

House Bill 4097

Sponsored by Representative TRAN; Representatives GAMBA, HELM, HUDSON, NELSON, NOSSE, Senators DEMBROW, FREDERICK, GOLDEN, SOLLMAN (Pre-session 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**. 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. The Act makes the same changes for setting aside GEI judgments. (Flesch Readability Score: 62.7).

Modifies the process for setting aside convictions, dismissals and guilty except for insanity judgments. 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 days of granting a motion to set aside. Authorizes the court to waive remaining fines and fees upon entry of the order. 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 only. Provides that the dismissal of a traffic violation citation may not be 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 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 **or who has outstanding**
10 **compensatory fines or restitution** as part of the sentence for the offense that is the subject of the
11 motion has not fully complied with or performed the sentence of the court. **The fact that a person**
12 **has outstanding fines and fees other than restitution and compensatory fines that are part**
13 **of the sentence for the offense that is the subject of the motion may not be considered when**
14 **determining whether the person has fully complied with or performed the sentence of the**
15 **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, five years from the date of conviction or the release of the person from
20 imprisonment for the conviction sought to be set aside, whichever is later.

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

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

26 (c) If no accusatory instrument is filed, at any time after 60 days from the date the prosecuting

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 attorney indicates that the state has elected not to proceed with a prosecution or contempt pro-
2 ceeding, an arrested, cited or charged person may apply to the court in the county in which the
3 person was arrested, cited or charged, for entry of an order setting aside the record of the arrest,
4 citation or charge.

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

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

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

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

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

29 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
30 under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the motion
31 and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion
32 and notice to the victim's last-known address. **If the prosecuting attorney filed an objection un-**
33 **der paragraph (a) of this subsection that is not based on the circumstances and behavior of**
34 **the person, the prosecuting attorney shall notify the victim that the victim has 33 calendar**
35 **days from the date of the filing of the objection to request a hearing.**

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

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

1 to the prosecuting attorney.

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

4 (3)(a) If an objection **based on the circumstances or behavior of the person** is received to
5 a motion filed under subsection (1)(a) of this section, **or upon the request of the person or the**
6 **victim**, the court shall hold a hearing, and may require the filing of such affidavits and may require
7 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
8 statement at the hearing. If the person is otherwise eligible for relief under this section, the court
9 shall grant the motion and enter an order as described in paragraph [(b)] (c) of this subsection un-
10 less the court makes written findings, by clear and convincing evidence, that the circumstances and
11 behavior of the person, from the date of the conviction the person is seeking to set aside to the date
12 of the hearing on the motion, do not warrant granting the motion due to the circumstances and
13 behavior creating a risk to public safety. When determining whether the person's circumstances and
14 behavior create a risk to public safety, the court may only consider criminal behavior, or violations
15 of regulatory law or administrative rule enforced by civil penalty or other administrative sanction
16 that relate to the character of the conviction sought to be set aside. The court may not consider
17 nonpunitive civil liability, monetary obligations and motor vehicle violations. Upon granting the
18 motion, the court shall, **within 60 days after the date of the hearing**, enter an appropriate order
19 containing the original arrest or citation charge, the conviction charge, if different from the ori-
20 ginal, the date of charge, the submitting agency and the disposition of the charge. Upon the entry
21 of the order, the person for purposes of the law shall be deemed not to have been previously con-
22 victed, and the court shall issue an order sealing the record of conviction and other official records
23 in the case, including the records of arrest, citation or charge.

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

26 [(b)] (c) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or
27 under subsection (1)(a) of this section if no objection to the motion is received, and shall **within 60**
28 **days after the conclusion of the time period during which the prosecuting attorney may ob-**
29 **ject under subsection (2)(a) of this section for a motion filed under subsection (1)(a) of this**
30 **section, or within 60 days after the date the motion was filed with the court for a motion**
31 **filed under subsection (1)(c) or (d) of this section**, enter an appropriate order containing the
32 original arrest or citation charge, the conviction charge, if applicable and different from the ori-
33 ginal, the date of charge, the submitting agency and the disposition of the charge. Upon the entry
34 of the order, the person for purposes of the law shall be deemed not to have been previously con-
35 victed, arrested, cited or charged, and the court shall issue an order sealing all official records in
36 the case, including the records of arrest, citation or charge, whether or not the arrest, citation or
37 charge resulted in a further criminal proceeding.

38 **(d) The court, as part of entering an order under this subsection, may waive any re-**
39 **maining fines and fees owed by the person on the offense other than compensatory fines**
40 **payable to the victim of the offense.**

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

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

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

4 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
5 161.705.

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

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

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

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

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

14 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
15 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
16 419B.005.

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

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

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

22 (f) Any sex crime, unless:

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

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

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

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

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

31 (ii) The person is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (13) As used in this section:

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

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

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

7 137.223. (1) A person who has been found guilty except for insanity of an offense for which, if
 8 convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS
 9 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding
 10 the person guilty except for insanity of the offense.

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

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

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

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

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

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

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

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

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

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

37 (3)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
 38 prosecuted the offense. The prosecuting attorney may *[object]* **file an objection** to the motion *[filed*
 39 *and shall notify the court and the person of the objection]* within 120 days of *[receiving the motion]*
 40 **the date the motion was filed with the court. The prosecuting attorney shall notify the court**
 41 **and the person of the objection upon filing, and shall indicate in the objection whether the**
 42 **objection is based on the circumstances and behavior of the person. If the objection is not**
 43 **based on the circumstances and behavior of the person, the prosecuting attorney shall fur-**
 44 **ther notify the person that the person has 33 calendar days from the date of the filing of the**
 45 **objection to request a hearing.**

1 (b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of
 2 guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the
 3 motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the
 4 motion and notice to the victim's last-known address. **If the prosecuting attorney filed an ob-**
 5 **jection under paragraph (a) of this subsection that is not based on the circumstances and**
 6 **behavior of the person, the prosecuting attorney shall notify the victim that the victim has**
 7 **33 calendar days from the date of the filing of the objection to request a hearing.**

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

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

19 (4)(a) If an objection **based on the circumstances or behavior of the person** is received to
 20 a motion filed under this section, **or upon the request of the person or the victim**, the court shall
 21 hold a hearing, and may require the filing of such affidavits and may require the taking of such
 22 proofs as the court deems proper. The court shall allow the victim to make a statement at the
 23 hearing. If the person is otherwise eligible for relief under this section, the court shall grant the
 24 motion and, **within 60 days after the date of the hearing**, enter an order as described in para-
 25 graph [(b)] (d) of this subsection unless the court makes written findings, by clear and convincing
 26 evidence, that the circumstances and behavior of the person, from the date of the judgment the
 27 person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the
 28 motion due to the circumstances and behavior creating a risk to public safety. When determining
 29 whether the person's circumstances and behavior create a risk to public safety, the court may only
 30 consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil
 31 penalty or other administrative sanction that relate to the character of the conviction sought to be
 32 set aside. The court may not consider nonpunitive civil liability, monetary obligations and motor
 33 vehicle violations.

34 **(b) If no objection to the motion filed under this section is received, the court shall grant**
 35 **the motion and, within 60 days after the conclusion of the time period during which the**
 36 **prosecuting attorney may object under subsection (3)(a) of this section, enter an order as**
 37 **described in paragraph (d) of this subsection.**

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

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

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

45 (A) The person, for purposes of the law, shall be deemed not to have been previously found

1 guilty except for insanity, and the court shall issue an order sealing the records of the case, in-
2 cluding the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

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

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

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

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

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

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

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

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

29