

SB 397-2
(LC 2562)
4/8/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 397**

1 On page 1 of the printed bill, line 2, after “expungement;” delete the rest
2 of the line and insert “creating new provisions; and amending ORS 135.418,
3 137.223, 137.225 and 646.607.”.

4 Delete lines 4 through 29 and delete pages 2 through 7 and insert:

5 **“SECTION 1.** ORS 137.225 is amended to read:

6 “137.225. (1)(a) [*Except as provided in paragraph (c) of this subsection,*]
7 At any time after the [*lapse of three years from the date of pronouncement of*
8 *judgment*] **person becomes eligible as described in paragraph (b) of this**
9 **subsection, any [*defendant*] person convicted of an offense** who has fully
10 complied with and performed the sentence of the court **for the offense**, and
11 whose conviction is described in subsection (5) of this section, by motion
12 may apply to the court where the conviction was entered for entry of an
13 order setting aside the conviction. A person who is still under supervision[,
14 *or who is still incarcerated,*] as part of the sentence for the offense that is
15 the subject of the motion has not fully complied with or performed the sen-
16 tence of the court.

17 **“(b) A person is eligible to file a motion under paragraph (a) of this**
18 **subsection:**

19 **“(A) For a Class B felony, seven years from the date of conviction**
20 **or the release of the person from imprisonment for the conviction**
21 **sought to be set aside, whichever is later.**

1 **“(B) For a Class C felony, five years from the date of conviction or**
2 **the release of the person from imprisonment for the conviction sought**
3 **to be set aside, whichever is later.**

4 **“(C) For a Class A misdemeanor, three years from the date of con-**
5 **viction or the release of the person from imprisonment for the con-**
6 **viction sought to be set aside, whichever is later.**

7 **“(D) For a Class B or Class C misdemeanor, a violation or the**
8 **finding of a person in contempt of court, one year from the date of**
9 **conviction or finding or the release of the person from imprisonment**
10 **for the conviction or finding sought to be set aside, whichever is later.**

11 *“(b) At any time after the lapse of one year from the date of any arrest,*
12 *issuance of a criminal citation or criminal charge, if no accusatory instrument*
13 *was filed, or at any time after an acquittal or a dismissal of the charge, the*
14 *arrested, cited or charged person may apply to the court that would have ju-*
15 *risdiction over the crime for which the person was arrested, cited or charged,*
16 *for entry of an order setting aside the record of the arrest, citation or charge.*
17 *For the purpose of computing the one-year period, time during which the per-*
18 *son has secreted himself or herself within or without this state is not*
19 *included.]*

20 **“(c) If no accusatory instrument is filed, at any time after 60 days**
21 **from the date the prosecuting attorney indicates that the state has**
22 **elected not to proceed with a prosecution or contempt proceeding, an**
23 **arrested, cited or charged person may apply to the court in the county**
24 **in which the person was arrested, cited or charged, for entry of an**
25 **order setting aside the record of the arrest, citation or charge.**

26 **“(d) At any time after an acquittal or a dismissal other than a dis-**
27 **missal described in subsection (c) of this section, an arrested, cited or**
28 **charged person may apply to the court in the county in which the**
29 **person was arrested, cited or charged, for entry of an order setting**
30 **aside the record of the arrest, citation or charge.**

1 “[*(c)*] **(e) Notwithstanding paragraph (b) of this subsection**, a person
2 whose sentence of probation was revoked may not apply to the court for
3 entry of an order setting aside the conviction for which the person was
4 sentenced to probation for a period of [*10*] **three** years from the date of re-
5 vocation **or until the person becomes eligible as described in paragraph**
6 **(b) of this subsection, whichever occurs later.**

7 **“(f) A person filing a motion under this section is not required to**
8 **pay the filing fee established under ORS 21.135.**

