

Senate Bill 149

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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**.

Prohibits setting aside adult conviction or expunging juvenile record if unsatisfied compensatory fine or restitution judgment exists.

A BILL FOR AN ACT

1
2 Relating to satisfaction of monetary obligations imposed in judgment for benefit of victim; creating
3 new provisions; and amending ORS 137.225 and 419A.262.

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 performed the sentence of the court, **in-**
8 **cluding satisfaction of any compensatory fine or restitution required by the judgment**, and
9 whose conviction is described in subsection (5) of this section by motion may apply to the court
10 where the conviction was entered for entry of an order setting aside 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 the court that would have jurisdiction over the crime for which the person was
14 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
15 the one-year period, time during which the arrested person has secreted himself or herself within
16 or without the state is not included.

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

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

29 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
30 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 re-
5 quire the taking of *[such]* proofs *[as]* it deems proper. The court shall allow the victim to make a
6 statement at the hearing. Except as otherwise provided in subsection (11) 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 aside
9 the conviction, or the arrest record as the case may be, *[it]* **the court** shall enter an appropriate
10 order that *[shall state]* **states** the original arrest charge and the conviction charge, if any and if
11 different from the original, date of charge, submitting agency and disposition. The order *[shall]* **must**
12 further state that positive identification has been established by the bureau and further identified
13 as to state bureau number or submitting agency number. Upon the entry of the order, the applicant
14 for purposes of the law *[shall be]* **is** deemed not to have been previously convicted, or arrested as
15 the case may be, and the court shall issue an order sealing the record of conviction and other offi-
16 cial records in the case, including the records of arrest whether or not the arrest resulted in a
17 further criminal 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]* **is** deemed not to have occurred, and the applicant may answer
22 accordingly 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
25 when 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, except
29 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
40 constitute 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)
4 when 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, a state or municipal traffic offense.

9 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
10 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
11 whether or not the other conviction is for conduct associated with the same criminal episode that
12 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
13 section, a conviction that has been set aside under this section shall be considered for the purpose
14 of determining whether this paragraph is applicable.

15 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
16 before the court is under charge of commission of any crime.

17 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within
18 the three-year period immediately preceding the filing of the motion for any offense, excluding motor
19 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that
20 caused the arrest that is sought to be set aside.

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

24 (9) For purposes of any civil action in which truth is an element of a claim for relief or affir-
25 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
26 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
27 court for an order requiring disclosure of the official records in the case as may be necessary in the
28 interest of justice.

29 (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this
30 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
31 pening and disclosure of any records sealed under this section for the limited purpose of assisting
32 the investigation of the movant. However, such an order has no other effect on the orders setting
33 aside the conviction or the arrest record.

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

38 (a) Abandonment of a child, ORS 163.535.

39 (b) Attempted assault in the second degree, ORS 163.175.

40 (c) Assault in the third degree, ORS 163.165.

41 (d) Coercion, ORS 163.275.

42 (e) Criminal mistreatment in the first degree, ORS 163.205.

43 (f) Attempted escape in the first degree, ORS 162.165.

44 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.

45 (h) Intimidation in the first degree, ORS 166.165.

1 (i) Attempted kidnapping in the second degree, ORS 163.225.

2 (j) Criminally negligent homicide, ORS 163.145.

3 (k) Attempted robbery in the second degree, ORS 164.405.

4 (L) Robbery in the third degree, ORS 164.395.

5 (m) Supplying contraband, ORS 162.185.

6 (n) Unlawful use of a weapon, ORS 166.220.

7 (12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

8 **SECTION 2.** ORS 419A.262 is amended to read:

9 419A.262. (1) An expunction proceeding shall be commenced in the county where the subject
10 person resided at the time of the most recent termination.

11 (2) Upon application of either a person who is the subject of a record or a juvenile department,
12 or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter
13 is contested, it finds that:

14 (a) At least five years have elapsed since the date of the person's most recent termination;

15 (b) Since the date of the most recent termination, the person has not been convicted of a felony
16 or a Class A misdemeanor;

17 (c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are
18 pending against the person;

19 (d) The person is not within the jurisdiction of any juvenile court on the basis of a petition al-
20 leging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005;

21 **(e) The person is not subject to a judgment imposing a compensatory fine or restitution**
22 **that has not been satisfied;** and

23 [(e)] **(f)** The juvenile department is not aware of any pending investigation of the conduct of the
24 person by any law enforcement agency.

25 (3) In the case of an application by the juvenile department or of the court acting upon its own
26 motion, expunction shall not be ordered if actual notice of expunction has not been given to the
27 person in accordance with subsection (10) of this section unless the person has reached 21 years of
28 age.

29 (4) When a person who is the subject of a record kept by a juvenile court or juvenile department
30 reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order
31 expunction if:

32 (a) The person never has been found to be within the jurisdiction of the court; or

33 (b) The conditions of subsection (2) of this section have been met.

34 (5) Expunction shall not be ordered under this section if actual notice of expunction has not
35 been given to the person in accordance with subsection (10) of this section unless the person has
36 reached 21 years of age.

37 (6) Subsections (4) and (5) of this section apply only to cases resulting in termination after
38 September 13, 1975.

39 (7) Notwithstanding subsections (2) and (4) to (6) of this section, upon application of a person
40 who is the subject of a record kept by a juvenile court or juvenile department, upon application of
41 the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter
42 is contested, may order expunction of all or any part of the person's record if it finds that to do so
43 would be in the best interests of the person and the public. In the case of an application by the ju-
44 venile department or of the court acting upon its own motion, expunction shall not be ordered if
45 actual notice of expunction has not been given to the person in accordance with subsection (10) of

1 this section unless the person has reached 21 years of age.

