

CHAPTER 820

AN ACT

HB 2320

Relating to crime; creating new provisions; amending ORS 90.630, 137.225, 144.005, 144.015, 144.025, 144.035, 144.054, 144.079, 144.110, 144.641, 144.783, 163.105, 163.115, 163.155, 163.476, 163.479, 181.800, 181.801, 181.803, 181.806, 181.808, 181.809, 181.810, 181.812, 181.817, 181.820, 181.821, 181.823, 181.835, 181.837 and 419A.262 and sections 7, 34 and 37, chapter 708, Oregon Laws 2013; repealing ORS 181.838, 181.839 and 181.840 and section 1, chapter 462, Oregon Laws 2015 (Enrolled Senate Bill 908); and declaring an emergency.

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

SEX OFFENDER CLASSIFICATION

SECTION 1. ORS 181.800 is amended to read:

181.800. The [Department of Corrections shall] **State Board of Parole and Post-Prison Supervision shall, in consultation with community corrections agencies,** adopt by rule a sex offender risk assessment [tool] **methodology** for use in classifying sex offenders [based on the statistical likelihood that an individual sex offender will commit another sex crime]. Application of the risk assessment [tool] **methodology** to a sex offender must result in placing the sex offender in one of the following levels:

(1) A level one sex offender who presents the lowest risk of reoffending and requires a limited range of notification.

(2) A level two sex offender who presents a moderate risk of reoffending and requires a moderate range of notification.

(3) A level three sex offender who presents the highest risk of reoffending and requires the widest range of notification.

SECTION 2. ORS 181.801 is amended to read:

181.801. (1) When a person convicted of a crime described in ORS 163.355 to 163.427 is sentenced to a term of imprisonment in a Department of Corrections institution for that crime, the [department] **State Board of Parole and Post-Prison Supervision shall [conduct a risk assessment of] assess** the person utilizing the risk assessment [tool] **methodology** described in ORS 181.800. **The board shall apply the results of the assessment to place the person in one of the levels described in ORS 181.800** before the person is released from custody.

(2) When a person convicted of a sex crime is sentenced to a term of incarceration in a jail, or is discharged, released or placed on probation by the court, the supervisory authority as defined in ORS 144.087 shall [conduct a risk assessment of] **assess** the person utilizing the risk assessment [tool] **methodology** described in ORS 181.800 **and apply the results of the assessment to place the person in one of the levels described in ORS 181.800**

no later than 60 days after the person is released from jail or discharged, released or placed on probation by the court.

(3)(a) When a person is found guilty except for insanity of a sex crime, the [State Board of Parole and Post-Prison Supervision] **Psychiatric Security Review Board or the Oregon Health Authority shall [conduct a risk assessment of] assess** the person utilizing the risk assessment [tool] **methodology** described in ORS 181.800 **and apply the results of the assessment to place the person in one of the levels described in ORS 181.800 [within] no later than 60 days** after the person is:

(A) Placed on conditional release by the Psychiatric Security Review Board or the Oregon Health Authority;

(B) Discharged from the jurisdiction of the Psychiatric Security Review Board or the Oregon Health Authority;

(C) Placed on conditional release by the court pursuant to ORS 161.327; or

(D) Discharged by the court pursuant to ORS 161.329.

(b) [The Psychiatric Security Review Board or the Oregon Health Authority shall notify the State Board of Parole and Post-Prison Supervision when the Psychiatric Security Review Board or the authority conditionally releases or discharges a person described in paragraph (a) of this subsection.] **If the State Board of Parole and Post-Prison Supervision previously completed a risk assessment and assigned a classification level described in ORS 181.800 for a person described in paragraph (a) of this subsection, the Psychiatric Security Review Board or the Oregon Health Authority need not complete a reassessment for an initial classification.**

(c) The court shall notify the [State Board of Parole and Post-Prison Supervision] **Psychiatric Security Review Board** when the court conditionally releases or discharges a person described in paragraph (a) of this subsection.

(d) **The Psychiatric Security Review Board or the Oregon Health Authority shall notify the State Board of Parole and Post-Prison Supervision no later than seven days after the Psychiatric Security Review Board or the authority conditionally releases or discharges a person who has a prior sex crime conviction that obligates the person to report as a sex offender, unless the person has also been found guilty except for insanity of a sex crime that obligates the person to report as a sex offender.**

(4) Within 60 days after the event triggering the obligation to make an initial report, the State Board of Parole and Post-Prison Supervision shall [conduct a risk assessment of] **assess** a person utilizing the risk assessment [tool] **methodology** described in ORS 181.800 **and apply the results of the assessment to place the person in one of the levels described in ORS 181.800** if the person:

(a) Has been convicted in another United States court of a crime:

(A) That would constitute a sex crime if committed in this state; or

(B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state; or

(b) Has been convicted of a sex crime and was sentenced to a term of imprisonment in a Department of Corrections institution for that sex crime, but was not subjected to a risk assessment utilizing the risk assessment *[tool]* **methodology** described in ORS 181.800 before release under subsection (1) of this section.

(5) When *[the Department of Corrections,]* the State Board of Parole and Post-Prison Supervision, **the Psychiatric Security Review Board, the Oregon Health Authority** or a supervisory authority *[conducts a risk assessment under this section]* **applies the results of a risk assessment to place a person in one of the levels described in ORS 181.800**, the agency shall notify the Department of State Police of the results of the risk assessment **within three business days after the agency's classification**. Upon receipt, the Department of State Police shall enter the results of the risk assessment into the Law Enforcement Data System.

SECTION 3. ORS 181.803 is amended to read:

181.803. Notwithstanding any other provision of law:

[(1) A person required to report as a sex offender under ORS 181.806, 181.807 or 181.808 is classified as a level three sex offender under ORS 181.800 (3) unless:]

[(a) Following a risk assessment conducted under ORS 181.801, the person is classified as a level two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1); or]

[(b) After filing a petition under ORS 181.821 (2), the person is reclassified as a level two sex offender under ORS 181.800 (2) by the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board.]

[(2)] (1) A person who is a sexually violent dangerous offender under ORS 137.765:

(a) Must be classified as a level three sex offender under ORS 181.800 (3); and

(b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as a level two sex offender under ORS 181.800 (2), pursuant to a petition filed under ORS 181.821.

[(3)] (2) A person who has been convicted or found guilty except for insanity of one of the following offenses is not eligible for relief from the obligation to report as a sex offender pursuant to a petition filed under ORS 181.821 (1):

(a) Rape in the first degree;

(b) Sodomy in the first degree;

(c) Unlawful sexual penetration in the first degree;

(d) Kidnapping in the first degree as described in ORS 163.235 (1)(e) or when the victim is under 18 years of age; or

(e) Burglary in the first degree when committed with the intent to commit any of the offenses listed in ORS 181.805 (5)(a) to (t).

(3) A person classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013 is not eligible for relief from the obligation to report as a sex offender pursuant to a petition filed under ORS 181.821 (1).

SECTION 4. ORS 181.821 is amended to read:

181.821. (1)(a) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to a conviction for a sex crime and is classified as a level one sex offender under ORS 181.800 (1) may petition the State Board of Parole and Post-Prison Supervision to relieve the person from the obligation to report as a sex offender under ORS 181.806, 181.807 or 181.808.

(b) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to being found guilty except for insanity under ORS 161.295 for a sex crime, and is classified as a level one sex offender under ORS 181.800 (1), may petition the Psychiatric Security Review Board to relieve the person from the obligation to report as a sex offender under ORS 181.806, 181.807 or 181.808.

(c)(A) Except as otherwise provided in subparagraph (B) of this paragraph, a person described in paragraph (a) or (b) of this subsection may file the petition no sooner than five years after the date supervision for the sex crime is terminated or, if the person was not subject to supervision for the sex crime, five years after the date the person was discharged from the jurisdiction of the court, Psychiatric Security Review Board or Oregon Health Authority.

(B) A person who was reclassified under subsection (2) of this section from a level two sex offender under ORS 181.800 (2) to a level one sex offender under ORS 181.800 (1) may file the petition no sooner than five years after the date of reclassification.

(d) Notwithstanding paragraph (c) of this subsection, if a person is required to report because of a conviction or finding of guilty except for insanity from another United States court as that term is defined in ORS 181.805, the person may not petition for relief from reporting as a sex offender in Oregon unless the laws of the jurisdiction where the person was convicted or found guilty except for insanity would permit a petition for relief from reporting as a sex offender.

(2)(a) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to a conviction for a sex crime and is classified as a level three sex offender under ORS 181.800 (3) may petition the State Board of Parole and Post-Prison Supervision to reclassify the person as a level two sex offender under ORS 181.800 (2).

(b) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to being found guilty except for insanity under ORS 161.295 for a sex crime, and is classified as a level three sex offender under ORS 181.800 (3), may petition the Psychiatric Security Review Board to reclassify the person as a level two sex offender under ORS 181.800 (2).

(c) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to a conviction for a sex crime and is classified as a level two sex offender under ORS 181.800 (2) may petition the State Board of Parole and Post-Prison Supervision to reclassify the person as a level one sex offender under ORS 181.800 (1).

(d) A person who is required to report as a sex offender under ORS 181.806, 181.807 or 181.808 due to being found guilty except for insanity under ORS 161.295 for a sex crime, and is classified as a level two sex offender under ORS 181.800 (2), may petition the Psychiatric Security Review Board to reclassify the person as a level one sex offender under ORS 181.800 (1).

(e) The petition described in this subsection may be filed no sooner than 10 years after the date supervision for the sex crime is terminated or, if the person was not subject to supervision for the sex crime, 10 years after the date the person was discharged from the jurisdiction of the court, Psychiatric Security Review Board or Oregon Health Authority.

(3)(a) The State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board shall deny a petition filed under this section if, at any time after the person is convicted or found guilty except for insanity of a sex crime, the person is convicted of or found guilty except for insanity of a person felony or a person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(b) The appropriate board shall deny a petition filed under subsection (2)(c) or (d) of this section if the board has previously reclassified the person as a level two sex offender under ORS 181.800 (2) as the result of a petition filed under subsection (2)(a) or (b) of this section.

(4)(a) Except as otherwise provided in subsection (3) of this section, if a person files a petition under subsection (1) of this section, the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board shall hold a hearing. At the hearing, the board shall enter an order relieving the person of the obligation to report as a sex offender under ORS 181.806, 181.807 or 181.808 if the board determines, by clear and convincing evidence, that the person:

(A) Is statistically unlikely to reoffend; and

(B) Does not pose a threat to the safety of the public.

