

Senate Bill 240

Sponsored by Senator THATCHER (at the request of Representative Kevin Mannix) (Pre-session 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 law enforcement agencies to collect blood or buccal sample of arrested persons and submit sample to Department of State Police within 96 hours of collection. Creates process by which law enforcement agency may request reimbursement from department for cost of collecting sample. Appropriates moneys to department for reimbursement of costs.

Directs department to, beginning January 1, 2025, test all blood or buccal samples within 96 hours of receipt and all sexual assault forensic evidence kits within seven days of receipt. Authorizes department to hire staff, enter into contracts and waive hiring restrictions in order to meet testing time requirements.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to forensic evidence; creating new provisions; amending ORS 137.076, 181A.155, 181A.160,
3 181A.324, 419A.260 and 419C.473; and prescribing an effective date.

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

DNA TESTING OF ARRESTED PERSONS

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8 **SECTION 1. (1) A law enforcement agency shall obtain a blood or buccal sample in ac-**
9 **cordance with this section from all arrested persons.**

10 **(2)(a) A blood sample may only be drawn in a medically acceptable manner by a licensed**
11 **physician, a person acting under the direction or control of a licensed physician, a physician**
12 **assistant licensed under ORS 677.505 to 677.525, a nurse licensed under ORS chapter 678 or**
13 **a qualified medical technician.**

14 **(b) A buccal sample may be obtained by anyone authorized to do so by the arresting law**
15 **enforcement agency. The person obtaining the buccal sample shall follow collections proce-**
16 **dures established by the Department of State Police.**

17 **(c) A test result, or an opinion based upon a test result, of a blood or buccal sample ob-**
18 **tained under this section is not inadmissible as evidence solely because of deviations from**
19 **procedures adopted by the department that do not affect the reliability of the opinion or test**
20 **result.**

21 **(d) A person authorized by this section to obtain a blood or buccal sample may not be**
22 **held civilly liable for obtaining a sample in accordance with this section.**

23 **(3) A sample is not required to be obtained under this section if:**

24 **(a) The law enforcement agency has previously obtained an adequate blood or buccal**
25 **sample of the person;**

26 **(b) The department notifies the law enforcement agency that the department has previ-**
27 **ously received an adequate blood or buccal sample of the person in accordance with ORS**

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 **137.076, 161.325 or 419C.473; or**

2 (c) **Obtaining a sample would create a substantial and unreasonable risk to the health**
 3 **of the arrested person.**

4 (4) **The law enforcement agency shall cause the blood or buccal sample to be transmitted**
 5 **to the department within 96 hours of collection in accordance with any procedures estab-**
 6 **lished by the department.**

7 (5) **The blood or buccal sample may be analyzed during or immediately following the ar-**
 8 **rest of the person, or at any time thereafter, in accordance with procedures established by**
 9 **the department.**

10 (6) **The department may adopt rules to carry out the provisions of this section.**

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

12 137.076. (1) This section applies to any person convicted of:

13 (a) A felony;

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

15 (c) Conspiracy or attempt to commit rape in the third degree, sodomy in the third degree, sexual
 16 abuse in the second degree, burglary in the second degree or promoting prostitution; or

17 (d) Murder or aggravated murder.

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

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

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

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

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

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

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

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

45 (c) A person authorized by this subsection to obtain a blood or buccal sample shall not be held

1 civilly liable for obtaining a sample in accordance with this subsection and subsection (2) of this
 2 section, ORS 161.325 and 419C.473. The sample shall also be obtained and transmitted in accordance
 3 with any procedures that may be established by the Department of State Police. However, no test
 4 result or opinion based upon a test result shall be rendered inadmissible as evidence solely because
 5 of deviations from procedures adopted by the Department of State Police that do not affect the re-
 6 liability of the opinion or test result.

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

8 (a) The Department of State Police notifies the court or the appropriate agency that *[it]* **the**
 9 **department** has previously received an adequate blood or buccal sample obtained from the con-
 10 victed person in accordance with this section or ORS 161.325 or 419C.473 **or section 1 of this 2023**
 11 **Act**; or

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

14 (5) The provisions of subsections (1) to (4) of this section apply to any person who, on or after
 15 September 29, 1991, is serving a term of incarceration as a sentence or as a condition of probation
 16 imposed for conviction of an offense listed in subsection (1) of this section, and any such person shall
 17 submit to the obtaining of a blood or buccal sample. Before releasing any such person from
 18 incarceration, the supervisory authority shall cause a blood or buccal sample and the person's
 19 thumbprint to be obtained and transmitted in accordance with subsections (1) to (4) of this section.