9 “(2)(a) A copy of the motion [*and a full set of the defendant’s*
10 *fingerprints*] shall be served upon the office of the prosecuting attorney who
11 prosecuted the [*crime or violation*] **offense**, or who had authority to prose-
12 cute the charge if there was no accusatory instrument filed[, *and opportunity*
13 *shall be given to contest the motion. The fingerprint card with the notation*
14 *‘motion for setting aside conviction,’ or ‘motion for setting aside arrest, citation*
15 *or charge record’ as the case may be, shall be forwarded to the Department*
16 *of State Police. Information resulting from the fingerprint search along with*
17 *the fingerprint card shall be returned to the prosecuting attorney*].**The pros-**
18 **ecuting attorney may object to a motion filed under subsection (1)(a)**
19 **of this section and shall notify the court and the person of the ob-**
20 **jection within 120 days of the date the motion was filed with the court.**

21 “(b) When a prosecuting attorney is served with a copy of a motion to set
22 aside a conviction under **subsection (1)(a) of this section**, the prosecuting
23 attorney shall provide a copy of the motion and notice of the hearing date
24 to the victim, if any, of the [*crime*] **offense** by mailing a copy of the motion
25 and notice to the victim’s last-known address.

26 **“(c) When a person makes a motion under this section, the person**
27 **shall forward to the Department of State Police a full set of the**
28 **person’s fingerprints on a fingerprint card or in any other manner**
29 **specified by the department.**

30 “[*(c)*] **(d)** When a person makes a motion under subsection (1)(a) of this

1 section, the person must pay a fee [of \$80] to the Department of State Police
2 **for the purpose of the department performing a criminal record**
3 **check.** *[The person shall attach a certified check payable to the Department*
4 *of State Police in the amount of \$80 to the fingerprint card that is served upon*
5 *the prosecuting attorney. The office of the prosecuting attorney shall forward*
6 *the check with the fingerprint card to the Department of State Police.]* **The**
7 **department shall establish a fee in an amount not to exceed the actual**
8 **cost of performing the criminal record check. If the department is**
9 **required to perform only one criminal record check for the person, the**
10 **department may only charge one fee, regardless of the number of**
11 **counties in which the person is filing a motion to set aside a con-**
12 **viction, arrest, charge or citation under this section. The department**
13 **shall provide a copy of the results of the criminal record check to the**
14 **prosecuting attorney.**

15 “*[(d) In addition to the fee established under paragraph (c) of this sub-*
16 *section, when a person makes a motion under subsection (1)(a) of this section*
17 *the person must pay the filing fee established under ORS 21.135.]*

18 “[~~(e)~~] **(e)** The prosecuting attorney may not charge the [~~defendant~~] **person**
19 a fee for performing the requirements described in this section.

20 “[~~(3)~~ *Upon hearing the motion, the court may require the filing of such af-*
21 *fidavits and may require the taking of such proofs as the court deems proper.*
22 *The court shall allow the victim to make a statement at the hearing. Except*
23 *as otherwise provided in subsection (12) of this section, if the court determines*
24 *that the circumstances and behavior of the applicant from the date of con-*
25 *viction, or from the date of arrest, citation or charge as the case may be, to the*
26 *date of the hearing on the motion warrant setting aside the conviction, or the*
27 *arrest, citation or charge record as the case may be, the court shall enter an*
28 *appropriate order that shall state the original arrest or citation charge and the*
29 *conviction charge, if any and if different from the original, date of charge,*
30 *submitting agency and disposition. The order shall further state that positive*

1 *identification has been established by the Department of State Police and fur-*
2 *ther identified as to Department of State Police number or submitting agency*
3 *number. Upon the entry of the order, the applicant for purposes of the law*
4 *shall be deemed not to have been previously convicted, or arrested, cited or*
5 *charged as the case may be, and the court shall issue an order sealing the*
6 *record of conviction and other official records in the case, including the re-*
7 *ords of arrest, citation or charge whether or not the arrest, citation or charge*
8 *resulted in a further criminal proceeding.]*