(b)(A) Except as otherwise provided in subsection (3) of this section, if a person files a petition under subsection (2)(a) or (b) of this section, the State Board of Parole and Post-Prison Supervision or the

Psychiatric Security Review Board shall hold a hearing. At the hearing, the board shall enter an order reclassifying the person as a level two sex offender under ORS 181.800 (2) if, after completion of a new risk assessment utilizing the risk assessment [tool] **methodology** described in ORS 181.800, the person is classified as presenting a low or moderate risk of reoffending and the board determines that a lower level of notification is sufficient to protect public safety.

(B) Except as otherwise provided in subsection (3) of this section, if a person files a petition under subsection (2)(c) or (d) of this section, the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board shall hold a hearing. At the hearing, the board shall enter an order reclassifying the person as a level one sex offender under ORS 181.800 (1) if, after completion of a new risk assessment utilizing the risk assessment [tool] **methodology** described in ORS 181.800, the person is classified as presenting a low risk of reoffending and the board determines that a lower level of notification is sufficient to protect public safety.

(5) In making the determinations described in subsection (4) of this section, the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board shall consider:

(a) The nature of and degree of violence involved in the offense that requires reporting;

(b) The age and number of victims of the offense that requires reporting;

(c) The age of the person at the time of the offense that requires reporting;

(d) The length of time since the offense that requires reporting and the time period during which the person has not reoffended;

(e) The person's performance on supervision for the offense that requires reporting;

(f) Whether the person has participated in or successfully completed a court-approved sex offender treatment program or any other rehabilitative programs;

(g) The person's stability in employment and housing;

(h) The person's community and personal support system;

(i) Other criminal and relevant noncriminal behavior of the person both before and after the offense that requires reporting; and

(j) Any other relevant factors.

(6)(a) The Attorney General may represent the state at a hearing conducted under this section unless the district attorney of the county in which the person was convicted or, if the conviction for which the person is required to report as a sex offender was entered in another United States court, the district attorney of the county in which the person resides, elects to represent the state.

(b) If a district attorney elects to represent the state, the district attorney shall give timely written notice of the election to the Attorney General, the State Board of Parole and Post-Prison Supervision

or the Psychiatric Security Review Board and the person who is the subject of the hearing.

(c) If the district attorney declines to represent the state, the district attorney shall cooperate with the Attorney General in securing the material necessary to represent the state.

(7)(a) When the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board enters an order under this section relieving a person of the obligation to report as a sex offender under ORS 181.806, 181.807 or 181.808 or enters an order reclassifying a person as a level two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1), the board shall forward a copy of the order to the Department of State Police.

(b) Upon receipt of an order relieving a person of the obligation to report, the department shall remove from the Law Enforcement Data System the sex offender information obtained from the sex offender registration form submitted under ORS 181.806, 181.807 or 181.808.

(c) Upon receipt of an order reclassifying a person as a level two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1), the department shall update the Law Enforcement Data System to reflect the reclassification.

(8) The State Board of Parole and Post-Prison Supervision and the Psychiatric Security Review Board shall adopt rules to carry out the provisions of this section. The rules may include a filing fee in an amount determined by the appropriate board. All fees paid under this subsection shall be deposited into the General Fund and credited to the account of the appropriate board.

(9) As used in this section, "supervision" means probation, parole, post-prison supervision or any other form of supervised or conditional release.

SEX OFFENDER REPORTING

SECTION 5. ORS 181.806 is amended to read:

181.806. (1) The agency to which a person reports under subsection (3) of this section shall complete a sex offender registration form concerning the person when the person reports under subsection (3) of this section.

(2) Subsection (3) of this section applies to a person who:

(a) Is discharged, paroled or released on any form of supervised or conditional release from a jail, prison or other correctional facility or detention facility in this state at which the person was confined as a result of:

(A) Conviction of a sex crime or a crime for which the person would have to register as a sex offender under federal law; or

(B) Having been found guilty except for insanity of a sex crime;

(b) Is paroled to this state under ORS 144.610 after being convicted in another United States court of a crime:

(A) That would constitute a sex crime if committed in this state; or

(B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state; or

(c) Is discharged by the court under ORS 161.329 after having been found guilty except for insanity of a sex crime.

(3)(a) A person described in subsection (2) of this section shall report, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county to which the person was discharged, paroled or released or in which the person was otherwise placed:

(A) Within 10 days following discharge, release on parole, post-prison supervision or other supervised or conditional release;

(B) Within 10 days of a change of residence;

(C) Once each year within 10 days of the person's birth date, regardless of whether the person changed residence;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

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

(b) If a person required to report under this subsection has complied with the initial reporting requirement under paragraph (a)(A) of this subsection, the person shall subsequently report, in person, in the circumstances specified in paragraph (a) of this subsection, as applicable, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's last reported residence.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, during the period of supervision or custody authorized by law, the Oregon Youth Authority may register a youth offender committed to its supervision and custody by order of the juvenile court or a person placed in its physical custody under ORS 137.124 or any other provision of law.

[(c)] (d) The obligation to report under this subsection terminates if the conviction or adjudication that gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

(4) As part of the registration and reporting requirements of this section:

(a) The person required to report shall:

(A) Provide the information necessary to complete the sex offender registration form and sign the form as required; and

(B) Submit to the requirements described in paragraph (b) of this subsection.

(b) The Department of State Police, **Oregon Youth Authority**, [the] city police department or [the] county sheriff's office:

(A) Shall photograph the person when the person initially reports under this section and each time the person reports annually under this section;

(B) May photograph the person or any identifying scars, marks or tattoos located on the person when the person reports under any of the circumstances described in this section; and

(C) Shall fingerprint the person if the person's fingerprints are not included in the record file of the Department of State Police.

NOTE: Section 6 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 7. ORS 181.808 is amended to read:

181.808. (1)(a) When a person described in subsection (6) of this section moves into this state and is not otherwise required by ORS 181.806, 181.807 or 181.809 to report, the person shall report, in person, to the Department of State Police [*in Marion County, Oregon*], **a city police department or a county sheriff's office, in the county of the person's residence:**

(A) No later than 10 days after moving into this state;

(B) Within 10 days of a change of residence;

(C) Once each year within 10 days of the person's birth date, regardless of whether the person changed residence;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

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

(b) If a person required to report under this subsection has complied with the initial reporting requirement under paragraph (a)(A) of this subsection, the person shall subsequently report, in person, in the circumstances specified in paragraph (a) of this subsection, as applicable, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's last reported residence.

(2)(a) When a person described in ORS 181.806 (2) or 181.807 (2) or subsection (6) of this section attends school or works in this state, resides in another state and is not otherwise required by ORS 181.806, 181.807 or 181.809 to report, the person shall report, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county in which the school or place of work is located, no later than 10 days after:

(A) The first day of school attendance or the 14th day of employment in this state; and

(B) A change in school enrollment or employment.

(b) As used in this subsection, "attends school" means enrollment in any type of school on a full-time or part-time basis.

(3)(a) When a person described in subsection (6) of this section resides in this state at the time of the conviction or adjudication giving rise to the obligation to report, continues to reside in this state

following the conviction or adjudication and is not otherwise required by ORS 181.806, 181.807 or 181.809 to report, the person shall report, in person, to the Department of State Police [*in Marion County, Oregon*], **a city police department or a county sheriff's office, in the county of the person's residence:**

(A) Within 10 days following:

(i) Discharge, release on parole or release on any form of supervised or conditional release, from a jail, prison or other correctional facility or detention facility; or

(ii) Discharge, release or placement on probation, by another United States court;

(B) Within 10 days of a change of residence;

(C) Once each year within 10 days of the person's birth date, regardless of whether the person has changed residence;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

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

(b) If a person required to report under this subsection has complied with the applicable initial reporting requirement under paragraph (a)(A) of this subsection, the person shall subsequently report, in person, in the circumstances specified in paragraph (a) of this subsection, as applicable, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's last reported residence.

(4) When a person reports under this section, the agency to which the person reports shall complete a sex offender registration form concerning the person.

(5) The obligation to report under this section terminates if the conviction or adjudication that gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

(6) Subsections (1) to (5) of this section apply to a person convicted in another United States court of a crime:

(a) That would constitute a sex crime if committed in this state; or

(b) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state.

(7) As part of the registration and reporting requirements of this section:

(a) The person required to report shall:

(A) Provide the information necessary to complete the sex offender registration form and sign the form as required; and

(B) Submit to the requirements described in paragraph (b) of this subsection.

(b) The Department of State Police, the city police department or the **county** sheriff's office:

(A) Shall photograph the person when the person initially reports under this section, each time the person reports annually under subsection (1)(a)(C) or

(3)(a)(C) of this section and each time the person reports under subsection (2)(a)(B) of this section;

(B) May photograph the person or any identifying scars, marks or tattoos located on the person when the person reports under any of the circumstances described in this section; and

(C) Shall fingerprint the person if the person's fingerprints are not included in the record file of the Department of State Police.

SECTION 8. ORS 181.809 is amended to read:

181.809. (1) Unless the juvenile court enters an order under ORS 181.823 or 181.826 relieving a person of the obligation to report as a sex offender, subsections (2) to (4) of this section apply to a person:

[(a) Who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005, or found by the juvenile court to be responsible except for insanity under ORS 419C.411, for having committed an act that if committed by an adult would constitute a felony sex crime; or]

(a) Who has been ordered under section 31 of this 2015 Act to report as a sex offender; or

(b) Who has been found in a juvenile adjudication in another United States court to have committed an act while the person was under 18 years of age that would constitute a felony sex crime if committed in this state by an adult.

(2) A person described in subsection (1) of this section who resides in this state shall make an initial report, in person, to the Department of State Police, a city police department or a county sheriff's office as follows:

[(a) If, as a result of the juvenile adjudication for a felony sex crime, the person is discharged, released or placed on probation or any other form of supervised or conditional release by the juvenile court, the person shall make the initial report in the county in which the person is discharged, released or placed on probation or other form of supervised or conditional release, no later than 10 days after the date the person is discharged, released or placed on probation or other form of supervised or conditional release;]

[(b) If, as a result of the juvenile adjudication for a felony sex crime, the person is confined in a correctional facility by the juvenile court, the person shall make the initial report in the county in which the person is discharged or otherwise released from the facility, no later than 10 days after the date the person is discharged or otherwise released from the facility; or]

(a) The person shall report no later than 10 days after the date of the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no later than 10 days after the date the person is discharged from the jurisdiction of the board; or

[(c)] **(b)** If the person is adjudicated for the act giving rise to the obligation to report in another United States court and the person is found to have

committed an act that if committed by an adult in this state would constitute:

(A) A Class A or Class B felony sex crime:

(i) If the person is not a resident of this state at the time of the adjudication, the person shall make the initial report to the Department of State Police in Marion County, Oregon, no later than 10 days after the date the person moves into this state; or

(ii) If the person is a resident of this state at the time of the adjudication, the person shall make the initial report to the Department of State Police in Marion County, Oregon, no later than 10 days after the date the person is discharged, released or placed on probation or any other form of supervised or conditional release by the other United States court or, if the person is confined in a correctional facility by the other United States court, no later than 10 days after the date the person is discharged or otherwise released from the facility.

