

# A-Engrossed House Bill 4097

Ordered by the House February 28  
Including House Amendments dated February 28

Sponsored by Representative TRAN; Representatives EVANS, GAMBA, HELM, HUDSON, NELSON, NOSSE, Senators DEMBROW, FREDERICK, GOLDEN, SOLLMAN (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. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest: The Act changes the process for setting aside offense convictions and dismissals and contempt findings. The Act makes some of the same changes for setting aside GEI judgments. (Flesch Readability Score: 62.7).**

*[Digest: The Act changes the process for setting aside offense convictions and dismissals. The Act makes the same changes for setting aside GEI judgments. (Flesch Readability Score: 62.7).]*

Modifies the process for setting aside convictions, dismissals, **contempt of court findings** and guilty except for insanity judgments. **Increases waiting period for setting aside certain types of contempt of court findings.** Modifies when the court is required to hold a hearing on and grant motions to set aside. Requires that the court enter an order within [60] **120** days of granting a motion to set aside. *[Authorizes the court to waive remaining fines and fees upon entry of the order.]* **Specifies a process for when a person has outstanding financial obligations and authorizes the court to waive such obligations under specified circumstances.** Provides that the required time period prior to filing the motion, during which the person is required to have no convictions, applies to motions to set aside convictions **and certain arrests, charges and citations** only. Provides that the dismissal of a traffic violation citation may not be set aside.

**Directs the Judicial Department to annually submit a report to the interim committees of the Legislative Assembly related to the judiciary concerning motions to set aside.**

## A BILL FOR AN ACT

1  
2 Relating to expungements; creating new provisions; and amending ORS 137.223 and 137.225.

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, **or found in contempt of court**, who has fully  
7 complied with and performed the sentence of the court for the offense **or finding**, and whose con-  
8 viction **or finding** is described in subsection (5) of this section, by motion may apply to the court  
9 where the conviction **or finding** was entered for entry of an order setting aside the conviction **or**  
10 **finding**. A person who is still under supervision **or who has outstanding compensatory fines or**  
11 **restitution** as part of the sentence for the offense **or finding** that is the subject of the motion has  
12 not fully complied with or performed the sentence of the court. **The fact that a person has out-**  
13 **standing financial obligations, other than compensatory fines and restitution, that are part**  
14 **of the sentence for the offense or finding that is the subject of the motion may not be con-**  
15 **sidered when determining whether the person has fully complied with or performed the**  
16 **sentence of the court.**

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

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

**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) For a Class C felony **or a finding of a person in contempt of court for violating an order**  
 2 **related to abuse or a person crime**, five years from the date of conviction **or finding** or the re-  
 3 lease of the person from imprisonment for the conviction **or finding** sought to be set aside, which-  
 4 ever is later.

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

7 (D) For a Class B or Class C misdemeanor, a violation or *[the]* a finding of a person in contempt  
 8 of court **not described in subparagraph (B) of this paragraph**, one year from the date of con-  
 9 viction or finding or the release of the person from imprisonment for the conviction or finding  
 10 sought to be set aside, whichever is later.

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

16 (d) At any time after an acquittal or a dismissal other than a dismissal described in paragraph  
 17 (c) of this subsection, an arrested, cited or charged person may apply to the court in the county in  
 18 which the person was arrested, cited or charged, for entry of an order setting aside the record of  
 19 the arrest, citation or charge.

20 (e) Notwithstanding paragraph (b) of this subsection, a person whose sentence of probation was  
 21 revoked may not apply to the court for entry of an order setting aside the conviction **or finding** for  
 22 which the person was sentenced to probation for a period of three years from the date of revocation  
 23 or until the person becomes eligible as described in paragraph (b) of this subsection, whichever oc-  
 24 curs later.

25 (f) **If the offense classification of a conviction has been reduced by the court, the appli-**  
 26 **cable time period under paragraph (b) of this subsection is the time period associated with**  
 27 **the reduced offense classification, calculated from the date of conviction or the release of**  
 28 **the person from imprisonment for the conviction sought to be set aside, whichever is later.**

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

31 (2)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who  
 32 prosecuted the offense **or charge of contempt**, or who had authority to prosecute the charge if  
 33 there was no accusatory instrument filed. The prosecuting attorney may *[object]* **file an objection**  
 34 to a motion filed under subsection (1)(a) of this section *[and shall notify the court and the person of*  
 35 *the objection]* within 120 days of the date the motion was filed with the court. **The prosecuting**  
 36 **attorney shall notify the court and the person of the objection upon filing, and shall indicate**  
 37 **in the objection whether the objection is based on the circumstances and behavior of the**  
 38 **person. If the objection is not based on the circumstances and behavior of the person, the**  
 39 **prosecuting attorney shall further notify the person that the person has 33 calendar days**  
 40 **from the date of the filing of the objection to request a hearing.**

