

# House Bill 3227

Sponsored by Representative FLORES

## 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**.

Revises terminology for verdicts of guilty except for insanity.

### A BILL FOR AN ACT

1  
2 Relating to insanity; amending ORS 133.833, 147.275, 161.295, 161.319, 161.325, 161.327, 161.336,  
3 161.341, 162.135, 166.250, 166.291, 166.470, 181.085, 181.585, 181.594, 181.595, 480.225, 809.380,  
4 809.419 and 810.375.

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

6 **SECTION 1.** ORS 161.295 is amended to read:

7 161.295. (1) A person is [*guilty except for*] **not guilty by reason of** insanity if, as a result of  
8 mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial  
9 capacity either to appreciate the criminality of the conduct or to conform the conduct to the re-  
10 quirements of law.

11 (2) As used in chapter 743, Oregon Laws 1971, the terms "mental disease or defect" do not in-  
12 clude an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do  
13 they include any abnormality constituting solely a personality disorder.

14 **SECTION 2.** ORS 133.833 is amended to read:

15 133.833. (1) When the return to this state of a person charged with crime in this state is re-  
16 quired, the district attorney of the county in which the alleged crime is committed shall present to  
17 the Governor written application for a requisition for the return of the person charged, in which  
18 application shall be stated the name of the person so charged, the crime charged against the person,  
19 the approximate time, place and circumstances of its commission, the state in which the person is  
20 believed to be, including the location of the accused therein at the time the application is made, and  
21 certifying that in the opinion of the district attorney the interest of the public in the effective ad-  
22 ministration of criminal justice requires the arrest and return of the accused to this state for trial,  
23 and that the proceeding is not instituted to enforce a private claim.

24 (2) When the return to this state is required of a person who has been convicted of or found  
25 [*guilty except for*] **not guilty by reason of** insanity of a crime in this state and who has escaped  
26 from confinement or broken the terms of the release, probation or parole of such person, the district  
27 attorney of the county in which the offense was committed, the parole board, or the superintendent  
28 of the institution or sheriff of the county from which escape was made, shall present to the Governor  
29 a written application for a requisition for the return of such person, in which application shall be  
30 stated the name of the person, the crime of which the person was convicted or found [*guilty except*  
31 *for*] **not guilty by reason of** insanity, the circumstances of the escape from confinement or of the  
32 breach of the terms of release, probation or parole, the state in which the person is believed to be,

**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 including the location of the person therein at the time application is made.

2 (3) The application shall be verified by affidavit, shall be executed in duplicate and shall be ac-  
 3 companied by two certified copies of the indictment returned, or information and affidavit filed, or  
 4 of the complaint made to the magistrate, stating the offense with which the accused is charged, or  
 5 of the judgment of conviction or of the sentence. The district attorney, parole board, superintendent  
 6 or sheriff may also attach such further affidavits and other documents in duplicate as the district  
 7 attorney, parole board, superintendent or sheriff shall deem proper to be submitted with such ap-  
 8 plication. One copy of the application, with the action of the Governor indicated by indorsement  
 9 thereon, and one of the certified copies of the indictment, complaint, information and affidavit, or  
 10 of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State  
 11 to remain of record in that office. The other copies of all papers shall be forwarded with the Gov-  
 12 ernor's requisition.

13 **SECTION 3.** ORS 147.275 is amended to read:

14 147.275. (1)(a) Before any person or other legal entity pays or delivers the proceeds of a  
 15 compensable crime to any individual charged with or convicted of committing such a crime in this  
 16 state or found [*guilty except for*] **not guilty by reason of** insanity with regard to such a crime, or  
 17 to a representative or assignee of that individual, the person or legal entity shall promptly notify  
 18 the Department of Justice and pay or deliver to the department the proceeds that would otherwise  
 19 be paid to the individual charged, convicted or found [*guilty except for*] **not guilty by reason of**  
 20 insanity, or the representative or assignee of the individual.

21 (b) When any person or other legal entity contracts to pay the proceeds of the compensable  
 22 crime to any individual charged with or convicted of committing such a crime in this state or found  
 23 [*guilty except for*] **not guilty by reason of** insanity with regard to such a crime, or whenever any  
 24 person or other legal entity contracts with a representative or assignee of that individual to pay the  
 25 proceeds of the compensable crime committed by that individual, the person or legal entity shall  
 26 promptly submit a copy of the contract to the Department of Justice and pay to the department any  
 27 proceeds which otherwise, under the terms of the contract, would be paid to the accused or con-  
 28 victed individual, the person found [*guilty except for*] **not guilty by reason of** insanity or the rep-  
 29 resentative or assignee of the individual.

30 (2) The department shall deposit proceeds received under this section in an escrow account es-  
 31 tablished for the benefit of the victims or dependents of the victims of the crime for which the in-  
 32 dividual whose proceeds are placed in the escrow account is convicted or found [*guilty except for*]  
 33 **not guilty by reason of** insanity. Proceeds in the escrow account shall be paid to satisfy judgments  
 34 as provided in subsection (3) of this section or restitution orders under ORS 137.103 to 137.109.

35 (3) A person is entitled to payment of proceeds from the escrow account established under this  
 36 section if:

37 (a) The person is the victim or a dependent of a deceased victim of a compensable crime for  
 38 which the individual whose proceeds are placed in the escrow account is convicted or found [*guilty*  
 39 *except for*] **not guilty by reason of** insanity; and

40 (b) Within five years after the establishment of the escrow account, the person commences a  
 41 civil action against such individual in a court of competent jurisdiction and receives a money judg-  
 42 ment for damages suffered as a result of the crime.

43 (4) The department, at least once every year for five years from the date it establishes the  
 44 escrow account, shall cause to have published a legal notice in a newspaper of general circulation  
 45 in the county in which the crime was committed and in the counties adjoining such county advising

1 victims that the escrow proceeds are available to satisfy judgments pursuant to this section. The  
 2 department may, in its discretion, provide for such additional notice as it considers necessary.

3 (5) Upon dismissal of charges or acquittal of any individual whose proceeds are placed in an  
 4 escrow account under this section, the department shall immediately pay such individual the pro-  
 5 ceeds in the escrow account.

6 (6) Upon a showing by any convicted individual or the individual found [*guilty except for*] **not**  
 7 **guilty by reason of** insanity that five years have elapsed from the establishment of the escrow ac-  
 8 count in which the individual's proceeds have been placed under this section and that no civil  
 9 actions by victims or dependents of deceased victims of the individual's crime have been commenced,  
 10 the department shall immediately pay any proceeds in the escrow account to such individual or the  
 11 legal representative of the individual.

12 (7) Any action taken by an individual charged with or convicted of committing a compensable  
 13 crime in this state, including, but not limited to, execution of a power of attorney or creation of a  
 14 corporate entity, to defeat the purpose of this section is null and void. Any action taken by an in-  
 15 dividual found [*guilty except for*] **not guilty by reason of** insanity with regard to a compensable  
 16 crime in this state is similarly null and void.

17 (8) When an escrow account has insufficient funds to meet all judgments presented by victims  
 18 or their representatives, the escrow account shall be prorated among the victims or their represen-  
 19 tatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments.  
 20 There shall be no payment from the escrow account to a victim or a victim's representative until  
 21 either the amounts of all unsatisfied judgments are determined, or it is determined that the payment  
 22 for an unsatisfied judgment will not diminish the escrow account so that other potential victim  
 23 claims could not be satisfied.

24 (9)(a) The Department of Justice may notify any person whom the department believes to be in  
 25 possession of the proceeds of a compensable crime, or to have contracted to pay the proceeds of a  
 26 compensable crime as described in subsection (1) of this section, of the requirements of this section.

27 (b) Any person who disputes whether that person either possesses or has contracted to pay the  
 28 proceeds of a compensable crime may ask for a contested case hearing on the question before the  
 29 department. The hearing shall be conducted in accordance with the provisions of ORS chapter 183.

