

# House Bill 2049

Sponsored by Representative WRIGHT (Presession 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 when information about sex offenders can be released. The Act also makes changes to the crime of failure to report as a sex offender. (Flesch Readability Score: 64.6).

Modifies when information about level two sex offenders and level one sex offenders may be released.

Increases penalties for the crime of failure to report as a sex offender constituting a misdemeanor. Punishes by a maximum of five years' imprisonment, \$125,000 fine, or both.

Prohibits the setting aside of a conviction for failure to report as a sex offender.

## A BILL FOR AN ACT

1  
2 Relating to sex offenders; amending ORS 137.225, 163A.040 and 163A.215.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 163A.215 is amended to read:

5 163A.215. (1)(a) A notifying agency or a supervising agency shall release, upon request, any in-  
6 formation that may be necessary to protect the public concerning sex offenders who reside in a  
7 specific area or concerning a specific sex offender.

8 (b) A notifying agency or a supervising agency may release sex offender information to a law  
9 enforcement agency if the notifying agency or supervising agency determines that the release of  
10 information is in the public interest.

11 (c) In addition to the release of information described in this subsection and ORS 137.540,  
12 144.260 and 441.373, a notifying agency or a supervising agency may release sex offender information  
13 to the public in accordance with subsections (2) to (4) of this section.

14 (2) If the sex offender is classified as a level three sex offender under ORS 163A.100 (3) **or a**  
15 **level two sex offender under ORS 163A.100 (2):**

16 (a) The Department of State Police shall release sex offender information on a website main-  
17 tained by the department; and

18 (b) The supervising agency or a notifying agency may release sex offender information to:

19 (A) A person that resides with the sex offender;

20 (B) A person with whom the sex offender has a significant relationship;

21 (C) Residential neighbors and churches, community parks, schools and child care centers, con-  
22 venience stores, businesses and other places that children or other potential victims may frequent;

23 (D) A long term care facility, as defined in ORS 442.015, or a residential care facility, as defined  
24 in ORS 443.400, if the agency knows that the sex offender is seeking admission to the facility; and

25 (E) Local or regional media sources.

26 (3) Notwithstanding subsection (2)(a) of this section, the Department of State Police may not use  
27 the Internet to make available to the public information concerning a sex offender classified as a  
28 level three sex offender under ORS 163A.100 (3) **or a level two sex offender under ORS 163A.100**

**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 (2) while the person is under the supervision of the Psychiatric Security Review Board, unless the  
 2 department is authorized to do so by a request of the supervising agency.

3 (4) If the sex offender is classified as a level *[two]* **one** sex offender under ORS 163A.100 *[(2)]*  
 4 (1), the supervising agency or a notifying agency may release sex offender information to the per-  
 5 sons or entities described in subsection (2)(b)(A) to (D) of this section.

6 *[(5) If the sex offender is classified as a level one sex offender under ORS 163A.100 (1), the*  
 7 *supervising agency or a notifying agency may release sex offender information to a person described*  
 8 *in subsection (2)(b)(A) of this section.]*

9 *[(6)]* (5) As used in this section:

10 (a) “Notifying agency” means the Department of State Police, a city police department, a county  
 11 sheriff’s office or a police department established by a university under ORS 352.121.

12 (b) “Sex offender information” means information that the Department of State Police deter-  
 13 mines by rule is appropriate for release to the public.

14 (c) “Supervising agency” means a governmental entity responsible for supervising a person re-  
 15 quired to report as a sex offender under ORS 163A.010 or 163A.015.

16 **SECTION 2.** ORS 163A.040 is amended to read:

17 163A.040. (1) A person who is required to report as a sex offender in accordance with the ap-  
 18 plicable provisions of ORS 163A.010, 163A.015, 163A.020 or 163A.025 and who has knowledge of the  
 19 reporting requirement commits the crime of failure to report as a sex offender if the person:

20 (a) Fails to make the initial report to an agency;

21 (b) Fails to report when the person works at, carries on a vocation at or attends an institution  
 22 of higher education;

23 (c) Fails to report following a change of school enrollment or employment status, including en-  
 24 rollment, employment or vocation status at an institution of higher education;

25 (d) Moves to a new residence and fails to report the move and the person’s new address;

26 (e) Fails to report a legal change of name;

27 (f) Fails to make an annual report;

28 (g) Fails to provide complete and accurate information;

29 (h) Fails to sign the sex offender registration form as required;

30 (i) Fails or refuses to participate in a sex offender risk assessment as directed by the State  
 31 Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board, Oregon Health  
 32 Authority or supervisory authority;

33 (j) Fails to submit to fingerprinting or to having a photograph taken of the person’s face, iden-  
 34 tifying scars, marks or tattoos; or

35 (k) Fails to report prior to any intended travel outside of the United States.

