



OREGON

Oregon Revised Statutes

Chapter 181

1981 REPLACEMENT PART

State Police; Crime Reporting and Records; Police and Parole and Probation Standards and Training

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STATE POLICE

181.010 Definitions for ORS 181.010 to 181.560. As used in ORS 181.010 to 181.560, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police Bureau of Criminal Identification.

(2) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

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(3) "Crime for which criminal offender information is required" means:

- (a) Any felony;
- (b) Any misdemeanor or other offense which involves criminal sexual conduct; or
- (c) Any crime which involves a violation of the Uniform Controlled Substances Act.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Law enforcement agency" means county sheriffs, municipal police departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(7) "State Police" means the members of the state police force appointed under ORS 181.250.

(8) "Superintendent" means the Superintendent of State Police.

(9) "Criminal Justice Agency" means:

- (a) The Governor;
- (b) Courts of criminal jurisdiction;
- (c) The Attorney General;
- (d) District attorneys, city attorneys with criminal prosecutive functions and public defender organizations established under ORS chapter 151;
- (e) Law enforcement agencies;
- (f) The Corrections Division;
- (g) The State Board of Parole; and
- (h) Any other state or local agency designated by order of the Governor.

(10) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest. [Amended by 1963 c.547 §1; 1971 c.467 §1; 1975 c.548 §1; 1977 c.745 §46; 1981 c.905 §1]

181.020 Department of State Police established. There is established a Department of State Police. The department shall consist of office personnel and the Oregon State Police. The Oregon State Police shall consist of members of the state police force appointed under ORS 181.250, state police cadets and legislative security personnel appointed under ORS 181.265. [Amended by 1963 c.547 §8; 1971 c.467 §2]

181.030 Powers and duties of department and its members. (1) The Department of State Police and each member of the Oregon State Police shall be charged with the enforcement of all criminal laws.

(2) Each member of the state police is authorized and empowered to:

- (a) Prevent crime.
- (b) Pursue and apprehend offenders and obtain legal evidence necessary to insure the conviction in the courts of such offenders.
- (c) Institute criminal proceedings.
- (d) Execute any lawful warrant or order of arrest issued against any person or persons for any violation of the law.
- (e) Make arrests without warrant for violations of law in the manner provided in ORS 133.310.

(f) Give first aid to the injured.

(g) Succor the helpless.

(3) Each member of the state police shall have in general the same powers and authority as those conferred by law upon sheriffs, police officers, constables, peace officers and may be appointed as deputy medical examiners.

(4) The members of the state police shall be subject to the call of the Governor, and are empowered to cooperate with any other instrumentality or authority of the state, or any political subdivision in detecting crime, apprehending criminals and preserving law and order throughout the state; but the state police shall not be used as a posse except when ordered by the Governor. [Amended by 1961 c.434 §7; 1971 c.467 §3; 1973 c.408 §30; 1977 c.595 §1]

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181.040 Department to enforce laws relating to highways and operation of vehicles on highways; power of arrest possessed by persons not members of department. (1) The Department of State Police shall enforce all laws now or hereafter enacted relating to highways and to the operation of vehicles on state or other highways.

(2) Members of the state police have the power to arrest violators of any provision of the laws applicable to highways or to the movement of vehicles on highways.

(3) The necessary expenses in carrying out this section shall be paid from the State Highway Fund and from the monies received under ORS 481.950.

(4) ORS 181.010 to 181.560 does not prevent an officer or employe of the Department of Transportation from arresting any person for any crime committed in his presence and does not affect other powers of arrest granted by the laws of this state to persons other than peace officers. [Amended by 1967 c.175 §5; 1971 c.467 §4]

181.050 State police to enforce laws and regulations of agencies. The state police, with the approval of the Governor, may be called upon by any other branch or department of the state government to enforce criminal laws or any regulation of such branch or department. [Amended by 1971 c.58 §1]

181.060 [Repealed by 1963 c.547 §11]

181.065 [1963 c.547 §6; repealed by 1975 c.548 §2 (181.066 enacted in lieu of 181.065)]

181.066 Bureau of criminal identification. (1) There is established in the department a bureau of criminal identification which shall be operated by the department.

(2) The bureau shall:

(a) Install and maintain systems for filing and retrieving fingerprint data and supplemental information submitted by criminal justice agencies for the identification of criminal offenders as the superintendent deems necessary;

(b) Employ its fingerprint record file as a basis for identifying individuals and provide criminal offender information to criminal justice agencies while acting in the performance of their official duties;

(c) Provide information to persons and agencies as provided in ORS 181.555 and 181.560; and

(d) Undertake such other projects as are necessary or appropriate to the speedy collection and dissemination of information relating to crimes and criminals. [1975 c.548 §3 (enacted in lieu of 181.065); 1975 c.605 §11a; 1981 c.905 §2]

181.070 State detective bureau. (1) The superintendent may, with the approval of the Governor, maintain a state detective bureau under his immediate supervision.

(2) The detective bureau shall:

(a) Maintain facilities for the detection of crime by the state police.

(b) Supply expert information on handwriting and ballistics.

(3) To accomplish the purposes of subsection (2) of this section, the superintendent may, with the approval of the Governor, utilize the services of such members of the state police as assistant state detectives as he deems expedient. [Amended by 1963 c.547 §9; 1971 c.467 §22]

181.080 Crime detection laboratories.

(1) The Department of State Police may establish crime detection laboratories, to be operated by the department in cooperation with the Oregon Health Sciences University.

(2) The Oregon Health Sciences University may furnish adequate quarters, heat and light for the laboratory in the buildings of the school at Portland and may assist the personnel of all laboratories with technical advice and assistance.

(3) The laboratories shall furnish service as available to all district attorneys, sheriffs and other peace officers in the state. The services of the laboratories shall also be available to any defendant in a criminal case on order of the court before which the criminal case is pending. [Amended by 1953 c.5 §3; 1963 c.218 §1; 1971 c.467 §23]

181.090 Headquarters and patrol stations. The superintendent, with the approval of the Governor, may establish headquarters and patrol stations at such places as he may deem most advisable for the patrol and protection of the state and for the enforcement of the laws. For that purpose, with the approval of the Governor, he may use lands and buildings for the accommodation of members of the state police and their vehicles and equipment. [Amended by 1971 c.467 §21]

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181.100 Organization of work of department. The superintendent shall, so far as in his judgment it is practicable and expedient so to do, organize the work of his department so that:

(1) The various duties required of the department may be assigned to appropriate departments, to be performed by persons experienced and qualified for such respective kinds of work.

(2) The duties of his various officers and police are coordinated so that when not engaged in a particular duty specified or directed to be done or not then requiring attention such officers and police shall perform the other duties required of the department and then required to be done.

(3) The cooperation of other officers and police may be secured for the purposes of avoiding duplication of time and effort.

181.110 Distribution of police throughout state. The superintendent shall distribute the state police throughout the various sections of the state where they will be most efficient in carrying out the purposes of the department to preserve the peace, to enforce the law and to prevent and detect crime.

181.120 Standard uniform for state police. The State of Oregon shall provide the members of the state police with standard uniforms. Subject to detailed regulations and specifications prescribed by the superintendent, the uniform to be worn by members of the state police shall be of standard pattern and distinctive design. [Amended by 1971 c.467 §7; 1979 c.30 §1]

181.130 Service without wearing uniform. The superintendent may direct that members of the state police shall serve without wearing uniform, when, in his judgment, law enforcement will thereby be made more efficient. [Amended by 1971 c.467 §8]

181.140 Wearing uniforms by other persons prohibited. (1) No person other than a member of the Oregon State Police shall wear, use or order to be worn or used, copy or imitate in any respect or manner the standard uniforms specified in ORS 181.120.

(2) As used in this section, "person" includes agents, officers and officials elected or appointed by any municipality or county.

181.150 Supplies and equipment of state police. (1) The state shall provide the members of the state police with emergency and first aid outfits, weapons, motor vehicles, and all other supplies and equipment necessary to carry out the objects of the department. All such property shall remain the property of the state.

(2) When any of the property, supplies or equipment becomes surplus, obsolete or unused it shall be disposed of by the Department of General Services as provided in ORS 283.230. [Amended by 1955 c.148 §1; 1971 c.467 §9]

181.160 [Repealed by 1955 c.260 §3]

181.170 Damage or loss of property by neglect of member; deduction from pay. The superintendent shall make charges against any member of the state police for property of the department damaged, lost or destroyed through carelessness or neglect of such member. If it is determined that such damage, loss or destruction was due to carelessness or neglect, there shall be deducted from the pay of such member the amount of money necessary to repair or replace the article or articles damaged, lost or destroyed.

181.175 State Police Account. There is established in the General Fund of the State Treasury an account to be known as the State Police Account. All moneys received by the Department of State Police shall be paid to the credit of the State Police Account, and such moneys are continuously appropriated for the payment of expenses of the Department of State Police. [1971 c.277 §2; 1979 c.541 §4; 1981 c.881 §3]

181.180 Petty cash account. The superintendent shall establish a petty cash account from the appropriation for carrying out the functions of the department in the amount of \$10,000 and shall authorize designated commissioned officers to make disbursements from such account in all cases where it may be necessary to make an immediate cash payment for transportation expenses, accessories and repairs to motor vehicles, board and lodging, immediate medical and veterinary supplies, telephone and imperative supplementary supplies. Upon presentation to the Secretary of State of duly approved vouchers for moneys so expended from the petty cash account or fund, the account or fund shall be reimbursed to the amount of vouchers submitted. Disbursing officers shall give a surety bond to the State of Oregon to be approved by

the Attorney General in the amount of \$10,000 for faithful performance of duty and proper administration of funds, the premium on which shall be paid by the department.

181.190 Commanding assistance of citizens. All members of the state police may direct and command the assistance of any able-bodied citizen of the United States to aid, when necessary, to maintain law and order. When so called, any person shall, during the time his assistance is required, be considered a member of the state police and subject to ORS 181.010 to 181.560. [Amended by 1971 c.467 §10]

181.200 Superintendent of State Police; appointment; confirmation; removal. The Superintendent of State Police shall be the executive and administrative head of the Department of State Police. Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint the superintendent for a term of four years. The Governor may remove the superintendent for inefficiency or malfeasance in office after charges have been preferred and a hearing granted. [Amended by 1971 c.467 §11; 1973 c.792 §1]

181.210 Oath and bond of superintendent and deputy. The Superintendent of State Police and the Deputy Superintendent of State Police, before assuming their duties, each shall take and subscribe an oath of office as prescribed by ORS 181.390 and shall be covered by a fidelity or blanket bond as provided in ORS 291.011. [Amended by 1971 c.467 §13]

181.220 Deputy Superintendent of State Police; qualifications, appointment and removal. The Superintendent of State Police may, with the approval of the Governor as to person and salary, appoint a Deputy Superintendent of State Police. The deputy superintendent shall have served as a captain or in higher rank in the Oregon State Police not less than one year prior to his appointment. The deputy superintendent shall be removable for the causes and in the manner provided in ORS 181.290 to 181.350 for the removal of members of the state police. [Amended by 1971 c.467 §12]

181.230 [Repealed by 1971 c.467 §26]

181.240 Powers and duties of deputy superintendent. The deputy superintendent, when appointed and qualified, shall possess during his term of office all the powers of the

superintendent and shall act as the head of the department in the absence or incapacity of the superintendent, and shall perform such duties as the superintendent may prescribe.

