

Senate Bill 690

Sponsored by Senator STEINER HAYWARD

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**.

Permits order to set aside conviction of certain sex crimes under certain circumstances. Permits expungement of juvenile records related to adjudication for certain sex crimes under certain circumstances.

Directs Department of State Police to remove certain records related to sex crimes from Law Enforcement Data System when conviction is set aside or adjudication is expunged.

A BILL FOR AN ACT

1
2 Relating to motions to set aside convictions of certain sex crimes; amending ORS 137.225, 181.592
3 and 419A.260.

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

5 **SECTION 1.** ORS 137.225, as amended by section 4, chapter 70, Oregon Laws 2012, is amended
6 to read:

7 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
8 judgment, any defendant who has fully complied with and performed the sentence of the court 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 this 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 fingerprint card with the notation "motion for setting aside conviction,"
21 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
22 of State Police. Information resulting from the fingerprint search along with the fingerprint card
23 shall be returned to the prosecuting attorney.

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

28 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
29 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
30 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the

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 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
2 gerprint card to the Department of State Police.

3 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
4 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
5 under ORS 21.135.

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

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

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

26 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
27 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

28 (b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
29 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

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

32 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
33 cept for:

34 (A) Any sex crime; or

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

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

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

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

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

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

43 (A) A Class C felony, except for any sex crime or for the following crimes when they would
44 constitute child abuse as defined in ORS 419B.005:

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

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

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

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

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

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

9 (D) A violation.

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

12 (a) A conviction for a state or municipal traffic offense.

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

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

21 **(7) Notwithstanding subsection (5) of this section, a person may apply for an order set-**
22 **ting aside a conviction under subsection (1)(a) of this section if:**

23 **(a)(A) The person has been convicted of rape in the third degree as defined in ORS**
24 **163.355, sodomy in the third degree as defined in ORS 163.385, sexual abuse in the third de-**
25 **gree as defined in ORS 163.415, contributing to the sexual delinquency of a minor as defined**
26 **in ORS 163.435, sexual misconduct as defined in ORS 163.445, or an attempt to commit any**
27 **of those offenses; or**

28 **(B) The person has been found guilty except for insanity of the offense, or the person**
29 **has been found to be within the jurisdiction of the juvenile court for having committed an**
30 **act that if committed by an adult would constitute the offense;**

31 **(b) The person was less than five years older than the victim at the time of the offense;**

32 **(c) The victim's lack of consent was due solely to incapacity to consent by reason of be-**
33 **ing less than a specified age;**

34 **(d) The victim was at least 14 years of age at the time of the offense or act; and**

35 **(e) At the time of the offense or act, the person had no prior conviction for an offense**
36 **listed in ORS 181.594 (5) or adjudication for an act that if committed by an adult would con-**
37 **stitute an offense listed in ORS 181.594 (5), or no prior conviction or adjudication for conduct**
38 **in another jurisdiction that if committed in this state by an adult would constitute an offense**
39 **listed in ORS 181.594 (5).**

40 **[(7)] (8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this**
41 **section do not apply to:**

42 **(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of**
43 **the crime was 65 years of age or older; and**

44 **(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the**
45 **crime was 65 years of age or older.**

1 [(8)] (9) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
2 section do not apply to criminally negligent homicide under ORS 163.145, when that offense was
3 punishable as a Class C felony.

4 [(9)] (10) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
5 section apply to a conviction for a Class B felony described in subsection (5)(a) of this section only
6 if:

7 (a) Twenty years or more have elapsed from the date of the conviction sought to be set aside
8 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
9 ever is later; and

10 (b) The person has not been convicted of or arrested for any other offense, excluding motor ve-
11 hicle violations, after the date the person was convicted of the offense sought to be set aside.
12 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
13 this section shall be considered for the purpose of determining whether this paragraph is applicable.

14 [(10)] (11) The provisions of subsection (1)(b) of this section do not apply to:

15 (a) A person arrested within the three-year period immediately preceding the filing of the motion
16 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
17 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
18 has been set aside under this section may not be considered for the purpose of determining whether
19 this paragraph is applicable.

20 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
21 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

22 [(11)] (12) The provisions of subsection (1) of this section apply to convictions and arrests that
23 occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for
24 making an application.

