

D R A F T

SUMMARY

Modifies circumstances under which person arrested, charged or convicted of offense may have arrest, charge or conviction expunged.

Creates civil cause of action against person who disseminates record of arrest, charge or conviction under certain circumstances.

Requires public safety officers and instructors to disclose existence of arrest, charge or conviction that has been set aside.

A BILL FOR AN ACT

1
2 Relating to orders to set aside; creating new provisions; amending ORS
3 40.015, 135.390, 181.085, 181.548 and 181.662; and repealing ORS 137.225.

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

5 **SECTION 1. (1) A person who has been convicted of an offense may**
6 **file a motion to set aside the conviction in accordance with sections**
7 **1 to 5 of this 2013 Act.**

8 **(2) A motion to set aside a conviction must be filed in the court in**
9 **which the conviction was entered. The person filing the motion must:**

10 **(a) Serve a copy of the motion and a full set of the person's fin-**
11 **gerprints upon the office of the district attorney that prosecuted the**
12 **offense or, if a district attorney did not prosecute the offense, upon**
13 **the district attorney of the county in which the conviction was en-**
14 **tered;**

15 **(b) Attach to the fingerprint card a certified check in the amount**
16 **of \$80, payable to the Department of State Police; and**

17 **(c) Pay to the court a filing fee in the amount established under**
18 **ORS 21.135.**

1 **(3) Upon receipt of the motion, fingerprint card and certified check,**
2 **the district attorney shall:**

3 **(a) Include on the fingerprint card the notation “motion to set aside**
4 **conviction”; and**

5 **(b) Forward the fingerprint card and the certified check to the De-**
6 **partment of State Police.**

7 **(4) As soon as practicable following receipt of a fingerprint card**
8 **under this section, the Department of State Police shall conduct a**
9 **criminal records check, return the fingerprint card to the district at-**
10 **torney and notify the district attorney of any information resulting**
11 **from the criminal records check, including:**

12 **(a) Any department identification number or submitting law**
13 **enforcement agency identification number associated with the con-**
14 **viction; and**

15 **(b) Whether the department has established positive identification**
16 **of the defendant.**

17 **(5) The district attorney may file an objection to a motion to set**
18 **aside a conviction no later than 180 days after the date the motion is**
19 **filed. When the district attorney files a timely objection, the court**
20 **shall schedule a hearing on the motion and notify the parties of the**
21 **hearing date. The court shall allow the victim to make a statement**
22 **at the hearing.**

23 **(6) When a person files a motion to set aside a conviction in ac-**
24 **cordance with this section, the court shall enter an order granting the**
25 **motion, unless:**

26 **(a) The person does not meet the eligibility requirements described**
27 **in section 3 (1) of this 2013 Act;**

28 **(b) The conviction that is the subject of the motion is described in**
29 **section 3 (2) of this 2013 Act; or**

30 **(c) The district attorney files a timely objection to the motion and:**

31 **(A) If the conviction is for a crime other than a crime listed in**

1 **section 3 (3) of this 2013 Act, the court finds that the person has vio-**
2 **lated the law since the date of conviction.**

3 **(B) If the conviction is for a crime listed in section 3 (3) of this 2013**
4 **Act, the court finds that granting the motion is not in the best inter-**
5 **ests of the community. In making the determination described in this**
6 **subparagraph, the court shall consider the effect of the crime and the**
7 **proposed set aside order on the victim.**

8 **(7) In determining whether to grant a motion filed under sections**
9 **1 to 5 of this 2013 Act, the court may require the filing of affidavits**
10 **and the taking of proofs as the court deems proper.**

11 **(8) When the court enters an order setting aside a conviction under**
12 **sections 1 to 5 of this 2013 Act, the order must indicate:**

13 **(a) The offense for which, and the date on which, the person was**
14 **arrested;**

15 **(b) The department identification number or submitting law**
16 **enforcement agency identification number associated with the con-**
17 **viction; and**

18 **(c) Whether the department has established positive identification**
19 **of the person.**

20 **(9) As used in this section, “violated the law since the date of con-**
21 **viction” includes a conviction for an offense, the commission of a**
22 **crime or violation or the violation of a court order or of a condition**
23 **of probation, parole or post-prison supervision.**

24 **SECTION 2. (1) When the court grants a motion to set aside an**
25 **arrest, a charge or a conviction under sections 1 to 5 of this 2013 Act,**
26 **the court shall enter an order sealing the official records in the case.**
27 **The clerk of the court shall forward a certified copy of the order to:**

28 **(a) The Department of Corrections, if the person has previously**
29 **been committed to the custody of the department;**

30 **(b) The State Board of Parole and Post-Prison Supervision, if the**
31 **person has previously been subject to the jurisdiction of the board; and**

1 (c) Any other agency designated by the court.

