

# House Bill 2298

Sponsored by Representatives MANNIX, WALLAN (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 a person can set aside a conviction, arrest or GEI finding. (Flesch Readability Score: 67.5).

Modifies when a person can obtain an order setting aside a conviction, arrest, charge or guilty except for insanity judgment.

## A BILL FOR AN ACT

1  
2 Relating to expungements; 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, as amended by section 55, chapter 70, Oregon Laws 2024, is amended  
5 to read:

6 137.225. (1)(a) At any time after the person becomes eligible as described in paragraph (b) of this  
7 subsection, any person convicted of an offense who has fully complied with and performed the sen-  
8 tence of the court for the offense, and whose conviction is described in subsection (5) of this section,  
9 by motion may apply to the court where the conviction was entered for entry of an order setting  
10 aside the conviction. A person who is still under supervision as part of the sentence for the offense  
11 that is the subject of the motion has not fully complied with or performed the sentence of the court.

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

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

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

17 (C) For a Class A misdemeanor, [*three*] **five** years from the date of conviction or the release of  
18 the person from imprisonment for the conviction sought to be set aside, whichever is later.

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

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

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

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

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

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

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

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

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

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

29 (3)(a) If an objection is received to a motion filed under subsection (1)(a) of this section, **or upon**  
 30 **the court's own motion**, the court shall hold a hearing, and may require the filing of such affida-  
 31 vits and may require the taking of such proofs as the court deems proper. The court shall allow the  
 32 victim to make a statement at the hearing. If the person is otherwise eligible for relief under this  
 33 section, the court shall grant the motion and enter an order as described in paragraph (b) of this  
 34 subsection unless:

35 **(A) The court determines that, based on the evidence presented, the interests of justice**  
 36 **are not served by granting the motion, and states the reasons on the record; or**

37 **(B)** The court makes written findings, by clear and convincing evidence, that the circumstances  
 38 and behavior of the person, from the date of the conviction the person is seeking to set aside to the  
 39 date of the hearing on the motion, do not warrant granting the motion due to the circumstances and  
 40 behavior creating a risk to public safety. When determining whether the person's circumstances and  
 41 behavior create a risk to public safety, the court may only consider criminal behavior, or violations  
 42 of regulatory law or administrative rule enforced by civil penalty or other administrative sanction  
 43 that relate to the character of the conviction sought to be set aside. The court may not consider  
 44 nonpunitive civil liability, monetary obligations and motor vehicle violations.

45 **(b)** Upon granting the motion, the court shall enter an appropriate order containing the original

1 arrest or citation charge, the conviction charge, if different from the original, the date of charge,  
 2 the submitting agency and the disposition of the charge. Upon the entry of the order, the person for  
 3 purposes of the law shall be deemed not to have been previously convicted, and the court shall issue  
 4 an order sealing the record of conviction and other official records in the case, including the records  
 5 of arrest, citation or charge.

6 [(b)] (c) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or  
 7 under subsection (1)(a) of this section if no objection to the motion is received **and the court does**  
 8 **not, on its own motion, hold a hearing**, and shall enter an appropriate order containing the ori-  
 9 ginal arrest or citation charge, the conviction charge, if applicable and different from the original,  
 10 the date of charge, the submitting agency and the disposition of the charge. Upon the entry of the  
 11 order, the person for purposes of the law shall be deemed not to have been previously convicted,  
 12 arrested, cited or charged, and the court shall issue an order sealing all official records in the case,  
 13 including the records of arrest, citation or charge, whether or not the arrest, citation or charge  
 14 resulted in a further criminal proceeding.

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

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

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

23 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS  
 24 161.705.

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

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

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

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

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

33 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the  
 34 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS  
 35 419B.005.

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

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

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

41 (f) Any sex crime, unless:

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

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

45 (ii) The person has not been convicted of, found guilty except for insanity of or found to be

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

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

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

5 (ii) The person is:

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

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

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

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

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

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

17 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section  
 18 do not apply to:

19 (a) A conviction for a state or municipal traffic offense.

