

House Bill 2103

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of former Representative Donna Nelson)

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**.

Requires law enforcement agency to take DNA sample of person arrested for felony. Requires destruction of sample, upon person's request, if arrest leads to acquittal, dismissal, reversal of conviction or expiration of statute of limitations.

A BILL FOR AN ACT

1
2 Relating to DNA (deoxyribonucleic acid) samples; creating new provisions; and amending ORS
3 181.085 and 181.511.

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

5 **SECTION 1. (1) A law enforcement agency shall obtain a blood or buccal sample in ac-**
6 **cordance with this section for any person who is arrested for a felony.**

7 **(2)(a) A blood sample may only be drawn in a medically acceptable manner by a licensed**
8 **professional nurse, a licensed practical nurse, a qualified medical technician, a licensed phy-**
9 **sician or a person acting under the direction or control of a licensed physician.**

10 **(b) A buccal sample may be obtained by anyone authorized to do so by the arresting law**
11 **enforcement agency. The person obtaining the buccal sample shall follow collection proce-**
12 **dures established by the Department of State Police.**

13 **(c) A test result or opinion based upon a test result of a blood or buccal sample obtained**
14 **under this section is not inadmissible as evidence solely because of deviations from proce-**
15 **dures adopted by the department that do not affect the reliability of the opinion or test re-**
16 **sult.**

17 **(d) A person authorized by this section to obtain a blood or buccal sample may not be**
18 **held civilly liable for obtaining a sample in accordance with this section.**

19 **(3) A sample is not required to be obtained under this section if:**

20 **(a) The law enforcement agency has previously obtained an adequate blood or buccal**
21 **sample of the person;**

22 **(b) The department notifies the law enforcement agency that it has previously received**
23 **an adequate blood or buccal sample of the person in accordance with ORS 137.076, 161.325 or**
24 **419C.473; or**

25 **(c) Obtaining a sample would create a substantial and unreasonable risk to the health**
26 **of the arrested person.**

27 **(4) The law enforcement agency shall cause the blood or buccal sample to be transmitted**
28 **to the department in accordance with any procedures that may be established by the de-**
29 **partment.**

30 **SECTION 2. ORS 181.511 is amended to read:**

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.

1 181.511. (1) A law enforcement agency immediately upon the arrest of a person for a crime for
 2 which criminal offender information must be provided under ORS 181.515 shall:

3 (a) Place the arrested person's fingerprints and identifying data on forms prescribed or furnished
 4 by the Department of State Police bureau of criminal identification, photograph the arrested person
 5 and promptly transmit the form and photograph to the bureau.

6 (b) If the arrest is disposed of by the arresting agency, cause the disposition report to be com-
 7 pleted and promptly transmitted to the bureau.

8 (c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded,
 9 except as otherwise provided in section 3, chapter 553, Oregon Laws 1987, to the court that will
 10 dispose of the charge, for further action in accordance with ORS 181.521.

11 **(2) A law enforcement agency immediately upon the arrest of a person for a felony shall**
 12 **obtain a blood or buccal sample in accordance with section 1 of this 2009 Act.**

13 [(2)] (3) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole
 14 prints, toe prints or other personal identifiers when, in the discretion of the agency, it is necessary
 15 to effect identification of the persons or to the investigation of the crime charged.

16 [(3)] (4) A law enforcement agency, for the purpose of identification, may record and submit to
 17 the bureau the fingerprints of persons arrested for crimes for which criminal offender information
 18 is not required under ORS 181.515.

19 **SECTION 3.** ORS 181.085 is amended to read:

20 181.085. (1) The Department of State Police is authorized to:

21 (a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325
 22 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, **and section 1 of this 2009 Act** and
 23 other physical evidence obtained from analysis of such samples;

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

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

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

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

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

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

41 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 42 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 43 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

