

Senate Bill 352

Sponsored by Senator OLSEN (Presession filed.)

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**.

Requires person arrested for sex crime to submit to providing buccal sample. Directs arresting law enforcement agency to obtain required sample and transmit to Department of State Police. Authorizes department to analyze sample and maintain information from sample in criminal identification database.

Directs court to include fee in criminal judgment payable to Department of State Police to be expended on testing of buccal samples.

A BILL FOR AN ACT

1
2 Relating to buccal samples of certain persons; creating new provisions; and amending ORS 137.076,
3 181A.155, 419A.260 and 419C.473.

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

5 **SECTION 1. (1) As used in this section, "sex crime" has the meaning given that term in**
6 **ORS 163A.005.**

7 **(2) A person who has been arrested for a sex crime shall provide a buccal sample at the**
8 **request of the law enforcement agency, as described in subsection (3) of this section.**

9 **(3) A law enforcement agency that arrests a person described in subsection (2) of this**
10 **section shall cause a buccal sample to be:**

11 **(a) Obtained as soon as practicable after the person's arrest; and**

12 **(b) Transmitted to the Department of State Police within 30 days after collection.**

13 **(4) Any person that the law enforcement agency authorizes to do so may obtain a buccal**
14 **sample under this section. The person that obtains the buccal sample shall follow collection**
15 **procedures that the Department of State Police establishes.**

16 **(5) A person authorized by this section to obtain a buccal sample may not be held civilly**
17 **liable for obtaining a sample in accordance with this section. The sample must also be ob-**
18 **tained and transmitted in accordance with procedures that the Department of State Police**
19 **establishes, but a test result or an opinion based upon a test result may not be rendered**
20 **inadmissible as evidence solely because of deviations from procedures that the department**
21 **adopted if the deviations do not affect the reliability of the test result or opinion.**

22 **(6) A law enforcement agency is not required to obtain a buccal sample if the law**
23 **enforcement agency determines that obtaining a sample would create a substantial and un-**
24 **reasonable risk to the health of the arrested person.**

25 **SECTION 2. ORS 137.076 is amended to read:**

26 137.076. (1) This section applies to any person convicted of:

27 (a) A felony;

28 (b) Sexual abuse in the third degree or public indecency;

29 (c) Conspiracy or attempt to commit rape in the third degree, sodomy in the third degree, sexual

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 abuse in the second degree, burglary in the second degree or promoting prostitution; or

2 (d) Murder or aggravated murder.

3 (2) When a person is convicted of an offense listed in subsection (1) of this section:

4 (a) The person shall, whether or not ordered to do so by the court under paragraph (b) of this
5 subsection, provide a blood or buccal sample at the request of the appropriate agency designated in
6 paragraph (c) of this subsection.

7 (b) The court shall include in the judgment of conviction an order stating that a blood or buccal
8 sample is required to be obtained at the request of the appropriate agency and, unless the convicted
9 person lacks the ability to pay, that the person shall reimburse the appropriate agency for the cost
10 of obtaining and transmitting the blood or buccal sample. If the judgment sentences the convicted
11 person to probation, the court shall order the convicted person to submit to the obtaining of a blood
12 or buccal sample as a condition of the probation.

13 (c) The appropriate agency shall cause a blood or buccal sample to be obtained and transmitted
14 to the Department of State Police. The agency shall cause the sample to be obtained as soon as
15 practicable after conviction. The agency shall obtain the convicted person's thumbprint at the same
16 time the agency obtains the blood or buccal sample. The agency shall include the thumbprint with
17 the identifying information that accompanies the sample. Whenever an agency is notified by the
18 Department of State Police that a sample is not adequate for analysis, the agency shall obtain and
19 transmit a blood sample. The appropriate agency shall be:

20 (A) The Department of Corrections, whenever the convicted person is committed to the legal
21 and physical custody of the department.

22 (B) In all other cases, the law enforcement agency attending upon the court.

23 (3)(a) A blood sample may only be drawn in a medically acceptable manner by a licensed phy-
24 sician, a person acting under the direction or control of a licensed physician, a physician assistant
25 licensed under ORS 677.505 to 677.525, a nurse licensed under ORS chapter 678 or a qualified med-
26 ical technician.

