to**  
45 **have acquiesced in prohibited conduct if the person knew of the prohibited conduct and failed**

1 **to take reasonable action under the circumstances to terminate the prohibited conduct or**  
2 **prevent use of the seized property to facilitate the prohibited conduct.**

3 **SECTION 31.** ORS 475A.035, as amended by section 5a, chapter 780, Oregon Laws 2001, is  
4 amended to read:

5 475A.035. Property may be seized for forfeiture as provided in this section.

6 (1) Any person who delivers property in obedience to an order or direction to deliver the prop-  
7 erty under this section shall not be liable:

8 (a) To any person on account of obedience to the order or direction; or

9 (b) For any costs incurred on account of any contamination of the delivered property. This in-  
10 cludes, but is not limited to, any disposal costs for any property forfeited under ORS 475A.020, any  
11 hazardous waste or material, any contraband or any other contamination contained in property  
12 seized under this section.

13 (2) Property may be seized by any police officer without a court order if:

14 (a) The property has been the subject of an earlier judgment in favor of any forfeiting agency  
15 in an earlier civil in rem proceeding under this chapter;

16 (b) There is probable cause to believe that property is subject to forfeiture, provided that the  
17 property may constitutionally be seized without a warrant;

18 (c) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or  
19 search, and there is probable cause to believe that the property is subject to forfeiture;

20 (d) The property is directly or indirectly dangerous to the health or safety of any person; or

21 (e) An owner consents to the seizure.

22 (3) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time  
23 of seizure are held in any form of account in a financial institution, if the property is in whole or  
24 in part intangible, the person having control or custody of the property shall deliver the same over  
25 to the police officer.

26 (4)(a) Property may be seized by any police officer pursuant to an order of the court. Forfeiture  
27 counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

28 (b) Application shall be made to any judge as defined in ORS 133.525. The application shall be  
29 supported by one or more affidavits setting forth the facts and circumstances tending to show where  
30 the objects of the seizure are to be found. The court shall issue the order upon a finding of probable  
31 cause to believe that the described property is subject to forfeiture. The order may be set out on  
32 the face of a search warrant.

33 (c) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time  
34 of seizure are held in any form of account in a financial institution, if the property is in whole or  
35 in part intangible, the order shall direct any person having control or custody of the property to  
36 deliver the same over to the seizing agency or to the court to abide judgment.

37 (5) Property may be constructively seized by posting notice of seizure for forfeiture on it or by  
38 filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart  
39 constructive notice of matters relating to such property. A notice which is filed must include a de-  
40 scription of the property that is the subject of the seizure. Real property, including interests arising  
41 out of land sale contracts, shall be seized only upon recording notice of seizure containing a legal  
42 description of the property in the mortgage records of the county in which the real property is lo-  
43 cated.

44 (6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis  
45 for forfeiture under this chapter is sustained by evidence which is not the fruit of the unconstitu-

1 tional seizure.

2 (7) Promptly upon seizure, the officer who seized the property shall make an inventory of the  
 3 property seized and shall deliver a receipt embodying the inventory to the person from whose pos-  
 4 session they are taken or to the person in apparent control of the property at the time it is seized.  
 5 The officer may, in addition, provide an estimate of the value of the property seized and information  
 6 on the right to file a claim under ORS 475A.055 (2), and the deadline for filing that claim. If the  
 7 property is unoccupied or there is no one present in apparent control, the officer shall leave the  
 8 receipt suitably affixed to the property. If the property is physically removed from the location of  
 9 seizure and it is unoccupied or there is no one present in apparent control, then the officer shall  
 10 promptly file the receipt in the public records of the forfeiting agency. Every receipt prepared under  
 11 this subsection shall contain, in addition to an inventory of the property seized, the following in-  
 12 formation:

13 (a) The identity of the seizing agency; and

14 (b) The address and telephone number of the office or other place where the person may obtain  
 15 further information concerning the forfeiture.

16 (8) *[In determining probable cause or reasonable suspicion for seizure, evidence that cash, weapons*  
 17 *or negotiable instruments were found in close proximity to controlled substances or to instrumentalities*  
 18 *of prohibited conduct gives rise to an inference that the cash, weapons or negotiable instruments are*  
 19 *subject to forfeiture. This inference is sufficient in itself to carry the forfeiting agency's initial burden*  
 20 *under ORS 475A.080.]* **A police officer has probable cause to believe that cash, weapons or**  
 21 **negotiable instruments are subject to forfeiture if the cash, weapons or negotiable instru-**  
 22 **ments are found in close proximity to controlled substances or to instrumentalities of pro-**  
 23 **hibited conduct. Notwithstanding ORS 475A.080, if the forfeiting agency establishes in a**  
 24 **forfeiture action that cash, weapons or negotiable instruments were found in close proximity**  
 25 **to controlled substances or to instrumentalities of prohibited conduct, the burden is on any**  
 26 **person claiming the cash, weapons or negotiable instruments to prove by a preponderance**  
 27 **of the evidence that the cash, weapons or negotiable instruments are not proceeds of pro-**  
 28 **hibited conduct or an instrumentality of prohibited conduct.**

29 (9) In the event that property is seized from the possession of a person who asserts a possessory  
 30 lien over such property pursuant to applicable law, notwithstanding any other provision of law, any  
 31 lien of the person from whom the property was seized shall remain in effect and shall be enforceable  
 32 as fully as though the person had retained possession of the property.

33 **SECTION 32.** ORS 475A.085, as amended by section 10a, chapter 780, Oregon Laws 2001, and  
 34 section 310, chapter 14, Oregon Laws 2003, is amended to read:

35 475A.085. *[(1) A claimant may plead as an affirmative defense that the claimant took the property*  
 36 *or the interest which the claimant holds therein:]*

37 *[(a)(A) Before it was seized for forfeiture;]*

38 *[(B) In good faith and without intent to defeat the interest of any forfeiting agency; and]*

39 *[(C) Continued to hold the property or interest without acquiescing in the prohibited conduct; or]*

40 *[(b) By coownership or cotenancy taken in good faith, without intent to defeat the interest of any*  
 41 *forfeiting agency and continued to hold the property or interest without acquiescing in the prohibited*  
 42 *conduct.]*

43 [(2)] (1) A claimant may plead as an affirmative defense that the property was seized in violation  
 44 of ORS 475A.025.

45 [(3)] (2) In any action brought against property subject to forfeiture under ORS 475A.020 (7), a

1 claimant may plead as an affirmative defense that the controlled substance was solely for personal  
2 use.

3 [(4)] (3) If, by a preponderance of the evidence, the claimant proves a defense under this section,  
4 then judgment shall be entered for the claimant as provided in ORS 475A.110 (7).

5 [(5)] (4) This defense may not be asserted by a financial institution [*which*] **that** holds a security  
6 interest in the property.

7 [(6) *For the purposes of subsection (1) of this section, a person shall be considered to have*  
8 *acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to*  
9 *take reasonable action under the circumstances to terminate or avoid use of the property in the course*  
10 *of prohibited conduct.*]

11 **NOTE:** Section 33 was deleted by amendment. Subsequent sections were not renumbered.

