

Requested by Representative TRAN

**PROPOSED AMENDMENTS TO
HOUSE BILL 4097**

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

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

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
6 in paragraph (b) of this subsection, any person convicted of an offense who
7 has fully complied with and performed the sentence of the court for the of-
8 fense, and whose conviction is described in subsection (5) of this section, by
9 motion may apply to the court where the conviction was entered for entry
10 of an order setting aside the conviction. A person who is still under super-
11 vision **or who has outstanding compensatory fines or restitution** as part
12 of the sentence for the offense that is the subject of the motion has not fully
13 complied with or performed the sentence of the court. **The fact that a**
14 **person has outstanding financial obligations, other than compensatory**
15 **fines and restitution, that are part of the sentence for the offense that**
16 **is the subject of the motion may not be considered when determining**
17 **whether the person has fully complied with or performed the sentence**
18 **of the court.**

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

21 “(A) For a Class B felony, seven years from the date of conviction or the

1 release of the person from imprisonment for the conviction sought to be set
2 aside, whichever is later.

3 “(B) For a Class C felony **or a finding of a person in contempt of**
4 **court for violating an order issued under ORS 107.700 to 107.735, 124.005**
5 **to 124.040, 133.035 or 163.760 to 163.777**, five years from the date of con-
6 viction **or finding** or the release of the person from imprisonment for the
7 conviction **or finding** sought to be set aside, whichever is later.

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

11 “(D) For a Class B or Class C misdemeanor, a violation or the finding
12 of a person in contempt of court **not described in subparagraph (B) of this**
13 **paragraph**, one year from the date of conviction or finding or the release
14 of the person from imprisonment for the conviction or finding sought to be
15 set aside, whichever is later.

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

22 “(d) At any time after an acquittal or a dismissal other than a dismissal
23 described in paragraph (c) of this subsection, an arrested, cited or charged
24 person may apply to the court in the county in which the person was ar-
25 rested, cited or charged, for entry of an order setting aside the record of the
26 arrest, citation or charge.

27 “(e) Notwithstanding paragraph (b) of this subsection, a person whose
28 sentence of probation was revoked may not apply to the court for entry of
29 an order setting aside the conviction for which the person was sentenced to
30 probation for a period of three years from the date of revocation or until the

1 person becomes eligible as described in paragraph (b) of this subsection,
2 whichever occurs later.

3 **“(f) If the offense classification of a conviction has been reduced**
4 **by the court, the applicable time period under paragraph (b) of this**
5 **subsection is the time period associated with the reduced offense**
6 **classification, calculated from the date of conviction or the release of**
7 **the person from imprisonment for the conviction sought to be set**
8 **aside, whichever is later.**

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

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

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

1 **torney shall notify the victim that the victim has 33 calendar days**
2 **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
4 forward to the Department of State Police a full set of the person’s finger-
5 prints on a fingerprint card or in any other manner specified by the depart-
6 ment.

7 “(d) When a person makes a motion under subsection (1)(a) of this section,
8 the person must pay a fee to the Department of State Police for the purpose
9 of the department performing a criminal record check. The department shall
10 establish a fee in an amount not to exceed the actual cost of performing the
11 criminal record check. If the department is required to perform only one
12 criminal record check for the person, the department may only charge one
13 fee, regardless of the number of counties in which the person is filing a
14 motion to set aside a conviction, arrest, charge or citation under this section.
15 The department shall provide a copy of the results of the criminal record
16 check to the prosecuting attorney.

17 “(e) The prosecuting attorney may not charge the person a fee for per-
18 forming the requirements described in this section.

