

HB 2492-2
(LC 2848)
4/3/25 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Oregon Law Center)

**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, **or**
8 **found in contempt of court**, who has fully complied with and performed
9 the sentence of the court for the offense **or contempt finding**, and whose
10 conviction **or finding** is described in subsection (5) of this section, by motion
11 may apply to the court where the conviction **or finding** was entered for
12 entry of an order setting aside the conviction **or finding**. A person who is
13 still under supervision as part of the sentence for the offense that is the
14 subject of the motion has not fully complied with or performed the sentence
15 of the court.

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

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

21 “(B) For a Class C felony **or a finding of a person in contempt of**

1 **court for violating an order related to abuse or a person crime**, five
2 years from the date of conviction **or finding**, or the release of the person
3 from imprisonment for the conviction **or finding** sought to be set aside,
4 whichever is later.

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

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

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

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

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

30 “(f) A person filing a motion under this section is not required to pay the

1 filing fee established under ORS 21.135.

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

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

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

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

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

29 “(3)(a) If an objection is received to a motion filed under subsection (1)(a)
30 of this section, the court shall hold a hearing, and may require the filing of

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

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

1 records in the case, including the records of arrest, citation or charge,
2 whether or not the arrest, citation or charge resulted in a further criminal
3 proceeding.

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

10 “(5) The provisions of subsection (1)(a) of this section apply to [*a con-*
11 *viction for*] **the following convictions and findings:**

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

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

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

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

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

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

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

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

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

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

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

4 “(f) Any sex crime, unless:

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

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

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

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

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

15 “(ii) The person is:

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

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

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

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

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

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

30 “(7)(a) Notwithstanding subsection (5) of this section, the provisions of

1 subsection (1)(a) of this section do not apply to:

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

3 “[b)] (B) A person convicted[, *within the following applicable time period*
4 *immediately preceding the filing of the motion pursuant to subsection (1) of*
5 *this section,*] of any other offense, excluding motor vehicle violations and
6 unlawful possession of a controlled substance constituting a drug enforce-
7 ment misdemeanor as described in section 35, chapter 70, Oregon Laws 2024,
8 **or found in contempt of court for violating an order related to abuse**
9 **or a person crime, within the following applicable time period imme-**
10 **diately preceding the filing of the motion pursuant to subsection (1)(a)**
11 **of this section,** whether or not the other conviction is for conduct associ-
12 ated with the same criminal episode that caused the [*arrest, citation, charge*
13 *or*] conviction, **or with the same course of conduct that caused the**
14 **finding,** that is sought to be set aside:

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

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

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

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

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

27 “[c)] (b) A single violation, other than a motor vehicle violation, within
28 the time period specified in paragraph [(b)] (a)(B) of this subsection is not
29 a conviction under this subsection. Notwithstanding subsection (1) of this
30 section, a conviction that has been set aside under this section shall be

1 considered for the purpose of determining whether paragraph [(b)] (a)(B) of
2 this subsection is applicable.

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

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

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

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

15 “(c) For a motion concerning an arrest, citation or charge for a
16 crime constituting domestic violence, a sex crime or any other person
17 felony or person Class A misdemeanor, as those terms are defined in
18 the rules of the Oregon Criminal Justice Commission, a person con-
19 victed of any other offense, excluding motor vehicle violations, or
20 found in contempt of court for violating an order related to abuse or
21 a person crime, within the three years immediately preceding the fil-
22 ing of the motion pursuant to subsection (1)(c) or (d) of this section,
23 whether or not the other conviction or finding is for conduct associ-
24 ated with the same criminal episode that caused the arrest, citation
25 or charge that is sought to be set aside.

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

30 “(10) For purposes of any civil action in which truth is an element of a

1 claim for relief or affirmative defense, the provisions of subsection (3) of this
2 section providing that the conviction, **finding**, arrest, citation, charge or
3 other proceeding be deemed not to have occurred do not apply and a party
4 may apply to the court for an order requiring disclosure of the official re-
5 cords in the case as may be necessary in the interest of justice.

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

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

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

24 “(13) As used in this section:

25 “(a) ‘Affidavit’ includes a declaration under penalty of perjury.

26 “(b) **‘Domestic violence’ has the meaning given that term in ORS**
27 **135.230.**

28 “(c) **‘Order related to abuse or a person crime’ means:**

29 “(A) **A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to**
30 **107.735, 124.005 to 124.040, 133.035, 135.247 or 163.760 to 163.777; or**