25 [(12)] (13) For purposes of any civil action in which truth is an element of a claim for relief or
26 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
27 arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to
28 the court for an order requiring disclosure of the official records in the case as may be necessary
29 in the interest of justice.

30 [(13)] (14) Upon motion of any prosecutor or defendant in a case involving records sealed under
31 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
32 reopening and disclosure of any records sealed under this section for the limited purpose of assisting
33 the investigation of the movant. However, such an order has no other effect on the orders setting
34 aside the conviction or the arrest record.

35 [(14)] (15) Unless the court makes written findings by clear and convincing evidence that
36 granting the motion would not be in the best interests of justice, the court shall grant the motion
37 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
38 of one of the following crimes and is otherwise eligible for relief under this section:

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

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

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

42 (d) Coercion, ORS 163.275.

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

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

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

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

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

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

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

5 (L) Supplying contraband, ORS 162.185.

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

7 [(15)] (16) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

8 **SECTION 2.** ORS 419A.260 is amended to read:

9 419A.260. (1) As used in this section and ORS 419A.262:

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

14 (b) “Expunction” means:

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

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

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

24 (d) “Record” includes a fingerprint or photograph file, report, exhibit or other material which
 25 contains information relating to a person’s contact with any law enforcement agency or juvenile
 26 court or juvenile department and is kept manually, through the use of electronic data processing
 27 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile
 28 court or juvenile department or an agency of the State of Oregon. “Record” does not include:

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

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

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

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

36 (E) Records related to a support obligation;

37 (F) Medical records;

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

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

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

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

45 (i) Aggravated murder under ORS 163.095;

- 1 (ii) Murder under ORS 163.115;
- 2 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;
- 3 (iv) Manslaughter in the first degree under ORS 163.118;
- 4 (v) Manslaughter in the second degree under ORS 163.125;
- 5 (vi) Criminally negligent homicide under ORS 163.145;
- 6 (vii) Assault in the first degree under ORS 163.185;
- 7 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 8 (ix) Kidnapping in the first degree under ORS 163.235;
- 9 (x) Rape in the third degree under ORS 163.355, **unless the person meets the eligibility re-**
- 10 **quirements described in ORS 137.225 (7) for applying by motion to set aside a conviction;**
- 11 (xi) Rape in the second degree under ORS 163.365;
- 12 (xii) Rape in the first degree under ORS 163.375;
- 13 (xiii) Sodomy in the third degree under ORS 163.385, **unless the person meets the eligibility**
- 14 **requirements under ORS 137.225 (7) for applying by motion to set aside a conviction;**
- 15 (xiv) Sodomy in the second degree under ORS 163.395;
- 16 (xv) Sodomy in the first degree under ORS 163.405;
- 17 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 18 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 19 (xviii) Sexual abuse in the third degree under ORS 163.415, **unless the person meets the el-**
- 20 **igibility requirements under ORS 137.225 (7) for applying by motion to set aside a**
- 21 **conviction;**
- 22 (xix) Sexual abuse in the second degree under ORS 163.425;
- 23 (xx) Sexual abuse in the first degree under ORS 163.427;
- 24 (xxi) Promoting prostitution under ORS 167.012;
- 25 (xxii) Compelling prostitution under ORS 167.017;
- 26 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- 27 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 28 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
- 29 second degree and criminally negligent homicide;
- 30 (K) Blood samples, buccal samples and other physical evidence and identification information
- 31 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 32 181.085 or 419C.473; or
- 33 (L) Records maintained in the Law Enforcement Data System under ORS 181.592, **provided that**
- 34 **the record is the result of a finding of juvenile court jurisdiction for conduct described in**
- 35 **subparagraph (J) of this paragraph.**
- 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 or of the court's wardship.
- 41 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 42 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 43 disposition of the person's most recent contact with a law enforcement agency.
- 44 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 45 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or

1 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
 2 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
 3 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
 4 a sex offender provided under ORS 181.823, at the following times:

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

7 (b) At the time of termination;

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

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

11 **SECTION 3.** ORS 181.592 is amended to read:

12 181.592. (1) The Department of State Police shall enter into the Law Enforcement Data System
 13 the sex offender information obtained from the sex offender registration forms submitted under ORS
 14 181.595, 181.596, 181.597 and 181.609. The department shall remove from the Law Enforcement Data
 15 System the sex offender information obtained from the sex offender registration form submitted un-
 16 der ORS 181.595, 181.596, 181.597 or 181.609 if the conviction or adjudication that gave rise to the
 17 registration obligation is reversed, [*or*] vacated, **set aside or expunged** or if the registrant is par-
 18 doned.