(B) A Class C felony sex crime:

(i) If the person is not a resident of this state at the time of the adjudication, the person shall make the initial report to the Department of State Police in Marion County, Oregon, no later than six months after the date the person moves into this state; or

(ii) If the person is a resident of this state at the time of the adjudication, the person shall make the initial report to the Department of State Police in Marion County, Oregon, no later than 10 days after the date the person is discharged, released or placed on probation or any other form of supervised or conditional release by the other United States court or, if the person is confined in a correctional facility by the other United States court, no later than 10 days after the date the person is discharged or otherwise released from the facility.

(3) After making the initial report described in subsection (2) of this section, the person shall report, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's last reported residence:

(a) Within 10 days of a change of residence;

(b) Once each year within 10 days of the person's birth date, regardless of whether the person changed residence;

(c) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

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

(4) When a person described in subsection (1) of this section attends school or works in this state, resides in another state and is not otherwise required to report as a sex offender under this section or ORS 181.806, 181.807 or 181.808, the person shall report, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county in which the person attends school or works, no later than 10 days after:

(a) The first day of school attendance or the 14th day of employment in this state; and

(b) A change in school enrollment or employment.

(5) The agency to which a person reports under this section shall complete a sex offender registration form concerning the person when the person reports under this section.

(6) As part of the registration and reporting requirements of this section:

(a) The person required to report shall:

(A) Provide the information necessary to complete the sex offender registration form and sign the form as required; and

(B) Submit to the requirements described in paragraph (b) of this subsection.

(b) The Department of State Police, **Oregon Youth Authority, county juvenile department, [the] city police department or [the] county sheriff's office:**

(A) Shall photograph the person when the person initially reports under this section and each time the person reports annually under this section;

(B) May photograph the person or any identifying scars, marks or tattoos located on the person when the person reports under any of the circumstances described in this section; and

(C) Shall fingerprint the person if the person's fingerprints are not included in the record file of the Department of State Police.

(7) The obligation to report under this section is terminated if the adjudication that gave rise to the obligation is reversed or vacated.

[(8) The court shall ensure that a person described in subsection (1)(a) of this section completes a form that documents the person's obligation to report under this section. No later than three working days after the person completes the form required by this subsection, the court shall ensure that the form is sent to the Department of State Police.]

(8) Notwithstanding subsections (2) and (3) of this section:

(a) The Oregon Youth Authority may register a youth offender committed to its custody and supervision by order of the juvenile court or a person placed in its physical custody under ORS 137.124 or any other provision of law.

(b) A county juvenile department may register a youth offender or young person, as those terms are defined in ORS 419A.004.

SECTION 9. ORS 181.812 is amended to read:

181.812. (1) A person who is required to report as a sex offender in accordance with the applicable provisions of ORS 181.806, 181.807, 181.808 or 181.809 and who has knowledge of the reporting requirement commits the crime of failure to report as a sex offender if the person:

(a) Fails to make the initial report to an agency;

(b) Fails to report when the person works at, carries on a vocation at or attends an institution of higher education;

(c) Fails to report following a change of school enrollment or employment status, including enroll-

ment, employment or vocation status at an institution of higher education;

(d) Moves to a new residence and fails to report the move and the person's new address;

(e) Fails to make an annual report;

(f) Fails to provide complete and accurate information;

(g) Fails to sign the sex offender registration form as required; [or]

(h) Fails or refuses to participate in a sex offender risk assessment as directed by the State Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board, Oregon Health Authority or supervisory authority; or

[(h)] (i) Fails to submit to fingerprinting or to having a photograph taken of the person's face, identifying scars, marks or tattoos.

(2)(a) It is an affirmative defense to a charge of failure to report under subsection (1)(d) of this section by a person required to report under ORS 181.806 (3)(a)(B), 181.807 (4)(a)(B) or 181.809 (3)(a) that the person reported, in person, within 10 days of a change of residence to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's new residence, if the person otherwise complied with all reporting requirements.

(b) It is an affirmative defense to a charge of failure to report under subsection (1)(a) of this section by a person required to report under ORS [181.808 (1)(a) or] 181.809 [(2)(c)(A)(i)] **(2)(b)(A)(i)** that the person reported, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's new residence, within 10 days of moving into this state.

(c) It is an affirmative defense to a charge of failure to report under subsection (1)(a) of this section by a person required to report under ORS 181.809 [(2)(c)(B)(i)] **(2)(b)(B)(i)** that the person reported, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's new residence, within six months of moving into this state.

(d) It is an affirmative defense to a charge of failure to report under subsection (1) of this section by a person required to report under ORS [181.808 (3) or] 181.809 [(2)(c)(A)(ii)] **(2)(b)(A)(ii)** or (B)(ii) or (3) that the person reported, in person, to the Department of State Police, a city police department or a county sheriff's office, in the county of the person's residence, if the person otherwise complied with all reporting requirements.

(e) It is an affirmative defense to a charge of failure to report under subsection (1) of this section by a person required to report under ORS 181.806 (3) that the person reported to the Oregon Youth Authority if the person establishes that the authority registered the person under ORS 181.806 (3)(c).

(f) It is an affirmative defense to a charge of failure to report under subsection (1) of this section by a person required to report under

ORS 181.809 (2) or (3) that the person reported to the Oregon Youth Authority or a county juvenile department if the person establishes that the authority or department registered the person under ORS 181.809 (8).

(3)(a) Except as otherwise provided in paragraph (b) of this subsection, failure to report as a sex offender is a Class A misdemeanor.

(b) Failure to report as a sex offender is a Class C felony if the person violates:

(A) Subsection (1)(a) of this section; or

(B) Subsection (1)(b), (c), (d) or (g) of this section and the crime for which the person is required to report is a felony.

(4) A person who fails to sign and return an address verification form as required by ORS 181.810 (4) commits a violation.

SECTION 10. ORS 181.810 is amended to read:

181.810. (1) Agencies [required to register] **registering** offenders under ORS 181.806, 181.807, 181.808 and 181.809 shall use forms [provided] **and procedures adopted** by the Department of State Police **by administrative rule.** The department shall include places on the form to list all the names used by the offender and the address of the offender. No later than three working days after registration, the agency or official completing the form shall[.]

[*(a) Send the original copy of the registration form to the department; or*

(b) Forward the registration information to the department by any means and, within 10 working days after registration, send the original copy of the registration form to the department.] **forward the registration information to the department in the manner prescribed by the department.**

(2) The department shall enter into the Law Enforcement Data System the sex offender information obtained from the sex offender registration forms. If a conviction or adjudication that gave rise to the registration obligation is reversed or vacated or if the registrant is pardoned, the department shall remove from the Law Enforcement Data System the sex offender information obtained from the form.

(3) The Law Enforcement Data System may send sex offender information to the National Crime Information Center as part of the national sex offender registry in accordance with appropriate state and federal procedures.

(4) If the person is no longer under supervision, the department shall verify the residence address of a person determined to be a sexually violent dangerous offender as defined in ORS 137.765 every 90 days by mailing a verification form to the person at the person's last reported residence address. No later than 10 days after receiving the form, the person shall sign and return the form to the department.

(5) The department shall assess a person who is required to report under ORS 181.806, 181.807, 181.808 or 181.809 and who is not under supervision a fee of \$70 each year. Moneys received by the de-

partment under this subsection are continuously appropriated to the department for the purpose of carrying out the department's duties under ORS 181.800 to 181.845.

SECTION 11. ORS 181.817 is amended to read:

181.817. (1) For those sex offenders classified as a level three sex offender under ORS 181.800 (3), or designated as a predatory sex offender [*under ORS 181.838*] **prior to January 1, 2014,** the **supervising agency or the agency making the classification or designation** shall provide the Department of State Police, by electronic or other means, at the termination of supervision, with the following information for the purpose of offender profiling:

(a) Presentence investigations;

(b) Violation reports;

(c) Parole and probation orders;

(d) Conditions of parole and probation and other corrections records;

(e) Sex offender risk [*assessment tools*] **assessments;** and

(f) Any other information that the [*agency*] **supervising agency or the agency making the classification or designation** determines is appropriate disclosure of which is not otherwise prohibited by law.

(2) The Oregon Youth Authority and county juvenile departments shall provide access to information in their files to the Oregon State Police for the purpose of offender profiling.

(3)(a) Except as otherwise provided by law, the Oregon State Police may not disclose information received under subsection (1) or (2) of this section.

(b) The Department of State Police may release information on the methodology of offenses and behavior profiles derived from information received under subsection (1) or (2) of this section to local law enforcement agencies.

SECTION 12. ORS 181.820 is amended to read:

181.820. (1)(a) No sooner than 10 years after termination of supervision on probation, conditional release, parole or post-prison supervision, a person required to report under ORS 181.806, 181.807 or 181.808 may file a petition in circuit court for an order relieving the person of the duty to report. The person must pay the filing fee established under ORS 21.135. A petition may be filed under this section only if:

(A) The person has only one conviction for a sex crime;

(B) The sex crime was a misdemeanor or Class C felony or, if committed in another state, would have been a misdemeanor or Class C felony if committed in this state; and

(C) The person has not been determined to be a predatory sex offender prior to January 1, 2014.

[*(C) The person has not been determined to be a predatory sex offender as described in ORS 181.838.*]

(b)(A) Except as otherwise provided in this paragraph, the petition must be filed in the circuit court

of the county in which the person was convicted of the sex crime.

(B) If the person was convicted of the sex crime in another state, the petition must be filed in the circuit court of the county in which the person resides.

(c) The district attorney of the county in which the petition is filed shall be named and served as the respondent in the petition.

(2) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider:

(a) The nature of the offense that required reporting;

(b) The age and number of victims;

(c) The degree of violence involved in the offense;

(d) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required reporting;

(e) The period of time during which the petitioner has not reoffended;

(f) Whether the petitioner has successfully completed a court-approved sex offender treatment program; and

(g) Any other relevant factors.