30 (10) Notwithstanding subsection (9) of this section, the Department of Justice may seek provi-  
 31 sional remedies, including garnishment or injunctive relief, to prevent the payment of money or  
 32 property which the department asserts to be the proceeds of a compensable crime to an individual  
 33 charged with or convicted of committing such a crime in this state or found [*guilty except for*] **not**  
 34 **guilty by reason of** insanity with regard to such a crime, or to the representative or assignee of  
 35 that individual, until the character of the property or money is determined.

36 (11) The Department of Justice may adopt rules to carry out the purposes of this section.

37 (12) As used in this section, "proceeds of a compensable crime" means any property or assets,  
 38 tangible or intangible:

39 (a) That are obtained during the commission of the compensable crime; or

40 (b) That are obtained after commission of the crime primarily because of commission of the  
 41 compensable crime.

42 (13) As used in this section, "proceeds of a compensable crime" does not include property or  
 43 assets that have been forfeited pursuant to law or that constitute contraband. It also does not in-  
 44 clude property or assets in which the individual charged or convicted of committing a compensable  
 45 crime has no legal or equitable interest.

1       **SECTION 4.** ORS 161.319 is amended to read:

2       161.319. When the defendant is found [*guilty except for*] **not guilty by reason of** insanity [*under*  
3       *ORS 161.295*], the verdict and judgment shall so state.

4       **SECTION 5.** ORS 161.325 is amended to read:

5       161.325. (1) After entry of judgment of [*guilty except for*] **not guilty by reason of** insanity, the  
6       court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by  
7       either party, make an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

8       (2) If the court makes an order as provided in ORS 161.327, it shall also:

9       (a) Determine on the record the offense of which the person otherwise would have been con-  
10      victed;

11      (b) State on the record the mental disease or defect on which the defendant relied for the [*guilty*  
12      *except for*] **not guilty by reason of** insanity defense; and

13      (c) Make specific findings on whether there is a victim of the crime for which the defendant has  
14      been found [*guilty except for*] **not guilty by reason of** insanity and, if so, whether the victim wishes  
15      to be notified, under ORS 161.326 (2), of any Psychiatric Security Review Board hearings concerning  
16      the defendant and of any conditional release, discharge or escape of the defendant.

17      (3) The court shall include any such findings in its order.

18      (4) Except under circumstances described in ORS 137.076 (4), whenever a defendant charged  
19      with any offense listed in ORS 137.076 (1) has been found **not** guilty of that offense [*except for*] **by**  
20      **reason of** insanity, the court shall, in any order entered under ORS 161.327 or 161.329, direct the  
21      defendant to submit to the obtaining of a blood or buccal sample in the manner provided in ORS  
22      137.076.

23      **SECTION 6.** ORS 161.327 is amended to read:

24      161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional  
25      determination under ORS 161.325, if the court finds that the person would have been guilty of a  
26      felony, or of a misdemeanor during a criminal episode in the course of which the person caused  
27      physical injury or risk of physical injury to another, the court shall order that a psychiatric or  
28      psychological evaluation be performed and a report of the evaluation be provided to the court if an  
29      evaluation was not performed or a report was not provided to the court prior to trial. Upon receipt  
30      of the evaluation, the court shall order that the person be placed under the jurisdiction of the Psy-  
31      chiatric Security Review Board for care and treatment if the court finds by a preponderance of the  
32      evidence that the person is affected by mental disease or defect and presents a substantial danger  
33      to others requiring commitment to:

34      (A) A state hospital designated by the Department of Human Services if the person is at least  
35      18 years of age; or

36      (B) A secure intensive community inpatient facility designated by the Department of Human  
37      Services if the person is under 18 years of age.

38      (b) The period of jurisdiction of the board is equal to the maximum sentence provided by statute  
39      for the crime for which the person was found [*guilty except for*] **not guilty by reason of** insanity.

40      (c) When a court orders a psychiatric or psychological evaluation of a financially eligible person  
41      under this subsection, the court shall order the public defense services executive director to pay a  
42      reasonable fee for the evaluation from funds available for the purpose.

43      (2) The court shall determine whether the person should be committed to a state hospital, or to  
44      a secure intensive community inpatient facility, designated by the Department of Human Services  
45      or conditionally released pending any hearing before the board as follows:

1 (a) If the court finds that the person presents a substantial danger to others and is not a proper  
 2 subject for conditional release, the court shall order the person committed to a state hospital des-  
 3 ignated by the Department of Human Services if the person is at least 18 years of age, or to a secure  
 4 intensive community inpatient facility designated by the Department of Human Services if the per-  
 5 son is under 18 years of age, for custody, care and treatment pending hearing before the board in  
 6 accordance with ORS 161.341 to 161.351.

7 (b) If the court finds that the person presents a substantial danger to others but that the person  
 8 can be adequately controlled with supervision and treatment if conditionally released and that nec-  
 9 essary supervision and treatment are available, the court may order the person conditionally re-  
 10 leased, subject to those supervisory orders of the court as are in the best interests of justice, the  
 11 protection of society and the welfare of the person. The court shall designate a person or state,  
 12 county or local agency to supervise the person upon release, subject to those conditions as the court  
 13 directs in the order for conditional release. Prior to the designation, the court shall notify the per-  
 14 son or agency to whom conditional release is contemplated and provide the person or agency an  
 15 opportunity to be heard before the court. After receiving an order entered under this paragraph, the  
 16 person or agency designated shall assume supervision of the person pursuant to the direction of the  
 17 Psychiatric Security Review Board. The person or agency designated as supervisor shall be required  
 18 to report in writing no less than once per month to the board concerning the supervised person's  
 19 compliance with the conditions of release.

20 (3) For purposes of this section, a person affected by a mental disease or defect in a state of  
 21 remission is considered to have a mental disease or defect requiring supervision when the disease  
 22 may, with reasonable medical probability, occasionally become active and, when active, render the  
 23 person a danger to others.

24 (4) In determining whether a person should be conditionally released, the court may order  
 25 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

26 (5) In determining whether a person should be committed to a state hospital or to a secure in-  
 27 tensive community inpatient facility or conditionally released, the court shall have as its primary  
 28 concern the protection of society.

29 (6) Upon placing a person on conditional release, the court shall notify the board in writing of  
 30 the court's conditional release order, the supervisor appointed, and all other conditions of release,  
 31 and the person shall be on conditional release pending hearing before the board in accordance with  
 32 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this  
 33 section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction  
 34 over the person.

35 (7) An order of the court under this section is a final order appealable by the person found  
 36 [*guilty except for*] **not guilty by reason of** insanity in accordance with ORS 19.205 (5).  
 37 Notwithstanding ORS 19.255, notice of an appeal under this section shall be served and filed within  
 38 90 days after the order appealed from is entered in the register. The person shall be entitled on  
 39 appeal to suitable counsel possessing skills and experience commensurate with the nature and  
 40 complexity of the case. If the person is financially eligible, suitable counsel shall be appointed in the  
 41 manner provided in ORS 138.500 (1), and the compensation for counsel and costs and expenses of the  
 42 person necessary to the appeal shall be determined and paid as provided in ORS 138.500.

43 (8) Upon placing a person under the jurisdiction of the board, the court shall notify the person  
 44 of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336  
 45 (7) and 161.341 (4).

1       **SECTION 7.** ORS 161.336 is amended to read:

2       161.336. (1) If the Psychiatric Security Review Board determines that the person presents a  
3 substantial danger to others but can be adequately controlled with supervision and treatment if  
4 conditionally released and that necessary supervision and treatment are available, the board may  
5 order the person conditionally released, subject to those supervisory orders of the board as are in  
6 the best interests of justice, the protection of society and the welfare of the person. The board may  
7 designate any person or state, county or local agency the board considers capable of supervising the  
8 person upon release, subject to those conditions as the board directs in the order for conditional  
9 release. Prior to the designation, the board shall notify the person or agency to whom conditional  
10 release is contemplated and provide the person or agency an opportunity to be heard before the  
11 board. After receiving an order entered under this section, the person or agency designated shall  
12 assume supervision of the person pursuant to the direction of the board.

13       (2) Conditions of release contained in orders entered under this section may be modified from  
14 time to time and conditional releases may be terminated by order of the board as provided in ORS  
15 161.351.