12  
13 **DEFAULT JUDGMENT AGAINST FUGITIVES**

14  
15 **SECTION 34.** ORS 475A.075, as amended by section 8a, chapter 780, Oregon Laws 2001, is  
16 amended to read:

17 475A.075. A civil action in rem may be brought as provided in this section in any case in which  
18 forfeiture is sought. A civil action in rem must be brought if the property is real property, the  
19 property is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a  
20 floating home as defined in ORS 830.700 or [*if*] the property is subject to an interest in favor of any  
21 person known to have an interest, other than a person who engaged in prohibited conduct.

22 (1) If a forfeiting agency has commenced proceedings under ORS 475A.055, then an action shall  
23 be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have  
24 been commenced under ORS 475A.055, then the action shall be commenced by forfeiture counsel  
25 within 30 days of seizure. The property may be released by forfeiture counsel as provided in ORS  
26 475A.045 (2).

27 (2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the  
28 following procedure:

29 (a) A person claiming an interest in the property shall respond as provided in the Oregon Rules  
30 of Civil Procedure and, if a claim has not previously been filed, by filing a claim in the form set forth  
31 in ORS 475A.055 (3) with the court and posting a bond with the court. The bond shall be a cash bond  
32 in an amount equal to 10 percent of the value of the interest claimed by the person in the property.  
33 Upon good cause shown by motion and affidavit filed with the initial appearance, the court may  
34 waive or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default.  
35 The bond shall be returned to the claimant upon the entry of a final determination on the claim.

36 (b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution  
37 holding an interest in the seized property shall respond to a complaint with an affidavit establishing  
38 that the financial institution's interest in the property was acquired:

39 (A) In the regular course of business as a financial institution;

40 (B) For valuable consideration;

41 (C) Without knowledge of the prohibited conduct;

42 (D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and

43 (E) With respect to personal property, prior to the seizure of the property, or with respect to  
44 real property, recorded prior to the recording of notice of the seizure of the real property in the  
45 mortgage records of the county in which the real property is located. Failure to file an affidavit

1 shall constitute a default. The affidavit shall be filed within 30 days from the date of service.

2 (c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than  
3 a financial institution, who transfers or conveys an interest in real property pursuant to a contract  
4 for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains  
5 an interest in the real property, or any successor in interest, may respond to a complaint with an  
6 affidavit establishing that the person:

7 (A) Received the interest in return for valuable consideration or by way of devise or intestate  
8 succession;

9 (B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

10 (C) Acted in good faith and without intent to defeat the interest of any potential forfeiting  
11 agency;

12 (D) Recorded the interest in the mortgage records of the county in which the real property is  
13 located prior to the recording of any notice of intent to seize or notice of seizure; and

14 (E) Continued to hold the interest without acquiescing in the prohibited conduct.

15 (d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have  
16 acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed  
17 to take reasonable action under the circumstances to terminate or avoid use of the property in the  
18 course of prohibited conduct. For purposes of this section, "reasonable action under the circum-  
19 stances" includes, but is not limited to:

20 (A) Reporting the prohibited conduct to a police agency;

21 (B) Commencing action that will assert the rights of the affiant as to the property interest;

22 (C) Terminating a rental agreement; or

23 (D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the  
24 provisions of ORS 105.550 to 105.600, or under any ordinance or regulation allowing abatement of  
25 nuisances.

26 (e) The affidavit permitted by paragraph (c) of this subsection shall be filed within 30 days from  
27 the date of service of the summons and complaint. Failure to file an affidavit or to respond as set  
28 forth in paragraph (a) of this subsection shall constitute a default.

29 (f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting  
30 agency may controvert any or all of the assertions made in the affidavit. The affidavit of the for-  
31 feiting agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of  
32 this subsection. The transferor, conveyor or successor in interest may respond, within five days of  
33 the filing of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the mat-  
34 ters stated in the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit  
35 within the time allowed, the transferor, conveyor or successor in interest shall be considered a fi-  
36 nancial institution for all purposes under this chapter.

37 (g)(A) If the forfeiting agency files an affidavit under paragraph (f) of this subsection, the court  
38 shall determine from the affidavits whether there is a genuine issue of material fact with respect to  
39 the assertions of the transferor, conveyor or successor in interest.

40 (B) If the court determines that there is no genuine issue of material fact as to the truth of the  
41 assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyor or  
42 successor in interest shall be considered a financial institution for all purposes under this chapter.  
43 The court shall order the forfeiting agency to pay the costs and disbursements, including attorney  
44 fees, of the prevailing transferor, conveyor or successor in interest if the forfeiting agency does not  
45 prevail.

1 (C) If the court determines that there is a genuine issue of material fact as to the truth of the  
 2 assertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyer  
 3 or successor in interest shall, within 15 days, respond as provided in paragraph (a) of this sub-  
 4 section. The court may order the transferor, conveyer or successor in interest to pay the attorney  
 5 fees of the forfeiting agency that were incurred in contesting the affidavit of the transferor, con-  
 6 veyor or successor in interest if the court determines that the affidavit of the transferor, conveyer  
 7 or successor in interest was frivolous.

8 (3) All persons known to have an interest in the property, including any claimant, shall be  
 9 served with a true copy of the inventory of the property prepared pursuant to ORS 475A.035 and  
 10 475A.055, the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall  
 11 be published as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in  
 12 accordance with ORS 475A.055 (1). In the event that a forfeiture involves a vehicle, and the notices  
 13 required by this statute have been given, and substitute service on the claimant is required because  
 14 personal service cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be  
 15 sufficient to establish jurisdiction over a registered owner or operator of a vehicle. If the property  
 16 is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined  
 17 in ORS 830.700, the forfeiting agency shall, in addition to serving all persons known to have an in-  
 18 terest in the property, record a notice of seizure containing a description of the manufactured  
 19 dwelling or floating home in all public offices maintaining records that impart constructive notice  
 20 of matters relating to manufactured dwellings or floating homes.

21 **(4) Forfeiture counsel may move the court at any time after a response is made as pro-**  
 22 **vided in subsection (2)(a) of this section for an order finding that the defendant is a fugitive**  
 23 **and in default. The court may enter an order finding the defendant in default under this**  
 24 **subsection and enter a judgment of civil forfeiture if the court finds that the defendant is**  
 25 **not confined or held in custody by another jurisdiction, and that the defendant, after notice**  
 26 **or knowledge of the fact that a warrant has been issued for the defendant:**

27 **(a) Purposely left the state to avoid prosecution;**

28 **(b) Declines to return to the state and allow execution of the warrant; or**

29 **(c) Otherwise evades the jurisdiction of the court issuing the warrant.**

30 [(4)] (5) All judicial proceedings under this chapter shall be governed by the Oregon Rules of  
 31 Civil Procedure to the extent that they do not conflict with specific provisions of this chapter.

32 [(5)(a)] (6)(a) The filing of criminal charges related to any civil proceeding for forfeiture may,  
 33 upon motion of forfeiture counsel or the district attorney or upon motion on behalf of defendant in  
 34 a related criminal proceeding, stay the civil forfeiture proceeding until the trial, plea or dismissal  
 35 of the related criminal proceeding. A motion for stay on behalf of the defendant in a related criminal  
 36 proceeding shall constitute a waiver of double jeopardy by the defendant as to the civil forfeiture  
 37 proceeding and any related criminal proceeding. Pursuant to subsection [(6)] (7) of this section, a  
 38 civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other re-  
 39 solution with any related criminal proceeding.