41 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction **or**  
 42 **finding** under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the  
 43 motion and notice of the hearing date to the victim, if any, *[of the offense]* by mailing a copy of the  
 44 motion and notice to the victim's last-known address. **If the prosecuting attorney filed an ob-**  
 45 **jection under paragraph (a) of this subsection that is not based on the circumstances and**

1 **behavior of the person, the prosecuting attorney shall notify the victim that the victim has**  
2 **33 calendar days from the date of the filing of the objection to request a hearing.**

3 (c) When a person makes a motion under this section, the person shall forward to the Depart-  
4 ment of State Police a full set of the person's fingerprints on a fingerprint card or in any other  
5 manner specified by the department.

6 (d) When a person makes a motion under subsection (1)(a) of this section, the person must pay  
7 a fee to the Department of State Police for the purpose of the department performing a criminal  
8 record check. The department shall establish a fee in an amount not to exceed the actual cost of  
9 performing the criminal record check. If the department is required to perform only one criminal  
10 record check for the person, the 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 conviction, **finding**, arrest, charge or  
12 citation under this section. The department shall provide a copy of the results of the criminal record  
13 check to the prosecuting attorney.

14 (e) The prosecuting attorney may not charge the person a fee for performing the requirements  
15 described in this section.

16 (3)(a) If an objection **based on the circumstances or behavior of the person** is received to  
17 a motion filed under subsection (1)(a) of this section, **or upon the request of the person or the**  
18 **victim**, the court shall hold a hearing, and may require the filing of such affidavits and may require  
19 the taking of such proofs as the court deems proper. The court shall allow the victim to make a  
20 statement at the hearing. If the person is otherwise eligible for relief under this section, the court  
21 shall [*grant the motion and enter an order as described in paragraph (b)*] **proceed to a financial**  
22 **obligation waiver determination under paragraph (d) of this subsection or, if there are no**  
23 **outstanding financial obligations on the offense or finding, proceed to paragraph (e) of this**  
24 subsection unless the court makes written findings, by clear and convincing evidence, that the cir-  
25 cumstances and behavior of the person, from the date of the conviction **or finding** the person is  
26 seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion  
27 due to the circumstances and behavior creating a risk to public safety. When determining whether  
28 the person's circumstances and behavior create a risk to public safety, the court may only consider  
29 criminal behavior, or violations of regulatory law or administrative rule enforced by civil penalty  
30 or other administrative sanction that relate to the character of the conviction **or finding** sought to  
31 be set aside. The court may not consider nonpunitive civil liability, monetary obligations and motor  
32 vehicle violations. [*Upon granting the motion, the court shall enter an appropriate order containing the*  
33 *original arrest or citation charge, the conviction charge, if different from the original, the date of*  
34 *charge, the submitting agency and the disposition of the charge. Upon the entry of the order, the person*  
35 *for purposes of the law shall be deemed not to have been previously convicted, and the court shall issue*  
36 *an order sealing the record of conviction and other official records in the case, including the records*  
37 *of arrest, citation or charge.*]

38 (b) **If the court receives an objection to a motion filed under subsection (1)(a) of this**  
39 **section that is not based on the circumstances and behavior of the person and no request**  
40 **for a hearing is received, the court shall deny the motion.**

41 (c) **If no objection to a motion filed under subsection (1)(a) of this section is received, the**  
42 **court shall proceed to a financial obligation waiver determination under paragraph (d) of this**  
43 **subsection or, if there are no outstanding financial obligations on the offense or finding,**  
44 **proceed to paragraph (e) of this subsection.**

45 (d) **When conducting a financial obligation waiver determination under this subsection,**

1 the court shall proceed as follows:

2 (A) The court may waive any remaining financial obligations owed by the person on the  
3 offense or finding, other than compensatory fines or restitution.

4 (B) The court shall waive any remaining financial obligations owed by the person on the  
5 offense or finding, other than compensatory fines or restitution, if the date of the conviction  
6 or finding occurred more than 10 years prior to the filing of the motion and the court is  
7 setting aside all convictions, findings, arrests, citations or charges within the case.

8 (C) If the person has outstanding compensatory fines or restitution on the offense, or the  
9 court decides not to waive any other remaining financial obligations owed by the person on  
10 the offense, the court shall deny the motion.