16       (3) For purposes of this section, a person affected by a mental disease or defect in a state of  
17 remission is considered to have a mental disease or defect requiring supervision when the disease  
18 may, with reasonable medical probability, occasionally become active and, when active, render the  
19 person a danger to others. The person may be continued on conditional release by the board as  
20 provided in this section.

21       (4)(a) As a condition of release, the board may require the person to report to any state or local  
22 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is  
23 recommended, the board may order the person, as a condition of release, to cooperate with and ac-  
24 cept the treatment from the facility.

25       (b) The facility to which the person has been referred for evaluation shall perform the evalu-  
26 ation and submit a written report of its findings to the board. If the facility finds that treatment of  
27 the person is appropriate, it shall include its recommendations for treatment in the report to the  
28 board.

29       (c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a  
30 regular basis concerning the progress of the person.

31       (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the  
32 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS  
33 192.501 to 192.505.

34       (e) The facility shall comply with any other conditions of release prescribed by order of the  
35 board.

36       (5) If at any time while the person is under the jurisdiction of the board it appears to the board  
37 or its chairperson that the person has violated the terms of the conditional release or that the  
38 mental health of the individual has changed, the board or its chairperson may order the person re-  
39 turned for evaluation or treatment to a state hospital designated by the Department of Human Ser-  
40 vices if the person is at least 18 years of age, or to a secure intensive community inpatient facility  
41 designated by the Department of Human Services if the person is under 18 years of age. A written  
42 order of the board, or its chairperson on behalf of the board, is sufficient warrant for any law  
43 enforcement officer to take into custody such person and transport the person accordingly. A sheriff,  
44 municipal police officer, constable, parole and probation officer, prison official or other peace officer  
45 shall execute the order, and the person shall be returned as soon as practicable to the custody of

1 the Department of Human Services. Within 20 days following the return of the person to the custody  
2 of the Department of Human Services, the board shall conduct a hearing. Notice of the time and  
3 place of the hearing shall be given to the person, the attorney representing the person and the At-  
4 torney General. The board may continue the person on conditional release or, if it finds by a pre-  
5 ponderance of the evidence that the person is affected by mental disease or defect and presents a  
6 substantial danger to others and cannot be adequately controlled if conditional release is continued,  
7 it may order the person committed to a state hospital designated by the Department of Human  
8 Services if the person is at least 18 years of age, or to a secure intensive community inpatient fa-  
9 cility designated by the Department of Human Services if the person is under 18 years of age. The  
10 state must prove by a preponderance of the evidence the person's unfitness for conditional release.  
11 A person in custody pursuant to this subsection has the same rights as any person appearing before  
12 the board pursuant to ORS 161.346.

13 (6) The community mental health and developmental disabilities program director, the director  
14 of the facility providing treatment to a person on conditional release, any peace officer or any per-  
15 son responsible for the supervision of a person on conditional release may take a person on condi-  
16 tional release into custody or request that the person be taken into custody if there is reasonable  
17 cause to believe the person is a substantial danger to others because of mental disease or defect and  
18 that the person is in need of immediate care, custody or treatment. Any person taken into custody  
19 pursuant to this subsection shall be transported as soon as practicable to a state hospital designated  
20 by the Department of Human Services if the person is at least 18 years of age, or to a secure in-  
21 tensive community inpatient facility designated by the Department of Human Services if the person  
22 is under 18 years of age. A person taken into custody under this subsection has the same rights as  
23 any person appearing before the board pursuant to ORS 161.346.

24 (7)(a) Any person conditionally released under this section may apply to the board for discharge  
25 from or modification of an order of conditional release on the ground that the person is no longer  
26 affected by mental disease or defect or, if still so affected, no longer presents a substantial danger  
27 to others and no longer requires supervision, medication, care or treatment. Notice of the hearing  
28 on an application for discharge or modification of an order of conditional release shall be made to  
29 the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a  
30 preponderance of the evidence the applicant's fitness for discharge or modification of the order of  
31 conditional release. Applications by the person for discharge or modification of conditional release  
32 shall not be filed more often than once every six months.

33 (b) Upon application by any person or agency responsible for supervision or treatment pursuant  
34 to an order of conditional release, the board shall conduct a hearing to determine if the conditions  
35 of release shall be continued, modified or terminated. The application shall be accompanied by a  
36 report setting forth the facts supporting the application.

37 (8) The total period of commitment and conditional release ordered pursuant to this section may  
38 not exceed the maximum sentence provided by statute for the crime for which the person was found  
39 *[guilty except for]* **not guilty by reason of** insanity.

40 (9) The board shall maintain and keep current the medical, social and criminal history of all  
41 persons committed to its jurisdiction. The confidentiality of records maintained by the board shall  
42 be determined pursuant to ORS 192.501 to 192.505.

43 (10) In determining whether a person should be committed to a state hospital or to a secure  
44 intensive community inpatient facility, conditionally released or discharged, the board shall have as  
45 its primary concern the protection of society.

1        **SECTION 8.** ORS 161.341 is amended to read:

2        161.341. (1) If the Psychiatric Security Review Board finds, upon its initial hearing, that the  
3 person presents a substantial danger to others and is not a proper subject for conditional release,  
4 the board shall order the person committed to, or retained in, a state hospital designated by the  
5 Department of Human Services if the person is at least 18 years of age, or to a secure intensive  
6 community inpatient facility designated by the Department of Human Services if the person is under  
7 18 years of age, for custody, care and treatment. The period of commitment ordered by the board  
8 may not exceed the maximum sentence provided by statute for the crime for which the person was  
9 found [*guilty except for*] **not guilty by reason of** insanity.

10        (2) If at any time after the commitment of a person to a state hospital, or to a secure intensive  
11 community inpatient facility, designated by the Department of Human Services under this section,  
12 the superintendent of the hospital or the director of the secure intensive community inpatient fa-  
13 cility is of the opinion that the person is no longer affected by mental disease or defect, or, if so  
14 affected, no longer presents a substantial danger to others or that the person continues to be af-  
15 fected by mental disease or defect and continues to be a danger to others, but that the person can  
16 be controlled with proper care, medication, supervision and treatment if conditionally released, the  
17 superintendent or director shall apply to the board for an order of discharge or conditional release.  
18 The application shall be accompanied by a report setting forth the facts supporting the opinion of  
19 the superintendent or director. If the application is for conditional release, the application must also  
20 be accompanied by a verified conditional release plan. The board shall hold a hearing on the appli-  
21 cation within 60 days of its receipt. Not less than 20 days prior to the hearing before the board,  
22 copies of the report shall be sent to the Attorney General.

23        (3) The attorney representing the state may choose a psychiatrist or licensed psychologist to  
24 examine the person prior to the initial or any later decision by the board on discharge or condi-  
25 tional release. The results of the examination shall be in writing and filed with the board, and shall  
26 include, but need not be limited to, an opinion as to the mental condition of the person, whether the  
27 person presents a substantial danger to others and whether the person could be adequately con-  
28 trolled with treatment as a condition of release.

29        (4) Any person who has been committed to a state hospital, or to a secure intensive community  
30 inpatient facility, designated by the Department of Human Services for custody, care and treatment  
31 or another person acting on the person's behalf may apply to the board for an order of discharge  
32 or conditional release upon the grounds:

33        (a) That the person is no longer affected by mental disease or defect;

34        (b) If so affected, that the person no longer presents a substantial danger to others; or

35        (c) That the person continues to be affected by a mental disease or defect and would continue  
36 to be a danger to others without treatment, but that the person can be adequately controlled and  
37 given proper care and treatment if placed on conditional release.

38        (5) When application is made under subsection (4) of this section, the board shall require that  
39 a report from the superintendent of the hospital or the director of the secure intensive community  
40 inpatient facility be prepared and transmitted as provided in subsection (2) of this section. The ap-  
41 plicant must prove by a preponderance of the evidence the applicant's fitness for discharge or con-  
42 ditional release under the standards of subsection (4) of this section, unless more than two years  
43 has passed since the state had the burden of proof on that issue, in which case the state shall have  
44 the burden of proving by a preponderance of the evidence the applicant's lack of fitness for dis-  
45 charge or conditional release. Applications for discharge or conditional release under subsection (4)

1 of this section shall not be filed more often than once every six months commencing with the date  
 2 of the initial board hearing.

