

CHAPTER 120

AN ACT

SB 1543

Relating to public safety; creating new provisions; amending ORS 137.221, 137.225, 137.372, 137.540, 147.395, 147.397, 161.336, 161.390, 161.705, 162.375, 166.412, 166.436, 180.700, 423.105 and 837.365; and declaring an emergency.

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

SECTION 1. ORS 180.700 is amended to read:

180.700. (1) The Attorney General shall appoint an advisory committee composed [at least] of:

(a) Representatives from local supervisory authorities, batterers' intervention programs and domestic violence victims' advocacy groups; and

(b) **Persons who:**

(A) **Are experienced with evidence-based practices specific to reducing recidivism that take into account risk factors, needs and responsiveness to treatment; and**

(B) **Represent the diverse groups that interact with violence prevention and batterers' intervention programs.**

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

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

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

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

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

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

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

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

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

(4) **As used in this section, "supervisory authority" has the meaning given that term in ORS 144.087.**

SECTION 2. ORS 147.397 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Cooperate with law enforcement agencies to develop and implement procedures that protect the

identities of victims while allowing retrieval and assessment of **sexual assault forensic** evidence [*collection*] kits and related evidence.

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

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

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

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

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

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

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

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

SECTION 3. ORS 147.395 is amended to read:

147.395. As used in ORS 147.397:

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

(a) A medical examination;

(b) The collection of forensic evidence using an evidence collection kit approved by the Department of State Police; and

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

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

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

(a) A medical examination; and

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

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

SECTION 4. ORS 161.390 is amended to read:

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

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

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

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

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

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

SECTION 5. ORS 161.336 is amended to read:

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

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

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

(d) After receiving an order entered under this section, the person or state, county or local agency designated in the order shall assume supervision of the person in accordance with the conditions de-

scribed in the order and any modifications of the conditions ordered by the board.

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

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

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

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

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

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

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

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

(i) The supervising entity;

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

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

(B) An order described in this paragraph may be issued when the supervising entity, the authorized designee or, if the person has absconded, the community mental health program director, has determined that:

(i) The person has violated the terms of conditional release; or

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

(C) A written order under this paragraph is sufficient warrant for any law enforcement officer to take into custody and transport the person named in the order. A peace officer shall execute the order and the person shall be transported as described in paragraph (c) of this subsection.

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

(c) When a person is taken into custody by a peace officer under this subsection, the agency employing the peace officer shall cause the person, as soon as practicable, to be transported to a state hospital or other facility designated by the supervising entity. If the person was taken into custody pursuant to an order described in paragraph (a) of this subsection, the supervising entity shall facilitate the reimbursement of reasonable costs of the transport to the agency employing the peace officer.

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

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

(5)(a) Any person conditionally released under this section may apply to the board for discharge from or modification of an order of conditional re-

lease on the ground that the person is no longer affected by a qualifying mental disorder or, if still so affected, no longer presents a substantial danger to others and no longer requires supervision, medication, care or treatment. Notice of the hearing on an application for discharge or modification of an order of conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a preponderance of the evidence the applicant's fitness for discharge or modification of the order of conditional release. Applications by the person for discharge or modification of conditional release may not be filed more often than once every six months.

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

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

SECTION 6. ORS 837.365 is amended to read:

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

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

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

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

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

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

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

(B)(i) **Is specifically designed or modified to cause, and is presently capable of causing, seri-**

ous physical injury as defined in ORS 161.015; and

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

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

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

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

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

(d) If the person intends to use an unmanned aircraft system that is capable of releasing, discharging, propelling or ejecting a projectile in an area open to the public, the person provides reasonable notice to the public of the time and location at which the person intends to use the unmanned aircraft system; and

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

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

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

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

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

(d) The Oregon Health and Science University;

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

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

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

(6) **As used in this section, "school" means a public or private institution of learning providing instruction at levels kindergarten through grade 12, or their equivalents.**

SECTION 7. ORS 137.221 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. ORS 423.105 is amended to read:

423.105. (1) As used in this section:

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

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

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

(B) A child support obligation;

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

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

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

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

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

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

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

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

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

(A) Disability benefits for veterans;

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

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

(D) Railroad retirement benefits; or

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

(2)(a) The Department of Corrections shall collect eligible moneys from an inmate trust account if

the inmate owes court-ordered financial obligations as described in this section.