40 (b) The court may stay the civil forfeiture proceeding upon motion of a party and good cause  
 41 shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could  
 42 be prosecuted for conduct arising out of the same factual situation which gave rise to the seizure  
 43 of property. Pursuant to subsection [(6)] (7) of this section, a civil forfeiture proceeding stayed under  
 44 this paragraph may be consolidated for trial or other resolution with any related criminal proceed-  
 45 ing.



1        *[(B) Payment of the wages of peace officers performing supervisory duties for interagency drug*  
2 *enforcement task forces created by intergovernmental agreement.]*

3        *[(C) Payments to counties in the manner specified in paragraph (d) of this subsection.]*

4        *[(D) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

5        *[(d) If the political subdivision is not a county, the political subdivision shall enter into an agree-*  
6 *ment with the county pursuant to ORS chapter 190 to provide a portion for prosecution from these*  
7 *funds. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture*  
8 *proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.]*

9        *[(e) Except as otherwise provided by intergovernmental agreement, the forfeiting agency may:]*

10       *[(A) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law*  
11 *enforcement agency or district attorney.]*

12       *[(B) Sell the forfeited property by public or other commercially reasonable sale and pay from the*  
13 *proceeds the expenses of keeping and selling the property.]*

14       *[(C) Retain the property.]*

15       *[(D) With written authorization from the district attorney for the forfeiting agency's jurisdiction,*  
16 *destroy any firearms or controlled substances.]*

17       *[(f) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds*  
18 *under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this*  
19 *subsection, the political subdivision shall deduct an amount equal to five percent of the proceeds cred-*  
20 *ited to the general fund of the political subdivision under paragraph (b) of this subsection and deposit*  
21 *that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified*  
22 *in ORS 475.495 (5). The political subdivision shall sell as much property as may be needed to meet the*  
23 *requirements of this paragraph. Deposits to the Illegal Drug Cleanup Fund under this paragraph shall*  
24 *be made once every three months and are due within 20 days of the end of each quarter. No interest*  
25 *shall accrue on amounts that are paid within the period specified by this paragraph.]*

26       *[(g) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds*  
27 *under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this*  
28 *subsection, the political subdivision shall deduct an amount equal to 2.5 percent of the proceeds credited*  
29 *to the general fund of the political subdivision under paragraph (b) of this subsection and deposit that*  
30 *amount in the Asset Forfeiture Oversight Account established by ORS 475A.160. The political subdivi-*  
31 *vision shall sell as much property as may be needed to meet the requirements of this paragraph. De-*  
32 *posits to the Asset Forfeiture Oversight Account under this paragraph shall be made once every three*  
33 *months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that*  
34 *are paid within the period specified by this paragraph.]*

35       *[(h) Notwithstanding paragraphs (c) and (d) of this subsection, growing equipment and laboratory*  
36 *equipment seized by a forfeiting agency that was used, or intended for use, in manufacturing of con-*  
37 *trolled substances, may be donated to a public school, community college or institution of higher edu-*  
38 *cation.]*

39       **(1) The provisions of this section apply to a forfeiting agency other than the state.**

40       **(2) Except as otherwise provided by intergovernmental agreement and this section, a**  
41 **forfeiting agency may:**

42       **(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law**  
43 **enforcement agency or district attorney.**

44       **(b) Sell forfeited property by public or other commercially reasonable sale and pay from**  
45 **the proceeds the expenses of keeping and selling the property.**

1 (c) Retain forfeited property.

2 (d) With written authorization from the district attorney for the county in which the  
3 property was seized, destroy any forfeited firearms or controlled substances.

4 (3) If the forfeiting agency is a political subdivision other than a county, the political  
5 subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to  
6 provide a portion of the forfeiture proceeds to the county. Any intergovernmental agree-  
7 ments or ordinances providing for the distribution of forfeiture proceeds in effect on July 24,  
8 1989, shall remain valid unless changed by the parties.

9 (4) A forfeiting agency shall distribute forfeiture proceeds as follows:

10 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined  
11 in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by  
12 any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeit-  
13 ing agency may pay expenses of servicing or maintaining the seized property under ORS  
14 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay  
15 expenditures made in connection with the ordinary maintenance and operation of the seizing  
16 or forfeiting agency under the provisions of this paragraph.

17 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency  
18 shall:

19 (A) Deduct an amount equal to five percent of the proceeds and deposit that amount in  
20 the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS  
21 475.495 (5);

22 (B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in  
23 the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes speci-  
24 fied in ORS 475A.155;

25 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the  
26 Judicial Department Operating Account established by ORS 1.009 for disbursement to drug  
27 court programs as described in ORS 3.450; and

28 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the  
29 State Commission on Children and Families Account established by ORS 417.733 for dis-  
30 bursement to relief nurseries as described in ORS 417.788.

31 (c) If the forfeiting agency has entered into an agreement with a county under subsection  
32 (3) of this section, after paying costs under paragraph (a) of this subsection and making the  
33 deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay the  
34 county the amounts required by the agreement.

35 (d) After making all payments and deductions required by paragraphs (a) to (c) of this  
36 subsection, the forfeiting agency may use forfeiture proceeds, including amounts received  
37 by a county under paragraph (c) of this subsection and pursuant to an intergovernmental  
38 agreement entered into under ORS 475A.115, only for:

39 (A) The purchase of equipment necessary for the enforcement of laws relating to the  
40 unlawful delivery, distribution, manufacture or possession of controlled substances;

41 (B) Cash for use in law enforcement activities;

42 (C) Drug awareness and drug education programs offered in middle schools and high  
43 schools;

44 (D) The expenses of a forfeiting agency in operating joint narcotic operations with other  
45 forfeiting agencies pursuant to the terms of an intergovernmental agreement, including

1 **paying for rental space, utilities and office equipment; and**

2 **(E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, dis-**  
3 **tribution, manufacture or possession of controlled substances, as determined through inter-**  
4 **governmental agreement between the forfeiting agency and the district attorney.**

5 **(5) Notwithstanding subsection (4) of this section, growing equipment and laboratory**  
6 **equipment seized by a forfeiting agency that was used, or intended for use, in the manufac-**  
7 **turing of controlled substances may be donated to a public school, community college or in-**  
8 **stitution of higher education.**

9 **(6) A political subdivision shall sell as much property as may be needed to make the**  
10 **distributions required by subsection (4) of this section. Distributions required under sub-**  
11 **section (4)(b) of this section must be made once every three months and are due within 20**  
12 **days of the end of each quarter. No interest shall accrue on amounts that are paid within**  
13 **the period specified by this subsection.**

14 [(2)] **(7) The forfeiting agency, and any agency which receives forfeited property or proceeds**  
15 **from the sale of forfeited property, shall maintain written documentation of each sale, decision to**  
16 **retain, transfer or other disposition.**

17 [(3)] **(8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advi-**  
18 **sory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings,**  
19 **whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee**  
20 **shall develop and make available forms for the purpose of reporting forfeitures.**

21 [(4)] **(9) Law enforcement agencies shall supply to forfeiture counsel all information requested**  
22 **by forfeiture counsel necessary for the preparation of the report required by subsection [(3)] (8) of**  
23 **this section.**

