

House Bill 3054

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**.

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 40.015, 135.390, 181.085,
3 181.548 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 file a motion to set**
6 **aside the conviction in accordance with sections 1 to 5 of this 2013 Act.**

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

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

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

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

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

18 **(a) Include on the fingerprint card the notation "motion to set aside conviction"; and**

19 **(b) Forward the fingerprint card and the certified check to the Department of State Po-**
20 **lice.**

21 **(4) As soon as practicable following receipt of a fingerprint card under this section, the**
22 **Department of State Police shall conduct a criminal records check, return the fingerprint**
23 **card to the district attorney and notify the district attorney of any information resulting**
24 **from the criminal records check, including:**

25 **(a) Any department identification number or submitting law enforcement agency iden-**
26 **tification number associated with the conviction; and**

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

28 **(5) The district attorney may file an objection to a motion to set aside a conviction no**
29 **later than 180 days after the date the motion is filed. When the district attorney files a**

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 timely objection, the court shall schedule a hearing on the motion and notify the parties of
 2 the hearing date. The court shall allow the victim to make a statement at the hearing.

3 (6) When a person files a motion to set aside a conviction in accordance with this section,
 4 the court shall enter an order granting the motion, unless:

5 (a) The person does not meet the eligibility requirements described in section 3 (1) of this
 6 2013 Act;

7 (b) The conviction that is the subject of the motion is described in section 3 (2) of this
 8 2013 Act; or

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

10 (A) If the conviction is for a crime other than a crime listed in section 3 (3) of this 2013
 11 Act, the court finds that the person has violated the law since the date of conviction.

12 (B) If the conviction is for a crime listed in section 3 (3) of this 2013 Act, the court finds
 13 that granting the motion is not in the best interests of the community. In making the de-
 14 termination described in this subparagraph, the court shall consider the effect of the crime
 15 and the proposed set aside order on the victim.

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

19 (8) When the court enters an order setting aside a conviction under sections 1 to 5 of this
 20 2013 Act, the order must indicate:

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

22 (b) The department identification number or submitting law enforcement agency iden-
 23 tification number associated with the conviction; and

24 (c) Whether the department has established positive identification of the person.

25 (9) As used in this section, “violated the law since the date of conviction” includes a
 26 conviction for an offense, the commission of a crime or violation or the violation of a court
 27 order or of a condition of probation, parole or post-prison supervision.

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

32 (a) The Department of Corrections, if the person has previously been committed to the
 33 custody of the department;

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

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

37 (2) For purposes of the law, when an arrest, a charge or a conviction has been set aside
 38 under sections 1 to 5 of this 2013 Act, the arrest, charge or conviction is deemed not to have
 39 occurred and the person may answer accordingly any questions related to the occurrence
 40 of the arrest, charge or conviction.

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

42 (a) On motion of the district attorney alleging that a person has committed an offense
 43 for which a previous conviction is a material element of the offense under ORS 132.540, the
 44 court shall order disclosure of the official records in the case for purposes of the prosecution
 45 of the offense.

1 (b) On motion of a party to a prosecution for an offense, the court shall order disclosure
 2 of the official records in the case for any purpose related to the sentencing of the person
 3 whose conviction has been set aside or, if the court finds good cause to believe that the of-
 4 ficial records in the case will assist the investigation of the party, for the limited purpose
 5 of assisting the investigation of the party.

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

10 (d) On motion of a party to a civil action in which truth is an element of a claim or de-
 11 fense, the court may order the disclosure of the official records in the case if the court finds
 12 that disclosure is necessary in the interests of justice.

13 (e) On motion of a party to a civil action in which a claim or defense alleges misconduct
 14 for which a person was arrested, charged or convicted, the court may order the disclosure
 15 of the official records in the case, for the limited purpose of refreshing the memory of a
 16 witness under ORS 40.375.

17 (f)(A) When the Department of Public Safety Standards and Training requests under ORS
 18 181.534 that the Department of State Police conduct a criminal records check on a person
 19 described in ORS 181.612 (1)(c), the Department of State Police shall include in the results
 20 of the check any convictions of the subject individual that have been set aside.