36 (2)(a) It is an affirmative defense to a charge of failure to report under subsection (1)(d) of this  
 37 section by a person required to report under ORS 163A.010 (3)(a)(B), 163A.015 (4)(a)(B) or 163A.025  
 38 (3)(a) that the person reported, in person, within 10 days of a change of residence to the Department  
 39 of State Police, a city police department or a county sheriff’s office, in the county of the person’s  
 40 new residence, if the person otherwise complied with all reporting requirements.

41 (b) It is an affirmative defense to a charge of failure to report under subsection (1)(a) of this  
 42 section by a person required to report under ORS 163A.025 (2)(b)(A)(i) that the person reported, in  
 43 person, to the Department of State Police in Marion County, Oregon, within 10 days of moving into  
 44 this state.

45 (c) It is an affirmative defense to a charge of failure to report under subsection (1)(a) of this

1 section by a person required to report under ORS 163A.025 (2)(b)(B)(i) that the person reported, in  
 2 person, to the Department of State Police in Marion County, Oregon, within six months of moving  
 3 into this state.

4 (d) It is an affirmative defense to a charge of failure to report under subsection (1) of this sec-  
 5 tion by a person required to report under ORS 163A.025 (2)(b)(A)(ii) or (B)(ii) that the person re-  
 6 ported, in person, to the Department of State Police in Marion County, Oregon, if the person  
 7 otherwise complied with all reporting requirements.

8 (e) It is an affirmative defense to a charge of failure to report under subsection (1) of this sec-  
 9 tion by a person required to report under ORS 163A.025 (3) that the person reported, in person, to  
 10 the Department of State Police, a city police department or a county sheriff's office, in the county  
 11 of the person's residence, if the person otherwise complied with all reporting requirements.

12 (f) It is an affirmative defense to a charge of failure to report under subsection (1) of this section  
 13 by a person required to report under ORS 163A.010 (3) that the person reported to the Oregon Youth  
 14 Authority if the person establishes that the authority registered the person under ORS 163A.010  
 15 (3)(c).

16 (g) It is an affirmative defense to a charge of failure to report under subsection (1) of this sec-  
 17 tion by a person required to report under ORS 163A.025 (2) or (3) that the person reported to the  
 18 Oregon Youth Authority or a county juvenile department if the person establishes that the authority  
 19 or department registered the person under ORS 163A.025 (8).

20 *[(3)(a) Except as otherwise provided in paragraph (b) of this subsection, failure to report as a sex*  
 21 *offender is a Class A misdemeanor.]*

22 *[(b)] (3) Failure to report as a sex offender is a Class C felony. [if the person violates:]*

23 *[(A) Subsection (1)(a) of this section; or]*

24 *[(B) Subsection (1)(b), (c), (d), (e) or (h) of this section and the crime for which the person is re-*  
 25 *quired to report is a felony.]*

26 (4) A person who fails to sign and return an address verification form as required by ORS  
 27 163A.035 (4) commits a violation.

28 **SECTION 3.** ORS 137.225, as amended by section 55, chapter 70, Oregon Laws 2024, is amended  
 29 to read:

30 137.225. (1)(a) At any time after the person becomes eligible as described in paragraph (b) of this  
 31 subsection, any person convicted of an offense who has fully complied with and performed the sen-  
 32 tence of the court for the offense, and whose conviction is described in subsection (5) of this section,  
 33 by motion may apply to the court where the conviction was entered for entry of an order setting  
 34 aside the conviction. A person who is still under supervision as part of the sentence for the offense  
 35 that is the subject of the motion has not fully complied with or performed the sentence of the court.

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

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

39 (B) For a Class C felony, five years from the date of conviction or the release of the person from  
 40 imprisonment for the conviction sought to be set aside, whichever is later.

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

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

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

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

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

14 (f) A person filing a motion under this section is not required to pay the filing fee established  
 15 under ORS 21.135.

16 (2)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who  
 17 prosecuted the offense, or who had authority to prosecute the charge if there was no accusatory  
 18 instrument filed. The prosecuting attorney may object to a motion filed under subsection (1)(a) of  
 19 this section and shall notify the court and the person of the objection within 120 days of the date  
 20 the motion was filed with the court.

