

House Bill 2356

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys' Association)

SUMMARY

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

Modifies circumstances under which person may expunge criminal arrests and convictions.
Renames order setting aside conviction as order expunging conviction.

A BILL FOR AN ACT

1
2 Relating to expunction; creating new provisions; and amending ORS 40.355, 137.225, 137.281, 161.725,
3 181.085 and 181.534 and section 2, chapter 873, Oregon Laws 2007.

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

5 **SECTION 1.** ORS 137.225 is amended to read:

6 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
7 judgment, any defendant who has fully complied with and **successfully** performed the sentence of
8 the court and whose conviction is described in subsection (5) of this section [*by motion*] may [*apply*
9 *to*] **move** the court where the conviction was entered for entry of an order [*setting aside*] **expunging**
10 the conviction.[: *or*]

11 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
12 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
13 son may [*apply to*] **move** the court that would have jurisdiction over the crime for which the person
14 was arrested, for entry of an order [*setting aside*] **expunging** the record of the arrest. For the pur-
15 pose of computing the one-year period, time during which the arrested person has secreted himself
16 or herself within or without the state is not included. **With the consent of the district attorney,**
17 **the court may waive the one-year period in the interests of justice.**

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

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

30 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
31 a fee of \$80. The person shall attach a certified check payable to the Department of State Police in

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office
 2 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of
 3 State Police bureau of criminal identification.

4 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 5 the taking of such proofs as it deems proper. The court shall allow the victim to make a statement
 6 at the hearing. Except as otherwise provided in subsection [(11)] (10) of this section, if the court
 7 determines that the circumstances and behavior of the applicant from the date of conviction, or from
 8 the date of arrest as the case may be, to the date of the hearing on the motion warrant [*setting*
 9 *aside*] **expunging** the conviction, or the arrest record as the case may be, it shall enter an appro-
 10 priate order that shall state the original arrest charge and the conviction charge, if any and if dif-
 11 ferent from the original, date of charge, submitting agency and disposition. The order shall further
 12 state that positive identification has been established by the bureau and further identified as to state
 13 bureau number or submitting agency number. Upon the entry of the order, the applicant for pur-
 14 poses of the law shall be deemed not to have been previously convicted, or arrested as the case may
 15 be, and the court shall issue an order sealing the record of conviction and other official records in
 16 the case, including the records of arrest whether or not the arrest resulted in a further criminal
 17 proceeding.

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

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

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

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

28 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court[, *ex-*
 29 *cept for:*]

30 [(A) *Any sex crime; and*]

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (D) A violation.

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

8 (a) A *[person convicted of, or arrested for,]* **conviction or arrest for:**

9 **(A) A state or municipal traffic offense;**

10 **(B) A criminal offense that involves the operation of a motor vehicle;**

11 **(C) A sex crime;**

12 **(D) An offense that would constitute child abuse as defined in ORS 419B.005;**

13 **(E) A person crime, if the victim is the defendant's family or household member as de-**
 14 **defined in ORS 135.230;**

15 **(F) An offense that has serious physical injury or death as an element, unless the victim**
 16 **as defined in ORS 131.007 consents to the consideration of the motion by the court; or**

17 **(G) Criminally negligent homicide under ORS 163.145.**

18 (b) A person:

19 **(A)** Convicted, within the 10-year period immediately preceding the filing of the motion pursuant
 20 to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether
 21 or not the other conviction is for conduct associated with the same criminal episode that caused the
 22 arrest or conviction that is sought to be *[set aside]* **expunged**. Notwithstanding subsection *[(1)]* **(3)**
 23 of this section, a conviction that has been *[set aside]* **expunged** under this section shall be consid-
 24 ered for the purpose of determining whether this *[paragraph]* **subparagraph** is applicable.

25 *[(c)]* **(B)** *[A person]* Who at the time the motion authorized by subsection (1) of this section is
 26 pending before the court is under charge of commission of any crime.

27 *[(7)]* **(C)** *[The provisions of subsection (1)(b) of this section do not apply to a person]* Arrested
 28 within the three-year period immediately preceding the filing of the motion for any offense, exclud-
 29 ing motor vehicle violations, and excluding arrests for conduct associated with the same criminal
 30 episode that caused the arrest that is sought to be *[set aside]* **expunged**.

