

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 1543**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest  
2 of the line and delete line 3 and insert “amending ORS 137.221, 137.225,  
3 137.540, 147.395, 147.397, 161.336, 161.390, 161.705, 162.375, 180.700, 423.105 and  
4 837.365; and prescribing an effective date.”.

5 Delete lines 5 through 24 and delete pages 2 through 7 and insert:

6 **“SECTION 1.** ORS 180.700 is amended to read:

7 “180.700. (1) The Attorney General shall appoint an advisory committee  
8 composed [*at least of representatives from local supervisory authorities,*  
9 *batterers’ intervention programs and domestic violence victims’ advocacy*  
10 *groups.*] **of members who:**

11 **“(a) Are experienced with evidence-based practices specific to re-**  
12 **ducing recidivism that take into account risk factors, needs and re-**  
13 **sponsiveness to treatment; and**

14 **“(b) Represent the diverse groups that interact with violence pre-**  
15 **vention and batterers’ intervention programs.**

16 **“(2)** The Attorney General, in consultation with the advisory committee,  
17 shall adopt rules that establish standards for batterers’ intervention pro-  
18 grams. The rules adopted must include, but are not limited to:

19 “[*1*] (a) Standards for contacts between the defendant and the victim;

20 “[*2*] (b) Standards for the dissemination of otherwise confidential med-  
21 ical, mental health and treatment records;

1       “[(3)] (c) Standards that protect to the greatest extent practicable the  
2 confidentiality of defendants who are participating in domestic violence de-  
3 ferred sentencing agreements;

4       “[(4)] (d) A requirement that the designated batterers’ intervention pro-  
5 gram must report to the defendant’s local supervisory authority any criminal  
6 assaults, threats to harm the victim or any substantial violation of the  
7 program’s rules by the defendant; and

8       “[(5)] (e) Standards for batterers’ intervention programs that are most  
9 likely to end domestic violence and increase victims’ safety.

10       **“(3) The standards established by the rules described in subsection  
11 (2) of this section must:**

12       **“(a) Consist of separate standards for programs that address male  
13 defendants, female defendants, defendants offending against same-sex  
14 victims and circumstances in which the defendant or victim is gender  
15 nonconforming; and**

16       **“(b) Be based on scientific research and direct practice with both  
17 persons who have perpetrated and persons who have survived domestic  
18 violence.**

19       **“SECTION 2.** ORS 147.397 is amended to read:

20       “147.397. (1) Subject to the availability of funds from gifts, grants and  
21 donations in the Sexual Assault Victims’ Emergency Medical Response Fund,  
22 the Department of Justice shall pay the costs of:

23       “(a) A complete medical assessment obtained by the victim of a sexual  
24 assault if the victim obtains the medical assessment no later than 84 hours  
25 after the sexual assault.

26       “(b) A partial medical assessment obtained by the victim of a sexual as-  
27 sault if the victim obtains the medical assessment no later than seven days  
28 after the sexual assault.

29       “(2) The department may not deny payment under this section for any of  
30 the following reasons:

1       “(a) The victim of a sexual assault has not reported the assault to a law  
2 enforcement agency.

3       “(b) The identity of a victim of a sexual assault is not readily available  
4 to the department because forensic evidence has been collected from the  
5 victim and preserved in a manner intended to protect the victim’s identity.

6       “(3) The department shall develop a form that the victim of a sexual as-  
7 sault must complete if the victim wants the department to pay for a medical  
8 assessment as provided in subsection (1) of this section. The department shall  
9 make copies of the form available to providers of medical assessments. The  
10 form must inform the victim that:

11       “(a) A complete or partial medical assessment can be obtained regardless  
12 of whether the victim reports the assault to a law enforcement agency; and

13       “(b) A complete or partial medical assessment can be performed and evi-  
14 dence collected in a manner intended to protect the victim’s identity.

15       “(4) When the victim of a sexual assault completes the form developed by  
16 the department under subsection (3) of this section, the victim shall submit  
17 the form to the provider of the medical assessment. The provider shall submit  
18 the form with a bill for the medical assessment to the department. A provider  
19 who submits a bill under this subsection may not bill the victim or the  
20 victim’s insurance carrier for the medical assessment except to the extent  
21 that the department is unable to pay the bill due to lack of funds or declines  
22 to pay the bill.

23       “(5) Providers of medical assessments that seek reimbursement under this  
24 section shall:

25       “(a) Maintain records of medical assessments that protect the identity of  
26 victims of sexual assault and keep confidential the identity of victims who  
27 have not reported the sexual assault to a law enforcement agency;

28       “(b) Store **sexual assault** forensic evidence [*collection*] kits and transfer  
29 custody of the kits to a law enforcement agency having jurisdiction over the  
30 geographic area where the provider is located; and

1 “(c) Cooperate with law enforcement agencies to develop and implement  
2 procedures that protect the identities of victims while allowing retrieval and  
3 assessment of **sexual assault forensic** evidence [*collection*] kits and related  
4 evidence.

5 “(6) Law enforcement agencies that receive evidence [*collection kits*] as  
6 provided by subsection (5) of this section shall preserve [*the kits and any*  
7 *related evidence for at least six months.*]:

8 **“(a) A sexual assault forensic evidence kit for no less than 60 years**  
9 **after collection of the evidence; and**

10 **“(b) Any related evidence for at least six months.**

11 “(7) A provider may not charge the department more for a complete  
12 medical assessment or a partial medical assessment than the maximum  
13 amounts established by the department by rule for the assessments.

14 “(8) The victim of a sexual assault may obtain a medical assessment and  
15 complete and submit a form under this section regardless of whether the  
16 victim reports the sexual assault to a law enforcement agency.

17 “(9) This section does not require the department to pay any costs of  
18 treatment for injuries resulting from the sexual assault.

19 **“(10) The department shall create, and make available to medical**  
20 **assessment providers, informational materials describing the services**  
21 **payable by the fund as described in subsection (1) of this section. A**  
22 **provider shall ensure that the informational materials are made**  
23 **available to sexual assault victims.**

24 “[*10*] (11) The department may adopt rules necessary to carry out the  
25 provisions of this section.

26 **“SECTION 3.** ORS 147.395 is amended to read:

27 “147.395. As used in ORS 147.397:

28 “(1) ‘Complete medical assessment’ means an assessment that consists of:

29 “(a) A medical examination;

30 “(b) The collection of forensic evidence using an evidence collection kit

1 approved by the Department of State Police; and

2 “(c) The offering and, if requested, provision of emergency contraception,  
3 sexually transmitted disease prevention and, for a victim who is 17 years of  
4 age or younger, prescriptions for emergency contraception.