181.250 State police force; appointment; examination and enlistment of applicants. The superintendent, with the approval of the Governor, shall appoint a state police force, consisting of the number of commissioned officers, noncommissioned officers and troopers who are, in the judgment of the Governor and the superintendent, necessary in the performance of the duties of the department. The superintendent shall, subject to the laws of the state and with the approval of the Governor, arrange for the examination and enlistment of applicants and establish ranks or grades. [Amended by 1971 c.467 §6]

181.260 Qualifications for appointment and reappointment as member of state police. (1) No person, other than an expert in crime detection, shall be appointed a member of the state police unless he is:

- (a) A citizen of the United States.
- (b) A resident of the State of Oregon.
- (c) Of good health and of good moral character.
- (d) Over the age of 21 years.

(2) No person shall be appointed a member of the state police who has not established satisfactory evidence of his qualifications by passing a physical and mental examination based upon the standard provided by the rules and regulations of the United States Army; but the superintendent, with the approval of the Governor, may, for such positions and where, in his judgment, the good of the service requires it, waive the physical standard provided by such rules and regulations.

(3) Any member who voluntarily withdraws from the state police force without the consent of the superintendent, and all persons removed from the state police for cause after hearing, shall be ineligible for reappointment.

181.265 Qualification for cadets and legislative and executive security personnel. Notwithstanding ORS 181.260 (1)(d), the superintendent may appoint, as state police cadets or legislative and executive security personnel, individuals who are 18 years of age or older and satisfy other requirements of ORS 181.260 (1) and (2). [1971 c.467 §25b; 1977 c.258 §1]

181.270 (Amended by 1953 c.50 §4; 1955 c.704 §1; 1957 c.674 §1; 1959 c.677 §1; 1961 c.493 §2; 1963 c.572 §54; repealed by 1965 c.14 §2 (181.271 enacted in lieu of 181.270))

181.271 Salaries of state police. The salaries of members of the Oregon State Police shall be fixed in the same manner as the salaries of other officers and employes in the unclassified service pursuant to ORS 240.240. [1965 c.14 §3 (enacted in lieu of 181.270); 1971 c.467 §14]

181.280 Instruction; rules and regulations for discipline and control. The superintendent shall:

(1) Provide the necessary preliminary and subsequent instruction to recruits and troopers as to their duties as police officers of the state.

(2) Make rules and regulations for the discipline and control of the state police. [Amended by 1971 c.467 §15]

181.290 Grounds for removal of state police. The superintendent may remove members of the Oregon State Police in the manner prescribed in ORS 181.290 to 181.350 for inefficiency, misfeasance, malfeasance, nonfeasance in office, violation of the criminal laws of the state or of the United States, wilful violation of any rule or regulation of the department, insubordination, forfeiture of license to operate a motor vehicle, or physical or mental disability not incurred in line of duty. [Amended by 1971 c.467 §16]

181.300 Proceeding for removal. (1) Members of the Oregon State Police may be removed only after written charges have been preferred and a hearing granted as prescribed in ORS 181.290 to 181.350.

(2) This section does not require a hearing for:

(a) Disciplinary measures taken by the superintendent or any commanding officer of a detachment for the punishment of minor infractions of the rules or regulations of the department.

(b) Demotion of members.

(c) Removal of recruits. [Amended by 1971 c.467 §17]

181.310 Superintendent to make rules and regulations governing proceedings for removal. The superintendent shall make rules and regulations providing for:

(1) The filing of written charges against an accused member of the Oregon State Police.

(2) A hearing by the trial board on the charges upon not less than 10 days' notice.

(3) An opportunity to the accused member to produce proof in his defense. [Amended by 1971 c.467 §18]

181.320 Trial board; members; presiding officer. A trial board to hear charges against members of the Oregon State Police shall consist of the superintendent and two commissioned officers, senior in service, appointed by the superintendent. The superintendent shall be the presiding officer of the trial board. Upon written order of the superintendent, any commissioned officer appointed or designated by him may sit as presiding officer of the trial board. [Amended by 1971 c.467 §19]

181.330 Hearing on charges; compelling attendance of witnesses; witness fees and mileage. The presiding officer of the trial board shall make all necessary rulings during the course of the hearing which may be held at any place designated by the superintendent. The superintendent or the officer acting in his stead as presiding officer of the trial board is empowered to issue subpoenas to compel the attendance of witnesses and the production of evidence and to administer all necessary oaths. Persons summoned as witnesses before the trial board shall be entitled to witness fees and mileage for traveling, as provided by law for witnesses in courts of record in the county in which the hearing is held. Failure or refusal to obey any subpoena shall be brought to the attention of such circuit court and shall be punished by that court as a contempt.

181.340 Finding of trial board; action by superintendent. If the charges are proved the trial board shall make a written finding of guilty and recommend either removal of member of the Oregon State Police or such disciplinary punishment as, in their opinion, the offense merits. Thereupon the superintendent shall direct the removal or punishment. If any member refuses to attend the hearing or abide by any such disciplinary order, the superintendent may by order remove him forthwith. [Amended by 1971 c.467 §20]

181.350 Procedure for review of decision of trial board. The decisions of the trial board shall be subject to review by the Court

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of Appeals. The procedure for review shall be as provided in ORS 183.482. [Amended by 1979 c.772 §14]

181.360 Directors of crime detection laboratories. The superintendent shall appoint:

(1) The director of each crime detection laboratory, who shall have charge and supervision over the laboratory under the general supervision of the superintendent.

(2) The assistants necessary for the operation of the laboratories. [Amended by 1971 c.467 §24]

181.370 [Repealed by 1971 c.467 §26]

181.380 [Repealed by 1971 c.467 §26]

181.390 Oath of members of state police. Each member of the Oregon State Police shall take and subscribe to an oath of office to support the Constitution and laws of the United States and of the State of Oregon, and to honestly and faithfully perform the duties imposed upon him under the laws of Oregon. The oath of the superintendent and deputy superintendent shall be filed with the Secretary of State, and the oaths of all other members with the superintendent. [Amended by 1971 c.467 §5]

181.400 Restrictions on members of state police; personal and property rights of others; political contests. All members of the state police are subject to the following restrictions:

(1) No member of the state police shall in any way interfere with the rights or property of any person, except for the prevention of crime, or the capture or arrest of persons committing crimes.

(2) Notwithstanding any other law, no member of the state police shall in any way be active or participate in any political contest of any general or special election, except to cast his ballot. No member of the state police shall be detailed or ordered to duty at or near any voting precinct where any election is being held, nor shall any member of the state police remain in or about such voting precinct, except for the time necessary to cast his vote. [Amended by 1971 c.467 §25]

181.410 Records and reports of time spent in performance of duties; approval of claims. (1) Under rules and regulations to be promulgated by the Superintendent of

State Police, with the approval of the Governor, all state police shall be required to keep a record of the time spent in the performance of their various duties and report same to the superintendent at such times as he shall direct.

(2) The superintendent shall approve all claims. [Amended by 1957 c.521 §4; 1959 c.480 §3]

181.415 [1967 c.194 §1; repealed by 1977 c.249 §1]

181.420 [Amended by 1957 c.7 §1; repealed by 1971 c.743 §432]

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181.510 [1963 c.547 §3; repealed by 1975 c.548 §4 (181.511 enacted in lieu of 181.510)]

181.511 Fingerprints, identifying data, disposition report required. (1) A law enforcement agency immediately upon the arrest of a person for a crime shall:

(a) Place the required fingerprints and identifying data on forms prescribed or furnished by the bureau, photograph the arrested person, and promptly transmit the form and photograph to the bureau.

(b) If the arrest is disposed of by the arresting agency, cause the disposition report to be completed and promptly transmitted to the bureau.

(c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded to the court that will dispose of the charge for action by the court in accordance with ORS 181.521.

(2) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole prints, toe prints, or other personal identifiers when, in the discretion of the agency, it is necessary to effect identification of the persons or to the investigation of the crime charged.

(3) A law enforcement agency, for the purpose of identification, may record and submit to the bureau the fingerprints of persons arrested for crimes for which criminal offender information is not required.

(4) The prosecuting attorney shall submit to the court a disposition report for submission by the court to the bureau in accordance with ORS 181.521. [1975 c.548 §5 (enacted in lieu of 181.510)]

181.520 [1963 c.547 §4; repealed by 1975 c.548 §6 (181.521 enacted in lieu of 181.520)]

181.521 Courts to report disposition of certain cases; State Court Administrator to inquire about status of arrests. Courts shall cause the final court order or judgment of a crime for which criminal offender information is required to be reported promptly to the bureau. The State Court Administrator, upon notice by the bureau, shall make inquiry as to the status of an arrest which has not been reported disposed of within a reasonable time after the date of arrest. If from such inquiry the State Court Administrator believes that a court, or its clerk or administrator, may not be making satisfactory reports of dispositions he shall report his findings in relation thereto to the Supreme Court for its action. (1978 c.546 §6 (enacted in lieu of 181.520))

181.530 Report of release or escape from state institution of certain inmates. (1) The superintendent of any institution of this state shall notify the bureau prior to the release or immediately after the escape from such institution, of any person committed to such institution, for a crime for which a report is required or under civil commitment as a sexually dangerous person. The notice shall state the name of the person to be released or who has escaped, the county in which he was convicted or from which he was committed and, if known, the address or locality at which he will reside.

(2) Promptly upon receipt of the notice required by subsection (1) of this section, the bureau shall notify all law enforcement agencies in the county in which the person was convicted or from which he was committed and in the county, if known, in which the person will reside. (1983 c.547 §5)

181.535 Criminal identification information available to Executive Secretary of Oregon Racing Commission. (1) The department may, upon request of the Oregon Racing Commission, furnish to the Executive Secretary of the Oregon Racing Commission such information as the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information and data.