31 **(D) Who is not a citizen or a permanent resident alien of the United States.**

32 *[(8)]* **(7)(a)** The provisions of subsection (1) of this section apply to convictions and arrests that
 33 occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for
 34 *[making an application]* **filing the motion.**

35 **(b) A person's eligibility to have a conviction or arrest expunged under this section shall**
 36 **be determined based on the penalty and classification of the offense at the time of the ap-**
 37 **plication.**

38 *[(9)]* **(8)** For purposes of any civil action in which truth is an element of a claim for relief or
 39 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
 40 arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to
 41 the court for an order requiring disclosure of the official records in the case as may be necessary
 42 in the interest of justice.

43 *[(10)]* **(9)** Upon motion of any prosecutor or defendant in a case involving records sealed under
 44 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
 45 reopening and disclosure of any records sealed under this section for the limited purpose of assisting

1 the investigation of the movant. However, such an order has no other effect on the orders [*setting*
2 *aside*] **expunging** the conviction or the arrest record.

3 [(11)] (10) Unless the court makes written findings by clear and convincing evidence that
4 granting the motion would not be in the best interests of justice, the court shall grant the motion
5 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
6 of one of the following crimes and is otherwise eligible for relief under this section:

7 [(a)] *Abandonment of a child, ORS 163.535.*

8 [(b)] (a) Attempted assault in the second degree, ORS 163.175.

9 [(c)] (b) Assault in the third degree, ORS 163.165.

10 [(d)] (c) Coercion, ORS 163.275.

11 [(e)] (d) Criminal mistreatment in the first degree, ORS 163.205.

12 [(f)] (e) Attempted escape in the first degree, ORS 162.165.

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

14 [(h)] (g) Intimidation in the first degree, ORS 166.165.

15 [(i)] (h) Attempted kidnapping in the second degree, ORS 163.225.

16 [(j)] *Criminally negligent homicide, ORS 163.145.*

17 [(k)] (i) Attempted robbery in the second degree, ORS 164.405.

18 [(L)] (j) Robbery in the third degree, ORS 164.395.

19 [(m)] (k) Supplying contraband, ORS 162.185.

20 [(n)] (L) Unlawful use of a weapon, ORS 166.220.

21 [(12)] (11) As used in this section[,]:

22 (a) **“Conviction” includes a finding of not guilty by reason of mental disease or defect**
23 **excluding criminal responsibility, not responsible due to a mental disease or defect or guilty**
24 **except for insanity.**

25 (b) **“Person crime” means a person felony or person Class A misdemeanor, as those**
26 **terms are defined by rule of the Oregon Criminal Justice Commission.**

27 (c) “Sex crime” has the meaning given that term in ORS 181.594.

28 **SECTION 2.** ORS 181.085 is amended to read:

29 181.085. (1) The Department of State Police is authorized to:

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

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

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

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

41 (e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and
42 buccal samples and for storing and destroying blood and buccal samples and other physical evidence
43 and criminal identification information obtained from such analysis. Procedures for blood and buccal
44 analyses may include all techniques which the department determines are accurate and reliable in
45 establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen

1 antibodies, polymorphic enzymes or polymorphic proteins.

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

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

5 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 6 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 7 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

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

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

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

21 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
 22 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to
 23 475.894, 475.904, 475.906 or 475.914.

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

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

29 (4) The department may not transfer or disclose any sample, physical evidence or criminal
 30 identification information obtained, stored or maintained under authority of this section, ORS
 31 137.076, 161.325 or 419C.473 (1) except:

32 (a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal
 33 Justice Division of the Department of Justice for the purpose of establishing the identity of a person
 34 in the course of a criminal investigation or proceeding;

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

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

39 (5) The department may not transfer or disclose any sample, physical evidence or criminal
 40 identification information under subsection (4) of this section unless the public agency or person
 41 receiving the sample, physical evidence or criminal identification information agrees to destroy the
 42 sample, physical evidence or criminal identification information if notified by the department that
 43 a court has reversed the conviction, judgment or order that created the obligation to provide the
 44 blood or buccal sample.

45 (6) Any public agency that receives a sample, physical evidence or criminal identification in-

1 formation under authority of subsection (4) of this section may not disclose it except as provided in
 2 subsection (4) of this section.

