

HOUSE AMENDMENTS TO HOUSE BILL 4097

By COMMITTEE ON RULES

February 28

1 On page 1 of the printed bill, delete lines 4 through 26 and delete pages 2 through 5.

2 On page 6, delete lines 1 through 5 and insert:

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

4 “137.225. (1)(a) At any time after the person becomes eligible as described in paragraph (b) of
5 this subsection, any person convicted of an offense, **or found in contempt of court**, who has fully
6 complied with and performed the sentence of the court for the offense **or finding**, and whose con-
7 viction **or finding** is described in subsection (5) of this section, by motion may apply to the court
8 where the conviction **or finding** was entered for entry of an order setting aside the conviction **or**
9 **finding**. A person who is still under supervision **or who has outstanding compensatory fines or**
10 **restitution** as part of the sentence for the offense **or finding** that is the subject of the motion has
11 not fully complied with or performed the sentence of the court. **The fact that a person has out-**
12 **standing financial obligations, other than compensatory fines and restitution, that are part**
13 **of the sentence for the offense or finding that is the subject of the motion may not be con-**
14 **sidered when determining whether the person has fully complied with or performed the**
15 **sentence of the court.**

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

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

19 “(B) For a Class C felony **or a finding of a person in contempt of court for violating an**
20 **order related to abuse or a person crime**, five years from the date of conviction **or finding** or
21 the release of the person from imprisonment for the conviction **or finding** sought to be set aside,
22 whichever is later.

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

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

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

34 “(d) At any time after an acquittal or a dismissal other than a dismissal described in paragraph
35 (c) of this subsection, an arrested, cited or charged person may apply to the court in the county in

1 which the person was arrested, cited or charged, for entry of an order setting aside the record of
2 the arrest, citation or charge.

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

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

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

14 “(2)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
15 prosecuted the offense **or charge of contempt**, or who had authority to prosecute the charge if
16 there was no accusatory instrument filed. The prosecuting attorney may *[object]* **file an objection**
17 to a motion filed under subsection (1)(a) of this section *[and shall notify the court and the person of*
18 *the objection]* within 120 days of the date the motion was filed with the court. **The prosecuting**
19 **attorney shall notify the court and the person of the objection upon filing, and shall indicate**
20 **in the objection whether the objection is based on the circumstances and behavior of the**
21 **person. If the objection is not based on the circumstances and behavior of the person, the**
22 **prosecuting attorney shall further notify the person that the person has 33 calendar days**
23 **from the date of the filing of the objection to request a hearing.**

24 “(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
25 **or finding** under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of
26 the motion and notice of the hearing date to the victim, if any, *[of the offense]* by mailing a copy of
27 the motion and notice to the victim’s last-known address. **If the prosecuting attorney filed an**
28 **objection under paragraph (a) of this subsection that is not based on the circumstances and**
29 **behavior of the person, the prosecuting attorney shall notify the victim that the victim has**
30 **33 calendar days from the date of the filing of the objection to request a hearing.**

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

34 “(d) When a person makes a motion under subsection (1)(a) of this section, the person must pay
35 a fee to the Department of State Police for the purpose of the department performing a criminal
36 record check. The department shall establish a fee in an amount not to exceed the actual cost of
37 performing the criminal record check. If the department is required to perform only one criminal
38 record check for the person, the department may only charge one fee, regardless of the number of
39 counties in which the person is filing a motion to set aside a conviction, **finding**, arrest, charge or
40 citation under this section. The department shall provide a copy of the results of the criminal record
41 check to the prosecuting attorney.

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

44 “(3)(a) If an objection **based on the circumstances or behavior of the person** is received to
45 a motion filed under subsection (1)(a) of this section, **or upon the request of the person or the**

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

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

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

28 “(d) When conducting a financial obligation waiver determination under this subsection,
29 the court shall proceed as follows:

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

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

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

39 “(e) If the court waives financial obligations under paragraph (d)(A) or (B) of this sub-
40 section, or if there are no outstanding financial obligations on the offense or finding, the
41 court shall grant the motion and shall, within 120 days after the date of the hearing, or if
42 no objection was received, within 120 days after the conclusion of the time period during
43 which the prosecuting attorney may object under subsection (2)(a) of this section, enter an
44 appropriate order containing the original arrest or citation charge, the conviction or con-
45 tempt charge, if different from the original, the date of charge, the submitting agency and

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

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

14 “(4) The clerk of the court shall forward a certified copy of the order to such agencies as di-
15 rected by the court. A certified copy must be sent to the Department of Corrections when the order
16 concerns a conviction. Upon entry of the order, the conviction, arrest, citation, charge or other
17 proceeding shall be deemed not to have occurred, and the person may answer accordingly any
18 questions relating to its occurrence.

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

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

23 “(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
24 161.705.

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

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

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

29 “(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
30 section do not apply to a conviction for:

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

33 “(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
34 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
35 419B.005.

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

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

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

41 “(f) Any sex crime, unless:

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

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

45 “(ii) The person has not been convicted of, found guilty except for insanity of or found to be

1 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
2 setting aside the conviction under this section; or

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

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

5 “(ii) The person is:

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

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

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

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

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

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

17 “(7)(a) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
18 section do not apply to:

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

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

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

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

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

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

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

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

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

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

45 “(a) An arrest or citation for driving while under the influence of intoxicants if the charge is

1 dismissed as a result of the person's successful completion of a diversion agreement described in
2 ORS 813.200.

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

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

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

15 **“(9) The provisions of subsection (1) of this section apply to convictions, findings, arrests, ci-**
16 **tations and charges that occurred before, as well as those that occurred after, September 9, 1971.**
17 **There is no time limit for making an application.**

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

23 **“(11)(a) Upon motion of any prosecutor or defendant in a case involving records sealed under**
24 **this section, supported by affidavit showing good cause, the court with jurisdiction may order the**
25 **reopening and disclosure of any records sealed under this section for the limited purpose of assisting**
26 **the investigation of the movant. However, such an order has no other effect on the orders setting**
27 **aside the conviction or finding, or the arrest, citation or charge record.**

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

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

36 **“(13) As used in this section:**

37 **“(a) ‘Affidavit’ includes a declaration under penalty of perjury.**

38 **“(b) ‘Domestic violence’ has the meaning given that term in ORS 135.230.**

39 **“(c) ‘Order related to abuse or a person crime’ means:**

40 **“(A) A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to 107.735, 124.005 to**
41 **124.040, 133.035, 135.247 or 163.760 to 163.777; or**

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

45 **“[(b)] (d) ‘Sex crime’ has the meaning given that term in ORS 163A.005.”.**

1 On page 7, line 24, delete “60” and insert “120”.

2 In line 35, delete “60” and insert “120”.

3 On page 8, delete lines 27 and 28 and insert:

4 **“SECTION 3. No later than January 1, 2026, and annually thereafter, the Judicial De-**
5 **partment shall submit a report to the interim committees of the Legislative Assembly re-**
6 **lated to the judiciary, in the manner described in ORS 192.245, concerning the setting aside**
7 **of arrests, citations, charges, convictions and contempt of court findings under ORS 137.225**
8 **and judgments of guilty except for insanity under ORS 137.223. The report may include a**
9 **description of additional resources the department requires in order to fulfill the**
10 **department’s duties under ORS 137.223 and 137.225.**

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

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