

A-Engrossed Senate Bill 1543

Ordered by the Senate February 19
Including Senate Amendments dated February 19

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

SUMMARY

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

Directs Attorney General to *[include, on]* **appoint members with certain qualifications to batterers' intervention program standards advisory committee**, *psychologist or psychiatrist with relevant experience*. Specifies requirements for program standards.

Specifies requirements for retention of sexual assault forensic evidence kits by law enforcement agencies. Directs Department of Justice to create informational materials for victims of sexual assault describing services payable by Sexual Assault Victims' Emergency Medical Response Fund.

Requires health care providers to, upon request, provide Psychiatric Security Review Board with medical records of person under jurisdiction of board. Modifies procedures by which person found guilty except for insanity and on conditional release may be ordered returned to state hospital or other facility. **Specifies entities authorized to issue order and under what circumstances each entity may issue order.**

Modifies elements of, and exceptions to, crime involving unlawful operation of unmanned aircraft system.

Authorizes court to vacate judgment of conviction for violating municipal prostitution ordinance upon making certain findings.

Provides that moneys in inmate transitional fund, while within custody or control of Department of Corrections, are not assignable or subject to process.

Increases to 30 days mandatory term of incarceration for person convicted of crime of initiating a false report if law enforcement Special Weapons and Tactics team was deployed and deployment resulted in death or serious physical injury to another person.

Modifies general conditions of probation to include requirement that probationer follow reasonable recommendations resulting from risk and needs assessment.

Authorizes court to enter judgment of conviction for Class A misdemeanor when person convicted of possession of controlled substance constituting Class B felony has successfully completed probation and court makes certain findings. Provides that court may enter judgment of conviction for Class A misdemeanor for specified felonies at any time after sentence of probation has been completed when person otherwise qualifies.

Takes effect June 30, 2018.

A BILL FOR AN ACT

1
2 Relating to public safety; creating new provisions; amending ORS 137.221, 137.225, 137.540, 147.395,
3 147.397, 161.336, 161.390, 161.705, 162.375, 180.700, 423.105 and 837.365; and prescribing an ef-
4 fective date.

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

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

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

10 **(a) Are experienced with evidence-based practices specific to reducing recidivism that**
11 **take into account risk factors, needs and responsiveness to treatment; 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 **(b) Represent the diverse groups that interact with violence prevention and batterers'**
2 **intervention programs.**

3 (2) The Attorney General, in consultation with the advisory committee, shall adopt rules that
4 establish standards for batterers' intervention programs. The rules adopted must include, but are
5 not limited to:

6 [(1)] (a) Standards for contacts between the defendant and the victim;

7 [(2)] (b) Standards for the dissemination of otherwise confidential medical, mental health and
8 treatment records;

9 [(3)] (c) Standards that protect to the greatest extent practicable the confidentiality of defend-
10 ants who are participating in domestic violence deferred sentencing agreements;

11 [(4)] (d) A requirement that the designated batterers' intervention program must report to the
12 defendant's local supervisory authority any criminal assaults, threats to harm the victim or any
13 substantial violation of the program's rules by the defendant; and

14 [(5)] (e) Standards for batterers' intervention programs that are most likely to end domestic vi-
15 olence and increase victims' safety.

16 **(3) The standards established by the rules described in subsection (2) of this section**
17 **must:**

18 **(a) Consist of separate standards for programs that address male defendants, female de-**
19 **fendants, defendants offending against same-sex victims and circumstances in which the de-**
20 **fendant or victim is gender nonconforming; and**

21 **(b) Be based on scientific research and direct practice with both persons who have per-**
22 **petrated and persons who have survived domestic violence.**

23 **SECTION 2.** ORS 147.397 is amended to read:

24 147.397. (1) Subject to the availability of funds from gifts, grants and donations in the Sexual
25 Assault Victims' Emergency Medical Response Fund, the Department of Justice shall pay the costs
26 of:

27 (a) A complete medical assessment obtained by the victim of a sexual assault if the victim ob-
28 tains the medical assessment no later than 84 hours after the sexual assault.

29 (b) A partial medical assessment obtained by the victim of a sexual assault if the victim obtains
30 the medical assessment no later than seven days after the sexual assault.

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

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

33 (b) The identity of a victim of a sexual assault is not readily available to the department because
34 forensic evidence has been collected from the victim and preserved in a manner intended to protect
35 the victim's identity.