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

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

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

26 (c) The department is not required to destroy an item of physical evidence obtained from a blood
 27 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
 28 161.325, 419A.260 and 419C.473 (1) and this section would thereby be destroyed. Notwithstanding this
 29 subsection, no sample, physical evidence or criminal identification record is affected by an order to
 30 [set aside] **expunge** a conviction under ORS 137.225.

31 (9) As used in this section, “convicted” includes a juvenile court finding of jurisdiction based
 32 on ORS 419C.005.

33 **SECTION 3.** ORS 40.355 is amended to read:

34 40.355. (1) For the purpose of attacking the credibility of a witness, evidence that the witness
 35 has been convicted of a crime shall be admitted if elicited from the witness or established by public
 36 record, but only if the crime:

37 (a) Was punishable by death or imprisonment in excess of one year under the law under which
 38 the witness was convicted; or

39 (b) Involved false statement or dishonesty.

40 (2)(a) If a defendant is charged with one or more of the crimes listed in paragraph (b) of this
 41 subsection, and the defendant is a witness, evidence that the defendant has been convicted of com-
 42 mitting one or more of the following crimes against a family or household member, as defined in
 43 ORS 135.230, may be elicited from the defendant, or established by public record, and admitted into
 44 evidence for the purpose of attacking the credibility of the defendant:

45 (A) Assault in the fourth degree under ORS 163.160.

- 1 (B) Menacing under ORS 163.190.
- 2 (C) Harassment under ORS 166.065.
- 3 (D) Attempted assault in the fourth degree under ORS 163.160 (1).
- 4 (E) Attempted assault in the fourth degree under ORS 163.160 (3).
- 5 (F) Strangulation under ORS 163.187.
- 6 (b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a
- 7 defendant under the provisions of this subsection only if the defendant is charged with committing
- 8 one or more of the following crimes against a family or household member, as defined in ORS
- 9 135.230:
 - 10 (A) Aggravated murder under ORS 163.095.
 - 11 (B) Murder under ORS 163.115.
 - 12 (C) Manslaughter in the first degree under ORS 163.118.
 - 13 (D) Manslaughter in the second degree under ORS 163.125.
 - 14 (E) Assault in the first degree under ORS 163.185.
 - 15 (F) Assault in the second degree under ORS 163.175.
 - 16 (G) Assault in the third degree under ORS 163.165.
 - 17 (H) Assault in the fourth degree under ORS 163.160.
 - 18 (I) Rape in the first degree under ORS 163.375 (1)(a).
 - 19 (J) Sodomy in the first degree under ORS 163.405 (1)(a).
 - 20 (K) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).
 - 21 (L) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).
 - 22 (M) Kidnapping in the first degree under ORS 163.235.
 - 23 (N) Kidnapping in the second degree under ORS 163.225.
 - 24 (O) Burglary in the first degree under ORS 164.225.
 - 25 (P) Coercion under ORS 163.275.
 - 26 (Q) Stalking under ORS 163.732.
 - 27 (R) Violating a court's stalking protective order under ORS 163.750.
 - 28 (S) Menacing under ORS 163.190.
 - 29 (T) Harassment under ORS 166.065.
 - 30 (U) Strangulation under ORS 163.187.
 - 31 (V) Attempting to commit a crime listed in this paragraph.
- 32 (3) Evidence of a conviction under this section is not admissible if:
 - 33 (a) A period of more than 15 years has elapsed since the date of the conviction or of the release
 - 34 of the witness from the confinement imposed for that conviction, whichever is the later date; or
 - 35 (b) The conviction has been expunged **under ORS 137.225 or** by pardon, reversed[, *set aside*] or
 - 36 otherwise rendered nugatory.
- 37 (4) When the credibility of a witness is attacked by evidence that the witness has been convicted
- 38 of a crime, the witness shall be allowed to explain briefly the circumstances of the crime or former
- 39 conviction; once the witness explains the circumstances, the opposing side shall have the opportu-
- 40 nity to rebut the explanation.
- 41 (5) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.
- 42 Evidence of the pendency of an appeal is admissible.
- 43 (6) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction
- 44 of a crime.
- 45 (7) A conviction of any of the statutory counterparts of offenses designated as violations as de-

1 scribed in ORS 153.008 may not be used to impeach the character of a witness in any criminal or
 2 civil action or proceeding.

