

Senate Bill 934

Sponsored by COMMITTEE ON JUDICIARY

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**.

Creates domestic violence diversion program for first-time domestic violence offenders. Establishes Batterers' Intervention Fund. Continuously appropriates moneys for diversion program.

A BILL FOR AN ACT

1
2 Relating to domestic violence diversion programs; creating new provisions; amending ORS 1.525,
3 137.225 and 163.160; and appropriating money.

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

5 **SECTION 1. As used in sections 1 to 9 of this 2007 Act:**

6 (1) **"Batterers' intervention program" means a program that complies with the rules**
7 **adopted by the Attorney General under ORS 180.700.**

8 (2) **"Domestic violence" has the meaning given that term in ORS 135.230. Strangulation,**
9 **as defined in ORS 163.187, shall constitute abuse under ORS 135.230.**

10 (3) **"Victim" has the meaning given that term in ORS 131.007.**

11 **SECTION 2. (1) At arraignment, the court shall inform a defendant charged with a**
12 **misdemeanor crime of domestic violence that a diversion agreement may be available if the**
13 **defendant meets the criteria set out in section 4 of this 2007 Act and files with the court a**
14 **petition for a domestic violence diversion agreement.**

15 (2) **The petition form for a domestic violence diversion agreement shall be available to a**
16 **defendant at the court.**

17 (3) **The form of the petition for the domestic violence diversion agreement, and the in-**
18 **formation and blanks contained in it, shall be determined by the Supreme Court under ORS**
19 **1.525. The petition form made available to a defendant shall conform to the requirements**
20 **adopted by the Supreme Court.**

21 (4) **In addition to any other information required by the Supreme Court to be contained**
22 **in a petition for a domestic violence diversion agreement, the petition shall include:**

23 (a) **A plea of guilty or no contest to the domestic violence charge, signed by the defend-**
24 **ant;**

25 (b) **An agreement by the defendant to complete, at the defendant's own expense based**
26 **on the defendant's ability to pay, a batterers' intervention program designated by the court;**

27 (c) **A notice to the defendant that the diversion agreement will be considered to be vio-**
28 **lated if the court receives notice that the defendant at any time during the diversion period**
29 **committed a crime of domestic violence;**

30 (d) **An agreement by the defendant to keep the court advised in writing of the defendant's**
31 **current mailing address at all times during the diversion period;**

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 (e) A waiver by the defendant of any former jeopardy rights under the federal and state
2 Constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any
3 other offenses based upon the same criminal episode;

4 (f) An agreement by the defendant to abide by orders of the court relating to contact
5 with the victim;

6 (g) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the
7 defendant meets the criteria set out in section 4 of this 2007 Act to be eligible to enter into
8 the domestic violence diversion agreement;

9 (h) An agreement by the defendant to pay court-appointed attorney fees as determined
10 by the court; and

11 (i) A notice to the defendant that:

12 (A) The arrest and dismissal resulting from a successful diversion is not expungible for
13 the period of time described in ORS 137.225; and

14 (B) The successful completion of the diversion program involving an allegation of assault
15 will be considered the equivalent of a conviction for the purposes of ORS 163.160.

16 **SECTION 3.** (1) After an accusatory instrument has been filed charging the defendant
17 with a misdemeanor crime of domestic violence, a defendant may file with the court a peti-
18 tion for a domestic violence diversion agreement described in section 2 of this 2007 Act. The
19 petition:

20 (a) Must be filed within 30 days after the date of the defendant's first appearance on the
21 summons, unless a later filing date is allowed by the court upon a showing of good cause.
22 For purposes of this paragraph, the filing of a demurrer, a motion to suppress or a motion
23 for an omnibus hearing does not constitute good cause.

24 (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a
25 guilty plea or a no contest plea or after commencement of any trial on the charge whether
26 or not a new trial or retrial is ordered for any reason.