5 “(2) ‘Medical assessment’ means a complete or partial medical assessment.

6 “(3) ‘Partial medical assessment’ means an assessment that consists of:

7 “(a) A medical examination; and

8 “(b) The offering and, if requested, provision of emergency contraception,  
9 sexually transmitted disease prevention and, for a victim who is 17 years of  
10 age or younger, prescriptions for emergency contraception.

11 “(4) **‘Sexual assault forensic evidence kit’ has the meaning given**  
12 **that term in ORS 181A.323.**

13 **“SECTION 4.** ORS 161.390 is amended to read:

14 “161.390. (1) The Oregon Health Authority shall adopt rules for the as-  
15 signment of persons to state mental hospitals or secure intensive community  
16 inpatient facilities under ORS 161.365 and 161.370 and for establishing stan-  
17 dards for evaluation and treatment of persons committed to a state hospital  
18 or a secure intensive community inpatient facility or ordered to a community  
19 mental health program under ORS 161.315 to 161.351.

20 “(2) When the Psychiatric Security Review Board requires the preparation  
21 of a predischarge or preconditional release plan before a hearing or as a  
22 condition of granting discharge or conditional release for a person committed  
23 under ORS 161.315 to 161.351 to a state hospital or a secure intensive com-  
24 munity inpatient facility for custody, care and treatment, the authority is  
25 responsible for and shall prepare the plan.

26 “(3) In carrying out a conditional release plan prepared under subsection  
27 (2) of this section, the authority may contract with a community mental  
28 health program, other public agency or private corporation or an individual  
29 to provide supervision and treatment for the conditionally released person.

30 “(4)(a) The board shall maintain and keep current the medical, social and

1 criminal history of all persons committed to its jurisdiction. The  
2 confidentiality of records maintained by the board shall be determined pur-  
3 suant to ORS 192.338, 192.345 and 192.355.

4 **“(b) Except as otherwise provided by law, upon request of the board,**  
5 **a state hospital, a community mental health program and any other**  
6 **health care service provider shall provide the board with all medical**  
7 **records pertaining to a person committed to the jurisdiction of the**  
8 **board.**

9 “(5) The evidentiary phase of a hearing conducted by the board under  
10 ORS 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.

11 **“SECTION 5.** ORS 161.336 is amended to read:

12 “161.336. (1)(a) When a person is conditionally released under ORS 161.315  
13 to 161.351, the person is subject to those supervisory orders of the Psychiat-  
14 ric Security Review Board as are in the best interests of justice, the pro-  
15 tection of society and the welfare of the person.

16 “(b) An order of conditional release entered by the board may designate  
17 any person or state, county or local agency capable of supervising the person  
18 upon release, subject to the conditions described in the order of conditional  
19 release.

20 “(c) Prior to the designation, the board shall notify the person or state,  
21 county or local agency to whom conditional release is contemplated and  
22 provide the person or state, county or local agency an opportunity to be  
23 heard.

24 “(d) After receiving an order entered under this section, the person or  
25 state, county or local agency designated in the order shall assume super-  
26 vision of the person in accordance with the conditions described in the order  
27 and any modifications of the conditions ordered by the board.

28 “(2) Conditions of release contained in orders entered under this section  
29 may be modified from time to time and conditional releases may be termi-  
30 nated as provided in ORS 161.351.

1 “(3)(a) As a condition of release, the person may be required to report to  
2 any state or local mental health facility for evaluation. Whenever medical,  
3 psychiatric or psychological treatment is recommended, the order may re-  
4 quire the person, as a condition of release, to cooperate with and accept the  
5 treatment from the facility.

6 “(b) The facility to which the person has been referred for evaluation  
7 shall perform the evaluation and submit a written report of its findings to  
8 the board. If the facility finds that treatment of the person is appropriate,  
9 it shall include its recommendations for treatment in the report to the board.

10 “(c) Whenever treatment is provided by the facility, it shall furnish re-  
11 ports to the board on a regular basis concerning the progress of the person.

12 “(d) Copies of all reports submitted to the board pursuant to this section  
13 shall be furnished to the person and the person’s counsel. The confidentiality  
14 of these reports is determined pursuant to ORS 192.338, 192.345 and 192.355.

15 “(e) The facility shall comply with the conditional release order and any  
16 modifications of the conditions ordered by the board.

17 “[4)(a) *If at any time while the person is under the jurisdiction of the*  
18 *board it appears to the board or its chairperson that the person has violated*  
19 *the terms of the conditional release or that the mental health of the individual*  
20 *has changed, the board or its chairperson may order the person returned for*  
21 *evaluation or treatment to a state hospital or, if the person is under 18 years*  
22 *of age, to a secure intensive community inpatient facility. A written order of*  
23 *the board, or its chairperson on behalf of the board, is sufficient warrant for*  
24 *any law enforcement officer to take into custody such person and transport the*  
25 *person accordingly. A sheriff, municipal police officer, constable, parole and*  
26 *probation officer, prison official or other peace officer shall execute the order,*  
27 *and the person shall be returned as soon as practicable to the state hospital*  
28 *or secure intensive community inpatient facility designated in the order.]*

29 “(4)(a)(A) **A written or electronic order for the return of a person**  
30 **on conditional release to a state hospital or other facility designated**

1 by the supervising entity or, if the person is under 18 years of age, to  
2 a secure intensive community inpatient facility, may be issued by:

3 “(i) The supervising entity;

4 “(ii) A person designated by the supervising entity, if the desig-  
5 nation is made as part of a written policy; or

6 “(iii) The community mental health program director, if the person  
7 has absconded from conditional release.

8 “(B) An order described in this paragraph may be issued under the  
9 following circumstances:

10 “(i) The supervising entity, or, if applicable, the designee or the  
11 community mental health program director determines that the per-  
12 son has violated the terms of conditional release; or

13 “(ii) The mental health of the person has changed such that the  
14 supervising entity, or, if applicable, the designee or the community  
15 mental health program director reasonably believes that the person  
16 may no longer be fit for conditional release.

17 “(C) Unless an order described in this paragraph provides otherwise,  
18 the order shall be executed by a peace officer. The order constitutes  
19 full authority for the arrest and detention of the person and all laws  
20 applicable to warrants and arrests apply to the order.