(2) For the purposes of requesting and receiving the information and data described in subsection (1) of this section, the Oregon Racing Commission is a "state agency" and a "criminal justice agency" and its enforcement agents are "peace officers" within this chapter

and rules adopted thereunder. (1975 c.549 §19).

181.537 Criminal identification information available to Department of Human Resources. (1) On the request of the Department of Human Resources and written consent of the person about whom information is being requested, the department may furnish to the director such information as the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information, concerning persons serving as or being considered to serve as foster parents pursuant to placement of persons in their custody and care. The department shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information.

(2) For purposes of receiving the information described in subsection (1) of this section, the Department of Human Resources is a "criminal justice agency" under ORS 181.010 to 181.560 and the rules adopted under ORS 181.555. (1979 c.732 §2)

181.540 Confidentiality of some records. (1) Notwithstanding the provisions of ORS 192.410 to 192.500 relating to public records the fingerprints, photographs, records and reports compiled under ORS 137.225, 181.010, 181.511, 181.521, 181.555, 481.125 (2) and this section are confidential and exempt from public inspection except:

(a) As ordered by a court;

(b) As provided in rules adopted by the department under ORS 183.310 to 183.550 to govern access to and use of computerized criminal offender information including access by an individual for review or challenge of the individual's own records; or

(c) As provided in ORS 181.555 and 181.560.

(2) The records of the department of crime reports to the department and of arrests made by the department, however, shall not be confidential and shall be available in the same manner as the records of arrest and reports of crimes of other law enforcement agencies under ORS 192.500 (1)(c). (1983 c.547 §7; 1973 c.794 §16; 1975 c.548 §7; 1979 c.518 §1; 1981 c.905 §3)

181.550 Reporting of crime statistics. (1) All law enforcement agencies shall report to the Executive Department statistics con-

cerning crimes:

(a) As directed by the Executive Department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation; and

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities but not individual criminal records.

(2) The Executive Department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein; and

(b) Special reports as directed by the Governor. [1973 c.130 §2]

181.555 Establishment of procedures for access to criminal record information. The department shall adopt rules under ORS 183.310 to 183.550 establishing procedures:

(1) To provide access to criminal offender information by criminal justice agencies and by other state and local agencies.

(2) (a) To permit a person or agency not included in subsection (1) of this section to inquire as to whether the department has compiled criminal offender information on an individual.

(b) To provide that any person making an inquiry under paragraph (a) of this subsection furnish the department with such information known to the inquirer as will assist the department in identifying and notifying the individual about whom the information is sought. If the information is sought by an employer for employment purposes, the employer first shall have advised the employee or prospective employee that such information might be sought and shall state upon making the request that the individual has been so advised and the manner in which the individual was so advised.

(3) To provide each individual about whom criminal offender information has been compiled the right to inspect and challenge that criminal offender information.

(4) Providing for purging or updating of inaccurate or incomplete information. [1973 c.548 §8; 1981 c.905 §6]

181.560 Procedure when information requested by other than criminal justice agency. (1) When a person or agency, other than a criminal justice agency or a law en-

forcement agency, pursuant to ORS 181.555 (2), requests from the department criminal offender information regarding an individual, if the department's compiled criminal offender information on the individual contains records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal, the department shall respond to the request as follows:

(a) The department shall send prompt written notice of the request to the individual about whom the request has been made. The department shall address the notice to the individual's last address known to the department and to the individual's address, if any, supplied by the person making the request. However, the department has no obligation to insure that the addresses are current. The notice shall state that the department has received a request for information concerning the individual and shall identify the person or agency making the request. Notice to the individual about whom the request is made shall include:

(A) A copy of all information to be supplied to the person or agency making the request;

(B) Notice to the individual of the manner in which the individual may become informed of the procedures adopted under ORS 181.555 (3) for challenging inaccurate criminal offender information; and

(C) Notice to the individual of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964, and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(b) Fourteen days after sending notice to the individual about whom the request is made, the department shall deliver to the person or agency making the request the following information if held regarding any convictions and any arrests less than one year old on which the records show no acquittal or dismissal:

(A) Date of arrest.

(B) Offense for which arrest was made.

(C) Arresting agency.

(D) Court of origin.

(E) Disposition, including sentence imposed, date of parole if any and parole revocations if any.

(c) The department shall deliver only the data authorized under paragraph (b) of this subsection.

(d) The department shall inform the person or agency requesting the criminal offender information that the department's response is being furnished only on the basis of similarity of names and description and that identification is not confirmed by fingerprints.

(2) If the department holds no criminal offender information on an individual, or the department's compiled criminal offender information on the individual consists only of nonconviction data, the department shall respond to a request under this section that the individual has no criminal record and shall release no further information.

(3) The department shall keep a record of all persons and agencies making inquiries under ORS 181.555 (2) and shall keep a record of the names of the individuals about whom such persons or agencies are inquiring, regardless of whether the department has compiled any criminal offender information on the individuals. These records shall be public records and shall be available for inspection under ORS 192.410 to 192.500.

(4) Nothing in ORS 181.066, 181.540, 181.555 or this section is intended to prevent the department from charging a reasonable fee, pursuant to ORS 192.440, for responding to a criminal offender information inquiry or for making information available under ORS 181.555 or this section. [1981 c.905 §5]

181.570 [1975 c.375 §1; repealed by 1979 c.485 §1]

181.525 Copy of certain disposition reports to Teacher Standards and Practices Commission and Department of Education

Whenever any court or district attorney receives a disposition report and the court or district attorney has cause to believe that the arrested person who is the subject of the report is an employee of a school district or is licensed as a school teacher or administrator and that the charge involves a violation of any crime listed in ORS 342.143 (3) or 342.175 (2), the court or district attorney shall cause the Teacher Standards and Practices Commission and the Department of Education to be sent a copy of the completed disposition report. [1987 c.503 § 4; 1993 c.674 § 2]

181.537 Criminal identification information available to Department of Human Resources and Employment Department

(1) Subject to subsection (2) of this section, the Department of Human Resources or the Employment Department may request and the Department of State Police shall furnish to the Department of Human Resources or the Employment Department such information as the Department of State Police may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information, concerning persons where criminal offender information is required:

(a) To implement a federal or state statute, executive order or rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct;

(b) For departmental employment purposes;

(c) For the purposes of Department of Human Resources and Employment Department licensing, certifying or regulating programs or persons that provide care or treatment to children; or

(d) For the purposes of employment decisions by private entities that provide care or treatment to children and that are regulated by the Department of Human Resources or the Employment Department.

(2) Subsequent to furnishing the information obtained under subsection (1) of this section, the Department of State Police shall conduct nationwide criminal record checks through the Federal Bureau of Investigation of persons described in subsection (1) of this section, including their fingerprints, and shall report the results to the Department of Human Resources or the Employment Department.

(3) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of Human Resources or the Employment Department shall cease to send the cards to the federal bureau but shall continue to process the information through other available resources.

(4) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the department shall return the fingerprint cards to the Department of Human Resources or the Employment Department. The Department of Human Resources or the Employment Department shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(5) The Department of Human Resources or the Employment Department, in consultation with the Department of State Police, shall adopt by rule definitions or descriptions of employees authorized to make criminal record inquiries and persons subject to criminal record inquiries, including fingerprints, for purposes of this section.

(6) The Department of State Police shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information. Any public or private agency receiving information pursuant to this section is bound by the rules of disclosure adopted by the department.

(7) For purposes of receiving the information described in this section, the Department of Human Resources and the Employment Department are each considered to be a "designated agency" under ORS 181.010 to 181.560 and 181.715 to 181.730 and the rules adopted under ORS 181.555. [1979 c.732 § 2; 1983 c.714 § 1; 1985 c.792 § 1; 1989 c.364 § 4; 1989 c.439 § 1; 1991 c.390 § 1; 1993 c.344 § 48; 1993 c.674 § 10; 1995 c.446 § 1]

181.538 Criminal identification information available to Native American tribe

(1) Upon the request of a Native American tribe, and in compliance with procedures adopted by the Department of State Police under ORS 181.555, the Department of State Police shall furnish to the authorized staff of the Native American tribe such information on a subject individual or contractor as the Department of State Police may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized criminal offender information. With the approval of the Department of State Police, a local law enforcement agency may furnish the information described in this subsection to a Native American tribe.

(2)(a) Subsequent to furnishing the information required under subsection (1) of this section, the Department of State Police shall conduct nationwide criminal records checks of the subject individual or contractor through the Federal Bureau of Investigation by use of the subject individual's or contractor's fingerprints and shall report the results to the staff of the Native American tribe, who must be specifically authorized to receive the information. In accordance with the procedures of the Department of State Police, a local law enforcement agency may conduct the criminal records check described in this paragraph if the local law enforcement agency has received approval under subsection (1) of this section.

(b) The Department of State Police shall return the fingerprint cards to the Native American tribe.

(3) For purposes of requesting and receiving the information and data described in subsections (1) and (2) of this section, Native American tribes are designated agencies for purposes of ORS 181.010 to 181.560 and 181.715 to 181.730.

(4) As used in this section:

(a) "Contractor" means any natural person or corporation, trust, association, partnership, joint venture, subsidiary or other business entity with whom a Native American tribe intends to contract for the purpose of providing supplies or services related to tribal gaming, or any control person of a contractor.

(b) "Control person" means:

(A) In a privately owned corporation, the officers, directors and stockholders of the parent company and, if applicable, each of its subsidiaries.

(B) In a publicly owned corporation, the officers and directors of the parent company, each of its subsidiaries and stockholders owning at least 15 percent of the company's stock.

(C) In a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(D) In an association, the members, officers and directors.

(E) In a partnership or joint venture, the general partners, limited partners or joint venturers.

(F) A member of the immediate family of any of the persons listed in subparagraphs (A) to (E) of this paragraph if the person is involved in the business.

(G) A subcontractor of a contractor, if the subcontractor performs more than 50 percent of the contractor's contract with the Native American tribe.

(c) "Native American tribe" means any recognized Native American tribe or band of tribes authorized by the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. 2701 et seq., and the State of Oregon to conduct gambling operations on tribal land.

(d) "Subject individual" means a person who is applying for employment at a tribal gaming facility as a key employee, high security employee, low security employee or management employee. [1995 c.723 § 1]

Note: 181.538 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 181 or any series therein by legislative action.

181.539 Criminal identification information available to Teacher Standards and Practices Commission and Department of Education

(1) Upon the request of the Teacher Standards and Practices Commission or the Department of Education, the Department of State Police shall furnish to the authorized staff of the Teacher Standards and Practices Commission or the Department of Education such information on a subject individual as the Department of State Police may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized criminal offender information.