24 [(5)] **(10) Political subdivisions of the state who receive forfeiture proceeds under this section**  
25 **shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which**  
26 **those proceeds are received. The committee shall develop and make available forms for the purpose**  
27 **of those reports. The forms shall require the political subdivision to report on how proceeds received**  
28 **by the political subdivision have been or will be used, and such other information as may be re-**  
29 **quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal**  
30 **year of the political subdivision.**

31 [(6)] **(11) This section applies only to forfeiture proceeds arising out of prohibited conduct as**  
32 **defined by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other con-**  
33 **duct.**

34 **SECTION 36. If House Bill 2485 becomes law, ORS 475A.120, as amended by section 14a,**  
35 **chapter 780, Oregon Laws 2001, and section 35 of this 2005 Act, is amended to read:**

36 **475A.120. (1) The provisions of this section apply to a forfeiting agency other than the state.**

37 **(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting**  
38 **agency may:**

39 **(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement**  
40 **agency or district attorney.**

41 **(b) Sell forfeited property by public or other commercially reasonable sale and pay from the**  
42 **proceeds the expenses of keeping and selling the property.**

43 **(c) Retain forfeited property.**

44 **(d) With written authorization from the district attorney for the county in which the property**  
45 **was seized, destroy any forfeited firearms or controlled substances.**

1 (3) If the forfeiting agency is a political subdivision other than a county, the political subdivision  
2 shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion of  
3 the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing  
4 for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless  
5 changed by the parties.

6 (4) A forfeiting agency shall distribute forfeiture proceeds as follows:

7 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP  
8 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or  
9 forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay  
10 expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the pro-  
11 visions of this paragraph. The forfeiting agency may not pay expenditures made in connection with  
12 the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of  
13 this paragraph.

14 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

15 (A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Il-  
16 legal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

17 (B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset  
18 Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS  
19 475A.155;

20 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the [*Ju-*  
21 *dicial Department Operating Account established by ORS 1.009*] **Oregon Criminal Justice Com-**  
22 **mission Account established under ORS 137.662** for disbursement to drug court programs as  
23 described in ORS 3.450; and

24 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State  
25 Commission on Children and Families Account established by ORS 417.733 for disbursement to relief  
26 nurseries as described in ORS 417.788.

27 (c) If the forfeiting agency has entered into an agreement with a county under subsection (3)  
28 of this section, after paying costs under paragraph (a) of this subsection and making the deductions  
29 required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts  
30 required by the agreement.

31 (d) After making all payments and deductions required by paragraphs (a) to (c) of this sub-  
32 section, the forfeiting agency may use forfeiture proceeds, including amounts received by a county  
33 under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into  
34 under ORS 475A.115, only for:

35 (A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful  
36 delivery, distribution, manufacture or possession of controlled substances;

37 (B) Cash for use in law enforcement activities;

38 (C) Drug awareness and drug education programs offered in middle schools and high schools;

39 (D) The expenses of a forfeiting agency in operating joint narcotic operations with other for-  
40 feiting agencies pursuant to the terms of an intergovernmental agreement, including paying for  
41 rental space, utilities and office equipment; and

42 (E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution,  
43 manufacture or possession of controlled substances, as determined through intergovernmental  
44 agreement between the forfeiting agency and the district attorney.

45 (5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment

1 seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled  
2 substances may be donated to a public school, community college or institution of higher education.

3 (6) A political subdivision shall sell as much property as may be needed to make the distrib-  
4 utions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this  
5 section must be made once every three months and are due within 20 days of the end of each  
6 quarter. No interest shall accrue on amounts that are paid within the period specified by this sub-  
7 section.

8 (7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the  
9 sale of forfeited property, shall maintain written documentation of each sale, decision to retain,  
10 transfer or other disposition.

11 (8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory  
12 Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or  
13 not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop  
14 and make available forms for the purpose of reporting forfeitures.

15 (9) Law enforcement agencies shall supply to forfeiture counsel all information requested by  
16 forfeiture counsel necessary for the preparation of the report required by subsection (8) of this  
17 section.

18 (10) Political subdivisions of the state who receive forfeiture proceeds under this section shall  
19 submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those  
20 proceeds are received. The committee shall develop and make available forms for the purpose of  
21 those reports. The forms shall require the political subdivision to report on how proceeds received  
22 by the political subdivision have been or will be used, and such other information as may be re-  
23 quested by the committee. Reports shall be submitted each December 15 for the last ending fiscal  
24 year of the political subdivision.

25 (11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined  
26 by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct.

27 **SECTION 37.** Section 38, chapter 780, Oregon Laws 2001, is amended to read:

28 **Sec. 38.** *[After the forfeiture counsel distributes payments under ORS 475A.110, the forfeiture*  
29 *counsel shall disburse and distribute payment as follows when the forfeiting agency is the state or when*  
30 *the state is the recipient of property forfeited under this chapter:]*

31 *[(1)(a) Costs shall first be paid from the property or, if the property is sold, from its proceeds. As*  
32 *used in this section, "costs" includes attorney fees, costs and disbursements, and those special expenses,*  
33 *including hourly investigative costs and including the provision of lawful currency, incurred by any*  
34 *seizing agency or other agency of the state in investigating and prosecuting a specific case. "Costs" as*  
35 *used in this section also includes any expenses of servicing or maintaining the seized property under*  
36 *the provisions of ORS 475A.045 (3). These costs shall not otherwise include the expenditures made in*  
37 *connection with the ordinary maintenance and operation of the seizing agency.]*

38 *[(b) Any amount paid to or retained by the Department of Justice under this subsection shall be*  
39 *deposited in the Criminal Justice Revolving Account in the State Treasury.]*

40 *[(c) Any amount paid to or retained by the Oregon State Police under this subsection shall be de-*  
41 *posited in the State Police Account.]*

42 *[(2) The state may:]*

43 *[(a) With written authorization from the district attorney for the jurisdiction in which the property*  
44 *was seized, destroy any firearms or controlled substances.]*

45 *[(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the*

1 *proceeds the expenses of keeping and selling the property.]*

2 *[(c) Retain any vehicles, firearms or other equipment usable for law enforcement purposes, for of-*  
3 *ficial law enforcement use directly by the state.]*

4 *[(d) Lend or transfer any vehicles, firearms or other equipment usable for law enforcement pur-*  
5 *poses, to any federal, state or local law enforcement agency or district attorney for official law*  
6 *enforcement use directly by the transferee entity.]*

7 *[(3) When the state has entered into an intergovernmental agreement with one or more political*  
8 *subdivisions under ORS 475A.115, or when a law enforcement agency of the state has entered into an*  
9 *agreement with another law enforcement agency of the state, an equitable portion of the forfeited*  
10 *property shall be distributed to each agency participating in the seizure or forfeiture as provided by the*  
11 *agreement.]*

12 *[(4) The balance of the property, including the balance of any proceeds received by the state under*  
13 *an intergovernmental agreement or under an agreement between state law enforcement agencies, shall*  
14 *be divided as follows:]*

15 *[(a) When no law enforcement agency other than the Department of Justice participated in the sei-*  
16 *zure or forfeiture, or when the Department of Justice has entered into an agreement under subsection*  
17 *(3) of this section, the property shall be divided between the Criminal Justice Revolving Account and*  
18 *the Special Crime and Forfeiture Account created in ORS 475A.130, according to the following sched-*  
19 *ule:]*