21 “(b) [*The community mental health program director*] **A peace officer**, the  
22 director of the facility providing treatment to a person on conditional  
23 release[, *any peace officer*] or any person responsible for the supervision of  
24 a person on conditional release may take a person on conditional release into  
25 custody, or request that the person be taken into custody, if there is rea-  
26 sonable cause to believe the person is a substantial danger to others because  
27 of a [*qualifying*] mental disorder and that the person is in need of immediate  
28 care, custody or treatment. [*Any person taken into custody pursuant to this*  
29 *subsection shall be transported as soon as practicable to a state hospital or,*  
30 *if the person is under 18 years of age, to a secure intensive community inpa-*



1 *tient facility.]*

2 **“(c) When a person is taken into custody by a peace officer under**  
3 **this subsection, the agency employing the peace officer shall transport**  
4 **the person as soon as practicable to a state hospital or other facility**  
5 **designated by the supervising entity. If the person was taken into**  
6 **custody pursuant to an order issued by the supervising entity, the**  
7 **supervising entity shall facilitate the reimbursement of reasonable**  
8 **costs of the transport to the agency employing the peace officer.**

9 “[*(c)*] **(d)** Within 20 days following the return of the person to a state  
10 hospital or secure intensive community inpatient facility under this sub-  
11 section, the board shall conduct a hearing. The board shall provide notice  
12 of the hearing to the person, the attorney representing the person and the  
13 Attorney General. The state must prove by a preponderance of the evidence  
14 the person’s unfitness for conditional release. The hearing shall be conducted  
15 in accordance with ORS 161.346.

16 **“(e) As used in this subsection, ‘supervising entity’ means the board**  
17 **or the chairperson or executive director of the board.**

18 “(5)(a) Any person conditionally released under this section may apply to  
19 the board for discharge from or modification of an order of conditional re-  
20 lease on the ground that the person is no longer affected by a qualifying  
21 mental disorder or, if still so affected, no longer presents a substantial dan-  
22 ger to others and no longer requires supervision, medication, care or treat-  
23 ment. Notice of the hearing on an application for discharge or modification  
24 of an order of conditional release shall be made to the Attorney General.  
25 The applicant, at the hearing pursuant to this subsection, must prove by a  
26 preponderance of the evidence the applicant’s fitness for discharge or mod-  
27 ification of the order of conditional release. Applications by the person for  
28 discharge or modification of conditional release may not be filed more often  
29 than once every six months.

30 “(b) Upon application by any person or agency responsible for supervision

1 or treatment pursuant to an order of conditional release, the board shall  
2 conduct a hearing to determine if the conditions of release shall be contin-  
3 ued, modified or terminated. The application shall be accompanied by a re-  
4 port setting forth the facts supporting the application.

5 “(6) A person who has spent five years on conditional release shall be  
6 brought before the board for hearing within 30 days before the expiration  
7 of the five-year period. The board shall review the person’s status and de-  
8 termine whether the person should be discharged from the jurisdiction of the  
9 board.

10 **“SECTION 6.** ORS 837.365 is amended to read:

11 “837.365. (1) Except as provided in subsection [(2)] **(3)** of this section, a  
12 person may not intentionally, knowingly or recklessly operate or cause to  
13 be operated an unmanned aircraft system that is:

14 **“(a)** Capable of firing a bullet or projectile; or

15 **“(b) Specifically designed or modified to cause, and is presently ca-  
16 pable of causing, serious physical injury as defined in ORS 161.015.**  
17 [*otherwise operate or cause to be operated an unmanned aircraft system in a  
18 manner that causes the system to function as a dangerous weapon as defined  
19 in ORS 161.015.*]

20 “(2)(a) Except as provided in paragraphs (b) and (c) of this subsection,  
21 violation of subsection (1) of this section is a Class A misdemeanor.

22 **“(b) Violation of subsection (1) of this section is a Class C felony** if  
23 the person intentionally, knowingly or recklessly operates an unmanned  
24 aircraft system [*to fire*] **and the unmanned aircraft system fires** a bullet  
25 or projectile. [*or otherwise operates an unmanned aircraft system in a manner  
26 that causes the system to function as a dangerous weapon as defined in ORS  
27 161.015, violation of subsection (1) of this section is a Class C felony.*]

28 **“(c) Violation of subsection (1) of this section is a Class B felony** if  
29 the person intentionally, knowingly or recklessly operates an unmanned  
30 aircraft system [*to fire*] **and the unmanned aircraft system:**

1       **“(A) Fires a bullet or projectile that causes serious physical injury,**  
2       **as defined in ORS 161.015, to another person; or**

3       **“(B)(i) Is specifically designed or modified to cause, and is presently**  
4       **capable of causing, serious physical injury as defined in ORS 161.015;**  
5       **and**

6       **“(ii) The design or modification causes serious physical injury, as**  
7       **defined in ORS 161.015, to another person.** [*or otherwise operates an un-*  
8       *manned aircraft system in a manner that causes the system to function as a*  
9       *dangerous weapon as defined in ORS 161.015, and the operation of the un-*  
10       *manned aircraft system causes serious physical injury to another person as*  
11       *both terms are defined in ORS 161.015, violation of subsection (1) of this sec-*  
12       *tion is a Class B felony.*]

13       “(3) Subsection (1) of this section does not apply if:

14       “(a) The person uses the unmanned aircraft system to release, discharge,  
15       propel or eject a nonlethal projectile for purposes other than to injure or  
16       kill persons or animals;

17       “(b) The person uses the unmanned aircraft system for nonrecreational  
18       purposes in compliance with specific authorization from the Federal Aviation  
19       Administration;

20       “(c) The person notifies the Oregon Department of Aviation, the Oregon  
21       State Police and any other agency that issues a permit or license for the  
22       activity requiring the use of the unmanned aircraft system of the time and  
23       location at which the person intends to use an unmanned aircraft system  
24       that is capable of releasing, discharging, propelling or ejecting a projectile  
25       at least five days before the person uses the system;

26       “(d) If the person intends to use an unmanned aircraft system that is ca-  
27       pable of releasing, discharging, propelling or ejecting a projectile in an area  
28       open to the public, the person provides reasonable notice to the public of the  
29       time and location at which the person intends to use the unmanned aircraft  
30       system; and

1 “(e) The person maintains a liability insurance policy in an amount not  
2 less than \$1 million that covers injury resulting from use of the unmanned  
3 aircraft system.