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

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

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

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

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

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

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

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

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

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

(c) Level III obligations are civil judgments including a money award entered against an inmate resulting from an action for the inmate's assault or

battery of a Department of Corrections or Oregon Corrections Enterprises employee.

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

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

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

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

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

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

SECTION 9. ORS 162.375 is amended to read:

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

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

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

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

(A) At least 10 days.

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

SECTION 10. ORS 137.540 is amended to read:

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

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

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

(c) Submit to testing for controlled substance, cannabis or alcohol use if the probationer has a history of substance abuse or if there is a reasonable

suspicion that the probationer has illegally used controlled substances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) When supervision begins;

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

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

(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.

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

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

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

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

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

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

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

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

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

(b) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to a location that causes the probationer to be in violation of the special condition of probation, the court may not require the probationer to change the

probationer's residence in order to comply with the special condition of probation.

(4) When a person who is a sex offender is released on probation, the court shall impose as a special condition of probation that the person not reside in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides, without the approval of the person's supervising parole and probation officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides, without the approval of the director of the probation agency that is supervising the person or of the county manager of the Department of Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole and probation officer of a person subject to the requirements of this subsection shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subsection:

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

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

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

(d) "Sex offender" has the meaning given that term in ORS 163A.005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. ORS 161.705 is amended to read:

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

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

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

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

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

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

(b) At any time after the sentence of probation has been completed, for offenses described in subsection (1)(a)(B) of this section.

SECTION 12. ORS 137.225 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 sec-

tion by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction. 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, issuance of a criminal citation or criminal charge, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested, cited or charged person may apply to the court that would have jurisdiction over the crime for which the person was arrested, cited or charged, for entry of an order setting aside the record of the arrest, citation or charge. For the purpose of computing the one-year period, time during which the 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, citation or charge 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.

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

(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 (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, citation or charge as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest, citation or charge record as the case may be, the court shall enter an appropriate order that shall state the original arrest or citation 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, cited or charged 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, citation or charge whether or not the arrest, citation or charge 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, citation, charge 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 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, arrested or criminally cited for or charged with 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, arrest, citation or charge 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)] (d) of this subsection.

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

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

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

[(e)] (d) 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 163A.140 (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 163A.145 or 163A.150; 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.

(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, citation, charge 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.

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

(a) A person arrested or criminally cited for or charged with an offense within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests, citations or charges for conduct associated with the same criminal episode that caused the arrest, citation or charge that is sought to be set aside. An arrest, citation or charge 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 or citation 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.

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

(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, citation, charge 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.

(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, citation or charge record.

(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.

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

SECTION 13. ORS 137.372 is amended to read:

137.372. (1)(a) Notwithstanding the provisions of ORS 137.370 (2), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, and whose sentence was imposed as a downward dispositional departure under the rules of the Oregon Criminal Justice Commission, shall receive credit for the time served in jail after arrest and before commencement of the probationary sentence and for the time served in jail as part of the probationary sentence. However, if the credit for the time served in jail as described in this paragraph is greater than 90 days, the sentencing judge may limit or deny credit for any of that time that exceeds 90 days.

(b) Notwithstanding the provisions of ORS 137.370 (2), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, and whose sentence was imposed as a presumptive **or optional** probationary sentence under the rules of the Oregon Criminal Justice Commission, shall receive credit for the time served in jail after arrest and before commencement of the probationary sentence and for the time served in jail as part of the probationary sentence, unless the sentencing judge orders otherwise.

