

**A-Engrossed**  
**Senate Bill 763**

Ordered by the Senate May 3  
Including Senate Amendments dated May 3

Sponsored by COMMITTEE ON JUDICIARY

**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.

Authorizes setting aside conviction for certain sex crimes and expungement of juvenile records related to adjudication for certain sex crimes under certain circumstances.

*[Directs Department of State Police to remove record related to sex crime from Law Enforcement Data System when conviction is set aside or adjudication is expunged.]*

**A BILL FOR AN ACT**

1  
2 Relating to expungement; creating new provisions; and amending ORS 137.225 and 419A.262.

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 where the 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 that would have jurisdiction over the crime for which the person was  
12 arrested, for entry of an order setting aside the record of the 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 is not 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 shall be given  
18 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"  
19 or "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

**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 amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office  
 2 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of  
 3 State Police bureau of criminal identification.

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

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

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

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

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

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

29 (A) Any sex crime; and

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (D) A violation.

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

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

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

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

16 (7)(a) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this  
17 section:

18 (A) Do not apply to criminally negligent homicide under ORS 163.145, when that offense was  
19 punishable as a Class C felony.

20 (B) Apply to a conviction for a sex crime listed in ORS 181.830 (1)(a) if:

21 (i) The person has not been convicted of, found guilty except for insanity of or found to  
22 be within the jurisdiction of the juvenile court based on, any crime other than the conviction  
23 that is the subject of the motion; and

24 (ii) The person has been relieved of the obligation to report as a sex offender pursuant  
25 to a court order entered under ORS 181.832 or 181.833.

26 (b) Notwithstanding any other provision of law, for purposes of paragraph (a)(B) of this  
27 subsection a conviction that has been set aside under this section or an adjudication that  
28 has been expunged under ORS 419A.262 shall be considered for determining whether para-  
29 graph (a)(B) of this subsection is applicable.

30 (8) The provisions of subsection (1)(b) of this section do not apply to:

31 (a) A person arrested within the three-year period immediately preceding the filing of the motion  
32 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated  
33 with the same criminal episode that caused the arrest that is sought to be set aside.

34 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as  
35 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

36 (9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred  
37 before, as well as those that occurred after, September 9, 1971. There is no time limit for making  
38 an application.

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

44 (11) Upon motion of any prosecutor or defendant in a case involving records sealed under this  
45 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-

1 pening and disclosure of any records sealed under this section for the limited purpose of assisting  
2 the investigation of the movant. However, such an order has no other effect on the orders setting  
3 aside the conviction or the arrest record.

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

- 8 (a) Abandonment of a child, ORS 163.535.
- 9 (b) Attempted assault in the second degree, ORS 163.175.
- 10 (c) Assault in the third degree, ORS 163.165.
- 11 (d) Coercion, ORS 163.275.
- 12 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 13 (f) Attempted escape in the first degree, ORS 162.165.
- 14 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 15 (h) Intimidation in the first degree, ORS 166.165.
- 16 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 17 (j) Attempted robbery in the second degree, ORS 164.405.
- 18 (k) Robbery in the third degree, ORS 164.395.
- 19 (L) Supplying contraband, ORS 162.185.
- 20 (m) Unlawful use of a weapon, ORS 166.220.

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

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

23 419A.262. (1) An expunction proceeding shall be commenced in the county where the subject  
24 person resided at the time of the most recent termination.

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

- 28 (a) At least five years have elapsed since the date of the person's most recent termination;
- 29 (b) Since the date of the most recent termination, the person has not been convicted of a felony  
30 or a Class A misdemeanor;
- 31 (c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are  
32 pending against the person;
- 33 (d) The person is not within the jurisdiction of any juvenile court on the basis of a petition al-  
34 leging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and
- 35 (e) The juvenile department is not aware of any pending investigation of the conduct of the  
36 person by any law enforcement agency.

