

Enrolled
House Bill 2428

Sponsored by Representatives LEWIS, SPRENGER; Representative POST (Pre-session filed.)

CHAPTER

AN ACT

Relating to public indecency; creating new provisions; amending ORS 163.465, 181A.155 and 419C.473; and prescribing an effective date.

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

SECTION 1. ORS 163.465 is amended to read:

163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

- (a) An act of sexual intercourse;
- (b) An act of oral or anal sexual intercourse; [*or*]
- (c) **Masturbation; or**

[(c)] (d) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2)(a) Public indecency is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445.

SECTION 2. ORS 181A.155 is amended to read:

181A.155. (1) The Department of State Police is authorized to:

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

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

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

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

(e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and buccal samples and for storing and destroying blood and buccal samples and other physical evidence and criminal identification information obtained from such analysis. Procedures for blood and buccal analyses may include all techniques which the department determines are accurate and reliable in

establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen antibodies, polymorphic enzymes or polymorphic proteins.

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

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

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

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

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

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

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

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

(G) Stalking, as defined in ORS 163.732;

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

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

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

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

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

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

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

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

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

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

(a) To a law enforcement agency as defined in ORS 181A.010, a district attorney or the Criminal Justice Division of the Department of Justice for the purpose of establishing the identity of a person in the course of a criminal investigation or proceeding;

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

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

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

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

(7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a record within a criminal identification database maintained under the authority of this section may, upon request, inspect that information at a time and location designated by the department. The department may deny inspection if it determines that there is a reasonable likelihood that such in-

spection would prejudice a pending criminal investigation. In any case, the department is not required to allow the person or anyone acting on the person's behalf to test any blood or buccal sample or other physical evidence. The department shall adopt procedures governing the inspection of records and samples and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

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

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

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

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

SECTION 3. ORS 419C.473 is amended to read:

419C.473. (1) Whenever a youth offender has been found to be within the jurisdiction of the court under ORS 419C.005 for having committed an act that if done by an adult would constitute a felony listed in subsection (2) of this section, the court shall order the youth offender to submit to the obtaining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall further order that as soon as practicable after the entry of the dispositional order, the law enforcement agency attending upon the court shall cause a blood or buccal sample to be obtained and transmitted in accordance with ORS 137.076. The court may also order the youth offender to reimburse the appropriate agency for the cost of obtaining and transmitting the blood or buccal sample.

(2) The felonies to which subsection (1) of this section applies are:

(a) Rape, sodomy, unlawful sexual penetration, sexual abuse in the first or second degree, public indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to 163.427, 163.465 [(1)(c)] **(1)(d)**, 163.525 and 163.670;

(b) Burglary in the second degree, as defined in ORS 164.215, when committed with intent to commit any offense listed in paragraph (a) of this subsection;

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

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

(e) Assault in the first degree, as defined in ORS 163.185;

(f) Conspiracy or attempt to commit any Class A or Class B felony listed in paragraphs (a) to (e) of this subsection; or

(g) Murder or aggravated murder.

(3) No order for the obtaining and transmitting of a blood or buccal sample is required to be entered if:

(a) The Department of State Police notifies the court or the law enforcement agency attending upon the court that it has previously received an adequate blood or buccal sample taken from the youth offender in accordance with this section, ORS 137.076 or 161.325 (4); or

(b) The court determines that obtaining a sample would create a substantial and unreasonable risk to the health of the youth offender.

(4) Notwithstanding any other provision of law, blood and buccal samples and other physical evidence and criminal identification information obtained under authority of this section or as a result of analysis conducted pursuant to ORS 181A.155 may be maintained, stored, destroyed and released to authorized persons or agencies under the conditions established in ORS 181A.155 and rules adopted by the Department of State Police under the authority of that section.

SECTION 4. The amendments to ORS 163.465 by section 1 of this 2019 Act apply to:

(1) Conduct occurring on or after the effective date of this 2019 Act.

(2) For purposes of ORS 163.465 (2)(b), prior convictions occurring before, on or after the effective date of this 2019 Act.

SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Passed by House March 28, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate April 25, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State