

House Bill 2428

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that masturbation while in, or in view of, public place constitutes crime of public indecency. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both, if person has specified prior conviction.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public indecency; creating new provisions; amending ORS 163.465, 181A.155 and
3 419C.473; and prescribing an effective date.

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

5 **SECTION 1.** ORS 163.465 is amended to read:

6 163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public
7 place the person performs:

8 (a) An act of sexual intercourse;

9 (b) An act of oral or anal sexual intercourse; [*or*]

10 **(c) Masturbation; or**

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

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

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

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

19 181A.155. (1) The Department of State Police is authorized to:

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

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

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

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

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

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

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

10 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 11 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 12 163.427, 163.465 [(1)(c)] (1)(d), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
 27 partment shall analyze samples from persons convicted of a felony under ORS 475.752, 475.806 to
 28 475.894, 475.904, 475.906 or 475.914.

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

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

34 (4) The department may not transfer or disclose any sample, physical evidence or criminal
 35 identification information obtained, stored or maintained under authority of this section, ORS
 36 137.076, 161.325 or 419C.473 (1) except:

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

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

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

44 (5) The department may not transfer or disclose any sample, physical evidence or criminal
 45 identification information under subsection (4) of this section unless the public agency or person

1 receiving the sample, physical evidence or criminal identification information agrees to destroy the
2 sample, physical evidence or criminal identification information if notified by the department that
3 a court has reversed the conviction, judgment or order that created the obligation to provide the
4 blood or buccal sample.

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

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

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

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

31 (c) The department is not required to destroy an item of physical evidence obtained from a blood
32 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
33 161.325, 419A.260 and 419C.473 (1) and this section would thereby be destroyed. Notwithstanding this
34 subsection, no sample, physical evidence or criminal identification record is affected by an order to
35 set aside a conviction under ORS 137.225.

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

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

39 419C.473. (1) Whenever a youth offender has been found to be within the jurisdiction of the court
40 under ORS 419C.005 for having committed an act that if done by an adult would constitute a felony
41 listed in subsection (2) of this section, the court shall order the youth offender to submit to the ob-
42 taining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall further
43 order that as soon as practicable after the entry of the dispositional order, the law enforcement
44 agency attending upon the court shall cause a blood or buccal sample to be obtained and transmit-
45 ted in accordance with ORS 137.076. The court may also order the youth offender to reimburse the

1 appropriate agency for the cost of obtaining and transmitting the blood or buccal sample.

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

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

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

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

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

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

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

13 (g) Murder or aggravated murder.

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

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

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

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

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

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

28 **(2) For purposes of ORS 164.465 (2)(b), prior convictions occurring before, on or after the**
29 **effective date of this 2019 Act.**

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

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