

# Senate Bill 681

Sponsored by Senator FREDERICK (at the request of Oregon Society of Addiction Medicine (State Chapter of American Society of Addiction Medicine)) (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**.

Establishes procedure for person with qualifying conviction for possession of controlled substance to file motion requesting court order setting aside conviction. Provides that fee, set of fingerprints and background check are not required for motion. Specifies grounds for objection to order and burden of proof.

## A BILL FOR AN ACT

1  
2 Relating to setting aside convictions.

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

4 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 475.752 to**  
5 **475.980.**

6 **SECTION 2. (1) Notwithstanding ORS 137.225, a person with a qualifying conviction may**  
7 **apply by motion to the court in which the judgment of conviction was entered for entry of**  
8 **an order setting aside the conviction as provided in this section.**

9 **(2)(a) The person may not file a motion under this section until at least one year after**  
10 **any sentence ordered by the court for the qualifying conviction has been completed.**

11 **(b) A person filing a motion under this section is not required to pay the filing fee es-**  
12 **tablished under ORS 21.135 or any other fee, or file a set of fingerprints.**

13 **(c) No background check or identification by the Department of State Police is required**  
14 **to set aside a conviction under this section.**

15 **(3)(a) At the time of filing the motion, the person shall serve a copy of the motion upon**  
16 **the office of the prosecuting attorney of the jurisdiction in which the judgment of conviction**  
17 **was entered.**

18 **(b) The prosecuting attorney, within 30 days after the filing of the motion under para-**  
19 **graph (a) of this subsection, may file an objection to granting the motion only on the basis**  
20 **that the person's conviction is not a qualifying conviction.**

21 **(c) If no objection from the prosecuting attorney is received by the court within 30 days**  
22 **after the filing of the motion, the court shall grant the motion and enter an order as de-**  
23 **scribed in subsection (5) of this section.**

24 **(4) If the court receives an objection from the prosecuting attorney, the court shall hold**  
25 **a hearing to determine whether the conviction sought to be set aside is a qualifying con-**  
26 **viction. The person has the burden of establishing, by a preponderance of the evidence, that**  
27 **the conviction is a qualifying conviction. If the court determines that the conviction is a**  
28 **qualifying conviction, the court shall grant the motion and enter an order as provided in**  
29 **subsection (5) of this section.**

30 **(5) Upon granting a motion to set aside a qualifying conviction under this section, 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 court shall enter an appropriate order. Upon the entry of the order, the person for purposes  
2 of the law shall be deemed not to have been previously convicted and the court shall issue  
3 an order sealing the record of conviction and other official records in the case, including the  
4 records of arrest, citation or charge.

5 (6) The clerk of the court shall forward a certified copy of the order to such agencies as  
6 directed by the court. A certified copy must be sent to the Department of Corrections when  
7 the person has been in the custody of the Department of Corrections. Upon entry of the or-  
8 der, the conviction, arrest, citation, charge or other proceeding shall be deemed not to have  
9 occurred, and the person may answer accordingly any questions relating to its occurrence.

10 (7) As used in this section:

11 (a) "Prosecuting attorney" means a district attorney or a city attorney with a  
12 prosecutorial function.

13 (b) "Qualifying conviction" means a conviction for unlawful possession of a controlled  
14 substance based on the following conduct:

15 (A) Possession of fewer than 40 user units of a mixture or substance containing a de-  
16 tectable amount of lysergic acid diethylamide;

17 (B) Possession of less than 12 grams of a mixture or substance containing a detectable  
18 amount of psilocybin or psilocin;

19 (C) Possession of fewer than 40 user units of a mixture or substance containing a de-  
20 tectable amount of methadone;

21 (D) Possession of fewer than 40 pills, tablets or capsules of a mixture or substance con-  
22 taining a detectable amount of oxycodone;

23 (E) Possession of less than one gram of a mixture or substance containing a detectable  
24 amount of heroin;

25 (F) Possession of less than one gram, or fewer than five pills, tablets or capsules, of a  
26 mixture or substance containing a detectable amount of:

27 (i) 3,4-methylenedioxyamphetamine;

28 (ii) 3,4-methylenedioxymethamphetamine; or

29 (iii) 3,4-methylenedioxy-N-ethylamphetamine;

30 (G) Possession of less than two grams of a mixture of substance containing a detectable  
31 amount of cocaine;

32 (H) Possession of less than two grams of a mixture or substance containing a detectable  
33 amount of methamphetamine; or

34 (I) Any other possession of a controlled substance that, if occurring on or after February  
35 1, 2021, would constitute a Class E violation.

36