(2)(a) Subsequent to furnishing the information required under subsection (1) of this section, the Department of State Police shall conduct nationwide criminal records checks of the subject individual through the Federal Bureau of Investigation by use of the subject individual's fingerprints and shall report the results to the staff of the Teacher Standards and Practices Commission or the Department of Education, who must be specifically authorized to receive the information.

(b) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the department shall cease to send the cards to the federal bureau but shall continue to process the information through other available resources.

(c) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the department shall return the fingerprint cards to the Teacher Standards and Practices Commission or the Department of Education. The Teacher Standards and Practices Commission or the Department of Education shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(3) For purposes of requesting and receiving the information and data described in subsections (1) and (2) of this section, the Teacher Standards and Practices Commission and the Department of Education are designated agencies for purposes of ORS 181.010 to 181.560 and 181.715 to 181.730.

(4) As used in this section, "subject individual" means:

(a) An individual who is applying for initial issuance of a license under ORS 342.120 to 342.430 as a teacher, administrator or personnel specialist if the individual has not submitted to a criminal records check within the previous year with the Teacher Standards and Practices Commission for the purpose of a criminal records check.

(b) An individual who is applying for reinstatement of a license as a teacher, administrator or personnel specialist whose license has lapsed for at least three years.

(c) An individual who is applying for initial issuance of a certificate under ORS 342.475 as a school nurse.

(d) A school district contractor, whether part-time or full-time, or an employee thereof, whether part-time or full-time, who has direct, unsupervised contact with students as determined by the district.

(e) An individual newly hired, whether part-time or full-time, by a school district in a capacity not described in paragraphs (a) to (c) of this subsection who has direct, unsupervised contact with children as determined by the district.

(f) An individual employee, whether part-time or full-time, of a school district in a capacity not described in paragraphs (a) to (c) of this subsection who has direct, unsupervised contact with children as determined by the district.

(g) An individual who is registering with the Teacher Standards and Practices Commission for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the individual has not submitted to a criminal records check within the previous year with the Teacher Standards and Practices Commission for student teaching, practicum or internship as a teacher, administrator or personnel specialist.

(h) An individual who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day.

(5) "Subject individual" does not include an individual described in subsection (4)(d), (e), (f) or (h) of this section if the individual or the individual's employer was checked in one school district and is currently seeking to work in another district unless the individual lived outside this state during the period between the two periods of time of working in the district.

(6) Nothing in this section shall be considered to require a subject individual as described in subsection (4)(d) or (e) of this section to submit to fingerprinting until the individual has been offered employment or a contract by a school district. Contractor employees shall not be required to submit to fingerprinting until the contractor has been offered a contract.

(7) As used in this section, "school district" means:

(a) A school district as defined in ORS 330.003.

(b) The Oregon State School for the Blind.

(c) The Oregon State School for the Deaf.

(d) An educational program under the Juvenile Corrections Education Program. [1993 c.674 § 3; 1995 c.67 § 39; 1995 c.446 § 2]

181.540 Confidentiality of some records

(1) Notwithstanding the provisions of ORS 192.410 to 192.505 relating to public records the fingerprints, photographs, records and reports compiled under ORS 137.225, 181.010, 181.511, 181.521, 181.555, 805.060 and this section are confidential and exempt from public inspection except:

(a) As ordered by a court;

(b) As provided in rules adopted by the department under ORS 183.310 to 183.550 to govern access to and use of computerized criminal offender information including access by an individual for review or challenge of the individual's own records;

(c) As provided in ORS 181.555 and 181.560;

(d) As provided in ORS 181.525; or

(e) As provided in ORS 418.747 (5).

(2) The records of the department of crime reports to the department and of arrests made by the department, however, shall not be confidential and shall be available in the same manner as the records of arrest and reports of crimes of other law enforcement agencies under ORS 192.501 (3). [1963 c.547 § 7; 1973 c.794 § 16; 1975 c.548 § 7; 1979 c.518 § 1; 1981 c.905 § 3; 1983 c.338 § 900; 1987 c.503 § 5; 1995 c.134 § 2]

181.575 Specific information not to be collected or maintained. No law enforcement agency, as defined in ORS 181.010, may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct. [1981 c.905 §8]

181.715 Criminal Justice Information System established; duties; application

(1) The Department of State Police shall establish a Criminal Justice Information System that coordinates information among state criminal justice agencies. The system shall:

- (a) Insure that in developing new information systems data can be retrieved to support evaluation of criminal justice programs and planning;
- (b) Insure that maximum effort is made for the safety of public safety officers;
- (c) Establish methods and standards for data interchange and information access between criminal justice information systems, in compliance with the technology standards and policies of the Oregon Department of Administrative Services;
- (d) Design and implement improved applications for exchange of agency information; and
- (e) Implement the capability to exchange images between criminal justice agencies.

(2) As used in this section and ORS 181.720, "criminal justice agencies" includes, but is not limited to:

- (a) The Judicial Department;
- (b) The Department of Corrections;
- (c) The Department of State Police;
- (d) The Department of Transportation;
- (e) The State Board of Parole and Post-Prison Supervision;
- (f) The Board on Public Safety Standards and Training;
- (g) The State Department of Fish and Wildlife; and
- (h) The Oregon Liquor Control Commission. [1993 c.188 § 5]

Cross References

Interstate agreements on crime prevention, see ORSA 131.685.

181.720 Duties of state criminal justice agencies

State criminal justice agencies, as part of their biennial information resource management plan, shall address the goals of the Criminal Justice Information System with particular attention to data access, availability and information sharing among criminal justice agencies. The plans must be based on industry standards for open systems to the greatest extent possible. A state criminal justice agency shall submit a copy of its information resource management plan to the Criminal Justice Information System's Advisory Board. [1993 c.188 § 7]

181.725 Criminal Justice Information System Advisory Board; members; expenses

(1) There is established a Criminal Justice Information Systems Advisory Board to advise the Department of State Police in the department's duties under ORS 181.715. The board consists of the following members:

- (a) The State Court Administrator or the administrator's designee;
 - (b) The Director of the Department of Corrections or the director's designee;
 - (c) The Superintendent of State Police or the superintendent's designee;
 - (d) The Executive Director of the Oregon Criminal Justice Commission or the executive director's designee;
 - (e) The Director of Transportation or the director's designee;
 - (f) The chairperson of the State Board of Parole and Post-Prison Supervision or the chairperson's designee;
 - (g) The executive director of the Board on Public Safety Standards and Training or the executive director's designee;
 - (h) A chief of police designated by the Oregon Association of Chiefs of Police;
 - (i) A sheriff designated by the Oregon Sheriffs' Association;
 - (j) A jail manager designated by the Oregon Jail Managers' Association; and
 - (k) The administrator of the information resource management division of the Oregon Department of Administrative Services or the administrator's designee.
- (2) The board shall meet at such times and places as the board deems necessary.
- (3) The members of the board are not entitled to compensation but are entitled to expenses as provided in ORS 292.495. [1993 c.188 § 6]

181.730 Law Enforcement Data System established; duties; rules

(1) There is established in the Department of State Police a Law Enforcement Data System.

(2) The Law Enforcement Data System shall:

- (a) Install and maintain a criminal justice telecommunication and information system for storage and retrieval of criminal justice information submitted by criminal justice agencies for the State of Oregon;
- (b) Function as the control point for access to similar programs operated by other states and the Federal Government;
- (c) Undertake other projects as are necessary or appropriate for the speedy collection and dissemination of information relating to crime and criminals; and
- (d) Provide service as available to all qualified criminal justice agencies and designated agencies.

(3) The department may adopt rules establishing procedures for the submission, access and dissemination of information by the Law Enforcement Data System. [1993 c.188 § 8]

137.225 Order setting aside conviction or record of arrest; prerequisites; limitations. (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 wherein that 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 dismissal of the charge, the arrested person may apply to the court which would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state shall not be included.

(2) 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 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 Bureau of Criminal Identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. Except as otherwise provided in subsection (11) 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, it shall enter an appropriate order which 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 bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an 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 such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

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

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

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

(B) Rape in the third degree under ORS 163.355;

(C) Sodomy in the third degree under ORS 163.385;

(D) Sexual abuse in the second degree under ORS 163.425; and

(E) Promoting prostitution under ORS 167.012.

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

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

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

(B) Rape in the third degree under ORS 163.355;

(C) Sodomy in the third degree under ORS 163.385;

(D) Sexual abuse in the second degree under ORS 163.425;

(E) Promoting prostitution under ORS 167.012; and

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

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(A) Sexual abuse in the third degree under ORS 163.415; and

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

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

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

(A) A Class C felony, except 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;

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

(vi) 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 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;

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

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

(C) A misdemeanor, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Sexual abuse in the third degree under ORS 163.415; and

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

(D) A violation.

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

(a) A person convicted of, or arrested 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 which 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

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is pending before the court is under charge of commission of any crime; or

(d) A person convicted of sexual exploitation of a child under ORS 163.670, dealing in depictions of a child's sexual conduct under ORS 163.673 or transporting child pornography into Oregon under ORS 163.677.

(7) The provisions of subsection (1)(b) of this section do not apply to 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.

(8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.

(9) 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 shall 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.

(10) 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 shall have no other effect on the orders setting aside the conviction or the arrest record.

(11) 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) Criminally negligent homicide, ORS 163.145.
- (k) Attempted robbery in the second degree, ORS 164.405.
- (l) Robbery in the third degree, ORS 164.395.
- (m) Supplying contraband, ORS 162.185.
- (n) Unlawful use of a weapon, ORS 166.220.

(12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594. [1971 c.434 § 2; 1973 c.680 § 3; 1973 c.689 § 1a; 1973 c.836 § 265; 1975 c.548 § 10; 1975 c.714 § 2; 1977 c.286 § 1; 1983 c.556 § 1; 1983 c.740 § 17; 1987 c.320 § 31; 1987 c.408 § 1; 1987 c.864 § 6; 1989 c.774 § 1; 1991 c.830 § 6; 1993 c.546 § 98; 1993 c.664 § 2; 1995 c.429 § 9; 1995 c.743 § 1]

Chapter 430

Expungement of Record

430.505 Expunction of verdict. If a person is diverted after conviction, but prior to sentencing, the court may order expunction from the record of the verdict of the court and all proceedings incident thereto upon successful completion of the diversion plan and a post-treatment period of three years, provided there have been no new convictions for misdemeanor or felony offenses. [1977 c.871 §20]

Chapter 192

Public Records

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of state-wide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or non-current, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon, and to assure the retention of records essential to meet the needs of the Legislative Assembly, the state,

its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State.
[1973 c.439 s.1]

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" means a document, book, paper, photograph, file, sound recording or other material, such as court files, mortgage and deed records, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public records" includes correspondence, public records made by photocopying and public writings, but does not include:

(a) Records of the Legislative Assembly, its committees, officers and employees.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Extra copies of a document, preserved only for convenience of reference.

