

B-Engrossed
Senate Bill 1553

Ordered by the Senate February 24
Including Senate Amendments dated February 17 and February 24

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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.

[Authorizes prosecution of first-degree sex crimes any time after commission of crime if prosecuting attorney obtains corroborating evidence of crime. Requires prosecuting attorney to present evidence reasonably tending to negate guilt to grand jury.]

Creates new manner of committing crime of assault in the third degree when person with criminal negligence causes serious physical injury to vulnerable user of public way by means of motor vehicle. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both. Directs Oregon Criminal Justice Commission to classify crime as crime category 4 on sentencing guidelines grid.

Provides that images related to death of person are exempt from disclosure as public record if disclosure would create unreasonable invasion of privacy of family of deceased person. Creates exception when public interest requires disclosure in particular instance.

Clarifies crime classification categories that may be expunged if requirements met.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 137.225, 163.165, 163.168 and 192.502.

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

4 **SECTION 1.** ORS 163.165 is amended to read:

5 163.165. (1) A person commits the crime of assault in the third degree if the person:

6 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
7 weapon;

8 (b) Recklessly causes serious physical injury to another under circumstances manifesting ex-
9 tremeness of indifference to the value of human life;

10 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon un-
11 der circumstances manifesting extreme indifference to the value of human life;

12 **(d) With criminal negligence causes serious physical injury to another who is a vulner-
13 able user of a public way, as defined in ORS 801.608, by means of a motor vehicle;**

14 [(d)] (e) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle,
15 physical injury to the operator of a public transit vehicle while the operator is in control of or op-
16 erating the vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that
17 term in ORS 166.116;

18 [(e)] (f) While being aided by another person actually present, intentionally or knowingly causes
19 physical injury to another;

20 [(f)] (g) While committed to a youth correction facility, intentionally or knowingly causes phys-
21 ical injury to another knowing the other person is a staff member while the other person is acting

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 in the course of official duty;

2 [(g)] (h) Intentionally, knowingly or recklessly causes physical injury to an emergency medical
3 services provider, as defined in ORS 682.025, while the emergency medical services provider is per-
4 forming official duties;

5 [(h)] (i) Being at least 18 years of age, intentionally or knowingly causes physical injury to a
6 child 10 years of age or younger; or

7 [(i)] (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle,
8 physical injury to the operator of a taxi while the operator is in control of the taxi.

9 (2)(a) Assault in the third degree is a Class C felony.

10 (b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under sub-
11 section (1)(a) or (b) of this section is a Class B felony if:

12 (A) The assault resulted from the operation of a motor vehicle; and

13 (B) The defendant was the driver of the motor vehicle and was driving while under the influence
14 of intoxicants.

15 (3) As used in this section:

16 (a) "Staff member" means:

17 (A) A corrections officer as defined in ORS 181A.355, a youth correction officer, a youth cor-
18 rection facility staff member, a Department of Corrections or Oregon Youth Authority staff member
19 or a person employed pursuant to a contract with the department or youth authority to work with,
20 or in the vicinity of, inmates, youth or youth offenders; and

21 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
22 corrections facility to work with, or in the vicinity of, inmates, youth or youth offenders.

23 (b) "Youth correction facility" has the meaning given that term in ORS 162.135.

24 **SECTION 2.** ORS 163.168 is amended to read:

25 163.168. The Oregon Criminal Justice Commission shall classify assault in the third degree that
26 is committed under the circumstances described in:

27 (1) ORS 163.165 (2)(b) as crime category 8 of the sentencing guidelines grid of the commission.

28 (2) **ORS 163.165 (1)(d) as crime category 4 of the sentencing guidelines grid of the com-**
29 **mission.**

30 **SECTION 3.** ORS 192.502 is amended to read:

31 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

32 (1) Communications within a public body or between public bodies of an advisory nature to the
33 extent that they cover other than purely factual materials and are preliminary to any final agency
34 determination of policy or action. This exemption shall not apply unless the public body shows that
35 in the particular instance the public interest in encouraging frank communication between officials
36 and employees of public bodies clearly outweighs the public interest in disclosure.

