

Senate Bill 698

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**.

Directs Judicial Department to develop and implement automated system that identifies convictions, arrests, citations, charges and judgments of guilty except for insanity that are eligible to be automatically sealed. Directs department to identify eligible records created prior to February 1, 2025, and send list to presiding judge of judicial district where record was created no later than February 15, 2025. Directs department to, beginning March 1, 2025, and every month thereafter, identify eligible records from previous month and send list to presiding judge of judicial district. Directs presiding judge to enter order sealing records within 30 days of receipt of list.

Directs Oregon Criminal Justice Commission to, beginning no later than February 1, 2026, and each year thereafter, provide report to interim legislative committees related to judiciary concerning convictions that have been automatically sealed during previous year.

Directs court to grant motion to set aside judgment of guilty except for insanity if no objection is received.

Requires criminal history data providers to ensure criminal history reports reflect all material changes from previous 30 days.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the sealing of records; creating new provisions; amending ORS 137.223 and 137.930; and
3 prescribing an effective date.

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

5 **SECTION 1. (1) As used in this section, "eligible record" means an official record per-**
6 **taining to a conviction, arrest, citation, charge or judgment of guilty except for insanity re-**
7 **lating to an offense if:**

8 (a) **The person who is the subject of the record is eligible to apply by motion for an order**
9 **setting aside the conviction, arrest, citation, charge or judgment under ORS 137.223 or**
10 **137.225;**

11 (b) **The court would be required to grant the motion described in paragraph (a) of this**
12 **subsection assuming no objection to the motion is received; and**

13 (c) **For a record pertaining to a conviction, the person has fully paid any restitution or-**
14 **dered as a sentence on the conviction.**

15 (2) **The Judicial Department shall develop and implement an automated system for iden-**
16 **tifying eligible records within the electronic court record database maintained by the de-**
17 **partment.**

18 (3) **The Judicial Department shall identify all eligible records within the electronic court**
19 **record database maintained by the department that were created prior to February 1, 2025,**
20 **and shall, no later than February 15, 2025, provide a list of the eligible records to the pre-**
21 **siding judge of the judicial district from which the record originated.**

22 (4)(a) **Beginning March 1, 2025, and on the first of each month thereafter, the Judicial**
23 **Department shall identify:**

24 (A) **All records created during the previous month that are eligible records; and**

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 (B) All records that have become eligible records during the previous month.

2 (b) The department shall, within 15 days of identifying the records, provide a list of the
3 eligible records to the presiding judge of the judicial district from which the record origi-
4 nated.

5 (5) If there is insufficient information in court records for the Judicial Department to
6 definitively determine whether a record is an eligible record:

7 (a) The department shall presume that any record concerning a violation or misdemeanor
8 is an eligible record if no action has been taken and no proceeding has occurred concerning
9 the offense during the previous five years.

10 (b) The department shall presume that any record concerning a felony is an eligible re-
11 cord if no action has been taken and no proceeding has occurred concerning the offense
12 during the previous 10 years.

13 (6)(a) Within 30 days of receiving a list of eligible records under subsections (3) or (4) of
14 this section, a presiding judge of a judicial district shall issue an order sealing all official
15 records pertaining to each case.

16 (b) The clerk of the court shall forward a certified copy of the order to such agencies as
17 determined by the court. The clerk shall forward a certified copy of the order to the De-
18 partment of Corrections when the order concerns a conviction.

19 (c) Upon entry of the order, the conviction, arrest, citation, charge or other proceeding
20 shall be deemed not to have occurred, and the person who is the subject of the eligible record
21 may answer accordingly any questions relating to its occurrence.

22 (7) Notwithstanding subsection (6) of this section, a person who has had an eligible record
23 automatically sealed under this section retains the ability to access the record without
24 charge and without being required to file a petition or obtain a court order.

25 (8) The Judicial Department shall establish a website that:

26 (a) Allows a person to confidentially determine whether the person's eligible record has
27 been automatically sealed under this section.

28 (b) Provides information on how a person who has had an eligible record automatically
29 sealed under this section may obtain a copy of the order sealing the record.

30 (9) The Judicial Department may:

31 (a) Enter into interagency agreements to carry out the provisions of this section.

32 (b) Contract with a third party for the development of the automated system to identify
33 eligible records.

34 **SECTION 2.** On or before February 1, 2026, and each year thereafter, the Oregon Crimi-
35 nal Justice Commission shall report to the interim committees of the Legislative Assembly
36 related to the judiciary, in the manner provided in ORS 192.245, the following data from the
37 previous calendar year, organized by county and disaggregated by race, sex and offense level,
38 whenever possible:

39 (1) The convictions identified as eligible for automatic sealing under section 1 of this 2023
40 Act by the Judicial Department that were provided to the presiding judge of each judicial
41 district.