2 (2) For purposes of the law, when an arrest, a charge or a con-
3 viction has been set aside under sections 1 to 5 of this 2013 Act, the
4 arrest, charge or conviction is deemed not to have occurred and the
5 person may answer accordingly any questions related to the occur-
6 rence of the arrest, charge or conviction.

7 (3) Notwithstanding subsection (1) or (2) of this section:

8 (a) On motion of the district attorney alleging that a person has
9 committed an offense for which a previous conviction is a material
10 element of the offense under ORS 132.540, the court shall order dis-
11 closure of the official records in the case for purposes of the prose-
12 cution of the offense.

13 (b) On motion of a party to a prosecution for an offense, the court
14 shall order disclosure of the official records in the case for any purpose
15 related to the sentencing of the person whose conviction has been set
16 aside or, if the court finds good cause to believe that the official re-
17 cords in the case will assist the investigation of the party, for the
18 limited purpose of assisting the investigation of the party.

19 (c) A conviction that has been set aside must be considered in a
20 proceeding conducted under sections 1 to 5 of this 2013 Act for the
21 purposes of determining a person's eligibility to have an arrest, charge
22 or conviction set aside under section 3 (1)(b) or (c) or (2)(c)(C) or (r)
23 or 4 (6)(c) of this 2013 Act.

24 (d) On motion of a party to a civil action in which truth is an ele-
25 ment of a claim or defense, the court may order the disclosure of the
26 official records in the case if the court finds that disclosure is neces-
27 sary in the interests of justice.

28 (e) On motion of a party to a civil action in which a claim or de-
29 fense alleges misconduct for which a person was arrested, charged or
30 convicted, the court may order the disclosure of the official records
31 in the case, for the limited purpose of refreshing the memory of a

1 witness under ORS 40.375.

2 (f)(A) When the Department of Public Safety Standards and Train-
3 ing requests under ORS 181.534 that the Department of State Police
4 conduct a criminal records check on a person described in ORS 181.612
5 (1)(c), the Department of State Police shall include in the results of
6 the check any convictions of the subject individual that have been set
7 aside.

8 (B) Upon the request of the Department of Public Safety Standards
9 and Training or a prospective employer of a public safety officer, as
10 defined in ORS 181.610, a public body shall disclose any official records
11 in the case relating to the subject individual that have been sealed
12 under this section.

13 (g)(A) When the Department of Human Services or the Oregon
14 Health Authority requests under ORS 181.534 that the Department of
15 State Police conduct a criminal records check required by ORS 443.004,
16 the Department of State Police shall include in the results of the
17 check any convictions of the subject individual that have been set
18 aside.

19 (B) Upon the request of the Department of Human Services or the
20 Oregon Health Authority, a public body shall disclose any official re-
21 cords in the case relating to the subject individual that have been
22 sealed under this section.

23 (h)(A) When the Child Care Division of the Employment Depart-
24 ment requests under ORS 181.534 that the Department of State Police
25 conduct a criminal records check required by ORS 657A.030, 657A.270,
26 657A.300 or 657A.330, the Department of State Police shall include in
27 the results of the check any convictions of the subject individual that
28 have been set aside.

29 (B) Upon the request of the Child Care Division of the Employment
30 Department, a public body shall disclose any official records in the
31 case relating to the subject individual that have been sealed under this

1 section.