(3) If the court is satisfied by clear and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a threat to the safety of the public, the court shall enter an order relieving the petitioner of the duty to report. When the court enters an order under this subsection, the petitioner shall send a certified copy of the court order to the Department of State Police.

OFFENDER INFORMATION AVAILABLE TO PUBLIC

SECTION 13. ORS 181.835 is amended to read: 181.835. (1)(a) A notifying agency or a supervising agency shall release, upon request, any information that may be necessary to protect the public concerning sex offenders who reside in a specific area or concerning a specific sex offender.

(b) A notifying agency or a supervising agency may release sex offender information to a law enforcement agency if the notifying agency or supervising agency determines that the release of information is in the public interest.

(c) In addition to the release of information described in this subsection and ORS 137.540, 144.260 and 441.373, a notifying agency or a supervising agency may release sex offender information to the public in accordance with subsections (2) to (4) of this section.

(2) If the sex offender is classified as a level three sex offender under ORS 181.800 (3):

(a) The Department of State Police shall release sex offender information on a website maintained by the department; and

(b) The supervising agency or a notifying agency may release sex offender information to:

(A) A person that resides with the sex offender;

(B) A person with whom the sex offender has a significant relationship;

(C) Residential neighbors and churches, community parks, schools and child care centers, convenience stores, businesses and other places that children or other potential victims may frequent;

(D) A long term care facility, as defined in ORS 442.015, or a residential care facility, as defined in ORS 443.400, if the agency knows that the sex offender is seeking admission to the facility; and

(E) Local or regional media sources.

(3) Notwithstanding subsection (2)(a) of this section, the Department of State Police may not use the Internet to make available to the public information concerning a sex offender classified as a level three sex offender under ORS 181.800 (3) while the person is under the supervision of the Psychiatric Security Review Board or the Oregon Health Authority, unless the department is authorized to do so by a request of the supervising agency.

[3] (4) If the sex offender is classified as a level two sex offender under ORS 181.800 (2), the supervising agency or a notifying agency may release sex offender information to the persons or entities described in subsection (2)(b)(A) to (D) of this section.

[4] (5) If the sex offender is classified as a level one sex offender under ORS 181.800 (1), the supervising agency or a notifying agency may release sex offender information to a person described in subsection (2)(b)(A) of this section.

[5] (6) As used in this section:

(a) "Notifying agency" means the Department of State Police, a city police department, a county sheriff's office or a police department established by a university under ORS 352.383.

(b) "Sex offender information" means information that the Department of State Police determines by rule is appropriate for release to the public.

(c) "Supervising agency" means a governmental entity responsible for supervising a person required to report as a sex offender under ORS 181.806 or 181.807.

SECTION 14. ORS 181.837 is amended to read: 181.837. (1)(a) Except as otherwise provided in [ORS 181.839 or] this section, when a sex offender is under the supervision of the Oregon Youth Authority or a county juvenile department for the first time as a result of committing an act that if committed by an adult would constitute a sex crime, the Department of State Police, city police department or county sheriff's office shall release, upon request, only:

(A) The sex offender's name and year of birth;

(B) The name and zip code of the city where the sex offender resides;

(C) The name and telephone number of a contact person at the agency that is supervising the sex offender; and

(D) The name of institutions of higher education that the sex offender attends or at which the sex offender works or carries on a vocation.

(b) Notwithstanding paragraph (a) of this section, the Oregon Youth Authority or a county juvenile department shall release, upon request, any information that may be necessary to protect the public concerning a sex offender under the supervision of the authority or department.

(2) Except as otherwise limited by subsection (1)(a) of this section regarding persons who are under supervision for the first time as sex offenders, the Department of State Police, a city police department or a county sheriff's office shall release, upon request, any information that may be necessary to protect the public concerning sex offenders required to report under ORS 181.809 who reside in a specific area or concerning a specific sex offender required to report under ORS 181.809. However, the entity releasing the information may not release the identity of a victim of a sex crime.

(3)(a) The Department of State Police may make the information described in subsections (1) and (2) of this section available to the public, without the need for a request, by electronic or other means. The Department of State Police shall make information about a person who is under supervision for the first time as a result of committing an act that if committed by an adult would constitute a sex crime accessible only by the use of the sex offender's name. For all other sex offenders required to report under ORS 181.809, the Department of State Police may make the information accessible in any manner the department chooses.

(b) Notwithstanding paragraph (a) of this subsection, the Department of State Police may not use the Internet to make information available to the public. *[except as required by paragraph (c) of this subsection.]*

[(c) Notwithstanding subsections (1) and (2) of this section, the Department of State Police shall make the information described in paragraph (d) of this subsection available to the public on the website described in ORS 181.835 (2)(a) if the information is about a person determined to be a predatory sex offender, as provided in ORS 181.838, who has also been determined, pursuant to rules of the agency making the predatory sex offender determination, to present the highest risk of reoffending and to require the widest range of notification.]

[(d) The information required to be made available under paragraph (c) of this subsection is:]

[(A) The person's name and address;]

[(B) A physical description of the person including, but not limited to, the person's age, height, weight and eye and hair color;]

[(C) The type of vehicle that the person is known to drive;]

[(D) Any conditions or restrictions upon the person's probation or conditional release;]

[(E) A description of the person's primary and secondary targets;]

[(F) A description of the person's method of offense;]

[(G) A current photograph of the person;]

[(H) If the person is under supervision, the name or telephone number of the person's supervising officer; and]

[(I) If the person is not under supervision, contact information for the Department of State Police.]

TEMPORARY PROVISIONS RELATED TO HIGH-RISK OFFENDERS

SECTION 15. ORS 90.630 is amended to read:

90.630. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating home by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing;

(c) Is classified as a level three sex offender under ORS 181.800 (3) *[or is determined to be a predatory sex offender under ORS 181.838]; [or]*

(d) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013; or

[(d)] (e) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to ORS 90.534 or 90.536.

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy and state that the tenant may avoid termination by correcting the violation as provided in subsection (4) of this section.

(4) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section.

However, if substantially the same act or omission that constituted a prior violation of which notice was given recurs within six months after the date of the notice, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) Notwithstanding subsection (3) or (4) of this section, a tenant who is given a notice of termination under subsection (1)(c) of this section does not have a right to correct the violation. A notice given to a tenant under subsection (1)(c) of this section must state that the tenant does not have a right to avoid the termination.

(6) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent under ORS 90.394 or for other cause under ORS 90.380 (5)(b), 90.396, 90.398 or 90.632 by complying with ORS 105.105 to 105.168.

(7) A tenancy terminates on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(8) Notwithstanding any other provision of this section or ORS 90.394, 90.396 or 90.398, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days' notice in writing before the date designated in that notice for termination and may take possession as provided in ORS 105.105 to 105.168 if:

(a) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.394 (2)(a) or the fifth day of the rental period as described in ORS 90.394 (2)(b) in at least three of the preceding 12 months and the landlord has given the tenant a nonpayment of rent termination notice pursuant to ORS 90.394 (2) during each of those three instances of nonpayment;

(b) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third nonpayment of rent termination notice within a 12-month period. The warning must be contained in at least two nonpayment of rent termination notices that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two nonpayment of rent termination notices; and

(c) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent nonpayment of rent termination notice.

(9) Notwithstanding subsection (4) of this section, a tenant who receives a 30-day notice of termination pursuant to subsection (8) of this section does not have a right to correct the cause for the notice.

(10) The landlord may give a copy of the notice required by subsection (8) of this section to any

lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder. A lienholder's rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675.

SECTION 16. ORS 144.641 is amended to read: 144.641. As used in this section and ORS 144.642, 144.644 and 144.646:

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

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

(3) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(4) "Locations where children are the primary occupants or users" includes, but is not limited to, public and private elementary and secondary schools and licensed child care centers.

(5) "Sex offender" means [a]:

(a) A sexually violent dangerous offender as defined in ORS 137.765;

(b) A level three sex offender under ORS 181.800 (3); or

(c) [*Predatory sex offender as described in ORS 181.838*] **An unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013.**

(6) "Transitional housing" means housing intended to be occupied by a sex offender for 45 days or less immediately after release from incarceration.

SECTION 17. ORS 163.476 is amended to read: 163.476. (1) A person commits the crime of unlawfully being in a location where children regularly congregate if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 181.800 (3) [*or designated a predatory sex offender under ORS 181.838*], **is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or is a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013,** and does not have written approval from the State Board of Parole and Post-Prison Supervision or the person's supervisory authority or supervising officer to be in or upon the specific premises;

(C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or

(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly enters or remains in or upon premises where persons under 18 years of age regularly congregate.

(2) As used in this section:

(a) "Premises where persons under 18 years of age regularly congregate" means schools, child care centers, playgrounds, other places intended for use primarily by persons under 18 years of age and places where persons under 18 years of age gather for regularly scheduled educational and recreational programs.

(b) "Sex crime" has the meaning given that term in ORS 181.805.

(3) Unlawfully being in a location where children regularly congregate is a Class A misdemeanor.

SECTION 18. ORS 163.479 is amended to read:

163.479. (1) A person commits the crime of unlawful contact with a child if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 181.800 (3);

[(C) Has been designated a predatory sex offender under ORS 181.838;]

(C) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013;

(D) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or

(E) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.

(2) As used in this section:

(a) "Child" means a person under 18 years of age.

(b) "Contact" means to communicate in any manner.

(c) "Sex crime" has the meaning given that term in ORS 181.805.

(3) Unlawful contact with a child is a Class C felony.

INTERAGENCY INFORMATION SHARING

SECTION 19. (1) Notwithstanding ORS 179.505, the Psychiatric Security Review Board and the Oregon Health Authority shall provide to the State Board of Parole and Post-Prison Supervision any records that would assist the State Board of Parole and Post-Prison Supervision in:

(a) Performing an initial classification of a person into one of the three levels described in ORS 181.800, as required by ORS 181.801;

(b) Deciding whether to reclassify a person as a level one or a level two sex offender or relieve the person from the obligation to report as a sex offender, as described in ORS 181.821; or

(c) Conducting a risk assessment of a person who is an existing registrant to classify the person into one of the three levels described in ORS 181.800, as required by section 7, chapter 708, Oregon Laws 2013.

(2) The State Board of Parole and Post-Prison Supervision may not release any records obtained pursuant to this section to any other agency or person unless authorized by law to do so.