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

21 181A.155. (1) The Department of State Police is authorized to:

22 (a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325
 23 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, **and section 1 of this 2023 Act** and
 24 other physical evidence obtained from analysis of such samples;

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

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

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

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

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

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

42 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 43 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 44 163.427, 163.465 (1)(d), 163.525 and 163.670;

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

- 1 (C) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;
- 2 (D) Burglary in the first degree, as defined in ORS 164.225;
- 3 (E) Assault in the first, second or third degree, as defined in ORS 163.165, 163.175 and 163.185;
- 4 (F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;
- 5 (G) Stalking, as defined in ORS 163.732;
- 6 (H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;
- 7 (I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;
- 8 (J) Criminally negligent homicide, as defined in ORS 163.145;
- 9 (K) Aggravated vehicular homicide, as defined in ORS 163.149;
- 10 (L) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this para-
- 11 graph; or

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

13 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
 14 partment shall analyze samples from persons convicted of a felony under ORS 475.752, 475.806 to
 15 475.894, 475.904, 475.906 or 475.914.

16 (c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,
 17 the department shall analyze samples from persons convicted of any other felony **or from arrested**
 18 **persons described in section 1 of this 2023 Act.**

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

22 (4) The department may not transfer or disclose any sample, physical evidence or criminal
 23 identification information obtained, stored or maintained under authority of this section, ORS
 24 137.076, 161.325 or 419C.473 (1) **or section 1 of this 2023 Act** except:

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

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

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

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

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

41 (7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a
 42 record within a criminal identification database maintained under the authority of this section may,
 43 upon request, inspect that information at a time and location designated by the department. The
 44 department may deny inspection if it determines that there is a reasonable likelihood that such in-
 45 spection would prejudice a pending criminal investigation. In any case, the department is not re-

1 quired to allow the person or anyone acting on the person's behalf to test any blood or buccal
 2 sample or other physical evidence. The department shall adopt procedures governing the inspection
 3 of records and samples and challenges to the accuracy of records. The procedures shall accommo-
 4 date the need to preserve the materials from contamination and destruction.

5 (8)(a) Whenever a court reverses the conviction, judgment or order that created an obligation
 6 to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1) **and the person**
 7 **did not provide a sample under section 1 of this 2023 Act**, the person who provided the sample
 8 may request destruction of the sample and any criminal identification record created in connection
 9 with that sample.

10 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
 11 copy of the court order reversing the conviction, judgment or order, the department shall destroy
 12 any sample received from the person, any physical evidence obtained from that sample and any
 13 criminal identification records pertaining to the person, unless the department determines that the
 14 person has otherwise become obligated to submit a blood or buccal sample as a result of **section 1**
 15 **of this 2023 Act** or a separate conviction, juvenile adjudication or finding of guilty except for in-
 16 sanity for an offense listed in ORS 137.076 (1). When the department destroys a sample, physical
 17 evidence or criminal identification record under this paragraph, the department shall notify any
 18 public agency or person to whom the sample, physical evidence or criminal identification informa-
 19 tion was transferred or disclosed under subsection (4) of this section of the reversal of the con-
 20 viction, judgment or order.

21 (c) The department is not required to destroy an item of physical evidence obtained from a blood
 22 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
 23 161.325, 419A.260 and 419C.473 (1) and this section **and section 1 of this 2023 Act** would thereby
 24 be destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal identifica-
 25 tion record is affected by an order to set aside a conviction under ORS 137.225.

26 (9) As used in this section, "convicted" includes a juvenile court finding of jurisdiction based
 27 on ORS 419C.005.

28 **SECTION 4.** ORS 181A.160 is amended to read:

29 181A.160. (1) Immediately upon the arrest of a person for a crime for which criminal offender
 30 information must be provided under ORS 181A.165, a law enforcement agency shall:

31 (a) Place the arrested person's fingerprints and identifying data on forms prescribed or furnished
 32 by the Department of State Police, photograph the arrested person and promptly transmit the form
 33 and photograph to the department.

34 (b) If the arrest is disposed of by the arresting agency, cause the disposition report to be com-
 35 pleted and promptly transmitted to the department.

36 (c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded
 37 to the court that will dispose of the charge for further action in accordance with ORS 181A.175.