36 (3) The department shall develop a form that the victim of a sexual assault must complete if the
37 victim wants the department to pay for a medical assessment as provided in subsection (1) of this
38 section. The department shall make copies of the form available to providers of medical assessments.
39 The form must inform the victim that:

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

42 (b) A complete or partial medical assessment can be performed and evidence collected in a
43 manner intended to protect the victim's identity.

44 (4) When the victim of a sexual assault completes the form developed by the department under
45 subsection (3) of this section, the victim shall submit the form to the provider of the medical as-

1 sessment. The provider shall submit the form with a bill for the medical assessment to the depart-
2 ment. A provider who submits a bill under this subsection may not bill the victim or the victim's
3 insurance carrier for the medical assessment except to the extent that the department is unable to
4 pay the bill due to lack of funds or declines to pay the bill.

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

6 (a) Maintain records of medical assessments that protect the identity of victims of sexual assault
7 and keep confidential the identity of victims who have not reported the sexual assault to a law
8 enforcement agency;

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

12 (c) Cooperate with law enforcement agencies to develop and implement procedures that protect
13 the identities of victims while allowing retrieval and assessment of **sexual assault forensic** evi-
14 dence [*collection*] kits and related evidence.

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

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

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

20 (7) A provider may not charge the department more for a complete medical assessment or a
21 partial medical assessment than the maximum amounts established by the department by rule for the
22 assessments.

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

26 (9) This section does not require the department to pay any costs of treatment for injuries re-
27 sulting from the sexual assault.

28 (10) **The department shall create, and make available to medical assessment providers,**
29 **informational materials describing the services payable by the fund as described in sub-**
30 **section (1) of this section. A provider shall ensure that the informational materials are made**
31 **available to sexual assault victims.**

32 [(10)] (11) The department may adopt rules necessary to carry out the provisions of this section.

33 **SECTION 3.** ORS 147.395 is amended to read:

34 147.395. As used in ORS 147.397:

35 (1) "Complete medical assessment" means an assessment that consists of:

36 (a) A medical examination;

37 (b) The collection of forensic evidence using an evidence collection kit approved by the De-
38 partment of State Police; and

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

42 (2) "Medical assessment" means a complete or partial medical assessment.

43 (3) "Partial medical assessment" means an assessment that consists of:

44 (a) A medical examination; and

45 (b) The offering and, if requested, provision of emergency contraception, sexually transmitted

1 disease prevention and, for a victim who is 17 years of age or younger, prescriptions for emergency
2 contraception.

3 **(4) “Sexual assault forensic evidence kit” has the meaning given that term in ORS**
4 **181A.323.**

5 **SECTION 4.** ORS 161.390 is amended to read:

6 161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state
7 mental hospitals or secure intensive community inpatient facilities under ORS 161.365 and 161.370
8 and for establishing standards for evaluation and treatment of persons committed to a state hospital
9 or a secure intensive community inpatient facility or ordered to a community mental health program
10 under ORS 161.315 to 161.351.

11 (2) When the Psychiatric Security Review Board requires the preparation of a predischarge or
12 preconditional release plan before a hearing or as a condition of granting discharge or conditional
13 release for a person committed under ORS 161.315 to 161.351 to a state hospital or a secure inten-
14 sive community inpatient facility for custody, care and treatment, the authority is responsible for
15 and shall prepare the plan.

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

20 (4)(a) The board shall maintain and keep current the medical, social and criminal history of all
21 persons committed to its jurisdiction. The confidentiality of records maintained by the board shall
22 be determined pursuant to ORS 192.338, 192.345 and 192.355.

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

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

29 **SECTION 5.** ORS 161.336 is amended to read:

30 161.336. (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person
31 is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best
32 interests of justice, the protection of society and the welfare of the person.

33 (b) An order of conditional release entered by the board may designate any person or state,
34 county or local agency capable of supervising the person upon release, subject to the conditions
35 described in the order of conditional release.

36 (c) Prior to the designation, the board shall notify the person or state, county or local agency
37 to whom conditional release is contemplated and provide the person or state, county or local agency
38 an opportunity to be heard.

39 (d) After receiving an order entered under this section, the person or state, county or local
40 agency designated in the order shall assume supervision of the person in accordance with the con-
41 ditions described in the order and any modifications of the conditions ordered by the board.