2 **SECTION 3. (1) A person who has been convicted of an offense is**
3 **eligible to have the conviction set aside under sections 1 to 5 of this**
4 **2013 Act if at least three years have elapsed since the date the judg-**
5 **ment of conviction was entered in the register and the person:**

6 (a) **Has fully complied with and performed the sentence of the court**
7 **and, if a sentence of probation, parole or post-prison supervision was**
8 **imposed as a result of the conviction, has not had the sentence re-**
9 **voked;**

10 (b) **Has not been convicted of a crime, excluding the offense that**
11 **is the subject of the motion, in the 10-year period immediately pre-**
12 **ceding the filing of the motion;**

13 (c) **Has not been convicted of more than one violation, excluding**
14 **traffic violations and the offense that is the subject of the motion, in**
15 **the 10-year period immediately preceding the filing of the motion;**

16 (d) **Is not subject to a pending charge in any jurisdiction that al-**
17 **leges the person has committed an offense;**

18 (e) **Is not subject to an outstanding warrant of arrest in any juris-**
19 **diction; and**

20 (f) **Has no outstanding monetary obligations as described in ORS**
21 **137.288.**

22 (2) **A conviction for any of the following offenses may not be set**
23 **aside under sections 1 to 5 of this 2013 Act:**

24 (a) **Murder or treason.**

25 (b) **A crime that is classified as a Class A felony at the time the**
26 **motion is filed, unless the conviction is for the unlawful manufacture**
27 **of marijuana under ORS 475.856.**

28 (c) **A crime that is classified as a Class B felony at the time the**
29 **motion is filed, unless the conviction is for:**

30 (A) **The unlawful delivery of marijuana under ORS 475.860 (2)(a);**

31 (B) **The possession of a controlled substance in Schedule I; or**

1 (C) A conditional Class B felony, the person files the motion more
2 than 20 years after the date on which the person completed serving the
3 sentence and the person has not been arrested or convicted for an of-
4 fense, excluding traffic violations, since the date on which the person
5 completed serving the sentence.

6 (d) Perjury as defined in ORS 162.065.

7 (e) Assault in the fourth degree under ORS 163.160 (3)(a) or (b).

8 (f) Strangulation under ORS 163.187 (4).

9 (g) Subjecting another person to involuntary servitude in the sec-
10 ond degree as defined in ORS 163.263.

11 (h) Bigamy as defined in ORS 163.515.

12 (i) Incest as defined in ORS 163.525.

13 (j) Criminal mistreatment in the first degree under ORS 163.205.

14 (k) Criminal mistreatment in the second degree under ORS 163.200,
15 unless the person establishes by a preponderance of the evidence that
16 the victim was not 65 years of age or older at the time the crime was
17 committed.

18 (L) Endangering the welfare of a minor under ORS 163.575, unless
19 the person establishes by a preponderance of the evidence that the
20 crime did not constitute child abuse.

21 (m) Stalking under ORS 163.732 (2)(b).

22 (n) Aggravated animal abuse in the first degree as defined in ORS
23 167.322.

24 (o) A crime that constitutes child abuse, if the victim is under 18
25 years of age at the time the motion is filed.

26 (p) A sex crime as defined in ORS 181.594, except for crimes listed
27 in ORS 181.830 (1)(a), if the person establishes by a preponderance of
28 the evidence that the provisions of ORS 181.830 (2) apply.

29 (q) A traffic offense as defined in ORS 801.555, except for fleeing or
30 attempting to elude a police officer as defined in ORS 811.540, if the
31 person establishes by a preponderance of the evidence that:

1 (A) The person does not hold a commercial driver license or a
2 commercial learner's permit;

3 (B) The person was not operating a commercial motor vehicle at
4 the time the crime was committed;

5 (C) The person was not convicted of driving while under the influ-
6 ence of intoxicants, assault in any degree or criminal mischief in any
7 degree, arising out of the same criminal episode as the crime; and

8 (D) The person did not enter a driving while under the influence
9 of intoxicants diversion program for conduct arising out of the same
10 criminal episode as the crime.

11 (r) Any offense, if the person has previously had a conviction set
12 aside and the conviction that is the subject of the current motion was
13 entered in the register after the date of the previous order.

14 (3) A conviction for any of the following crimes may be set aside
15 only if the court makes the finding described in section 1 (6)(c)(B) of
16 this 2013 Act:

17 (a) An attempt to commit escape in the first degree as defined in
18 ORS 162.165.

19 (b) Tampering with a witness as defined in ORS 162.285.

20 (c) Supplying contraband as defined in ORS 162.185.

21 (d) An attempt to commit assault in the second degree as defined
22 in ORS 163.175.

23 (e) Assault in the third degree as defined in ORS 163.165.