3 **SECTION 4.** ORS 137.281, as amended by section 6, chapter 35, Oregon Laws 2008, is amended
 4 to read:

5 137.281. (1) In any felony case, when the defendant is sentenced to a term of incarceration, the
 6 defendant is deprived of all rights and privileges described in subsection (3) of this section from the
 7 date of sentencing until:

- 8 (a) The defendant is released from incarceration; or
- 9 (b) The defendant's conviction is [*set aside*] **expunged**.

10 (2) Subsection (1) of this section applies to any term of incarceration, whether the term of
 11 incarceration was imposed as a result of conviction or as a sanction or revocation resulting from
 12 the defendant's violation of the terms and conditions of probation, parole or post-prison supervision.

13 (3) The rights and privileges of which a person may be deprived under this section are:

- 14 (a) Holding a public office or an office of a political party or becoming or remaining a candidate
 15 for either office;
- 16 (b) Holding a position of private trust;
- 17 (c) Acting as a juror; or
- 18 (d) Exercising the right to vote.

19 (4) If the court under subsection (1) of this section temporarily stays execution of sentence for
 20 any purpose other than probation, the defendant nonetheless is sentenced for purposes of subsection
 21 (1) of this section.

22 (5) A person convicted of any crime and serving a term of imprisonment in any federal
 23 correctional institution in this state is deprived of the rights to register to vote, update a registra-
 24 tion or vote in any election in this state from the date of sentencing until:

- 25 (a) The person is discharged or paroled from imprisonment; or
- 26 (b) The person's conviction is [*set aside*] **expunged**.

27 (6) The county clerk or county official in charge of elections in any county may cancel the
 28 registration of any person serving a term of imprisonment in any federal correctional institution in
 29 this state.

30 (7) Except as otherwise provided in ORS 10.030, the rights and privileges withdrawn by this
 31 section are restored automatically upon release from incarceration, but in the case of parole shall
 32 be automatically withdrawn upon a subsequent imprisonment for violation of the terms of the parole.

33 **SECTION 5.** ORS 161.725 is amended to read:

34 161.725. (1) Subject to the provisions of ORS 161.737, the maximum term of an indeterminate
 35 sentence of imprisonment for a dangerous offender is 30 years, if because of the dangerousness of
 36 the defendant an extended period of confined correctional treatment or custody is required for the
 37 protection of the public and one or more of the following grounds exist:

- 38 (a) The defendant is being sentenced for a Class A felony and the defendant is suffering from a
 39 severe personality disorder indicating a propensity toward crimes that seriously endanger the life
 40 or safety of another.
- 41 (b) The defendant is being sentenced for a felony that seriously endangered the life or safety
 42 of another, the defendant has been previously convicted of a felony not related to the instant crime
 43 as a single criminal episode and the defendant is suffering from a severe personality disorder indi-
 44 cating a propensity toward crimes that seriously endanger the life or safety of another.
- 45 (c) The defendant is being sentenced for a felony that seriously endangered the life or safety of

1 another, the defendant has previously engaged in unlawful conduct not related to the instant crime
 2 as a single criminal episode that seriously endangered the life or safety of another and the defendant
 3 is suffering from a severe personality disorder indicating a propensity toward crimes that seriously
 4 endanger the life or safety of another.

5 (2) As used in this section, “previously convicted of a felony” means:

6 (a) Previous conviction of a felony in a court of this state;

7 (b) Previous conviction in a court of the United States, other than a court-martial, of an offense
 8 which at the time of conviction of the offense was and at the time of conviction of the instant crime
 9 is punishable under the laws of the United States by death or by imprisonment in a penitentiary,
 10 prison or similar institution for a term of one year or more; or

11 (c) Previous conviction by a general court-martial of the United States or in a court of any other
 12 state or territory of the United States, or of the Commonwealth of Puerto Rico, of an offense which
 13 at the time of conviction of the offense was punishable by death or by imprisonment in a
 14 penitentiary, prison or similar institution for a term of one year or more and which offense also at
 15 the time of conviction of the instant crime would have been a felony if committed in this state.