9 **“(3)(a) If an objection is received to a motion filed under subsection**
10 **(1)(a) of this section, the court shall hold a hearing, and may require**
11 **the filing of such affidavits and may require the taking of such proofs**
12 **as the court deems proper. The court shall allow the victim to make**
13 **a statement at the hearing. If the person is otherwise eligible for relief**
14 **under this section, the court shall grant the motion and enter an order**
15 **as described in paragraph (b) of this subsection unless the court makes**
16 **written findings, by clear and convincing evidence, that the circum-**
17 **stances and behavior of the person, from the date of the conviction**
18 **the person is seeking to set aside to the date of the hearing on the**
19 **motion, do not warrant granting the motion due to the circumstances**
20 **and behavior creating a risk to public safety. When determining**
21 **whether the person’s circumstances and behavior create a risk to**
22 **public safety, the court may only consider criminal behavior, or vio-**
23 **lations of regulatory law or administrative rule enforced by civil pen-**
24 **alty or other administrative sanction that relate to the character of**
25 **the conviction sought to be set aside. The court may not consider**
26 **non-punitive civil liability, monetary obligations and motor vehicle**
27 **violations. Upon granting the motion, the court shall enter an appro-**
28 **priate order containing the original arrest or citation charge, the**
29 **conviction charge, if different from the original, the date of charge,**
30 **the submitting agency and the disposition of the charge. Upon the**

1 **entry of the order, the person for purposes of the law shall be deemed**
2 **not to have been previously convicted, and the court shall issue an**
3 **order sealing the record of conviction and other official records in the**
4 **case, including the records of arrest, citation or charge.**

5 **“(b) The court shall grant a motion filed under subsection (1)(c) or**
6 **(d) of this section, or under subsection (1)(a) of this section if no ob-**
7 **jection to the motion is received, and shall enter an appropriate order**
8 **containing the original arrest or citation charge, the conviction**
9 **charge, if applicable and different from the original, the date of**
10 **charge, the submitting agency and the disposition of the charge. Upon**
11 **the entry of the order, the person for purposes of the law shall be**
12 **deemed not to have been previously convicted, arrested, cited or**
13 **charged, and the court shall issue an order sealing all official records**
14 **in the case, including the records of arrest, citation or charge,**
15 **whether or not the arrest, citation or charge resulted in a further**
16 **criminal proceeding.**

17 **“(4) The clerk of the court shall forward a certified copy of the order to**
18 **such agencies as directed by the court. A certified copy must be sent to the**
19 **Department of Corrections when the person has been in the custody of the**
20 **Department of Corrections. Upon entry of the order, the conviction, arrest,**
21 **citation, charge or other proceeding shall be deemed not to have occurred,**
22 **and the [applicant] person may answer accordingly any questions relating**
23 **to its occurrence.**

24 **“(5) The provisions of subsection (1)(a) of this section apply to a con-**
25 **viction for:**

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

29 **“[(A)(i) *Twenty years or more have elapsed from the date of the conviction***
30 ***sought to be set aside or of the release of the person from imprisonment for the***

1 conviction sought to be set aside, whichever is later; and]

2 “[ii] The person has not been convicted of, arrested or criminally cited for
3 or charged with any other offense, excluding motor vehicle violations, after the
4 date the person was convicted of the offense sought to be set aside. Notwith-
5 standing subsection (1) of this section, a conviction, arrest, citation or charge
6 that has been set aside under this section shall be considered for the purpose
7 of determining whether this subparagraph is applicable; or]

8 “[B] The Class B felony is described in paragraphs (b) to (d) of this sub-
9 section.]

10 “(b) Any misdemeanor, Class C felony or felony punishable as a
11 misdemeanor pursuant to ORS 161.705.

12 “(c) An offense constituting a violation under state law or local ordi-
13 nance.

14 “(d) An offense committed before January 1, 1972, that, if committed after
15 that date, would qualify for an order under this section.

16 “(e) **The finding of a person in contempt of court.**

17 “(6) Notwithstanding subsection (5) of this section, the provisions of sub-
18 section (1)(a) of this section do not apply to a conviction for:

19 “(a) Criminal mistreatment in the second degree under ORS 163.200 if the
20 victim at the time of the crime was 65 years of age or older.

21 “(b) Criminal mistreatment in the first degree under ORS 163.205 if the
22 victim at the time of the crime was 65 years of age or older, or when the
23 offense constitutes child abuse as defined in ORS 419B.005.

