

Enrolled
House Bill 2492

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

CHAPTER

AN ACT

Relating to courts; creating new provisions; and amending ORS 137.225.

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

SECTION 1. ORS 137.225, as amended by section 55, chapter 70, Oregon Laws 2024, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(a) If an objection is received to a motion filed under subsection (1)(a) of this section, the court shall hold a hearing, and may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the motion and enter an order as described in paragraph (b) of this subsection unless the court makes written findings, by clear and convincing evidence, that the circumstances and behavior of the person, from the date of the conviction **or finding** the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety. When determining whether the person's circumstances and behavior create a risk to public safety, the court may only consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil penalty or other administrative sanction that relate to the character of the conviction **or finding** sought to be set aside. The court may not consider nonpunitive civil liability, monetary obligations and motor vehicle violations. Upon granting the motion, the court shall enter an appropriate order containing the original arrest or citation charge, the conviction charge, if different from the original, the date of charge, the submitting agency and the disposition of the charge. Upon the entry of the order, the person for purposes of the law shall be deemed not to have been previously convicted, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation or charge.

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

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

(5) The provisions of subsection (1)(a) of this section apply to *[a conviction for]* **the following convictions and findings:**

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

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

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

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

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

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

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

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

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

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

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

(f) Any sex crime, unless:

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

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

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

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

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

(ii) The person is:

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

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

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

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

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

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

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

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

[(b)] (B) A person convicted[, *within the following applicable time period immediately preceding the filing of the motion pursuant to subsection (1) of this section,*] of any other offense, excluding motor vehicle violations and unlawful possession of a controlled substance constituting a drug enforcement misdemeanor as described in section 35, chapter 70, Oregon Laws 2024, **or found in contempt of court for violating an order related to abuse or a person crime, within the following applicable time period immediately preceding the filing of the motion pursuant to subsection (1)(a) of this section**, whether or not the other conviction is for conduct associated with the same criminal episode that caused the [*arrest, citation, charge or*] conviction, **or with the same course of conduct that caused the finding**, that is sought to be set aside:

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

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

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

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

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

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

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

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

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

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

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

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

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

(11)(a) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting

the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction **or finding**, or the arrest, citation or charge record.

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

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

(13) As used in this section:

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

(b) **"Order related to abuse or a person crime" means:**

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

(B) A court order arising from a criminal case involving:

(i) A sex crime;

(ii) Stalking under ORS 163.732; or

(iii) A person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, committed against the person's family or household member as defined in ORS 135.230.

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

SECTION 2. The amendments to ORS 137.225 by section 1 of this 2025 Act apply to motions filed on or after the effective date of this 2025 Act.

Passed by House April 23, 2025

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Julie Fahey, Speaker of House

Passed by Senate June 11, 2025

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

.....
Tobias Read, Secretary of State