SECTION 20. (1) Notwithstanding ORS 179.505, the Oregon Health Authority shall provide to the Psychiatric Security Review Board any records that would assist the board in:

(a) Performing an initial classification of a person into one of the three levels described in ORS 181.800, as required by ORS 181.801;

(b) Deciding whether to reclassify a person as a level one or a level two sex offender or relieve the person from the obligation to report as a sex offender, as described in ORS 181.821; or

(c) Conducting a risk assessment of a person who is an existing registrant to classify the person into one of the three levels described in ORS 181.800, as required by section 7, chapter 708, Oregon Laws 2013.

(2) The board may not release any records obtained pursuant to this section to any other agency or person unless authorized by law to do so.

SECTION 21. Notwithstanding ORS 419A.257 or any other provision of law, the Oregon Youth Authority and the juvenile department may disclose and provide copies of reports and other materials relating to a child, ward, youth or youth offender's history and prognosis to the Psychiatric Security Review Board, the Oregon Health Authority or the State Board of Parole and Post-Prison Supervision in order to determine whether to reclassify the person as a level one or a level two sex offender or relieve the person from the obligation to report as a sex

offender, as described in ORS 181.821, or whether to classify a person who is an existing registrant into one of the three levels described in ORS 181.800, as required by section 7, chapter 708, Oregon Laws 2013.

**AMENDMENTS OPERATIVE
ON JANUARY 1, 2019**

SECTION 22. ORS 90.630, as amended by section 15 of this 2015 Act, is amended to read:

90.630. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating home by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing;

(c) Is classified as a level three sex offender under ORS 181.800 (3); **or**

[(d) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013; or]

[(e)] (d) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to ORS 90.534 or 90.536.

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy and state that the tenant may avoid termination by correcting the violation as provided in subsection (4) of this section.

(4) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission that constituted a prior violation of which notice was given recurs within six months after the date of the notice, the landlord may terminate the

tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) Notwithstanding subsection (3) or (4) of this section, a tenant who is given a notice of termination under subsection (1)(c) of this section does not have a right to correct the violation. A notice given to a tenant under subsection (1)(c) of this section must state that the tenant does not have a right to avoid the termination.

(6) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent under ORS 90.394 or for other cause under ORS 90.380 (5)(b), 90.396, 90.398 or 90.632 by complying with ORS 105.105 to 105.168.

(7) A tenancy terminates on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(8) Notwithstanding any other provision of this section or ORS 90.394, 90.396 or 90.398, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days' notice in writing before the date designated in that notice for termination and may take possession as provided in ORS 105.105 to 105.168 if:

(a) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.394 (2)(a) or the fifth day of the rental period as described in ORS 90.394 (2)(b) in at least three of the preceding 12 months and the landlord has given the tenant a nonpayment of rent termination notice pursuant to ORS 90.394 (2) during each of those three instances of nonpayment;

(b) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third nonpayment of rent termination notice within a 12-month period. The warning must be contained in at least two nonpayment of rent termination notices that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two nonpayment of rent termination notices; and

(c) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent nonpayment of rent termination notice.

(9) Notwithstanding subsection (4) of this section, a tenant who receives a 30-day notice of termination pursuant to subsection (8) of this section does not have a right to correct the cause for the notice.

(10) The landlord may give a copy of the notice required by subsection (8) of this section to any lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any

damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder. A lienholder's rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675.

SECTION 23. ORS 144.641, as amended by section 16 of this 2015 Act, is amended to read:

144.641. As used in this section and ORS 144.642, 144.644 and 144.646:

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

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

(3) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(4) "Locations where children are the primary occupants or users" includes, but is not limited to, public and private elementary and secondary schools and licensed child care centers.

(5) "Sex offender" means:

(a) A sexually violent dangerous offender as defined in ORS 137.765; **or**

(b) A level three sex offender under ORS 181.800 (3); **or**

[(c) An unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013].

(6) "Transitional housing" means housing intended to be occupied by a sex offender for 45 days or less immediately after release from incarceration.

SECTION 24. ORS 163.476, as amended by section 17 of this 2015 Act, is amended to read:

163.476. (1) A person commits the crime of unlawful being in a location where children regularly congregate if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 181.800 (3), *[is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013,]* and does not have written approval from the State Board of Parole and Post-Prison Supervision or the person's supervisory authority or supervising officer to be in or upon the specific premises;

(C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; **or**

(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly enters or remains in or upon premises where persons under 18 years of age regularly congregate.

(2) As used in this section:

(a) "Premises where persons under 18 years of age regularly congregate" means schools, child care centers, playgrounds, other places intended for use primarily by persons under 18 years of age and places where persons under 18 years of age gather for regularly scheduled educational and recreational programs.

(b) "Sex crime" has the meaning given that term in ORS 181.805.

(3) Unlawfully being in a location where children regularly congregate is a Class A misdemeanor.

SECTION 25. ORS 163.479, as amended by section 18 of this 2015 Act, is amended to read:

163.479. (1) A person commits the crime of unlawful contact with a child if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 181.800 (3);

[(C) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board or the Oregon Health Authority has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013;]

[(D)] (C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; **or**

[(E)] (D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.

(2) As used in this section:

(a) "Child" means a person under 18 years of age.

(b) "Contact" means to communicate in any manner.

(c) "Sex crime" has the meaning given that term in ORS 181.805.

(3) Unlawful contact with a child is a Class C felony.

SECTION 26. The amendments to ORS 90.630, 144.641, 163.476 and 163.479 by sections 22 to 25 of this 2015 Act become operative January 1, 2019.

2013 SESSION LAW AMENDMENTS

SECTION 27. Section 7, chapter 708, Oregon Laws 2013, is amended to read:

Sec. 7. (1) As used in this section **and sections 19 to 21 of this 2015 Act:**

(a) “Event triggering the obligation to make an initial report” has the meaning given that term in [section 3 of this 2013 Act] **ORS 181.802**.

(b) “Existing registrant” means a person for whom the event triggering the obligation to make an initial report under ORS [181.595] **181.806** (3)(a)(A), [181.596] **181.807** (4)(a)(A) or [181.597] **181.808** (1)(a)(A), (2)(a)(A) or (3)(a)(A) occurs before January 1, 2014.

(2)(a) No later than December 1, [2016] **2018**, the State Board of Parole and Post-Prison Supervision shall classify existing registrants in one of the levels described in [section 1 of this 2013 Act] **ORS 181.800**. No later than February 1, [2017] **2019**, the Department of State Police shall enter the results of the classifications described in this section into the Law Enforcement Data System.

(b) The board shall classify an existing registrant as a level three sex offender under [section 1 (3) of this 2013 Act] **ORS 181.800** (3), if:

(A) The person was previously designated a predatory sex offender and the designation was made after the person was afforded notice and an opportunity to be heard as to all factual questions at a meaningful time and in a meaningful manner; or

(B) The person is a sexually violent dangerous offender under ORS 137.765.

(c) **The Psychiatric Security Review Board may complete the risk assessment of an existing registrant who is under the jurisdiction of the Psychiatric Security Review Board or the Oregon Health Authority, regardless of whether the person has been found guilty except for insanity of a sex crime or was previously convicted of a sex crime, if the State Board of Parole and Post-Prison Supervision and the Psychiatric Security Review Board mutually agree that the Psychiatric Security Review Board has adequate resources to perform the assessment and that the performance of the assessment by the Psychiatric Security Review Board would assist in classifying the existing registrant in a more timely manner.**

(3) As soon as practicable following the classification of an existing registrant under this section, the **classifying** board shall notify the person of the classification by [certified] mail.

[(4) *If, for any reason, the board does not classify an existing registrant under subsection (2) of this section, the person is, by operation of law, classified as a level three sex offender under section 1 (3) of this 2013 Act on January 1, 2017.*]

[(5)(a)] (4)(a) An existing registrant who seeks review of a classification made under this section may petition the **classifying** board for review. The petition may be filed no later than[:]

[(A) *sixty*] **60** days after the board provides the notice described in subsection (3) of this section[: or]

[(B) *Sixty days after the person receives actual notice of the classification, if the person is classified under subsection (4) of this section.*]

(b) Upon receipt of a petition described in this subsection, the **classifying** board shall afford the person an opportunity to be heard as to all factual questions related to the classification.

(c) After providing the person with notice and an opportunity to be heard in accordance with this subsection, the board shall classify the person in accordance with the classifications described in [section 1 of this 2013 Act] **ORS 181.800**, based on all of the information available to the **classifying** board.

[(6)] (5) The [board] **boards** shall adopt rules to carry out the provisions of this section.

[(7)] (6) An existing registrant may not petition for reclassification or relief from the obligation to report as a sex offender as provided in [section 5 of this 2013 Act] **ORS 181.821** until either all existing registrants have been classified in one of the levels described in [section 1 of this 2013 Act] **ORS 181.800** or December 1, [2016] **2018**, whichever occurs first.

(7) **Notwithstanding ORS 181.837 or any other provision of law, the Department of State Police may until December 1, 2018, continue to use the Internet to make information available to the public concerning any adult sex offender designated as predatory as authorized by the law in effect on December 31, 2013.**

(8) If the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board does not classify an existing registrant under ORS 181.800 because the person has failed or refused to participate in a sex offender risk assessment as directed by the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board, the person is, by operation of law, classified as a level three sex offender under ORS 181.800 (3) as of January 1, 2019.

SECTION 28. Section 34, chapter 708, Oregon Laws 2013, is amended to read:

Sec. 34. (1) ORS 181.587 and 181.588 are repealed on January 1, 2014.

(2) ORS 181.820 is repealed on January 1, [2017] **2019**.

SECTION 29. Section 37, chapter 708, Oregon Laws 2013, is amended to read:

Sec. 37. The amendments to section 35 [of this 2013 Act], **chapter 708, Oregon Laws 2013**, by section 36 [of this 2013 Act], **chapter 708, Oregon Laws 2013**, become operative on January 1, [2017] **2019**.

JUVENILE REGISTRATION HEARINGS

SECTION 30. Section 31 of this 2015 Act is added to and made a part of ORS 181.800 to 181.845.

SECTION 31. (1)(a) The juvenile court shall hold a hearing on the issue of reporting as a sex

offender by a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005, or found by the juvenile court to be responsible except for insanity under ORS 419C.411, for having committed an act that if committed by an adult would constitute a felony sex crime.

(b) The hearing described in paragraph (a) of this subsection must be held during the six-month period before:

(A) The termination of juvenile court jurisdiction over the person; or

(B) The person is discharged from the jurisdiction of the Psychiatric Security Review Board, if the person was placed under the jurisdiction of the board.