42 (2) The convictions considered for automatic sealing under section 1 of this 2023 Act;

43 (3) The convictions that were automatically sealed under section 1 of this 2023 Act; and

44 (4) The percentage of convictions determined ineligible for automatic sealing under sec-
45 tion 1 of this 2023 Act due to the defendant owing restitution.

1 **SECTION 3.** ORS 137.223 is amended to read:

2 137.223. (1) A person who has been found guilty except for insanity of an offense for which, if
3 convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS
4 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding
5 the person guilty except for insanity of the offense.

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

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

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

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

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

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

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

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

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

32 (3)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
33 prosecuted the offense. The prosecuting attorney may object to the motion filed and shall notify the
34 court and the person of the objection within 120 days of receiving the motion.

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

39 (c) When a person files a motion under this section, the person must pay a fee to the Department
40 of State Police for the purpose of the department performing a criminal record check, and shall
41 forward to the department a full set of the person's fingerprints on a fingerprint card or in any other
42 manner specified by the department. The department shall establish a fee in an amount not to ex-
43 ceed the actual cost of performing the criminal record check. If the department is required to per-
44 form only one criminal record check for the person, the department may only charge one fee,
45 regardless of the number of counties in which the person is filing a motion to set aside a conviction,

1 arrest, charge or citation under this section. The department shall provide a copy of the results of
2 the criminal record check to the prosecuting attorney.

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

5 (4)(a) If an objection is received to a motion filed under this section, the court shall hold a
6 hearing, and may require the filing of such affidavits and may require the taking of such proofs as
7 the court deems proper. The court shall allow the victim to make a statement at the hearing. If the
8 person is otherwise eligible for relief under this section, the court shall grant the motion and enter
9 an order as described in paragraph [(b)] (c) of this subsection unless the court makes written
10 findings, by clear and convincing evidence, that the circumstances and behavior of the person, from
11 the date of the judgment the person is seeking to set aside to the date of the hearing on the motion,
12 do not warrant granting the motion due to the circumstances and behavior creating a risk to public
13 safety. When determining whether the person's circumstances and behavior create a risk to public
14 safety, the court may only consider criminal behavior, or violations of regulatory law or adminis-
15 trative rule enforced by civil penalty or other administrative sanction that relate to the character
16 of the conviction sought to be set aside. The court may not consider nonpunitive civil liability,
17 monetary obligations and motor vehicle violations.

18 **(b) If no objection to a motion filed under this section is received, the court shall grant**
19 **the motion and enter an order as described in paragraph (c) of this subsection.**

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

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

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

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

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

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

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

43 (8) Upon motion of any prosecutor or defendant in a case involving records sealed under this
44 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
45 pening and disclosure of any records sealed under this section for the limited purpose of assisting

1 the investigation of the movant. However, such an order has no other effect on the orders setting
 2 aside the judgment of guilty except for insanity.

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

6 (10) As used in this section, “affidavit” includes a declaration under penalty of perjury.

7 **SECTION 4.** ORS 137.930 is amended to read:

8 137.930. (1) A criminal history data provider is prohibited from including criminal history infor-
 9 mation in a criminal history report if the criminal history information fails to reflect material
 10 changes to the official record of a person’s criminal history occurring more than [60] **30** days before
 11 the date the criminal history report is delivered.

12 (2) As used in this section, “material changes” include, but are not limited to:

13 (a) The setting aside of a conviction, arrest, [*record of acquittal or dismissal, or the issuance of*
 14 *a criminal citation or criminal charge, if no accusatory instrument is filed*] **charge or citation;**

15 (b) The reduction of an offense to a lower level of offense; and

16 (c) The vacating of a conviction.

17 (3) A violation of subsection (1) of this section constitutes an unlawful trade practice under ORS
 18 646.607.

19 **SECTION 5.** (1) **Sections 1 and 2 of this 2023 Act become operative on January 1, 2025.**

20 **(2) The Judicial Department and the Oregon Criminal Justice Commission may take any**
 21 **action before the operative date specified in subsection (1) of this section that is necessary**
 22 **to enable the department and commission to exercise, on and after the operative date spec-**
 23 **ified in subsection (1) of this section, all of the duties, functions and powers conferred on the**
 24 **department and commission by sections 1 and 2 of this 2023 Act.**

25 **SECTION 6.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
 26 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**