27 (2) The defendant shall pay to the court, at the time of filing a petition for a domestic
28 violence diversion agreement, a filing fee established under section 9 of this 2007 Act. The
29 court may make provision for payment of the filing fee by the defendant on an installment
30 basis. The court may waive all or part of the filing fee in cases involving indigent defendants.
31 The filing fee paid to the court under this subsection shall be retained by the court if the
32 petition is allowed. The filing fee shall be distributed as provided by section 9 of this 2007
33 Act.

34 (3)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant
35 shall pay to the court any court-appointed attorney fees agreed to under section 2 of this
36 2007 Act. Payments shall be made prior to the end of the diversion period on a schedule de-
37 termined by the court.

38 (b) The court may waive all or part of the court-appointed attorney fees.

39 (4) The defendant shall cause a copy of the petition for a domestic violence diversion
40 agreement to be served upon the district attorney. The district attorney may file with the
41 court, within 15 days after the date of service, a written objection to the petition and a re-
42 quest for a hearing.

43 (5) The district attorney shall notify the victim that the defendant may be eligible for
44 diversion and that if there is a hearing on a petition for diversion, the victim has a right to
45 be present and to be heard at the hearing.

1 **SECTION 4.** (1) A defendant is eligible for domestic violence diversion under sections 1
2 to 9 of this 2007 Act if:

3 (a) The defendant is charged with a misdemeanor domestic violence crime;

4 (b) The defendant had no charge of a domestic violence crime or its statutory counter-
5 part in any jurisdiction, other than the charge for the present offense, pending on the date
6 the defendant filed the petition for a domestic violence diversion agreement;

7 (c) The defendant was not participating in a domestic violence diversion program, other
8 than a program entered into as a result of the charge for the present offense, in this state
9 or any other jurisdiction on the date the defendant filed the petition for a domestic violence
10 diversion agreement;

11 (d) The defendant has not been convicted of any of the following offenses, or their stat-
12 utory counterparts, in any jurisdiction:

13 (A) A crime of domestic violence;

14 (B) Assault in the fourth degree as defined in ORS 163.160; or

15 (C) Strangulation as defined in ORS 163.187; and

16 (e) The defendant did not have a charge for the offenses described in paragraph (d) of this
17 subsection or their statutory counterparts in any jurisdiction, other than the charge for the
18 present offense, pending on the date the defendant filed the petition for a domestic violence
19 diversion agreement.

20 (2) The court may allow the diversion agreement to include each eligible charge arising
21 out of a continuous and interrupted course of conduct.

22 **SECTION 5.** (1) After the time for requesting a hearing under section 3 of this 2007 Act
23 has expired with no request for a hearing, or after a hearing if one is requested, the court
24 shall determine whether to allow or deny a petition for a domestic violence diversion agree-
25 ment. In making a determination under this section, the court:

26 (a) Shall consider whether the diversion will be of benefit to the defendant and the com-
27 munity.

28 (b) May take into consideration whether there is a probability that the defendant will
29 cooperate with the batterers' intervention program.

30 (c) May take into consideration whether the defendant will observe the restrictions con-
31 tained in the diversion agreement.

32 (d) Shall deny the petition for a domestic violence diversion agreement if the defendant
33 failed to appear at an arraignment on the present offense without good cause.

34 (e) Shall deny the petition for a domestic violence diversion agreement if the defendant
35 has previously participated in a domestic violence diversion program in any jurisdiction.

36 (f) Shall deny the petition for a domestic violence diversion agreement if the defendant
37 has, in any jurisdiction, a previous conviction or pending charge, other than the charge for
38 the present offense, for the offenses described in section 4 of this 2007 Act.

39 (2) When the court allows a petition for a domestic violence diversion agreement, the
40 judge taking that action shall:

41 (a) Accept the guilty plea or no contest plea filed as part of the petition for a diversion
42 agreement but withhold entry of a judgment of conviction; and

43 (b) Sign the petition and indicate thereon the date of allowance of the diversion period,
44 the length of the diversion period and the date upon which the domestic violence offense
45 occurred.

1 (3) The petition, when signed and dated, becomes the diversion agreement between the
2 defendant and the court. The court shall make the agreement a part of the record of the
3 case.