(c) The court shall notify the person of the person's right to a hearing under this section upon finding the person within the jurisdiction of the juvenile court under ORS 419C.005.

(d) The county or state agency responsible for supervising the person shall notify the person when the agency determines that termination of jurisdiction will occur within six months.

(e) A petition requesting a hearing may be filed under this section by the person within six months of the termination date if the date has been set by the court, or within six months of the projected termination date provided to the person by the supervising agency.

(2) The district attorney shall notify the victim prior to the hearing of the right to appear and the right to be heard under ORS 419C.273.

(3) At the hearing described in subsection (1) of this section:

(a) The district attorney, the victim, the person and the juvenile court counselor or a representative of the Oregon Youth Authority shall have an opportunity to be heard.

(b) The person who is the subject of the hearing has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. If the court finds that the person has not met the burden of proof, the court shall enter an order requiring the person to report as a sex offender under ORS 181.809.

(4) In determining whether the person has met the burden of proof, the juvenile court may consider but need not be limited to considering:

(a) The extent and impact of any physical or emotional injury to the victim;

(b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

(c) Whether the person used or threatened to use force in committing the act;

(d) Whether the act was premeditated;

(e) Whether the person took advantage of a position of authority or trust in committing the act;

(f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

(g) The vulnerability of the victim;

(h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

(i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

(j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

(k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;

(L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person's compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person's academic and employment history;

(n) The person's use of drugs or alcohol before and after the adjudication;

(o) The person's history of public or private indecency;

(p) The person's compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by the continued existence of the records; and

(s) Any other relevant factors.

(5) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence, without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585, if the evidence is relevant evidence related to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(6)(a) In a hearing under this section, the juvenile court shall review:

(A) Evaluations and treatment records concerning the person conducted by a clinician or program operating under the standards of practice for the evaluation and treatment of juvenile sex offenders adopted by the Sex Offender Treatment Board under ORS 675.400, and recommendations contained therein regarding the

need for the person to register in order to protect the public from future sex crimes; and

(B) All examination preparation material and examination records from polygraph examinations conducted by or for the treatment provider, juvenile department or Oregon Youth Authority.

(b) Any records and materials to be reviewed by the court under this subsection shall be released and disclosed to the court, district attorney, person's attorney and to the Oregon Youth Authority or juvenile department that is responsible for the supervision of the person, no less than 15 days prior to any hearing held under this section.

(7) When the juvenile court enters an order described in subsection (3)(b) of this section, the court shall ensure that the person completes a form that documents the person's obligation to report under ORS 181.809. No later than three business days after the person completes the form required by this subsection, the court shall ensure that the form is sent to the Department of State Police.

(8)(a) A person who is the subject of a hearing under this section has the right to be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense.

(b) In order to comply with the right to counsel under paragraph (a) of this subsection, the court may:

(A) Continue the appointment of the attorney appointed under ORS 419C.200 at the time of disposition;

(B) Set a date prior to the hearing under this section in order to reappoint the attorney appointed under ORS 419C.200; or

(C) Appoint or reappoint an attorney at any time in response to a request by the person who is the subject of a hearing under this section.

(9) Notwithstanding ORS 419C.005 (4)(e), the juvenile court retains jurisdiction over a person for purposes of this section.

EXPUNGEMENT

SECTION 32. ORS 137.225 is amended to read:

137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dis-

missal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without this state is not included.

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

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

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

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

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (13) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, the court shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously

convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

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

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

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

(b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(c) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; or

(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(f) A violation, whether under state law or local ordinance.

(g) An offense committed before January 1, 1972, that if committed after that date would be:

(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(D) A violation.

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

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

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

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

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

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

(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older.

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

(8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section apply to a conviction for:

(a) A Class B felony described in subsection (5)(a) of this section only if:

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

(B) The person has not been convicted of or arrested for any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under this section shall be considered for the purpose of determining whether this subparagraph is applicable.

(b) A sex crime listed in ORS 181.830 (1)(a) if:

(A) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 181.832 or 181.833; and

(B) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on, a

crime that a court is prohibited from setting aside under this section.

(c) A sex crime constituting a Class C felony, if:

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

(B) The person is:

(i) Less than [three years] **two years and 180 days** older than the victim; **or**

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

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

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

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

(F) Each conviction or finding described in this paragraph involved the same victim.

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

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

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

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

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

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

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

(a) Abandonment of a child, ORS 163.535.

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

(c) Assault in the third degree, ORS 163.165.

(d) Coercion, ORS 163.275.

(e) Criminal mistreatment in the first degree, ORS 163.205.

(f) Attempted escape in the first degree, ORS 162.165.

(g) Incest, ORS 163.525, if the victim was at least 18 years of age.

(h) Intimidation in the first degree, ORS 166.165.

(i) Attempted kidnapping in the second degree, ORS 163.225.

(j) Attempted robbery in the second degree, ORS 164.405.

(k) Robbery in the third degree, ORS 164.395.

(l) Supplying contraband, ORS 162.185.

(m) Unlawful use of a weapon, ORS 166.220.

(14) As used in this section, "sex crime" has the meaning given that term in ORS 181.805.

SECTION 32a. If Senate Bill 908 becomes law, section 1, chapter 462, Oregon Laws 2015 (Enrolled Senate Bill 908) (amending ORS 137.225), is repealed and ORS 137.225, as amended by section 32 of this 2015 Act, is amended to read:

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

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

(c) A person whose sentence of probation was revoked may not apply to the court for

entry of an order setting aside the conviction for which the person was sentenced to probation for a period of 10 years from the date of revocation.

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

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

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

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

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection [(13)] (12) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, the court shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, in-

cluding the records of arrest whether or not the arrest resulted in a further criminal proceeding.

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

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

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

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

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

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

[(b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.]

[(c) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.]

[(d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:]

[(A) Any sex crime; or]

[(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:]

[(i) Criminal mistreatment in the first degree under ORS 163.205; and]

[(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]

[(e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.]

[(f) A violation, whether under state law or local ordinance.]

[(g) An offense committed before January 1, 1972, that if committed after that date would be:]

[(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:]

[(i) Criminal mistreatment in the first degree under ORS 163.205; and]

[(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]

[(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:]

[(i) Criminal mistreatment in the first degree under ORS 163.205; and]

[(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]

[(C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.]

[(D) A violation.]

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

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

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

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

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

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

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

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

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

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

(f) Any sex crime, unless:

(A) The sex crime is listed in ORS 181.830 (1)(a) and:

(i) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 181.832 or 181.833; and

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

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

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

(ii) The person is:

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

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

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

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

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

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

[(6)] (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

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

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

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

[(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section do not apply to:]

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

[(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older.]

[(c) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony.]

[(8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section apply to a conviction for:]

[(a) A Class B felony described in subsection (5)(a) of this section only if:]

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

[(B) The person has not been convicted of or arrested for any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under this section shall be considered for the purpose of determining whether this subparagraph is applicable.]

[(b) A sex crime listed in ORS 181.830 (1)(a) if:]

[(A) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 181.832 or 181.833; and]

[(B) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on, a crime that a court is prohibited from setting aside under this section.]

[(c) A sex crime constituting a Class C felony, if:]

[(A) The person was under 16 years of age at the time of the offense;]

[(B) The person is:]

[(i) Less than two years and 180 days older than the victim; or]

[(ii) At least two years and 180 days older, but less than three years and 180 days older, than the victim and the court finds that setting aside the conviction is in the interests of justice and of benefit to the person and the community;]

[(C) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;]

[(D) The victim was at least 12 years of age at the time of the offense;]

[(E) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime that a court is prohibited from setting aside under this section; and]

[(F) Each conviction or finding described in this paragraph involved the same victim.]

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

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

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

[(10)] (9) The provisions of subsection (1) of this section apply to convictions and arrests that oc-

curred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

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

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

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

(a) Abandonment of a child, ORS 163.535.

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

(c) Assault in the third degree, ORS 163.165.

(d) Coercion, ORS 163.275.

(e) Criminal mistreatment in the first degree, ORS 163.205.

(f) Attempted escape in the first degree, ORS 162.165.

(g) Incest, ORS 163.525, if the victim was at least 18 years of age.

(h) Intimidation in the first degree, ORS 166.165.

(i) Attempted kidnapping in the second degree, ORS 163.225.

(j) Attempted robbery in the second degree, ORS 164.405.

(k) Robbery in the third degree, ORS 164.395.

(l) Supplying contraband, ORS 162.185.

(m) Unlawful use of a weapon, ORS 166.220.

[(14)] (13) As used in this section, "sex crime" has the meaning given that term in ORS 181.805.

SECTION 33. ORS 419A.262 is amended to read:

419A.262. (1) An expunction proceeding shall be commenced in the county where the subject person resided at the time of the most recent termination.

(2) Upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

(a) At least five years have elapsed since the date of the person's most recent termination;

(b) Since the date of the most recent termination, the person has not been convicted of a felony or a Class A misdemeanor;

(c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pending against the person;

(d) The person is not within the jurisdiction of any juvenile court on the basis of a petition alleging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and

(e) The juvenile department is not aware of any pending investigation of the conduct of the person by any law enforcement agency.

(3)(a) Notwithstanding subsection (2) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested under subsection (13) of this section, shall order expunction if it finds that:

(A) The application requests expunction of only that part of the person's record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under ORS 167.007; and

(B) The person was under 18 years of age at the time of the conduct.

(b) Except as provided in subsections (13) and (14) of this section, there is no waiting period required before the juvenile court orders expunction under this subsection.

(4) In the case of an application by the juvenile department or of the court acting upon its own motion, expunction shall not be ordered if actual notice of expunction has not been given to the person in accordance with subsection (12) of this section unless the person has reached 21 years of age.

(5) When a person who is the subject of a record kept by a juvenile court or juvenile department reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order expunction if:

(a) The person never has been found to be within the jurisdiction of the court; or

(b) The conditions of subsection (2) or (3) of this section have been met.

(6) Expunction shall not be ordered under this section if actual notice of expunction has not been given to the person in accordance with subsection (12) of this section unless the person has reached 21 years of age.

(7) Subsections (5) and (6) of this section apply only to cases resulting in termination after September 13, 1975.

(8) Notwithstanding subsections (2), (3) and (5) to (7) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested, may order expunction of all or any part of the person's record if it finds that to do so would

be in the best interests of the person and the public. In the case of an application by the juvenile department or of the court acting upon its own motion, expunction shall not be ordered if actual notice of expunction has not been given to the person in accordance with subsection (12) of this section unless the person has reached 21 years of age.