4 “(4) The notification requirement of subsection (3)(c) of this section does  
5 not apply to:

6 “(a) A career school licensed under ORS 345.010 to 345.450;

7 “(b) A community college as defined in ORS 341.005;

8 “(c) [*An education service district as defined in ORS 334.003*] **A school**;

9 “(d) The Oregon Health and Science University;

10 “(e) A public university listed in ORS 352.002; or

11 “(f) An institution that is exempt from ORS 348.594 to 348.615 under ORS  
12 348.597 (2).

13 “(5) Notwithstanding subsection (3) of this section, a person may not use  
14 an unmanned aircraft system that is capable of releasing, discharging, pro-  
15 pelling or ejecting a projectile for purposes of crowd management.

16 “(6) **As used in this section, ‘school’ means a public or private in-**  
17 **stitution of learning providing instruction at levels kindergarten**  
18 **through grade 12, or their equivalents.**

19 “**SECTION 7.** ORS 137.221 is amended to read:

20 “137.221. (1) **Notwithstanding ORS 138.540**, a court may vacate a judg-  
21 ment of conviction for the crime of prostitution under ORS 167.007 **or for**  
22 **violating a municipal prostitution ordinance** as described in this section.

23 “(2)(a) A person may request vacation of a judgment of conviction for  
24 prostitution by filing a motion in the county of conviction. The motion may  
25 be filed at least 21 days after the judgment of conviction is entered.

26 “(b) A copy of the motion shall be served on the district attorney.

27 “(c) The motion must contain an explanation of facts supporting a claim  
28 that the person was the victim of sex trafficking at or around the time of  
29 the conduct giving rise to the prostitution conviction. The motion must fur-  
30 ther contain an explanation of why those facts were not presented to the

1 trial court.

2 “(3) Upon receiving the motion described in subsection (2) of this section,  
3 the court shall hold a hearing. At the hearing, the person has the burden  
4 of proof and may present evidence that, at or around the time of the conduct  
5 giving rise to the prostitution conviction, the person was the victim of sex  
6 trafficking. The court shall consider any evidence the court deems of suffi-  
7 cient credibility and probative value in determining whether the person was  
8 a victim of sex trafficking. The evidence may include, but is not limited to:

9 “(a) Certified records of a state or federal court proceeding demonstrating  
10 that the person was a victim of sex trafficking;

11 “(b) Certified records from federal immigration proceedings recognizing  
12 the person as a victim of sex trafficking; and

13 “(c) A sworn statement from a trained professional staff member of a  
14 victim services organization, an attorney, a member of the clergy or a med-  
15 ical or other professional, certifying that the person has sought assistance  
16 addressing trauma associated with being a sex trafficking victim.

17 “(4) If the court finds, by clear and convincing evidence, that the person  
18 was the victim of sex trafficking at or around the time of the conduct giving  
19 rise to the prostitution conviction, the court shall grant the motion.

20 “(5) If the court grants a motion under this section, the court shall vacate  
21 the judgment of conviction for prostitution and may make other orders as  
22 the court considers appropriate.

23 “(6) If the court grants a motion under this section while an appeal of the  
24 judgment of conviction is pending, the court shall immediately forward a  
25 copy of the vacation order to the appellate court.

26 “(7) As used in this section[,]:

27 “(a) **‘Municipal prostitution ordinance’ means a municipal ordi-**  
28 **nance prohibiting a person from engaging in, or offering or agreeing**  
29 **to engage in, sexual conduct or sexual contact in return for a fee.**

30 “(b) ‘Sex trafficking’ means the use of force, intimidation, fraud or

1 coercion to cause a person to engage, or attempt to engage, in a commercial  
2 sex act.

3 **SECTION 8.** ORS 423.105 is amended to read:

4 “423.105. (1) As used in this section:

5 “(a) ‘Collected moneys’ means moneys that have been collected from an  
6 inmate trust account by the Department of Corrections pursuant to this  
7 section.

8 “(b) ‘Court-ordered financial obligation’ means:

9 “(A) A compensatory fine imposed pursuant to ORS 137.101, an award of  
10 restitution as defined in ORS 137.103 or any other fines, fees or court-  
11 appointed attorney fees imposed in a criminal action;

12 “(B) A child support obligation;

13 “(C) A civil judgment including a money award for a crime victim entered  
14 against an inmate resulting from a crime committed by the inmate; or

15 “(D) A civil judgment including a money award entered against an inmate  
16 resulting from an action for the inmate’s assault or battery of a Department  
17 of Corrections or Oregon Corrections Enterprises employee.

18 “(c) ‘Eligible moneys’ means moneys deposited in an inmate trust account  
19 that are subject to collection under this section, including but not limited  
20 to inmate performance monetary awards and moneys received from an  
21 inmate’s family members or friends. ‘Eligible moneys’ does not include pro-  
22 tected moneys.

23 “(d) ‘Inmate’ means a person who is at least 18 years of age and in the  
24 physical custody of the Department of Corrections. ‘Inmate’ does not in-  
25 clude:

26 “(A) A person on leave from prison due to participation in an alternative  
27 incarceration program established under ORS 421.504 or short-term transi-  
28 tional leave under ORS 421.168.

29 “(B) A person transferred into or out of department custody pursuant to  
30 an interstate corrections compact.

1 “(C) A person in the physical custody of the Oregon Youth Authority.

2 “(D) A person in the physical custody of a county jail or other county  
3 detention facility.

4 “(e) ‘Protected moneys’ means moneys deposited in an inmate trust ac-  
5 count that are not subject to collection under state or federal law or under  
6 this section including but not limited to:

7 “(A) Disability benefits for veterans;

8 “(B) Moneys received from a Native American tribe or tribal government;

9 “(C) Moneys dedicated for medical, dental or optical expenses or emer-  
10 gency trips;

11 “(D) Railroad retirement benefits; or

12 “(E) Moneys paid as compensation to an inmate in a prison work program  
13 established under the Prison Industries Enhancement Certification Program,  
14 or a successor program designated by the United States Director of the Bu-  
15 reau of Justice Assistance pursuant to 18 U.S.C. 1761.

16 “(2)(a) The Department of Corrections shall collect eligible moneys from  
17 an inmate trust account if the inmate owes court-ordered financial obli-  
18 gations as described in this section.

19 “(b) Notwithstanding any other provision of this section, the department  
20 may deduct a fixed percentage of each inmate performance monetary award  
21 made to an inmate, to be credited to a general victims assistance fund, before  
22 crediting the remainder of the award to the inmate trust account.

23 “(3)(a) The Department of Justice and the Judicial Department shall pro-  
24 vide an accounting to the Department of Corrections of court-ordered finan-  
25 cial obligations, if any, owed by each inmate. The accounting records may  
26 be provided electronically in a format agreed upon by the departments.