3 (6) The board is not required to hold a hearing on a first application under subsection (4) of this  
 4 section any sooner than 90 days after the initial hearing. However, hearings resulting from any  
 5 subsequent requests shall be held within 60 days of the filing of the application.

6 (7)(a) In no case shall any person committed by the court under ORS 161.327 to a state hospital,  
 7 or to a secure intensive community inpatient facility, designated by the Department of Human Ser-  
 8 vices be held in the hospital or facility for more than 90 days from the date of the court’s commit-  
 9 ment order without an initial hearing before the board to determine whether the person should be  
 10 conditionally released or discharged.

11 (b) In no case shall a person be held pursuant to this section for a period of time exceeding two  
 12 years without a hearing before the board to determine whether the person should be conditionally  
 13 released or discharged.

14 **SECTION 9.** ORS 162.135 is amended to read:

15 162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

16 (1)(a) “Contraband” means:

17 (A) Controlled substances as defined in ORS 475.005;

18 (B) Drug paraphernalia as defined in ORS 475.525;

19 (C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or  
 20 in the control of an inmate confined in a correctional facility; or

21 (D) Any article or thing which a person confined in a correctional facility, youth correction fa-  
 22 cility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and  
 23 whose use would endanger the safety or security of such institution or any person therein.

24 (b) “Contraband” does not include authorized currency possessed by an inmate in a work release  
 25 facility.

26 (2) “Correctional facility” means any place used for the confinement of persons charged with  
 27 or convicted of a crime or otherwise confined under a court order and includes but is not limited  
 28 to a youth correction facility. “Correctional facility” applies to a state hospital or a secure intensive  
 29 community inpatient facility only as to persons detained therein charged with or convicted of a  
 30 crime, or detained therein after having been found [*guilty except for*] **not guilty by reason of** in-  
 31 sanity of a crime [*under ORS 161.290 to 161.370*].

32 (3) “Currency” means paper money and coins that are within the correctional institution.

33 (4) “Custody” means the imposition of actual or constructive restraint by a peace officer pur-  
 34 suant to an arrest or court order, but does not include detention in a correctional facility, youth  
 35 correction facility or a state hospital.

36 (5) “Escape” means the unlawful departure of a person from custody or a correctional facility.  
 37 “Escape” includes the unauthorized departure or absence from this state or failure to return to this  
 38 state by a person who is under the jurisdiction of the Psychiatric Security Review Board.  
 39 “Escape” does not include failure to comply with provisions of a conditional release in ORS 135.245.

40 (6) “Youth correction facility” means:

41 (a) A youth correction facility as defined in ORS 420.005; and

42 (b) A detention facility as defined in ORS 419A.004.

43 (7) “State hospital” means the Oregon State Hospital, Eastern Oregon Psychiatric Center,  
 44 Eastern Oregon Training Center and any other hospital established by law for similar purposes.

45 (8) “Unauthorized departure” means the unauthorized departure of a person confined by court

1 order in a youth correction facility or a state hospital that, because of the nature of the court order,  
 2 is not a correctional facility as defined in this section, or the failure to return to custody after any  
 3 form of temporary release or transitional leave from a correctional facility.

4 **SECTION 10.** ORS 166.250 is amended to read:

5 166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,  
 6 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm  
 7 if the person knowingly:

8 (a) Carries any firearm concealed upon the person;

9 (b) Possesses a handgun that is concealed and readily accessible to the person within any vehi-  
 10 cle; or

11 (c) Possesses a firearm and:

12 (A) Is under 18 years of age;

13 (B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having  
 14 committed an act which, if committed by an adult, would constitute a felony or a misdemeanor in-  
 15 volving violence, as defined in ORS 166.470; and

16 (ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being  
 17 charged under this section;

18 (C) Has been convicted of a felony or found [*guilty, except for insanity under ORS 161.295,*] **not**  
 19 **guilty by reason of insanity** of a felony;

20 (D) Was committed to the Department of Human Services under ORS 426.130; or

21 (E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be  
 22 prohibited from purchasing or possessing a firearm as a result of that mental illness.

23 (2) This section does not prohibit:

24 (a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from pos-  
 25 sessed a firearm:

26 (A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or  
 27 guardian or by another person with the consent of the minor's parent or guardian; or

28 (B) Temporarily for hunting, target practice or any other lawful purpose; or

29 (b) Any citizen of the United States over the age of 18 years who resides in or is temporarily  
 30 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270  
 31 and subsection (1) of this section, from owning, possessing or keeping within the person's place of  
 32 residence or place of business any handgun, and no permit or license to purchase, own, possess or  
 33 keep any such firearm at the person's place of residence or place of business is required of any such  
 34 citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle  
 35 while used, for whatever period of time, as residential quarters.

36 (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

37 (4) Unlawful possession of a firearm is a Class A misdemeanor.

38 **SECTION 11.** ORS 166.291 is amended to read:

39 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed  
 40 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set  
 41 out in this section, shall issue the person a concealed handgun license if the person:

42 (a)(A) Is a citizen of the United States; or

43 (B) Is a legal resident alien who can document continuous residency in the county for at least  
 44 six months and has declared in writing to the United States Citizenship and Immigration Services  
 45 the intent to acquire citizenship status and can present proof of the written declaration to the

1 sheriff at the time of application for the license;

2 (b) Is at least 21 years of age;

3 (c) Has a principal residence in the county in which the application is made;

4 (d) Has no outstanding warrants for arrest;

5 (e) Is not free on any form of pretrial release;

6 (f) Demonstrates competence with a handgun by any one of the following:

7 (A) Completion of any hunter education or hunter safety course approved by the State Depart-  
8 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component  
9 of the course;

10 (B) Completion of any National Rifle Association firearms safety or training course if handgun  
11 safety was a component of the course;

12 (C) Completion of any firearms safety or training course or class available to the general public  
13 offered by law enforcement, community college, or private or public institution or organization or  
14 firearms training school utilizing instructors certified by the National Rifle Association or a law  
15 enforcement agency if handgun safety was a component of the course;

16 (D) Completion of any law enforcement firearms safety or training course or class offered for  
17 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-  
18 cers if handgun safety was a component of the course;

19 (E) Presents evidence of equivalent experience with a handgun through participation in organ-  
20 ized shooting competition or military service;

21 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been  
22 revoked; or

23 (G) Completion of any firearms training or safety course or class conducted by a firearms in-  
24 structor certified by a law enforcement agency or the National Rifle Association if handgun safety  
25 was a component of the course;

26 (g) Has never been convicted of a felony or found [*guilty, except for insanity under ORS*  
27 *161.295,*] **not guilty by reason of insanity** of a felony;

28 (h) Has not been convicted of a misdemeanor or found [*guilty, except for insanity under ORS*  
29 *161.295,*] **not guilty by reason of insanity** of a misdemeanor within the four years prior to the ap-  
30 plication;

31 (i) Has not been committed to the Department of Human Services under ORS 426.130;

32 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that  
33 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

34 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,  
35 while a minor, the person was found to be within the jurisdiction of the juvenile court for having  
36 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-  
37 volving violence, as defined in ORS 166.470; and

38 (L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,  
39 107.700 to 107.735 or 163.738.

40 (2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or  
41 has had the person's record expunged under the laws of this state or equivalent laws of other ju-  
42 risdictions is not subject to the disabilities in subsection (1)(g) to (k) of this section.

43 (3) Before the sheriff may issue a license:

44 (a) The application must state the applicant's legal name, current address and telephone number,  
45 date and place of birth, hair and eye color and height and weight. The application must also list the

1 applicant's residence address or addresses for the previous three years. The application must contain  
2 a statement by the applicant that the applicant meets the requirements of subsection (1) of this  
3 section. The application may include the Social Security number of the applicant if the applicant  
4 voluntarily provides this number. The application must be signed by the applicant.