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

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

29 (B) Upon the request of the Department of Human Services or the Oregon Health Au-
 30 thority, a public body shall disclose any official records in the case relating to the subject
 31 individual that have been sealed under this section.

32 (h)(A) When the Child Care Division of the Employment Department requests under ORS
 33 181.534 that the Department of State Police conduct a criminal records check required by
 34 ORS 657A.030, 657A.270, 657A.300 or 657A.330, the Department of State Police shall include
 35 in the results of the check any convictions of the subject individual that have been set aside.

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

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

42 (a) Has fully complied with and performed the sentence of the court and, if a sentence
 43 of probation, parole or post-prison supervision was imposed as a result of the conviction, has
 44 not had the sentence revoked;

45 (b) Has not been convicted of a crime, excluding the offense that is the subject of the

1 motion, in the 10-year period immediately preceding the filing of the motion;

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

5 (d) Is not subject to a pending charge in any jurisdiction that alleges the person has
6 committed an offense;

7 (e) Is not subject to an outstanding warrant of arrest in any jurisdiction; and

8 (f) Has no outstanding monetary obligations as described in ORS 137.288.

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

11 (a) Murder or treason.

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

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

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

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

18 (C) A conditional Class B felony, the person files the motion more than 20 years after the
19 date on which the person completed serving the sentence and the person has not been ar-
20 rested or convicted for an offense, excluding traffic violations, since the date on which the
21 person completed serving the sentence.

22 (d) Perjury as defined in ORS 162.065.

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

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

25 (g) Subjecting another person to involuntary servitude in the second degree as defined
26 in ORS 163.263.

27 (h) Bigamy as defined in ORS 163.515.

28 (i) Incest as defined in ORS 163.525.

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

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

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

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

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

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

39 (p) A sex crime as defined in ORS 181.594, except for crimes listed in ORS 181.830 (1)(a),
40 if the person establishes by a preponderance of the evidence that the provisions of ORS
41 181.830 (2) apply.

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

45 (A) The person does not hold a commercial driver license or a commercial learner's

1 permit;

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

4 (C) The person was not convicted of driving while under the influence of intoxicants, as-
5 sult in any degree or criminal mischief in any degree, arising out of the same criminal ep-
6 isode as the crime; and

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

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

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

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

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

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

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

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

19 (f) An attempt to commit kidnapping in the second degree as defined in ORS 163.225.

20 (g) Coercion as defined in ORS 163.275.

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

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

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

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

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

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

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

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

30 (p) A person felony.

31 (4) As used in this section:

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

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

34 (A) A person felony;

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

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

39 (D) A violation of ORS 166.429.

40 (c) "The date on which the person completed serving the sentence" means the date on
41 which the conviction that is the subject of the motion was entered in the register or, if the
42 person was sentenced to a term of imprisonment as a result of the conviction that is the
43 subject of the motion, the date on which the person was released from imprisonment.

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

1 **(2) A motion to set aside an arrest or a charge must be filed in the circuit court of the**
 2 **county in which the person was arrested or charged. The person must serve a copy of the**
 3 **motion and a full set of the person’s fingerprints upon the office of the district attorney that**
 4 **filed the accusatory instrument or, if no charges were filed, upon the office of the district**
 5 **attorney of the county in which the person was arrested.**

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

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

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

10 **(4) As soon as practicable following receipt of a fingerprint card under this section, the**
 11 **Department of State Police shall conduct a criminal records check, return the fingerprint**
 12 **card to the district attorney 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 enforcement agency iden-**
 15 **tification number associated with the arrest or charge; and**

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

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

21 **(6) When a person files a motion to set aside an arrest or a charge in accordance with**
 22 **this section, the court shall enter an order granting the motion, unless:**

23 **(a) The person was convicted of the offense for which the person was arrested or charged**
 24 **or another offense arising out of the same criminal episode as the offense for which the**
 25 **person was arrested or charged;**

26 **(b) The person is subject to a pending charge in any jurisdiction that alleges the person**
 27 **has committed an offense;**