(2) Notwithstanding the provisions of ORS 137.370 (2), an offender who is sentenced to imprisonment in the custody of the Department of Corrections following the failure to complete a diversion program described in ORS 430.450 to 430.555 or a

specialty court program in which the offender was not on probation shall receive credit for the time served in jail after arrest and before commencement of the program and for the time served in jail as a sanction for violating the terms of the program, unless the sentencing judge orders otherwise.

(3) Notwithstanding the provisions of ORS 137.320 (4), an offender who has been ordered confined as part of a probationary sentence for a felony committed on or after July 18, 1995, shall receive credit for the time served in jail after arrest and before commencement of the term unless the sentencing judge orders otherwise.

(4) As used in this section, "specialty court" has the meaning given that term in ORS 137.680.

SECTION 14. (1) Jurisdiction is conferred upon the Supreme Court to determine whether chapter 673, Oregon Laws 2017, violates any provision of the Oregon Constitution, for the following appeals:

(a) In a civil action, any appeal in which the notice of appeal was filed after January 1, 2018, and before April 1, 2018; or

(b) In an appeal by a criminal defendant, any appeal in which:

(A) The only assignment of error relates to the constitutionality of a section of chapter 673, Oregon Laws 2017;

(B) A notice of appeal was filed after January 1, 2018, and before April 1, 2018; and

(C) The defendant requests in writing, no later than April 13, 2018, that the appeal be decided by the Supreme Court.

(2) The Supreme Court shall, to the extent practicable, expedite its disposition of appeals under subsection (1)(a) of this section as provided in the rules of appellate procedure.

SECTION 15. If House Bill 4145 becomes law, ORS 166.412, as amended by section 4, chapter 5, Oregon Laws 2018 (Enrolled House Bill 4145), is amended to read:

166.412. (1) As used in this section:

(a) "Antique firearm" has the meaning given that term in 18 U.S.C. 921;

(b) "Department" means the Department of State Police;

(c) "Firearm" has the meaning given that term in ORS 166.210, except that it does not include an antique firearm;

(d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C. 921 to 929;

(e) "Firearms transaction thumbprint form" means a form provided by the department under subsection (11) of this section;

(f) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise; and

(g) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun dealer.

(2) Except as provided in subsections (3)(c) and (12) of this section, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

(a) The purchaser shall present to the gun dealer current identification meeting the requirements of subsection (4) of this section.

(b) The gun dealer shall complete the firearms transaction record and obtain the signature of the purchaser on the record.

(c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.

(d) The gun dealer shall request by telephone that the department conduct a criminal history record check on the purchaser and shall provide the following information to the department:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the firearm being transferred;

(F) The name and date of birth of the purchaser;

(G) The Social Security number of the purchaser if the purchaser voluntarily provides this number to the gun dealer; and

(H) The type, issuer and identification number of the identification presented by the purchaser.

(e) The gun dealer shall receive a unique approval number for the transfer from the department and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(f) The gun dealer may destroy the firearms transaction thumbprint form five years after the completion of the firearms transaction thumbprint form.

(3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the department shall immediately, during the gun dealer's telephone call or by return call:

(A) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under ORS 166.470 from completing the purchase; and

(B) Notify the gun dealer when a purchaser is disqualified from completing the transfer or provide the gun dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the gun dealer and provide the gun dealer with an estimate of the time when the department will provide the requested information.

(c) If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the gun dealer for a criminal history record check, the gun dealer may deliver the firearm to the purchaser.

(4)(a) Identification required of the purchaser under subsection (2) of this section shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(b) If the identification presented by the purchaser under paragraph (a) of this subsection does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.

(c) The department may require that the gun dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.

(5) The department shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from gun dealers for a criminal history record check under this section.

(6) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

(7)(a) The department may retain a record of the information obtained during a request for a criminal history record check for no more than five years.

(b) The record of the information obtained during a request for a criminal history record check by a gun dealer is exempt from disclosure under public records law.

