

Senate Bill 697

Sponsored by Senators MANNING JR, GORSEK (Presession 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**.

Modifies process for setting aside convictions and guilty except for insanity judgments. Eliminates requirement that person submit fingerprint card with application. Eliminates ability of district attorney to object to motion. Provides that time period prior to motion that person is required to have no convictions applies to motions to set aside convictions only. Provides that dismissal of traffic violation citation may not be set aside. Authorizes court to waive remaining fines and fees upon entry of order.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to expungements; amending ORS 137.223 and 137.225; and prescribing an effective date.

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

4 **SECTION 1.** ORS 137.225 is amended to read:

5 137.225. (1)(a) At any time after the person becomes eligible as described in paragraph (b) of this
6 subsection, any person convicted of an offense who has fully complied with and performed the sen-
7 tence of the court for the offense, and whose conviction is described in subsection (5) of this section,
8 by motion may apply to the court where the conviction was entered for entry of an order setting
9 aside the conviction. A person who is still under supervision as part of the sentence for the offense
10 that is the subject of the motion has not fully complied with or performed the sentence of the court.

11 (b) A person is eligible to file a motion under paragraph (a) of this subsection:

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

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

16 (C) For a Class A misdemeanor, three years from the date of conviction or the release of the
17 person from imprisonment for the conviction sought to be set aside, whichever is later.

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

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

26 (d) At any time after an acquittal or a dismissal other than a dismissal described in paragraph
27 (c) of this subsection, an arrested, cited or charged person may apply to the court in the county in
28 which the person was arrested, cited or charged, for entry of an order setting aside the record of

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 arrest, citation or charge.

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

6 **(f) If the offense classification of a conviction has been reduced by the court, the appli-**
7 **cable time period under paragraph (b) of this subsection is the time period associated with**
8 **the reduced offense classification.**

9 [(f)] (g) A person filing a motion under this section is not required to pay the filing fee estab-
10 lished under ORS 21.135.

11 (2)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
12 prosecuted the offense, or who had authority to prosecute the charge if there was no accusatory
13 instrument filed. [*The prosecuting attorney may object to a motion filed under subsection (1)(a) of this*
14 *section and shall notify the court and the person of the objection within 120 days of the date the motion*
15 *was filed with the court.*]

16 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
17 under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the motion
18 and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion
19 and notice to the victim's last-known address.

20 [(c) *When a person makes a motion under this section, the person shall forward to the Department*
21 *of State Police a full set of the person's fingerprints on a fingerprint card or in any other manner*
22 *specified by the department.*]

23 [(d)] (c) When a person makes a motion under subsection (1)(a) of this section, the person must
24 pay a fee to the Department of State Police for the purpose of the department performing a criminal
25 record check. The department shall establish a fee in an amount not to exceed the actual cost of
26 performing the criminal record check. If the department is required to perform only one criminal
27 record check for the person, the department may only charge one fee, regardless of the number of
28 counties in which the person is filing a motion to set aside a conviction, arrest, charge or citation
29 under this section. The department shall provide a copy of the results of the criminal record check
30 to the prosecuting attorney.

31 [(e)] (d) The prosecuting attorney may not charge the person a fee for performing the require-
32 ments described in this section.

33 (3)(a) [*If an objection is received to a motion filed under subsection (1)(a) of this section,*] The
34 court, [*shall*] **on its own motion, may** hold a hearing, and may require the filing of such affidavits
35 and may require the taking of such proofs as the court deems proper. The court shall allow the
36 victim to make a statement at the hearing. If the person is otherwise eligible for relief under this
37 section, the court shall grant the motion and enter an order as described in paragraph (b) of this
38 subsection unless the court makes written findings, by clear and convincing evidence, that the cir-
39 cumstances and behavior of the person, from the date of the conviction the person is seeking to set
40 aside to the date of the hearing on the motion, do not warrant granting the motion due to the cir-
41 cumstances and behavior creating a risk to public safety. When determining whether the person's
42 circumstances and behavior create a risk to public safety, the court may only consider criminal
43 behavior, or violations of regulatory law or administrative rule enforced by civil penalty or other
44 administrative sanction that relate to the character of the conviction sought to be set aside. The
45 court may not consider nonpunitive civil liability, monetary obligations and motor vehicle violations.

1 Upon granting the motion, the court shall enter an appropriate order containing the original arrest
 2 or citation charge, the conviction charge, if different from the original, the date of charge, the sub-
 3 mitting agency and the disposition of the charge. Upon the entry of the order, the person for pur-
 4 poses of the law shall be deemed not to have been previously convicted, **the person's civil rights**
 5 **are restored** and the court shall issue an order sealing the record of conviction and other official
 6 records in the case, including the records of arrest, citation or charge.

