

# House Bill 2336

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## 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**.

Prohibits, in any case involving domestic violence, setting aside conviction or setting aside record of arrest when dismissal is result of diversion.

## A BILL FOR AN ACT

1  
2 Relating to expunction; amending ORS 137.225.

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

4 **SECTION 1.** ORS 137.225 is amended to read:

5 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of  
6 judgment, any defendant who has fully complied with and performed the sentence of the court and  
7 whose conviction is described in subsection (5) of this section by motion may apply to the court  
8 wherein that conviction was entered for entry of an order setting aside the conviction; or

9 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-  
10 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-  
11 son may apply to the court which would have jurisdiction over the crime for which the person was  
12 arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing  
13 the one-year period, time during which the arrested person has secreted himself or herself within  
14 or without the state shall not be included.

15 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon  
16 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority  
17 to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to  
18 contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or  
19 "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department  
20 of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search  
21 along with the fingerprint card shall be returned to the prosecuting attorney.

22 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction  
23 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the  
24 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the  
25 victim's last-known address.

26 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay  
27 a fee of \$80. The person shall attach a certified check payable to the Department of State Police in  
28 the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office  
29 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of  
30 State Police Bureau of Criminal Identification.

31 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require

**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 taking of such proofs as it deems proper. The court shall allow the victim to make a statement  
 2 at the hearing. Except as otherwise provided in subsection (11) of this section, if the court deter-  
 3 mines that the circumstances and behavior of the applicant from the date of conviction, or from the  
 4 date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside  
 5 the conviction, or the arrest record as the case may be, it shall enter an appropriate order which  
 6 shall state the original arrest charge and the conviction charge, if any and if different from the or-  
 7 iginal, date of charge, submitting agency and disposition. The order shall further state that positive  
 8 identification has been established by the bureau and further identified as to state bureau number  
 9 or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law  
 10 shall be deemed not to have been previously convicted, or arrested as the case may be, and the  
 11 court shall issue an order sealing the record of conviction and other official records in the case,  
 12 including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

13 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed  
 14 by the court. A certified copy must be sent to the Department of Corrections when the person has  
 15 been in the custody of the Department of Corrections. Upon entry of such an order, such conviction,  
 16 arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer  
 17 accordingly any questions relating to their occurrence.

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

19 (a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205  
 20 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

21 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as  
 22 a felony only.

23 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except  
 24 for:

25 (A) Any sex crime; and

26 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

27 (i) Criminal mistreatment in the first degree under ORS 163.205; and

28 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

29 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may  
 30 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would  
 31 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

32 (e) A violation, whether under state law or local ordinance.

33 (f) An offense committed before January 1, 1972, which if committed after that date would be:

34 (A) A Class C felony, except for any sex crime or for the following crimes when they would  
 35 constitute child abuse as defined in ORS 419B.005:

36 (i) Criminal mistreatment in the first degree under ORS 163.205; and

37 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

38 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-  
 39 cept for any sex crime or for the following crimes when they would constitute child abuse as defined  
 40 in ORS 419B.005:

41 (i) Criminal mistreatment in the first degree under ORS 163.205; and

42 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

43 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)  
 44 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

45 (D) A violation.

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

3 (a) A person convicted of, or arrested for, a state or municipal traffic offense[;].

4 **(b) A person convicted of a crime involving domestic violence as defined in ORS 135.230.**

5 **(c) A person who, as part of a diversion agreement, has pleaded guilty to a crime in-**  
 6 **volving domestic violence as defined in ORS 135.230 and has subsequently had the accusatory**  
 7 **instrument pleading domestic violence dismissed as a result of fulfilling the diversion agree-**  
 8 **ment.**

9 [(b)] **(d)** A person convicted, within the 10-year period immediately preceding the filing of the  
 10 motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle vio-  
 11 lations, whether or not the other conviction is for conduct associated with the same criminal episode  
 12 that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1)  
 13 of this section, a conviction which has been set aside under this section shall be considered for the  
 14 purpose of determining whether this paragraph is applicable[; or].

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

17 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within  
 18 the three-year period immediately preceding the filing of the motion for any offense, excluding motor  
 19 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that  
 20 caused the arrest that is sought to be set aside.

21 (8) The provisions of subsection (1) of this section apply to convictions and arrests which oc-  
 22 curred before, as well as those which occurred after, September 9, 1971. There shall be no time limit  
 23 for making such application.

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

29 (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this  
 30 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-  
 31 pening and disclosure of any records sealed under this section for the limited purpose of assisting  
 32 the investigation of the movant. However, such an order shall have no other effect on the orders  
 33 setting aside the conviction or the arrest record.

34 (11) Unless the court makes written findings by clear and convincing evidence that granting the  
 35 motion would not be in the best interests of justice, the court shall grant the motion and enter an  
 36 order as provided in subsection (3) of this section if the defendant has been convicted of one of the  
 37 following crimes and is otherwise eligible for relief under this section:

38 (a) Abandonment of a child, ORS 163.535.

39 (b) Attempted assault in the second degree, ORS 163.175.

40 (c) Assault in the third degree, ORS 163.165.

41 (d) Coercion, ORS 163.275.

42 (e) Criminal mistreatment in the first degree, ORS 163.205.

43 (f) Attempted escape in the first degree, ORS 162.165.

44 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.

45 (h) Intimidation in the first degree, ORS 166.165.

- 1 (i) Attempted kidnapping in the second degree, ORS 163.225.
  - 2 (j) Criminally negligent homicide, ORS 163.145.
  - 3 (k) Attempted robbery in the second degree, ORS 164.405.
  - 4 (L) Robbery in the third degree, ORS 164.395.
  - 5 (m) Supplying contraband, ORS 162.185.
  - 6 (n) Unlawful use of a weapon, ORS 166.220.
  - 7 (12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.
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