(c) If the department determines that a purchaser is prohibited from possessing a firearm under ORS 166.250 (1)(c), the department shall report the attempted transfer, the purchaser's name and any other personally identifiable information to all federal, state and local law enforcement agencies and district attorneys that have jurisdiction over the location or locations where the attempted transfer was made and where the purchaser resides.

(d) If the department determines that, based on the judgment of conviction, the purchaser is prohibited from possessing a firearm as a condition of pro-

bation or that the purchaser is currently on post-prison supervision or parole, the department shall report the attempted transfer to the purchaser's supervising officer and the district attorney of the county in which the conviction occurred.

(e) If the department determines that the purchaser is prohibited from possessing a firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer to the court that issued the order.

(f) If the department determines that the purchaser is under the jurisdiction of the Psychiatric Security Review Board, the department shall report the attempted transfer to the board.

(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours after the determination is made, unless a report would compromise an ongoing investigation, in which case the report may be delayed as long as necessary to avoid compromising the investigation.

(h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's office that received a report pursuant to paragraph (c) of this subsection during the previous calendar year shall inform the department of *[the] any* action that was taken concerning *[each attempted transfer] the report* and the outcome of the action.

(i) The department shall annually publish a written report, based on any information received under paragraph (h) of this subsection, detailing the following information for the previous year:

(A) The number of purchasers whom the department determined were prohibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

(B) The number of reports made pursuant to paragraph (c) of this subsection;

(C) The number of investigations arising from the reports made pursuant to paragraph (c) of this subsection, the number of investigations concluded and the number of investigations referred for prosecution, all arranged by category of prohibition; and

(D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of this subsection and the disposition of the charges, both arranged by category of prohibition.

(8) A law enforcement agency may inspect the records of a gun dealer relating to transfers of firearms with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(9) When a firearm is delivered, it shall be unloaded.

(10) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State Police may adopt rules necessary for:

(a) The design of the firearms transaction thumbprint form;

(b) The maintenance of a procedure to correct errors in the criminal records of the department;

(c) The provision of a security system to identify gun dealers that request a criminal history record check under subsection (2) of this section; and

(d) The creation and maintenance of a database of the business hours of gun dealers.

(11) The department shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(12) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C. 923.

(13)(a) If requested by a transferor who is not a gun dealer, a gun dealer may request a criminal background check pursuant to ORS 166.435 or 166.438 and may charge a reasonable fee for providing the service.

(b) A gun dealer that requests a criminal background check under this subsection is immune from civil liability for any use of the firearm by the recipient or transferee, provided that the gun dealer requests the criminal background check as described in this section.

SECTION 16. If House Bill 4145 becomes law, ORS 166.436, as amended by section 5, chapter 5, Oregon Laws 2018 (Enrolled House Bill 4145), is amended to read:

166.436. (1) The Department of State Police shall make the telephone number established under ORS 166.412 (5) available for requests for criminal background checks under this section from persons who are not gun dealers and who are transferring firearms at gun shows.

(2) Prior to transferring a firearm at a gun show, a transferor who is not a gun dealer may request by telephone that the department conduct a criminal background check on the recipient and shall provide the following information to the department:

(a) The name, address and telephone number of the transferor;

(b) The make, model, caliber and manufacturer's number of the firearm being transferred;

(c) The name, date of birth, race, sex and address of the recipient;

(d) The Social Security number of the recipient if the recipient voluntarily provides that number;

(e) The address of the place where the transfer is occurring; and

(f) The type, issuer and identification number of a current piece of identification bearing a recent photograph of the recipient presented by the recipient. The identification presented by the recipient must meet the requirements of ORS 166.412 (4)(a).