16 (3) As used in this section, “previous conviction of a felony” does not include:

17 (a) An offense committed when the defendant was less than 16 years of age;

18 (b) A conviction rendered after the commission of the instant crime;

19 (c) A conviction that is the defendant’s most recent conviction described in subsection (2) of this
 20 section, and the defendant was finally and unconditionally discharged from all resulting
 21 imprisonment, probation or parole more than seven years before the commission of the instant crime;
 22 or

23 (d) A conviction that was by court-martial of an offense denounced only by military law and
 24 triable only by court-martial.

25 (4) As used in this section, “conviction” means an adjudication of guilt upon a plea, verdict or
 26 finding in a criminal proceeding in a court of competent jurisdiction, but does not include an adju-
 27 dication which has been expunged **under ORS 137.225 or** by pardon, reversed[, *set aside*] or other-
 28 wise rendered nugatory.

29 **SECTION 6.** ORS 181.534 is amended to read:

30 181.534. (1) As used in this section:

31 (a) “Authorized agency” means state government as defined in ORS 174.111 and the Oregon
 32 State Bar. “Authorized agency” does not include:

33 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

34 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
 35 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

36 (b) “Subject individual” means a person from whom an authorized agency may require finger-
 37 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
 38 nationwide criminal records check.

39 (2) An authorized agency may request that the Department of State Police conduct a criminal
 40 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
 41 records check of a subject individual is necessary, the authorized agency may request that the De-
 42 partment of State Police conduct the check, including fingerprint identification, through the Federal
 43 Bureau of Investigation.

44 (3) The Department of State Police shall (3) provide the results of a criminal records check con-
 45 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

1 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
 2 conduct the criminal records check and may not keep any record of the fingerprints. If the federal
 3 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department
 4 of State Police shall cease to send the cards to the federal bureau but shall continue to process the
 5 information through other available resources.

6 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
 7 State Police, the department shall destroy the fingerprint cards and shall retain no facsimiles or
 8 other material from which a fingerprint can be reproduced.

9 (6) If only a state criminal records check is conducted, the Department of State Police shall
 10 destroy the fingerprint cards after the criminal records check is completed and the results of the
 11 criminal records check provided to the authorized agency and shall retain no facsimiles or other
 12 material from which a fingerprint can be reproduced.

13 (7) An authorized agency may conduct criminal records checks on subject individuals through
 14 the Law Enforcement Data System maintained by the Department of State Police in accordance with
 15 rules adopted, and procedures established, by the Department of State Police.

16 (8) An authorized agency and the Department of State Police shall permit a subject individual
 17 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
 18 state and national criminal offender records and, if requested by the subject individual, provide the
 19 individual with a copy of the individual's own state and national criminal offender records.

20 (9) Each authorized agency, in consultation with the Department of State Police, shall adopt
 21 rules to implement this section and other statutes relating to criminal offender information obtained
 22 through fingerprint-based criminal records checks. The rules shall include but need not be limited
 23 to:

24 (a) Specifying categories of subject individuals who are subject to criminal records checks.

25 (b) Specifying the information that may be required from a subject individual to permit a crim-
 26 inal records check.

27 (c) Specifying which programs or services are subject to this section.

28 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-
 29 mation of a subject individual.

30 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.
 31 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based
 32 criminal records check when adopting rules under this subsection.

33 (f) If the authorized agency uses criminal records checks for agency employment purposes:

34 (A) Determining when and under what conditions a subject individual may be hired on a pre-
 35 liminary basis pending a criminal records check; and

36 (B) Defining the conditions under which a subject individual may participate in training, orien-
 37 tation and work activities pending completion of a criminal records check.

38 (g) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
 39 criminal offender information.

40 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
 41 required by subsection (9) of this section.

42 (11) Except as otherwise provided in ORS 181.612, an authorized agency, using the rules adopted
 43 under subsection (9) of this section, shall determine whether a subject individual is fit to hold a
 44 position, provide services, be employed or be granted a license, certification, registration or permit,
 45 based on the criminal records check obtained pursuant to this section, on any false statements made

1 by the individual regarding the criminal history of the individual and on any refusal to submit or
 2 consent to a criminal records check including fingerprint identification. If a subject individual is
 3 determined to be unfit, then the individual may not hold the position, provide services, be employed
 4 or be granted a license, certification, registration or permit.