20 *[(A) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal*  
21 *Justice Revolving Account.]*

22 *[(B) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving*  
23 *Account and the balance in the Special Crime and Forfeiture Account.]*

24 *[(C) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account*  
25 *and the balance in the Special Crime and Forfeiture Account.]*

26 *[(D) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving*  
27 *Account and the balance in the Special Crime and Forfeiture Account.]*

28 *[(E) One hundred percent of all additional sums shall be deposited in the Special Crime and*  
29 *Forfeiture Account.]*

30 *[(b) When no law enforcement agency other than the Department of State Police participated in the*  
31 *seizure or forfeiture, or when the Department of State Police has entered into an agreement under*  
32 *subsection (3) of this section, the property shall be divided between the State Police Account and the*  
33 *Special Crime and Forfeiture Account according to the following schedule:]*

34 *[(A) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police*  
35 *Account.]*

36 *[(B) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the*  
37 *balance in the Special Crime and Forfeiture Account.]*

38 *[(C) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the bal-*  
39 *ance in the Special Crime and Forfeiture Account.]*

40 *[(D) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the*  
41 *balance in the Special Crime and Forfeiture Account.]*

42 *[(E) One hundred percent of all additional sums shall be deposited in the Special Crime and*  
43 *Forfeiture Account.]*

44 *[(5) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection*  
45 *(3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the*

1 state shall deduct an amount equal to 10 percent of the proceeds from the property, but not to exceed  
2 \$250,000 in any biennium, and deposit that amount in the Illegal Drug Cleanup Fund established by  
3 ORS 475.495 for the purposes specified in ORS 475.495 (5). The state shall sell as much property as  
4 may be needed to meet the requirements of this section. Deposits to the Illegal Drug Cleanup Fund  
5 under this subsection shall be made once every three months and are due within 20 days of the end  
6 of each quarter. No interest shall accrue on amounts that are paid within the period specified by this  
7 subsection.]

8 [(6) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection  
9 (3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the  
10 state shall deduct an amount equal to three percent of the proceeds from the property, but not to exceed  
11 \$50,000 in any biennium, and deposit that amount in the Asset Forfeiture Oversight Account estab-  
12 lished by ORS 475A.160 for the purposes specified in ORS 475A.155. The state shall sell as much  
13 property as may be needed to meet the requirements of this section. Deposits to the Asset Forfeiture  
14 Oversight Account under this subsection shall be made once every three months and are due within  
15 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period  
16 specified by this subsection.]

17 [(7) Forfeiture proceeds received by the Department of Justice and the Department of State Police  
18 shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or  
19 possession of controlled substances, including but not limited to use of the proceeds for controlled  
20 substance crime prevention, drug intervention, drug treatment and drug education programs. Except  
21 as specifically provided by this subsection, forfeiture proceeds under this subsection may not be used  
22 for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, ex-  
23 pansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was  
24 in existence before August 23, 1993, and that was previously funded out of revenues other than forfei-  
25 ture proceeds. Forfeiture proceeds may be used for the following:]

26 [(a) Payment of that portion of the wages of personnel other than peace officers who administer the  
27 forfeiture laws.]

28 [(b) Payment of the wages of peace officers performing supervisory duties for interagency drug  
29 enforcement task forces created by intergovernmental agreement.]

30 [(c) Payment of overtime wages of peace officers arising out of drug enforcement duties.]

31 **(1) The provisions of this section apply only when the forfeiting agency is the state.**

32 **(2) Except as otherwise provided by intergovernmental agreement and this section, a**  
33 **forfeiting agency may:**

34 **(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law**  
35 **enforcement agency or district attorney.**

36 **(b) Sell forfeited property by public or other commercially reasonable sale and pay from**  
37 **the proceeds the expenses of keeping and selling the property.**

38 **(c) Retain forfeited property.**

39 **(d) With written authorization from the district attorney for the county in which the**  
40 **property was seized, destroy any forfeited firearms or controlled substances.**

41 **(3) The forfeiting agency shall distribute forfeiture proceeds as follows:**

42 **(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined**  
43 **in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by**  
44 **any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeit-**  
45 **ing agency may pay expenses of servicing or maintaining the seized property under ORS**

1 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay  
2 expenditures made in connection with the ordinary maintenance and operation of the seizing  
3 or forfeiting agency under the provisions of this paragraph. Any amount paid to or retained  
4 by the Department of Justice under this paragraph shall be deposited in the Criminal Justice  
5 Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon  
6 State Police under this paragraph shall be deposited in the State Police Account.

7 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency  
8 shall:

9 (A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the  
10 Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS  
11 475.495 (5);

12 (B) Deduct an amount equal to three percent of the proceeds, not to exceed \$50,000 in a  
13 biennium, and deposit that amount in the Asset Forfeiture Oversight Account established  
14 by ORS 475A.160 for the purposes specified in ORS 475A.155;

15 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the  
16 Judicial Department Operating Account established by ORS 1.009 for disbursement to drug  
17 court programs as described in ORS 3.450; and

18 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the  
19 State Commission on Children and Families Account established by ORS 417.733 for dis-  
20 bursement to relief nurseries as described in ORS 417.788.

21 (c) If the forfeiting agency has entered into an intergovernmental agreement with a pol-  
22 itical subdivision under ORS 475A.115, or has entered into an agreement with any other law  
23 enforcement agency of the state relating to distribution of forfeiture proceeds, after paying  
24 costs under paragraph (a) of this subsection and making the deductions required by para-  
25 graph (b) of this subsection, the forfeiting agency shall pay an equitable portion of the  
26 forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by  
27 the agreement.

28 (d) After making all payments and deductions required by paragraphs (a) to (c) of this  
29 subsection, the forfeiting agency shall distribute the remaining proceeds as follows:

30 (A) If no law enforcement agency other than the Department of Justice participated in  
31 the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department  
32 of Justice under paragraph (c) of this subsection, shall be divided between the Criminal  
33 Justice Revolving Account and the Special Crime and Forfeiture Account established by ORS  
34 475A.130 according to the following schedule:

35 (i) One hundred percent of the first \$200,000 accumulated shall be deposited in the  
36 Criminal Justice Revolving Account.

37 (ii) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice  
38 Revolving Account and the balance in the Special Crime and Forfeiture Account.

39 (iii) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving  
40 Account and the balance in the Special Crime and Forfeiture Account.

41 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice  
42 Revolving Account and the balance in the Special Crime and Forfeiture Account.

43 (v) One hundred percent of all additional sums shall be deposited in the Special Crime  
44 and Forfeiture Account.

45 (B) If no law enforcement agency other than the Department of State Police participated

1 in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Depart-  
2 ment of State Police under paragraph (c) of this subsection, shall be divided between the  
3 State Police Account and the Special Crime and Forfeiture Account according to the follow-  
4 ing schedule:

5 (i) One hundred percent of the first \$600,000 accumulated shall be deposited in the State  
6 Police Account.

7 (ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Ac-  
8 count and the balance in the Special Crime and Forfeiture Account.

9 (iii) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and  
10 the balance in the Special Crime and Forfeiture Account.

11 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Ac-  
12 count and the balance in the Special Crime and Forfeiture Account.

13 (v) One hundred percent of all additional sums shall be deposited in the Special Crime  
14 and Forfeiture Account.