24 “(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when
25 the offense constitutes child abuse as defined in ORS 419B.005.

26 “(d) Criminally negligent homicide under ORS 163.145, when that offense
27 was punishable as a Class C felony.

28 “(e) Assault in the third degree under ORS 163.165 (1)(h).

29 “(f) Any sex crime, unless:

30 “(A) The sex crime is listed in ORS 163A.140 (1)(a) and:

1 “(i) The person has been relieved of the obligation to report as a sex
2 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
3 and

4 “(ii) The person has not been convicted of, found guilty except for insan-
5 ity of or found to be within the jurisdiction of the juvenile court based on
6 a crime for which the court is prohibited from setting aside the conviction
7 under this section; or

8 “(B) The sex crime constitutes a Class C felony and:

9 “(i) The person was under 16 years of age at the time of the offense;

10 “(ii) The person is:

11 “(I) Less than two years and 180 days older than the victim; or

12 “(II) At least two years and 180 days older, but less than three years and
13 180 days older, than the victim and the court finds that setting aside the
14 conviction is in the interests of justice and of benefit to the person and the
15 community;

16 “(iii) The victim’s lack of consent was due solely to incapacity to consent
17 by reason of being less than a specified age;

18 “(iv) The victim was at least 12 years of age at the time of the offense;

19 “(v) The person has not been convicted of, found guilty except for insanity
20 of or found to be within the jurisdiction of the juvenile court based on a
21 crime for which the court is prohibited from setting aside the conviction
22 under this section; and

23 “(vi) Each conviction or finding described in this subparagraph involved
24 the same victim.

25 “(7) Notwithstanding subsection (5) of this section, the provisions of sub-
26 section (1) of this section do not apply to:

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

28 “(b) A person convicted, within the [10-year] **following applicable time**
29 period immediately preceding the filing of the motion pursuant to subsection
30 (1) of this section, of any other offense, excluding motor vehicle violations,

1 whether or not the other conviction is for conduct associated with the same
2 criminal episode that caused the arrest, citation, charge or conviction that
3 is sought to be set aside[.]:

4 **“(A) For a motion concerning a Class B felony, seven years.**

5 **“(B) For a motion concerning a Class C felony, five years.**

6 **“(C) For a motion concerning a Class A misdemeanor, three years.**

7 **“(D) For a motion concerning a Class B or Class C misdemeanor a
8 violation or a finding of contempt of court, one year.**

9 **“(c) A single violation, other than a motor vehicle violation, within the
10 [last 10 years] time period specified in paragraph (b) of this subsection
11 is not a conviction under this subsection. Notwithstanding subsection (1) of
12 this section, a conviction that has been set aside under this section shall be
13 considered for the purpose of determining whether [this] paragraph (b) of
14 this subsection is applicable.**

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

18 **“(8) The provisions of subsection [(1)(b)] (1)(c) or (d) of this section do
19 not apply to[:]**

20 **“[(a) A person arrested or criminally cited for or charged with an offense
21 within the three-year period immediately preceding the filing of the motion for
22 any offense, excluding motor vehicle violations, and excluding arrests, citations
23 or charges for conduct associated with the same criminal episode that caused
24 the arrest, citation or charge that is sought to be set aside. An arrest, citation
25 or charge that has been set aside under this section may not be considered for
26 the purpose of determining whether this paragraph is applicable.]**

27 **“[(b)] an arrest or citation for driving while under the influence of
28 intoxicants if the charge is dismissed as a result of the person’s successful
29 completion of a diversion agreement described in ORS 813.200.**

30 **“(9) The provisions of subsection (1) of this section apply to convictions,**

1 arrests, citations and charges that occurred before, as well as those that
2 occurred after, September 9, 1971. There is no time limit for making an ap-
3 plication.

4 “(10) For purposes of any civil action in which truth is an element of a
5 claim for relief or affirmative defense, the provisions of subsection (3) of this
6 section providing that the conviction, arrest, citation, charge or other pro-
7 ceeding be deemed not to have occurred do not apply and a party may apply
8 to the court for an order requiring disclosure of the official records in the
9 case as may be necessary in the interest of justice.