- 1 (D) Burglary in the first degree, as defined in ORS 164.225;
- 2 (E) Assault in the first, second or third degree, as defined in ORS 163.165, 163.175 and 163.185;
- 3 (F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;
- 4 (G) Stalking, as defined in ORS 163.732;
- 5 (H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;
- 6 (I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;
- 7 (J) Criminally negligent homicide, as defined in ORS 163.145;
- 8 (K) Aggravated vehicular homicide, as defined in ORS 163.149;
- 9 (L) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this para-
- 10 graph; or
- 11 (M) Murder, aggravated murder or an attempt to commit murder or aggravated murder.
- 12 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
- 13 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to
- 14 475.894, 475.904, 475.906 or 475.914.
- 15 (c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,
- 16 the department shall analyze samples from persons convicted of any other felony.
- 17 (3) Notwithstanding subsection (2) of this section, the department may analyze a sample from a
- 18 lower priority before all samples in higher priorities are analyzed if required in a particular case
- 19 for law enforcement purposes.
- 20 (4) The department may not transfer or disclose any sample, physical evidence or criminal
- 21 identification information obtained, stored or maintained under authority of this section, ORS
- 22 137.076, 161.325 or 419C.473 (1) **or section 1 of this 2009 Act** except:
- 23 (a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal
- 24 Justice Division of the Department of Justice for the purpose of establishing the identity of a person
- 25 in the course of a criminal investigation or proceeding;
- 26 (b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if
- 27 discovery or disclosure is required by a separate statutory or constitutional provision; or
- 28 (c) To a court or grand jury in response to a lawful subpoena or court order when the evidence
- 29 is not otherwise privileged and is necessary for criminal justice purposes.
- 30 (5) The department may not transfer or disclose any sample, physical evidence or criminal
- 31 identification information under subsection (4) of this section unless the public agency or person
- 32 receiving the sample, physical evidence or criminal identification information agrees to destroy the
- 33 sample, physical evidence or criminal identification information if notified by the department [*that*
- 34 *a court has reversed the conviction, judgment or order that created the obligation to provide the blood*
- 35 *or buccal sample*] **that the authority to obtain the sample has been rescinded.**
- 36 (6) Any public agency that receives a sample, physical evidence or criminal identification in-
- 37 formation under authority of subsection (4) of this section may not disclose it except as provided in
- 38 subsection (4) of this section.
- 39 (7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a
- 40 record within a criminal identification database maintained under the authority of this section may,
- 41 upon request, inspect that information at a time and location designated by the department. The
- 42 department may deny inspection if it determines that there is a reasonable likelihood that such in-
- 43 spection would prejudice a pending criminal investigation. In any case, the department is not re-
- 44 quired to allow the person or anyone acting on the person's behalf to test any blood or buccal
- 45 sample or other physical evidence. The department shall adopt procedures governing the inspection

1 of records and samples and challenges to the accuracy of records. The procedures shall accommo-
2 date the need to preserve the materials from contamination and destruction.

3 **(8)(a) A person who provided a blood or buccal sample may request destruction of the**
4 **sample and any criminal identification record created in connection with that sample when-**
5 **ever:**

6 **(A)** A court reverses the conviction, judgment or order that created an obligation to provide a
7 blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1)[, *the person who provided the*
8 *sample may request destruction of the sample and any criminal identification record created in con-*
9 *nection with that sample.*];

10 **(B) The arrest that created the obligation to provide a blood or buccal sample under**
11 **section 1 of this 2009 Act leads to a judgment of acquittal, an order of dismissal or a con-**
12 **viction that is subsequently reversed; or**

13 **(C) A prosecution is not commenced within the statute of limitations for the crime of**
14 **arrest that created an obligation to provide a blood or buccal sample under section 1 of this**
15 **2009 Act. If this subparagraph applies, the district attorney shall provide to the department**
16 **a sworn affidavit within 90 days of the expiration of the statute of limitations indicating that**
17 **the authority to obtain the sample has been rescinded.**

18 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
19 copy of [*the*] a court order [*reversing the conviction, judgment or order*] **or sworn affidavit described**
20 **in paragraph (a) of this subsection**, the department shall destroy any sample received from the
21 person, any physical evidence obtained from that sample and any criminal identification records
22 pertaining to the person, unless the department determines that the person has otherwise become
23 obligated to submit a blood or buccal sample as a result of a separate conviction, juvenile adjudi-
24 cation or finding of guilty except for insanity for an offense listed in ORS 137.076 (1) **or an arrest**
25 **for an offense under section 1 of this 2009 Act.** When the department destroys a sample, physical
26 evidence or criminal identification record under this paragraph, the department shall notify any
27 public agency or person to whom the sample, physical evidence or criminal identification informa-
28 tion was transferred or disclosed under subsection (4) of this section [*of the reversal of the conviction,*
29 *judgment or order*] **that the authority to retain the sample has been rescinded.**

30 (c) The department is not required to destroy an item of physical evidence obtained from a blood
31 or buccal sample if evidence relating to another person subject to the provisions of **this section,**
32 ORS 137.076, 161.325, 419A.260 and 419C.473 (1) and [*this section*] **section 1 of this 2009 Act** would
33 thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal
34 identification record is affected by an order to set aside a conviction under ORS 137.225.

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

37 **SECTION 4. Section 1 of this 2009 Act and the amendments to ORS 181.085 and 181.511**
38 **by sections 2 and 3 of this 2009 Act apply to persons arrested on or after the effective date**
39 **of this 2009 Act.**

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