(d) A stock of publications.

(6) "Public writing" means a written act or record of an act of a sovereign authority, official body, tribunal or public officer of this state, whether legislative, judicial or executive.

(7) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employees.
[1961 c.160 s.2; 1965 c.302 s.1]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate.

* * *

INSPECTION OF PUBLIC RECORDS

192.410 Definitions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, type-writing, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

[1973 c.794 a.2]

192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500.

[1973 c.794 a.3]

192.440 Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.

[1973 c.794 a.5]

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection. (1) Subject to ORS 192.480, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

[1973 c.794 a.6; 1975 c.308 a.2]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body

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are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under subsection (3) of ORS 192.450, unless he ordinarily serves as counsel for it.
[1973 c.794 s.7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.
[1975 c.308 s.5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

_____ (date)
I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)
2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person(s):

1. _____
(Name of public officer or employee;
title or position, if known)
 2. _____
(Name of public officer or employee;
title or position, if known)
- _____
(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General.
[1973 c.794 s.10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.
[1973 c.794 s.8]

192.490 Court authority in reviewing action denying right to inspect public

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged

under ORS 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 135.155, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 469.090, 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 722.414, 731.264 or 744.017;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable; and

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to subsection (3) of ORS 469.530.

(3) If any public record contains material which is not exempt under subsection (1), (2) or (4) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access thereto would substantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Governor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire June 14, 1975.
[1973 c.794 s.11; 1975 c.308 s.1; 1975 c.582 s.150; 1975 c.606 s.41a]

192.500 Public records exempt from disclosure

(1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

- (a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;
- (b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;
- (c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:
 - (A) The arrested person's name, age, residence, employment, marital status and similar biographical information;
 - (B) The offense with which the arrested person is charged;
 - (C) The conditions of release pursuant to ORS 135.230 to 135.290;
 - (D) The identity of and biographical information concerning both complaining party and victim;
 - (E) The identity of the investigating and arresting agency and the length of the investigation;
 - (F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
 - (G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

- (d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;
 - (e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;
 - (f) Information relating to the appraisal of real estate prior to its acquisition;
 - (g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;
 - (h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;
 - (i) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;
 - (j) The circulation records of a public library showing use of specific library materials by named persons;
 - (k) Records, reports and other information received or compiled by the director under ORS 697.732; and
 - (l) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.
- (2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:
- (a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not

- apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;
- (b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;
 - (c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;
 - (d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;
 - (e) Records, reports and other information received or compiled by the Superintendent of Banks in the administration of ORS chapters 723, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;
 - (f) Reports made to or filed with the court under ORS 137.077 or 137.530;
 - (g) Any public records or information the disclosure of which is prohibited by federal law or regulations;
 - (h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 9.545, 40.225 to 40.295, 41.675, 56.100, 57.850, 135.155, 146.780, 147.115, 173.230, 179.495, 181.540, 251.145, 308.290, 308.413, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 351.070, 410.150, 410.690, 411.320, 418.135, 418.770, 419.567, 441.113, 441.671, 469.090, 476.090, 482.141, 483.610, 656.702, 657.665, 671.550, 673.710, 677.425, 678.126, 679.280, 684.023, 684.100, 706.720, 706.730, 722.414, 731.264, 731.312,

734.650, 734.830, 744.017, 756.075, 760.140, 761.421, 767.644 or ORS chapter 432;

- (i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;
- (j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530 (3); and
- (k) Employee and retiree address, telephone number and other nonfinancial membership records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

[1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 § 41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 § 400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 § 92; 1981 c.905 §7; 1983 c.17 §29; 1983 c.198 §1; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9]

Cross References

- ORS 9.080(2)(a) Records of claim against lawyer's professional liability fund are exempt from disclosure
- ORS 9.545(2)(a) Confidentiality of information furnished to lawyer's assistance committees
- ORS 40.270 Public officer may not be examined as to public records exempt from disclosure
- ORS 56.100 Public records law inapplicable to electronic materials kept by Corporation Division
- ORS 118.525 Department of Revenue unauthorized to reveal inheritance tax information; exceptions
- ORS 119.515 Department of Revenue unauthorized to reveal gift tax information; exceptions
- ORS 144.210 Statements and information about convicted person committed to custody of Corrections Division
- ORS 146.750(3) Physicians' duties to report injury or abuse of person under 18 to medical examiner
- ORS 161.336(9) Confidentiality of medical, social, and criminal history of persons committed to jurisdiction of Psychiatric Security Review Board
- ORS 176.765 Governor shall keep certain energy resource information confidential

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- ORS 180.320 Confidentiality of certain information furnished to Support Enforcement Division
- ORS 251.145 Material in Voters' Pamphlet exempt from public inspection until fourth day after final filing date
- ORS 288.690 Records of registered bond ownership are not public records
- ORS 343.173(1) Parents' right to examine records of school district pertaining to placement of child in special education program
- ORS 351.065(5) Confidentiality of personnel records of employees of institutions, divisions, and departments under control of State Board of Higher Education
- ORS 410.690 Confidentiality of records and reports on abuse of elderly persons
- ORS 418.130 Confidentiality of information on persons applying for or receiving aid to dependent children
- ORS 418.770 Confidentiality of records and reports on child abuse
- ORS 419.567 Confidentiality of records and reports in juvenile court proceedings
- ORS 441.671 Confidentiality of records pertaining to abuse of patients in nursing homes
- ORS 469.090 Confidentiality of certain energy resource information
- ORS 488.176 Confidentiality of boating accident reports
- ORS 671.550 Confidentiality of information obtained by inspection of landscape contractor's business
- ORS 673.455(7) Confidentiality of records and information prepared by or for Standards Enforcement Committee of State Board of Accountancy
- ORS 677.425(1) Confidentiality of information provided to Board of Medical Examiners
- ORS 679.300 Privileged nature of data furnished to State Board of Dentistry
- ORS 697.732 Confidentiality of records and reports on investigation of debt consolidating agency
- ORS 761.421 Disclosure of hazardous waste reports and information to Environmental Protection Agency

ANNOTATIONS

OREGON CASES

1. In General
2. Under ORS 192.500(1)(a)
3. Under ORS 192.500(1)(c)
4. Under ORS 192.500(2)(a)
5. Under ORS 192.500(2)(b)
6. Under ORS 192.500(2)(c)
7. Under ORS 192.500(2)(d)
8. Under ORS 192.500(3)

1. In General

Since public policy favors disclosure of public records, the statutory exemption to disclosure set forth in ORS 192.500(1)(h) is narrowly construed. The purpose of the exemption is fulfilled by authorizing that disclosure be denied to members of the public exclusive of those directly involved in an unlawful employment practice dispute under ORS Ch. 659. Thus, in a proceeding between the Commission of Labor and an

employer accused of unlawful employment practices, the ordinary rules of discovery apply, and it was an error for the Commissioner to deny the employer the right to examine the Commissioner's investigatory file on the case against the employer. *Ogden v Bureau of Labor*, 68 Or App 235, 682 P2d 802 (1984).

It was not error to admit a witness's testimony about his opinion of the value of condemned property, even though the witness relied on information contained in an earlier appraisal report prepared by the witness's father. Even if the report were to be classed as information protected by the privilege contained in ORS 44.040(1)(e) (ORS 40.270), this privilege would not apply to bar the witness's testimony independent of the report, where there was no basis for concluding that the witness was a public official within the meaning of the privilege. *City of Portland v Nudelman*,

45 Or App 425, 608 P2d 1190 (1980).

The Public Records Act did not apply to a private taxpayer's business records, which the taxpayer sought to keep confidential from the Department of Revenue under the theory that disclosure would risk revealing sensitive information to business competitors. *Eola Concrete Tile & Products Co. v State*, 288 Or 241, 603 P2d 1181 (1979).

ORS 192.500 was not applicable to a case in which the facts occurred prior to the statute's effective date, regardless of which party misled the trial court into believing that the statute applied. *Ayers v Lee Enterprises, Inc.*, 277 Or 527, 561 P2d 998 (1977).

ORS 192.500(1) indicates that the Legislature generally intended that secrecy of public documents would last only as long as there was a reason for secrecy. *Jensen v Schiffman*, 24 Or App 11, 544 P2d 1048 (1976).

Under ORS 192.490(1), the burden is on the public body denying access to public records to sustain its action. The effect of this statutory rule is to be interpreted as assigning a burden of pleading to public agencies, regardless of where the ultimate burden of proof might lie. Thus, it behooves an agency that is arguing for nondisclosure of public records to, in its pleading: (1) describe the records in question with as much particularity as possible, consistent with the claim of confidentiality; and (2) indicate, separately for each record, the exemption or exemptions under ORS 192.500 that it claims to be applicable. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

For at least some categories of documents, the question of whether they are available for public inspection may be answered solely on the basis of the nature of the documents, without regard to the particular contents of the documents. Stated differently, in applying the exceptions to disclosure in ORS 192.500(1) and (2) there will be extremes at either end of a spectrum; certain categories of documents will always be

available for public inspection, regardless of their contents, and other classes of documents will never be available for inspection, regardless of their contents. Between these extremes, decisions may have to be based, at least in part, on the contents of individual documents. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

The testimony of a psychiatrist with experience in providing psychiatric reports to the Corrections Division, a District Parole and Probation Officer, and the Administrator of the Corrections Division was inadequate to establish that 46 documents relating to a convict's prison and parole records were exempt from disclosure under ORS 192.500, where the psychiatrist and the parole officer had neither written nor examined the documents, and the Administrator testified only that he was familiar "in general" with the convict's records, but did not testify specifically about any of the documents. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

A professor was entitled to inspect a report made to university officials under the terms of former ORS 192.030, even if it could be assumed without deciding that ORS 44.040(1)(e) (ORS 40.270) was a limitation on ORS 192.030, where the Board of Higher Education had failed to show that the report was received in official confidence or that the public interest would be impaired by the disclosure of the report. *Papadopoulos v State Board of Higher Education*, 8 Or App 445, 494 P2d 260 (1972).