28 **(c) The person has been convicted of an offense, excluding traffic violations, in the**
 29 **10-year period immediately preceding the filing of the motion;**

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

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

34 **(f) The arrest or charge that is the subject of the motion is driving while under the in-**
 35 **fluence of intoxicants under ORS 813.010 and the charge was dismissed as a result of the**
 36 **person’s successful completion of a diversion agreement described in ORS 813.200; or**

37 **(g) The district attorney files an affidavit with the court indicating that the district at-**
 38 **torney is conducting an investigation into or determining whether to file charges arising out**
 39 **of, the conduct underlying the arrest or charge.**

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

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

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

44 **(c) The department identification number or submitting law enforcement agency iden-**
 45 **tification number associated with the arrest or charge; and**

1 (d) Whether the department has established positive identification of the person.

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

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

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

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

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

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

14 (4) "Person felony" has the meaning given that term in the rules of the Oregon Criminal
15 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 801.557.

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

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

22 (b) "Criminal record" means a record of an arrest, charge, criminal proceeding or con-
23 viction.

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

25 (a) A criminal record unless the record has been verified as accurate within the preced-
26 ing 30 days.

27 (b) A written record of a conviction that has been set aside under sections 1 to 5 of this
28 2013 Act, unless the business screening service includes, in writing directly adjacent to the
29 record, the following statement: "For purposes of the law, this individual has been deemed
30 not to have been convicted of this charge and may answer accordingly any questions related
31 to the occurrence of the charge."

32 (c) A written record of an arrest or charge that has been set aside under sections 1 to
33 5 of this 2013 Act, unless the business screening service includes, in writing directly adjacent
34 to the record, the following statement: "For purposes of the law, this individual has been
35 deemed not to have been arrested or charged in this case and may answer accordingly any
36 questions related to the occurrence of the arrest or charge."

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

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

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

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

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

4 181.662. (1) The Department of Public Safety Standards and Training may deny the application
 5 for training, or deny, suspend or revoke the certification, of any instructor or public safety officer,
 6 except a youth correction officer or fire service professional, after written notice and hearing con-
 7 sistent with the provisions of ORS 181.661, based upon a finding that:

8 (a) The public safety officer or instructor falsified any information submitted on the application
 9 for certification or on any documents submitted to the Board on Public Safety Standards and
 10 Training or the department.

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

13 **(c) Notwithstanding section 2 (1) or (2) of this 2013 Act, the public safety officer or in-**
 14 **structor failed to disclose to the department, or to the officer's or instructor's employer, the**
 15 **existence of any arrests, charges or convictions, that have been set aside.**

16 [(c)] (d) The public safety officer or instructor does not meet the applicable minimum standards,
 17 minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).

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

19 (2) The department shall deny, suspend or revoke the certification of a fire service professional,
 20 after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding
 21 that the fire service professional has been convicted in this state of a crime listed in ORS 137.700
 22 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime
 23 listed in ORS 137.700.

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

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

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

31 (4) The department shall deny, suspend or revoke the certification of any public safety officer
 32 or instructor, except a youth correction officer, after written notice and hearing consistent with the
 33 provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been
 34 discharged for cause from employment as a public safety officer.

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

38 (6) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a pub-
 39 lic safety officer or instructor, the department may:

40 (a) Proceed with any investigation of, or any action or disciplinary proceedings against, the
 41 public safety officer or instructor; or

42 (b) Revise or render void an order suspending or revoking the certification.

43 (7) The department shall deny, suspend or revoke the accreditation of a training or educational
 44 program or any course, subject, facility or instruction thereof if the program, course, subject, facility
 45 or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181.640

1 (1)(g) or 181.650 (3).

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

4 **SECTION 8. The amendments to ORS 181.662 by section 7 of this 2013 Act apply to ap-**
 5 **plications for certification made on or after the effective date of this 2013 Act.**

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

7 135.390. (1) The court shall not accept a plea of guilty or no contest without first determining
 8 that the plea is voluntary and intelligently made.