4 (4) A domestic violence diversion agreement shall be for a period of 18 months after the
5 date the court allows the petition. During the diversion period the court shall stay the do-
6 mestic violence offense proceeding pending completion of the diversion agreement or its
7 termination.

8 (5) When the court denies a petition for a domestic violence diversion agreement, it shall
9 continue the offense proceeding against the defendant. The guilty plea or no contest plea
10 filed as part of the petition for the diversion agreement may not be used in the offense pro-
11 ceeding under this subsection.

12 **SECTION 6.** (1) At any time after the conclusion of the domestic violence diversion
13 agreement period described in section 5 of this 2007 Act, a defendant who has fully complied
14 with and performed the conditions of the diversion agreement may apply by motion to the
15 court in which the diversion agreement was entered for an order dismissing the charge with
16 prejudice.

17 (2) The defendant shall cause to be served on the district attorney a copy of the motion
18 for entry of an order dismissing with prejudice the charge of domestic violence. The motion
19 shall be served on the district attorney at the time it is filed with the court. The district
20 attorney may contest the motion.

21 (3) If the defendant does not appear as provided by subsection (1) of this section within
22 six months after the conclusion of the diversion period, and if the court finds that the de-
23 fendant fully complied with and performed the conditions of the diversion agreement, and if
24 the court gives notice of that finding to the district attorney, the court may on its own
25 motion enter an order dismissing the domestic violence charge with prejudice.

26 (4) No statement made by the defendant about the offense with which the defendant is
27 charged shall be offered or received in evidence in any criminal or civil action or proceeding
28 arising out of the same conduct that is the basis of the domestic violence charge, if the
29 statement was made during the course of the batterers' intervention program and to a per-
30 son employed by the program.

31 (5) At any time before the court dismisses with prejudice the domestic violence charge,
32 the court on its own motion or on the motion of the district attorney may issue an order
33 requiring the defendant to appear and show cause why the court should not terminate the
34 diversion agreement. The order to show cause shall state the reasons for the proposed ter-
35 mination and shall set an appearance date.

36 (6) The order to show cause shall be served on the defendant and on the defendant's at-
37 torney, if any. Service may be made by first class mail, postage paid, addressed to the de-
38 fendant at the mailing address shown on the diversion petition and agreement or at any
39 other address that the defendant provides in writing to the court.

40 (7) The court shall terminate the diversion agreement and enter the guilty plea or no
41 contest plea that was filed as part of the petition for the diversion agreement if:

42 (a) At the hearing on the order to show cause, the court finds by a preponderance of the
43 evidence that any of the reasons for termination described in this section exist; or

44 (b) The defendant fails to appear at the hearing on the order to show cause.

45 (8) If the court terminates the diversion agreement and enters the guilty plea or no

1 contest plea, the court may take into account at the time of the sentencing any partial ful-
2 fillment by the defendant of the terms of the diversion agreement.

3 (9) The court shall terminate a diversion agreement under this section for either of the
4 following reasons:

5 (a) The defendant fails to fulfill the terms of the diversion agreement.

6 (b) The defendant does not qualify for the diversion agreement under the criteria set out
7 in section 4 of this 2007 Act.

8 **SECTION 7.** (1) Within 30 days prior to the end of the period of a domestic violence di-
9 version agreement under sections 1 to 9 of this 2007 Act, a defendant may apply by motion
10 to the court in which the diversion agreement was entered for an order extending the di-
11 version period.

12 (2) Petition forms for an application for an extension under this section shall be available
13 to a defendant at the court.

14 (3) The form of the petition for an extension under this section shall be determined by
15 the Supreme Court under ORS 1.525. The petition forms made available to a defendant by
16 any court shall conform to the requirements of the Supreme Court.

17 (4) The court may grant a petition for an extension filed under this section if the court
18 finds that the defendant made a good faith effort to complete the conditions of the diversion
19 agreement and that the defendant can complete the conditions of the diversion agreement
20 within the requested extended diversion period.

21 (5) An extension granted under this section may be for no more than 180 days.

22 (6) A court may grant a defendant only one extension of a diversion period under this
23 section.