15 (4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used  
16 only for:

17 (a) The purchase of equipment necessary for the enforcement of laws relating to the  
18 unlawful delivery, distribution, manufacture or possession of controlled substances;

19 (b) Cash for use in law enforcement activities;

20 (c) Drug awareness and drug education programs offered in middle schools and high  
21 schools; and

22 (d) The expenses of a forfeiting agency in operating joint narcotic operations with other  
23 forfeiting agencies pursuant to the terms of an intergovernmental agreement, including  
24 paying for rental space, utilities and office equipment.

25 (5) A forfeiting agency shall sell as much property as may be needed to make the dis-  
26 tributions required by subsection (3) of this section. Distributions required under subsection  
27 (3)(b) of this section must be made once every three months and are due within 20 days of  
28 the end of each quarter. No interest shall accrue on amounts that are paid within the period  
29 specified by this subsection.

30 [(8)] (6) The forfeiting agency, and any agency that receives forfeited property or proceeds from  
31 the sale of forfeited property, shall maintain written documentation of each sale, decision to retain,  
32 transfer or other disposition of the property or proceeds.

33 [(9)] (7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advi-  
34 sory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings,  
35 whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee  
36 shall develop and make available forms for the purpose of reporting forfeitures.

37 [(10)] (8) Law enforcement agencies shall supply to forfeiture counsel all information requested  
38 by forfeiture counsel necessary for the preparation of the report required by subsection [(9)] (7) of  
39 this section.

40 **SECTION 38.** If House Bill 2485 becomes law, section 38, chapter 780, Oregon Laws 2001, as  
41 amended by section 37 of this 2005 Act, is amended to read:

42 **Sec. 38.** (1) The provisions of this section apply only when the forfeiting agency is the state.

43 (2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting  
44 agency may:

45 (a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement

1 agency or district attorney.

2 (b) Sell forfeited property by public or other commercially reasonable sale and pay from the  
3 proceeds the expenses of keeping and selling the property.

4 (c) Retain forfeited property.

5 (d) With written authorization from the district attorney for the county in which the property  
6 was seized, destroy any forfeited firearms or controlled substances.

7 (3) The forfeiting agency shall distribute forfeiture proceeds as follows:

8 (a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP  
9 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or  
10 forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay  
11 expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the pro-  
12 visions of this paragraph. The forfeiting agency may not pay expenditures made in connection with  
13 the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of  
14 this paragraph. Any amount paid to or retained by the Department of Justice under this paragraph  
15 shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount  
16 paid to or retained by the Oregon State Police under this paragraph shall be deposited in the State  
17 Police Account.

18 (b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

19 (A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the Illegal  
20 Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

21 (B) Deduct an amount equal to three percent of the proceeds, not to exceed \$50,000 in a  
22 biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS  
23 475A.160 for the purposes specified in ORS 475A.155;

24 (C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the [*Ju-*  
25 *dicial Department Operating Account established by ORS 1.009*] **Oregon Criminal Justice Com-**  
26 **mission Account established under ORS 137.662** for disbursement to drug court programs as  
27 described in ORS 3.450; and

28 (D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State  
29 Commission on Children and Families Account established by ORS 417.733 for disbursement to relief  
30 nurseries as described in ORS 417.788.

31 (c) If the forfeiting agency has entered into an intergovernmental agreement with a political  
32 subdivision under ORS 475A.115, or has entered into an agreement with any other law enforcement  
33 agency of the state relating to distribution of forfeiture proceeds, after paying costs under paragraph  
34 (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the  
35 forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency partic-  
36 ipating in the seizure or forfeiture as provided by the agreement.

37 (d) After making all payments and deductions required by paragraphs (a) to (c) of this sub-  
38 section, the forfeiting agency shall distribute the remaining proceeds as follows:

39 (A) If no law enforcement agency other than the Department of Justice participated in the sei-  
40 zure or forfeiture, the remaining proceeds, and proceeds received by the Department of Justice un-  
41 der paragraph (c) of this subsection, shall be divided between the Criminal Justice Revolving  
42 Account and the Special Crime and Forfeiture Account established by ORS 475A.130 according to  
43 the following schedule:

44 (i) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal  
45 Justice Revolving Account.

1 (ii) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving  
2 Account and the balance in the Special Crime and Forfeiture Account.

3 (iii) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Ac-  
4 count and the balance in the Special Crime and Forfeiture Account.

5 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving  
6 Account and the balance in the Special Crime and Forfeiture Account.

7 (v) One hundred percent of all additional sums shall be deposited in the Special Crime and  
8 Forfeiture Account.

9 (B) If no law enforcement agency other than the Department of State Police participated in the  
10 seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State  
11 Police under paragraph (c) of this subsection, shall be divided between the State Police Account and  
12 the Special Crime and Forfeiture Account according to the following schedule:

13 (i) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police  
14 Account.

15 (ii) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and  
16 the balance in the Special Crime and Forfeiture Account.

17 (iii) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the  
18 balance in the Special Crime and Forfeiture Account.

19 (iv) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and  
20 the balance in the Special Crime and Forfeiture Account.

21 (v) One hundred percent of all additional sums shall be deposited in the Special Crime and  
22 Forfeiture Account.

23 (4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used only for:

24 (a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful  
25 delivery, distribution, manufacture or possession of controlled substances;

26 (b) Cash for use in law enforcement activities;

27 (c) Drug awareness and drug education programs offered in middle schools and high schools; and

28 (d) The expenses of a forfeiting agency in operating joint narcotic operations with other for-  
29 feiting agencies pursuant to the terms of an intergovernmental agreement, including paying for  
30 rental space, utilities and office equipment.

31 (5) A forfeiting agency shall sell as much property as may be needed to make the distributions  
32 required by subsection (3) of this section. Distributions required under subsection (3)(b) of this sec-  
33 tion must be made once every three months and are due within 20 days of the end of each quarter.  
34 No interest shall accrue on amounts that are paid within the period specified by this subsection.

35 (6) The forfeiting agency, and any agency that receives forfeited property or proceeds from the  
36 sale of forfeited property, shall maintain written documentation of each sale, decision to retain,  
37 transfer or other disposition of the property or proceeds.

38 (7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory  
39 Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or  
40 not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop  
41 and make available forms for the purpose of reporting forfeitures.

42 (8) Law enforcement agencies shall supply to forfeiture counsel all information requested by  
43 forfeiture counsel necessary for the preparation of the report required by subsection (7) of this  
44 section.

