

House Bill 2047

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Corrections)

SUMMARY

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

Modifies authority of Department of Corrections to receive, hold and dispose of property. Expands authority to include property seized from person on probation or other supervised or conditional release. Provides for manner of disposing of unclaimed property.

A BILL FOR AN ACT

1
2 Relating to property held by the Department of Corrections; amending ORS 98.245, 144.404, 144.405,
3 144.406, 144.407, 144.408 and 144.409.

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

5 **SECTION 1.** ORS 144.404 is amended to read:

6 144.404. (1) The Department of Corrections is authorized to receive, hold and dispose of:

7 (a) Contraband[,] **and other things subject to seizure under ORS 133.535;**

8 (b) Things [*otherwise criminally possessed or*] possessed in violation of [*parole or post-prison*]
9 supervision conditions[, or]; **or**

10 (c) Unclaimed goods seized by a parole and probation officer. [*during the arrest of a suspected*
11 *parole or post-prison supervision violator or during the search of the suspected violator or of the*
12 *premises, vehicle or other property of the suspected violator.*]

13 (2) **As used in this section and ORS 144.405 to 144.409, "supervision" means probation,**
14 **parole, post-prison supervision or any other form of supervised or conditional release.**

15 **SECTION 2.** ORS 144.405 is amended to read:

16 144.405. (1) **Notwithstanding ORS 98.302 to 98.436 and ORS 133.623,** upon seizing property in
17 [*execution of duty*] **connection with a suspected violation of the conditions of supervision,** a
18 parole and probation officer shall, as soon thereafter as is reasonably possible, make a written list
19 of the things seized and furnish a copy to the suspected [*parole or post-prison*] supervision violator.
20 The list shall contain a notice informing the person of the right to contest the seizure by filing a
21 petition and shall contain such other information as the Department of Corrections, by rule, may
22 require.

23 (2) If no claim of rightful possession has been established under ORS 144.405 to 144.409, the
24 Department of Corrections may order the sale, destruction or other disposition of the things seized.
25 The department may enter into agreements with other state and local officials responsible under
26 applicable laws for selling, destroying or otherwise disposing of contraband or **forfeited or** un-
27 claimed goods in official custody for ultimate disposition of the things seized. The clear proceeds,
28 if any, generated by the disposition of things seized shall be deposited in the State Treasury to the
29 credit of the General Fund.

30 (3) If things seized by a parole and probation officer in execution of duty are not needed for

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 evidentiary purposes, and if a person having a rightful claim establishes identity and right to pos-
 2 session to the satisfaction of the Department of Corrections, the department may summarily return
 3 the things seized to their rightful possessor.

4 (4) If the things seized are contraband, the fruits of crime or things otherwise criminally pos-
 5 sessed, the Department of Corrections may:

6 (a) Relinquish custody of the things seized to appropriate law enforcement officials for dispo-
 7 sition; or

8 (b) Hold and safeguard the things seized until directed by appropriate law enforcement officials
 9 that the things in question are no longer needed for purposes of criminal prosecution.

10 **SECTION 3.** ORS 144.406 is amended to read:

11 144.406. (1) Within 30 days after actual notice of any seizure, or at such later date as the De-
 12 partment of Corrections in its discretion may allow:

13 (a) An individual from whose person, property or premises things have been seized may petition
 14 the department to return the things seized to the person, **property** or premises from which they
 15 were seized.

16 (b) Any other person asserting a claim to rightful possession of the things seized may petition
 17 the department to restore the things seized to the person.

18 (2) Petitions for return or restoration of things seized shall be served on the [*manager of the*
 19 *local field services office having supervision over the suspected parole or post-prison supervision vi-*
 20 *olator*] **department in accordance with rules adopted by the department.**

21 (3) Service of a petition for the return or restoration of things seized shall be made by certified
 22 or registered mail, return receipt requested.

23 **SECTION 4.** ORS 144.407 is amended to read:

24 144.407. A petition for the return or restoration of things seized shall be based on the ground
 25 that the petitioner has a valid claim to rightful possession because:

26 (1) The things had been stolen or otherwise converted and the petitioner is the owner or rightful
 27 possessor;

28 (2) The things seized were not, in fact, subject to seizure in connection with the suspected
 29 [*parole or post-prison*] supervision violation;

30 (3) Although the things seized were subject to seizure in connection with a suspected [*parole or*
 31 *post-prison*] supervision violation, the petitioner is or will be entitled to their return or restoration
 32 upon a determination by the Department of Corrections, [*or*] the State Board of Parole and Post-
 33 Prison Supervision **or a court** that they are no longer needed for evidentiary purposes, do not
 34 constitute a [*parole or post-prison*] supervision violation or may be lawfully possessed by the
 35 petitioner; or

36 (4) The suspected [*parole or post-prison*] supervision violator and the department have stipulated
 37 that the things seized may be returned to the petitioner.

