

HB 2492-3
(LC 2848)
4/7/25 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jason Kropf)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2492**

1 In line 2 of the printed bill, after “courts” insert “; creating new pro-
2 visions; and amending ORS 137.225”.

3 Delete lines 4 through 8 and insert:

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

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

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

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

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

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

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

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

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

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

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

1 “~~(f)~~ (g) A person filing a motion under this section is not required to
2 pay the filing fee established under ORS 21.135.

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

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

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

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

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

30 “(3)(a) If an objection is received to a motion filed under subsection (1)(a)

1 of this section, the court shall hold a hearing, and may require the filing of
2 such affidavits and may require the taking of such proofs as the court deems
3 proper. The court shall allow the victim to make a statement at the hearing.
4 If the person is otherwise eligible for relief under this section, the court
5 shall grant the motion and enter an order as described in paragraph (b) of
6 this subsection unless the court makes written findings, by clear and con-
7 vincing evidence, that the circumstances and behavior of the person, from
8 the date of the conviction the person is seeking to set aside to the date of
9 the hearing on the motion, do not warrant granting the motion due to the
10 circumstances and behavior creating a risk to public safety. When deter-
11 mining whether the person's circumstances and behavior create a risk to
12 public safety, the court may only consider criminal behavior, or violations
13 of regulatory law or administrative rule enforced by civil penalty or other
14 administrative sanction that relate to the character of the conviction sought
15 to be set aside. The court may not consider nonpunitive civil liability,
16 monetary obligations and motor vehicle violations. Upon granting the mo-
17 tion, the court shall enter an appropriate order containing the original arrest
18 or citation charge, the conviction charge, if different from the original, the
19 date of charge, the submitting agency and the disposition of the charge.
20 Upon the entry of the order, the person for purposes of the law shall be
21 deemed not to have been previously convicted, and the court shall issue an
22 order sealing the record of conviction and other official records in the case,
23 including the records of arrest, citation or charge.

24 “(b) The court shall grant a motion filed under subsection (1)(c) or (d) of
25 this section, or under subsection (1)(a) of this section if no objection to the
26 motion is received, and shall enter an appropriate order containing the ori-
27 ginal arrest or citation charge, the conviction charge, if applicable and dif-
28 ferent from the original, the date of charge, the submitting agency and the
29 disposition of the charge. Upon the entry of the order, the person for pur-
30 poses of the law shall be deemed not to have been previously convicted, ar-

1 rested, cited or charged, and the court shall issue an order sealing all official
2 records in the case, including the records of arrest, citation or charge,
3 whether or not the arrest, citation or charge resulted in a further criminal
4 proceeding.

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

11 “(5) The provisions of subsection (1)(a) of this section apply to a con-
12 viction for:

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

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

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

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

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

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

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

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

30 “(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when

1 the offense constitutes child abuse as defined in ORS 419B.005.

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

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

5 “(f) Any sex crime, unless:

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

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

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

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

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

16 “(ii) The person is:

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

18 “(II) At least two years and 180 days older, but less than three years and
19 180 days older, than the victim and the court finds that setting aside the
20 conviction is in the interests of justice and of benefit to the person and the
21 community;

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

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

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

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

1 “(7) Notwithstanding subsection (5) of this section, the provisions of sub-
2 section (1) of this section do not apply to:

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

4 “(b) A person convicted, within the following applicable time period im-
5 mediately preceding the filing of the motion pursuant to subsection (1) of
6 this section, of any other offense, excluding motor vehicle violations and
7 unlawful possession of a controlled substance constituting a drug enforce-
8 ment misdemeanor as described in section 35, chapter 70, Oregon Laws 2024,
9 whether or not the other conviction is for conduct associated with the same
10 criminal episode that caused the arrest, citation, charge or conviction that
11 is sought to be set aside:

12 “(A) For a motion concerning a Class B felony, seven years.

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

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

15 “(D) For a motion concerning a Class B or Class C misdemeanor a vio-
16 lation or a finding of contempt of court, one year.

17 “(c) A single violation, other than a motor vehicle violation, within the
18 time period specified in paragraph (b) of this subsection is not a conviction
19 under this subsection. Notwithstanding subsection (1) of this section, a
20 conviction that has been set aside under this section shall be considered for
21 the purpose of determining whether paragraph (b) of this subsection is ap-
22 plicable.

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

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

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

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

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

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

12 “(11)(a) Upon motion of any prosecutor or defendant in a case involving
13 records sealed under this section, supported by affidavit showing good cause,
14 the court with jurisdiction may order the reopening and disclosure of any
15 records sealed under this section for the limited purpose of assisting the in-
16 vestigation of the movant. However, such an order has no other effect on the
17 orders setting aside the conviction or the arrest, citation or 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) ‘Sex crime’ has the meaning given that term in ORS 163A.005.

2 “**SECTION 2. The amendments to ORS 137.225 by section 1 of this**
3 **2025 Act apply to motions filed on or after the effective date of this**
4 **2025 Act.**”

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