45 **SECTION 39.** ORS 475A.130, as amended by section 9a, chapter 834, Oregon Laws 2001, is

1 amended to read:

2 475A.130. The Special Crime and Forfeiture Account is established in the General Fund of the  
3 State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies  
4 of the state under this chapter, except as otherwise provided by section 38, chapter 780, Oregon  
5 Laws 2001. All moneys in the account are continuously appropriated **to the Department of Justice**  
6 and *[shall] may be used only for [enforcement of laws relating to the unlawful delivery, distribution,*  
7 *manufacture or possession of controlled substances, including but not limited to use of the proceeds for*  
8 *controlled substance crime prevention, drug intervention, drug treatment and drug education*  
9 *programs] the purposes specified in section 38 (4), chapter 780, Oregon Laws 2001. [Except as*  
10 *specifically provided by this section, forfeiture proceeds in the Special Crime and Forfeiture Account*  
11 *may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase,*  
12 *construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any*  
13 *position that was in existence before August 23, 1993, and that was previously funded out of revenues*  
14 *other than forfeiture proceeds. Forfeiture proceeds may be used for the following:]*

15 *[(1) Payment of that portion of the wages of personnel other than peace officers who administer the*  
16 *forfeiture laws.]*

17 *[(2) Payment of the wages of peace officers performing supervisory duties for interagency drug*  
18 *enforcement task forces created by intergovernmental agreement.]*

19 *[(3) Payment of overtime wages of peace officers arising out of drug enforcement duties.]*

20 **SECTION 39a.** ORS 475A.155, as amended by section 21, chapter 666, Oregon Laws 2001, is  
21 amended to read:

22 475A.155. *[(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee con-*  
23 *sists of 12 members to be appointed as follows:]*

24 *[(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six*  
25 *legislators to the committee. Three shall be Senators appointed by the President. Three shall be Rep-*  
26 *resentatives appointed by the Speaker.]*

27 *[(b) The Governor shall appoint three members to the committee.]*

28 *[(c) The Attorney General shall appoint three members to the committee.]*

29 *[(2) The term of a legislative member of the committee shall be two years. The term of all other*  
30 *members shall be four years. Members of the committee may be reappointed. If a vacancy occurs on*  
31 *the committee for any reason during the term of membership, the official who appointed the member to*  
32 *the vacant position shall appoint a new member to serve the remainder of the term. A member of the*  
33 *committee may be removed from the committee at any time by the official who appointed the member.]*

34 *[(3)(a) The members of the committee shall select from among themselves a chairperson and vice*  
35 *chairperson.]*

36 *[(b) The committee shall meet at such times and places as determined by the chairperson.]*

37 *[(4) Legislative members shall be entitled to payment of compensation and expense reimbursement*  
38 *under ORS 171.072, payable from funds appropriated to the Legislative Assembly.]*

39 *[(5) The committee shall:]*

40 *[(a) Prepare reports detailing the number and nature of forfeitures carried out under this chapter,*  
41 *including the disposition and use of the proceeds from the forfeitures. The reports shall be submitted*  
42 *on or before March 31 of each year to the Speaker of the House of Representatives, President of the*  
43 *Senate, Attorney General and Governor.]*

44 *[(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required*  
45 *from forfeiture counsel and political subdivisions to ensure that information necessary for oversight is*

1 *being obtained and is gathered in an efficient and effective manner.]*

2 *[(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and effi-*  
3 *ciency of forfeiture actions brought under this chapter.]*

4 *[(d) Make any recommendations for additional legislation governing forfeiture actions brought un-*  
5 *der this chapter.]*

6 *[(e) Conduct studies or other activities as necessary to accomplish the purposes of this*  
7 *subsection.]*

8 *[(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the committee*  
9 *with staff, subject to funds available for that purpose.]*

10 **(1) The Asset Forfeiture Oversight Advisory Committee is created. The committee con-**  
11 **sists of 12 members to be appointed as follows:**

12 **(a) The President of the Senate and the Speaker of the House of Representatives shall**  
13 **appoint six legislators to the committee. Three shall be Senators appointed by the President.**  
14 **Three shall be Representatives appointed by the Speaker.**

15 **(b) The Governor shall appoint three members to the committee.**

16 **(c) The Attorney General shall appoint three members to the committee.**

17 **(2) The term of a legislative member of the committee shall be two years. The term of**  
18 **all other members shall be four years. Members of the committee may be reappointed. If a**  
19 **vacancy occurs on the committee for any reason during the term of membership, the official**  
20 **who appointed the member to the vacant position shall appoint a new member to serve the**  
21 **remainder of the term. A member of the committee may be removed from the committee**  
22 **at any time by the official who appointed the member.**

23 **(3)(a) The members of the committee shall select from among themselves a chairperson**  
24 **and vice chairperson.**

25 **(b) The committee shall meet at such times and places as determined by the chairperson.**

26 **(4) Legislative members shall be entitled to payment of compensation and expense re-**  
27 **imbursement under ORS 171.072, payable from funds appropriated to the Legislative Assem-**  
28 **bley.**

29 **(5) The committee shall:**

30 **(a) Prepare reports detailing the number and nature of forfeitures carried out under this**  
31 **chapter and sections 1 to 18 of this 2005 Act including the disposition and use of the proceeds**  
32 **from the forfeitures. The reports shall be submitted on or before March 31 of each year to**  
33 **the Speaker of the House of Representatives, President of the Senate, Attorney General and**  
34 **Governor.**

35 **(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports**  
36 **required from forfeiture counsel and political subdivisions to ensure that information nec-**  
37 **essary for oversight is being obtained and is gathered in an efficient and effective manner.**

38 **(c) Make any recommendations it deems necessary to increase the effectiveness, fairness**  
39 **and efficiency of forfeiture actions brought under this chapter and sections 1 to 18 of this**  
40 **2005 Act.**

41 **(d) Make any recommendations for additional legislation governing forfeiture actions**  
42 **brought under this chapter and sections 1 to 18 of this 2005 Act.**

43 **(e) Conduct studies or other activities as necessary to accomplish the purposes of this**  
44 **subsection.**

45 **(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the**

1 **committee with staff, subject to funds available for that purpose.**

2 **(7) For purposes of this section, “forfeiture counsel” includes forfeiture counsel as de-**  
3 **defined in section 1 of this 2005 Act.**

4 **SECTION 40.** ORS 475A.160, as amended by section 16a, chapter 780, Oregon Laws 2001, is  
5 amended to read:

6 475A.160. (1) The Asset Forfeiture Oversight Account is established in the State Treasury sep-  
7 arate and distinct from the General Fund.

8 (2) The following moneys shall be deposited into the State Treasury and credited to the Asset  
9 Forfeiture Oversight Account:

10 (a) Moneys received from a state agency or political subdivision under the provisions of ORS  
11 475A.120 and section 38, chapter 780, Oregon Laws 2001; and

12 (b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.

13 (3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture Oversight Ac-  
14 count in the manner provided by law. Interest earned by the account shall be credited to the ac-  
15 count.

16 (4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the  
17 Oregon Criminal Justice Commission to be used for the purposes specified in ORS 475A.155.

18 (5) If at the end of a biennium the Asset Forfeiture Oversight Account has received amounts  
19 under the provisions of ORS 475A.120 [(1)(g)] **(4)(b)** and section 38 [(6)] **(3)(b)**, chapter 780, Oregon  
20 Laws 2001, that are in excess of 115 percent of the biennial expenditure limitation established for  
21 expenditures from the account, the Oregon Criminal Justice Commission shall refund to each state  
22 agency or political subdivision that made payment into the account during the biennium a pro rata  
23 share of the amounts that are in excess of 115 percent of the expenditure limitation for the account,  
24 based on the amount of forfeiture proceeds paid into the account by the state agency or political  
25 subdivision. The commission is not required to issue any refund under this subsection if the amount  
26 of the refund is less than \$25.