37 (2)(a) Information of a personal nature such as but not limited to that kept in a personal, med-
38 ical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless
39 the public interest by clear and convincing evidence requires disclosure in the particular instance.
40 The party seeking disclosure shall have the burden of showing that public disclosure would not
41 constitute an unreasonable invasion of privacy.

42 (b) **Images related to the death of a person that are part of a law enforcement agency**
43 **investigation, if public disclosure would create an unreasonable invasion of privacy of the**
44 **family of the deceased person, unless the public interest by clear and convincing evidence**
45 **requires disclosure in the particular instance. The party seeking disclosure shall have the**

1 **burden of showing that public disclosure would not constitute an unreasonable invasion of**
2 **privacy.**

3 (3) Upon compliance with ORS 192.437, public body employee or volunteer residential addresses,
4 residential telephone numbers, personal cellular telephone numbers, personal electronic mail ad-
5 dresses, driver license numbers, employer-issued identification card numbers, emergency contact in-
6 formation, Social Security numbers, dates of birth and other telephone numbers contained in
7 personnel records maintained by the public body that is the employer or the recipient of volunteer
8 services. This exemption:

9 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
10 unteers who are elected officials, except that a judge or district attorney subject to election may
11 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
12 terms of ORS 192.445;

13 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
14 shows by clear and convincing evidence that the public interest requires disclosure in a particular
15 instance pursuant to ORS 192.437;

16 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
17 fessional education association of which the substitute teacher may be a member; and

18 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

19 (4) Information submitted to a public body in confidence and not otherwise required by law to
20 be submitted, where such information should reasonably be considered confidential, the public body
21 has obliged itself in good faith not to disclose the information, and when the public interest would
22 suffer by the disclosure.

23 (5) Information or records of the Department of Corrections, including the State Board of Parole
24 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
25 a person in custody of the department or substantially prejudice or prevent the carrying out of the
26 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
27 terest in disclosure.

28 (6) Records, reports and other information received or compiled by the Director of the Depart-
29 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
30 otherwise required by law to be made public, to the extent that the interests of lending institutions,
31 their officers, employees and customers in preserving the confidentiality of such information out-
32 weighs the public interest in disclosure.

33 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

34 (8) Any public records or information the disclosure of which is prohibited by federal law or
35 regulations.

36 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
37 wise made confidential or privileged under Oregon law.

38 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
39 compiled in a public record when:

40 (A) The basis for the claim of exemption is ORS 40.225;

41 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
42 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
43 to 192.505;

44 (C) The factual information was compiled by or at the direction of an attorney as part of an
45 investigation on behalf of the public body in response to information of possible wrongdoing by the

1 public body;

2 (D) The factual information was not compiled in preparation for litigation, arbitration or an
3 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
4 or against the public body; and

5 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
6 characterizing or partially disclosing the factual information compiled by or at the attorney's di-
7 rection.

8 (10) Public records or information described in this section, furnished by the public body ori-
9 ginally compiling, preparing or receiving them to any other public officer or public body in con-
10 nection with performance of the duties of the recipient, if the considerations originally giving rise
11 to the confidential or exempt nature of the public records or information remain applicable.

12 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
13 programs pursuant to ORS 469.530.

14 (12) Employee and retiree address, telephone number and other nonfinancial membership records
15 and employee financial records maintained by the Public Employees Retirement System pursuant to
16 ORS chapters 238 and 238A.

17 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
18 agents of the treasurer or the council relating to active or proposed publicly traded investments
19 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
20 liquidation of the investments. For the purposes of this subsection:

21 (a) The exemption does not apply to:

22 (A) Information in investment records solely related to the amount paid directly into an invest-
23 ment by, or returned from the investment directly to, the treasurer or council; or

24 (B) The identity of the entity to which the amount was paid directly or from which the amount
25 was received directly.

26 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
27 or liquidation of the investment has been concluded.

28 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
29 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed
30 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset
31 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or
32 liquidation of the investments including but not limited to:

33 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
34 or to their respective investment vehicles.

35 (B) Financial statements of an investment fund, an asset ownership or their respective invest-
36 ment vehicles.

37 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
38 vehicles.