27 “(b) Upon receipt of the accounting records described in paragraph (a) of  
28 this subsection, the Department of Corrections shall collect a portion of eli-  
29 gible moneys from the inmate trust account of each inmate as follows:

30 “(A) Until an inmate not sentenced to death or to life imprisonment

1 without the possibility of release or parole has \$500 in a transitional fund  
2 to facilitate reentry after release, 10 percent of eligible moneys shall be  
3 collected for court-ordered financial obligations and five percent of eligible  
4 moneys shall be collected and transferred to the inmate's transitional fund.

5 “(B) After the inmate has at least \$500 in the transitional fund, or if the  
6 inmate has been sentenced to death or to life imprisonment without the  
7 possibility of release or parole, the department shall collect 15 percent of  
8 eligible moneys for court-ordered financial obligations.

9 “(C) After court-ordered financial obligations have been paid, an inmate  
10 not sentenced to death or to life imprisonment without the possibility of re-  
11 lease or parole may elect to continue to transfer five percent of eligible  
12 moneys into the transitional fund.

13 **“(c) Notwithstanding ORS 18.615 or any other provision of law, while**  
14 **moneys held in an inmate’s transitional fund described in this sub-**  
15 **section remain within the custody or control of the Department of**  
16 **Corrections, those moneys are neither assignable nor subject to exe-**  
17 **cution, garnishment, attachment or any other process.**

18 “(4) There are three levels of priority for the application of collected  
19 moneys to court-ordered financial obligations, with Level I obligations hav-  
20 ing the highest priority and Level III obligations having the lowest priority.  
21 The levels are as follows:

22 “(a) Level I obligations are compensatory fines imposed pursuant to ORS  
23 137.101, awards of restitution defined in ORS 137.103 and fines, fees or  
24 court-appointed attorney fees imposed in a criminal action.

25 “(b) Level II obligations are child support obligations and civil judgments  
26 including a money award for a crime victim entered against an inmate re-  
27 sulting from a crime committed by the inmate.

28 “(c) Level III obligations are civil judgments including a money award  
29 entered against an inmate resulting from an action for the inmate’s assault  
30 or battery of a Department of Corrections or Oregon Corrections Enterprises



1 employee.

2 “(5)(a) After receiving the accounting records described in subsection (3)  
3 of this section, the Department of Corrections shall disburse the collected  
4 moneys for court-ordered financial obligations to the Department of Justice  
5 and the Judicial Department.

6 “(b) The Department of Justice and the Judicial Department shall apply  
7 the collected moneys received from the Department of Corrections under this  
8 subsection to an inmate’s court-ordered financial obligations according to the  
9 priority levels of the obligations.

10 “(6)(a) The Department of Justice may create a subaccount in which to  
11 deposit the collected moneys received from the Department of Corrections  
12 under this section.

13 “(b) The Judicial Department may create a subaccount in which to deposit  
14 the collected moneys received from the Department of Corrections under this  
15 section.

16 “(c) The Department of Corrections may create subaccounts for the pur-  
17 poses of storing collected moneys prior to disbursement under this section.

18 “(7) The Department of Corrections, the Department of Justice and the  
19 Judicial Department may adopt rules to implement this section.

20 **“SECTION 9.** ORS 162.375 is amended to read:

21 “162.375. (1) A person commits the crime of initiating a false report if the  
22 person knowingly initiates a false alarm or report that is transmitted to a  
23 fire department, law enforcement agency or other organization that deals  
24 with emergencies involving danger to life or property.

25 “(2) Initiating a false report is a Class A misdemeanor.

26 “(3)(a) The court shall include in the sentence of any person convicted  
27 under this section a requirement that the person repay the costs incurred in  
28 responding to and investigating the false report.

29 “(b) If the response to the false report involved the deployment of a law  
30 enforcement special weapons and tactics (SWAT) team or a similar law

1 enforcement group, the court shall impose, and may not suspend, a term of  
2 incarceration of:

3 “(A) At least 10 days.

4 “(B) **At least 30 days if the deployment resulted in death or serious**  
5 **physical injury to another person.**

6 “**SECTION 10.** ORS 137.540 is amended to read:

7 “137.540. (1) The court may sentence the defendant to probation subject  
8 to the following general conditions unless specifically deleted by the court.

9 The probationer shall:

10 “(a) Pay supervision fees, fines, restitution or other fees ordered by the  
11 court.

12 “(b) Not use or possess controlled substances except pursuant to a medical  
13 prescription.

14 “(c) Submit to testing for controlled substance, cannabis or alcohol use  
15 if the probationer has a history of substance abuse or if there is a reasonable  
16 suspicion that the probationer has illegally used controlled substances.

17 “(d) Participate in a substance abuse evaluation as directed by the  
18 supervising officer and follow the recommendations of the evaluator if there  
19 are reasonable grounds to believe there is a history of substance abuse.

20 “(e) Remain in the State of Oregon until written permission to leave is  
21 granted by the Department of Corrections or a county community corrections  
22 agency.

23 “(f) If physically able, find and maintain gainful full-time employment,  
24 approved schooling, or a full-time combination of both. Any waiver of this  
25 requirement must be based on a finding by the court stating the reasons for  
26 the waiver.

27 “(g) Change neither employment nor residence without prior permission  
28 from the Department of Corrections or a county community corrections  
29 agency.

30 “(h) Permit the parole and probation officer to visit the probationer or

1 the probationer's work site or residence and to conduct a walk-through of  
2 the common areas and of the rooms in the residence occupied by or under  
3 the control of the probationer.

4 “(i) Consent to the search of person, vehicle or premises upon the request  
5 of a representative of the supervising officer if the supervising officer has  
6 reasonable grounds to believe that evidence of a violation will be found, and  
7 submit to fingerprinting or photographing, or both, when requested by the  
8 Department of Corrections or a county community corrections agency for  
9 supervision purposes.

10 “(j) Obey all laws, municipal, county, state and federal.

11 “(k) Promptly and truthfully answer all reasonable inquiries by the De-  
12 partment of Corrections or a county community corrections agency.

13 “(L) Not possess weapons, firearms or dangerous animals.

14 “(m) Report as required and abide by the direction of the supervising of-  
15 ficer.