2 (8) When an expunction proceeding is commenced by application of the person whose records
3 are to be expunged, the person shall set forth as part of the application the names of the juvenile
4 courts, juvenile departments, institutions and law enforcement and other agencies that the person
5 has reason to believe possess an expungible record of the person. The juvenile department shall
6 provide the names and addresses of the juvenile courts, juvenile departments, institutions and law
7 enforcement and other agencies that a reasonable search of department files indicates have
8 expungible records.

9 (9) When an expunction proceeding is commenced by application of the juvenile department or
10 upon the court's own motion, the application or motion shall set forth the names and addresses of
11 the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that
12 a reasonable search of department files indicates have expungible records and those provided by the
13 subject person.

14 (10)(a) Notice and a copy of an application for expunction under subsections (2) to (7) of this
15 section shall be given to:

16 (A) The district attorney of the county in which the expunction proceeding is commenced and
17 the district attorney of each county in which the record sought to be expunged is kept; and

18 (B) The person who is the subject of the record if the person has not initiated the expunction
19 proceeding.

20 (b) A district attorney who receives notice under this subsection shall notify the victim of the
21 acts that resulted in the disposition that is the subject of the application for expunction and shall
22 mail a copy of the application for expunction to the victim's last known address.

23 (11) Within 30 days of receiving the notice of application for expunction under subsection (10)
24 of this section, a district attorney shall give written notice of any objection and the grounds therefor
25 to the person whose records are to be expunged and to the juvenile court. If no objection is filed
26 the court may decide the issue of expunction either without a hearing or after full hearing pursuant
27 to subsections (12) to (15) of this section.

28 (12) When an expunction is pending pursuant to subsections (2) to (7) of this section, the court
29 may proceed with or without a hearing, except that:

30 (a) The court may not enter an expunction judgment without a hearing if a timely objection to
31 expunction has been filed pursuant to subsection (11) of this section; and

32 (b) The court may not deny an expunction without a hearing if the proceeding is based on an
33 application of the subject.

34 (13)(a) Notice of a hearing on a pending expunction shall be served on the subject and any dis-
35 trict attorney filing a timely objection pursuant to subsection (11) of this section.

36 (b) When a district attorney receives notice of a hearing for expunction of a record concerning
37 a youth or youth offender proceeding under ORS chapter 419C, if the victim of the acts that resulted
38 in the disposition that is the subject of the application for expunction requests, the district attorney
39 shall mail notice of the hearing to the victim's last-known address.

40 (14) The court shall conduct a hearing on a pending expunction in accord with the provisions
41 of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and
42 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as
43 defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting
44 expunction.

45 (15) At the conclusion of a hearing on a pending expunction, the court shall issue judgment

1 granting or denying expunction.

2 (16) The juvenile court or juvenile department shall send a copy of an expunction judgment to
3 each agency subject to the judgment. Upon receipt of a copy of the judgment, the agency shall
4 comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile
5 department with an indorsement indicating compliance.

6 (17) When all agencies subject to an expunction judgment have indicated their compliance or in
7 any event no later than six weeks following the date the judgment was delivered as required by
8 subsection (16) of this section, the juvenile court shall provide the person who is the subject of the
9 record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and
10 a written notice of rights and effects of expunction. The juvenile court and juvenile department then
11 shall expunge forthwith all records which they possess and which are subject to the judgment, ex-
12 cept the original expunction judgment and the list of complying and noncomplying agencies which
13 must be preserved under seal.

14 (18) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit, munic-
15 ipal and justice courts, and the district and city attorneys of this state, are bound by an expunction
16 judgment of any juvenile court of appropriate jurisdiction in this state issuing an expunction judg-
17 ment.

18 (19) Upon entry of an expunction judgment, the contact that is the subject of the expunged re-
19 cord shall not be disclosed by any agency. An agency that is subject to an expunction judgment shall
20 respond to any inquiry about the contact by indicating that no record or reference concerning the
21 contact exists.

22 (20) A person who is the subject of a record that has been expunged under this section may
23 assert that the record never existed and that the contact, which was the subject of the record, never
24 occurred without incurring a penalty for perjury or false swearing under the laws of this state.

25 (21) Juvenile courts, by court rule or by order related to a particular matter, may direct that
26 records concerning a subject person be destroyed. No such records shall be destroyed until at least
27 three years have elapsed after the date of the subject's most recent termination. In the event the
28 record has been expunged, the expunction judgment and list of complying and noncomplying agen-
29 cies may not be destroyed, but shall be preserved under seal. The destruction of records under this
30 subsection does not constitute expunction.

31 (22) An expunction judgment and list of complying and noncomplying agencies shall be released
32 from confidentiality only on order of the court originating the expunction judgment, based on a
33 finding that review of a particular case furthers compliance with the expunction provisions of this
34 chapter.

35 (23) A subject has a right of action against any person who intentionally violates the
36 confidentiality provisions of this section. In any such proceeding, punitive damages up to an amount
37 of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled
38 to costs and reasonable attorney fees.

39 (24) Intentional violation of the confidentiality provisions of this section by a public employee
40 is cause for dismissal.

41 (25) A person who intentionally releases all or part of an expunged record commits a Class C
42 misdemeanor.

43 **SECTION 3. (1) The amendments to ORS 137.225 by section 1 of this 2009 Act apply to**
44 **motions filed under ORS 137.225 on or after the effective date of this 2009 Act.**

45 **(2) The amendments to ORS 419A.262 by section 2 of this 2009 Act apply to proceedings**

1 **commenced under ORS 419A.262 on or after the effective date of this 2009 Act.**

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