

Senate Bill 126

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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 setting aside adult conviction or expunging juvenile record if unsatisfied compensatory fine or restitution judgment exists.

A BILL FOR AN ACT

1
2 Relating to satisfaction of monetary obligations imposed in judgment for benefit of victim; creating
3 new provisions; and amending ORS 137.225 and 419A.262.

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

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

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

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

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

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

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

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 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of
2 State Police Bureau of Criminal Identification.

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

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

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

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

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

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

28 (A) Any sex crime; and

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (D) A violation.

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

6 (a) A person convicted of, or arrested for, a state or municipal traffic offense;

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

13 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
14 before the court is under charge of commission of any crime.

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

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

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

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

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

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

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

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

39 (d) Coercion, ORS 163.275.

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

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

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

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

44 (i) Attempted kidnapping in the second degree, ORS 163.225.

45 (j) Criminally negligent homicide, ORS 163.145.

1 (k) Attempted robbery in the second degree, ORS 164.405.

2 (L) Robbery in the third degree, ORS 164.395.

3 (m) Supplying contraband, ORS 162.185.

4 (n) Unlawful use of a weapon, ORS 166.220.

5 (12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

6 **SECTION 2.** ORS 419A.262 is amended to read:

7 419A.262. (1) An expunction proceeding shall be commenced in the county where the subject
8 person resided at the time of the most recent termination.

9 (2) Upon application of either a person who is the subject of a record or a juvenile department,
10 or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter
11 is contested, it finds that:

12 (a) At least five years have elapsed since the date of the person's most recent termination;

13 (b) Since the date of the most recent termination, the person has not been convicted of a felony
14 or a Class A misdemeanor;

15 (c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are
16 pending against the person;

17 (d) The person is not within the jurisdiction of any juvenile court on the basis of a petition al-
18 leging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; [*and*]

19 **(e) The person is not subject to a judgment imposing a compensatory fine or restitution**
20 **that has not been satisfied; and**

21 [*e*] (f) The juvenile department is not aware of any pending investigation of the conduct of the
22 person by any law enforcement agency.

23 (3) In the case of an application by the juvenile department or of the court acting upon its own
24 motion, expunction shall not be ordered if actual notice of expunction has not been given to the
25 person in accordance with subsection (10) of this section unless the person has reached 21 years of
26 age.

27 (4) When a person who is the subject of a record kept by a juvenile court or juvenile department
28 reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order
29 expunction if:

30 (a) The person never has been found to be within the jurisdiction of the court; or

31 (b) The conditions of subsection (2) of this section have been met.

32 (5) Expunction shall not be ordered under this section if actual notice of expunction has not
33 been given to the person in accordance with subsection (10) of this section unless the person has
34 reached 21 years of age.

35 (6) Subsections (4) and (5) of this section shall apply only to cases which result in termination
36 after September 13, 1975.

37 (7) Notwithstanding subsections (2) and (4) to (6) of this section, upon application of a person
38 who is the subject of a record kept by a juvenile court or juvenile department, upon application of
39 the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter
40 is contested, may order expunction of all or any part of the person's record if it finds that to do so
41 would be in the best interests of the person and the public. In the case of an application by the ju-
42 venile department or of the court acting upon its own motion, expunction shall not be ordered if
43 actual notice of expunction has not been given to the person in accordance with subsection (10) of
44 this section unless the person has reached 21 years of age.

45 (8) When an expunction proceeding is commenced by application of the person whose records

1 are to be expunged, the person shall set forth as part of the application the names of the juvenile
2 courts, juvenile departments, institutions and law enforcement and other agencies which the person
3 has reason to believe possess an expungible record of the person. The juvenile department shall
4 provide the names and addresses of the juvenile courts, juvenile departments, institutions and law
5 enforcement and other agencies which a reasonable search of department files indicates have
6 expungible records.

7 (9) When an expunction proceeding is commenced by application of the juvenile department or
8 upon the court's own motion, the application or motion shall set forth the names and addresses of
9 the juvenile courts, juvenile departments, institutions and law enforcement and other agencies which
10 a reasonable search of department files indicates have expungible records and those provided by the
11 subject person.