42 (2) Conditions of release contained in orders entered under this section may be modified from
43 time to time and conditional releases may be terminated as provided in ORS 161.351.

44 (3)(a) As a condition of release, the person may be required to report to any state or local
45 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is

1 recommended, the order may require the person, as a condition of release, to cooperate with and
2 accept the treatment from the facility.

3 (b) The facility to which the person has been referred for evaluation shall perform the evalu-
4 ation and submit a written report of its findings to the board. If the facility finds that treatment of
5 the person is appropriate, it shall include its recommendations for treatment in the report to the
6 board.

7 (c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a
8 regular basis concerning the progress of the person.

9 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
10 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
11 192.338, 192.345 and 192.355.

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

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

24 **(4)(a)(A) A written or electronic order for the return of a person on conditional release
25 to a state hospital or other facility designated by the supervising entity or, if the person is
26 under 18 years of age, to a secure intensive community inpatient facility, may be issued by:**

27 **(i) The supervising entity;**

28 **(ii) A person designated by the supervising entity, if the designation is made as part of
29 a written policy; or**

30 **(iii) The community mental health program director, if the person has absconded from
31 conditional release.**

32 **(B) An order described in this paragraph may be issued under the following circum-
33 stances:**

34 **(i) The supervising entity, or, if applicable, the designee or the community mental health
35 program director determines that the person has violated the terms of conditional release;
36 or**

37 **(ii) The mental health of the person has changed such that the supervising entity, or, if
38 applicable, the designee or the community mental health program director reasonably be-
39 lieves that the person may no longer be fit for conditional release.**

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

43 **(b) [The community mental health program director] A peace officer, the director of the facility
44 providing treatment to a person on conditional release[, any peace officer] or any person responsible
45 for the supervision of a person on conditional release may take a person on conditional release into**

1 custody, or request that the person be taken into custody, if there is reasonable cause to believe
 2 the person is a substantial danger to others because of a *[qualifying]* mental disorder and that the
 3 person is in need of immediate care, custody or treatment. *[Any person taken into custody pursuant
 4 to this subsection shall be transported as soon as practicable to a state hospital or, if the person is
 5 under 18 years of age, to a secure intensive community inpatient facility.]*

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

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

17 **(e) As used in this subsection, "supervising entity" means the board or the chairperson
 18 or executive director of the board.**

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

28 (b) Upon application by any person or agency responsible for supervision or treatment pursuant
 29 to an order of conditional release, the board shall conduct a hearing to determine if the conditions
 30 of release shall be continued, modified or terminated. The application shall be accompanied by a
 31 report setting forth the facts supporting the application.

32 (6) A person who has spent five years on conditional release shall be brought before the board
 33 for hearing within 30 days before the expiration of the five-year period. The board shall review the
 34 person's status and determine whether the person should be discharged from the jurisdiction of the
 35 board.

36 **SECTION 6.** ORS 837.365 is amended to read:

37 837.365. (1) Except as provided in subsection [(2)] **(3)** of this section, a person may not inten-
 38 tionally, knowingly or recklessly operate or cause to be operated an unmanned aircraft system that
 39 is:

40 **(a)** Capable of firing a bullet or projectile; or

41 **(b) Specifically designed or modified to cause, and is presently capable of causing, serious
 42 physical injury as defined in ORS 161.015. [otherwise operate or cause to be operated an unmanned
 43 aircraft system in a manner that causes the system to function as a dangerous weapon as defined in
 44 ORS 161.015.]**

45 (2)(a) Except as provided in paragraphs (b) and (c) of this subsection, violation of subsection (1)

1 of this section is a Class A misdemeanor.

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

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

10 (A) **Fires** a bullet or projectile **that causes serious physical injury, as defined in ORS**
11 **161.015, to another person; or**

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

14 (ii) **The design or modification causes serious physical injury, as defined in ORS 161.015,**
15 **to another person.** [*or otherwise operates an unmanned aircraft system in a manner that causes the*
16 *system to function as a dangerous weapon as defined in ORS 161.015, and the operation of the un-*
17 *manned aircraft system causes serious physical injury to another person as both terms are defined in*
18 *ORS 161.015, violation of subsection (1) of this section is a Class B felony.*]

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

20 (a) The person uses the unmanned aircraft system to release, discharge, propel or eject a non-
21 lethal projectile for purposes other than to injure or kill persons or animals;