16 “(n) If recommended by the supervising officer, successfully complete a  
17 sex offender treatment program approved by the supervising officer and  
18 submit to polygraph examinations at the direction of the supervising officer  
19 if the probationer:

20 “(A) Is under supervision for a sex offense under ORS 163.305 to 163.467;

21 “(B) Was previously convicted of a sex offense under ORS 163.305 to  
22 163.467; or

23 “(C) Was previously convicted in another jurisdiction of an offense that  
24 would constitute a sex offense under ORS 163.305 to 163.467 if committed in  
25 this state.

26 “(o) Participate in a mental health evaluation as directed by the super-  
27 vising officer and follow the recommendation of the evaluator.

28 “(p) If required to report as a sex offender under ORS 163A.015, report  
29 with the Department of State Police, a city police department, a county  
30 sheriff's office or the supervising agency:

1       “(A) When supervision begins;

2       “(B) Within 10 days of a change in residence;

3       “(C) Once each year within 10 days of the probationer’s date of birth;

4       “(D) Within 10 days of the first day the person works at, carries on a

5 vocation at or attends an institution of higher education; and

6       “(E) Within 10 days of a change in work, vocation or attendance status

7 at an institution of higher education.

8       “(q) Submit to a risk and needs assessment as directed by the supervising

9 officer **and follow reasonable recommendations resulting from the as-**

10 **essment.**

11       “(2) In addition to the general conditions, the court may impose any spe-

12 cial conditions of probation that are reasonably related to the crime of con-

13 viction or the needs of the probationer for the protection of the public or

14 reformation of the probationer, or both, including, but not limited to, that

15 the probationer shall:

16       “(a) For crimes committed prior to November 1, 1989, and misdemeanors

17 committed on or after November 1, 1989, be confined to the county jail or

18 be restricted to the probationer’s own residence or to the premises thereof,

19 or be subject to any combination of such confinement and restriction, such

20 confinement or restriction or combination thereof to be for a period not to

21 exceed one year or one-half of the maximum period of confinement that could

22 be imposed for the offense for which the defendant is convicted, whichever

23 is the lesser.

24       “(b) For felonies committed on or after November 1, 1989:

25       “(A) Be confined in the county jail, or be subject to other custodial

26 sanctions under community supervision, or both, as provided by rules of the

27 Oregon Criminal Justice Commission; and

28       “(B) Comply with any special conditions of probation that are imposed

29 by the supervising officer in accordance with subsection (9) of this section.

30       “(c) For crimes committed on or after December 5, 1996, sell any assets

1 of the probationer as specifically ordered by the court in order to pay  
2 restitution.

3 “(d) For crimes constituting delivery of a controlled substance, as those  
4 terms are defined in ORS 475.005, or for telephonic harassment under ORS  
5 166.090, or for crimes involving domestic violence, as defined in ORS 135.230,  
6 be prohibited from using Internet websites that provide anonymous text  
7 message services.

8 “(3)(a) If a person is released on probation following conviction of stalk-  
9 ing under ORS 163.732 (2)(b) or violating a court’s stalking protective order  
10 under ORS 163.750 (2)(b), the court may include as a special condition of the  
11 person’s probation reasonable residency restrictions.

12 “(b) If the court imposes the special condition of probation described in  
13 this subsection and if at any time during the period of probation the victim  
14 moves to a location that causes the probationer to be in violation of the  
15 special condition of probation, the court may not require the probationer to  
16 change the probationer’s residence in order to comply with the special con-  
17 dition of probation.

18 “(4) When a person who is a sex offender is released on probation, the  
19 court shall impose as a special condition of probation that the person not  
20 reside in any dwelling in which another sex offender who is on probation,  
21 parole or post-prison supervision resides, without the approval of the  
22 person’s supervising parole and probation officer, or in which more than one  
23 other sex offender who is on probation, parole or post-prison supervision re-  
24 sides, without the approval of the director of the probation agency that is  
25 supervising the person or of the county manager of the Department of Cor-  
26 rections, or a designee of the director or manager. As soon as practicable,  
27 the supervising parole and probation officer of a person subject to the re-  
28 quirements of this subsection shall review the person’s living arrangement  
29 with the person’s sex offender treatment provider to ensure that the ar-  
30 rangement supports the goals of offender rehabilitation and community

1 safety. As used in this subsection:

2 “(a) ‘Dwelling’ has the meaning given that term in ORS 469B.100.

3 “(b) ‘Dwelling’ does not include a residential treatment facility or a  
4 halfway house.

5 “(c) ‘Halfway house’ means a publicly or privately operated profit or  
6 nonprofit residential facility that provides rehabilitative care and treatment  
7 for sex offenders.

8 “(d) ‘Sex offender’ has the meaning given that term in ORS 163A.005.

9 “(5)(a) If the person is released on probation following conviction of a sex  
10 crime, as defined in ORS 163A.005, or an assault, as defined in ORS 163.175  
11 or 163.185, and the victim was under 18 years of age, the court, if requested  
12 by the victim, shall include as a special condition of the person’s probation  
13 that the person not reside within three miles of the victim unless:

14 “(A) The victim resides in a county having a population of less than  
15 130,000 and the person is required to reside in that county;

16 “(B) The person demonstrates to the court by a preponderance of the ev-  
17 idence that no mental intimidation or pressure was brought to bear during  
18 the commission of the crime;

19 “(C) The person demonstrates to the court by a preponderance of the ev-  
20 idence that imposition of the condition will deprive the person of a residence  
21 that would be materially significant in aiding in the rehabilitation of the  
22 person or in the success of the probation; or

23 “(D) The person resides in a halfway house. As used in this subparagraph,  
24 ‘halfway house’ means a publicly or privately operated profit or nonprofit  
25 residential facility that provides rehabilitative care and treatment for sex  
26 offenders.

27 “(b) A victim may request imposition of the special condition of probation  
28 described in this subsection at the time of sentencing in person or through  
29 the prosecuting attorney.

30 “(c) If the court imposes the special condition of probation described in

1 this subsection and if at any time during the period of probation the victim  
2 moves to within three miles of the probationer's residence, the court may  
3 not require the probationer to change the probationer's residence in order  
4 to comply with the special condition of probation.

5 “(6) When a person who is a sex offender, as defined in ORS 163A.005, is  
6 released on probation, the Department of Corrections or the county commu-  
7 nity corrections agency, whichever is appropriate, shall notify the city police  
8 department, if the person is going to reside within a city, and the county  
9 sheriff's office of the county in which the person is going to reside of the  
10 person's release and the conditions of the person's release.

11 “(7) Failure to abide by all general and special conditions of probation  
12 may result in arrest, modification of conditions, revocation of probation or  
13 imposition of structured, intermediate sanctions in accordance with rules  
14 adopted under ORS 137.595.