2. Under ORS 192.500(1)(a)

A probationary school teacher was informed by a school district that her contract would not be renewed. She sought disclosure of the minutes of a school board meeting, of which she had not been informed, during which the board had reached a consensus not to rehire her. She also sought disclosure of the hearing record of another probationary teacher. Both requests were denied. The Court of Appeals ruled that the records subject to disclosure

under ORS 192.410, 192.420, and 192.490, and were not exempted from disclosure by ORS 192.500(1)(a) as records pertaining to litigation. Under ORS 192.420, it was irrelevant that the teacher did not state or have an adequate purpose to request the records. There was no evidence that her request was unduly burdensome to the district. Also, the fact that the teacher did receive the records before her trial on her writ of review seeking reinstatement was no reason for refusing to produce the records, since not all of the issues raised were resolved by turning over the records. Thus, the teacher's possession of the records did not justify the trial court in refusing to declare that they were public and subject to disclosure. *Smith v School District No. 45, Clackamas County*, 63 Or App 685, 666 P2d 1345 (1983), rev den 295 Or 731, 773, 670 P2d 1036 (1983).

Under ORS 192.500(1)(a), public records are exempt from disclosure only when the records contain information compiled or acquired by the public body for use in ongoing litigation, or, if a complaint has not been filed but the public body shows that such litigation is reasonably likely to occur. Thus, a substitute teacher roster and related documents were not exempted from disclosure by the statute, where there was no ongoing litigation against the district and no evidence that the records were compiled because litigation was likely to occur. *Lane County School District No. 4J v Parks*, 55 Or App 416, 637 P2d 1383 (1981), rev den 293 Or 103, 648 P2d 850 (1982).

3. Under ORS 192.500(1)(c)

The exemption from public disclosure of investigatory information compiled for criminal law purposes under ORS 192.500(1)(c) is not limited to literal investigations of crimes, but includes investigations to determine whether a crime has been committed. *Jensen v Schiffman*, 24 Or App 11, 544 P2d 1048 (1976).

ORS 192.500(1)(c), providing exemp-

tion for public disclosure of investigatory information compiled for criminal law purposes, requires identification and balancing of the various reasons for secrecy. Thus, investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings, but investigations not connected with pending or contemplated proceedings will remain secret, generally speaking, only if the government establishes that disclosure would: (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life or physical safety of law enforcement personnel. *Jensen v Schiffman*, 24 Or App 11, 544 P2d 1048 (1976).

Prompted by various allegations of misconduct, a district attorney requested a county sheriff's department to investigate a city police department. The sheriff's department submitted a report to the district attorney. Disclosure of this report was sought by a private citizen under ORS 192.410 et seq. Based on an in camera inspection of the report, the Court of Appeals held that it was not exempt from disclosure under ORS 192.500(1)(c), where the district attorney stipulated that no prosecutions were contemplated as a result of the investigation, and the report dealt primarily with the conduct of public servants in the performance of their public duties. However, the case was remanded to permit the district attorney to reconsider his refusal to turn over the records in light of the Court of Appeals' opinion. *Jensen v Schiffman*, 24 Or App 11, 544 P2d 1048 (1976).

4. Under ORS 192.500(2)(a)

Subjective evaluations and recommendations to the Parole Board, including recommendations as to whether to grant, deny, or revoke parole, constitute material of an advisory nature preliminary to an agency determination of action. Such records are exempted from public disclosure by ORS 192.500(2)(a) because the public interest in encouraging frank communication with the Parole Board clearly outweighs the public interest in disclosure. However, purely factual data given to the Parole Board is subject to disclosure. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

ORS 192.500(2)(a) did not exempt from public disclosure documents held by the Corrections Division that were, or might prove to be, embarrassing to division officials. Public records that are per se available for public inspection include records where the only interest in confidentiality is to protect public officials from criticism for the way they have discharged their public duties. Such records included public speeches, legislative testimony, newspaper stories, and television appearances by a parolee that were critical of the corrections system. *Turner v Reed*, 22 Or App 171, 538 P2d 373 (1975).

5. Under ORS 192.500(2)(b)

The names and addresses of part-time instructors employed by a community college were not exempt from disclosure as public records by ORS 192.500(2)(b) as information of a personal nature. Such information is not of the type that "normally would not be shared with strangers." Addresses are commonly listed in telephone directories, printed on checks, provided to merchants, and appear on identification, such as drivers licenses, that is routinely shown to strangers. *Kotulski v Mt. Hood Community College*, 62 Or App 452, 660 P2d 1083 (1983).

The exemption to disclosure of public records set forth in ORS 192.500(2)(b) is

to be narrowly construed. Also, construction of this provision does not depend on who requests the information or the circumstances existing at the time of the request. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The phrase, "such as that kept in a personal, medical or similar file" used in ORS 192.500(2)(b) is illustrative, rather than limiting, since it uses words like "such as" and "similar." Also, the exemption in ORS 192.500(2)(b) does not turn on the existence of a "file." *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The phrase "information of a personal nature" as used in ORS 192.500(2)(b) means information that normally would not be shared with strangers. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Under ORS 192.490(1), the public body seeking to deny access to public records under ORS 192.500(2)(b) has the general burden of sustaining its action in denying disclosure, even though the ultimate burden to prove that public disclosure outweighs the right to privacy may lie with the person making the request for disclosure. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Whether information is of a personal nature under ORS 192.500(2)(b) does not depend on an inquiry into the unreasonableness of the invasion of privacy that would be occasioned by public disclosure. The last sentence of ORS 192.500(2)(b) expressly shifts the burden of proof to the party seeking disclosure to show that public disclosure would not constitute an unreasonable invasion of privacy. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den

291 Or 893, 642 P2d 309 (1981).

The phrase "in the particular instance" as used in ORS 192.500(2)(b) acquires significance only if information sought to be exempted from public disclosure initially fits into the category, and if the invasion of privacy is not shown not to be unreasonable, but the public interest clearly requires disclosure "in the particular instance." Furthermore, the party seeking the information must show that "public disclosure" would not constitute an unreasonable invasion of privacy; the term "public" indicates that the focus is on the effect of disclosure in general, not disclosure to a particular person at a particular time. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The exemption from disclosure of public records under ORS 192.500(2)(b) is applicable if: (1) the information requested is within the category, the burden of proof being on the public body; and (2) public disclosure would constitute an unreasonable invasion of privacy, the burden of disproof being on the person requesting the information, unless; (3) the public interest is shown by clear and convincing evidence to require disclosure. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Information not otherwise personal, but which may become personal by reason of the context of a particular request, does not fall within the exemption from disclosure of public records set forth in ORS 192.500(2)(b). Thus, a list of names of substitute teachers in a school district, which was requested by a teachers' union, was not exempted from disclosure by the statute. One's name or identity as a substitute teacher is not personal information, as it would be readily available to parents of students and other parties. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

6. Under ORS 192.500(2)(c)

The names and addresses of part-time faculty employed by a community college were not exempt from disclosure as public records by ORS 192.500(2)(c) as information submitted to a public body in confidence, where the addresses were provided by faculty members in their initial application forms and retained in files kept by the college, but the applicants were never informed that the information would be confidential. *Kotulski v Mt. Hood Community College*, 62 Or App 452, 660 P2d 1083 (1983).

A substitute teacher roster and related documents were not exempted from public disclosure by a school district under ORS 192.500(2)(c) as information submitted to a public body in confidence, where the records contained no information that the school district obliged itself not to disclose. *Lane County School District No. 4J v Parks*, 55 Or App 416, 637 P2d 1383 (1981), rev den 293 Or 103, 648 P2d 850 (1982).

To avail itself of the exemption for disclosure of public information in ORS 192.500(2)(c), the public body must establish that the information sought to be exempted was submitted to it in confidence at the outset. A list of the names and addresses of substitute teachers was not submitted in confidence to a school district under this statute, where there was no evidence that the substitute teachers had submitted their names in confidence. *Morrison v School District No. 48, Washington County*, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Under ORS 192.500(2)(c), communications to the Oregon State Bar relating to the professional conduct of an attorney were not exempt from public disclosure, where there was no evidence that they were submitted in confidence and it was clear that the bar could not oblige itself in good faith not to disclose the information. *Sadler v Oregon State Bar*, 275 Or 279, 550 P2d 1218 (1976).

7. Under ORS 192.500(2)(d)

Information about a convicted person's family life, including comments by his wife about their marriage, which is normally regarded as personal in nature, is exempted from public disclosure by ORS 192.500(2)(d). Factual information about a convicted person's family life, such as that he is married or a parent, would be subject to disclosure as information normally not considered personal or kept from strangers. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

Disclosure of psychiatric examination reports that are part of the records of the Corrections Division would substantially prejudice the carrying out of the division's functions. Thus, the public interest in confidentiality clearly outweighs the public interest in disclosure of such reports, and they are exempt from disclosure under ORS 192.500(2)(d). This rule applies specifically to the literal findings of a psychiatrist or psychologist that are expressed in the professional's own words, but no decision is reached as to paraphrases or summaries of professional findings that are written by laypersons. *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

8. Under ORS 192.500(3)

ORS 192.500(3) only requires editing of documents when segregating exempt and nonexempt material is: (1) reasonably possible; and (2) can be done so as to genuinely preserve the confidentiality of exempt material. However, where editing of documents was neither impossible nor even difficult, a public agency should have been required to comply with ORS 192.500(3). *Turner v Reed*, 22 Or App 177, 538 P2d 373 (1975).

ATTORNEY GENERAL OPINIONS

The Oregon Investment Council's technical reports, prepared by money managers and consultants, and written evaluations of money managers, prepared by financial consultants, can be kept

confidential through an executive session if the conditions of ORS 192.500(2)(c) are met. 42 Op Att'y Gen 392, 402 (1982).

An executive session may be used to consider a public record if the record meets the requirements of ORS 192.500(2)(c) concerning information submitted in confidence. 42 Op Att'y Gen 392, 398 (1982).

Records of the juvenile court, made confidential by ORS 419.567, are exempt from public disclosure under the Public Records Act, ORS 192.500(1)(c). 42 Op Att'y Gen 17 (1981).

Under ORS 192.500(3), records partly disclosable and partly exempt from disclosure must be separated by the cognizant public body. 41 Op Att'y Gen 437 (1981).

Completed forms used to evaluate a district school superintendent, which do not include information of a personal nature, are not within the disclosure exemption found in ORS 192.500(2)(b), especially where there is a clear public interest in knowing how the superintendent is performing. 41 Op Att'y Gen 437 (1981).

Under ORS 192.500(2)(b), personal information on applications for public library cards or library privileges, and records showing use of specific material by named persons, are exempt from disclosure under ORS 192.410 to 192.500, to the extent that disclosure would be an unreasonable invasion of privacy. However, the information may still be disclosed if the public interest clearly and convincingly requires disclosure. 41 Op Att'y Gen 435 (1981).