39 (D) Records containing information regarding the portfolio positions in which an investment
40 fund, an asset ownership or their respective investment vehicles invest.

41 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
42 spective investment vehicles.

43 (F) Investment agreements and related documents.

44 (b) The exemption under this subsection does not apply to:

45 (A) The name, address and vintage year of each privately placed investment fund.

1 (B) The dollar amount of the commitment made to each privately placed investment fund since
2 inception of the fund.

3 (C) The dollar amount of cash contributions made to each privately placed investment fund since
4 inception of the fund.

5 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
6 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,
7 council or board from each privately placed investment fund.

8 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
9 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
10 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

11 (F) The net internal rate of return of each privately placed investment fund since inception of
12 the fund.

13 (G) The investment multiple of each privately placed investment fund since inception of the fund.

14 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
15 basis to each privately placed investment fund.

16 (I) The dollar amount of cash profit received from each privately placed investment fund on a
17 fiscal year-end basis.

18 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
19 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
20 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

21 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
22 by ORS 98.352.

23 (17)(a) The following records, communications and information submitted to the Oregon Business
24 Development Commission, the Oregon Business Development Department, the State Department of
25 Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS
26 777.005, or a county or city governing body and any board, department, commission, council or
27 agency thereof, by applicants for investment funds, grants, loans, services or economic development
28 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

29 (A) Personal financial statements.

30 (B) Financial statements of applicants.

31 (C) Customer lists.

32 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the
33 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
34 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
35 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
36 ery or deposition statutes to a party to litigation or potential litigation.

37 (E) Production, sales and cost data.

38 (F) Marketing strategy information that relates to applicant's plan to address specific markets
39 and applicant's strategy regarding specific competitors.

40 (b) The following records, communications and information submitted to the State Department
41 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

42 (A) Personal financial statements.

43 (B) Financial statements of applicants.

44 (C) Customer lists.

45 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the

1 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
2 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
3 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
4 ery or deposition statutes to a party to litigation or potential litigation.

5 (E) Production, sales and cost data.

6 (F) Marketing strategy information that relates to applicant's plan to address specific markets
7 and applicant's strategy regarding specific competitors.

8 (18) Records, reports or returns submitted by private concerns or enterprises required by law
9 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
10 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
11 information is in a form which would permit identification of the individual concern or enterprise.
12 Nothing in this subsection shall limit the use which can be made of such information for regulatory
13 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
14 payer of the delinquency immediately by certified mail. However, in the event that the payment or
15 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
16 public body shall disclose, upon the request of any person, the following information:

17 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
18 payment or delivery of the taxes.

19 (b) The period for which the taxes are delinquent.

20 (c) The actual, or estimated, amount of the delinquency.

21 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
22 pointed counsel, and all information supplied to the court from whatever source for the purpose of
23 verifying the financial eligibility of a person pursuant to ORS 151.485.

24 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
25 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
26 ness Services, in any of the following circumstances:

27 (a) When necessary for insurers, self-insured employers and third party claim administrators to
28 process workers' compensation claims.

29 (b) When necessary for the director, other governmental agencies of this state or the United
30 States to carry out their duties, functions or powers.

31 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
32 to identify any worker who is the subject of a claim.

33 (d) When a worker or the worker's representative requests review of the worker's claim record.

34 (21) Sensitive business records or financial or commercial information of the Oregon Health and
35 Science University that is not customarily provided to business competitors.

36 (22) Records of Oregon Health and Science University regarding candidates for the position of
37 president of the university.

38 (23) The records of a library, including:

39 (a) Circulation records, showing use of specific library material by a named person;

40 (b) The name of a library patron together with the address or telephone number of the patron;
41 and

42 (c) The electronic mail address of a patron.