24 (7) If the court grants the petition for an extension under this section, the following ap-
25 ply:

26 (a) If the defendant fully complies with the conditions of the diversion agreement within
27 the extended diversion period, the court may dismiss the charge with prejudice under section
28 6 of this 2007 Act.

29 (b) If the court finds that the defendant failed to comply with the diversion agreement
30 within the extended diversion period, the court shall enter the guilty plea or no contest plea
31 filed as part of the petition for a diversion agreement, shall enter a judgment of conviction
32 and shall sentence the defendant.

33 (8) If the court denies the petition for an extension under this section, the court shall
34 enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement,
35 shall enter a judgment of conviction and shall sentence the defendant.

36 **SECTION 8.** (1) Courts having jurisdiction over crimes of domestic violence shall desig-
37 nate agencies or organizations to administer the batterers' intervention program required
38 under domestic violence diversion agreements.

39 (2) Monitoring of a defendant's progress under a diversion agreement shall be the re-
40 sponsibility of the batterers' intervention program provider. The provider shall make a re-
41 port to the court stating the defendant's successful completion or failure to complete all or
42 any part of the batterers' intervention program. The form of the report shall be determined
43 by agreement between the court and the batterers' intervention program provider. The court
44 shall make the report that is required by this subsection a part of the record of the case.

45 **SECTION 9.** (1) The filing fee paid by a defendant at the time of filing a petition for a

1 **domestic violence diversion agreement under sections 1 to 9 of this 2007 Act shall be \$261**
 2 **and shall be ordered paid as follows if the petition is allowed:**

3 (a) **\$111 to be credited and distributed under ORS 137.295 as an obligation payable to the**
 4 **state;**

5 (b) **\$75 to be paid to the Director of Human Services for deposit in the Domestic Violence**
 6 **Fund established under ORS 409.300, to be used for purposes of the fund; and**

7 (c) **\$75 to be paid to the Director of Human Services for deposit in the Batterers' Inter-**
 8 **vention Fund established under subsection (3) of this section, to be used for the purposes of**
 9 **the fund.**

10 (2) **In addition to the filing fee under subsection (1) of this section, the court shall order**
 11 **the defendant to pay \$150 directly to the batterers' intervention program provider.**

12 (3) **The Batterers' Intervention Fund is established, separate and distinct from the Gen-**
 13 **eral Fund, to consist of moneys placed in the fund under subsection (1) of this section or as**
 14 **otherwise provided by law and of gifts and grants made to the fund for carrying out the**
 15 **purposes of the fund. All moneys credited to the Batterers' Intervention Fund are contin-**
 16 **uously appropriated to the Department of Human Services for the purposes described in this**
 17 **section. Interest earned by the fund shall be credited to the fund. The moneys in the fund**
 18 **may be used only for the following purposes:**

19 (a) **To pay for providing treatment to individuals who enter domestic violence diversion**
 20 **agreements and who are found to be indigent. Payment shall be made as provided by the di-**
 21 **rector by rule to agencies or organizations providing treatment.**

22 (b) **To pay for evaluation, as provided by law, of programs used for diversion agreements.**

23 (c) **To pay the cost of administration of the fund by the director.**

24 (d) **To pay for materials, resources and training supplied by the director to agencies or**
 25 **organizations providing treatment to individuals participating in diversion agreements.**

26 (e) **To pay for special services required to enable an individual with disabilities, or an**
 27 **individual whose proficiency in the use of English is limited, to participate in a batterers'**
 28 **intervention program. This paragraph applies:**

29 (A) **Whether or not the person is indigent; and**

30 (B) **Only to special services required solely because of the individual's disability or limited**
 31 **proficiency in the use of English.**

32 **SECTION 10.** ORS 163.160 is amended to read:

33 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

34 (a) Intentionally, knowingly or recklessly causes physical injury to another; or

35 (b) With criminal negligence causes physical injury to another by means of a deadly weapon.

36 (2) Assault in the fourth degree is a Class A misdemeanor.