7 (b) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or under
 8 subsection (1)(a) of this section if no [*objection to the motion is received*] **hearing is held**, and shall
 9 enter an appropriate order containing the original arrest or citation charge, the conviction charge,
 10 if applicable and different from the original, the date of charge, the submitting agency and the dis-
 11 position of the charge. Upon 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 charged, **the person's civil rights**
 13 **are restored** and the court shall issue an order sealing all official records in the case, including the
 14 records of arrest, citation or charge, whether or not the arrest, citation or charge resulted in a
 15 further criminal proceeding.

16 (c) **The court, as part of entering an order under this subsection concerning a conviction,**
 17 **may waive any remaining fines and fees owed by the person on the conviction.**

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 order con-
 20 cerns a conviction. Upon entry of the order, the conviction, arrest, citation, charge or other pro-
 21 ceeding shall be deemed not to have occurred, and the person may answer accordingly any questions
 22 relating to its occurrence.

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

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

26 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
 27 161.705.

28 (c) An offense constituting a violation under state law or local ordinance.

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

31 (e) The finding of a person in contempt of court.

32 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 33 tion do not apply to a conviction for:

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

36 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
 37 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
 38 419B.005.

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

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

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

44 (f) Any sex crime, unless:

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

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

3 **(II) The person has been relieved of the obligation to report as a sex offender by the**
4 **State Board of Parole and Post-Prison Supervision under ORS 163A.125, 163A.130 or 163A.135**
5 **and the offense meets the criteria described in ORS 163A.140 (2); and**

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

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

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

11 (ii) The person is:

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

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

16 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less
17 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 of or found to be
20 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
21 setting aside the conviction under this section; and

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

23 (7)(a) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
24 section do not apply to:

25 [(a)] (A) A conviction for a state or municipal traffic offense.

26 [(b)] (B) A person convicted, within the following applicable time period immediately preceding
27 the filing of the motion pursuant to subsection (1)(a) of this section, of any other offense, excluding
28 motor vehicle violations, whether or not the other conviction is for conduct associated with the
29 same criminal episode that caused the arrest, citation, charge or conviction that is sought to be set
30 aside:

31 [(A)] (i) For a motion concerning a Class B felony, seven years.

32 [(B)] (ii) For a motion concerning a Class C felony, five years.

33 [(C)] (iii) For a motion concerning a Class A misdemeanor, three years.

34 [(D)] (iv) For a motion concerning a Class B or Class C misdemeanor a violation or a finding
35 of contempt of court, one year.

36 **(C) A person who at the time the motion described in this section is pending before the**
37 **court is under charge of commission of any crime.**

38 [(c)] (b) A single violation, other than a motor vehicle violation, within the time period specified
39 in paragraph [(b)] (a)(B) of this subsection is not a conviction under this subsection.
40 Notwithstanding subsection (1) of this section, a conviction that has been set aside under this sec-
41 tion shall be considered for the purpose of determining whether paragraph [(b)] (a)(B) of this sub-
42 section is applicable.

43 [(d) A person who at the time the motion authorized by subsection (1) of this section is pending
44 before the court is under charge of commission of any crime.]

45 (8) The provisions of subsection (1)(c) or (d) of this section do not apply to:

1 **(a)** An arrest or citation for driving while under the influence of intoxicants if the charge is
2 dismissed as a result of the person's successful completion of a diversion agreement described in
3 ORS 813.200.

4 **(b) The dismissal of a citation for a traffic violation.**

5 **(c) A person who at the time the motion described in this section is pending before the**
6 **court is under charge of commission of any crime.**

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

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

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

20 (b) Notwithstanding paragraph (a) of this subsection, when an arrest, citation or charge de-
21 scribed in subsection (1)(c) of this section is set aside, a prosecuting attorney may, for the purpose
22 of initiating a criminal proceeding within the statute of limitations, unseal the records sealed under
23 this section by notifying the court with jurisdiction over the charge, record of arrest or citation.
24 The prosecuting attorney shall notify the person who is the subject of the records of the unsealing
25 under this paragraph by sending written notification to the person's last known address.

26 (12) The State Court Administrator shall create forms to be used throughout the state for
27 motions and proposed orders described in this section.

28 (13) As used in this section:

29 (a) "Affidavit" includes a declaration under penalty of perjury.

30 (b) "Sex crime" has the meaning given that term in ORS 163A.005.

31 **SECTION 2.** ORS 137.223 is amended to read:

32 137.223. (1) A person who has been found guilty except for insanity of an offense for which, if
33 convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS
34 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding
35 the person guilty except for insanity of the offense.

36 (2)(a) A person described in subsection (1) of this section may file the motion to set aside a
37 judgment of guilty except for insanity any time after the following time periods:

38 (A) For a judgment of guilty except for insanity on a Class B felony, seven years from the date
39 of entry of the judgment or the date the person is no longer under the jurisdiction of the Psychiatric
40 Security Review Board, whichever is later.

41 (B) For a judgment of guilty except for insanity on a Class C felony, five years from the date
42 of entry of the judgment or the date the person is no longer under the jurisdiction of the board,
43 whichever is later.