43 (24) The following records, communications and information obtained by the Housing and Com-
44 munity Services Department in connection with the department's monitoring or administration of
45 financial assistance or of housing or other developments:

- 1 (a) Personal and corporate financial statements and information, including tax returns.
- 2 (b) Credit reports.
- 3 (c) Project appraisals, excluding appraisals obtained in the course of transactions involving an
- 4 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed
- 5 of as part of the project, but only after the transactions have closed and are concluded.
- 6 (d) Market studies and analyses.
- 7 (e) Articles of incorporation, partnership agreements and operating agreements.
- 8 (f) Commitment letters.
- 9 (g) Project pro forma statements.
- 10 (h) Project cost certifications and cost data.
- 11 (i) Audits.
- 12 (j) Project tenant correspondence.
- 13 (k) Personal information about a tenant.
- 14 (L) Housing assistance payments.
- 15 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
- 16 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
- 17 that is not otherwise required by law to be submitted.
- 18 (26) Sensitive business, commercial or financial information furnished to or developed by a
- 19 public body engaged in the business of providing electricity or electricity services, if the information
- 20 is directly related to a transaction described in ORS 261.348, or if the information is directly related
- 21 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
- 22 disclosure of the information would cause a competitive disadvantage for the public body or its re-
- 23 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
- 24 velopment or review of generally applicable rate schedules.
- 25 (27) Sensitive business, commercial or financial information furnished to or developed by the
- 26 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
- 27 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
- 28 and disclosure of the information would cause a competitive disadvantage for the Klamath
- 29 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
- 30 ment or review of generally applicable rate schedules.
- 31 (28) Personally identifiable information about customers of a municipal electric utility or a
- 32 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
- 33 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
- 34 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
- 35 lease personally identifiable information about a customer, and a public body providing water, sewer
- 36 or storm drain services may release the name, date of birth, driver license number, telephone num-
- 37 ber, electronic mail address or Social Security number of a customer, if the customer consents in
- 38 writing or electronically, if the disclosure is necessary for the utility, district or other public body
- 39 to render services to the customer, if the disclosure is required pursuant to a court order or if the
- 40 disclosure is otherwise required by federal or state law. The utility, district or other public body
- 41 may charge as appropriate for the costs of providing such information. The utility, district or other
- 42 public body may make customer records available to third party credit agencies on a regular basis
- 43 in connection with the establishment and management of customer accounts or in the event such
- 44 accounts are delinquent.
- 45 (29) A record of the street and number of an employee's address submitted to a special district

1 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

2 (30) Sensitive business records, capital development plans or financial or commercial information
3 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

4 (31) Documents, materials or other information submitted to the Director of the Department of
5 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
6 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
7 or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200
8 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code
9 when:

10 (a) The document, material or other information is received upon notice or with an under-
11 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
12 the document, material or other information; and

13 (b) The director has obligated the Department of Consumer and Business Services not to dis-
14 close the document, material or other information.

15 (32) A county elections security plan developed and filed under ORS 254.074.

16 (33) Information about review or approval of programs relating to the security of:

17 (a) Generation, storage or conveyance of:

18 (A) Electricity;

19 (B) Gas in liquefied or gaseous form;

20 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

21 (D) Petroleum products;

22 (E) Sewage; or

23 (F) Water.

24 (b) Telecommunication systems, including cellular, wireless or radio systems.

25 (c) Data transmissions by whatever means provided.

26 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
27 ignates the information as confidential by rule under ORS 1.002.

28 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

29 (b) As used in this subsection, "employer account records" means all records maintained in any
30 form that are specifically related to the account of any employer insured, previously insured or un-
31 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
32 mation obtained or developed by the corporation in connection with providing, offering to provide
33 or declining to provide insurance to a specific employer. "Employer account records" includes, but
34 is not limited to, an employer's payroll records, premium payment history, payroll classifications,
35 employee names and identification information, experience modification factors, loss experience and
36 dividend payment history.

37 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
38 discovery documents in litigation pursuant to applicable rules of civil procedure.

39 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

40 (b) As used in this subsection, "claimant files" includes, but is not limited to, all records held
41 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
42 records pertaining to such a claim.

43 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
44 discovery documents in litigation pursuant to applicable rules of civil procedure.

45 (37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge

1 or other separation from military service.

2 (38) Records of or submitted to a domestic violence service or resource center that relate to the
3 name or personal information of an individual who visits a center for service, including the date of
4 service, the type of service received, referrals or contact information or personal information of a
5 family member of the individual. As used in this subsection, “domestic violence service or resource
6 center” means an entity, the primary purpose of which is to assist persons affected by domestic or
7 sexual violence by providing referrals, resource information or other assistance specifically of ben-
8 efit to domestic or sexual violence victims.