21 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction  
 22 under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the motion  
 23 and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion  
 24 and notice to the victim's last-known address.

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

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

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

38 (3)(a) If an objection is received to a motion filed under subsection (1)(a) of this section, the  
 39 court shall hold a hearing, and may require the filing of such affidavits and may require the taking  
 40 of such proofs as the court deems proper. The court shall allow the victim to make a statement at  
 41 the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the  
 42 motion and enter an order as described in paragraph (b) of this subsection unless the court makes  
 43 written findings, by clear and convincing evidence, that the circumstances and behavior of the per-  
 44 son, from the date of the conviction the person is seeking to set aside to the date of the hearing on  
 45 the motion, do not warrant granting the motion due to the circumstances and behavior creating a

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

11 (b) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or under  
 12 subsection (1)(a) of this section if no objection to the motion is received, and shall enter an appro-  
 13 priate order containing the original arrest or citation charge, the conviction charge, if applicable  
 14 and different from the original, the date of charge, the submitting agency and the disposition of the  
 15 charge. Upon the entry of the order, the person for purposes of the law shall be deemed not to have  
 16 been previously convicted, arrested, cited or charged, and the court shall issue an order sealing all  
 17 official records in the case, including the records of arrest, citation or charge, whether or not the  
 18 arrest, citation or charge resulted in a further criminal proceeding.

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

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

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

27 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS  
 28 161.705.

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

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

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

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

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

37 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the  
 38 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS  
 39 419B.005.

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

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

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

45 (f) Any sex crime, unless:

- 1 (A) The sex crime is listed in ORS 163A.140 (1)(a) and:
- 2 (i) The person has been relieved of the obligation to report as a sex offender pursuant to a court  
3 order entered under ORS 163A.145 or 163A.150; and
- 4 (ii) The person has not been convicted of, found guilty except for insanity of or found to be  
5 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from  
6 setting aside the conviction under this section; or
- 7 (B) The sex crime constitutes a Class C felony and:
- 8 (i) The person was under 16 years of age at the time of the offense;
- 9 (ii) The person is:
- 10 (I) Less than two years and 180 days older than the victim; or
- 11 (II) At least two years and 180 days older, but less than three years and 180 days older, than  
12 the victim and the court finds that setting aside the conviction is in the interests of justice and of  
13 benefit to the person and the community;
- 14 (iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less  
15 than a specified age;
- 16 (iv) The victim was at least 12 years of age at the time of the offense;
- 17 (v) The person has not been convicted of, found guilty except for insanity of or found to be  
18 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from  
19 setting aside the conviction under this section; and
- 20 (vi) Each conviction or finding described in this subparagraph involved the same victim.
- 21 **(g) Failure to report as a sex offender under ORS 163A.040.**
- 22 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section  
23 do not apply to:
- 24 (a) A conviction for a state or municipal traffic offense.
- 25 (b) A person convicted, within the following applicable time period immediately preceding the  
26 filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor  
27 vehicle violations and unlawful possession of a controlled substance constituting a drug enforcement  
28 misdemeanor as described in section 35, chapter 70, Oregon Laws 2024, whether or not the other  
29 conviction is for conduct associated with the same criminal episode that caused the arrest, citation,  
30 charge or conviction that is sought to be set aside:
- 31 (A) For a motion concerning a Class B felony, seven years.
- 32 (B) For a motion concerning a Class C felony, five years.
- 33 (C) For a motion concerning a Class A misdemeanor, three years.
- 34 (D) For a motion concerning a Class B or Class C misdemeanor a violation or a finding of con-  
35 tempt of court, one year.
- 36 (c) A single violation, other than a motor vehicle violation, within the time period specified in  
37 paragraph (b) of this subsection is not a conviction under this subsection. Notwithstanding sub-  
38 section (1) of this section, a conviction that has been set aside under this section shall be considered  
39 for the purpose of determining whether paragraph (b) of this subsection is applicable.
- 40 (d) A person who at the time the motion authorized by subsection (1) of this section is pending  
41 before the court is under charge of commission of any crime.
- 42 (8) The provisions of subsection (1)(c) or (d) of this section do not apply to an arrest or citation  
43 for driving while under the influence of intoxicants if the charge is dismissed as a result of the  
44 person's successful completion of a diversion agreement described in ORS 813.200.
- 45 (9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and

1 charges that occurred before, as well as those that occurred after, September 9, 1971. There is no  
 2 time limit for making an application.

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

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

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

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

21 (13) As used in this section:

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

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

24