

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 **finances 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 related to abuse or a person crime**, five
5 years from the date of conviction **or finding** or the release of the person
6 from imprisonment for the conviction **or finding** sought to be set aside,
7 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*] **a 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)*] **proceed to a financial obligation**
27 **waiver determination under paragraph (d)** of this subsection unless the
28 court makes written findings, by clear and convincing evidence, that the
29 circumstances and behavior of the person, from the date of the conviction
30 the person is seeking to set aside to the date of the hearing on the motion,

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

15 **“(b) If the court receives an objection to a motion filed under sub-**
16 **section (1)(a) of this section that is not based on the circumstances**
17 **and behavior of the person and no request for a hearing is received,**
18 **the court shall deny the motion.**

19 **“(c) If no objection to a motion filed under subsection (1)(a) of this**
20 **section is received, the court shall proceed to a financial obligation**
21 **waiver determination under paragraph (d) of this subsection.**

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

24 **“(A) The court may waive any remaining financial obligations owed**
25 **by the person on the offense, other than compensatory fines or**
26 **restitution.**

27 **“(B) The court shall waive any remaining financial obligations owed**
28 **by the person on the offense, other than compensatory fines or**
29 **restitution, if the date of the conviction occurred more than 10 years**
30 **prior to the filing of the motion and the court is setting aside all**

1 **convictions, arrests, citations or charges within the case.**

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

6 **“(e) If the court waives financial obligations under paragraph (d)(A)**
7 **or (B) of this subsection, the court shall grant the motion and shall,**
8 **within 120 days after the date of the hearing, or if no objection was**
9 **received, within 120 days after the conclusion of the time period during**
10 **which the prosecuting attorney may object under subsection (2)(a) of**
11 **this section, enter an appropriate order containing the original arrest**
12 **or citation charge, the conviction charge, if different from the ori-**
13 **ginal, the date of charge, the submitting agency and the disposition**
14 **of the charge. Upon the entry of the order, the person for purposes**
15 **of the law shall be deemed not to have been previously convicted, and**
16 **the court shall issue an order sealing the record of conviction and**
17 **other official records in the case, including the records of arrest, ci-**
18 **tation or charge.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(f) Any sex crime, unless:
2 “(A) The sex crime is listed in ORS 163A.140 (1)(a) and:
3 “(i) The person has been relieved of the obligation to report as a sex
4 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
5 and
6 “(ii) The person has not been convicted of, found guilty except for insan-
7 ity of or found to be within the jurisdiction of the juvenile court based on
8 a crime for which the court is prohibited from setting aside the conviction
9 under this section; or
10 “(B) The sex crime constitutes a Class C felony and:
11 “(i) The person was under 16 years of age at the time of the offense;
12 “(ii) The person is:
13 “(I) Less than two years and 180 days older than the victim; or
14 “(II) At least two years and 180 days older, but less than three years and
15 180 days older, than the victim and the court finds that setting aside the
16 conviction is in the interests of justice and of benefit to the person and the
17 community;
18 “(iii) The victim’s lack of consent was due solely to incapacity to consent
19 by reason of being less than a specified age;
20 “(iv) The victim was at least 12 years of age at the time of the offense;
21 “(v) The person has not been convicted of, found guilty except for insanity
22 of or found to be within the jurisdiction of the juvenile court based on a
23 crime for which the court is prohibited from setting aside the conviction
24 under this section; and
25 “(vi) Each conviction or finding described in this subparagraph involved
26 the same victim.
27 “(7)(a) Notwithstanding subsection (5) of this section, the provisions of
28 subsection (1)(a) of this section do not apply to:
29 “[a] (A) A conviction for a state or municipal traffic offense.
30 “[b] (B) A person convicted, within the following applicable time period

1 immediately preceding the filing of the motion pursuant to subsection (1)(a)
2 of this section, of any other offense, excluding motor vehicle violations, **or**
3 **found in contempt of court for violating an order related to abuse or**
4 **a person crime**, whether or not the other conviction **or finding** is for con-
5 duct associated with the same criminal episode that caused the [*arrest, cita-*
6 *tion, charge or*] conviction, **or with the same course of conduct that**
7 **caused the finding**, that is sought to be set aside:

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

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

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

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

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

20 “[c] (b) A single violation, other than a motor vehicle violation, within
21 the time period specified in paragraph [(b)] (a)(B) of this subsection is not
22 a conviction under this subsection. Notwithstanding subsection (1) of this
23 section, a conviction that has been set aside under this section shall be
24 considered for the purpose of determining whether paragraph [(b)] (a)(B) of
25 this subsection is applicable.

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

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

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

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

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

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

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

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

25 “(b) Notwithstanding paragraph (a) of this subsection, when an arrest,
26 citation or charge described in subsection (1)(c) of this section is set aside,
27 a prosecuting attorney may, for the purpose of initiating a criminal pro-
28 ceeding within the statute of limitations, unseal the records sealed under
29 this section by notifying the court with jurisdiction over the charge, record
30 of arrest or citation. The prosecuting attorney shall notify the person who

1 is the subject of the records of the unsealing under this paragraph by sending
2 written notification to the person's last known address.

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

6 “(13) As used in this section:

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

8 “(b) ‘Order related to abuse or a person crime’ means:

9 “(A) A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to
10 107.735, 124.005 to 124.040, 133.035, 135.247 or 163.760 to 163.777; or

11 “(B) A court order arising from a criminal case involving a crime
12 of domestic violence as defined in ORS 135.230, a sex crime or any
13 other person felony or person Class A misdemeanor, as those terms
14 are defined in the rules of the Oregon Criminal Justice Commission.

15 “[*(b)*] (c) ‘Sex crime’ has the meaning given that term in ORS
16 163A.005.”.

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

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

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

20 **“SECTION 3. No later than January 1, 2026, and annually there-**
21 **after, the Judicial Department shall submit a report to the interim**
22 **committees of the Legislative Assembly related to the judiciary, in the**
23 **manner described in ORS 192.245, concerning the setting aside of ar-**
24 **rests, citations, charges, convictions and contempt of court findings**
25 **under ORS 137.225 and judgments of guilty except for insanity under**
26 **ORS 137.223. The report may include a description of additional re-**
27 **sources the department requires in order to fulfill the department’s**
28 **duties under ORS 137.223 and 137.225.**

29 **“SECTION 4. The amendments to ORS 137.223 and 137.225 by**
30 **sections 1 and 2 of this 2024 Act apply to motions filed on or after the**

1 **effective date of this 2024 Act.”.**

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