

D R A F T

SUMMARY

Allows conviction for certain traffic offenses to be set aside if committed while under 18 years of age.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to orders setting aside convictions; amending ORS 137.225; and declaring an emergency.

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

SECTION 1. ORS 137.225, as amended by section 4, chapter 70, Oregon Laws 2012, is amended to read:

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

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without this state is not included.

(2)(a) A copy of the motion and a full set of the [*defendant's*] **applicant's** fingerprints shall be served upon the office of the prosecuting attorney who

1 prosecuted the crime or violation, or who had authority to prosecute the
2 charge if there was no accusatory instrument filed, and opportunity shall be
3 given to contest the motion. The fingerprint card with the notation “motion
4 for setting aside conviction,” or “motion for setting aside arrest record” as
5 the case may be, shall be forwarded to the Department of State Police. In-
6 formation resulting from the fingerprint search along with the fingerprint
7 card shall be returned to the prosecuting attorney.

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

13 (c) When [*a person*] **an applicant** makes a motion under subsection (1)(a)
14 of this section, the [*person*] **applicant** must pay a fee of \$80 to the Depart-
15 ment of State Police. The [*person*] **applicant** shall attach a certified check
16 payable to the Department of State Police in the amount of \$80 to the fin-
17 gerprint card that is served upon the prosecuting attorney. The office of the
18 prosecuting attorney shall forward the check with the fingerprint card to the
19 Department of State Police.

20 (d) In addition to the fee established under paragraph (c) of this sub-
21 section, when [*a person*] **an applicant** makes a motion under subsection
22 (1)(a) of this section the [*person*] **applicant** must pay the filing fee established
23 under ORS 21.135.

24 (3) Upon hearing the motion, the court may require the filing of such af-
25 fidavits and may require the taking of such proofs as the court deems proper.
26 The court shall allow the victim to make a statement at the hearing. Except
27 as otherwise provided in subsection (14) of this section, if the court deter-
28 mines that the circumstances and behavior of the applicant from the date
29 of conviction, or from the date of arrest as the case may be, to the date of
30 the hearing on the motion warrant setting aside the conviction, or the arrest
31 record as the case may be, the court shall enter an appropriate order that

1 shall state the original arrest charge and the conviction charge, if any and
2 if different from the original, date of charge, submitting agency and disposi-
3 tion. The order shall further state that positive identification has been es-
4 tablished by the Department of State Police and further identified as to
5 Department of State Police number or submitting agency number. Upon the
6 entry of the order, the applicant for purposes of the law shall be deemed not
7 to have been previously convicted, or arrested as the case may be, and the
8 court shall issue an order sealing the record of conviction and other official
9 records in the case, including the records of arrest whether or not the arrest
10 resulted in a further criminal proceeding.

11 (4) The clerk of the court shall forward a certified copy of the order to
12 such agencies as directed by the court. A certified copy must be sent to the
13 Department of Corrections when the [*person*] **applicant** has been in the
14 custody of the Department of Corrections. Upon entry of the order, the con-
15 viction, arrest or other proceeding shall be deemed not to have occurred, and
16 the applicant may answer accordingly any questions relating to its occur-
17 rence.

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

20 (a) A Class B felony, except for a violation of ORS 166.429 or any crime
21 classified as a person felony as that term is defined in the rules of the
22 Oregon Criminal Justice Commission.

23 (b) A Class C felony, except for criminal mistreatment in the first degree
24 under ORS 163.205 when it would constitute child abuse as defined in ORS
25 419B.005 or any sex crime.

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

28 (d) A crime punishable as either a felony or a misdemeanor, in the dis-
29 cretion of the court, except for:

30 (A) Any sex crime; or

31 (B) The following crimes when they would constitute child abuse as de-

1 fined in ORS 419B.005:

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

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

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

8 (f) A violation, whether under state law or local ordinance.

9 (g) An offense committed before January 1, 1972, that if committed after
10 that date would be:

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

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

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

15 (B) A crime punishable as either a felony or a misdemeanor, in the dis-
16 cretion of the court, except for any sex crime or for the following crimes
17 when they would constitute child abuse as defined in ORS 419B.005:

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

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

20 (C) A misdemeanor, except for endangering the welfare of a minor under
21 ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS
22 419B.005 or any sex crime.

23 (D) A violation.

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

26 (a) A conviction for a state or municipal traffic offense[.], **unless:**

27 **(A) The applicant was under 18 years of age at the time of the of-**
28 **fense;**

29 **(B) The applicant does not currently hold a commercial driver li-**
30 **cense of any class or a commercial instruction driver permit of any**
31 **class;**

1 (C) **The applicant was not driving a commercial vehicle as defined**
2 **in ORS 826.001 at the time of the offense; and**

3 (D) **The offense is not driving under the influence of intoxicants as**
4 **described in ORS 813.010.**

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

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

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

18 (a) Criminal mistreatment in the second degree under ORS 163.200 if the
19 victim at the time of the crime was 65 years of age or older; and

20 (b) Criminal mistreatment in the first degree under ORS 163.205 if the
21 victim at the time of the crime was 65 years of age or older.

22 (8) Notwithstanding subsection (5) of this section, the provisions of sub-
23 section (1)(a) of this section do not apply to criminally negligent homicide
24 under ORS 163.145, when that offense was punishable as a Class C felony.

25 (9) Notwithstanding subsection (5) of this section, the provisions of sub-
26 section (1)(a) of this section apply to a conviction for a Class B felony de-
27 scribed in subsection (5)(a) of this section only if:

28 (a) Twenty years or more have elapsed from the date of the conviction
29 sought to be set aside or of the release of the [*person*] **applicant** from
30 imprisonment for the conviction sought to be set aside, whichever is later;
31 and

1 (b) The [*person*] **applicant** has not been convicted of or arrested for any
2 other offense, excluding motor vehicle violations, after the date the [*person*]
3 **applicant** was convicted of the offense sought to be set aside. Notwith-
4 standing subsection (1) of this section, a conviction or arrest that has been
5 set aside under this section shall be considered for the purpose of determin-
6 ing whether this paragraph is applicable.

7 (10) The provisions of subsection (1)(b) of this section do not apply to:

8 (a) [*A person*] **An applicant** arrested within the three-year period imme-
9 diately preceding the filing of the motion for any offense, excluding motor
10 vehicle violations, and excluding arrests for conduct associated with the
11 same criminal episode that caused the arrest that is sought to be set aside.
12 An arrest that has been set aside under this section may not be considered
13 for the purpose of determining whether this paragraph is applicable.

14 (b) An arrest for driving while under the influence of intoxicants if the
15 charge is dismissed as a result of the [*person's*] **applicant's** successful com-
16 pletion of a diversion agreement described in ORS 813.200.

17 (11) The provisions of subsection (1) of this section apply to convictions
18 and arrests that occurred before, as well as those that occurred after, Sep-
19 tember 9, 1971. There is no time limit for making an application.

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

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

1 (14) Unless the court makes written findings by clear and convincing ev-
2 idence that granting the motion would not be in the best interests of justice,
3 the court shall grant the motion and enter an order as provided in subsection
4 (3) of this section if the [*defendant*] **applicant** has been convicted of one of
5 the following crimes and is otherwise eligible for relief under this section:

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

19 (15) As used in this section, “sex crime” has the meaning given that term
20 in ORS 181.594.

21 **SECTION 2. This 2013 Act being necessary for the immediate pres-**
22 **ervation of the public peace, health and safety, an emergency is de-**
23 **clared to exist, and this 2013 Act takes effect on its passage.**

24