24 (f) An attempt to commit kidnapping in the second degree as de-
25 fined in ORS 163.225.

26 (g) Coercion as defined in ORS 163.275.

27 (h) Abandonment of a child as defined in ORS 163.535.

28 (i) Stalking under ORS 163.732 (2)(a).

29 (j) Robbery in the third degree as defined in ORS 164.395.

30 (k) An attempt to commit robbery in the second degree as defined
31 in ORS 164.405.

1 (L) Intimidation in the first degree as defined in ORS 166.165.

2 (m) Unlawful use of a weapon as defined in ORS 166.220.

3 (n) A violation of ORS 166.270 (1).

4 (o) Fleeing or attempting to elude a peace officer as defined in ORS
5 811.540, if the crime may be set aside under subsection (2)(q) of this
6 section.

7 (p) A person felony.

8 (4) As used in this section:

9 (a) "Child abuse" means conduct that constitutes abuse as defined
10 in ORS 419B.005.

11 (b) "Conditional Class B felony" means a Class B felony other than:

12 (A) A person felony;

13 (B) Criminally negligent homicide as defined in ORS 163.145;

14 (C) Aggravated theft in the first degree as defined in ORS 164.057,
15 if the victim of the theft employed or contracted with the person, or
16 allowed the person to volunteer for or with the victim, at the time the
17 crime was committed; or

18 (D) A violation of ORS 166.429.

19 (c) "The date on which the person completed serving the sentence"
20 means the date on which the conviction that is the subject of the
21 motion was entered in the register or, if the person was sentenced to
22 a term of imprisonment as a result of the conviction that is the sub-
23 ject of the motion, the date on which the person was released from
24 imprisonment.

25 SECTION 4. (1) A person who has been arrested for, or charged
26 with, an offense may file a motion to set aside the arrest or charge in
27 accordance with sections 1 to 5 of this 2013 Act.

28 (2) A motion to set aside an arrest or a charge must be filed in the
29 circuit court of the county in which the person was arrested or
30 charged. The person must serve a copy of the motion and a full set
31 of the person's fingerprints upon the office of the district attorney

1 that filed the accusatory instrument or, if no charges were filed, upon
2 the office of the district attorney of the county in which the person
3 was arrested.

4 (3) Upon receipt of the motion and fingerprint card, the district
5 attorney shall:

6 (a) Include on the fingerprint card the notation “motion to set aside
7 an arrest or a charge”; and

8 (b) Forward the fingerprint card to the Department of State Police.

9 (4) As soon as practicable following receipt of a fingerprint card
10 under this section, the Department of State Police shall conduct a
11 criminal records check, return the fingerprint card to the district at-
12 torney and notify the district attorney of any information resulting
13 from the criminal records check, including:

14 (a) Any department identification number or submitting law
15 enforcement agency identification number associated with the arrest
16 or charge; and

17 (b) Whether the department has established positive identification
18 of the person.

19 (5) The district attorney may file an objection to a motion to set
20 aside an arrest or charge no later than 180 days after the date the
21 motion is filed. When the district attorney files a timely objection, the
22 court shall schedule a hearing on the motion and notify the parties
23 of the hearing date.

24 (6) When a person files a motion to set aside an arrest or a charge
25 in accordance with this section, the court shall enter an order grant-
26 ing the motion, unless:

27 (a) The person was convicted of the offense for which the person
28 was arrested or charged or another offense arising out of the same
29 criminal episode as the offense for which the person was arrested or
30 charged;

31 (b) The person is subject to a pending charge in any jurisdiction

1 **that alleges the person has committed an offense;**

2 **(c) The person has been convicted of an offense, excluding traffic**
3 **violations, in the 10-year period immediately preceding the filing of the**
4 **motion;**

5 **(d) The person has been arrested for a crime, or charged with an**
6 **offense, excluding the arrest or charge that is the subject of the mo-**
7 **tion, in the three-year period immediately preceding the filing of the**
8 **motion;**

9 **(e) The person has an outstanding monetary obligation as described**
10 **in ORS 137.288;**

11 **(f) The arrest or charge that is the subject of the motion is driving**
12 **while under the influence of intoxicants under ORS 813.010 and the**
13 **charge was dismissed as a result of the person's successful completion**
14 **of a diversion agreement described in ORS 813.200; or**