5 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff  
6 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to  
7 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal  
8 records check is necessary, the sheriff shall request the Department of State Police to conduct the  
9 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal  
10 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records  
11 check and may not keep any record of the fingerprints. The Department of State Police shall report  
12 the results of the fingerprint-based criminal records check to the sheriff. The Department of State  
13 Police shall also furnish the sheriff with any information about the applicant that the Department  
14 of State Police may have in its possession from its central bureau of criminal identification includ-  
15 ing, but not limited to, manual or computerized criminal offender information.

16 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-  
17 quest. The forms shall be uniform throughout the state in substantially the following form:

---

18  
19  
20 APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

21 Date \_\_\_\_\_

22 I hereby declare as follows:

23 I am a citizen of the United States or a legal resident alien who can document continuous res-  
24 idency in the county for at least six months and have declared in writing to the United States Cit-  
25 izenship and Immigration Services my intention to become a citizen and can present proof of the  
26 written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have  
27 been discharged from the jurisdiction of the juvenile court for more than four years if, while a mi-  
28 nor, I was found to be within the jurisdiction of the juvenile court for having committed an act that,  
29 if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined  
30 in ORS 166.470. I have never been convicted of a felony or found [*guilty, except for insanity under*  
31 *ORS 161.295,*] **not guilty by reason of insanity** of a felony in the State of Oregon or elsewhere. I  
32 have not, within the last four years, been convicted of a misdemeanor or found [*guilty, except for*  
33 *insanity under ORS 161.295,*] **not guilty by reason of insanity** of a misdemeanor. There are no  
34 outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not  
35 been committed to the Department of Human Services under ORS 426.130, nor have I been found  
36 mentally ill and presently subject to an order prohibiting me from purchasing or possessing a  
37 firearm because of mental illness. If any of the previous conditions do apply to me, I have been  
38 granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 or 18  
39 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS  
40 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738. I understand I will be  
41 fingerprinted and photographed.

42  
43 Legal name \_\_\_\_\_

44 Age \_\_\_\_\_ Date of birth \_\_\_\_\_

45 Place of birth \_\_\_\_\_

1 Social Security number \_\_\_\_\_

2 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-  
3 thorized under ORS 166.291. It will be used only as a means of identification.)

4  
5 Proof of identification (Two pieces of current identification are required, one of which must bear a  
6 photograph of the applicant. The type of identification and the number on the identification are to  
7 be filled in by the sheriff.):

8 1. \_\_\_\_\_

9 2. \_\_\_\_\_

10  
11 Height \_\_\_\_\_ Weight \_\_\_\_\_

12 Hair color \_\_\_\_\_ Eye color \_\_\_\_\_

13  
14 Current address \_\_\_\_\_

(List residence addresses for the  
past three years on the back.)

15  
16  
17  
18 City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

19 Phone \_\_\_\_\_

20  
21 I have read the entire text of this application, and the statements therein are correct and true.  
22 (Making false statements on this application is a misdemeanor.)

23 \_\_\_\_\_  
24 (Signature of Applicant)

25  
26 Character references.

27 _____	
28 Name	28 Address
29 _____	29 _____
30 Name	30 Address

31  
32 Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ by \_\_\_\_\_

33  
34 Competence with handgun demonstrated by \_\_\_\_\_ (to be filled in by sheriff) Date \_\_\_\_\_ Fee  
35 Paid \_\_\_\_\_

36 License No. \_\_\_\_\_

37 \_\_\_\_\_

- 38
- 39 (5)(a) Fees for concealed handgun licenses are:
- 40 (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.
- 41 (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.
- 42 (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.
- 43 (b) The sheriff may enter into an agreement with the Department of Transportation to produce
- 44 the concealed handgun license.
- 45 (6) No civil or criminal liability shall attach to the sheriff or any authorized representative en-

1 gaged in the receipt and review of, or an investigation connected with, any application for, or in the  
 2 issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful  
 3 performance of duties under those sections.

4 (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff  
 5 shall enter the applicant's name into the Law Enforcement Data System indicating that the person  
 6 is an applicant for a concealed handgun license or is a license holder.

7 (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section  
 8 for a resident of a contiguous state who has a compelling business interest or other legitimate  
 9 demonstrated need.

10 **SECTION 12.** ORS 166.470 is amended to read:

11 166.470. (1) Unless relief has been granted under ORS 166.274, 18 U.S.C. 925(c) or the expunction  
 12 laws of this state or an equivalent law of another jurisdiction, a person may not intentionally sell,  
 13 deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that  
 14 the recipient:

15 (a) Is under 18 years of age;

16 (b) Has been convicted of a felony or found [*guilty, except for insanity under ORS 161.295,*] **not**  
 17 **guilty by reason of insanity** of a felony;

18 (c) Has any outstanding felony warrants for arrest;

19 (d) Is free on any form of pretrial release for a felony;

20 (e) Was committed to the Department of Human Services under ORS 426.130;

21 (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130  
 22 that the person be prohibited from purchasing or possessing a firearm as a result of that mental  
 23 illness; or

24 (g) Has been convicted of a misdemeanor involving violence or found [*guilty, except for insanity*  
 25 *under ORS 161.295,*] **not guilty by reason of insanity** of a misdemeanor involving violence within  
 26 the previous four years. As used in this paragraph, "misdemeanor involving violence" means a  
 27 misdemeanor described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b).

28 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or  
 29 reasonably should know is stolen.

30 (3) Subsection (1)(a) of this section does not prohibit:

31 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a  
 32 minor from transferring to the minor a firearm, other than a handgun; or

33 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other  
 34 lawful purpose.

35 (4) Violation of this section is a Class A misdemeanor.

36 **SECTION 13.** ORS 181.085 is amended to read:

37 181.085. (1) The Department of State Police is authorized to:

38 (a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325  
 39 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, and other physical evidence obtained  
 40 from analysis of such samples;

41 (b) Analyze such samples for the purpose of establishing the genetic profile of the donor or  
 42 otherwise determining the identity of persons or contract with other qualified public or private  
 43 laboratories to conduct that analysis;

44 (c) Maintain a criminal identification database containing information derived from blood and  
 45 buccal analyses;

1 (d) Utilize such samples to create statistical population frequency databases, provided that ge-  
 2 netic profiles or other such information in a population frequency database shall not be identified  
 3 with specific individuals; and

4 (e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and  
 5 buccal samples and for storing and destroying blood and buccal samples and other physical evidence  
 6 and criminal identification information obtained from such analysis. Procedures for blood and buccal  
 7 analyses may include all techniques which the department determines are accurate and reliable in  
 8 establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen  
 9 antibodies, polymorphic enzymes or polymorphic proteins.

10 (2) If the department is unable to analyze all samples due to lack of funds, the department shall  
 11 analyze samples in the following order:

12 (a) The department shall first analyze samples from persons convicted of:

13 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using  
 14 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to  
 15 163.427, 163.465 (1)(c), 163.525 and 163.670;

16 (B) Burglary in the second degree, as defined in ORS 164.215;

17 (C) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

18 (D) Burglary in the first degree, as defined in ORS 164.225;

19 (E) Assault in the first, second or third degree, as defined in ORS 163.165, 163.175 and 163.185;

20 (F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;

21 (G) Stalking, as defined in ORS 163.732;

22 (H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;

23 (I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;

24 (J) Criminally negligent homicide, as defined in ORS 163.145;

25 (K) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this para-  
 26 graph; or

27 (L) Murder, aggravated murder or an attempt to commit murder or aggravated murder.

28 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-  
 29 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to  
 30 475.894, 475.904, 475.906 or 475.914.

31 (c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,  
 32 the department shall analyze samples from persons convicted of any other felony.

33 (3) Notwithstanding subsection (2) of this section, the department may analyze a sample from a  
 34 lower priority before all samples in higher priorities are analyzed if required in a particular case  
 35 for law enforcement purposes.