22 (b) The person uses the unmanned aircraft system for nonrecreational purposes in compliance
23 with specific authorization from the Federal Aviation Administration;

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

29 (d) If the person intends to use an unmanned aircraft system that is capable of releasing, dis-
30 charging, propelling or ejecting a projectile in an area open to the public, the person provides rea-
31 sonable notice to the public of the time and location at which the person intends to use the
32 unmanned aircraft system; and

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

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

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

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

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

39 (d) The Oregon Health and Science University;

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

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

42 (5) Notwithstanding subsection (3) of this section, a person may not use an unmanned aircraft
43 system that is capable of releasing, discharging, propelling or ejecting a projectile for purposes of
44 crowd management.

45 (6) **As used in this section, “school” means a public or private institution of learning**

1 **providing instruction at levels kindergarten through grade 12, or their equivalents.**

2 **SECTION 7.** ORS 137.221 is amended to read:

3 137.221. (1) **Notwithstanding ORS 138.540**, a court may vacate a judgment of conviction for the
4 crime of prostitution under ORS 167.007 **or for violating a municipal prostitution ordinance** as
5 described in this section.

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

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

10 (c) The motion must contain an explanation of facts supporting a claim that the person was the
11 victim of sex trafficking at or around the time of the conduct giving rise to the prostitution con-
12 viction. The motion must further contain an explanation of why those facts were not presented to
13 the trial court.

14 (3) Upon receiving the motion described in subsection (2) of this section, the court shall hold a
15 hearing. At the hearing, the person has the burden of proof and may present evidence that, at or
16 around the time of the conduct giving rise to the prostitution conviction, the person was the victim
17 of sex trafficking. The court shall consider any evidence the court deems of sufficient credibility and
18 probative value in determining whether the person was a victim of sex trafficking. The evidence
19 may include, but is not limited to:

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

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

24 (c) A sworn statement from a trained professional staff member of a victim services organization,
25 an attorney, a member of the clergy or a medical or other professional, certifying that the person
26 has sought assistance addressing trauma associated with being a sex trafficking victim.

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

30 (5) If the court grants a motion under this section, the court shall vacate the judgment of con-
31 viction for prostitution and may make other orders as the court considers appropriate.

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

34 (7) As used in this section[,]:

35 (a) **“Municipal prostitution ordinance” means a municipal ordinance prohibiting a person**
36 **from engaging in, or offering or agreeing to engage in, sexual conduct or sexual contact in**
37 **return for a fee.**

38 (b) **“Sex trafficking”** means the use of force, intimidation, fraud or coercion to cause a person
39 to engage, or attempt to engage, in a commercial sex act.

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

41 423.105. (1) As used in this section:

42 (a) **“Collected moneys”** means moneys that have been collected from an inmate trust account
43 by the Department of Corrections pursuant to this section.

44 (b) **“Court-ordered financial obligation”** means:

45 (A) A compensatory fine imposed pursuant to ORS 137.101, an award of restitution as defined

1 in ORS 137.103 or any other fines, fees or court-appointed attorney fees imposed in a criminal action;

2 (B) A child support obligation;

3 (C) A civil judgment including a money award for a crime victim entered against an inmate re-
4 sulting from a crime committed by the inmate; or

5 (D) A civil judgment including a money award entered against an inmate resulting from an
6 action for the inmate's assault or battery of a Department of Corrections or Oregon Corrections
7 Enterprises employee.

8 (c) "Eligible moneys" means moneys deposited in an inmate trust account that are subject to
9 collection under this section, including but not limited to inmate performance monetary awards and
10 moneys received from an inmate's family members or friends. "Eligible moneys" does not include
11 protected moneys.

12 (d) "Inmate" means a person who is at least 18 years of age and in the physical custody of the
13 Department of Corrections. "Inmate" does not include:

14 (A) A person on leave from prison due to participation in an alternative incarceration program
15 established under ORS 421.504 or short-term transitional leave under ORS 421.168.

16 (B) A person transferred into or out of department custody pursuant to an interstate corrections
17 compact.