10 “(11)(a) Upon motion of any prosecutor or defendant in a case involving
11 records sealed under this section, supported by affidavit showing good cause,
12 the court with jurisdiction may order the reopening and disclosure of any
13 records sealed under this section for the limited purpose of assisting the in-
14 vestigation of the movant. However, such an order has no other effect on the
15 orders setting aside the conviction or the arrest, citation or charge record.

16 **“(b) Notwithstanding paragraph (a) of this subsection, when an ar-
17 rest, citation or charge described in subsection (1)(c) of this section is
18 set aside, a prosecuting attorney may, for the purpose of initiating a
19 criminal proceeding within the statute of limitations, unseal the re-
20 cords sealed under this section by notifying the court with jurisdiction
21 over the charge, record of arrest or citation. The prosecuting attorney
22 shall notify the person who is the subject of the records of the un-
23 sealing under this paragraph by sending written notification to the
24 person’s last known address.**

25 “[*(12) Unless the court makes written findings by clear and convincing ev-
26 idence that granting the motion would not be in the best interests of justice,
27 the court shall grant the motion and enter an order as provided in subsection
28 (3) of this section if the defendant has been convicted of one of the following
29 crimes and is otherwise eligible for relief under this section:*]

30 “[*(a) Abandonment of a child, ORS 163.535.*]

1 “[(b) Attempted assault in the second degree, ORS 163.175.]
2 “[(c) Assault in the third degree, ORS 163.165.]
3 “[(d) Coercion, ORS 163.275.]
4 “[(e) Criminal mistreatment in the first degree, ORS 163.205.]
5 “[(f) Attempted escape in the first degree, ORS 162.165.]
6 “[(g) Incest, ORS 163.525, if the victim was at least 18 years of age.]
7 “[(h) A bias crime in the first degree, ORS 166.165.]
8 “[(i) Attempted kidnapping in the second degree, ORS 163.225.]
9 “[(j) Attempted robbery in the second degree, ORS 164.405.]
10 “[(k) Robbery in the third degree, ORS 164.395.]
11 “[(L) Supplying contraband, ORS 162.185.]
12 “[(m) Unlawful use of a weapon, ORS 166.220.]
13 **“(12) The State Court Administrator shall create forms to be used**
14 **throughout the state for motions and proposed orders described in this**
15 **section.**
16 “(13) As used in this section[,]:
17 **“(a) ‘Affidavit’ includes a declaration under penalty of perjury.**
18 **“(b) ‘Sex crime’ has the meaning given that term in ORS 163A.005.**
19 **“SECTION 2.** ORS 137.223 is amended to read:
20 “137.223. (1) A person who has been found guilty except for insanity of
21 an offense for which, if convicted, the person could apply for entry of an
22 order setting aside the conviction pursuant to ORS 137.225, may by motion
23 apply to the court for entry of an order setting aside the judgment finding
24 the person guilty except for insanity of the offense.
25 “(2)(a) A person described in subsection (1) of this section may file the
26 motion to set aside a judgment of guilty except for insanity any time after
27 [three years from the date of entry of the judgment of guilty except for insanity,
28 provided that:]
29 “[(a) The person is no longer under the jurisdiction of the Psychiatric Se-
30 curity Review Board; and]

1 “(b) *The person has no other findings of guilty except for insanity within*
2 *the 10 years prior to filing the motion and no convictions for offenses other*
3 *than motor vehicle violations within the 10 years prior to filing the motion.*]

4 **the following time periods:**

5 “(A) **For a judgment of guilty except for insanity on a Class B fel-**
6 **ony, seven years from the date of entry of the judgment or the date**
7 **the person is no longer under the jurisdiction of the Psychiatric Se-**
8 **curity Review Board, whichever is later.**

9 “(B) **For a judgment of guilty except for insanity on a Class C fel-**
10 **ony, five years from the date of entry of the judgment or the date the**
11 **person is no longer under the jurisdiction of the board, whichever is**
12 **later.**