36 (4) The department may not transfer or disclose any sample, physical evidence or criminal  
 37 identification information obtained, stored or maintained under authority of this section, ORS  
 38 137.076, 161.325 or 419C.473 (1) except:

39 (a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal  
 40 Justice Division of the Department of Justice for the purpose of establishing the identity of a person  
 41 in the course of a criminal investigation or proceeding;

42 (b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if  
 43 discovery or disclosure is required by a separate statutory or constitutional provision; or

44 (c) To a court or grand jury in response to a lawful subpoena or court order when the evidence  
 45 is not otherwise privileged and is necessary for criminal justice purposes.

1 (5) The department may not transfer or disclose any sample, physical evidence or criminal  
2 identification information under subsection (4) of this section unless the public agency or person  
3 receiving the sample, physical evidence or criminal identification information agrees to destroy the  
4 sample, physical evidence or criminal identification information if notified by the department that  
5 a court has reversed the conviction, judgment or order that created the obligation to provide the  
6 blood or buccal sample.

7 (6) Any public agency that receives a sample, physical evidence or criminal identification in-  
8 formation under authority of subsection (4) of this section may not disclose it except as provided in  
9 subsection (4) of this section.

10 (7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a  
11 record within a criminal identification database maintained under the authority of this section may,  
12 upon request, inspect that information at a time and location designated by the department. The  
13 department may deny inspection if it determines that there is a reasonable likelihood that such in-  
14 spection would prejudice a pending criminal investigation. In any case, the department is not re-  
15 quired to allow the person or anyone acting on the person's behalf to test any blood or buccal  
16 sample or other physical evidence. The department shall adopt procedures governing the inspection  
17 of records and samples and challenges to the accuracy of records. The procedures shall accommo-  
18 date the need to preserve the materials from contamination and destruction.

19 (8)(a) Whenever a court reverses the conviction, judgment or order that created an obligation  
20 to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1), the person who  
21 provided the sample may request destruction of the sample and any criminal identification record  
22 created in connection with that sample.

23 (b) Upon receipt of a written request for destruction pursuant to this section and a certified  
24 copy of the court order reversing the conviction, judgment or order, the department shall destroy  
25 any sample received from the person, any physical evidence obtained from that sample and any  
26 criminal identification records pertaining to the person, unless the department determines that the  
27 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate  
28 conviction, juvenile adjudication or finding of [*guilty except for*] **not guilty by reason of** insanity for  
29 an offense listed in ORS 137.076 (1). When the department destroys a sample, physical evidence or  
30 criminal identification record under this paragraph, the department shall notify any public agency  
31 or person to whom the sample, physical evidence or criminal identification information was trans-  
32 ferred or disclosed under subsection (4) of this section of the reversal of the conviction, judgment  
33 or order.

34 (c) The department is not required to destroy an item of physical evidence obtained from a blood  
35 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,  
36 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding this sub-  
37 section, no sample, physical evidence or criminal identification record is affected by an order to set  
38 aside a conviction under ORS 137.225.

39 (9) As used in this section, "convicted" includes a juvenile court finding of jurisdiction based  
40 on ORS 419C.005.

41 **SECTION 14.** ORS 181.585 is amended to read:

42 181.585. (1) For purposes of ORS 181.585 to 181.587, a person is a predatory sex offender if the  
43 person exhibits characteristics showing a tendency to victimize or injure others and has been con-  
44 victed of a sex crime listed in ORS 181.594 (4)(a) to (d), has been convicted of attempting to commit  
45 one of those crimes or has been found [*guilty except for*] **not guilty by reason of** insanity of one

1 of those crimes.

2 (2) In determining whether a person is a predatory sex offender, an agency shall use a sex  
 3 offender risk assessment scale approved by the Department of Corrections or a community cor-  
 4 rections agency.

5 **SECTION 15.** ORS 181.594 is amended to read:

6 181.594. As used in ORS 181.595, 181.596, 181.597 and 181.603:

7 (1) “Attends” means is enrolled on a full-time or part-time basis.

8 (2)(a) “Correctional facility” means any place used for the confinement of persons:

9 (A) Charged with or convicted of a crime or otherwise confined under a court order.

10 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that  
 11 if committed by an adult would constitute a crime.

12 (b) “Correctional facility” applies to a state hospital or a secure intensive community inpatient  
 13 facility only as to persons detained therein charged with or convicted of a crime, or detained therein  
 14 after being found [*guilty except for*] **not guilty by reason of** insanity [*under ORS 161.290 to*  
 15 *161.370*].

16 (3) “Institution of higher education” means a public or private educational institution that pro-  
 17 vides a program of post-secondary education.

18 (4) “Sex crime” means:

19 (a) Rape in any degree;

20 (b) Sodomy in any degree;

21 (c) Unlawful sexual penetration in any degree;

22 (d) Sexual abuse in any degree;

23 (e) Incest with a child victim;

24 (f) Using a child in a display of sexually explicit conduct;

25 (g) Encouraging child sexual abuse in any degree;

26 (h) Transporting child pornography into the state;

27 (i) Paying for viewing a child’s sexually explicit conduct;

28 (j) Compelling prostitution;

29 (k) Promoting prostitution;

30 (L) Kidnapping in the first degree if the victim was under 18 years of age;

31 (m) Contributing to the sexual delinquency of a minor;

32 (n) Sexual misconduct if the offender is at least 18 years of age;

33 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;

34 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent  
 35 or by a person found to be within the jurisdiction of the juvenile court;

36 (q) Any attempt to commit any of the crimes set forth in paragraphs (a) to (p) of this subsection;

37 (r) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a)  
 38 to (p) or (s) of this subsection; or

39 (s) Public indecency or private indecency, if the person has a prior conviction for a crime listed  
 40 in this subsection.

41 (5) “Sex offender” means a person who:

42 (a) Has been convicted of a sex crime;

43 (b) Has been found [*guilty except for*] **not guilty by reason of** insanity of a sex crime;

44 (c) Has been found to be within the jurisdiction of the juvenile court for having committed an  
 45 act that if committed by an adult would constitute a sex crime; or

1 (d) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a  
 2 crime that would constitute a sex crime if committed in this state.

3 (6) “Works” or “carries on a vocation” means full-time or part-time employment for more than  
 4 14 days within one calendar year whether financially compensated, volunteered or for the purpose  
 5 of governmental or educational benefit.

6 **SECTION 16.** ORS 181.595 is amended to read:

7 181.595. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, the agency or  
 8 official to whom a person reports under subsection (3) of this section shall complete a sex offender  
 9 registration form concerning the person when the person reports under subsection (3) of this section.

10 (b) When a person who is under supervision reports to the agency supervising the person, the  
 11 supervising agency may require the person to report instead to the Department of State Police, a  
 12 chief of police or a county sheriff and provide the supervising agency with proof of the completed  
 13 registration.

14 (2) Subsection (3) of this section applies to a person who:

15 (a) Is discharged, paroled or released on any form of supervised or conditional release from a  
 16 jail, prison or other correctional facility or detention facility in this state at which the person was  
 17 confined as a result of:

18 (A) Conviction of a sex crime;

19 (B) Having been found [*guilty except for*] **not guilty by reason of** insanity of a sex crime; or

20 (C) Having been found to be within the jurisdiction of the juvenile court for having committed  
 21 an act that if committed by an adult would constitute a sex crime;

22 (b) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a  
 23 crime that would constitute a sex crime if committed in this state;

24 (c) Is paroled to or otherwise placed in this state after having been found by a court in another  
 25 jurisdiction to have committed an act while the person was under 18 years of age that would con-  
 26 stitute a sex crime if committed in this state by an adult; or

27 (d) Is discharged by the court under ORS 161.329 after having been found [*guilty except for*] **not**  
 28 **guilty by reason of** insanity of a sex crime.

29 (3)(a) Within 10 days following discharge, release on parole, post-prison supervision or other  
 30 supervised or conditional release, the person shall report, in person, to the Department of State  
 31 Police, a chief of police or a county sheriff or to the supervising agency, if any.

32 (b) After making the report required by paragraph (a) of this subsection, the person shall report,  
 33 in person:

34 (A) Within 10 days of a change of residence;

35 (B) Once each year within 10 days of the person’s birth date, regardless of whether the person  
 36 changed residence;

37 (C) Within 10 days of the first day the person works at, carries on a vocation at or attends an  
 38 institution of higher education; and

39 (D) Within 10 days of a change in work, vocation or attendance status at an institution of higher  
 40 education.

