

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

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

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

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

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

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

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

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

28 “(e) Notwithstanding paragraph (b) of this subsection, a person whose
29 sentence of probation was revoked may not apply to the court for entry of
30 an order setting aside the conviction **or finding** for which the person was

1 sentenced to probation for a period of three years from the date of revocation
2 or until the person becomes eligible as described in paragraph (b) of this
3 subsection, whichever occurs later.

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

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

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

25 “(b) When a prosecuting attorney is served with a copy of a motion to set
26 aside a conviction **or finding** under subsection (1)(a) of this section, the
27 prosecuting attorney shall provide a copy of the motion and notice of the
28 hearing date to the victim, if any, [*of the offense*] by mailing a copy of the
29 motion and notice to the victim’s last-known address. **If the prosecuting**
30 **attorney filed an objection under paragraph (a) of this subsection that**

1 **is not based on the circumstances and behavior of the person, the**
2 **prosecuting attorney shall notify the victim that the victim has 33**
3 **calendar days from the date of the filing of the objection to request a**
4 **hearing.**

5 “(c) When a person makes a motion under this section, the person shall
6 forward to the Department of State Police a full set of the person’s finger-
7 prints on a fingerprint card or in any other manner specified by the depart-
8 ment.

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

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

21 “(3)(a) If an objection **based on the circumstances or behavior of the**
22 **person** is received to a motion filed under subsection (1)(a) of this section,
23 **or upon the request of the person or the victim**, the court shall hold a
24 hearing, and may require the filing of such affidavits and may require the
25 taking of such proofs as the court deems proper. The court shall allow the
26 victim to make a statement at the hearing. If the person is otherwise eligible
27 for relief under this section, the court shall [*grant the motion and enter an*
28 *order as described in paragraph (b)*] **proceed to a financial obligation**
29 **waiver determination under paragraph (d) of this subsection or, if**
30 **there are no outstanding financial obligations on the offense or find-**

1 **ing, proceed to paragraph (e)** of this subsection unless the court makes
2 written findings, by clear and convincing evidence, that the circumstances
3 and behavior of the person, from the date of the conviction **or finding** the
4 person is seeking to set aside to the date of the hearing on the motion, do
5 not warrant granting the motion due to the circumstances and behavior
6 creating a risk to public safety. When determining whether the person’s
7 circumstances and behavior create a risk to public safety, the court may only
8 consider criminal behavior, or violations of regulatory law or administrative
9 rule enforced by civil penalty or other administrative sanction that relate
10 to the character of the conviction **or finding** sought to be set aside. The
11 court may not consider nonpunitive civil liability, monetary obligations and
12 motor vehicle violations. [*Upon granting the motion, the court shall enter an*
13 *appropriate order containing the original arrest or citation charge, the con-*
14 *viction charge, if different from the original, the date of charge, the submitting*
15 *agency and the disposition of the charge. Upon the entry of the order, the*
16 *person for purposes of the law shall be deemed not to have been previously*
17 *convicted, and the court shall issue an order sealing the record of conviction*
18 *and other official records in the case, including the records of arrest, citation*
19 *or charge.*]

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

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

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

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

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

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

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

28 “[(b)] (f) The court shall grant a motion filed under subsection (1)(c) or
29 (d) of this section[, or under subsection (1)(a) of this section if no objection to
30 the motion is received,] and shall, within 120 days after the date the mo-

1 **tion was filed with the court**, enter an appropriate order containing the
2 original arrest or citation charge, [*the conviction charge, if applicable and*
3 *different from the original,*] the date of charge, the submitting agency and the
4 disposition of the charge. Upon the entry of the order, the person for pur-
5 poses of the law shall be deemed not to have been previously [*convicted,*]
6 arrested, cited or charged, and the court shall issue an order sealing all of-
7 ficial records in the case, including the records of arrest, citation or charge,
8 whether or not the arrest, citation or charge resulted in a further criminal
9 proceeding.

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

16 “(5) The provisions of subsection (1)(a) of this section apply to [*a con-*
17 *viction for*] **the following convictions and findings:**

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

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

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

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

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

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

30 “(a) Criminal mistreatment in the second degree under ORS 163.200 if the

1 victim at the time of the crime was 65 years of age or older.

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

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

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

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

10 “(f) Any sex crime, unless:

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

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

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

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

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

21 “(ii) The person is:

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

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

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

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

30 “(v) The person has not been convicted of, found guilty except for insanity

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

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

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

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

9 “[b] (B) A person convicted[, *within the following applicable time period*
10 *immediately preceding the filing of the motion pursuant to subsection (1) of*
11 *this section,*] of any other offense, excluding motor vehicle violations, **or**
12 **found in contempt of court for violating an order related to abuse or**
13 **a person crime, within the following applicable time period imme-**
14 **diately preceding the filing of the motion pursuant to subsection (1)(a)**
15 **of this section,** whether or not the other conviction **or finding** is for con-
16 duct associated with the same criminal episode that caused the [*arrest, cita-*
17 *tion, charge or*] conviction, **or with the same course of conduct that**
18 **caused the finding,** that is sought to be set aside:

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

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

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

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

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

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

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

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

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

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

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 “**(d)** **For a motion concerning an arrest, citation or charge for a**
21 **crime constituting domestic violence, a sex crime or any other person**
22 **felony or person Class A misdemeanor, as those terms are defined in**
23 **the rules of the Oregon Criminal Justice Commission, a person con-**
24 **victed of any other offense, excluding motor vehicle violations, or**
25 **found in contempt of court for violating an order related to abuse or**
26 **a person crime, within the three years immediately preceding the fil-**
27 **ing of the motion pursuant to subsection (1)(c) or (1)(d) of this section,**
28 **whether or not the other conviction or finding is for conduct associ-**
29 **ated with the same criminal episode that caused the arrest, citation**
30 **or charge that is sought to be set aside.**

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

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

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

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

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

29 “(13) As used in this section:

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

1 “(b) ‘Domestic violence’ has the meaning given that term in ORS
2 135.230;

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

4 “(A) A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to
5 107.735, 124.005 to 124.040, 133.035, 135.247 or 163.760 to 163.777; or

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

10 “[(b)] (d) ‘Sex crime’ has the meaning given that term in ORS
11 163A.005.”.

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

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

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

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

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

27