9 (2) The court shall determine whether the plea is the result of prior plea discussions and a plea
 10 agreement. If the plea is the result of a plea agreement, the court shall determine the nature of the
 11 agreement.

12 (3) If the plea agreement includes an agreement that the district attorney will seek or not op-
 13 pose dismissal of a charge in exchange for the defendant’s plea of guilty or no contest to another
 14 charge, the court may not accept the plea of guilty or no contest unless:

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

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

23 (4) If the district attorney has agreed to seek charge or sentence concessions which must be
 24 approved by the court, the court shall advise the defendant personally that the recommendations
 25 of the district attorney are not binding on the court.

26 (5)(a) If the district attorney has provided a plea offer and agreed disposition recommendation
 27 to the defendant as provided in ORS 135.405 and the defendant is entering a guilty plea based on
 28 the plea offer and agreed disposition recommendation, the court shall determine whether the plea
 29 is voluntarily made. Except as otherwise provided in paragraph (b) of this subsection, if the court
 30 finds that the plea is voluntarily made, the court shall impose sentence as provided in the agreed
 31 disposition recommendation.

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

35 **(6) As used in this section, “set aside” does not include an order entered under sections**
 36 **1 to 5 of this 2013 Act.**

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

38 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

39 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
 40 305.501;

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

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

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

1 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-
 2 ceedings.

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

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

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

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

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

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

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

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

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

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

19 (j) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS
 20 40.105 and 40.115.

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

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

24 181.548. (1) Notwithstanding the provisions of ORS 192.410 to 192.505 relating to public
 25 records, the fingerprints, photographs, records and reports compiled under ORS [137.225,] 181.010,
 26 181.511, 181.521, 181.555[,] or 805.060 [and this section] or **sections 1 to 5 of this 2013 Act** are
 27 confidential and exempt from public inspection except:

28 (a) As ordered by a court;

29 (b) As provided in rules adopted by the Department of State Police under ORS chapter 183 to
 30 govern access to and use of computerized criminal offender information including access by an in-
 31 dividual for review or challenge of the individual's own records;

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

33 (d) As provided in ORS 181.525; or

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

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

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

39 181.085. (1) The Department of State Police is authorized to:

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

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

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

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

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

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

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

15 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 16 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 17 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

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

28 (L) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this para-
 29 graph; or

30 (M) Murder, aggravated murder or an attempt to commit murder or aggravated murder.

31 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
 32 partment shall analyze samples from persons convicted of a felony under ORS 475.752, 475.806 to
 33 475.894, 475.904, 475.906 or 475.914.

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

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

39 (4) The department may not transfer or disclose any sample, physical evidence or criminal
 40 identification information obtained, stored or maintained under authority of this section, ORS
 41 137.076, 161.325 or 419C.473 (1) except:

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

45 (b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if

1 discovery or disclosure is required by a separate statutory or constitutional provision; or

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

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

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

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

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

26 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
27 copy of the court order reversing the conviction, judgment or order, the department shall destroy
28 any sample received from the person, any physical evidence obtained from that sample and any
29 criminal identification records pertaining to the person, unless the department determines that the
30 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate
31 conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS
32 137.076 (1). When the department destroys a sample, physical evidence or criminal identification
33 record under this paragraph, the department shall notify any public agency or person to whom the
34 sample, physical evidence or criminal identification information was transferred or disclosed under
35 subsection (4) of this section of the reversal of the conviction, judgment or order.

36 (c) The department is not required to destroy an item of physical evidence obtained from a blood
37 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
38 161.325, 419A.260 and 419C.473 (1) and this section would thereby be destroyed. Notwithstanding this
39 subsection, no sample, physical evidence or criminal identification record is affected by an order to
40 set aside a conviction under *[ORS 137.225]* **sections 1 to 5 of this 2013 Act.**

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

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

44 **SECTION 14. Sections 1 to 5 of this 2013 Act and the amendments to ORS 40.015, 135.390,**
45 **181.085 and 181.548 by sections 9 to 12 of this 2013 Act apply to motions filed on or after the**

1 **effective date of this 2013 Act.**

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