



## Rod Underhill, District Attorney

1021 SW Fourth Avenue, Room 600  
Portland, OR 97204-1193  
Phone: 503-988-3162 Fax: 503-988-3643  
[www.mcda.us](http://www.mcda.us)

### M E M O R A N D U M

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**To:** House Majority Leader Jennifer Williamson, Chair House Rules Committee  
**From:** Jeff Lowe, Multnomah Deputy District Attorney  
**Date:** February 29, 2016  
**Subject:** SB 1553B – Section 4 Expungement Technical Fixes; Position of Support

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Chair Williamson and Members of the Committee:

This testimony is provided in support of SB 1553B, which makes technical adjustments to the expungement statute in Oregon via Section 4 of the B-Engrossed measure. The fixes described herein are the consensus product of a workgroup aimed at streamlining, reorganizing and modernizing the existing expungement statute.

ORS 137.225, which addresses the set aside of convictions and arrests, was amended by the passage of Senate Bill 908 in 2013. The statute was restructured to remove a great deal of redundancy that had crept into the statute due to a series of small amendments. There were also four substantive changes to the statute:

- 1) If a defendant's probation is revoked, the defendant will not be eligible for a set aside of the conviction for ten years from the date of revocation. The statute now explicitly states that a person will not become eligible for a set aside of a conviction until supervision has ended and the defendant is no longer incarcerated.
- 2) A person convicted of the Class B felony of the Unlawful Possession of a Controlled Substance Schedule I is eligible for a set aside of the conviction after only three years, just like the Unlawful Possession of a Controlled Substance Schedule II and other C felony and misdemeanor crimes. A defendant will not be eligible if there is another conviction for any other offense within ten years of filing of the motion.
- 3) A single violation conviction with the ten-year period prior to the filing of a motion to set aside a conviction or arrest is not considered a conviction that would bar a person from a set aside of a conviction or arrest within three years of conviction, upon dismissal of the charge or one year from arrest if no charging instrument was filed.
- 4) A conviction for Assault in the Third Degree, where the defendant is at least eighteen years of age and the victim is ten years of age or younger, is no longer eligible.

Upon the passage of House Bill 2320 in 2015, SB 908 was immediately repealed. However, HB 2320 had within it all of the provisions in the same form as SB 908, with the addition of one more substantive change:

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- 5) A conviction for a Class C felony sex crime is eligible for a set aside where the defendant was less than sixteen years of age at the commission of the crime and either:
  - a. The defendant was less than two years and 180 days older than the victim or
  - b. At least two years and 180 days older, but less than three years and 180 days older than the victim and the court finds that a set aside of the conviction is in the interests of justice and of benefit to the defendant and the community.

SB 1553B simply clarifies that offenses that are reducible to a misdemeanor in ORS 161.570 will qualify for a set-aside under ORS 137.225, under subsection (5). I do not believe that the amendment will expand the number of offenses that would be eligible, given that ORS 137.225(6) overrides any eligibility in ORS 137.225(5).