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

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

20 (e) "Protected moneys" means moneys deposited in an inmate trust account that are not subject
21 to collection under state or federal law or under this section including but not limited to:

22 (A) Disability benefits for veterans;

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

24 (C) Moneys dedicated for medical, dental or optical expenses or emergency trips;

25 (D) Railroad retirement benefits; or

26 (E) Moneys paid as compensation to an inmate in a prison work program established under the
27 Prison Industries Enhancement Certification Program, or a successor program designated by the
28 United States Director of the Bureau of Justice Assistance pursuant to 18 U.S.C. 1761.

29 (2)(a) The Department of Corrections shall collect eligible moneys from an inmate trust account
30 if the inmate owes court-ordered financial obligations as described in this section.

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

35 (3)(a) The Department of Justice and the Judicial Department shall provide an accounting to the
36 Department of Corrections of court-ordered financial obligations, if any, owed by each inmate. The
37 accounting records may be provided electronically in a format agreed upon by the departments.

38 (b) Upon receipt of the accounting records described in paragraph (a) of this subsection, the
39 Department of Corrections shall collect a portion of eligible moneys from the inmate trust account
40 of each inmate as follows:

41 (A) Until an inmate not sentenced to death or to life imprisonment without the possibility of
42 release or parole has \$500 in a transitional fund to facilitate reentry after release, 10 percent of
43 eligible moneys shall be collected for court-ordered financial obligations and five percent of eligible
44 moneys shall be collected and transferred to the inmate's transitional fund.

45 (B) After the inmate has at least \$500 in the transitional fund, or if the inmate has been sen-

1 tenced to death or to life imprisonment without the possibility of release or parole, the department
2 shall collect 15 percent of eligible moneys for court-ordered financial obligations.

3 (C) After court-ordered financial obligations have been paid, an inmate not sentenced to death
4 or to life imprisonment without the possibility of release or parole may elect to continue to transfer
5 five percent of eligible moneys into the transitional fund.

6 (c) **Notwithstanding ORS 18.615 or any other provision of law, while moneys held in an**
7 **inmate's transitional fund described in this subsection remain within the custody or control**
8 **of the Department of Corrections, those moneys are neither assignable nor subject to exe-**
9 **cutiion, garnishment, attachment or any other process.**

10 (4) There are three levels of priority for the application of collected moneys to court-ordered
11 financial obligations, with Level I obligations having the highest priority and Level III obligations
12 having the lowest priority. The levels are as follows:

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

16 (b) Level II obligations are child support obligations and civil judgments including a money
17 award for a crime victim entered against an inmate resulting from a crime committed by the inmate.

18 (c) Level III obligations are civil judgments including a money award entered against an inmate
19 resulting from an action for the inmate's assault or battery of a Department of Corrections or
20 Oregon Corrections Enterprises employee.

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

24 (b) The Department of Justice and the Judicial Department shall apply the collected moneys
25 received from the Department of Corrections under this subsection to an inmate's court-ordered fi-
26 nancial obligations according to the priority levels of the obligations.

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

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

31 (c) The Department of Corrections may create subaccounts for the purposes of storing collected
32 moneys prior to disbursement under this section.

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

35 **SECTION 9.** ORS 162.375 is amended to read:

36 162.375. (1) A person commits the crime of initiating a false report if the person knowingly ini-
37 tiates a false alarm or report that is transmitted to a fire department, law enforcement agency or
38 other organization that deals with emergencies involving danger to life or property.

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

40 (3)(a) The court shall include in the sentence of any person convicted under this section a re-
41 quirement that the person repay the costs incurred in responding to and investigating the false re-
42 port.

43 (b) If the response to the false report involved the deployment of a law enforcement special
44 weapons and tactics (SWAT) team or a similar law enforcement group, the court shall impose, and
45 may not suspend, a term of incarceration of:

1 (A) At least 10 days.

2 (B) At least 30 days if the deployment resulted in death or serious physical injury to an-
3 other person.

4 **SECTION 10.** ORS 137.540 is amended to read:

5 137.540. (1) The court may sentence the defendant to probation subject to the following general
6 conditions unless specifically deleted by the court. The probationer shall:

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

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

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

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

15 (e) Remain in the State of Oregon until written permission to leave is granted by the Depart-
16 ment of Corrections or a county community corrections agency.

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

20 (g) Change neither employment nor residence without prior permission from the Department of
21 Corrections or a county community corrections agency.

22 (h) Permit the parole and probation officer to visit the probationer or the probationer's work
23 site or residence and to conduct a walk-through of the common areas and of the rooms in the resi-
24 dence occupied by or under the control of the probationer.