19 (2)(a) When a person is under supervision for the first time as a result of a conviction for an
 20 offense requiring reporting as a sex offender, the Department of State Police, a city police depart-
 21 ment or a county sheriff's office shall release, upon request, only the following information about the
 22 sex offender:

23 (A) The sex offender's name and date of birth;

24 (B) A physical description of the sex offender and a photograph, if applicable;

25 (C) The name and zip code of the city where the sex offender resides;

26 (D) The name and telephone number of a contact person at the agency that is supervising the
 27 sex offender; and

28 (E) The name of institutions of higher education that the sex offender attends or at which the
 29 sex offender works or carries on a vocation.

30 (b) Notwithstanding paragraph (a) of this subsection, if the sex offender is under the supervision
 31 of the Oregon Youth Authority or a county juvenile department, the Department of State Police, city
 32 police department or county sheriff's office shall release only:

33 (A) The sex offender's name and year of birth;

34 (B) The name and zip code of the city where the sex offender resides;

35 (C) The name and telephone number of a contact person at the agency that is supervising the
 36 sex offender; and

37 (D) The name of institutions of higher education that the sex offender attends or at which the
 38 sex offender works or carries on a vocation.

39 (c) An agency that supervises a sex offender shall release, upon request, any information that
 40 may be necessary to protect the public concerning the sex offender.

41 (3) Except as otherwise limited by subsection (2)(a) and (b) of this section regarding persons who
 42 are under supervision for the first time as sex offenders, the Department of State Police, a city po-
 43 lice department or a county sheriff's office shall release, upon request, any information that may be
 44 necessary to protect the public concerning sex offenders who reside in a specific area or concerning
 45 a specific sex offender. However, the entity releasing the information may not release the identity

1 of a victim of a sex crime.

2 (4)(a) The Department of State Police may make the information described in subsections (2) and
 3 (3) of this section available to the public, without the need for a request, by electronic or other
 4 means. The Department of State Police shall make information about a person who is under super-
 5 vision for the first time as a result of a conviction for an offense that requires reporting as a sex
 6 offender accessible only by the use of the sex offender’s name. For all other sex offenders, the De-
 7 partment of State Police may make the information accessible in any manner the department
 8 chooses.

9 (b) Notwithstanding paragraph (a) of this subsection, the Department of State Police may not
 10 use the Internet to make information available to the public except as required by paragraph (c) of
 11 this subsection.

12 (c) Notwithstanding subsections (2) and (3) of this section, the Department of State Police shall
 13 use the Internet to make the information described in paragraph (d) of this subsection available to
 14 the public if the information is about a person:

15 (A) Determined to be a predatory sex offender, as provided in ORS 181.585, who has also been
 16 determined, pursuant to rules of the agency making the predatory sex offender determination, to
 17 present the highest risk of reoffending and to require the widest range of notification; or

18 (B) Found to be a sexually violent dangerous offender under ORS 144.635.

19 (d) The information required to be made available under paragraph (c) of this subsection is:

20 (A) The person’s name and address;

21 (B) A physical description of the person including, but not limited to, the person’s age, height,
 22 weight and eye and hair color;

23 (C) The type of vehicle that the person is known to drive;

24 (D) Any conditions or restrictions upon the person’s probation, parole, post-prison supervision
 25 or conditional release;

26 (E) A description of the person’s primary and secondary targets;

27 (F) A description of the person’s method of offense;

28 (G) A current photograph of the person;

29 (H) If the person is under supervision, the name or telephone number of the person’s parole and
 30 probation officer; and

31 (I) If the person is not under supervision, contact information for the Department of State Po-
 32 lice.

33 (5) The Law Enforcement Data System may send sex offender information to the National Crime
 34 Information Center as part of the national sex offender registry in accordance with appropriate state
 35 and federal procedures.

36 (6) As used in this section:

37 (a) “Attends,” “institution of higher education,” “sex crime,” “works” and “carries on a
 38 vocation” have the meanings given those terms in ORS 181.594.

39 (b) “Sex offender” means a person who is required to report under ORS 181.595, 181.596, 181.597
 40 or 181.609.