27 (b) A buccal sample may be obtained by anyone authorized to do so by the appropriate agency.
28 The person obtaining the buccal sample shall follow the collection procedures established by the
29 Department of State Police.

30 (c) A person authorized by this subsection to obtain a blood or buccal sample shall not be held
31 civilly liable for obtaining a sample in accordance with this subsection and subsection (2) of this
32 section, ORS 161.325 and 419C.473. The sample shall also be obtained and transmitted in accordance
33 with any procedures that may be established by the Department of State Police. However, no test
34 result or opinion based upon a test result shall be rendered inadmissible as evidence solely because
35 of deviations from procedures adopted by the Department of State Police that do not affect the re-
36 liability of the opinion or test result.

37 (4) No sample is required to be obtained if:

38 (a) The Department of State Police notifies the court or the appropriate agency that it has
39 previously received an adequate blood or buccal sample obtained from the convicted person in ac-
40 cordance with this section or ORS 161.325 or 419C.473 **or section 1 of this 2021 Act**; or

41 (b) The court determines that obtaining a sample would create a substantial and unreasonable
42 risk to the health of the convicted person.

43 (5) The provisions of subsections (1) to (4) of this section apply to any person who, on or after
44 September 29, 1991, is serving a term of incarceration as a sentence or as a condition of probation
45 imposed for conviction of an offense listed in subsection (1) of this section, and any such person shall

1 submit to the obtaining of a blood or buccal sample. Before releasing any such person from
2 incarceration, the supervisory authority shall cause a blood or buccal sample and the person's
3 thumbprint to be obtained and transmitted in accordance with subsections (1) to (4) of this section.

4 **SECTION 3.** ORS 181A.155 is amended to read:

5 181A.155. (1) The Department of State Police is authorized to:

6 (a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325
7 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, **and section 1 of this 2021 Act** and
8 other physical evidence obtained from analysis of such samples;

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

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

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

17 (e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and
18 buccal samples and for storing and destroying blood and buccal samples and other physical evidence
19 and criminal identification information obtained from such analysis. Procedures for blood and buccal
20 analyses may include all techniques which the department determines are accurate and reliable in
21 establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen
22 antibodies, polymorphic enzymes or polymorphic proteins.

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

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

26 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
27 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
28 163.427, 163.465 (1)(d), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
43 partment shall analyze samples from persons convicted of a felony under ORS 475.752, 475.806 to
44 475.894, 475.904, 475.906 or 475.914.

45 (c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,

1 the department shall analyze samples from persons convicted of any other felony **or from persons**
2 **described in section 1 of this 2021 Act.**

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

6 (4) The department may not transfer or disclose any sample, physical evidence or criminal
7 identification information obtained, stored or maintained under authority of this section, ORS
8 137.076, 161.325 or 419C.473 (1) **or section 1 of this 2021 Act** except:

9 (a) To a law enforcement agency as defined in ORS 181A.010, a district attorney or the Criminal
10 Justice Division of the Department of Justice for the purpose of establishing the identity of a person
11 in the course of a criminal investigation or proceeding;

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

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

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

22 (6) Any public agency that receives a sample, physical evidence or criminal identification in-
23 formation under authority of subsection (4) of this section may not disclose it except as provided in
24 subsection (4) of this section.

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

34 (8)(a) Whenever a court reverses the conviction, judgment or order that created an obligation
35 to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1) **and the person**
36 **did not provide a sample as provided in section 1 of this 2021 Act**, the person who provided the
37 sample may request destruction of the sample and any criminal identification record created in
38 connection with that sample.

39 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
40 copy of the court order reversing the conviction, judgment or order, the department shall destroy
41 any sample received from the person, any physical evidence obtained from that sample and any
42 criminal identification records pertaining to the person, unless the department determines that the
43 person has otherwise become obligated to submit a blood or buccal sample as a result of **section 1**
44 **of this 2021 Act** or a separate conviction, juvenile adjudication or finding of guilty except for in-
45 sanity for an offense listed in ORS 137.076 (1). When the department destroys a sample, physical

1 evidence or criminal identification record under this paragraph, the department shall notify any
 2 public agency or person to whom the sample, physical evidence or criminal identification informa-
 3 tion was transferred or disclosed under subsection (4) of this section of the reversal of the con-
 4 viction, judgment or order.