25 (i) Consent to the search of person, vehicle or premises upon the request of a representative of
26 the supervising officer if the supervising officer has reasonable grounds to believe that evidence of
27 a violation will be found, and submit to fingerprinting or photographing, or both, when requested
28 by the Department of Corrections or a county community corrections agency for supervision pur-
29 poses.

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

31 (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections
32 or a county community corrections agency.

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

34 (m) Report as required and abide by the direction of the supervising officer.

35 (n) If recommended by the supervising officer, successfully complete a sex offender treatment
36 program approved by the supervising officer and submit to polygraph examinations at the direction
37 of the supervising officer if the probationer:

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

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

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

42 (o) Participate in a mental health evaluation as directed by the supervising officer and follow
43 the recommendation of the evaluator.

44 (p) If required to report as a sex offender under ORS 163A.015, report with the Department of
45 State Police, a city police department, a county 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 vocation at or attends an
5 institution of higher education; and

6 (E) Within 10 days of a change in work, vocation or attendance status at an institution of higher
7 education.

8 (q) Submit to a risk and needs assessment as directed by the supervising officer **and follow**
9 **reasonable recommendations resulting from the assessment.**

10 (2) In addition to the general conditions, the court may impose any special conditions of pro-
11 bation that are reasonably related to the crime of conviction or the needs of the probationer for the
12 protection of the public or reformation of the probationer, or both, including, but not limited to, that
13 the probationer shall:

14 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after
15 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence
16 or to the premises thereof, or be subject to any combination of such confinement and restriction,
17 such confinement or restriction or combination thereof to be for a period not to exceed one year
18 or one-half of the maximum period of confinement that could be imposed for the offense for which
19 the defendant is convicted, whichever is the lesser.

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

21 (A) Be confined in the county jail, or be subject to other custodial sanctions under community
22 supervision, or both, as provided by rules of the Oregon Criminal Justice Commission; and

23 (B) Comply with any special conditions of probation that are imposed by the supervising officer
24 in accordance with subsection (9) of this section.

25 (c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as
26 specifically ordered by the court in order to pay restitution.

27 (d) For crimes constituting delivery of a controlled substance, as those terms are defined in ORS
28 475.005, or for telephonic harassment under ORS 166.090, or for crimes involving domestic violence,
29 as defined in ORS 135.230, be prohibited from using Internet websites that provide anonymous text
30 message services.

31 (3)(a) If a person is released on probation following conviction of stalking under ORS 163.732
32 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b), the court may include
33 as a special condition of the person's probation reasonable residency restrictions.

34 (b) If the court imposes the special condition of probation described in this subsection and if at
35 any time during the period of probation the victim moves to a location that causes the probationer
36 to be in violation of the special condition of probation, the court may not require the probationer
37 to change the probationer's residence in order to comply with the special condition of probation.

38 (4) When a person who is a sex offender is released on probation, the court shall impose as a
39 special condition of probation that the person not reside in any dwelling in which another sex
40 offender who is on probation, parole or post-prison supervision resides, without the approval of the
41 person's supervising parole and probation officer, or in which more than one other sex offender who
42 is on probation, parole or post-prison supervision resides, without the approval of the director of the
43 probation agency that is supervising the person or of the county manager of the Department of
44 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole
45 and probation officer of a person subject to the requirements of this subsection shall review the

1 person's living arrangement with the person's sex offender treatment provider to ensure that the
2 arrangement supports the goals of offender rehabilitation and community safety. As used in this
3 subsection:

4 (a) "Dwelling" has the meaning given that term in ORS 469B.100.

5 (b) "Dwelling" does not include a residential treatment facility or a halfway house.

6 (c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facil-
7 ity that provides rehabilitative care and treatment 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 crime, as defined in
10 ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18
11 years of age, the court, if requested by the victim, shall include as a special condition of the person's
12 probation that the person not reside within three miles of the victim unless:

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

15 (B) The person demonstrates to the court by a preponderance of the evidence that no mental
16 intimidation or pressure was brought to bear during the commission of the crime;

17 (C) The person demonstrates to the court by a preponderance of the evidence that imposition
18 of the condition will deprive the person of a residence that would be materially significant in aiding
19 in the rehabilitation of the person or in the success of the probation; or

20 (D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means
21 a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative
22 care and treatment for sex offenders.