Drafts of orders under consideration by the Land Use Board of Appeals, as well as drafts of the recommendations the Board will make to LCDC, are exempt from disclosure under ORS 192.500(2), which exempts communications of a "preliminary," advisory nature. Accordingly, the drafts are not subject to disclosure until the final order is issued or the Board's recommendation is

transmitted to LCDC. 41 Op Att'y Gen 218 (1980).

ORS 192.500(2)(c) protects informants who submit information regarding the conditions found in a long-term health care facility where the information is outside the reporting requirements of Oregon Laws 1979, Ch. 770, § 9 relating to patient abuse. 40 Op Att'y Gen 155, 159 (1979).

The Board of Parole must disclose to prisoners, prior to parole, all information submitted pursuant to ORS 144.210 except for that material exempted from disclosure by ORS 192.500(2)(d). 38 Op Att'y Gen 1881 (1978).

Where a public body determines that the public interest in material within an ORS 192.500 exemption justifies a conditional disclosure of the material to the press, the body may give partial or conditional disclosure to the press. The only enforcement mechanism available if the stipulation is violated is a refusal to release other exempt material in the future. 38 Op Att'y Gen 1761 (1978).

Background materials regarding agency matters before city and county governing bodies, given to governing body members prior to public hearing, are public records under ORS 192.410 and are subject to disclosure unless exempted by ORS 192.500. 38 Op Att'y Gen 1761 (1978).

Student records at a state university fall within the definition of "public record" found in ORS 192.005(5). Student records are public records notwithstanding ORS 351.065(5). ORS 192.500 exempts certain records from disclosure, including student and faculty records covered by ORS 351.065, but does not change their status as public

records. 38 Op Att'y Gen 945, 948 (1977).

The only criminal records subject to ORS 192.410 to ORS 192.500 are reports of crime and a record of arrest, although disclosure of both of those records may be delayed with cause. All other criminal investigatory material is exempt from disclosure by ORS 192.500(1)(c), unless the public interest requires disclosure in a particular instance. 37 Op Att'y Gen 126 (1974).

Notwithstanding ORS 311.280(1), which states that unrecorded deeds, contracts of sale, or other documents indicating a purchaser's interest filed with the county tax assessor do not constitute public records, those documents are public records under the provisions of the later enacted Public Records Law and are not within any of the exemptions to that law found in ORS 192.500. Accordingly, they must be made available for inspection upon request. 37 Op Att'y Gen 98 (1974).

Non-medical information contained in a confidential medical file may be disclosed unless it is of a "personal nature," in which case it is exempt from disclosure under ORS 192.500(2)(b). 36 Op Att'y Gen 1080, 1085 (1974).

ORS 192.500(1)(c) merely authorizes nondisclosure of investigatory information compiled for criminal law purposes; it does not prohibit such disclosure. 36 Op Att'y Gen 786 (1974).

A person's name, identity, and professional business address are not "information of a personal nature" for purposes of ORS 192.500(2)(b). 36 Op Att'y Gen 543 (1974).

OREGON

OREGON ADMINISTRATIVE RULES

CHAPTER 257

OREGON STATE POLICE

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DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

Scope of System

257-10-010 Rules adopted herein relate solely to the Oregon Criminal Offender Information System as maintained by the Oregon State Police. The Rules do not affect in any way other agencies' original records of arrest, arrest logs, or reports of crimes available for inspection under terms of the Oregon Public Records Law (ORS 192.410 to 192.500).

Oregon Criminal Offender Information files contain information, contributed by Criminal Justice Agencies, on a person's record of arrests, the nature and disposition of criminal charges, sentencing, confinement, and release, plus identifying data only relating to fingerprints of applicants submitted under Oregon Law. These files shall not permanently contain information about the political, religious, or social views, associations, or activities of any individual, group, association, corporation, business, or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities.

The Oregon CCH System is a computerization of essentially the same criminal offender information, and is maintained by the OSP under provisions of Oregon Law. Computerization of the manually accessed paper file is designed to provide faster access to criminal offender information for Oregon Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4.

Eff. 4-30-76

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257-10-015 As used in these rules:

(1) "Criminal Offender Information" means records and related data, including fingerprints, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(2) "Computerized Criminal History (CCH) System" means the maintenance in online computer files of significant criminal offender information.

(3) "OSP" means the Oregon State Police and includes the OSP Bureau of Criminal Identification.

(4) "LEDS" means the Oregon Law Enforcement Data System.

(5) "Oregon CCH System" means the Oregon Computerized Criminal History System.

(6) "NCIC-CCH System" means the national computerized criminal history system maintained and operated by the FBI.

(7) "Interstate System" means the NCIC-CCH system and the network of participating states and agencies.

(8) "Criminal Justice Agency" means:

- (a) The Governor
- (b) Courts of Criminal Jurisdiction
- (c) The Attorney General
- (d) District Attorneys
- (e) Law Enforcement Agencies
- (f) The Corrections Division
- (g) The State Board of Parole, and
- (h) Any other state or local agency designated by order of the Governor.

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(9) "State Control Terminal" means the agency within each state responsible for the NCIC interface to that state.

(10) "Law Enforcement Agency" means County Sheriffs, Municipal Police Departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(11) "Criminal Records Council" means that Council, advisory to the Governor established under the provisions of Executive Order 75-23.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

System Responsibilities

257-10-020 (1) Oregon State Police.

(a) Maintenance and Dissemination of Criminal Offender Information. The Oregon State Police has statutory and administrative responsibility for the maintenance and dissemination of criminal offender information in Oregon.

(b) Accuracy and Completeness of Information. Information entered into Criminal Offender Information files is based on written documents submitted to the OSP by Criminal Justice Agencies reporting their record of official action, which documents contain fingerprint or other verification as to the identity of the individual to whom the information refers.

OSP is responsible for the accuracy and completeness of information entered into the Oregon Criminal Offender Information System and any information subsequently transmitted for inclusion in the NCIC-CCH System.

This responsibility extends only to information contained in the documents as submitted to OSP.

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(c) Removal of Information. OSP is responsible for removal of information from the Oregon Criminal Offender Information and the NCIC-CCH System where required by law or court order. In the event the OSP discovers there has been an erroneous entry in criminal offender information records maintained by it, it shall make a reasonable effort to notify any recipient person or agency known to have received such information within a reasonable period preceding discovery of the error, of the fact of such error and of the correct information. Any such erroneous or inaccurate information shall be purged from the record and replaced by the correct information.

(d) Entry of Information. Only terminals located at OSP or others designated by the Superintendent of the OSP are allowed to enter records into the Oregon system or to change existing records.

(e) Information to Qualified Criminal Justice Agencies. OSP is responsible for providing Criminal Offender information to qualified Criminal Justice Agencies. Such information will be furnished, after proper inquiry, in either computerized form, via LEDS or document form.

(f) Development of Operational Procedures. OSP is responsible for development of operational procedures to be followed by Criminal Justice Agencies having access to Oregon Criminal Offender Information and NCIC-CCH files.

(g) All Criminal Offender information distributed by the OSP shall contain a notice in writing in substantially the following language: "All persons are advised that the information contained in this report can only be considered accurate for a period of six months from the date of this report. For accurate information, new inquiry must be made."

All agencies shall insofar as is feasible, taking into consideration the then existing capability of the OSP to respond, request and obtain a current criminal offender information record when that record is to be disseminated outside that agency.

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(2) Law Enforcement Data System - Executive Department.

(a) NCIC Control Terminal Responsibility. LEDS is the "state control terminal" for the NCIC interface to Oregon and is responsible for assuring that all policies and rules for access to the Oregon or the NCIC-CCH System are adhered to by Oregon user agencies.

(b) System Development and Operation. LEDS is responsible for providing the computer hardware and software capabilities necessary to insure that efficient processing and integrity of the information stored in the Oregon CCH System and for interfacing to the NCIC-CCH System.

(c) Physical Security of Computer Installation. LEDS is responsible for development and implementation of policies and procedures to safeguard the CCH information at the central computer site from accidental or malicious damage or unauthorized access or use.

(d) Audit and Inspection of the User Agencies. LEDS is responsible for periodically auditing and inspecting each terminal location accessing CCH or the FBI NCIC-CCH to insure compliance with the published rules, policies, and procedures.

CCH terminal transaction records will be maintained at and by LEDS and will be made available to participating Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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Access to and Use of Criminal Offender Information

257-10-025 (1) Access to OSP Criminal Offender information by any means shall be limited to:

(a) Criminal Justice Agencies, where the information is to be used for criminal justice purposes or criminal justice agency employment.

(b) Other state and local agencies, after application to the Criminal Records Council and upon Executive Order of the Governor, where the information is required to implement a Federal or State Statute or Executive Order that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct.

(2) Access to CCH information by means of terminals shall be limited to authorized Criminal Justice Agencies using their agency identification number (ORI).

(3) Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies outside the Criminal Justice community is prohibited.

(4) Criminal Offender information may be furnished only to authorized agency employees and no person who has been convicted of a crime which could have resulted in a sentence to a Federal or State Penitentiary will be allowed to operate a terminal accessing CCH information or have access to Criminal Offender information.

Exceptions to this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of the OSP will maintain a central file where such exception authorization shall be filed.

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(5) Screening of Criminal Justice Agency and Regional Criminal Justice information system employees who have access to CCH or Criminal Offender Information records is the responsibility of the employing agency.

(6) Any Criminal Justice Agency obtaining Criminal Offender information or NCIC-CCH information, either directly through that agency's terminals, or through the terminal of another Criminal Justice Agency, must have executed a written agreement with the OSP prior to such access.

(7) Security of Terminals. Any terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such terminal.

(8) Security of Criminal Offender Information Records. Any Criminal Justice Agency obtaining Criminal Offender information shall maintain those records in secure files until they are destroyed by burning or shredding, and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of Criminal Offender Information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible.

Plain text transmission of an entire (summary or full CCH) record is prohibited.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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Criminal Justice Research and Evaluation Projects

257-10-030 Criminal Offender information will be made available to qualified persons for research and evaluation related to criminal justice activity upon written application to the Criminal Records Council or, in exigent circumstances for temporary access to the Superintendent of the Oregon State Police but authorization to utilize such information will be conditioned upon:

(1) The execution of nondisclosure agreements by all participants in the program.