15 “(8) The court may order that probation be supervised by the court. If the  
16 court orders that probation be supervised by the court, the defendant shall  
17 pay a fee of \$100 to the court. Fees imposed under this subsection in the  
18 circuit court shall be deposited by the clerk of the court in the General  
19 Fund. Fees imposed in a justice court under this subsection shall be paid to  
20 the county treasurer. Fees imposed in a municipal court under this sub-  
21 section shall be paid to the city treasurer.

22 “(9)(a) The court may at any time modify the conditions of probation.

23 “(b) When the court orders a defendant placed under the supervision of  
24 the Department of Corrections or a community corrections agency, the  
25 supervising officer may file with the court a proposed modification to the  
26 special conditions of probation. The supervising officer shall provide a copy  
27 of the proposed modification to the district attorney and the probationer. If  
28 the district attorney:

29 “(A) Files an objection to the proposed modification less than five judicial  
30 days after the proposed modification was filed, the court shall schedule a

1 hearing no later than 10 judicial days after the proposed modification was  
2 filed, unless the court finds good cause to schedule a hearing at a later time.

3 “(B) Does not file an objection to the proposed modification less than five  
4 judicial days after the proposed modification was filed, the proposed modifi-  
5 cation becomes effective five judicial days after the proposed modification  
6 was filed.

7 “(10) A court may not order revocation of probation as a result of the  
8 probationer’s failure to pay restitution unless the court determines from the  
9 totality of the circumstances that the purposes of the probation are not being  
10 served.

11 “(11) It is not a cause for revocation of probation that the probationer  
12 failed to apply for or accept employment at any workplace where there is a  
13 labor dispute in progress. As used in this subsection, ‘labor dispute’ has the  
14 meaning for that term provided in ORS 662.010.

15 “(12)(a) If the court determines that a defendant has violated the terms  
16 of probation, the court shall collect a \$25 fee from the defendant and may  
17 impose a fee for the costs of extraditing the defendant to this state for the  
18 probation violation proceeding if the defendant left the state in violation of  
19 the conditions of the defendant’s probation. The fees imposed under this  
20 subsection become part of the judgment and may be collected in the same  
21 manner as a fine.

22 “(b) Probation violation fees collected under this subsection in the circuit  
23 court shall be deposited by the clerk of the court in the General Fund.  
24 Extradition cost fees collected in the circuit court under this subsection  
25 shall be deposited by the clerk of the court in the Arrest and Return Account  
26 established by ORS 133.865. Fees collected in a justice court under this sub-  
27 section shall be paid to the county treasurer. Fees collected in a municipal  
28 court under this subsection shall be paid to the city treasurer.

29 “(13) As used in this section, ‘attends,’ ‘institution of higher education,’  
30 ‘works’ and ‘carries on a vocation’ have the meanings given those terms in



1 ORS 163A.005.

2 **“SECTION 11.** ORS 161.705 is amended to read:

3 “161.705. (1) Notwithstanding ORS 161.525, the court may enter judgment  
4 of conviction for a Class A misdemeanor and make disposition accordingly  
5 when:

6 “[*(1)(a)*] (a)(A) A person is convicted of any Class C felony; or

7 “[*(b)*] (B) A person convicted of a **Class C** felony [*described in paragraph*  
8 *(a) of this subsection*], of possession or delivery of marijuana or a marijuana  
9 item as defined in ORS 475B.015 constituting a Class B felony, **of possession**  
10 **of a controlled substance constituting a Class B felony** or of a Class A  
11 felony pursuant to ORS 166.720, has successfully completed a sentence of  
12 probation; and

13 “[*(2)*] (b) The court, considering the nature and circumstances of the  
14 crime and the history and character of the defendant, believes that [*it*] a  
15 **felony conviction** would be unduly harsh [*to sentence the defendant for a*  
16 *felony*].

17 **“(2) The entry of judgment of conviction for a Class A misdemeanor**  
18 **under this section may be made:**

19 **“(a) At the time of conviction, for offenses described in subsection**  
20 **(1)(a)(A) of this section; or**

21 **“(b) At any time after the sentence of probation has been com-**  
22 **pleted, for offenses described in subsection (1)(a)(B) of this section.**

23 **“SECTION 12.** ORS 137.225 is amended to read:

24 “137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at  
25 any time after the lapse of three years from the date of pronouncement of  
26 judgment, any defendant who has fully complied with and performed the  
27 sentence of the court and whose conviction is described in subsection (5) of  
28 this section by motion may apply to the court where the conviction was en-  
29 tered for entry of an order setting aside the conviction. A person who is still  
30 under supervision, or who is still incarcerated, as part of the sentence for

1 the offense that is the subject of the motion has not fully complied with or  
2 performed the sentence of the court.

3 “(b) At any time after the lapse of one year from the date of any arrest,  
4 issuance of a criminal citation or criminal charge, if no accusatory instru-  
5 ment was filed, or at any time after an acquittal or a dismissal of the charge,  
6 the arrested, cited or charged person may apply to the court that would have  
7 jurisdiction over the crime for which the person was arrested, cited or  
8 charged, for entry of an order setting aside the record of the arrest, citation  
9 or charge. For the purpose of computing the one-year period, time during  
10 which the person has secreted himself or herself within or without this state  
11 is not included.

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

16 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints  
17 shall be served upon the office of the prosecuting attorney who prosecuted  
18 the crime or violation, or who had authority to prosecute the charge if there  
19 was no accusatory instrument filed, and opportunity shall be given to contest  
20 the motion. The fingerprint card with the notation ‘motion for setting aside  
21 conviction,’ or ‘motion for setting aside arrest, citation or charge record’ as  
22 the case may be, shall be forwarded to the Department of State Police. In-  
23 formation resulting from the fingerprint search along with the fingerprint  
24 card shall be returned to the prosecuting attorney.

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

30 “(c) When a person makes a motion under subsection (1)(a) of this section,

1 the person must pay a fee of \$80 to the Department of State Police. The  
2 person shall attach a certified check payable to the Department of State  
3 Police in the amount of \$80 to the fingerprint card that is served upon the  
4 prosecuting attorney. The office of the prosecuting attorney shall forward  
5 the check with the fingerprint card to the Department of State Police.

6 “(d) In addition to the fee established under paragraph (c) of this sub-  
7 section, when a person makes a motion under subsection (1)(a) of this section  
8 the person must pay the filing fee established under ORS 21.135.