23 (b) A victim may request imposition of the special condition of probation described in this sub-
24 section at the time of sentencing in person or through the prosecuting attorney.

25 (c) If the court imposes the special condition of probation described in this subsection and if at
26 any time during the period of probation the victim moves to within three miles of the probationer's
27 residence, the court may not require the probationer to change the probationer's residence in order
28 to comply with the special condition of probation.

29 (6) When a person who is a sex offender, as defined in ORS 163A.005, is released on probation,
30 the Department of Corrections or the county community corrections agency, whichever is appropri-
31 ate, shall notify the city police department, if the person is going to reside within a city, and the
32 county sheriff's office of the county in which the person is going to reside of the person's release
33 and the conditions of the person's release.

34 (7) Failure to abide by all general and special conditions of probation may result in arrest,
35 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-
36 tions in accordance with rules adopted under ORS 137.595.

37 (8) The court may order that probation be supervised by the court. If the court orders that
38 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-
39 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the
40 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county
41 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-
42 urer.

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

44 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
45 rections or a community corrections agency, the supervising officer may file with the court a pro-

1 posed modification to the special conditions of probation. The supervising officer shall provide a
2 copy of the proposed modification to the district attorney and the probationer. If the district attor-
3 ney:

4 (A) Files an objection to the proposed modification less than five judicial days after the proposed
5 modification was filed, the court shall schedule a hearing no later than 10 judicial days after the
6 proposed modification was filed, unless the court finds good cause to schedule a hearing at a later
7 time.

8 (B) Does not file an objection to the proposed modification less than five judicial days after the
9 proposed modification was filed, the proposed modification becomes effective five judicial days after
10 the proposed modification was filed.

11 (10) A court may not order revocation of probation as a result of the probationer's failure to
12 pay restitution unless the court determines from the totality of the circumstances that the purposes
13 of the probation are not being served.

14 (11) It is not a cause for revocation of probation that the probationer failed to apply for or ac-
15 cept employment at any workplace where there is a labor dispute in progress. As used in this sub-
16 section, "labor dispute" has the meaning for that term provided in ORS 662.010.

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

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

28 (13) As used in this section, "attends," "institution of higher education," "works" and "carries
29 on a vocation" have the meanings given those terms in ORS 163A.005.

30 **SECTION 11.** ORS 161.705 is amended to read:

31 161.705. (1) Notwithstanding ORS 161.525, the court may enter judgment of conviction for a
32 Class A misdemeanor and make disposition accordingly when:

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

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

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

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

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

45 **(b) At any time after the sentence of probation has been completed, for offenses de-**

1 **scribed in subsection (1)(a)(B) of this section.**

2 **SECTION 12.** ORS 137.225 is amended to read:

3 137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse
4 of three years from the date of pronouncement of judgment, any defendant who has fully complied
5 with and performed the sentence of the court and whose conviction is described in subsection (5)
6 of this section by motion may apply to the court where the conviction was entered for entry of an
7 order setting aside the conviction. A person who is still under supervision, or who is still
8 incarcerated, as part of the sentence for the offense that is the subject of the motion has not fully
9 complied with or performed the sentence of the court.

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

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

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

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

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

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

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

41 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
42 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
43 statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court
44 determines that the circumstances and behavior of the applicant from the date of conviction, or from
45 the date of arrest, citation or charge as the case may be, to the date of the hearing on the motion

1 warrant setting aside the conviction, or the arrest, citation or charge record as the case may be,
2 the court shall enter an appropriate order that shall state the original arrest or citation charge and
3 the conviction charge, if any and if different from the original, date of charge, submitting agency
4 and disposition. The order shall further state that positive identification has been established by the
5 Department of State Police and further identified as to Department of State Police number or sub-
6 mitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be
7 deemed not to have been previously convicted, or arrested, cited or charged as the case may be, and
8 the court shall issue an order sealing the record of conviction and other official records in the case,
9 including the records of arrest, citation or charge whether or not the arrest, citation or charge re-
10 sulted in a further criminal proceeding.

11 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
12 by the court. A certified copy must be sent to the Department of Corrections when the person has
13 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
14 rest, citation, charge or other proceeding shall be deemed not to have occurred, and the applicant
15 may answer accordingly any questions relating to its occurrence.