(2) When such qualified persons acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects of such information divorced as fully as possible from the data received, and agree to comply with any additional requirements and conditions found necessary to assure the protection of personal privacy and system security interests, and,

(3) When a specific agreement is executed between such qualified persons and the OSP, the agreement stating the scope of the project, the permissible dissemination of information for any purpose other than that for which it was obtained.

(4) Where temporary access is authorized by the Superintendent of the OSP, he shall report the reasons for such temporary grant to the Criminal Records Council for review and comment at its next regular meeting. No temporary grant of access shall be valid for more than 30 days or after the next regularly scheduled Council meeting, whichever period is longer.

(5) OSP and LEDS will retain the right to monitor and audit any approved criminal justice research and evaluation project and to terminate access to CCH or Criminal Offender information if a violation of this rule is detected.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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Access by Individuals for Purpose of Review and/or Challenge

257-10-035 (1) Any individual desiring to review information concerning himself maintained in the OSP Criminal Offender Record System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any State or Federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of challenge or correction. The OSP shall not charge an individual for a reasonable request to provide him with a copy of Criminal Offender information which refers to him.

(2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police. The request for review may be made at the General Headquarters of the Oregon State Police, Salem, Oregon, or through any Oregon Criminal Justice Agency. The OSP may prescribe reasonable hours and places of inspection.

If the request is made at other than the General Headquarters of the Oregon State Police and, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be forwarded to the Criminal Justice Agency to whom the request was made.

(3) Upon receipt of such record that agency shall furnish same to the individual named in the record and at the same time return to that individual the fingerprints submitted for positive identification.

(4) All data included in the Criminal Offender information record is obtained from contributing Criminal Justice Agencies.

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If after review of the information concerning himself as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information, requesting the appropriate agency to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency.

(5) Any individual whose record is not removed, modified, or corrected as he may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review.

After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.

(6) Any Criminal Justice Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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Annual Audits

257-10-040 At least once annually, the Governor shall cause to be conducted a random audit of the practices and procedures of the OSP and LEDS concerning information collected and disseminated pursuant to Executive Orders 74-6 and 75-23 and these rules to insure compliance with the requirements and restrictions set forth.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

Violation of Rules

257-10-045 Willful violation of published rules relating to Criminal Offender Information record by any authorized agency or employee may result in immediate termination of such agency's right to receive such information from the Oregon System and/or the NCIC-CCH System.

Reinstatement will be effected only upon demonstration by the Agency that the cause of such violation has been corrected. Final determination as to the reinstatement of any agency so terminated will be the responsibility of the OSP.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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Rights of Appeal

257-10-050 A Criminal Justice Agency or employee desiring to appeal any action, order, or administrative ruling by the OSP or LEDS may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act relating to contested cases and judicial review.

Statutory Authority: ORS Chapter 181

Hist: Filed 6-14-74 as DSP 2,

Eff. 7-11-74

Amended 4-22-76 by DSP 4,

Eff. 4-30-76

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OREGON ADVANCE LEGISLATIVE SERVICE

67TH OREGON LEGISLATIVE ASSEMBLY, 1993 REGULAR SESSION

CHAPTER 664

HOUSE BILL 2254

1993 Ore. ALS 664; 1993 Ore. Law 664; 1993 Ore. HB 2254

SYNOPSIS: AN ACT Relating to criminal law; amending ORS 137.225 and 163.115.

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

[*2] SECTION 2. 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 wherein that 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 dismissal of the charge, the arrested person may apply to the court which would have jurisdiction over the crime for which the person was arrested, for entry of order setting aside the record of such arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state shall not be included.

(2) 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 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 Bureau of Criminal Identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. [A] EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11) OF THIS SECTION, [A] 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, it shall enter an appropriate order which 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 bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an 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.

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(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 such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

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

(a) A Class C felony, except for the following crimes when they would constitute child abuse as defined in ORS 418.740:

- (A) Criminal mistreatment in the first degree under ORS 163.205;
- (B) Rape in the third degree under ORS 163.355;
- (C) Sodomy in the third degree under ORS 163.385;
- (D) Sexual abuse in the second degree under ORS 163.425; and
- (E) Promoting prostitution under ORS 167.012.

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

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for the following crimes when they would constitute child abuse as defined in ORS 418.740:

- (A) Criminal mistreatment in the first degree under ORS 163.205;
- (B) Rape in the third degree under ORS 163.355;
- (C) Sodomy in the third degree under ORS 163.385;
- (D) Sexual abuse in the second degree under ORS 163.425; and
- (E) Promoting prostitution under ORS 167.012.
- (F) Endangering the welfare of a minor under ORS 163.575 (1) (a).

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for the following crimes when they would constitute child abuse as defined in ORS 418.740:

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(A) Sexual abuse in the third degree under ORS 163.415; and

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

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

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

(A) A Class C felony, except for the following crimes when they would constitute child abuse as defined in ORS 418.740:

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

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

(vi) 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 the following crimes when they would constitute child abuse as defined in ORS 417.470:

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

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

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

(C) A misdemeanor, except for the following crimes when they would constitute child abuse as defined in ORS 418.740:

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(i) Sexual abuse in the third degree under ORS 163.415; and

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

(D) A violation.

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

(a) A person convicted of, or arrested 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 which 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; or

(d) A person convicted of sexual exploitation of a child under ORS 163.670, dealing in depictions of a child's sexual conduct under ORS 163.673 or transporting child pornography into Oregon under ORS 163.677.

(7) The provisions of subsection (1)(b) of this section do not apply to 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.

(8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.

(9) 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 shall 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.

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(10) 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 shall have no other effect on the orders setting aside the conviction or the arrest record.

[A> (11) 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]

[A> (A) ABANDONMENT OF A CHILD, ORS 163.535. <A]

[A> (B) ATTEMPTED ASSAULT IN THE SECOND DEGREE, ORS 163.175. <A]

[A> (C) ASSAULT IN THE THIRD DEGREE, ORS 163.165. <A]

[A> (D) COERCION, ORS 163.275. <A]

[A> (E) CRIMINAL MISTREATMENT IN THE FIRST DEGREE, ORS 163.205. <A]

[A> (F) ATTEMPTED ESCAPE IN THE FIRST DEGREE, ORS 162.165. <A]

[A> (G) INCEST, ORS 163.525. <A]

[A> (H) INTIMIDATION IN THE FIRST DEGREE, ORS 166.165. <A]

[A> (I) ATTEMPTED KIDNAPPING IN THE SECOND DEGREE, ORS 163.225. <A]

[A> (J) CRIMINALLY NEGLIGENT HOMICIDE, ORS 163.145. <A]

[A> (K) ATTEMPTED COMPELLING PROSTITUTION, ORS 167.017. <A]

[A> (L) PROMOTING PROSTITUTION, ORS 167.012. <A]

[A> (M) ATTEMPTED RAPE IN THE SECOND DEGREE, ORS 163.365. <A]

[A> (N) RAPE IN THE THIRD DEGREE, ORS 163.355. <A]

[A> (O) ATTEMPTED ROBBERY IN THE SECOND DEGREE, ORS 164.405. <A]

[A> (P) ROBBERY IN THE THIRD DEGREE, ORS 164.395. <A]

[A> (Q) SEXUAL ABUSE IN THE SECOND DEGREE, ORS 163.425. <A]

[A> (R) ATTEMPTED SODOMY IN THE SECOND DEGREE, ORS 163.395. <A]

[A> (S) SODOMY IN THE THIRD DEGREE, ORS 163.385. <A]

[A> (T) SUPPLYING CONTRABAND, ORS 162.185. <A]

[A> (U) UNLAWFUL USE OF A WEAPON, ORS 166.220. <A]

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OREGON ADVANCE LEGISLATIVE SERVICE

67TH OREGON LEGISLATIVE ASSEMBLY, 1993 REGULAR SESSION

CHAPTER 546

SENATE BILL 1051

1993 Ore. ALS 546; 1993 Ore. Law 546; 1993 Ore. SB 1051

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

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

(2) 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 violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity 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 Bureau of Criminal Identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. 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, it shall enter an appropriate order which 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 bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an 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

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Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

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

(a) A Class C felony, except for the following crimes when they would constitute child abuse as defined in [D> ORS 418.740 <D] [A> SECTION 12 OF THIS 1993 ACT <A] :

- (A) Criminal mistreatment in the first degree under ORS 163.205;
- (B) Rape in the third degree under ORS 163.355;
- (C) Sodomy in the third degree under ORS 163.385;
- (D) Sexual abuse in the second degree under ORS 163.425; and
- (E) Promoting prostitution under ORS 167.012.

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

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except the following crimes when they would constitute child abuse defined in [D> ORS 418.740 <D] [A> SECTION 12 OF THIS 1993 ACT <A] :

- (A) Criminal mistreatment in the first degree under ORS 163.205;
- (B) Rape in the third degree under ORS 163.355;
- (C) Sodomy in the third degree under ORS 163.385;
- (D) Sexual abuse in the second degree under ORS 163.425;
- (E) Promoting prostitution under ORS 167.012; and
- (F) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for the following crimes when they would constitute child abuse as defined in [D> ORS 418.740 <D] [A> SECTION 12 OF

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THIS 1993 ACT <A] :

(A) Sexual abuse in the third degree under ORS 163.415; and

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

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

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

(A) A Class C felony, except for the following crimes when they would constitute child abuse as defined in [D> ORS 418.740 <D] [A> SECTION 12 OF THIS 1993 ACT <A] :

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

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

(vi) 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 the following crimes when they would constitute child abuse as defined in [D> ORS 418.740 <D] [A> SECTION 12 OF THIS 1993 ACT <A] :

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

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

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

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(C) A misdemeanor, except for the following crimes when they would constitute child abuse as defined in [D] ORS 418.740 [A] SECTION 12 OF THIS 1993 ACT [A] :

(i) Sexual abuse in the third degree under ORS 163.415; and

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

(D) A violation.

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

(a) A person convicted of, or arrested 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 which 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;

(d) A person convicted of sexual exploitation of a child under ORS 163.670, dealing in depictions of a child's sexual conduct under ORS 163.673 or transporting child pornography into Oregon under ORS 163.677.

(7) The provisions of subsection (1)(b) of this section do not apply to 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.

(8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.

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(9) For the 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 shall 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.

(10) 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 shall have no other effect on the orders setting aside the conviction or the arrest record.

[*99] SECTION 99. ORS 146.750 is amended to read:

146.750. (1) Except as required in subsection (3) of this section, any physician, including any intern and resident, having reasonable cause to suspect that a person brought to the physician or coming before the physician for examination, care or treatment has had injury, as defined in ORS 146.710, inflicted upon the person other than by accidental means, shall report or cause reports to be made in accordance with the provisions of subsection (2) of this