38 **SECTION 5.** ORS 144.408 is amended to read:

39 144.408. (1) If, upon consideration of a petition for return or restoration of things seized, it ap-
 40 pears to the Department of Corrections that the things should be returned or restored, but there is
 41 substantial question whether they should be returned to the person from whose possession they were
 42 seized or to some other person, or a substantial question among several claimants to rightful pos-
 43 session, the department may set a further hearing, assuring that all persons with a possible
 44 possessory interest in the things in question receive due notice and an opportunity to be heard.
 45 Upon completion of the hearing, the department shall enter an order for the return or restoration

1 of the things seized.

2 (2) Instead of conducting the hearing provided for in subsection (1) of this section and returning
3 or restoring the property, the department in its discretion, may leave the [several] claimants to ap-
4 propriate civil process for the determination of the claims.

5 **SECTION 6.** ORS 144.409 is amended to read:

6 144.409. (1) In granting a petition for return or restoration of things seized, the Department of
7 Corrections shall postpone execution of the order until such time as the things in question are no
8 longer needed for evidentiary purposes in establishing either a criminal or [parole or post-prison]
9 supervision violation.

10 (2) Judicial review of a department order for return or restoration of things seized shall be
11 available as for review of orders in other than contested cases as provided in ORS chapter 183.

12 **SECTION 7.** ORS 98.245 is amended to read:

13 98.245. (1) As used in this section:

14 (a) "Removing authority" means a sheriff's office, a municipal police department, a state police
15 office, **the Department of Corrections**, a law enforcement agency created by intergovernmental
16 agreement or a port as defined in ORS 777.005 or 778.005.

17 (b) "Unclaimed property" means personal property that was seized by a removing authority as
18 evidence, abandoned property, found property or stolen property, and that has remained in the
19 physical possession of that removing authority for a period of more than 60 days following conclu-
20 sion of all criminal actions related to the seizure of the evidence, abandoned property, found prop-
21 erty or stolen property, or conclusion of the investigation if no criminal action is filed.

22 (2) Notwithstanding ORS 98.302 to 98.436, and in addition to any other method provided by law,
23 a removing authority may dispose of unclaimed property as follows:

24 (a) An inventory describing the unclaimed property shall be prepared by the removing authority.

25 (b) The removing authority shall publish a notice of intent to dispose of the unclaimed property
26 described in the inventory prepared pursuant to paragraph (a) of this subsection. The notice shall
27 be posted in three public places in the jurisdiction of the removing authority, and shall also be
28 published in a newspaper of general circulation in the jurisdiction of the removing authority. The
29 notice shall include a description of the unclaimed property as provided in the inventory, the ad-
30 dress and telephone number of the removing authority and a statement in substantially the following
31 form:

32 _____
33
34 **NOTICE**

35 The (removing authority) has in its physical possession the unclaimed personal property de-
36 scribed below. If you have any ownership interest in any of that unclaimed property, you must file
37 a claim with the (removing authority) within 30 days from the date of publication of this notice, or
38 you will lose your interest in that property.

39 _____
40
41 (c) A copy of the notice described in paragraph (b) of this subsection shall also be sent to any
42 person that the removing authority has reason to believe has an ownership or security interest in
43 any of the unclaimed property described in the notice. A notice sent pursuant to this paragraph
44 shall be sent by regular mail to the last known address of the person.

45 (d) Prior to the expiration of the time period stated in a notice issued pursuant to this section,

1 a person may file a claim that presents proof satisfactory to the removing authority issuing the no-
 2 tice that the person is the lawful owner or security interest holder of any property described in that
 3 notice. The removing authority shall then return the property to that person.

4 (e) If a removing authority fails to return property to a person that has timely filed a claim
 5 pursuant to paragraph (d) of this subsection, the person may file, within 30 days of the date of the
 6 failure to return the property, a petition seeking return of the property to the person. The petition
 7 shall be filed in the circuit court for the county in which the removing authority is located. If one
 8 or more petitions are filed, the removing authority shall hold the property pending receipt of an
 9 order of the court directing disposition of the property or dismissing the petition or petitions with
 10 prejudice. If the court grants the petition, the removing authority shall turn the unclaimed property
 11 over to the petitioner in accordance with the order.

12 (f) Unless the removing authority or court upholds the claim or petition under paragraph (d) or
 13 (e) of this subsection, title to all unclaimed property described in a notice issued pursuant to this
 14 section shall pass to the removing authority free of any interest or encumbrance thereon in favor
 15 of any person who has:

16 (A) A security interest in the property and to whom the removing authority mailed a copy of
 17 the notice described in paragraph (b) of this subsection in accordance with paragraph (c) of this
 18 subsection; or

19 (B) Any ownership interest in the property.

20 (g) The removing authority may transfer good and sufficient title to any subsequent purchaser
 21 or transferee, and the title shall be recognized by all courts and governmental agencies. Any de-
 22 partment, agency or officer of the state or any political subdivision whose official functions include
 23 the issuance of certificates or other evidence of title shall be immune from civil or criminal liability
 24 when such issuance is pursuant to a bill of sale issued by the removing authority.

25 _____