5 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
 6 subsection (11) of this section, the authorized agency shall consider:

7 (a) The nature of the crime;

8 (b) The facts that support the conviction or pending indictment or that indicate the making of
 9 the false statement;

10 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
 11 subject individual's present or proposed position, services, employment, license, certification or reg-
 12 istration; and

13 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
 14 services, employment, license, certification, registration or permit. Intervening circumstances in-
 15 clude but are not limited to:

16 (A) The passage of time since the commission of the crime;

17 (B) The age of the subject individual at the time of the crime;

18 (C) The likelihood of a repetition of offenses or of the commission of another crime;

19 (D) The subsequent commission of another relevant crime;

20 (E) Whether the conviction was [*set aside*] **expunged** and the legal effect of [*setting aside*]
 21 **expunging** the conviction; and

22 (F) A recommendation of an employer.

23 (13) An authorized agency and an employee of an authorized agency acting within the course
 24 and scope of employment are immune from any civil liability that might otherwise be incurred or
 25 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
 26 or not fit to hold a position, provide services, be employed or be granted a license, certification,
 27 registration or permit. An authorized agency and an employee of an authorized agency acting within
 28 the course and scope of employment who in good faith comply with this section are not liable for
 29 employment-related decisions based on determinations made under subsection (11) of this section.
 30 An authorized agency or an employee of an authorized agency acting within the course and scope
 31 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
 32 semination of information lawfully obtained under this section.

33 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
 34 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
 35 provide services, be employed or be granted a license, certification, registration or permit on the
 36 basis of information obtained as the result of a criminal records check conducted pursuant to this
 37 section. Challenges to the accuracy or completeness of information provided by the Department of
 38 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
 39 partment of State Police or Federal Bureau of Investigation must be made through the Department
 40 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
 41 case process required by this paragraph.

42 (b) A subject individual who is employed by an authorized agency and who is determined not to
 43 be fit for a position on the basis of information obtained as the result of a criminal records check
 44 conducted pursuant to this section may appeal the determination through the contested case process
 45 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-

1 visions. An individual's decision to appeal a determination through personnel rules, policies and
 2 collective bargaining provisions is an election of remedies as to the rights of the individual with
 3 respect to the fitness determination and is a waiver of the contested case process.

4 (15) Criminal offender information is confidential. Authorized agencies and the Department of
 5 State Police shall adopt rules to restrict dissemination of information received under this section to
 6 persons with a demonstrated and legitimate need to know the information.

7 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
 8 fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny
 9 any applicable position, authority to provide services, license, certification, registration or permit.

10 (17) If an authorized agency requires a criminal records check of employees, prospective em-
 11 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
 12 permit, the application forms of the authorized agency must contain a notice that the person is
 13 subject to fingerprinting and a criminal records check.

14 **SECTION 7.** Section 2, chapter 873, Oregon Laws 2007, is amended to read:

15 **Sec. 2.** (1) The Oregon Department of Administrative Services shall disburse to the Independent
 16 Development Enterprise Alliance moneys appropriated to the department for the purposes described
 17 in subsection (2) of this section.

18 (2) The Independent Development Enterprise Alliance shall develop and execute a plan to sup-
 19 port community-based programs that assist underserved individuals in removing legal impediments
 20 to employment by:

- 21 (a) Obtaining or reinstating driver licenses;
- 22 (b) [*Setting aside*] **Expunging** minor criminal convictions; or
- 23 (c) Creating mechanisms to resolve past-due fines, fees and child support obligations.
- 24 (3) The plan may give preference to programs that:
 - 25 (a) Build constructive relationships between communities and the criminal justice system;
 - 26 (b) Promote community service; and
 - 27 (c) Establish monitoring programs that measure results.

28 (4) During a biennium for which the Independent Development Enterprise Alliance receives
 29 moneys under subsection (1) of this section, the Independent Development Enterprise Alliance shall
 30 report on the plan and its implementation once every six months to:

- 31 (a) The judiciary committee in the House of Representatives or other appropriate legislative
 32 committee dealing with criminal justice issues, if the Legislative Assembly is convened in regular
 33 session; or
- 34 (b) The joint legislative interim committee on the judiciary or other appropriate legislative in-
 35 terim committee dealing with issues of criminal justice, if the Legislative Assembly is not in regular
 36 session.

37 **SECTION 8.** The amendments to ORS 137.225 by section 1 of this 2009 Act apply to
 38 motions filed on or after the effective date of this 2009 Act.