38 **(2) A law enforcement agency, immediately upon the arrest of a person, shall obtain a**
 39 **blood or buccal sample from the person in accordance with section 1 of this 2023 Act.**

40 [(2)] (3) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole
 41 prints, toe prints or other personal identifiers when, in the discretion of the agency, it is necessary
 42 to effect identification of the persons or to the investigation of the crime charged.

43 [(3)] (4) A law enforcement agency, for the purpose of identification, may record and submit to
 44 the department the fingerprints of persons arrested for crimes for which criminal offender informa-
 45 tion is not required under ORS 181A.165.

SECTION 5. ORS 419A.260 is amended to read:

419A.260. (1) As used in ORS 419A.260 to 419A.271:

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

(b) “Expunction” means:

(A) The removal by destruction of a judgment or order related to a contact and all records and references associated with a subject person;

(B) The removal by sealing of a judgment or order related to a contact and all records and references associated with a subject person;

(C) The removal by redaction of a subject person’s name and all personal identifiers and all references to the subject person within a record; or

(D) If a record is kept by the Department of Human Services, the department’s affixing to the front of the file containing the record a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference may be made to the record that is subject to the expunction notice or order.

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

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

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

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

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

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

(E) Records related to a support obligation;

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

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

(H) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court;

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

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

(i) Aggravated murder under ORS 163.095;

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

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

- 1 (iv) Manslaughter in the first degree under ORS 163.118;
2 (v) Manslaughter in the second degree under ORS 163.125;
3 (vi) Criminally negligent homicide under ORS 163.145;
4 (vii) Assault in the first degree under ORS 163.185;
5 (viii) Criminal mistreatment in the first degree under ORS 163.205;
6 (ix) Kidnapping in the first degree under ORS 163.235;
7 (x) Rape in the third degree under ORS 163.355;
8 (xi) Rape in the second degree under ORS 163.365;
9 (xii) Rape in the first degree under ORS 163.375;
10 (xiii) Sodomy in the third degree under ORS 163.385;
11 (xiv) Sodomy in the second degree under ORS 163.395;
12 (xv) Sodomy in the first degree under ORS 163.405;
13 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
14 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
15 (xviii) Sexual abuse in the third degree under ORS 163.415;
16 (xix) Sexual abuse in the second degree under ORS 163.425;
17 (xx) Sexual abuse in the first degree under ORS 163.427;
18 (xxi) Promoting prostitution under ORS 167.012;
19 (xxii) Compelling prostitution under ORS 167.017;
20 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
21 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
22 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
23 second degree and criminally negligent homicide;
- 24 (K) Blood samples, buccal samples and other physical evidence and identification information
25 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
26 181A.155 or 419C.473 **or section 1 of this 2023 Act**;
- 27 (L) Records maintained in the Law Enforcement Data System under ORS 163A.035; or
28 (M) Records of a law enforcement agency or public investigative agency concerning an open or
29 otherwise unresolved investigation.
- 30 (e) "Termination" means:
- 31 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
32 the final disposition of a case by informal means, by a decision not to place the person on probation
33 or make the person a ward of the court after the person has been found to be within the court's
34 jurisdiction or by a discontinuance of probation, of the court's wardship or of the jurisdiction of the
35 Psychiatric Security Review Board, the Oregon Health Authority or the Department of Human Ser-
36 vices.
- 37 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
38 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
39 disposition of the person's most recent contact with a law enforcement agency.
- 40 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
41 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
42 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
43 parent, of the procedures for expunction of a record, the right to and procedure to access counsel
44 under this chapter, the legal effect of an expunction order and the procedures for seeking relief from
45 the duty to report as a sex offender provided under ORS 163A.130, at the following times:

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

3 (b) At the time of termination;

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

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

7 **SECTION 6.** ORS 419C.473 is amended to read:

8 419C.473. (1) Whenever an adjudicated youth has been found to be within the jurisdiction of the
 9 court under ORS 419C.005 for having committed an act that if done by an adult would constitute a
 10 felony listed in subsection (2) of this section, the court shall order the adjudicated youth to submit
 11 to the obtaining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall
 12 further order that as soon as practicable after the entry of the dispositional order, the law
 13 enforcement agency attending upon the court shall cause a blood or buccal sample to be obtained
 14 and transmitted in accordance with ORS 137.076.

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

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

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

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

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

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

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

26 (g) Murder or aggravated murder.