37 (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C fel-
 38 ony if the person commits the crime of assault in the fourth degree and:

39 (a) The person has previously been convicted of assaulting the same victim;

40 (b) **The person has previously completed a domestic violence diversion program in which**
 41 **the person entered a plea of guilty or no contest to an accusatory instrument alleging as-**
 42 **sault of the same victim, if at the time the diversion agreement was entered into, the de-**
 43 **fendant was represented by counsel;**

44 (c) **The person has, at least three times in any combination:**

45 [(b)] (A) [*The person has*] Previously been convicted [*at least three times*] under this section or

1 under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as
 2 defined in ORS 135.230; or

3 **(B) Previously completed a domestic violence diversion program in which the defendant**
 4 **entered a plea of guilty or no contest to an accusatory instrument alleging assault; or**

5 [(c)] (d) The assault is committed in the immediate presence of, or is witnessed by, the person's
 6 or the victim's minor child or stepchild or a minor child residing within the household of the person
 7 or victim.

8 (4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is
 9 seen or directly perceived in any other manner by the child.

10 **SECTION 11.** ORS 137.225 is amended to read:

11 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 12 judgment, any defendant who has fully complied with and performed the sentence of the court and
 13 whose conviction is described in subsection (5) of this section by motion may apply to the court
 14 wherein that conviction was entered for entry of an order setting aside the conviction; or

15 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
 16 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
 17 son may apply to the court which would have jurisdiction over the crime for which the person was
 18 arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing
 19 the one-year period, time during which the arrested person has secreted himself or herself within
 20 or without the state shall not be included.

21 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
 22 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
 23 to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to
 24 contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or
 25 "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
 26 of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search
 27 along with the fingerprint card shall be returned to the prosecuting attorney.

28 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
 29 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
 30 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
 31 victim's last-known address.

32 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 33 a fee of \$80. The person shall attach a certified check payable to the Department of State Police in
 34 the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office
 35 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of
 36 State Police Bureau of Criminal Identification.

37 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 38 the taking of such proofs as it deems proper. The court shall allow the victim to make a statement
 39 at the hearing. Except as otherwise provided in subsection [(11)] (12) of this section, if the court
 40 determines that the circumstances and behavior of the applicant from the date of conviction, or from
 41 the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
 42 the conviction, or the arrest record as the case may be, it shall enter an appropriate order which
 43 shall state the original arrest charge and the conviction charge, if any and if different from the or-
 44 iginal, date of charge, submitting agency and disposition. The order shall further state that positive
 45 identification has been established by the bureau and further identified as to state bureau number

1 or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law
2 shall be deemed not to have been previously convicted, or arrested as the case may be, and the
3 court shall issue an order sealing the record of conviction and other official records in the case,
4 including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

5 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
6 by the court. A certified copy must be sent to the Department of Corrections when the person has
7 been in the custody of the Department of Corrections. Upon entry of such an order, such conviction,
8 arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer
9 accordingly any questions relating to their occurrence.

10 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

11 (a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
12 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

13 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as
14 a felony only.

15 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
16 for:

17 (A) Any sex crime; and

18 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

19 (i) Criminal mistreatment in the first degree under ORS 163.205; and

20 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

21 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
22 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
23 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

24 (e) A violation, whether under state law or local ordinance.

25 (f) An offense committed before January 1, 1972, which if committed after that date would be:

26 (A) A Class C felony, except for any sex crime or for the following crimes when they would
27 constitute child abuse as defined in ORS 419B.005:

28 (i) Criminal mistreatment in the first degree under ORS 163.205; and

29 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

30 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
31 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
32 in ORS 419B.005:

33 (i) Criminal mistreatment in the first degree under ORS 163.205; and

34 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

35 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
36 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

37 (D) A violation.

38 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
39 do not apply to:

40 (a) A person convicted of, or arrested for, a state or municipal traffic offense;

41 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
42 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
43 whether or not the other conviction is for conduct associated with the same criminal episode that
44 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
45 section, a conviction which has been set aside under this section shall be considered for the purpose

1 of determining whether this paragraph is applicable; or

2 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
3 before the court is under charge of commission of any crime.