(3)(a) Upon receipt of a request for a criminal background check under this section, the department shall immediately, during the telephone call or by return call:

(A) Determine from criminal records and other information available to it whether the recipient is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state or federal law from possessing a firearm; and

(B) Notify the transferor when a recipient is disqualified from completing the transfer or provide the transferor with a unique approval number indicating that the recipient is qualified to complete the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer. If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt of the unique approval number, a new request must be made by the transferor.

(b) If the department is unable to determine whether the recipient is qualified for or disqualified from completing the transfer within 30 minutes of receiving the request, the department shall notify the transferor and provide the transferor with an estimate of the time when the department will provide the requested information.

(4) A public employee or public agency incurs no criminal or civil liability for performing the criminal background checks required by this section, provided the employee or agency acts in good faith and without malice.

(5)(a) The department may retain a record of the information obtained during a request for a criminal background check under this section for the period of time provided in ORS 166.412 (7).

(b) The record of the information obtained during a request for a criminal background check under this section is exempt from disclosure under public records law.

(c) If the department determines that a recipient is prohibited from possessing a firearm under ORS 166.250 (1)(c), the department shall report the attempted transfer, the recipient's name and any other personally identifiable information to all federal, state and local law enforcement agencies and district attorneys that have jurisdiction over the location or locations where the attempted transfer was made and where the recipient resides.

(d) If the department determines that, based on the judgment of conviction, the recipient is prohibited from possessing a firearm as a condition of probation or that the recipient is currently on post-prison supervision or parole, the department shall report the attempted transfer to the recipient's supervising officer and the district attorney of the county in which the conviction occurred.

(e) If the department determines that the recipient is prohibited from possessing a firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer to the court that issued the order.

(f) If the department determines that the recipient is under the jurisdiction of the Psychiatric Security Review Board, the department shall report the attempted transfer to the board.

(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours after the determination is made, unless a report would compromise an ongoing investigation, in which case the report may be delayed as long as necessary to avoid compromising the investigation.

(h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's office that received a report pursuant to paragraph (c) of this subsection during the previous calendar year shall inform the department of *[the]* **any** action that was taken concerning *[each attempted transfer]* **the report** and the outcome of the action.

(i) The department shall annually publish a written report, based on any information received under paragraph (h) of this subsection, detailing the following information for the previous year:

(A) The number of recipients whom the department determined were prohibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

(B) The number of reports made pursuant to paragraph (c) of this subsection;

(C) The number of investigations arising from the reports made pursuant to paragraph (c) of this subsection, the number of investigations concluded and the number of investigations referred for prosecution, all arranged by category of prohibition; and

(D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of this subsection and the disposition of the charges, both arranged by category of prohibition.

(6) The recipient of the firearm must be present when the transferor requests a criminal background check under this section.

(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a transferor who receives notification under this section that the recipient is qualified to complete the transfer of a firearm, has the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2) is immune from civil liability for any use of the firearm from the time of the transfer unless the transferor knows, or reasonably should

know, that the recipient is likely to commit an unlawful act involving the firearm.

(b) The immunity provided by paragraph (a) of this subsection does not apply:

(A) If the transferor knows, or reasonably should know, that the recipient of the firearm intends to deliver the firearm to a third person who the transferor knows, or reasonably should know, may not lawfully possess the firearm; or

(B) In any product liability civil action under ORS 30.900 to 30.920.

SECTION 17. Section 14 of this 2018 Act is repealed on July 1, 2023.

SECTION 18. (1) The amendments to ORS 423.105 by section 8 of this 2018 Act become operative on June 30, 2018.

(2) The amendments to ORS 166.412 and 166.436 by sections 15 and 16 of this 2018 Act become operative on January 1, 2019.

SECTION 19. (1) The amendments to ORS 137.540, 162.375 and 837.365 by sections 6, 9 and 10 of this 2018 Act apply to offenses committed on or after the effective date of this 2018 Act.

(2) The amendments to ORS 137.372 by section 13 of this 2018 Act apply to sentences imposed on or after the effective date of this 2018 Act.

SECTION 20. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Approved by the Governor April 13, 2018
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