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

29 (a) The Department of State Police notifies the court or the law enforcement agency attending
 30 upon the court that *[it]* **the department** has previously received an adequate blood or buccal sample
 31 taken from the adjudicated youth in accordance with this section, ORS 137.076 or 161.325 (4) **or**
 32 **section 1 of this 2023 Act;** or

33 (b) The court determines that obtaining a sample would create a substantial and unreasonable
 34 risk to the health of the adjudicated youth.

35 (4) Notwithstanding any other provision of law, blood and buccal samples and other physical
 36 evidence and criminal identification information obtained under authority of this section or as a
 37 result of analysis conducted pursuant to ORS 181A.155 may be maintained, stored, destroyed and
 38 released to authorized persons or agencies under the conditions established in ORS 181A.155 and
 39 rules adopted by the Department of State Police under the authority of that section.

40 (5) The court may not order the adjudicated youth or the parent or guardian of the adjudicated
 41 youth to pay for or to reimburse any agency for the cost of obtaining or transmitting a blood or
 42 buccal sample under this section.

43
 44 **REIMBURSEMENT OF DNA COLLECTION COSTS**
 45

1 164.415;]

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

3 [(J) Criminally negligent homicide, as defined in ORS 163.145;]

4 [(K) Aggravated vehicular homicide, as defined in ORS 163.149;]

5 [(L) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this para-
6 graph; or]

7 [(M) Murder, aggravated murder or an attempt to commit murder or aggravated murder.]

8 [(b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
9 partment shall analyze samples from persons convicted of a felony under ORS 475.752, 475.806 to
10 475.894, 475.904, 475.906 or 475.914.]

11 [(c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,
12 the department shall analyze samples from persons convicted of any other felony or from arrested per-
13 sons described in section 1 of this 2023 Act.]

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

17 **(2) The department shall ensure that all blood and buccal samples described in this sec-
18 tion are analyzed within 96 hours of receipt.**

19 [(4)] **(3)** The department may not transfer or disclose any sample, physical evidence or criminal
20 identification information obtained, stored or maintained under authority of this section, ORS
21 137.076, 161.325 or 419C.473 (1) or section 1 of this 2023 Act except:

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

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

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

29 [(5)] **(4)** The department may not transfer or disclose any sample, physical evidence or criminal
30 identification information under subsection [(4)] **(3)** of this section unless the public agency or per-
31 son receiving the sample, physical evidence or criminal identification information agrees to destroy
32 the sample, physical evidence or criminal identification information if notified by the department
33 that a court has reversed the conviction, judgment or order that created the obligation to provide
34 the blood or buccal sample.

35 [(6)] **(5)** Any public agency that receives a sample, physical evidence or criminal identification
36 information under authority of subsection [(4)] **(3)** of this section may not disclose it except as pro-
37 vided in subsection [(4)] **(3)** of this section.

38 [(7)] **(6)** Notwithstanding subsections [(4)] **(3)** and [(6)] **(5)** of this section, any person who is the
39 subject of a record within a criminal identification database maintained under the authority of this
40 section may, upon request, inspect that information at a time and location designated by the de-
41 partment. The department may deny inspection if it determines that there is a reasonable likelihood
42 that such inspection would prejudice a pending criminal investigation. In any case, the department
43 is not required to allow the person or anyone acting on the person's behalf to test any blood or
44 buccal sample or other physical evidence. The department shall adopt procedures governing the in-
45 spection of records and samples and challenges to the accuracy of records. The procedures shall

1 accommodate the need to preserve the materials from contamination and destruction.

2 [(8)(a)] (7)(a) Whenever a court reverses the conviction, judgment or order that created an ob-
3 ligation to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1) and the
4 person did not provide a sample under section 1 of this 2023 Act, the person who provided the
5 sample may request destruction of the sample and any criminal identification record created in
6 connection with that sample.

7 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
8 copy of the court order reversing the conviction, judgment or order, the department shall destroy
9 any sample received from the person, any physical evidence obtained from that sample and any
10 criminal identification records pertaining to the person, unless the department determines that the
11 person has otherwise become obligated to submit a blood or buccal sample as a result of section 1
12 of this 2023 Act or a separate conviction, juvenile adjudication or finding of guilty except for in-
13 sanity for an offense listed in ORS 137.076 (1). When the department destroys a sample, physical
14 evidence or criminal identification record under this paragraph, the department shall notify any
15 public agency or person to whom the sample, physical evidence or criminal identification informa-
16 tion was transferred or disclosed under subsection [(4)] (3) of this section of the reversal of the
17 conviction, judgment or order.