13 “(C) **For a judgment of guilty except for insanity on a Class A**
14 **misdemeanor, three years from the date of entry of the judgment or**
15 **the date the person is no longer under the jurisdiction of the board,**
16 **whichever is later.**

17 “(D) **For a judgment of guilty except for insanity on a Class B or**
18 **Class C misdemeanor, one year from the date of entry of the judgment**
19 **or the date the person is no longer under the jurisdiction of the board,**
20 **whichever is later.**

21 “(b) **A person is eligible to have a judgment of guilty except for in-**
22 **sanity set aside under this section if the person has no other findings**
23 **of guilty except for insanity and no convictions for offenses other than**
24 **motor vehicle violations within the following time periods prior to fil-**
25 **ing the motion:**

26 “(A) **For a motion concerning a judgment of guilty except for in-**
27 **sanity on a Class B felony, seven years.**

28 “(B) **For a motion concerning a judgment of guilty except for in-**
29 **sanity on a Class C felony, five years.**

30 “(C) **For a motion concerning a judgment of guilty except for in-**

1 **sanity on a Class A misdemeanor, three years.**

2 **“(D) For a motion concerning a judgment of guilty except for in-**
3 **sanity on a Class B or Class C misdemeanor, one year.**

4 *“(3)(a) A copy of the motion [and a full set of the defendant’s*
5 *fingerprints] shall be served upon the office of the prosecuting attorney who*
6 *prosecuted the offense. [and opportunity shall be given to contest the motion.*
7 *The fingerprint card with the notation ‘motion for setting aside judgment of*
8 *guilty except for insanity’ shall be forwarded to the Department of State Po-*
9 *lice. Information resulting from the fingerprint search along with the finger-*
10 *print card shall be returned to the prosecuting attorney.]* **The prosecuting**
11 **attorney may object to the motion filed and shall notify the court and**
12 **the person of the objection within 120 days of receiving the motion.**

13 *“(b) When a prosecuting attorney is served with a copy of a motion to set*
14 *aside a judgment of guilty except for insanity under this section, the prose-*
15 *cuting attorney shall provide a copy of the motion and notice of the hearing*
16 *date to the victim, if any, of the offense by mailing a copy of the motion and*
17 *notice to the victim’s last-known address.*

18 *“(c) When a person files a motion under this section, the person must pay*
19 *a fee [of \$80] to the Department of State Police* **for the purpose of the**
20 **department performing a criminal record check, and shall forward to**
21 **the department a full set of the person’s fingerprints on a fingerprint**
22 **card or in any other manner specified by the department.** *[The person*
23 *shall attach a certified check payable to the Department of State Police in the*
24 *amount of \$80 to the fingerprint card that is served upon the prosecuting at-*
25 *torney. The office of the prosecuting attorney shall forward the check with the*
26 *fingerprint card to the Department of State Police.]* **The department shall**
27 **establish a fee in an amount not to exceed the actual cost of per-**
28 **forming the criminal record check. If the department is required to**
29 **perform only one criminal record check for the person, the department**
30 **may only charge one fee, regardless of the number of counties in**

1 **which the person is filing a motion to set aside a conviction, arrest,**
2 **charge or citation under this section. The department shall provide a**
3 **copy of the results of the criminal record check to the prosecuting**
4 **attorney.**

5 “(d) *[In addition to the fee established under paragraph (c) of this sub-*
6 *section, the person must pay the filing fee established under ORS 21.135.]* **A**
7 **person filing a motion under this section is not required to pay the**
8 **filing fee established under ORS 21.135.**

9 “[*(4)(a) Upon hearing the motion, the court may require the filing of such*
10 *affidavits and may require the taking of such proofs as the court deems proper.*
11 *The court shall allow the victim, if any, to make a statement at the hearing.]*”

12 “[*(b) Except as otherwise provided in paragraph (c) of this subsection, if the*
13 *court determines that the circumstances and behavior of the person from the*
14 *date of the judgment of guilty except for insanity to the date of the hearing*
15 *on the motion warrant the court granting the motion, the court shall enter an*
16 *order setting aside the judgment of guilty except for insanity.]*”