15 **(g) The district attorney files an affidavit with the court indicating**
16 **that the district attorney is conducting an investigation into or de-**
17 **termining whether to file charges arising out of, the conduct under-**
18 **lying the arrest or charge.**

19 **(7) When the court enters an order setting aside an arrest or a**
20 **charge under sections 1 to 5 of this 2013 Act, the order must indicate:**

21 **(a) The offense for which, and the date on which, the person was**
22 **arrested;**

23 **(b) The disposition of the arrest;**

24 **(c) The department identification number or submitting law**
25 **enforcement agency identification number associated with the arrest**
26 **or charge; and**

27 **(d) Whether the department has established positive identification**
28 **of the person.**

29 **SECTION 5. As used in sections 1 to 5 of this 2013 Act:**

30 **(1) "District attorney" has the meaning given that term in ORS**
31 **131.005.**

1 (2) "Offense" has the meaning given that term in ORS 161.505.

2 (3) "Official records in the case":

3 (a) Means investigative records created by a law enforcement
4 agency if the records precede an arrest or prosecution and are in the
5 possession of the investigative agency, motions related to pretrial re-
6 lease, the suppression of evidence or a sentencing proceeding, a tran-
7 script of a criminal proceeding as defined in ORS 131.005, the record
8 of an appeal or a post-conviction proceeding and any other record of
9 a proceeding that relates to or reflects an official determination of the
10 culpability of a person's conduct.

11 (b) Does not mean records maintained by a public body for a pur-
12 pose other than documenting the official determination of the
13 culpability of a person's conduct.

14 (4) "Person felony" has the meaning given that term in the rules
15 of the Oregon Criminal Justice Commission.

16 (5) "Public body" has the meaning given that term in ORS 174.109.

17 (6) "Traffic violation" has the meaning given that term in ORS
18 801.557.

19 **SECTION 6.** (1) As used in this section:

20 (a) "Business screening service" means a person regularly engaged
21 in the business of collecting, assembling or disseminating criminal
22 records for a fee. "Business screening service" does not include a
23 governmental entity or the news media.

24 (b) "Criminal record" means a record of an arrest, charge, criminal
25 proceeding or conviction.

26 (2) A business screening service may not disseminate:

27 (a) A criminal record unless the record has been verified as accu-
28 rate within the preceding 30 days.

29 (b) A written record of a conviction that has been set aside under
30 sections 1 to 5 of this 2013 Act, unless the business screening service
31 includes, in writing directly adjacent to the record, the following

1 **statement: “For purposes of the law, this individual has been deemed**
2 **not to have been convicted of this charge and may answer accordingly**
3 **any questions related to the occurrence of the charge.”**

4 (c) A written record of an arrest or charge that has been set aside
5 under sections 1 to 5 of this 2013 Act, unless the business screening
6 service includes, in writing directly adjacent to the record, the fol-
7 lowing statement: “For purposes of the law, this individual has been
8 deemed not to have been arrested or charged in this case and may
9 answer accordingly any questions related to the occurrence of the ar-
10 rest or charge.”

11 (3)(a) A presumption exists that a business screening service has
12 violated this section if the service disseminates a record of an arrest,
13 charge or conviction that has been set aside within the previous 30
14 days and the service does not include a statement required by sub-
15 section (2) of this section.

16 (b) In an action brought under this section, it is a defense that the
17 business screening service was in full compliance with the federal Fair
18 Credit Reporting Act, as that Act existed on the effective date of this
19 2013 Act.

20 (4)(a) A business screening service that violates this section is liable
21 to the individual who is the subject of the record in the amount of
22 \$1,000 plus actual damages.

23 (b) The court shall award reasonable attorney fees to a prevailing
24 plaintiff in an action under this section.

25 **SECTION 7.** ORS 181.662 is amended to read:

26 181.662. (1) The Department of Public Safety Standards and Training may
27 deny the application for training, or deny, suspend or revoke the certif-
28 ication, of any instructor or public safety officer, except a youth correction
29 officer or fire service professional, after written notice and hearing consist-
30 ent with the provisions of ORS 181.661, based upon a finding that:

31 (a) The public safety officer or instructor falsified any information sub-

1 mitted on the application for certification or on any documents submitted to
2 the Board on Public Safety Standards and Training or the department.