41 (c) The person shall make the reports required by paragraph (b) of this subsection to the de-  
 42 partment, a chief of police, a county sheriff or the supervising agency, if any.

43 (d) If the person required to report under this subsection is a youth offender, as defined in ORS  
 44 419A.004, who is under supervision, the person shall make the reports required by paragraphs (a)  
 45 and (b) of this subsection to the agency supervising the person.

1 (e) The obligation to report under this subsection terminates if the conviction or adjudication  
 2 that gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

3 (4) As part of the registration requirement under this section, the Department of State Police,  
 4 the chief of police, the county sheriff or the supervising agency:

5 (a) Shall photograph the person and obtain the signature of the person; and

6 (b) May fingerprint the person.

7 **SECTION 17.** ORS 181.595, as amended by section 34, chapter 843, Oregon Laws 2005, is  
 8 amended to read:

9 181.595. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, the agency or  
 10 official to whom a person reports under subsection (3) of this section shall complete a sex offender  
 11 registration form concerning the person when the person reports under subsection (3) of this section.

12 (b) When a person who is under supervision reports to the agency supervising the person, the  
 13 supervising agency may require the person to report instead to the Department of State Police, a  
 14 chief of police or a county sheriff and provide the supervising agency with proof of the completed  
 15 registration.

16 (2) Subsection (3) of this section applies to a person who:

17 (a) Is discharged, paroled or released on any form of supervised or conditional release from a  
 18 jail, prison or other correctional facility or detention facility in this state at which the person was  
 19 confined as a result of:

20 (A) Conviction of a sex crime;

21 (B) Having been found [*guilty except for*] **not guilty by reason of** insanity of a sex crime; or

22 (C) Having been found to be within the jurisdiction of the juvenile court for having committed  
 23 an act that if committed by an adult would constitute a sex crime;

24 (b) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a  
 25 crime that would constitute a sex crime if committed in this state;

26 (c) Is paroled to or otherwise placed in this state after having been found by a court in another  
 27 jurisdiction to have committed an act while the person was under 18 years of age that would con-  
 28 stitute a sex crime if committed in this state by an adult;

29 (d) Is discharged or placed on conditional release by the juvenile panel of the Psychiatric Se-  
 30 curity Review Board after having been found to be responsible except for insanity under ORS  
 31 419C.411 for an act that would constitute a sex crime if committed by an adult; or

32 (e) Is discharged by the court under ORS 161.329 after having been found [*guilty except for*] **not**  
 33 **guilty by reason of** insanity of a sex crime.

34 (3)(a) Within 10 days following discharge, release on parole, post-prison supervision or other  
 35 supervised or conditional release, the person shall report, in person, to the Department of State  
 36 Police, a chief of police or a county sheriff or to the supervising agency, if any.

37 (b) After making the report required by paragraph (a) of this subsection, the person shall report,  
 38 in person:

39 (A) Within 10 days of a change of residence;

40 (B) Once each year within 10 days of the person's birth date, regardless of whether the person  
 41 changed residence;

42 (C) Within 10 days of the first day the person works at, carries on a vocation at or attends an  
 43 institution of higher education; and

44 (D) Within 10 days of a change in work, vocation or attendance status at an institution of higher  
 45 education.

1 (c) The person shall make the reports required by paragraph (b) of this subsection to the de-  
 2 partment, a chief of police, a county sheriff or the supervising agency, if any.

3 (d) If the person required to report under this subsection is a youth offender or young person,  
 4 as defined in ORS 419A.004, who is under supervision, the person shall make the reports required  
 5 by paragraphs (a) and (b) of this subsection to the agency supervising the person.

6 (e) The obligation to report under this subsection terminates if the conviction or adjudication  
 7 that gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

8 (4) As part of the registration requirement under this section, the Department of State Police,  
 9 the chief of police, the county sheriff or the supervising agency:

10 (a) Shall photograph the person and obtain the signature of the person; and

11 (b) May fingerprint the person.

12 **SECTION 18.** ORS 480.225 is amended to read:

13 480.225. (1) A person is eligible for a certificate of possession under ORS 480.235 if:

14 (a) The person has not been convicted, or found [*guilty except for*] **not guilty by reason of** in-  
 15 sanity [*under ORS 161.295*], of a misdemeanor involving violence, as defined in ORS 166.470, within  
 16 the previous four years. A person who has been so convicted is eligible under this subsection fol-  
 17 lowing the expiration of seven years after the date of final and unconditional discharge from all  
 18 imprisonment, probation and parole resulting from the conviction.

19 (b) The person has not been convicted[,] or found [*guilty except for*] **not guilty by reason of**  
 20 insanity [*under ORS 161.295,*] of **any felony**, and is not under indictment for[,] any felony.

21 (c) The person is not a fugitive from justice, has no outstanding warrants for arrest and is not  
 22 free on any form of pretrial release for any offenses listed in paragraphs (a) and (b) of this sub-  
 23 section.

24 (d) The person has not been adjudged to be mentally ill or mentally deficient pursuant to ORS  
 25 chapter 426 and 430.397 to 430.401 or ORS chapter 427. A person who previously has been so  
 26 adjudged is eligible under this subsection if, at the time of application for such a certificate, the  
 27 person produces a certified copy of a full discharge from the proper state hospital. The Department  
 28 of Human Services shall provide the State Fire Marshal with direct electronic access to the de-  
 29 partment's database of information identifying persons meeting the criteria of this section who were  
 30 committed or subject to an order under ORS 426.130. The State Fire Marshal and the Department  
 31 of Human Services shall enter into an agreement describing the access to information under this  
 32 subsection.

33 (e) The person is at least 21 years of age.

34 (f) The person does not use a fictitious name or make a material misrepresentation in applica-  
 35 tion for such a certificate.

36 (g)(A) The person has not been convicted of, and is not under indictment for, a criminal offense  
 37 involving a controlled substance as defined in ORS 475.005, other than the offense of driving under  
 38 the influence of intoxicants.

39 (B) Notwithstanding subparagraph (A) of this paragraph, a person who has had a certificate  
 40 denied or revoked due to conviction of a criminal offense involving a controlled substance is eligible  
 41 under this section following the expiration of seven years after the date of final and unconditional  
 42 discharge from all imprisonment, probation and parole resulting from the conviction.

43 (h) The person has been discharged from the jurisdiction of the juvenile court for more than four  
 44 years for an act that, if committed by an adult, would constitute a felony or a misdemeanor involv-  
 45 ing violence, as defined in ORS 166.470.

1 (i) The person is not the subject of a restraining order that alleges the person's possession of  
 2 explosives presents a credible threat to another person.

3 (j) The person has passed an examination administered by the State Fire Marshal that assesses  
 4 the person's knowledge of safety in the transportation and storage of explosives as required under  
 5 federal and state laws and regulations pertaining to explosives. The State Fire Marshal shall ex-  
 6 amine each applicant prior to issuance of a certificate of possession to the applicant. The State Fire  
 7 Marshal may by rule establish and collect an examination fee in an amount necessary to cover the  
 8 cost of administering the examination.

9 (k) The person certifies on the application for a certificate of possession that all explosives in  
 10 the person's possession will be used, stored and transported in accordance with federal, state and  
 11 local requirements.

12 (L) The person certifies that all explosives will be possessed, used, stored and transported in  
 13 accordance with federal, state and local requirements.

14 (2) Subsection (1)(a) and (b) of this section does not apply to a conviction or indictment that has  
 15 been expunged from a person's record under the laws of this state or equivalent laws of another  
 16 jurisdiction.

17 **SECTION 19.** ORS 809.380 is amended to read:

18 809.380. All of the following apply to a person whose driving privileges have been suspended:

19 (1) The period of suspension shall last as long as provided for that particular suspension by law.