19 “(3)(a) If an objection **based on the circumstances or behavior of the**
20 **person** is received to a motion filed under subsection (1)(a) of this section,
21 **or upon the request of the person or the victim**, the court shall hold a
22 hearing, and may require the filing of such affidavits and may require the
23 taking of such proofs as the court deems proper. The court shall allow the
24 victim to make a statement at the hearing. If the person is otherwise eligible
25 for relief under this section, the court shall grant the motion and enter an
26 order as described in paragraph [(b)] (c) of this subsection unless the court
27 makes written findings, by clear and convincing evidence, that the circum-
28 stances and behavior of the person, from the date of the conviction the per-
29 son is seeking to set aside to the date of the hearing on the motion, do not
30 warrant granting the motion due to the circumstances and behavior creating

1 a risk to public safety. When determining whether the person's circum-
2 stances and behavior create a risk to public safety, the court may only con-
3 sider criminal behavior, or violations of regulatory law or administrative
4 rule enforced by civil penalty or other administrative sanction that relate
5 to the character of the conviction sought to be set aside. The court may not
6 consider nonpunitive civil liability, monetary obligations and motor vehicle
7 violations. Upon granting the motion, the court shall, **within 120 days after**
8 **the date of the hearing**, enter an appropriate order containing the original
9 arrest or citation charge, the conviction charge, if different from the ori-
10 ginal, the date of charge, the submitting agency and the disposition of the
11 charge. Upon the entry of the order, the person for purposes of the law shall
12 be deemed not to have been previously convicted, and the court shall issue
13 an order sealing the record of conviction and other official records in the
14 case, including the records of arrest, citation or charge.

15 **“(b) If the court receives an objection that is not based on the cir-**
16 **cumstances and behavior of the person and no request for a hearing**
17 **is received, the court shall deny the motion.**

18 “[~~(b)~~] (c) The court shall grant a motion filed under subsection (1)(c) or
19 (d) of this section, or under subsection (1)(a) of this section if no objection
20 to the motion is received, and shall **within 120 days after the conclusion**
21 **of the time period during which the prosecuting attorney may object**
22 **under subsection (2)(a) of this section for a motion filed under sub-**
23 **section (1)(a) of this section, or within 120 days after the date the**
24 **motion was filed with the court for a motion filed under subsection**
25 **(1)(c) or (d) of this section**, enter an appropriate order containing the ori-
26 ginal arrest or citation charge, the conviction charge, if applicable and dif-
27 ferent from the original, the date of charge, the submitting agency and the
28 disposition of the charge. Upon the entry of the order, the person for pur-
29 poses of the law shall be deemed not to have been previously convicted, ar-
30 rested, cited or charged, and the court shall issue an order sealing all official

1 records in the case, including the records of arrest, citation or charge,
2 whether or not the arrest, citation or charge resulted in a further criminal
3 proceeding.

4 **“(d) The court, as part of entering an order under this subsection:**

5 **“(A) May, for good cause, waive any remaining financial obligations**
6 **owed by the person on the offense, other than compensatory fines or**
7 **restitution payable to the victim of the offense.**

8 **“(B) Shall waive any remaining financial obligations owed by the**
9 **person on the offense, other than compensatory fines or restitution**
10 **payable to the victim of the offense, if the date of the conviction oc-**
11 **curred more than 10 years prior to the filing of the motion and the**
12 **court is setting aside all convictions, arrests, citations or charges**
13 **within the case.**

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

20 “(5) The provisions of subsection (1)(a) of this section apply to a con-
21 viction for:

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

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

27 “(c) An offense constituting a violation under state law or local ordi-
28 nance.