11 (e) If the court waives financial obligations under paragraph (d)(A) or (B) of this sub-  
12 section, or if there are no outstanding financial obligations on the offense or finding, the  
13 court shall grant the motion and shall, within 120 days after the date of the hearing, or if  
14 no objection was received, within 120 days after the conclusion of the time period during  
15 which the prosecuting attorney may object under subsection (2)(a) of this section, enter an  
16 appropriate order containing the original arrest or citation charge, the conviction or con-  
17 tempt charge, if different from the original, the date of charge, the submitting agency and  
18 the disposition of the charge. Upon the entry of the order, the person for purposes of the law  
19 shall be deemed not to have been previously convicted, and the court shall issue an order  
20 sealing the record of conviction or contempt finding and other official records in the case,  
21 including the records of arrest, citation or charge.

22 [(b)] (f) The court shall grant a motion filed under subsection (1)(c) or (d) of this section[, or  
23 under subsection (1)(a) of this section if no objection to the motion is received,] and shall, **within 120**  
24 **days after the date the motion was filed with the court**, enter an appropriate order containing  
25 the original arrest or citation charge, [*the conviction charge, if applicable and different from the ori-*  
26 *ginal,*] the date of charge, the submitting agency and the disposition of the charge. Upon the entry  
27 of the order, the person for purposes of the law shall be deemed not to have been previously [*con-*  
28 *vinced,*] arrested, cited or charged, and the court shall issue an order sealing all official records in  
29 the case, including the records of arrest, citation or charge, whether or not the arrest, citation or  
30 charge resulted in a further criminal proceeding.

31 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed  
32 by the court. A certified copy must be sent to the Department of Corrections when the order con-  
33 cerns a conviction. Upon entry of the order, the conviction, arrest, citation, charge or other pro-  
34 ceeding shall be deemed not to have occurred, and the person may answer accordingly any questions  
35 relating to its occurrence.

36 (5) The provisions of subsection (1)(a) of this section apply to [*a conviction for*] **the following**  
37 **convictions and findings:**

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

40 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS  
41 161.705.

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

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

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

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

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

5 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the  
6 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS  
7 419B.005.

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

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

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

13 (f) Any sex crime, unless:

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

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

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

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

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

22 (ii) The person is:

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

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

27 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less  
28 than a specified age;

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

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

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

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

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

37 [(b)] (B) A person convicted[, *within the following applicable time period immediately preceding*  
38 *the filing of the motion pursuant to subsection (1) of this section,*] of any other offense, excluding mo-  
39 tor vehicle violations, **or found in contempt of court for violating an order related to abuse**  
40 **or a person crime, within the following applicable time period immediately preceding the fil-**  
41 **ing of the motion pursuant to subsection (1)(a) of this section**, whether or not the other con-  
42 viction **or finding** is for conduct associated with the same criminal episode that caused the [*arrest,*  
43 *citation, charge or*] conviction, **or with the same course of conduct that caused the finding**, that  
44 is sought to be set aside:

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

1       [(B)] **(ii)** For a motion concerning a Class C felony **or a finding of a person in contempt of**  
2 **court for violating an order related to abuse or a person crime**, five years.

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

4       [(D)] **(iv)** For a motion concerning a Class B or Class C misdemeanor, a violation or a finding  
5 of contempt of court **not described in sub-subparagraph (ii) of this subparagraph**, one year.

6       **(C) A person who at the time the motion described in this section is pending before the**  
7 **court is under charge of commission of any crime or contempt of court for violating an order**  
8 **related to abuse or a person crime.**

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

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

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

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

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

21       **(c) A person who at the time the motion described in this section is pending before the**  
22 **court is under charge of commission of any crime or contempt of court for violating an order**  
23 **related to abuse or a person crime.**

24       **(d) For a motion concerning an arrest, citation or charge for a crime constituting do-**  
25 **mestic violence, a sex crime or any other person felony or person Class A misdemeanor, as**  
26 **those terms are defined in the rules of the Oregon Criminal Justice Commission, a person**  
27 **convicted of any other offense, excluding motor vehicle violations, or found in contempt of**  
28 **court for violating an order related to abuse or a person crime, within the three years im-**  
29 **mediately preceding the filing of the motion pursuant to subsection (1)(c) or (d) of this sec-**  
30 **tion, whether or not the other conviction or finding is for conduct associated with the same**  
31 **criminal episode that caused the arrest, citation or charge that is sought to be set aside.**

32       (9) The provisions of subsection (1) of this section apply to convictions, **findings**, arrests, cita-  
33 tions and charges that occurred before, as well as those that occurred after, September 9, 1971.  
34 There is no time limit for making an application.

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

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

45       (b) Notwithstanding paragraph (a) of this subsection, when an arrest, citation or charge de-

1 scribed in subsection (1)(c) of this section is set aside, a prosecuting attorney may, for the purpose  
2 of initiating a criminal proceeding within the statute of limitations, unseal the records sealed under  
3 this section by notifying the court with jurisdiction over the charge, record of arrest or citation.  
4 The prosecuting attorney shall notify the person who is the subject of the records of the unsealing  
5 under this paragraph by sending written notification to the person's last known address.