9 “(e) The prosecuting attorney may not charge the defendant a fee for  
10 performing the requirements described in this section.

11 “(3) Upon hearing the motion, the court may require the filing of such  
12 affidavits and may require the taking of such proofs as the court deems  
13 proper. The court shall allow the victim to make a statement at the hearing.  
14 Except as otherwise provided in subsection (12) of this section, if the court  
15 determines that the circumstances and behavior of the applicant from the  
16 date of conviction, or from the date of arrest, citation or charge as the case  
17 may be, to the date of the hearing on the motion warrant setting aside the  
18 conviction, or the arrest, citation or charge record as the case may be, the  
19 court shall enter an appropriate order that shall state the original arrest or  
20 citation charge and the conviction charge, if any and if different from the  
21 original, date of charge, submitting agency and disposition. The order shall  
22 further state that positive identification has been established by the De-  
23 partment of State Police and further identified as to Department of State  
24 Police number or submitting agency number. Upon the entry of the order,  
25 the applicant for purposes of the law shall be deemed not to have been pre-  
26 viously convicted, or arrested, cited or charged as the case may be, and the  
27 court shall issue an order sealing the record of conviction and other official  
28 records in the case, including the records of arrest, citation or charge  
29 whether or not the arrest, citation or charge resulted in a further criminal  
30 proceeding.

1 “(4) The clerk of the court shall forward a certified copy of the order to  
2 such agencies as directed by the court. A certified copy must be sent to the  
3 Department of Corrections when the person has been in the custody of the  
4 Department of Corrections. Upon entry of the order, the conviction, arrest,  
5 citation, charge or other proceeding shall be deemed not to have occurred,  
6 and the applicant may answer accordingly any questions relating to its oc-  
7 currence.

8 “(5) The provisions of subsection (1)(a) of this section apply to a con-  
9 viction for:

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

13 “(A)(i) Twenty years or more have elapsed from the date of the conviction  
14 sought to be set aside or of the release of the person from imprisonment for  
15 the conviction sought to be set aside, whichever is later; and

16 “(ii) The person has not been convicted of, arrested or criminally cited for  
17 or charged with any other offense, excluding motor vehicle violations, after  
18 the date the person was convicted of the offense sought to be set aside.  
19 Notwithstanding subsection (1) of this section, a conviction, arrest, citation  
20 or charge that has been set aside under this section shall be considered for  
21 the purpose of determining whether this subparagraph is applicable; or

22 “(B) The Class B felony is described in paragraphs (b) to [(e)] **(d)** of this  
23 subsection.

24 “(b) Any misdemeanor, Class C felony or felony punishable as a  
25 misdemeanor pursuant to ORS 161.705.

26 “[c) *Unlawful possession of a controlled substance classified in Schedule*  
27 *I.*]

28 “[d)] **(c)** An offense constituting a violation under state law or local or-  
29 dinance.

30 “[e)] **(d)** An offense committed before January 1, 1972, that, if committed

1 after that date, would qualify for an order under this section.

2 “(6) Notwithstanding subsection (5) of this section, the provisions of sub-  
3 section (1)(a) of this section do not apply to a conviction for:

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

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

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

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

13 “(e) Assault in the third degree under ORS 163.165 (1)(h).

14 “(f) Any sex crime, unless:

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

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

19 “(ii) The person has not been convicted of, found guilty except for insan-  
20 ity of or found to be within the jurisdiction of the juvenile court based on  
21 a crime for which the court is prohibited from setting aside the conviction  
22 under this section; or

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

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

25 “(ii) The person is:

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

27 “(II) At least two years and 180 days older, but less than three years and  
28 180 days older, than the victim and the court finds that setting aside the  
29 conviction is in the interests of justice and of benefit to the person and the  
30 community;

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

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

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

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

10       “(7) Notwithstanding subsection (5) of this section, the provisions of sub-  
11 section (1) of this section do not apply to:

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

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

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

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

27       “(a) A person arrested or criminally cited for or charged with an offense  
28 within the three-year period immediately preceding the filing of the motion  
29 for any offense, excluding motor vehicle violations, and excluding arrests,  
30 citations or charges for conduct associated with the same criminal episode

1 that caused the arrest, citation or charge that is sought to be set aside. An  
2 arrest, citation or charge that has been set aside under this section may not  
3 be considered for the purpose of determining whether this paragraph is ap-  
4 plicable.

5 “(b) An arrest or citation for driving while under the influence of  
6 intoxicants if the charge is dismissed as a result of the person’s successful  
7 completion of a diversion agreement described in ORS 813.200.

8 “(9) The provisions of subsection (1) of this section apply to convictions,  
9 arrests, citations and charges that occurred before, as well as those that  
10 occurred after, September 9, 1971. There is no time limit for making an ap-  
11 plication.

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

18 “(11) Upon motion of any prosecutor or defendant in a case involving re-  
19 cords sealed under this section, supported by affidavit showing good cause,  
20 the court with jurisdiction may order the reopening and disclosure of any  
21 records sealed under this section for the limited purpose of assisting the in-  
22 vestigation of the movant. However, such an order has no other effect on the  
23 orders setting aside the conviction or the arrest, citation or charge record.

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

29 “(a) Abandonment of a child, ORS 163.535.

30 “(b) Attempted assault in the second degree, ORS 163.175.

- 1       “(c) Assault in the third degree, ORS 163.165.  
2       “(d) Coercion, ORS 163.275.  
3       “(e) Criminal mistreatment in the first degree, ORS 163.205.  
4       “(f) Attempted escape in the first degree, ORS 162.165.  
5       “(g) Incest, ORS 163.525, if the victim was at least 18 years of age.  
6       “(h) Intimidation in the first degree, ORS 166.165.  
7       “(i) Attempted kidnapping in the second degree, ORS 163.225.  
8       “(j) Attempted robbery in the second degree, ORS 164.405.  
9       “(k) Robbery in the third degree, ORS 164.395.  
10       “(L) Supplying contraband, ORS 162.185.  
11       “(m) Unlawful use of a weapon, ORS 166.220.  
12       “(13) As used in this section, ‘sex crime’ has the meaning given that term  
13 in ORS 163A.005.  
14       **“SECTION 13. The amendments to ORS 137.540, 162.375 and 837.365**  
15 **by sections 6, 9 and 10 of this 2018 Act apply to offenses committed on**  
16 **or after the effective date of this 2018 Act.**  
17       **“SECTION 14. This 2018 Act takes effect on June 30, 2018.”.**  
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