20 (2) During the period of suspension, the person is not entitled to exercise any driving privileges  
 21 in this state except as provided under this subsection. Unless otherwise specifically provided by law,  
 22 a person whose driving privileges are suspended may obtain, if the person qualifies, a hardship  
 23 driver permit under ORS 807.240, and exercise driving privileges under the driver permit.

24 (3) Upon expiration of the suspension, the Department of Transportation shall reissue, upon re-  
 25 quest of the person, the suspended driving privileges and any license or driver permit that evidences  
 26 the driving privileges. The reissuance shall be without requalification by the person except that the  
 27 department may require the person to furnish evidence satisfactory to the department that the per-  
 28 son is qualified to continue to exercise driving privileges in this state before the department reissues  
 29 the driving privileges.

30 (4) The department may not issue any driving privileges in contradiction to this section.

31 (5) If the person fails to surrender to the department any license or driver permit issued as ev-  
 32 idence of driving privileges that are suspended, the person is subject to the penalties under ORS  
 33 809.500.

34 (6) No reinstatement of suspended driving privileges will be made by the department until the  
 35 fee for reinstatement of suspended driving privileges established under ORS 807.370 is paid to or  
 36 waived by the department. The department may waive the reinstatement fee for any of the following  
 37 reasons:

38 (a) The suspension occurred under ORS 809.419 for failure to take an examination upon request  
 39 of the department under ORS 807.340.

40 (b) The suspension occurred under ORS 809.419 for failure to obtain required medical clearance  
 41 upon request of the department under ORS 807.070 or 807.090.

42 (c) The suspension occurred under ORS 809.419 for incompetence to drive a motor vehicle or  
 43 having a mental or physical condition or impairment that affects the person's ability to safely op-  
 44 erate a motor vehicle.

45 (d) The suspension occurred under ORS 809.419 upon notification by the superintendent of a

1 hospital under ORS 807.700 that a person should not drive.

2 (e) The suspension occurred under ORS 809.419 upon notification by a court under ORS 810.375  
3 that a person charged with a traffic offense has been found [*guilty except for*] **not guilty by reason**  
4 **of** insanity.

5 (f) The department committed an error in issuing the suspension.

6 (g) The suspension was the result of an error committed by an insurance company in issuing or  
7 failing to issue a certification of insurance or in canceling a certification of insurance filed with the  
8 department under ORS 806.270.

9 (h) The department issued the suspension without error because the person failed to respond as  
10 required under ORS 806.160 or to furnish proof of exemption under ORS 806.210 from the filing re-  
11 quirement of ORS 806.200, but the department later determines that the person in fact was in com-  
12 pliance with financial responsibility requirements as of the date of the department's letter of  
13 verification under ORS 806.150 or at the time of an accident described in ORS 806.200.

14 (i) The department issued the suspension without error because the person was not in compli-  
15 ance with financial responsibility requirements as of the date of the department's letter of verifica-  
16 tion under ORS 806.150 or at the time of an accident described in ORS 806.200, but the department  
17 later determines that the person reasonably and in good faith believed that the person was in com-  
18 pliance with financial responsibility requirements on the date of the department's letter of verifica-  
19 tion or at the time of the accident.

20 (j) The suspension was the result of an error committed by an insurance company in notifying  
21 the department regarding the correctness of a certification under ORS 806.150.

22 (k) The suspension occurred because the person failed to make future responsibility filings but  
23 the department later determines that the reason for the failure was that the person was a military  
24 reservist or a member of a national guard unit that was ordered to active military duty to a location  
25 outside of the United States. The effective date of the military orders must be prior to the effective  
26 date of a suspension issued by the department for failure to make a future responsibility filing.

27 (L) The department issued the suspension without error because the department received a no-  
28 tice to suspend from a court under ORS 809.210 or 809.220, but the department later determines that  
29 the person in fact was in compliance with the requirements of the court prior to the effective date  
30 of the suspension.

31 **SECTION 20.** ORS 809.419 is amended to read:

32 809.419. (1)(a) The Department of Transportation shall suspend the driving privileges of a person  
33 if the department requests the person to submit to examination under ORS 807.340 and the person  
34 fails to appear within a reasonable length of time after being notified to do so or fails to satisfac-  
35 torily complete the required examination. A suspension under this subsection shall continue until  
36 the examination required by the department is successfully completed.

37 (b) Upon suspension under this subsection, the department may issue an identification card to  
38 the person for identification purposes as described under ORS 807.400.

39 (2) The department shall suspend the driving privileges of a person if the department requests  
40 the person to obtain medical clearance under ORS 807.070 or 807.090 and the person fails to do so.  
41 The suspension under this subsection shall continue until the required medical clearance is received  
42 by the department.

43 (3)(a) The department may suspend the driving privileges of a person who is incompetent to  
44 drive a motor vehicle because of a mental or physical condition or impairment that affects the per-  
45 son's ability to safely operate a motor vehicle upon the highways.

1 (b) A suspension under this subsection shall continue for a period determined by the department  
 2 and shall be subject to any conditions the department determines to be necessary.

3 (c) The department may impose an immediate suspension of driving privileges of any person  
 4 described in paragraph (a) of this subsection without hearing and without receiving a record of the  
 5 conviction of the person of a crime if the department has reason to believe that the person may  
 6 endanger people or property if the person's driving privileges are not immediately suspended. A  
 7 suspension under this paragraph is subject to a post-imposition hearing under ORS 809.440, except  
 8 that a person who is denied a certificate of eligibility under ORS 807.090 is entitled only to an ad-  
 9 ministrative review under ORS 809.440 of the suspension.

10 (4)(a) Whenever the department has reason to believe an individual with a motorcycle endorse-  
 11 ment under ORS 807.170 is incompetent to operate a motorcycle, the department may revoke the  
 12 endorsement.

13 (b) Upon revocation under this subsection, the endorsed license shall be surrendered to the de-  
 14 partment.

15 (c) Upon surrender of the endorsed license, the department may issue a license without  
 16 endorsement for the unexpired period of the license.

17 (5) Upon notification by the superintendent of a hospital under ORS 807.700 that a person should  
 18 not drive, the department shall immediately suspend the driving privileges of the released person.  
 19 A suspension under this subsection is subject to administrative review under ORS 809.440 and shall  
 20 continue until such time as the person produces a judicial judgment of competency or a certificate  
 21 from the superintendent of the hospital that the person is competent, or establishes eligibility under  
 22 ORS 807.090.

23 (6) Upon notification by a court under ORS 810.375 that a person charged with a traffic offense  
 24 has been found [*guilty except for*] **not guilty by reason of** insanity and committed to the jurisdiction  
 25 of the Psychiatric Security Review Board, the department shall immediately suspend the driving  
 26 privileges of the person. A suspension under this subsection is subject to administrative review un-  
 27 der ORS 809.440 and shall continue until such time as the person establishes eligibility under ORS  
 28 807.090.

29 **SECTION 21.** ORS 810.375 is amended to read:

30 810.375. (1) The judge or clerk of every court of this state having jurisdiction of any traffic of-  
 31 fense, including all local and municipal judicial officers in this state:

32 (a) Shall keep a full record of every case in which a person is charged with any such offense.

33 (b) Shall send the Department of Transportation an abstract of conviction for any person who  
 34 is convicted.

35 (c) Shall send the department a copy of any final judgment of conviction of any person which  
 36 results in mandatory suspension or revocation of driving privileges or commercial driver license  
 37 under ORS 809.404, 809.407, 809.409, 809.411, 809.413, 813.400 or 813.403.

38 (d) Shall send the department a copy of any final judgment finding a person charged with a  
 39 traffic offense [*guilty except for*] **not guilty by reason of** insanity and committed to the jurisdiction  
 40 of the Psychiatric Security Review Board.

41 (2) The department shall keep such records in its office, and they shall be open to the inspection  
 42 of any person during reasonable business hours.

43 (3) To comply with this section, a judge or clerk must comply with the following:

44 (a) Any information required by this section to be sent to the department must be sent within  
 45 the time provided under ORS 810.370 and must include information required by ORS 810.370.

1 (b) Information shall not be sent to the department under this section concerning convictions  
2 excluded from ORS 810.370.  
3 \_\_\_\_\_