3 (b) The public safety officer or instructor has been convicted of a crime
4 or violation in this state or any other jurisdiction.

5 **(c) Notwithstanding section 2 (1) or (2) of this 2013 Act, the public**
6 **safety officer or instructor failed to disclose to the department, or to**
7 **the officer's or instructor's employer, the existence of any arrests,**
8 **charges or convictions, that have been set aside.**

9 [(c)] (d) The public safety officer or instructor does not meet the appli-
10 cable minimum standards, minimum training or the terms and conditions
11 established under ORS 181.640 (1)(a) to (d).

12 [(d)] (e) The public safety officer failed to comply with ORS 181.789 (3)(b).

13 (2) The department shall deny, suspend or revoke the certification of a
14 fire service professional, after written notice and hearing consistent with the
15 provisions of ORS 181.661, based upon a finding that the fire service profes-
16 sional has been convicted in this state of a crime listed in ORS 137.700 or
17 in any other jurisdiction of a crime that, if committed in this state, would
18 constitute a crime listed in ORS 137.700.

19 (3) The department may deny, suspend or revoke the certification of any
20 fire service professional after written notice and hearing consistent with the
21 provisions of ORS 181.661, based upon a finding:

22 (a) That the fire service professional falsified any information submitted
23 on the application for certification or on any documents submitted to the
24 board or the department; or

25 (b) Consistent with ORS 670.280, that the fire service professional is not
26 fit to receive or hold the certification as a result of conviction of a crime
27 in this state, or in any other jurisdiction, other than a crime described in
28 subsection (2) of this section.

29 (4) The department shall deny, suspend or revoke the certification of any
30 public safety officer or instructor, except a youth correction officer, after
31 written notice and hearing consistent with the provisions of ORS 181.661,

1 based upon a finding that the public safety officer or instructor has been
2 discharged for cause from employment as a public safety officer.

3 (5) The department, in consultation with the board, shall adopt rules
4 specifying those crimes and violations for which a conviction requires the
5 denial, suspension or revocation of the certification of a public safety officer
6 or instructor.

7 (6) Notwithstanding the lapse, suspension, revocation or surrender of the
8 certification of a public safety officer or instructor, the department may:

9 (a) Proceed with any investigation of, or any action or disciplinary pro-
10 ceedings against, the public safety officer or instructor; or

11 (b) Revise or render void an order suspending or revoking the certifi-
12 cation.

13 (7) The department shall deny, suspend or revoke the accreditation of a
14 training or educational program or any course, subject, facility or instruc-
15 tion thereof if the program, course, subject, facility or instruction is not in
16 compliance with rules adopted or conditions prescribed under ORS 181.640
17 (1)(g) or 181.650 (3).

18 (8) When the department completes an investigation relating to a person's
19 qualifications for employment, training or certification under this section,
20 the department shall issue a report.

21 **SECTION 8. The amendments to ORS 181.662 by section 7 of this**
22 **2013 Act apply to applications for certification made on or after the**
23 **effective date of this 2013 Act.**

24 **SECTION 9.** ORS 135.390 is amended to read:

25 135.390. (1) The court shall not accept a plea of guilty or no contest
26 without first determining that the plea is voluntary and intelligently made.

27 (2) The court shall determine whether the plea is the result of prior plea
28 discussions and a plea agreement. If the plea is the result of a plea agree-
29 ment, the court shall determine the nature of the agreement.

30 (3) If the plea agreement includes an agreement that the district attorney
31 will seek or not oppose dismissal of a charge in exchange for the defendant's

1 plea of guilty or no contest to another charge, the court may not accept the
2 plea of guilty or no contest unless:

3 (a) The agreement includes a written provision that indicates whether the
4 court is required to reinstate charges that are dismissed pursuant to the
5 agreement if the plea of guilty or no contest is withdrawn under ORS 135.365
6 or the judgment of conviction is subsequently reversed, vacated or set aside;
7 and

8 (b) If the agreement requires the court to reinstate charges under the
9 circumstances described in paragraph (a) of this subsection, the defendant
10 has provided the court with a written waiver of the statute of limitations
11 and any statutory or constitutional speedy trial or double jeopardy rights,
12 applicable to the dismissed charges.