12 (10) Notice of an application for expunction under subsections (2) to (7) of this section shall be
13 given to:

14 (a) The district attorney of the county in which the expunction proceeding is commenced and
15 the district attorney of each county in which the record sought to be expunged is kept; and

16 (b) The person who is the subject of the record if the person has not initiated the expunction
17 proceeding.

18 (11) Within 30 days of receiving the notice of application for expunction under subsection (10)
19 of this section, a district attorney shall give written notice of any objection and the grounds therefor
20 to the person whose records are to be expunged and to the juvenile court. If no objection is filed
21 the court may decide the issue of expunction either without a hearing or after full hearing pursuant
22 to subsections (12) to (15) of this section.

23 (12) When an expunction is pending pursuant to subsections (2) to (7) of this section, the court
24 may proceed with or without a hearing, except that:

25 (a) The court may not enter an expunction judgment without a hearing if a timely objection to
26 expunction has been filed pursuant to subsection (11) of this section; and

27 (b) The court may not deny an expunction without a hearing if the proceeding is based on an
28 application of the subject.

29 (13) Notice of a hearing on a pending expunction shall be served on the subject and any district
30 attorney filing a timely objection pursuant to subsection (11) of this section.

31 (14) The court shall conduct a hearing on a pending expunction in accord with the provisions
32 of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and
33 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as
34 defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting
35 expunction.

36 (15) At the conclusion of a hearing on a pending expunction, the court shall issue judgment
37 granting or denying expunction.

38 (16) The juvenile court or juvenile department shall send a copy of an expunction judgment to
39 each agency subject to the judgment. Upon receipt of a copy of the judgment, an agency subject
40 thereto shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court
41 or juvenile department with an indorsement indicating compliance.

42 (17) When all agencies subject to an expunction judgment have indicated their compliance or in
43 any event no later than six weeks following the date the judgment was delivered as required by
44 subsection (16) of this section, the juvenile court shall provide the person who is the subject of the
45 record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and

1 a written notice of rights and effects of expunction. The juvenile court and juvenile department then
2 shall expunge forthwith all records which they possess and which are subject to the judgment, ex-
3 cept the original expunction judgment and the list of complying and noncomplying agencies which
4 shall be preserved under seal.

5 (18) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit, munic-
6 ipal and justice courts, and the district and city attorneys of this state, are bound by an expunction
7 judgment of any juvenile court of appropriate jurisdiction in this state issuing an expunction judg-
8 ment.

9 (19) Upon entry of an expunction judgment, the contact which is the subject of the expunged
10 record shall not be disclosed by any agency. An agency that is subject to an expunction judgment
11 shall respond to any inquiry about the contact by indicating that no record or reference concerning
12 the contact exists.

13 (20) A person who is the subject of a record which has been expunged under this section may
14 assert that the record never existed and that the contact, which was the subject of the record, never
15 occurred without incurring a penalty for perjury or false swearing under the laws of this state.

16 (21) Juvenile courts, by court rule or by order related to a particular matter, may direct that
17 records concerning a subject person be destroyed. No such records shall be destroyed until at least
18 three years have elapsed after the date of the subject's most recent termination. In the event the
19 record has been expunged, the expunction judgment and list of complying and noncomplying agen-
20 cies shall not be destroyed, but shall be preserved under seal. The destruction herein defined does
21 not constitute expunction.

22 (22) An expunction judgment and list of complying and noncomplying agencies shall be released
23 from confidentiality only on order of the court originating the expunction judgment, based on a
24 finding that review of a particular case furthers compliance with the expunction provisions of this
25 chapter.

26 (23) A subject has a right of action against any person who intentionally violates the
27 confidentiality provisions of this section. In any such proceeding, punitive damages up to an amount
28 of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled
29 to costs and reasonable attorney fees.

30 (24) Intentional violation of the confidentiality provisions of this section by a public employee
31 is cause for dismissal.

32 (25) A person who intentionally releases all or part of an expunged record commits a Class C
33 misdemeanor.

34 **SECTION 3. (1) The amendments to ORS 137.225 by section 1 of this 2007 Act apply to**
35 **motions filed under ORS 137.225 on or after the effective date of this 2007 Act.**

36 **(2) The amendments to ORS 419A.262 by section 2 of this 2007 Act apply to proceedings**
37 **commenced under ORS 419A.262 on or after the effective date of this 2007 Act.**

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