18 (c) The department is not required to destroy an item of physical evidence obtained from a blood
19 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
20 161.325, 419A.260 and 419C.473 (1) and this section and section 1 of this 2023 Act would thereby be
21 destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal identification
22 record is affected by an order to set aside a conviction under ORS 137.225.

23 [(9)] (8) As used in this section, “convicted” includes a juvenile court finding of jurisdiction
24 based on ORS 419C.005.

25 **SECTION 10.** ORS 181A.324 is amended to read:

26 181A.324. (1) The Department of State Police shall adopt rules concerning the prioritization of
27 testing untested sexual assault forensic evidence kits in the department’s possession. The rules must
28 contain:

29 (a) A *[requirement to test all nonanonymous kits and a]* prohibition on the testing of anonymous
30 kits.

31 (b) **A requirement that all nonanonymous kits be tested within seven days of receipt by**
32 **the department.**

33 (2) The department shall test any untested sexual assault forensic evidence kits, other than
34 anonymous kits, in the department’s possession in accordance with the rules adopted pursuant to
35 subsection (1) of this section.

36 (3)(a) The department shall designate an entity, position or class of positions to receive inquiries
37 from law enforcement agencies and victims seeking information concerning the testing of sexual
38 assault forensic evidence kits.

39 (b) The department shall prohibit victims from directly contacting a forensic laboratory per-
40 forming testing of sexual assault forensic evidence kits and may not publicize a means for victims
41 to contact the laboratory.

42 [(4)(a)] (4) As soon as practicable, the department shall ensure that the results from testing
43 sexual assault forensic evidence kits that are eligible to be entered into the Combined DNA Index
44 System are entered into the system after the testing results are obtained.

45 *[(b) No later than July 1, 2019, the department shall provide a written report to the interim com-*

1 *mittees of the Legislative Assembly related to the judiciary, in the manner provided in ORS 192.245,*
 2 *describing the department's progress in entering results from testing sexual assault forensic evidence*
 3 *kits into the Combined DNA Index System.]*

4 (5) No later than January 15 of each calendar year, the department shall provide a written re-
 5 port to the interim committees of the Legislative Assembly related to the judiciary in the manner
 6 provided in ORS 192.245. The report must detail the progress made on the backlog of untested sexual
 7 assault forensic evidence kits and include the number of new kits that have been received during
 8 the previous calendar year, the number of kits that have been tested during the previous calendar
 9 year, and the number of remaining untested kits in the possession of the department.

10 **SECTION 11. (1) The Department of State Police may hire permanent or temporary staff**
 11 **and may enter into contracts with persons or entities in order to enable the department to**
 12 **ensure that all blood or buccal samples are analyzed within 96 hours of receipt and all sexual**
 13 **assault forensic evidence kits are tested within seven days of receipt.**

14 (2) Notwithstanding any other provision of law, the department may, until one year after
 15 the effective date of this 2023 Act, waive hiring requirements or restrictions in order to en-
 16 able the department to ensure that all blood or buccal samples are analyzed within 96 hours
 17 of receipt and all sexual assault forensic evidence kits are tested within seven days of re-
 18 ceipt.

19 **SECTION 12. Section 11 of this 2023 Act is repealed on January 2, 2026.**

20 21 APPLICABILITY

22
23 **SECTION 13. Section 1 of this 2023 Act and the amendments to ORS 137.076, 181A.155,**
 24 **181A.160, 419A.260 and 419C.473 by sections 2 to 6 of this 2023 Act apply to arrests occurring**
 25 **on or after the effective date of this 2023 Act.**

26 27 OPERATIVE DATE

28
29 **SECTION 14. (1) The amendments to ORS 181A.155 and 181A.324 by sections 9 and 10 of**
 30 **this 2023 Act become operative on January 1, 2025.**

31 (2) The Department of State Police may take any action before the operative date speci-
 32 fied in subsection (1) of this section that is necessary to enable the department to exercise,
 33 on and after the operative date specified in subsection (1) of this section, all of the duties,
 34 functions and powers conferred on the department by the amendments to ORS 181A.155 and
 35 181A.324 by sections 9 and 10 of this 2023 Act.

36 37 CAPTIONS

38
39 **SECTION 15. The unit captions used in this 2023 Act are provided only for the conven-**
 40 **ience of the reader and do not become part of the statutory law of this state or express any**
 41 **legislative intent in the enactment of this 2023 Act.**

42 43 EFFECTIVE DATE

44
45 **SECTION 16. This 2023 Act takes effect on the 91st day after the date on which the 2023**

1 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

2