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

8 (13) As used in this section:

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

10 (b) **"Domestic violence" has the meaning given that term in ORS 135.230.**

11 (c) **"Order related to abuse or a person crime" means:**

12 (A) **A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to 107.735, 124.005 to**  
13 **124.040, 133.035, 135.247 or 163.760 to 163.777; or**

14 (B) **A court order arising from a criminal case involving a crime constituting domestic**  
15 **violence, a sex crime or any other person felony or person Class A misdemeanor, as those**  
16 **terms are defined in the rules of the Oregon Criminal Justice Commission.**

17 [(b)] (d) "Sex crime" has the meaning given that term in ORS 163A.005.

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

19 137.223. (1) A person who has been found guilty except for insanity of an offense for which, if  
20 convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS  
21 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding  
22 the person guilty except for insanity of the offense.

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

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

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

31 (C) For a judgment of guilty except for insanity on a Class A misdemeanor, three years from the  
32 date of entry of the judgment or the date the person is no longer under the jurisdiction of the board,  
33 whichever is later.

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

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

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

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

45 (C) For a motion concerning a judgment of guilty except for insanity on a Class A misdemeanor,

1 three years.

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

4 (3)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who  
5 prosecuted the offense. The prosecuting attorney may *[object]* **file an objection** to the motion *[filed*  
6 *and shall notify the court and the person of the objection]* within 120 days of *[receiving the motion]*  
7 **the date the motion was filed with the court. The prosecuting attorney shall notify the court**  
8 **and the person of the objection upon filing, and shall indicate in the objection whether the**  
9 **objection is based on the circumstances and behavior of the person. If the objection is not**  
10 **based on the circumstances and behavior of the person, the prosecuting attorney shall fur-**  
11 **ther notify the person that the person has 33 calendar days from the date of the filing of the**  
12 **objection to request a hearing.**

13 (b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of  
14 guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the  
15 motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the  
16 motion and notice to the victim's last-known address. **If the prosecuting attorney filed an ob-**  
17 **jection under paragraph (a) of this subsection that is not based on the circumstances and**  
18 **behavior of the person, the prosecuting attorney shall notify the victim that the victim has**  
19 **33 calendar days from the date of the filing of the objection to request a hearing.**

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

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

31 (4)(a) If an objection **based on the circumstances or behavior of the person** is received to  
32 a motion filed under this section, **or upon the request of the person or the victim**, the court shall  
33 hold a hearing, and may require the filing of such affidavits and may require the taking of such  
34 proofs as the court deems proper. The court shall allow the victim to make a statement at the  
35 hearing. If the person is otherwise eligible for relief under this section, the court shall grant the  
36 motion and, **within 120 days after the date of the hearing**, enter an order as described in para-  
37 graph *[(b)]* **(d)** of this subsection unless the court makes written findings, by clear and convincing  
38 evidence, that the circumstances and behavior of the person, from the date of the judgment the  
39 person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the  
40 motion due to the circumstances and behavior creating a risk to public safety. When determining  
41 whether the person's circumstances and behavior create a risk to public safety, the court may only  
42 consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil  
43 penalty or other administrative sanction that relate to the character of the conviction sought to be  
44 set aside. The court may not consider nonpunitive civil liability, monetary obligations and motor  
45 vehicle violations.

1       **(b) If no objection to the motion filed under this section is received, the court shall grant**  
2 **the motion and, within 120 days after the conclusion of the time period during which the**  
3 **prosecuting attorney may object under subsection (3)(a) of this section, enter an order as**  
4 **described in paragraph (d) of this subsection.**

5       **(c) If the court receives an objection that is not based on the circumstances and behavior**  
6 **of the person and no request for a hearing is received, the court shall deny the motion.**

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

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

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

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

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

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

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

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

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

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

39       **SECTION 3. No later than January 1, 2026, and annually thereafter, the Judicial Depart-**  
40 **ment shall submit a report to the interim committees of the Legislative Assembly related**  
41 **to the judiciary, in the manner described in ORS 192.245, concerning the setting aside of ar-**  
42 **rests, citations, charges, convictions and contempt of court findings under ORS 137.225 and**  
43 **judgments of guilty except for insanity under ORS 137.223. The report may include a de-**  
44 **scription of additional resources the department requires in order to fulfill the department's**  
45 **duties under ORS 137.223 and 137.225.**

1        **SECTION 4.** The amendments to ORS 137.223 and 137.225 by sections 1 and 2 of this 2024  
2        Act apply to motions filed on or after the effective date of this 2024 Act.  
3        \_\_\_\_\_