4 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within
5 the three-year period immediately preceding the filing of the motion for any offense, excluding motor
6 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that
7 caused the arrest that is sought to be set aside.

8 (8) The provisions of subsection (1) of this section apply to convictions and arrests which oc-
9 curred before, as well as those which occurred after, September 9, 1971. There shall be no time limit
10 for making such application.

11 **(9) The provisions of subsection (1) of this section do not apply to an arrest or dismissal**
12 **resulting from the domestic violence diversion program under sections 1 to 9 of this 2007**
13 **Act until 10 years from the date of the dismissal.**

14 [(9)] (10) For purposes of any civil action in which truth is an element of a claim for relief or
15 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
16 arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply
17 to the court for an order requiring disclosure of the official records in the case as may be necessary
18 in the interest of justice.

19 [(10)] (11) Upon motion of any prosecutor or defendant in a case involving records sealed under
20 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
21 reopening and disclosure of any records sealed under this section for the limited purpose of assisting
22 the investigation of the movant. However, such an order shall have no other effect on the orders
23 setting aside the conviction or the arrest record.

24 [(11)] (12) Unless the court makes written findings by clear and convincing evidence that
25 granting the motion would not be in the best interests of justice, the court shall grant the motion
26 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
27 of one of the following crimes and is otherwise eligible for relief under this section:

- 28 (a) Abandonment of a child, ORS 163.535.
- 29 (b) Attempted assault in the second degree, ORS 163.175.
- 30 (c) Assault in the third degree, ORS 163.165.
- 31 (d) Coercion, ORS 163.275.
- 32 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 33 (f) Attempted escape in the first degree, ORS 162.165.
- 34 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 35 (h) Intimidation in the first degree, ORS 166.165.
- 36 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 37 (j) Criminally negligent homicide, ORS 163.145.
- 38 (k) Attempted robbery in the second degree, ORS 164.405.
- 39 (L) Robbery in the third degree, ORS 164.395.
- 40 (m) Supplying contraband, ORS 162.185.
- 41 (n) Unlawful use of a weapon, ORS 166.220.

42 [(12)] (13) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

43 **SECTION 12.** ORS 1.525 is amended to read:

44 1.525. (1) The Supreme Court shall adopt one or more forms for the following purposes:

- 45 (a) A form of uniform violation citation for the purposes of ORS 153.045;

1 (b) A form of uniform criminal citation without complaint for the purposes of ORS 133.068;

2 (c) A form of uniform criminal citation with complaint for the purposes of ORS 133.069;

3 (d) Any form of uniform citation for categories of offenses as the court finds necessary or con-
4 venient; *and*

5 (e) A uniform petition for a driving while under the influence of intoxicants diversion agreement
6 for the purposes of ORS 813.210[.]; **and**

7 **(f) A uniform petition for a domestic violence diversion agreement and a uniform petition**
8 **for an extension of the diversion period for the purposes of sections 1 to 9 of this 2007 Act.**

9 (2) If changes are made to a uniform **petition or** citation form under this section, the Supreme
10 Court shall make a reasonable effort to minimize the financial impact of the changes on the state
11 agencies and political subdivisions of this state that use the uniform **petition or** citation form.
12 Where possible, the effort to minimize the financial impact shall include a reasonable time for the
13 state agencies and political subdivisions to exhaust their existing supplies of the **petition or** citation
14 form before the changes become effective.

15 (3) Except as provided in subsection (4) of this section, the uniform citation forms adopted by
16 the Supreme Court under this section must be used by all enforcement officers, as defined in ORS
17 153.005, when issuing a violation citation or criminal citation.

18 (4) The uniform citation forms adopted by the Supreme Court under this section need not be
19 used for:

20 (a) Offenses created by ordinance or agency rule governing parking of vehicles; or

21 (b) Offenses created by the ordinances of political subdivisions.

22 **SECTION 13. Sections 1 to 9 of this 2007 Act and the amendments to ORS 1.525, 137.225**
23 **and 163.160 by sections 10, 11 and 12 of this 2007 Act apply to prosecutions commenced on**
24 **or after the effective date of this 2007 Act.**

25