37 (3) In the case of an application by the juvenile department or of the court acting upon its own  
38 motion, expunction shall not be ordered if actual notice of expunction has not been given to the  
39 person in accordance with subsection [(10)] (11) of this section unless the person has reached 21  
40 years of age.

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

- 44 (a) The person never has been found to be within the jurisdiction of the court; or
- 45 (b) The conditions of subsection (2) of this section have been met.

1 (5) Expunction shall not be ordered under this section if actual notice of expunction has not  
2 been given to the person in accordance with subsection [(10)] (11) of this section unless the person  
3 has reached 21 years of age.

4 (6) Subsections (4) and (5) of this section apply only to cases resulting in termination after  
5 September 13, 1975.

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

14 **(8)(a) Notwithstanding ORS 419A.260 (1)(d)(J)(x), (xiii) or (xviii), a person who has been**  
15 **found to be within the jurisdiction of the juvenile court based on an act that if committed**  
16 **by an adult would constitute rape in the third degree under ORS 163.355, sodomy in the third**  
17 **degree under ORS 163.385 or sexual abuse in the third degree under ORS 163.415, or an at-**  
18 **tempt to commit those crimes, may apply for an order of expunction under this section. The**  
19 **court shall order expunction of the records in the case if, after a hearing when the matter**  
20 **is contested, the court finds:**

21 **(A) That the person meets the requirements of subsection (2) of this section;**

22 **(B) The person has not been convicted of, found guilty except for insanity of or found to**  
23 **be within the jurisdiction of the juvenile court based on, any crime other than the adjudi-**  
24 **cation that is the subject of the motion; and**

25 **(C) The person has been relieved of the obligation to report as a sex offender pursuant**  
26 **to a court order entered under ORS 181.832 or 181.833.**

27 **(b) Notwithstanding any other provision of law, for purposes of this subsection a con-**  
28 **viction that has been set aside under ORS 137.225 or an adjudication that has been expunged**  
29 **under this section shall be considered for determining whether this subsection is applicable.**

30 [(8)] (9) When an expunction proceeding is commenced by application of the person whose re-  
31 cords are to be expunged, the person shall set forth as part of the application the names of the ju-  
32 venile courts, juvenile departments, institutions and law enforcement and other agencies that the  
33 person has reason to believe possess an expungible record of the person. The juvenile department  
34 shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and  
35 law enforcement and other agencies that a reasonable search of department files indicates have  
36 expungible records.

37 [(9)] (10) When an expunction proceeding is commenced by application of the juvenile depart-  
38 ment or upon the court's own motion, the application or motion shall set forth the names and ad-  
39 dresses of the juvenile courts, juvenile departments, institutions and law enforcement and other  
40 agencies that a reasonable search of department files indicates have expungible records and those  
41 provided by the subject person.

42 [(10)(a)] (11)(a) Notice and a copy of an application for expunction under subsections (2) to  
43 [(7)] (8) of this section shall be given to:

44 (A) The district attorney of the county in which the expunction proceeding is commenced and  
45 the district attorney of each county in which the record sought to be expunged is kept; and

1 (B) The person who is the subject of the record if the person has not initiated the expunction  
2 proceeding.

3 (b) A district attorney who receives notice under this subsection shall notify the victim of the  
4 acts that resulted in the disposition that is the subject of the application for expunction and shall  
5 mail a copy of the application for expunction to the victim's last known address.

6 [(11)] (12) Within 30 days of receiving the notice of application for expunction under subsection  
7 [(10)] (11) of this section, a district attorney shall give written notice of any objection and the  
8 grounds therefor to the person whose records are to be expunged and to the juvenile court. If no  
9 objection is filed the court may decide the issue of expunction either without a hearing or after full  
10 hearing pursuant to subsections [(12) to (15)] (13) to (16) of this section.