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

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

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

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

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

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

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

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

14 “(f) Any sex crime, unless:

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

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

19 “(ii) The person has not been convicted of, found guilty except for insan-
20 ity of or found to be within the jurisdiction of the juvenile court based on
21 a crime for which the court is prohibited from setting aside the conviction
22 under this section; or

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

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

25 “(ii) The person is:

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

27 “(II) At least two years and 180 days older, but less than three years and
28 180 days older, than the victim and the court finds that setting aside the
29 conviction is in the interests of justice and of benefit to the person and the
30 community;

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

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

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

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

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

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

13 “[(b)] (B) A person convicted, within the following applicable time period
14 immediately preceding the filing of the motion pursuant to subsection (1)(a)
15 of this section, of any other offense, excluding motor vehicle violations, **or**
16 **found in contempt of court for violating an order issued under ORS**
17 **107.700 to 107.735, 124.005 to 124.040, 133.035 or 163.760 to 163.777**, whether
18 or not the other conviction **or finding** is for conduct associated with the
19 same criminal episode that caused the [*arrest, citation, charge or*] conviction
20 **or finding** that is sought to be set aside:

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

22 “[(B)] (ii) For a motion concerning a Class C felony **or a finding of a**
23 **person in contempt of court for violating an order issued under ORS**
24 **107.700 to 107.735, 124.005 to 124.040, 133.035 or 163.760 to 163.777**, five
25 years.

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

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

30 “(C) A person who at the time the motion described in this section

1 **is pending before the court is under charge of commission of any**
2 **crime or contempt of court for violating an order issued under ORS**
3 **107.700 to 107.735, 124.005 to 124.040, 133.035 or 163.760 to 163.777.**

4 “[*(c)*] **(b)** A single violation, other than a motor vehicle violation, within
5 the time period specified in paragraph [*(b)*] **(a)(B)** of this subsection is not
6 a conviction under this subsection. Notwithstanding subsection (1) of this
7 section, a conviction that has been set aside under this section shall be
8 considered for the purpose of determining whether paragraph [*(b)*] **(a)(B)** of
9 this subsection is applicable.

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

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

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

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

19 “**(c)** **A person who at the time the motion described in this section**
20 **is pending before the court is under charge of commission of any**
21 **crime or contempt of court for violating an order issued under ORS**
22 **107.700 to 107.735, 124.005 to 124.040, 133.035 or 163.760 to 163.777.**

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

27 “(10) For purposes of any civil action in which truth is an element of a
28 claim for relief or affirmative defense, the provisions of subsection (3) of this
29 section providing that the conviction, **finding**, arrest, citation, charge or
30 other proceeding be deemed not to have occurred do not apply and a party

1 may apply to the court for an order requiring disclosure of the official re-
2 cords in the case as may be necessary in the interest of justice.

3 “(11)(a) Upon motion of any prosecutor or defendant in a case involving
4 records sealed under this section, supported by affidavit showing good cause,
5 the court with jurisdiction may order the reopening and disclosure of any
6 records sealed under this section for the limited purpose of assisting the in-
7 vestigation of the movant. However, such an order has no other effect on the
8 orders setting aside the conviction or the arrest, citation or charge record.

9 “(b) Notwithstanding paragraph (a) of this subsection, when an arrest,
10 citation or charge described in subsection (1)(c) of this section is set aside,
11 a prosecuting attorney may, for the purpose of initiating a criminal pro-
12 ceeding within the statute of limitations, unseal the records sealed under
13 this section by notifying the court with jurisdiction over the charge, record
14 of arrest or citation. The prosecuting attorney shall notify the person who
15 is the subject of the records of the unsealing under this paragraph by sending
16 written notification to the person’s last known address.

17 “(12) The State Court Administrator shall create forms to be used
18 throughout the state for motions and proposed orders described in this sec-
19 tion.

20 “(13) As used in this section:

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

22 “(b) ‘Sex crime’ has the meaning given that term in ORS 163A.005.”.

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

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

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

26 **“SECTION 3. No later than January 1, 2026, and annually there-**
27 **after, the Judicial Department shall submit a report to the interim**
28 **committees of the Legislative Assembly related to the judiciary, in the**
29 **manner described in ORS 192.245, concerning the setting aside of ar-**
30 **rests, citations, charges, convictions and contempt of court findings**

1 **under ORS 137.225 and judgments of guilty except for insanity under**
2 **ORS 137.223.**

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

6