13 (4) If the district attorney has agreed to seek charge or sentence conces-
14 sions which must be approved by the court, the court shall advise the de-
15 fendant personally that the recommendations of the district attorney are not
16 binding on the court.

17 (5)(a) If the district attorney has provided a plea offer and agreed dispo-
18 sition recommendation to the defendant as provided in ORS 135.405 and the
19 defendant is entering a guilty plea based on the plea offer and agreed dis-
20 position recommendation, the court shall determine whether the plea is vol-
21 untarily made. Except as otherwise provided in paragraph (b) of this
22 subsection, if the court finds that the plea is voluntarily made, the court
23 shall impose sentence as provided in the agreed disposition recommendation.

24 (b) If the court determines that the agreed disposition recommendation is
25 inappropriate in a particular case, the court shall so advise the parties and
26 allow the defendant an opportunity to withdraw the plea.

27 **(6) As used in this section, “set aside” does not include an order**
28 **entered under sections 1 to 5 of this 2013 Act.**

29 **SECTION 10.** ORS 40.015 is amended to read:

30 40.015. (1) The Oregon Evidence Code applies to all courts in this state
31 except for:

1 (a) A hearing or mediation before a magistrate of the Oregon Tax Court
2 as provided by ORS 305.501;

3 (b) The small claims department of a circuit court as provided by ORS
4 46.415; and

5 (c) The small claims department of a justice court as provided by ORS
6 55.080.

7 (2) The Oregon Evidence Code applies generally to civil actions, suits and
8 proceedings, criminal actions and proceedings and to contempt proceedings
9 except those in which the court may act summarily.

10 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all
11 actions, suits and proceedings.

12 (4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following
13 situations:

14 (a) The determination of questions of fact preliminary to admissibility of
15 evidence when the issue is to be determined by the court under ORS 40.030.

16 (b) Proceedings before grand juries, except as required by ORS 132.320.

17 (c) Proceedings for extradition, except as required by ORS 133.743 to
18 133.857.

19 (d) Sentencing proceedings, except proceedings under ORS 138.012 and
20 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to
21 136.785.

22 (e) Proceedings to revoke probation, except as required by ORS 137.090.

23 (f) Issuance of warrants of arrest, bench warrants or search warrants.

24 (g) Proceedings under ORS chapter 135 relating to conditional release,
25 security release, release on personal recognizance, or preliminary hearings,
26 subject to ORS 135.173.

27 (h) Proceedings to determine proper disposition of a child in accordance
28 with ORS 419B.325 (2) and 419C.400 (4).

29 (i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and
30 813.255 to determine whether a driving while under the influence of
31 intoxicants diversion agreement should be allowed or terminated.

1 (j) Proceedings under ORS 147.530 relating to victims' rights, except for
2 the provisions of ORS 40.105 and 40.115.

3 **(k) Proceedings under sections 1 to 5 of this 2013 Act to determine**
4 **whether to set aside an arrest, a charge or a conviction.**

5 **SECTION 11.** ORS 181.548 is amended to read:

6 181.548. (1) Notwithstanding the provisions of ORS 192.410 to 192.505 re-
7 lating to public records, the fingerprints, photographs, records and reports
8 compiled under ORS [*137.225,*] 181.010, 181.511, 181.521, 181.555[,] **or** 805.060
9 [*and this section*] **or sections 1 to 5 of this 2013 Act** are confidential and
10 exempt from public inspection except:

11 (a) As ordered by a court;

12 (b) As provided in rules adopted by the Department of State Police under
13 ORS chapter 183 to govern access to and use of computerized criminal
14 offender information including access by an individual for review or chal-
15 lenge of the individual's own records;

16 (c) As provided in ORS 181.555 and 181.560;

17 (d) As provided in ORS 181.525; or

18 (e) As provided in ORS 418.747 (5).

19 (2) The records of the department of crime reports to the department and
20 of arrests made by the department, however, shall not be confidential and
21 shall be available in the same manner as the records of arrest and reports
22 of crimes of other law enforcement agencies under ORS 192.501 (3).