(9) Notwithstanding ORS 419A.260 (1)(d)(J)(x), (xiii), (xix) or (xviii), a person who has been found to be within the jurisdiction of the juvenile court based on an act that if committed by an adult would constitute:

(a) Rape in the third degree under ORS 163.355, sodomy in the third degree under ORS 163.385 or sexual abuse in the third degree under ORS 163.415, or an attempt to commit those crimes, may apply for an order of expunction under this section. The court shall order expunction of the records in the case if, after a hearing when the matter is contested, the court finds that the person:

(A) Meets the requirements of subsection (2) of this section;

(B) Has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 181.832 or 181.833; and

(C) Has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime listed in ORS 419A.260 (1)(d)(J), other than the adjudication that is the subject of the motion.

(b) A sex crime that is a Class C felony may apply for an order of expunction under this section. The court shall order expunction of the records in the case if, after a hearing when the matter is contested, the court finds that:

(A) The person meets the requirements of subsection (2) of this section;

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

(C) The person is:

(i) Less than *[three years]* **two years and 180 days** older than the victim; or

(ii) **At least two years and 180 days older, but less than three years and 180 days older, than the victim and the expunction is in the interests of justice and of benefit to the person and the community;**

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

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

(F) Each finding described in this paragraph involved the same victim; and

(G) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime listed in ORS 419A.260 (1)(d)(J) or an offense the court is prohibited from setting aside under ORS 137.225, other than the adjudication that is the subject of the motion.

(10) When an expunction proceeding is commenced by application of the person whose records

are to be expunged, the person shall set forth as part of the application the names of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that the person has reason to believe possess an expungible record of the person. The juvenile department shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungible records.

(11) When an expunction proceeding is commenced by application of the juvenile department or upon the court's own motion, the application or motion shall set forth the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungible records and those provided by the subject person.

(12)(a) Notice and a copy of an application for expunction under subsections (2) to (8) of this section shall be given to:

(A) The district attorney of the county in which the expunction proceeding is commenced and the district attorney of each county in which the record sought to be expunged is kept; and

(B) The person who is the subject of the record if the person has not initiated the expunction proceeding.

(b) A district attorney who receives notice under this subsection shall notify the victim of the acts that resulted in the disposition that is the subject of the application for expunction and shall mail a copy of the application for expunction to the victim's last known address.

(13)(a) Within 30 days of receiving the notice of application for expunction under subsection (12) of this section, a district attorney shall give written notice of any objection and the grounds therefor to the person whose records are to be expunged and to the juvenile court.

(b) Except as provided in subsection (14)(c) of this section, if no objection is filed the court may decide the issue of expunction either without a hearing or after full hearing under subsections (14) to (17) of this section.

(14) When an expunction is pending under subsections (2) to (8) of this section, the court may proceed with or without a hearing, except that:

(a) The court may not enter an expunction judgment without a hearing if a timely objection to expunction has been filed under subsection (13) of this section;

(b) The court may not deny an expunction without a hearing if the proceeding is based on an application of the subject; and

(c) The court shall proceed without a hearing if:

(A) No objection is filed under subsection (13) of this section;

(B) The application requests expunction of only that part of the person's record that involves a charge, allegation or adjudication based on conduct

that if done by an adult would constitute the crime of prostitution under ORS 167.007; and

(C) The person was under 18 years of age at the time of the conduct.

(15)(a) Notice of a hearing on a pending expunction shall be served on the subject and any district attorney filing a timely objection under subsection (13) of this section.

(b) When a district attorney receives notice of a hearing for expunction of a record concerning a youth or youth offender proceeding under ORS chapter 419C, if the victim of the acts that resulted in the disposition that is the subject of the application for expunction requests, the district attorney shall mail notice of the hearing to the victim's last-known address.

(16) The court shall conduct a hearing on a pending expunction in accord with the provisions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting expunction.

(17) At the conclusion of a hearing on a pending expunction, the court shall issue judgment granting or denying expunction.

(18) The juvenile court or juvenile department shall send a copy of an expunction judgment to each agency subject to the judgment. Upon receipt of a copy of the judgment, the agency shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

(19) When all agencies subject to an expunction judgment have indicated their compliance or in any event no later than six weeks following the date the judgment was delivered as required by subsection (18) of this section, the juvenile court shall provide the person who is the subject of the record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile department then shall expunge forthwith all records which they possess and which are subject to the judgment, except the original expunction judgment and the list of complying and noncomplying agencies which must be preserved under seal.

(20) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit, municipal and justice courts, and the district and city attorneys of this state, are bound by an expunction judgment of any juvenile court of appropriate jurisdiction in this state issuing an expunction judgment.

(21) Upon entry of an expunction judgment, the contact that is the subject of the expunged record shall not be disclosed by any agency. An agency that is subject to an expunction judgment shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

(22) A person who is the subject of a record that has been expunged under this section may assert that the record never existed and that the contact, which was the subject of the record, never occurred without incurring a penalty for perjury or false swearing under the laws of this state.

(23) Juvenile courts, by court rule or by order related to a particular matter, may direct that records concerning a subject person be destroyed. No records shall be destroyed until at least three years have elapsed after the date of the subject's most recent termination. In the event the record has been expunged, the expunction judgment and list of complying and noncomplying agencies may not be destroyed, but shall be preserved under seal. The destruction of records under this subsection does not constitute expunction.

(24) An expunction judgment and list of complying and noncomplying agencies shall be released from confidentiality only on order of the court originating the expunction judgment, based on a finding that review of a particular case furthers compliance with the expunction provisions of this chapter.

(25) A subject has a right of action against any person who intentionally violates the confidentiality provisions of this section. In the proceeding, punitive damages up to an amount of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled to costs and reasonable attorney fees.

(26) Intentional violation of the confidentiality provisions of this section by a public employee is cause for dismissal.

(27) A person who intentionally releases all or part of an expunged record commits a Class C misdemeanor.

NOTE: Section 34 was deleted by amendment. Subsequent sections were not renumbered.

MISCELLANEOUS PROVISIONS

SECTION 35. ORS 181.823 is amended to read:

181.823. (1) A person required to report as a sex offender under ORS 181.809 (1)(a), **or required to report as a sex offender under the laws of another state as a result of an adjudication in an Oregon juvenile court**, may file a petition for an order relieving the person of the [duty] **obligation** to report. The person must pay the filing fee established under ORS 21.135. If the person resides:

(a) In this state and is required to report under ORS 181.809 (2) or (3), the petition must be filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

(b) In another state and is required to report under ORS 181.809 (4), the petition must be filed in the juvenile court in the county in which the person attends school or works.

(c) **In another state and is required to report under the laws of the other state, the petition must be filed in the juvenile court in which the**

person was adjudicated for the act that requires reporting.

(2) If the act giving rise to the obligation to report would constitute:

(a) A Class A or Class B felony sex crime if committed by an adult, the petition may be filed no sooner than two years after the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than two years after the person is discharged from the jurisdiction of the board.

(b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than 30 days before the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days before the person is discharged from the jurisdiction of the board.

(3)(a) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

(b) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

(c) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

(4) The person filing the petition has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. In determining whether the person has met the burden of proof, the juvenile court may consider but need not be limited to considering:

(a) The extent and impact of any physical or emotional injury to the victim;

(b) The nature of the act that subjected the person to the [duty] **obligation** of reporting as a sex offender;

(c) Whether the person used or threatened to use force in committing the act;

(d) Whether the act was premeditated;

(e) Whether the person took advantage of a position of authority or trust in committing the act;

(f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

(g) The vulnerability of the victim;

(h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

(i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

(j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

(k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;

(L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person's compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person's academic and employment history;

(n) The person's use of drugs or alcohol before and after the adjudication;

(o) The person's history of public or private indecency;

(p) The person's compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by the continued existence of the records; and

(s) Any other relevant factors.

(5) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(6) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

(7) As soon as practicable after a petition has been filed under this section, the district attorney or juvenile department shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.

(8)(a) When a petition filed under this section is filed:

(A) While the person is under the jurisdiction of the juvenile court or the Psychiatric Security Review Board or less than three years after the date the jurisdiction is terminated, the court shall hold a hearing no sooner than 60 days and no later than 120 days after the date of filing.

(B) Three years or more after the date the juvenile court or board jurisdiction is terminated, the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court may extend the period of time in which a hearing on the petition must be held.

(9)(a) When the person proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

(b) Notwithstanding paragraph (a) of this subsection, the court may not grant a petition filed under this section before the date the juvenile court or board jurisdiction over the person is terminated.

(10) When a juvenile court enters an order relieving a person of the requirement to report under ORS 181.809, the person shall send a certified copy of the juvenile court order to the Department of State Police.

(11) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707.

(12) When a petition is filed under subsection (2)(b) of this section before the termination of juvenile court or board jurisdiction, if the person, or the parent or guardian of the person if the person is less than 18 years of age, requests counsel and is without sufficient financial means to employ suitable counsel to represent the person, for purposes of the petition described in this section, the court shall appoint suitable counsel to represent the person. Appointment of counsel under this subsection is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.

SECTION 36. ORS 181.838, 181.839 and 181.840 are repealed.

STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION

SECTION 37. ORS 144.005 is amended to read: 144.005. (1) A State Board of Parole and Post-Prison Supervision of at least three but no more than five members hereby is created. At least one member must be a woman.

(2)(a) Members of the board shall be appointed by the Governor and serve for a term of four years.

(b) If the number of members falls below three for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(c) The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office.

(3) Each member shall devote the member's entire time to the performance of the duties imposed on the board and shall not engage in any partisan political activity.

(4) The members shall receive a salary set by the Governor. In addition, all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or under ORS 292.220 and 292.230.

(5) The Director of the Department of Corrections shall serve as an ex officio nonvoting member of the board **and shall not be considered a member for the purposes of subsections (1) to (4) of this section.**

SECTION 38. ORS 144.015 is amended to read:

144.015. **Except as provided in ORS 144.005 (2)(b),** the appointment of a member of the State Board of Parole and Post-Prison Supervision is subject to confirmation by the Senate as provided in ORS 171.562 and 171.565.

SECTION 39. ORS 144.025 is amended to read:

144.025. (1) The Governor shall select one of the members of the State Board of Parole and Post-Prison Supervision as chairperson and another member as vice chairperson, for such terms and with duties and powers, in addition to those established by law, necessary for the performance of the function of such office as the Governor determines.

(2) A majority of the members of the board constitutes a quorum for decisions concerning rules and policies.