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

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

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

22 (ii) The person has not been convicted of, arrested or criminally cited for or charged with any
23 other offense, excluding motor vehicle violations, after the date the person was convicted of the of-
24 fense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction, arrest, ci-
25 tation or charge that has been set aside under this section shall be considered for the purpose of
26 determining whether this subparagraph is applicable; or

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

28 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
29 161.705.

30 [(c) *Unlawful possession of a controlled substance classified in Schedule I.*]

31 [(d)] (c) An offense constituting a violation under state law or local ordinance.

32 [(e)] (d) An offense committed before January 1, 1972, that, if committed after that date, would
33 qualify for an order under this section.

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

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

38 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
39 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
40 419B.005.

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

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

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

- 1 (f) Any sex crime, unless:
- 2 (A) The sex crime is listed in ORS 163A.140 (1)(a) and:
- 3 (i) The person has been relieved of the obligation to report as a sex offender pursuant to a court
- 4 order entered under ORS 163A.145 or 163A.150; and
- 5 (ii) 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; or
- 8 (B) The sex crime constitutes a Class C felony and:
- 9 (i) The person was under 16 years of age at the time of the offense;
- 10 (ii) The person is:
- 11 (I) Less than two years and 180 days older than the victim; or
- 12 (II) At least two years and 180 days older, but less than three years and 180 days older, than
- 13 the victim and the court finds that setting aside the conviction is in the interests of justice and of
- 14 benefit to the person and the community;
- 15 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less
- 16 than a specified age;
- 17 (iv) The victim was at least 12 years of age at the time of the offense;
- 18 (v) The person has not been convicted of, found guilty except for insanity of or found to be
- 19 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
- 20 setting aside the conviction under this section; and
- 21 (vi) Each conviction or finding described in this subparagraph involved the same victim.
- 22 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
- 23 do not apply to:
- 24 (a) A conviction for a state or municipal traffic offense.
- 25 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
- 26 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
- 27 whether or not the other conviction is for conduct associated with the same criminal episode that
- 28 caused the arrest, citation, charge or conviction that is sought to be set aside. A single violation,
- 29 other than a motor vehicle violation, within the last 10 years is not a conviction under this sub-
- 30 section. Notwithstanding subsection (1) of this section, a conviction that has been set aside under
- 31 this section shall be considered for the purpose of determining whether this paragraph is applicable.
- 32 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
- 33 before the court is under charge of commission of any crime.
- 34 (8) The provisions of subsection (1)(b) of this section do not apply to:
- 35 (a) A person arrested or criminally cited for or charged with an offense within the three-year
- 36 period immediately preceding the filing of the motion for any offense, excluding motor vehicle vio-
- 37 lations, and excluding arrests, citations or charges for conduct associated with the same criminal
- 38 episode that caused the arrest, citation or charge that is sought to be set aside. An arrest, citation
- 39 or charge that has been set aside under this section may not be considered for the purpose of de-
- 40 termining whether this paragraph is applicable.
- 41 (b) An arrest or citation for driving while under the influence of intoxicants if the charge is
- 42 dismissed as a result of the person's successful completion of a diversion agreement described in
- 43 ORS 813.200.
- 44 (9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and
- 45 charges that occurred before, as well as those that occurred after, September 9, 1971. There is no

1 time limit for making an application.

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

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

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

- 16 (a) Abandonment of a child, ORS 163.535.
- 17 (b) Attempted assault in the second degree, ORS 163.175.
- 18 (c) Assault in the third degree, ORS 163.165.
- 19 (d) Coercion, ORS 163.275.
- 20 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 21 (f) Attempted escape in the first degree, ORS 162.165.
- 22 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 23 (h) Intimidation in the first degree, ORS 166.165.
- 24 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 25 (j) Attempted robbery in the second degree, ORS 164.405.
- 26 (k) Robbery in the third degree, ORS 164.395.
- 27 (L) Supplying contraband, ORS 162.185.
- 28 (m) Unlawful use of a weapon, ORS 166.220.

29 (13) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005.

30 **SECTION 13. The amendments to ORS 137.540, 162.375 and 837.365 by sections 6, 9 and**
31 **10 of this 2018 Act apply to offenses committed on or after the effective date of this 2018 Act.**
32 **SECTION 14. This 2018 Act takes effect on June 30, 2018.**
33