

# House Bill 3829

Sponsored by Representative CHOTZEN

## 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 lets a person set aside a conviction for certain traffic offenses. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 71.2).

Provides that certain traffic offenses may be set aside. Specifies when a person is not eligible. Takes effect on the 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the expungement of traffic offenses; amending ORS 137.225; and prescribing an effective  
3 date.

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

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

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

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

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

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

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

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

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

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

**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 the arrest, citation or charge.

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

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

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

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

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

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

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

30 (3)(a) If an objection is received to a motion filed under subsection (1)(a) of this section, the  
31 court shall hold a hearing, and may require the filing of such affidavits and may require the taking  
32 of such proofs as the court deems proper. The court shall allow the victim to make a statement at  
33 the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the  
34 motion and enter an order as described in paragraph (b) of this subsection unless the court makes  
35 written findings, by clear and convincing evidence, that the circumstances and behavior of the per-  
36 son, from the date of the conviction the person is seeking to set aside to the date of the hearing on  
37 the motion, do not warrant granting the motion due to the circumstances and behavior creating a  
38 risk to public safety. When determining whether the person's circumstances and behavior create a  
39 risk to public safety, the court may only consider criminal behavior, or violations of regulatory law  
40 or administrative rule enforced by civil penalty or other administrative sanction that relate to the  
41 character of the conviction sought to be set aside. The court may not consider nonpunitive civil  
42 liability, monetary obligations and motor vehicle violations. Upon granting the motion, the court  
43 shall enter an appropriate order containing the original arrest or citation charge, the conviction  
44 charge, if different from the original, the date of charge, the submitting agency and the disposition  
45 of the charge. Upon the entry of the order, the person for purposes of the law shall be deemed not

1 to have been previously convicted, and the court shall issue an order sealing the record of con-  
 2 viction and other official records in the case, including the records of arrest, citation or charge.

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

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

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

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

19 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS  
 20 161.705.

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

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

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

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

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

29 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the  
 30 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS  
 31 419B.005.

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

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

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

37 (f) Any sex crime, unless:

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

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

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

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

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

- 1 (ii) The person is:
- 2 (I) Less than two years and 180 days older than the victim; or
- 3 (II) At least two years and 180 days older, but less than three years and 180 days older, than
- 4 the victim and the court finds that setting aside the conviction is in the interests of justice and of
- 5 benefit to the person and the community;
- 6 (iii) The victim’s lack of consent was due solely to incapacity to consent by reason of being less
- 7 than a specified age;
- 8 (iv) The victim was at least 12 years of age at the time of the offense;
- 9 (v) The person has not been convicted of, found guilty except for insanity of or found to be
- 10 within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from
- 11 setting aside the conviction under this section; and
- 12 (vi) Each conviction or finding described in this subparagraph involved the same victim.
- 13 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
- 14 do not apply to:
- 15 (a) A conviction for a state or municipal traffic offense, **unless:**
- 16 **(A) The offense is described in ORS 807.570, 811.140, 811.182 (4), 811.540 or 811.700; and**
- 17 **(B) The person did not have a commercial driver license or commercial learner driver**
- 18 **permit at the time of the offense or at the time of the filing of the motion, and was not**
- 19 **driving a commercial vehicle at the time of the 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, seven years.
- 27 (B) For a motion concerning a Class C felony, five years.
- 28 (C) For a motion concerning a Class A misdemeanor, three years.
- 29 (D) For a motion concerning a Class B or Class C misdemeanor a violation or a finding of con-
- 30 tempt of court, one year.
- 31 (c) A single violation, other than a motor vehicle violation, within the time period specified in
- 32 paragraph (b) of this subsection is not a conviction under this subsection. Notwithstanding sub-
- 33 section (1) of this section, a conviction that has been set aside under this section shall be considered
- 34 for the purpose of determining whether paragraph (b) of this subsection is applicable.
- 35 (d) A person who at the time the motion authorized by subsection (1) of this section is pending
- 36 before the court is under charge of commission of any crime.
- 37 (8) The provisions of subsection (1)(c) or (d) of this section do not apply to an arrest or citation
- 38 for driving while under the influence of intoxicants if the charge is dismissed as a result of the
- 39 person’s successful completion of a diversion agreement described in ORS 813.200.
- 40 (9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and
- 41 charges that occurred before, as well as those that occurred after, September 9, 1971. There is no
- 42 time limit for making an application.
- 43 (10) For purposes of any civil action in which truth is an element of a claim for relief or affir-
- 44 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest,
- 45 citation, charge or other proceeding be deemed not to have occurred do not apply and a party may

1 apply to the court for an order requiring disclosure of the official records in the case as may be  
2 necessary in the interest of justice.

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

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

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

16 (13) As used in this section:

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

18 (b) "**Commercial driver license**" has the meaning given that term in ORS 801.207.

19 (c) "**Commercial motor vehicle**" has the meaning given that term in ORS 801.208.

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

21 **SECTION 2. This 2025 Act takes effect on the 91st day after the date on which the 2025**  
22 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

23