9 (39) Information reported to the Oregon Health Authority under ORS 431A.860, except as pro-
10 vided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any
11 information related to disclosures made by the authority under ORS 431A.865, including information
12 identifying the recipient of the information.

13 (40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the
14 executive department, as defined in ORS 174.112, a local government or local service district, as
15 defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

16 (b) This subsection does not apply to electronic mail addresses assigned by a public body to
17 public employees for use by the employees in the ordinary course of their employment.

18 (41) Residential addresses, residential telephone numbers, personal cellular telephone numbers,
19 personal electronic mail addresses, driver license numbers, emergency contact information, Social
20 Security numbers, dates of birth and other telephone numbers of individuals currently or previously
21 certified or licensed by the Department of Public Safety Standards and Training contained in the
22 records maintained by the department.

23 (42) Personally identifiable information and contact information of veterans as defined in ORS
24 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the
25 United States, National Guard or other reserve component that was obtained by the Department of
26 Veterans’ Affairs in the course of performing its duties and functions, including but not limited to
27 names, residential and employment addresses, dates of birth, driver license numbers, telephone
28 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-
29 acter of discharge from military service, military rating or rank, that the person is a veteran or has
30 provided military service, information relating to an application for or receipt of federal or state
31 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-
32 formation relating to a home loan or grant application, including but not limited to financial infor-
33 mation provided in connection with the application.

34 **SECTION 4.** ORS 137.225 is amended to read:

35 137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse
36 of three years from the date of pronouncement of judgment, any defendant who has fully complied
37 with and performed the sentence of the court and whose conviction is described in subsection (5)
38 of this section by motion may apply to the court where the conviction was entered for entry of an
39 order setting aside the conviction. A person who is still under supervision, or who is still
40 incarcerated, as part of the sentence for the offense that is the subject of the motion has not fully
41 complied with or performed the sentence of the court.

42 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
43 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
44 son may apply to the court that would have jurisdiction over the crime for which the person was
45 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing

1 the one-year period, time during which the arrested person has secreted himself or herself within
2 or without this state is not included.

3 (c) A person whose sentence of probation was revoked may not apply to the court for entry of
4 an order setting aside the conviction for which the person was sentenced to probation for a period
5 of 10 years from the date of revocation.

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

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

17 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
18 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
19 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
20 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
21 gerprint card to the Department of State Police.

22 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
23 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
24 under ORS 21.135.

25 (e) The prosecuting attorney may not charge the defendant a fee for performing the require-
26 ments described in this section.

27 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
28 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
29 statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court
30 determines that the circumstances and behavior of the applicant from the date of conviction, or from
31 the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
32 the conviction, or the arrest record as the case may be, the court shall enter an appropriate order
33 that shall state the original arrest charge and the conviction charge, if any and if different from the
34 original, date of charge, submitting agency and disposition. The order shall further state that posi-
35 tive identification has been established by the Department of State Police and further identified as
36 to Department of State Police number or submitting agency number. Upon the entry of the order,
37 the applicant for purposes of the law shall be deemed not to have been previously convicted, or ar-
38 rested as the case may be, and the court shall issue an order sealing the record of conviction and
39 other official records in the case, including the records of arrest whether or not the arrest resulted
40 in a further criminal proceeding.

41 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
42 by the court. A certified copy must be sent to the Department of Corrections when the person has
43 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
44 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-
45 cordingly any questions relating to its occurrence.

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

2 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
3 felony as that term is defined in the rules of the Oregon Criminal Justice Commission, only if:

4 (A)(i) Twenty years or more have elapsed from the date of the conviction sought to be set aside
5 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
6 ever is later; and

7 (ii) The person has not been convicted of or arrested for any other offense, excluding motor
8 vehicle violations, after the date the person was convicted of the offense sought to be set aside.
9 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
10 this section shall be considered for the purpose of determining whether this subparagraph is appli-
11 cable; or

12 (B) The Class B felony is described in paragraphs (b) to (e) of this subsection.