5 (c) The department is not required to destroy an item of physical evidence obtained from a blood
 6 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
 7 161.325, 419A.260 and 419C.473 (1) and this section **and section 1 of this 2021 Act** would thereby
 8 be destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal identifica-
 9 tion record is affected by an order to set aside a conviction under ORS 137.225.

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

12 **SECTION 4.** ORS 419A.260 is amended to read:

13 419A.260. (1) As used in this section and ORS 419A.262:

14 (a) “Contact” means any instance in which a person’s act or behavior, or alleged act or behav-
 15 ior, which could result in a juvenile court’s assumption of jurisdiction under ORS 419B.100 (1)(a) to
 16 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-
 17 section.

18 (b) “Expunction” means:

19 (A) The removal and destruction or sealing of a judgment or order related to a contact and all
 20 records and references; and

21 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-
 22 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in
 23 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a
 24 stamp or statement identifying the name of the individual, the date of expunction and instruction
 25 that no further reference shall be made to the material that is subject to the expunction order ex-
 26 cept upon an order of a court of competent jurisdiction.

27 (c) “Person” includes a person under 18 years of age.

28 (d) “Record” includes a fingerprint or photograph file, report, exhibit or other material which
 29 contains information relating to a person’s contact with any law enforcement agency, juvenile court
 30 or juvenile department, the Psychiatric Security Review Board, the Department of Human Services
 31 or the Oregon Health Authority and is kept manually, through the use of electronic data processing
 32 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile
 33 court or juvenile department or an agency of the State of Oregon. “Record” does not include:

34 (A) A transcript of a student’s Youth Corrections Education Program academic record;

35 (B) Material on file with a public agency which is necessary for obtaining federal financial
 36 participation regarding financial assistance or services on behalf of a person who has had a contact;

37 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and
 38 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

39 (D) Police and court records related to an order of waiver where the matter is still pending in
 40 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

41 (E) Records related to a support obligation;

42 (F) Medical records other than those related to a finding of responsible except for insanity under
 43 ORS 419C.411;

44 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;

45 (H) Any law enforcement record of a person who currently does not qualify for expunction or

1 of current investigations or cases waived to the adult court;

2 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

3 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
 4 within the jurisdiction of the court based upon the person's commission of an act which if done by
 5 an adult would constitute one of the following offenses:

6 (i) Aggravated murder under ORS 163.095;

7 (ii) Murder in any degree under ORS 163.107 or 163.115;

8 (iii) Attempt, solicitation or conspiracy to commit murder in any degree or aggravated murder;

9 (iv) Manslaughter in the first degree under ORS 163.118;

10 (v) Manslaughter in the second degree under ORS 163.125;

11 (vi) Criminally negligent homicide under ORS 163.145;

12 (vii) Assault in the first degree under ORS 163.185;

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

14 (ix) Kidnapping in the first degree under ORS 163.235;

15 (x) Rape in the third degree under ORS 163.355;

16 (xi) Rape in the second degree under ORS 163.365;

17 (xii) Rape in the first degree under ORS 163.375;

18 (xiii) Sodomy in the third degree under ORS 163.385;

19 (xiv) Sodomy in the second degree under ORS 163.395;

20 (xv) Sodomy in the first degree under ORS 163.405;

21 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

22 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

23 (xviii) Sexual abuse in the third degree under ORS 163.415;

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

25 (xx) Sexual abuse in the first degree under ORS 163.427;

26 (xxi) Promoting prostitution under ORS 167.012;

27 (xxii) Compelling prostitution under ORS 167.017;

28 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;

29 (xxiv) Aggravated vehicular homicide under ORS 163.149; or

30 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
 31 second degree and criminally negligent homicide;

32 (K) Blood samples, buccal samples and other physical evidence and identification information
 33 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
 34 181A.155 or 419C.473 **or section 1 of this 2021 Act**; or

35 (L) Records maintained in the Law Enforcement Data System under ORS 163A.035.