20 (b) A person convicted, within the following applicable time period immediately preceding the  
 21 filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor  
 22 vehicle violations and unlawful possession of a controlled substance constituting a drug enforcement  
 23 misdemeanor as described in section 35, chapter 70, Oregon Laws 2024, whether or not the other  
 24 conviction is for conduct associated with the same criminal episode that caused the arrest, citation,  
 25 charge or conviction that is sought to be set aside:

26 (A) For a motion concerning a Class B felony **or a Class A felony arrest, citation or**  
 27 **charge**, seven years.

28 (B) For a motion concerning a Class C felony, five years.

29 (C) For a motion concerning a Class A misdemeanor, three years.

30 (D) For a motion concerning a Class B or Class C misdemeanor a violation or a finding of con-  
 31 tempt of court, one year.

32 (c) A single violation, other than a motor vehicle violation, within the time period specified in  
 33 paragraph (b) of this subsection is not a conviction under this subsection. Notwithstanding sub-  
 34 section (1) of this section, a conviction that has been set aside under this section shall be considered  
 35 for the purpose of determining whether paragraph (b) of this subsection is applicable.

36 (d) A person who at the time the motion authorized by subsection (1) of this section is pending  
 37 before the court is under charge of commission of any crime.

38 (e) **A person who has five or more convictions of any felony or Class A misdemeanor,**  
 39 **including a conviction that has been set aside under this section.**

40 (f) **A crime involving domestic violence as defined in ORS 135.230.**

41 (g) **A crime in which a firearm was involved.**

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

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

1       **(b) An arrest, citation or charge for a Class A felony, if the district attorney objects to**  
 2       **the motion.**

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

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

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

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

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

24       (13) As used in this section:

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

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

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

28       137.223. (1) A person who has been found guilty except for insanity of an offense for which, if  
 29 convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS  
 30 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding  
 31 the person guilty except for insanity of the offense.

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

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

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

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

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

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

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

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

9 (C) For a motion concerning a judgment of guilty except for insanity on a Class A misdemeanor,  
 10 [three] **five** years.

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

13 (3)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who  
 14 prosecuted the offense. The prosecuting attorney may object to the motion filed and shall notify the  
 15 court and the person of the objection within 120 days of [receiving the motion] **the date the motion**  
 16 **was filed with the court.**

17 (b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of  
 18 guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the  
 19 motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the  
 20 motion and notice to the victim's last-known address.

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

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

32 (4)(a) If an objection is received to a motion filed under this section, **or upon the court's own**  
 33 **motion**, the court shall hold a hearing, and may require the filing of such affidavits and may require  
 34 the taking of such proofs as the court deems proper. The court shall allow the victim to make a  
 35 statement at the hearing. If the person is otherwise eligible for relief under this section, the court  
 36 shall grant the motion and enter an order as described in paragraph (b) of this subsection unless:

37 **(A) The court determines that, based on the evidence presented, the interests of justice**  
 38 **are not served by granting the motion, and states the reasons on the record; or**

39 **(B) The court makes written findings, by clear and convincing evidence, that the circumstances**  
 40 **and behavior of the person, from the date of the judgment the person is seeking to set aside to the**  
 41 **date of the hearing on the motion, do not warrant granting the motion due to the circumstances and**  
 42 **behavior creating a risk to public safety. When determining whether the person's circumstances and**  
 43 **behavior create a risk to public safety, the court may only consider criminal behavior, or violations**  
 44 **of regulatory law or administrative rule enforced by civil penalty or other administrative sanction**  
 45 **that relate to the character of the conviction sought to be set aside. The court may not consider**

1 nonpunitive civil liability, monetary obligations and motor vehicle violations.

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

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

7 (A) The person, for purposes of the law, shall be deemed not to have been previously found  
 8 guilty except for insanity, and the court shall issue an order sealing the records of the case, in-  
 9 cluding the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

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

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

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

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

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

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

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

34