44 (C) For a judgment of guilty except for insanity on a Class A misdemeanor, three years from the
45 date of entry of the judgment or the date the person is no longer under the jurisdiction of the board,

1 whichever is later.

2 (D) For a judgment of guilty except for insanity on a Class B or Class C misdemeanor, one year
3 from the date of entry of the judgment or the date the person is no longer under the jurisdiction
4 of the board, whichever is later.

5 (b) A person is eligible to have a judgment of guilty except for insanity set aside under this
6 section if the person has no other findings of guilty except for insanity and no convictions for of-
7 fenses other than motor vehicle violations within the following time periods prior to filing the mo-
8 tion:

9 (A) For a motion concerning a judgment of guilty except for insanity on a Class B felony, seven
10 years.

11 (B) For a motion concerning a judgment of guilty except for insanity on a Class C felony, five
12 years.

13 (C) For a motion concerning a judgment of guilty except for insanity on a Class A misdemeanor,
14 three years.

15 (D) For a motion concerning a judgment of guilty except for insanity on a Class B or Class C
16 misdemeanor, one year.

17 (3)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
18 prosecuted the offense. [*The prosecuting attorney may object to the motion filed and shall notify the*
19 *court and the person of the objection within 120 days of receiving the motion.*]

20 (b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of
21 guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the
22 motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the
23 motion and notice to the victim's last-known address.

24 (c) When a person files a motion under this section, the person must pay a fee to the Department
25 of State Police for the purpose of the department performing a criminal record check[, *and shall*
26 *forward to the department a full set of the person's fingerprints on a fingerprint card or in any other*
27 *manner specified by the department*]. The department shall establish a fee in an amount not to exceed
28 the actual cost of performing the criminal record check. If the department is required to perform
29 only one criminal record check for the person, the department may only charge one fee, regardless
30 of the number of counties in which the person is filing a motion to set aside a conviction, arrest,
31 charge or citation under this section. The department shall provide a copy of the results of the
32 criminal record check to the prosecuting attorney.

33 (d) A person filing a motion under this section is not required to pay the filing fee established
34 under ORS 21.135.

35 (4)(a) [*If an objection is received to a motion filed under this section,*] The court, [*shall*] **on its**
36 **own motion, may** hold a hearing, and may require the filing of such affidavits and may require the
37 taking of such proofs as the court deems proper. The court shall allow the victim to make a state-
38 ment at the hearing. If the person is otherwise eligible for relief under this section, the court shall
39 grant the motion and enter an order as described in paragraph (b) of this subsection unless the court
40 makes written findings, by clear and convincing evidence, that the circumstances and behavior of
41 the person, from the date of the judgment the person is seeking to set aside to the date of the
42 hearing on the motion, do not warrant granting the motion due to the circumstances and behavior
43 creating a risk to public safety. When determining whether the person's circumstances and behavior
44 create a risk to public safety, the court may only consider criminal behavior, or violations of regu-
45 latory law or administrative rule enforced by civil penalty or other administrative sanction that

1 relate to the character of the conviction sought to be set aside. The court may not consider non-
2 punitive civil liability, monetary obligations and motor vehicle violations.

3 (b) An order entered under this subsection shall state the original arrest charge and the charge
4 for which the person was found guilty except for insanity. The order shall further state that positive
5 identification has been established by the Department of State Police and further identified as to
6 Department of State Police number or submitting agency number.

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

8 (A) The person, for purposes of the law, shall be deemed not to have been previously found
9 guilty except for insanity, and the court shall issue an order sealing the records of the case, in-
10 cluding the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

11 (B) The court shall inform the person that the person's right to possess, purchase or otherwise
12 acquire a firearm remains prohibited under federal law.

13 (b) For purposes of this subsection, records of the case do not include medical records that are
14 in the possession of the Psychiatric Security Review Board, including medical evaluations and re-
15 ports submitted from other agencies concerning the status or compliance of the person.

16 (6) The clerk of the court shall forward a certified copy of the order entered under subsection
17 (5) of this section to such agencies as directed by the court. A certified copy shall be sent to the
18 Psychiatric Security Review Board. Upon entry of the order, the judgment of guilty except for in-
19 sanity shall be deemed not to have been entered, and the person may answer accordingly any
20 questions relating to its occurrence.

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

26 (8) Upon motion of any prosecutor or defendant in a case involving records sealed under this
27 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
28 pening and disclosure of any records sealed under this section for the limited purpose of assisting
29 the investigation of the movant. However, such an order has no other effect on the orders setting
30 aside the judgment of guilty except for insanity.

31 (9) A prosecuting attorney may not condition an agreement not to object to the entry of a
32 judgment of guilty except for insanity on an agreement by a person to waive the ability to set aside
33 the judgment under this section.

34 (10) As used in this section, "affidavit" includes a declaration under penalty of perjury.

35 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**
36 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**