36 (e) "Termination" means:

37 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
 38 the final disposition of a case by informal means, by a decision not to place the person on probation
 39 or make the person a ward of the court after the person has been found to be within the court's
 40 jurisdiction or by a discontinuance of probation, of the court's wardship or of the jurisdiction of the
 41 Psychiatric Security Review Board, the Oregon Health Authority or the Department of Human Ser-
 42 vices.

43 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
 44 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
 45 disposition of the person's most recent contact with a law enforcement agency.

1 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
 2 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
 3 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
 4 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
 5 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
 6 a sex offender provided under ORS 163A.130, at the following times:

7 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
 8 ment;

9 (b) At the time of termination;

10 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
 11 department or motion on a juvenile court; and

12 (d) At the time of notice of execution of an expunction order.

13 **SECTION 5.** ORS 419C.473 is amended to read:

14 419C.473. (1) Whenever a youth offender has been found to be within the jurisdiction of the court
 15 under ORS 419C.005 for having committed an act that if done by an adult would constitute a felony
 16 listed in subsection (2) of this section, the court shall order the youth offender to submit to the ob-
 17 taining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall further
 18 order that as soon as practicable after the entry of the dispositional order, the law enforcement
 19 agency attending upon the court shall cause a blood or buccal sample to be obtained and transmit-
 20 ted in accordance with ORS 137.076. The court may also order the youth offender to reimburse the
 21 appropriate agency for the cost of obtaining and transmitting the blood or buccal sample.

22 (2) The felonies to which subsection (1) of this section applies are:

23 (a) Rape, sodomy, unlawful sexual penetration, sexual abuse in the first or second degree, public
 24 indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are
 25 defined in ORS 163.355 to 163.427, 163.465 (1)(d), 163.525 and 163.670;

26 (b) Burglary in the second degree, as defined in ORS 164.215, when committed with intent to
 27 commit any offense listed in paragraph (a) of this subsection;

28 (c) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

29 (d) Burglary in the first degree, as defined in ORS 164.225;

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

31 (f) Conspiracy or attempt to commit any Class A or Class B felony listed in paragraphs (a) to
 32 (e) of this subsection; or

33 (g) Murder or aggravated murder.

34 (3) No order for the obtaining and transmitting of a blood or buccal sample is required to be
 35 entered if:

36 (a) The Department of State Police notifies the court or the law enforcement agency attending
 37 upon the court that it has previously received an adequate blood or buccal sample taken from the
 38 youth offender in accordance with this section, ORS 137.076 or 161.325 (4) **or section 1 of this 2021**
 39 **Act**; or

40 (b) The court determines that obtaining a sample would create a substantial and unreasonable
 41 risk to the health of the youth offender.

42 (4) Notwithstanding any other provision of law, blood and buccal samples and other physical
 43 evidence and criminal identification information obtained under authority of this section or as a
 44 result of analysis conducted pursuant to ORS 181A.155 may be maintained, stored, destroyed and
 45 released to authorized persons or agencies under the conditions established in ORS 181A.155 and

1 rules adopted by the Department of State Police under the authority of that section.

2 **SECTION 6.** (1) **When a court sentences a defendant for any crime, the court shall in-**
3 **clude in the judgment a buccal sample testing fee in the amount of \$7. An award under this**
4 **section is a monetary obligation payable to the Department of State Police and must be de-**
5 **posited in the State Police Account and expended for the purpose of analyzing buccal samples**
6 **to establish the genetic profile of the donor or otherwise determine the identity of persons.**

7 (2) **The monetary obligation described in subsection (1) of this section is a Level III ob-**
8 **ligation for the purposes of ORS 137.145 to 137.159.**

9 **SECTION 7.** **Sections 1 and 6 of this 2021 Act and the amendments to ORS 137.076,**
10 **181A.155, 419A.260 and 419C.473 by sections 2 to 5 of this 2021 Act apply to persons arrested**
11 **on or after the effective date of this 2021 Act.**

12