11 [(12)] (13) When an expunction is pending pursuant to subsections (2) to [(7)] (8) of this section,  
12 the court may proceed with or without a hearing, except that:

13 (a) The court may not enter an expunction judgment without a hearing if a timely objection to  
14 expunction has been filed pursuant to subsection [(11)] (12) of this section; and

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

17 [(13)(a)] (14)(a) Notice of a hearing on a pending expunction shall be served on the subject and  
18 any district attorney filing a timely objection pursuant to subsection [(11)] (12) of this section.

19 (b) When a district attorney receives notice of a hearing for expunction of a record concerning  
20 a youth or youth offender proceeding under ORS chapter 419C, if the victim of the acts that resulted  
21 in the disposition that is the subject of the application for expunction requests, the district attorney  
22 shall mail notice of the hearing to the victim's last-known address.

23 [(14)] (15) The court shall conduct a hearing on a pending expunction in accord with the pro-  
24 visions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and  
25 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as  
26 defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting  
27 expunction.

28 [(15)] (16) At the conclusion of a hearing on a pending expunction, the court shall issue judg-  
29 ment granting or denying expunction.

30 [(16)] (17) The juvenile court or juvenile department shall send a copy of an expunction judg-  
31 ment to each agency subject to the judgment. Upon receipt of a copy of the judgment, the agency  
32 shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or ju-  
33 venile department with an indorsement indicating compliance.

34 [(17)] (18) When all agencies subject to an expunction judgment have indicated their compliance  
35 or in any event no later than six weeks following the date the judgment was delivered as required  
36 by subsection [(16)] (17) of this section, the juvenile court shall provide the person who is the sub-  
37 ject of the record with a copy of the expunction judgment, a list of complying and noncomplying  
38 agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile  
39 department then shall expunge forthwith all records which they possess and which are subject to  
40 the judgment, except the original expunction judgment and the list of complying and noncomplying  
41 agencies which must be preserved under seal.

42 [(18)] (19) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit,  
43 municipal and justice courts, and the district and city attorneys of this state, are bound by an  
44 expunction judgment of any juvenile court of appropriate jurisdiction in this state issuing an  
45 expunction judgment.

1 [(19)] (20) Upon entry of an expunction judgment, the contact that is the subject of the expunged  
2 record shall not be disclosed by any agency. An agency that is subject to an expunction judgment  
3 shall respond to any inquiry about the contact by indicating that no record or reference concerning  
4 the contact exists.

5 [(20)] (21) A person who is the subject of a record that has been expunged under this section  
6 may assert that the record never existed and that the contact, which was the subject of the record,  
7 never occurred without incurring a penalty for perjury or false swearing under the laws of this  
8 state.

9 [(21)] (22) Juvenile courts, by court rule or by order related to a particular matter, may direct  
10 that records concerning a subject person be destroyed. No such records shall be destroyed until at  
11 least three years have elapsed after the date of the subject's most recent termination. In the event  
12 the record has been expunged, the expunction judgment and list of complying and noncomplying  
13 agencies may not be destroyed, but shall be preserved under seal. The destruction of records under  
14 this subsection does not constitute expunction.

15 [(22)] (23) An expunction judgment and list of complying and noncomplying agencies shall be  
16 released from confidentiality only on order of the court originating the expunction judgment, based  
17 on a finding that review of a particular case furthers compliance with the expunction provisions of  
18 this chapter.

19 [(23)] (24) A subject has a right of action against any person who intentionally violates the  
20 confidentiality provisions of this section. In any such proceeding, punitive damages up to an amount  
21 of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled  
22 to costs and reasonable attorney fees.

23 [(24)] (25) Intentional violation of the confidentiality provisions of this section by a public em-  
24 ployee is cause for dismissal.

25 [(25)] (26) A person who intentionally releases all or part of an expunged record commits a Class  
26 C misdemeanor.

27 **SECTION 3. The amendments to ORS 137.225 and 419A.262 by sections 1 and 2 of this 2011**  
28 **Act apply to motions filed on or after the effective date of this 2011 Act involving a con-**  
29 **viction or adjudication that occurred before, on or after the effective date of this 2011 Act.**

30