23 **SECTION 12.** ORS 181.085 is amended to read:

24 181.085. (1) The Department of State Police is authorized to:

25 (a) Store blood and buccal samples received under authority of this sec-
26 tion, ORS 137.076, 161.325 and 419C.473 (1) and section 2, chapter 852, Oregon
27 Laws 2001, and other physical evidence obtained from analysis of such sam-
28 ples;

29 (b) Analyze such samples for the purpose of establishing the genetic pro-
30 file of the donor or otherwise determining the identity of persons or contract
31 with other qualified public or private laboratories to conduct that analysis;

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

3 (d) Utilize such samples to create statistical population frequency data-
4 bases, provided that genetic profiles or other such information in a popu-
5 lation frequency database shall not be identified with specific individuals;
6 and

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

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

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

18 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public in-
19 decency, incest or using a child in a display of sexually explicit conduct, as
20 those offenses are defined in ORS 163.355 to 163.427, 163.465 (1)(c), 163.525
21 and 163.670;

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

23 (C) Promoting or compelling prostitution, as defined in ORS 167.012 and
24 167.017;

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

26 (E) Assault in the first, second or third degree, as defined in ORS 163.165,
27 163.175 and 163.185;

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

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

31 (H) Robbery in the first, second or third degree, as defined in ORS 164.395,

1 164.405 and 164.415;

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

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

5 (K) Aggravated vehicular homicide, as defined in ORS 163.149;

6 (L) Conspiracy or attempt to commit any felony listed in subparagraphs
7 (A) to (J) of this paragraph; or

8 (M) Murder, aggravated murder or an attempt to commit murder or ag-
9 gravated murder.

10 (b) After analyzing samples from persons described in paragraph (a) of
11 this subsection, the department shall analyze samples from persons convicted
12 of a felony under ORS 475.752, 475.806 to 475.894, 475.904, 475.906 or 475.914.

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

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

19 (4) The department may not transfer or disclose any sample, physical ev-
20 idence or criminal identification information obtained, stored or maintained
21 under authority of this section, ORS 137.076, 161.325 or 419C.473 (1) except:

22 (a) To a law enforcement agency as defined in ORS 181.010, a district at-
23 torney or the Criminal Justice Division of the Department of Justice for the
24 purpose of establishing the identity of a person in the course of a criminal
25 investigation or proceeding;

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

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

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

8 (6) Any public agency that receives a sample, physical evidence or crimi-
9 nal identification information under authority of subsection (4) of this sec-
10 tion may not disclose it except as provided in subsection (4) of this section.

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

23 (8)(a) Whenever a court reverses the conviction, judgment or order that
24 created an obligation to provide a blood or buccal sample under ORS 137.076
25 (2), 161.325 or 419C.473 (1), the person who provided the sample may request
26 destruction of the sample and any criminal identification record created in
27 connection with that sample.

28 (b) Upon receipt of a written request for destruction pursuant to this
29 section and a certified copy of the court order reversing the conviction,
30 judgment or order, the department shall destroy any sample received from
31 the person, any physical evidence obtained from that sample and any crimi-

1 nal identification records pertaining to the person, unless the department
2 determines that the person has otherwise become obligated to submit a blood
3 or buccal sample as a result of a separate conviction, juvenile adjudication
4 or finding of guilty except for insanity for an offense listed in ORS 137.076
5 (1). When the department destroys a sample, physical evidence or criminal
6 identification record under this paragraph, the department shall notify any
7 public agency or person to whom the sample, physical evidence or criminal
8 identification information was transferred or disclosed under subsection (4)
9 of this section of the reversal of the conviction, judgment or order.

10 (c) The department is not required to destroy an item of physical evidence
11 obtained from a blood or buccal sample if evidence relating to another person
12 subject to the provisions of ORS 137.076, 161.325, 419A.260 and 419C.473 (1)
13 and this section would thereby be destroyed. Notwithstanding this sub-
14 section, no sample, physical evidence or criminal identification record is af-
15 fected by an order to set aside a conviction under [*ORS 137.225*] **sections 1**
16 **to 5 of this 2013 Act.**

17 (9) As used in this section, “convicted” includes a juvenile court finding
18 of jurisdiction based on ORS 419C.005.

19 **SECTION 13. ORS 137.225 is repealed.**

20 **SECTION 14. Sections 1 to 5 of this 2013 Act and the amendments**
21 **to ORS 40.015, 135.390, 181.085 and 181.548 by sections 9 to 12 of this 2013**
22 **Act apply to motions filed on or after the effective date of this 2013**
23 **Act.**

24