13 *[(b) Any crime punishable as a misdemeanor, including judgment of conviction for a misdemeanor*
14 *pursuant to ORS 161.705.]*

15 **(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to**
16 **ORS 161.705.**

17 (c) Unlawful possession of a controlled substance classified in Schedule I.

18 (d) An offense constituting a violation under state law or local ordinance.

19 (e) An offense committed before January 1, 1972, that, if committed after that date, would qualify
20 for an order under this section.

21 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
22 tion do not apply to a conviction for:

23 (a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of
24 the crime was 65 years of age or older.

25 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
26 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
27 419B.005.

28 (c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when the offense constitutes
29 child abuse as defined in ORS 419B.005.

30 (d) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a
31 Class C felony.

32 (e) Assault in the third degree under ORS 163.165 *[(1)(h)]* (1)(i).

33 (f) Any sex crime, unless:

34 (A) The sex crime is listed in ORS 163A.140 (1)(a) and:

35 (i) The person has been relieved of the obligation to report as a sex offender pursuant to a court
36 order entered under ORS 163A.145 or 163A.150; and

37 (ii) The person has not been convicted of, found guilty except for insanity of or found to be
38 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
39 setting aside the conviction under this section; or

40 (B) The sex crime constitutes a Class C felony and:

41 (i) The person was under 16 years of age at the time of the offense;

42 (ii) The person is:

43 (I) Less than two years and 180 days older than the victim; or

44 (II) At least two years and 180 days older, but less than three years and 180 days older, than
45 the victim and the court finds that setting aside the conviction is in the interests of justice and of

1 benefit to the person and the community;

2 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less
3 than a specified age;

4 (iv) The victim was at least 12 years of age at the time of the offense;

5 (v) The person has not been convicted of, found guilty except for insanity of or found to be
6 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
7 setting aside the conviction under this section; and

8 (vi) Each conviction or finding described in this subparagraph involved the same victim.

9 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
10 do not apply to:

11 (a) A conviction for a state or municipal traffic offense.

12 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
13 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
14 whether or not the other conviction is for conduct associated with the same criminal episode that
15 caused the arrest or conviction that is sought to be set aside. A single violation, other than a motor
16 vehicle violation, within the last 10 years is not a conviction under this subsection. Notwithstanding
17 subsection (1) of this section, a conviction that has been set aside under this section shall be con-
18 sidered for the purpose of determining whether this paragraph is applicable.

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

21 (8) The provisions of subsection (1)(b) of this section do not apply to:

22 (a) A person arrested within the three-year period immediately preceding the filing of the motion
23 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
24 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
25 has been set aside under this section may not be considered for the purpose of determining whether
26 this paragraph is applicable.

27 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
28 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

29 (9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred
30 before, as well as those that occurred after, September 9, 1971. There is no time limit for making
31 an application.

32 (10) For purposes of any civil action in which truth is an element of a claim for relief or affir-
33 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
34 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
35 court for an order requiring disclosure of the official records in the case as may be necessary in the
36 interest of justice.

37 (11) Upon motion of any prosecutor or defendant in a case involving records sealed under this
38 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
39 pening and disclosure of any records sealed under this section for the limited purpose of assisting
40 the investigation of the movant. However, such an order has no other effect on the orders setting
41 aside the conviction or the arrest record.

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

- 1 (a) Abandonment of a child, ORS 163.535.
 - 2 (b) Attempted assault in the second degree, ORS 163.175.
 - 3 (c) Assault in the third degree, ORS 163.165.
 - 4 (d) Coercion, ORS 163.275.
 - 5 (e) Criminal mistreatment in the first degree, ORS 163.205.
 - 6 (f) Attempted escape in the first degree, ORS 162.165.
 - 7 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
 - 8 (h) Intimidation in the first degree, ORS 166.165.
 - 9 (i) Attempted kidnapping in the second degree, ORS 163.225.
 - 10 (j) Attempted robbery in the second degree, ORS 164.405.
 - 11 (k) Robbery in the third degree, ORS 164.395.
 - 12 (L) Supplying contraband, ORS 162.185.
 - 13 (m) Unlawful use of a weapon, ORS 166.220.
 - 14 (13) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005.
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