

Senate Bill 1005

Sponsored by Senator GORSEK

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**.

Establishes procedures for review of certain Department of Corrections disciplinary orders and other housing-related decisions by panel of Court of Appeals.

A BILL FOR AN ACT

1
2 Relating to judicial review of Department of Corrections actions; creating new provisions; and re-
3 pealing ORS 421.194.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 421.**

6 **SECTION 2. (1) The purpose of this section is to provide for expedient review of discipli-**
7 **nary orders and other related actions of the Department of Corrections by the Court of Ap-**
8 **peals.**

9 **(2) The Chief Judge of the Court of Appeals shall appoint a three-judge panel consisting**
10 **of current or former appellate judges to consider petitions described in this section.**

11 **(3)(a) An adult in custody may file a petition for review of:**

12 **(A) A disciplinary order issued under procedures adopted pursuant to ORS 421.180 that**
13 **includes a sanction of over 15 consecutive days in disciplinary solitary confinement;**

14 **(B) A department decision to place an adult in custody in any type of prehearing de-**
15 **tention prior to a disciplinary hearing for a duration of over 15 days; or**

16 **(C) A department decision to place an adult in custody in any type of housing during or**
17 **related to the investigation of a disciplinary violation for a duration of over 15 days.**

18 **(b) The petition must be filed within 180 days of the action described in paragraph (a) of**
19 **this subsection. The failure to file within the time period described in this paragraph is not**
20 **jurisdictional, and the court may for good cause allow filing after that time period has ter-**
21 **minated.**

22 **(c) An adult in custody is not required to exhaust administrative remedies before filing**
23 **a petition under this section.**

24 **(d) The petition must be served on the Attorney General, who shall represent the state**
25 **in all proceedings on the petition.**

26 **(4) A proceeding on a petition described in this section is a civil action and the Depart-**
27 **ment of Corrections is the defendant.**

28 **(5)(a) If the petition seeks review of a disciplinary order, the department shall transmit**
29 **to the court the record of the proceeding or, if the adult in custody agrees, a shortened re-**
30 **cord. The department shall simultaneously provide a copy of the transmitted record, and**
31 **any other relevant material, to the adult in custody unless the department requests that the**

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 court review the record or other material in order to make a determination under paragraph
2 (b) of this subsection.

3 (b) If the court determines that any information in a report, document or other material
4 provided to the court is unsafe or inappropriate for the adult in custody to access, the court
5 may limit access to the report, document or other material by the adult in custody using the
6 least restrictive means possible.

7 (6)(a) Upon receipt of a petition described in this section, the court shall appoint counsel
8 to represent the petitioner. A determination of financial eligibility is not required for counsel
9 appointed under this subsection. The compensation for legal counsel and costs and expenses
10 necessary for representation of the petitioner shall be determined and paid by the public
11 defense services executive director as provided in ORS 135.055.

12 (b) The petitioner may file an amended petition within 30 days of the appointment of
13 counsel.

14 (c) The petitioner shall have the opportunity to subpoena witnesses and documents prior
15 to the hearing.

16 (7)(a) The court shall hold a hearing within 60 days of the filing date of the petition. The
17 court may extend the time for the hearing for good cause.

18 (b) At the hearing, the parties shall have the opportunity to present additional evidence.
19 The court may affirm, reverse or remand the order in the same manner as provided in ORS
20 183.482.

21 (c) The court shall make a decision on the petition in an expedited manner.

22 (8) The filing of a petition under this section does not stay any decision or order of the
23 department, but the department may stay the decision or order, or the court may stay the
24 decision or order, upon an application on such terms that the court deems proper.

25 (9) A court's decision on a petition described in this section is subject to discretionary
26 review by the Supreme Court.

27 (10)(a) In a proceeding described in this section, the filing fee shall be deferred and, if the
28 court grants the petition, filing fees shall be waived.

29 (b) If the petitioner appeals the decision on the petition, the appellate filing fee shall be
30 deferred and, if the appellant prevails, filing fees shall be waived.

31 SECTION 3. ORS 421.194 is repealed.
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