17 “[*(c) Unless the court makes written findings by clear and convincing evi-*
18 *dence that granting the motion would not be in the best interests of justice, the*
19 *court shall grant the motion and enter an order as provided in paragraph (b)*
20 *of this subsection if the defendant was found guilty except for insanity of an*
21 *offense described in ORS 137.225 (12) and is otherwise eligible for relief under*
22 *this section.]*”

23 **“(4)(a) If an objection is received to a motion filed under this sec-**
24 **tion, the court shall hold a hearing, and may require the filing of such**
25 **affidavits and may require the taking of such proofs as the court**
26 **deems proper. The court shall allow the victim to make a statement**
27 **at the hearing. If the person is otherwise eligible for relief under this**
28 **section, the court shall grant the motion and enter an order as de-**
29 **scribed in paragraph (b) of this subsection unless the court makes**
30 **written findings, by clear and convincing evidence, that the circum-**

1 **stances and behavior of the person, from the date of the judgment the**
2 **person is seeking to set aside to the date of the hearing on the motion,**
3 **do not warrant granting the motion due to the circumstances and be-**
4 **havior creating a risk to public safety. When determining whether the**
5 **person’s circumstances and behavior create a risk to public safety, the**
6 **court may only consider criminal behavior, or violations of regulatory**
7 **law or administrative rule enforced by civil penalty or other adminis-**
8 **trative sanction that relate to the character of the conviction sought**
9 **to be set aside. The court may not consider non-punitive civil liability,**
10 **monetary obligations and motor vehicle violations.**

11 “[*d*] (b) An order entered under this subsection shall state the original
12 arrest charge and the charge for which the person was found guilty except
13 for insanity. The order shall further state that positive identification has
14 been established by the Department of State Police and further identified as
15 to Department of State Police number or submitting agency number.

16 “(5)(a) Upon the entry of an order under subsection (4) of this section:

17 “(A) The person, for purposes of the law, shall be deemed not to have been
18 previously found guilty except for insanity, and the court shall issue an or-
19 der sealing the records of the case, including the records of arrest, whether
20 or not the arrest resulted in a further criminal proceeding.

21 “(B) The court shall inform the person that the person’s right to possess,
22 purchase or otherwise acquire a firearm remains prohibited under federal
23 law.

24 “(b) For purposes of this subsection, records of the case do not include
25 medical records that are in the possession of the Psychiatric Security Review
26 Board, including medical evaluations and reports submitted from other
27 agencies concerning the status or compliance of the person.

28 “(6) The clerk of the court shall forward a certified copy of the order
29 entered under subsection (5) of this section to such agencies as directed by
30 the court. A certified copy shall be sent to the Psychiatric Security Review

1 Board. Upon entry of the order, the judgment of guilty except for insanity
2 shall be deemed not to have been entered, and the person may answer ac-
3 cordingly any questions relating to its occurrence.

4 “(7) For purposes of any civil action in which truth is an element of a
5 claim for relief or affirmative defense, the provisions of subsection (6) of this
6 section providing that the judgment of guilty except for insanity be deemed
7 not to have been entered do not apply and a party may apply to the court
8 for an order requiring disclosure of the official records in the case as may
9 be necessary in the interests of justice.

10 “(8) Upon motion of any prosecutor or defendant in a case involving re-
11 cords sealed under this section, supported by affidavit showing good cause,
12 the court with jurisdiction may order the reopening and disclosure of any
13 records sealed under this section for the limited purpose of assisting the in-
14 vestigation of the movant. However, such an order has no other effect on the
15 orders setting aside the judgment of guilty except for insanity.

16 “(9) **A prosecuting attorney may not condition an agreement not to**
17 **object to the entry of a judgment of guilty except for insanity on an**
18 **agreement by a person to waive the ability to set aside the judgment**
19 **under this section.**

20 “(10) **As used in this section, ‘affidavit’ includes a declaration under**
21 **penalty of perjury.**

22 “**SECTION 3.** ORS 135.418 is amended to read:

23 “135.418. (1) A prosecuting attorney may not condition a defendant’s plea
24 offer on:

25 “(a) The defendant’s waiver of:

26 “(A) The disclosure obligation of ORS 135.815 (1)(g).