(3) Except as otherwise provided in this chapter, decisions affecting individuals under the jurisdiction of the board shall be made as designated by the rules of the board.

(4) **Except as otherwise provided by statute, all board hearings are presumed to be panel hearings.**

(5) **The chairperson of the board may require all voting members of the board to participate in any hearing or decision requiring at least three board members. The decision to require the participation of all board members is not appealable.**

(6) **The board shall adopt rules concerning the number of board members that participate in board hearings and decisions.**

SECTION 40. ORS 144.035 is amended to read:

144.035. (1) In hearings conducted by the State Board of Parole and Post-Prison Supervision, the board may sit together or in panels.

(2) Panels may consist of one or two board members or of one member and one hearings officer, appointed by the chairperson as a designated representative of the board. A panel consisting of one member or of one member and one hearings officer shall be used only when considering inmates convicted of non person-to-person crimes as defined in the rules of the Oregon Criminal Justice Commis-

sion. The chairperson of the board from time to time shall make assignments of members to the panels. The chairperson of the board may participate on any panel.

(3) The chairperson shall apportion matters for decision to the panels. Each panel shall have the authority to hear and determine all questions before it. However:

(a) If there is a division in the panel so that a decision is not unanimous, another member shall vote after administrative review of the record.

(b) In case of a panel consisting of one board member, another member shall vote after administrative review of the record.

(c) If the original panel was made up of one board member and the member voting after administrative review of the record disagrees with the decision, the matter shall be reassigned to a panel made up of the remaining board members. If this second panel agrees with neither member of the original panel, the matter will be referred to a hearing before the full board.

(4) The provisions of subsections (1) to (3) of this section shall not apply to a decision to release a prisoner sentenced under ORS 144.110 (1). In such cases, the board shall release the prisoner only upon affirmative vote of a majority of *[the board]* **three board members or, if the chairperson requires all voting members to participate, a majority of all voting members.**

(5) The chairperson may elect to conduct the hearings described in this section by conference call with the prisoner.

SECTION 41. ORS 144.054 is amended to read:

144.054. Whenever the State Board of Parole and Post-Prison Supervision makes a decision affecting a person sentenced to life imprisonment or convicted of a crime involving the death of a victim, whether or not the prosecution directly charged the person with causing the death of the victim, the decision affecting such person must be reviewed by *[the full membership of the board]* **no fewer than three board members.**

SECTION 42. ORS 144.079 is amended to read:

144.079. (1)(a) If a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period before the prisoner's first initial parole hearing, or if a prisoner is sentenced to terms of imprisonment that are consecutive to one another and result from crimes committed during the period between any two initial parole hearings, the total term resulting from the crimes committed during each such separate period shall be determined by the State Board of Parole and Post-Prison Supervision as follows, except as provided in subsection (2) of this section, and the total terms so determined shall then be summed as provided in ORS 144.783 (1):

(A) First, the board shall establish the appropriate range for the felony determined by the board, according to its rules, to be the most serious of the

felonies committed during the period. If two or more felonies are determined to be equally the most serious, the board shall establish the appropriate range under this paragraph only for one of those felonies.

(B) Second, the board shall establish a range for each of the remaining felonies committed during the same period. For purposes of establishing the ranges for the remaining felonies under this paragraph, the board shall not consider prior criminal history.

(C) Third, the board shall determine the total range applicable in the offender's case for crimes committed during the same period by summing the ranges established under subparagraph (B) of this paragraph with the range established under subparagraph (A) of this paragraph and shall determine an appropriate term within that range.

(D) Finally, the board shall vary the term determined under subparagraph (C) of this paragraph according to rules established under ORS 144.785 (1), if the board finds aggravating or mitigating factors in the case. The board shall consider as an aggravating factor the fact that the prisoner has been sentenced to consecutive terms of imprisonment.

(b) Whenever a prisoner is committed to the custody of the Department of Corrections for a crime that was committed during a period already considered at an initial parole hearing and upon a sentence consecutive to any sentence imposed for crimes committed during that period, the board shall conduct a hearing to consider the previously unconsidered crime. The hearing shall be a hearing supplemental to the original initial hearing concerning crimes committed during the period. Time limitations and other procedural provisions applicable to initial hearings shall apply to a supplemental hearing under this subsection. Upon conclusion of the supplemental hearing, the board shall redetermine the appropriate total term for the period. The re-determination shall be conducted de novo under the provisions of subsection (2) of this section.

(2) The method established by this section for determining, where applicable, the total term resulting from the summing of consecutive sentences shall apply only if none of the crimes involved is:

(a) Murder, as defined in ORS 163.115 or any aggravated form thereof;

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

(c) Kidnapping in the first degree, as defined in ORS 163.235;

(d) Rape in the first degree, as defined in ORS 163.375;

(e) Sodomy in the first degree, as defined in ORS 163.405;

(f) Unlawful sexual penetration, as defined in ORS 163.411;

(g) Arson in the first degree, as defined in ORS 164.325; or

(h) Treason, as defined in ORS 166.005.

(3) The duration of imprisonment pursuant to consecutive sentences may be less than the sum of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority of [its]

three board members or, if the chairperson requires all voting members to participate, a majority of all voting members, that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.

(4) The [State] board [of Parole and Post-Prison Supervision] shall use the method set forth in subsections (1) to (3) of this section to determine the parole release date for any person serving a sentence in the custody of the Department of Corrections for crimes committed before or after July 11, 1987.

SECTION 43. ORS 144.110 is amended to read:

144.110. (1) In any felony case, the court may impose a minimum term of imprisonment of up to one-half of the sentence it imposes.

(2) Notwithstanding the provisions of ORS 144.120 and 144.780:

(a) The State Board of Parole and Post-Prison Supervision shall not release a prisoner on parole who has been sentenced under subsection (1) of this section until the minimum term has been served, except upon affirmative vote of a majority of [*the members of the board*] **three board members or, if the chairperson requires all voting members to participate, a majority of all voting members**.

(b) The board shall not release a prisoner on parole:

(A) Who has been convicted of murder defined as aggravated murder under the provisions of ORS 163.095, except as provided in ORS 163.105; or

(B) Who has been convicted of murder under the provisions of ORS 163.115, except as provided in ORS 163.115 (5)(c) to (f) **or 163.155 (6) to (8)**.

SECTION 44. ORS 144.783 is amended to read:

144.783. (1) When a prisoner is sentenced to two or more consecutive terms of imprisonment, the duration of the term of imprisonment shall be the sum of the terms set by the State Board of Parole and Post-Prison Supervision pursuant to the ranges established for the offenses, subject to ORS 144.079, and subject to the variations established pursuant to ORS 144.785 (1).

(2) The duration of imprisonment pursuant to consecutive sentences may be less than the sum of the terms under subsection (1) of this section if the board finds, by affirmative vote of a majority of [*its members*] **three board members or, if the chairperson requires all voting members to participate, a majority of all voting members**, that consecutive sentences are not appropriate penalties for the criminal offenses involved and that the combined terms of imprisonment are not necessary to protect community security.

SECTION 45. ORS 163.105 is amended to read:

163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

(1)(a) Except as otherwise provided in ORS [137.700] **137.707**, when a defendant is convicted of

aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to death, life imprisonment without the possibility of release or parole or life imprisonment.

(b) A person sentenced to life imprisonment without the possibility of release or parole under this section shall not have that sentence suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined for a minimum of 30 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(2) At any time after completion of a minimum period of confinement pursuant to subsection (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing, the prisoner has:

(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(c) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of *[all of its]* **three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members**, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(4) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS 144.285.

(5) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

SECTION 46. ORS 163.115 is amended to read:

163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in ORS 164.325;

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

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

(D) Escape in the first degree as defined in ORS 162.165;

(E) Kidnapping in the second degree as defined in ORS 163.225;

(F) Kidnapping in the first degree as defined in ORS 163.235;

(G) Robbery in the first degree as defined in ORS 164.415;

(H) Any felony sexual offense in the first degree defined in this chapter;

(I) Compelling prostitution as defined in ORS 167.017; or

(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime;

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;

(c) Was not armed with a dangerous or deadly weapon;

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

[5(a)] (5) Except as otherwise provided in ORS 163.155[.]:

(a) A person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of *[all of its]* **three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members**, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to

post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS 144.285.

(f) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

(6) As used in this section:

(a) "Assault" means *[to intentionally, knowingly or recklessly cause]* **the intentional, knowing or reckless causation of physical injury to another person.** "Assault" does not include the *[causing]* **causation of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.**

(b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means *[to intentionally inflict]* **the intentional infliction of intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.**

SECTION 47. ORS 163.155 is amended to read:

163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in subsection (4) of this section or to life imprisonment as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modified by this section.

(2) Following the presentation of evidence and argument under subsection (1) of this section, the

court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section, unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole as described in subsection (5) of this section. If 10 or more members of the jury do not find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section. If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment as described in subsection (5) of this section.

(3) Nothing in this section precludes the court from sentencing the defendant to life imprisonment, as described in subsection (5) of this section, or life imprisonment without the possibility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) A sentence of life imprisonment without the possibility of release or parole under this section may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant be confined for a minimum of 30 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(6) At any time after completion of the minimum period of confinement pursuant to subsection (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS chapter 183, except that:

(a) The prisoner has the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The prisoner has the right, if the prisoner is without sufficient funds to employ an attorney, to

be represented by legal counsel, appointed by the board, at board expense; and

(c) The prisoner has the right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the board pursuant to rules adopted by the board.

(7) If, upon hearing all of the evidence, the board, upon a unanimous vote of [*all of its*] **three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting** members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release on post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release on post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(8) Not less than two years after the denial of the relief sought in a petition under this section, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

SECTION 48. In addition to and not in lieu of any other appropriation, there is appropriated to the State Board of Parole and Post-Prison Supervision, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$3,163,183, for the purposes of carrying out the amendments to ORS 144.005, 144.015, 144.025, 144.035, 144.054, 144.079, 144.110, 144.783, 163.105, 163.115 and 163.155 by sections 37 to 47 of this 2015 Act.

OPERATIVE DATE PROVISION

SECTION 49. The amendments to ORS 137.225 by section 32a of this 2015 Act become operative January 1, 2016.

CAPTIONS

SECTION 50. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

EMERGENCY CLAUSE

SECTION 51. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is de-

**clared to exist, and this 2015 Act takes effect on
its passage.**

Approved by the Governor August 12, 2015
Filed in the office of Secretary of State August 13, 2015
Effective date August 12, 2015