27 **SECTION 41.** Section 35, chapter 780, Oregon Laws 2001, as amended by section 254, chapter  
28 576, Oregon Laws 2003, is amended to read:

29 **Sec. 35.** (1) If it has been determined in an action brought under the provisions of ORS 475A.075  
30 that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve  
31 on the claimant a proposed judgment of forfeiture and a statement of costs as [defined] **described**  
32 in ORS 475A.120 [(1)(a)] **(4)** and [475A.125 (1)(a) (1999 Edition)] **section 38 (3), chapter 780, Oregon**  
33 **Laws 2001.**

34 (2)(a) A claimant who has filed a claim to seized property, appeared in the action, and part or  
35 all of whose interest in the claimed property is forfeited under the terms of the proposed judgment  
36 may file a motion for a mitigation hearing[:].

37 [(a)] **(b)** A motion under this section must list all evidence not previously received that is rele-  
38 vant to the determination to be made by the court under ORS 475A.100. Every argument that the  
39 claimant wishes to raise in mitigation must be set out in specific detail in the motion.

40 [(b)] **(c)** Before filing a motion for mitigation, the claimant and the plaintiff must make a good  
41 faith effort to confer with one another concerning any issues in dispute. The claimant must file a  
42 certificate of compliance with the requirements of this paragraph before the time set for hearing on  
43 the motion. The certificate is sufficient if the certificate states that the parties conferred or the  
44 certificate contains facts showing good cause for not conferring.

45 [(c)] **(d)** A motion under this section may [only] be filed **only** after the service of a proposed

1 judgment on the claimants. If a motion for a mitigation hearing is not filed with the court within  
2 14 days after the date the plaintiff serves the proposed judgment on the claimant, the court shall  
3 enter judgment.

4 (3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion  
5 of the proposed judgment is excessive in the manner provided by ORS 475A.100.

6 (4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

7 (5) The court may make such orders[,] as may be necessary to [*insure*] **ensure** that the forfeiture  
8 is not excessive, including but not limited to the following orders:

9 (a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale  
10 distributed between the litigants.

11 (b) An order directing that the claimant make available to the court other assets, not named  
12 as defendants in the forfeiture action, for the purpose of fashioning a judgment that is not excessive.

13 (6) The court shall make written findings of fact and shall enter written conclusions of law in  
14 proceedings under the provisions of this section.

15 **SECTION 41a. If House Bill 2261 becomes law, section 350, chapter 22, Oregon Laws 2005**  
16 **(Enrolled House Bill 2261) (amending section 35, chapter 780, Oregon Laws 2001), is repealed.**

17 **SECTION 42.** Section 36, chapter 780, Oregon Laws 2001, is amended to read:

18 **Sec. 36.** (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting  
19 agency at least [*so*] **as** much of the defendant property as may be required to pay the forfeiting  
20 agency's costs as [*defined*] **described** in ORS 475A.120 [(1)(a)] (4) and [475A.125 (1)(a) (1999  
21 *Edition*)] **section 38 (3), chapter 780, Oregon Laws 2001.**

22 (2) At least 10 days before a trial under ORS 475A.075, a claimant may serve upon the forfeiting  
23 agency an offer to allow judgment to be given against all or part of the defendant property for a  
24 specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer,  
25 the forfeiting agency must file a written acceptance with the clerk of the court within three days  
26 after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed  
27 with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless  
28 otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered  
29 as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed  
30 with the court within three days after the time the offer was served upon the forfeiting agency, the  
31 offer shall be considered withdrawn, and [*shall*] **may** not be given in evidence on the trial. If the  
32 forfeiting agency fails to obtain a judgment after trial that is more favorable than the offer made  
33 by the claimant, the court shall award to the claimant costs and disbursements as defined in ORCP  
34 68, and the court may enter a judgment that forfeits to the forfeiting agency less of the defendant  
35 property than may be required to pay the forfeiting agency's costs as [*defined*] **described** in ORS  
36 475A.120 [(1)(a)] (4) and [475A.125 (1)(a) (1999 *Edition*)] **section 38 (3), chapter 780, Oregon Laws**  
37 **2001.**

38 **SECTION 42a. If House Bill 2261 becomes law, section 351, chapter 22, Oregon Laws 2005**  
39 **(Enrolled House Bill 2261) (amending section 36, chapter 780, Oregon Laws 2001), is repealed.**

40  
41 **DRUG TREATMENT**

42  
43 **SECTION 43.** (1) **In collaboration with local seizing agencies, the district attorney, the**  
44 **local public safety coordinating council and the local mental health advisory committee, a**  
45 **local alcoholism planning committee appointed or designated pursuant to ORS 430.342 shall**

1 develop a plan to integrate drug treatment services into the criminal justice system for  
2 offenders who commit nonviolent felony drug possession offenses. The plan may also include  
3 property offenders as provided for under ORS 475.245. The plan developed under this sub-  
4 section must be incorporated into the local coordinated comprehensive plan required by ORS  
5 417.775.

6 (2)(a) A plan may include, but need not be limited to, programs that occur before adju-  
7 dication, after adjudication as part of a sentence of probation or as part of a conditional  
8 discharge.

9 (b) A plan must include, but need not be limited to:

10 (A) A description of local criminal justice and treatment coordination efforts;

11 (B) A description of the method by which local, state and federal treatment resources  
12 are prioritized and allocated to meet the needs of the drug abusing offender population;

13 (C) The principles that guide criminal justice strategies for supervision and treatment  
14 of drug abusing offenders and the purchase of treatment services from local community  
15 providers;

16 (D) The desired outcomes for criminal justice strategies for supervision and treatment  
17 of drug abusing offenders and the provision of treatment services and identification of a  
18 method for monitoring and reporting the outcomes; and

19 (E) Consistent standards for measuring the success of criminal justice strategies for  
20 supervision and treatment of drug abusing offenders and the provision of treatment.

21 (3) A program must include, but need not be limited to:

22 (a) Ongoing oversight of the participant;

23 (b) Frequent monitoring to determine whether a participant is using controlled sub-  
24 stances unlawfully; and

25 (c) A coordinated strategy governing responses to a participant's compliance or non-  
26 compliance with the program.

27 (4) The local alcoholism planning committee shall submit the plan to the Department of  
28 Human Services and shall provide the county board of commissioners with a copy of the plan.

29 **SECTION 44.** The Department of Human Services shall distribute moneys in the Drug  
30 Prevention and Education Fund established in section 46 of this 2005 Act based on a review  
31 of the plans submitted to the office under section 43 of this 2005 Act. Funding criteria in-  
32 clude, but need not be limited to, whether the plan includes the existence or development  
33 of a drug treatment court or a drug diversion program.

34 **SECTION 45.** (1) The Department of Human Services shall adopt rules necessary to carry  
35 out the provisions of sections 43 to 46 of this 2005 Act.

36 (2) The department may accept gifts, grants and donations from any source, public or  
37 private. Moneys accepted under this section must be deposited in the Drug Prevention and  
38 Education Fund to be used for the purposes for which the fund is established.

39 **SECTION 46.** The Drug Prevention and Education Fund is established separate and dis-  
40 tinct from the General Fund. The Drug Prevention and Education Fund consists of moneys  
41 deposited in the fund under sections 17 and 45 of this 2005 Act, and other moneys as may be  
42 appropriated to the fund by law. The moneys in the Drug Prevention and Education Fund  
43 are continuously appropriated to the Department of Human Services for the purpose of as-  
44 sisting counties in paying the costs incurred by the counties in providing drug treatment  
45 services pursuant to plans submitted under section 43 of this 2005 Act.