27 “(B) The ability to receive the audio recording of grand jury proceedings
28 as permitted under ORS 132.270, if the indictment has been indorsed ‘a true
29 bill.’

30 “(C) Eligibility for transitional leave under ORS 421.168.

1 “(D) Eligibility for a reduction in the term of incarceration under ORS
2 421.120 or 421.121.

3 “(E) Eligibility for any reduction in sentence, leave or release from cus-
4 tody or any other program for which the executing or releasing authority
5 may consider the defendant, including programs for which the executing or
6 releasing authority determines eligibility and programs for which consider-
7 ation must be ordered by the sentencing court under ORS 137.750.

8 **“(F) The ability to set aside the conviction under ORS 137.225.**

9 “(b) A requirement that the defendant or the defense attorney stipulate
10 to the unconstitutionality of an existing law.

11 “(2)(a) A plea agreement may not contain a provision prohibited by sub-
12 section (1) of this section.

13 “(b) A prohibited provision described in subsection (1) of this section in
14 a plea agreement is contrary to public policy and is void and unenforceable.

15 “(3) As used in this section, ‘executing or releasing authority’ has the
16 meaning given that term in ORS 137.750.

17 **“SECTION 4. (1) A criminal history data provider is prohibited from**
18 **including criminal history information in a criminal history report if**
19 **the criminal history information fails to reflect material changes to**
20 **the official record of a person’s criminal history occurring more than**
21 **60 days before the date the criminal history report is delivered.**

22 **“(2) As used in this section, ‘material changes’ include, but are not**
23 **limited to:**

24 **“(a) The setting aside of a conviction arrest, record of acquittal or**
25 **dismissal, or the issuance of a criminal citation or criminal charge, if**
26 **no accusatory instrument is filed;**

27 **“(b) The reduction of an offense to a lower level of offense; and**

28 **“(c) The vacating of a conviction.**

29 **“(3) A violation of subsection (1) of this section constitutes an un-**
30 **lawful trade practice under ORS 646.607.**

1 **“SECTION 5.** ORS 646.607 is amended to read:

2 “646.607. A person engages in an unlawful trade practice if in the course
3 of the person’s business, vocation or occupation the person:

4 “(1) Employs any unconscionable tactic in connection with selling, rent-
5 ing or disposing of real estate, goods or services, or collecting or enforcing
6 an obligation.

7 “(2) Fails to deliver all or any portion of real estate, goods or services
8 as promised, and at a customer’s request, fails to refund money that the
9 customer gave to the person to purchase the undelivered real estate, goods
10 or services and that the person does not retain pursuant to any right, claim
11 or defense the person may assert in good faith. This subsection does not
12 create a warranty obligation and does not apply to a dispute over the quality
13 of real estate, goods or services delivered to a customer.

14 “(3) Violates ORS 401.965 (2).

15 “(4) Violates a provision of ORS 646A.725 to 646A.750.

16 “(5) Violates ORS 646A.530.

17 “(6) Employs a collection practice that is unlawful under ORS 646.639.

18 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
19 86.732 (1) or (2).

20 “(8) Violates ORS 646A.093.

21 “(9) Violates a provision of ORS 646A.600 to 646A.628.

22 “(10) Violates ORS 646A.808 (2).

23 “(11) Violates ORS 336.184.

24 “(12) Publishes on a website related to the person’s business, or in a
25 consumer agreement related to a consumer transaction, a statement or rep-
26 resentation of fact in which the person asserts that the person, in a partic-
27 ular manner or for particular purposes, will use, disclose, collect, maintain,
28 delete or dispose of information that the person requests, requires or receives
29 from a consumer and the person uses, discloses, collects, maintains, deletes
30 or disposes of the information in a manner that is materially inconsistent

1 with the person's statement or representation.

2 "(13) Violates ORS 646A.813 (2).

3 "**(14) Violates section 4 (1) of this 2021 Act.**".

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