

# House Bill 2961

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 **as introduced**.

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

1  
2 Relating to orders setting aside convictions; amending ORS 137.225; and declaring an emergency.

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

4 **SECTION 1.** ORS 137.225, as amended by section 4, chapter 70, Oregon Laws 2012, is amended  
5 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 and  
8 whose conviction is described in subsection (5) of this section by motion may apply to the court  
9 where the conviction was entered for entry of an order setting aside the conviction; or

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

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

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

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

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

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 the court deems proper. The court shall allow the victim to make a  
 6 statement at the hearing. Except as otherwise provided in subsection (14) of this section, if the court  
 7 determines that the circumstances and behavior of the applicant from the date of conviction, or from  
 8 the 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, the court shall enter an appropriate order  
 10 that shall state the original arrest charge and the conviction charge, if any and if different from the  
 11 original, date of charge, submitting agency and disposition. The order shall further state that posi-  
 12 tive identification has been established by the Department of State Police and further identified as  
 13 to Department of State Police number or submitting agency number. Upon the entry of the order,  
 14 the applicant for purposes of the law shall be deemed not to have been previously convicted, or ar-  
 15 rested as the case may be, and the court shall issue an order sealing the record of conviction and  
 16 other official records in the case, including the records of arrest whether or not the arrest resulted  
 17 in a further criminal proceeding.

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

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

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

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

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

30 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-  
 31 cept for:

32 (A) Any sex crime; or

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

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

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

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

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

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

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

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

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

45 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-

cept for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

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

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

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

(D) A violation.

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

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

**(A) The applicant was under 18 years of age at the time of the offense;**

**(B) The applicant does not currently hold a commercial driver license of any class or a commercial instruction driver permit of any class;**

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

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

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

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

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

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

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

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

(9) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section apply to a conviction for a Class B felony described in subsection (5)(a) of this section only if:

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

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

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

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

6 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as  
 7 a result of the [*person's*] **applicant's** successful completion of a diversion agreement described in  
 8 ORS 813.200.

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

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

17 (13) Upon motion of any prosecutor or defendant in a case involving records sealed under this  
 18 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-  
 19 pening and disclosure of any records sealed under this section for the limited purpose of assisting  
 20 the investigation of the movant. However, such an order has no other effect on the orders setting  
 21 aside the conviction or the arrest record.

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

- 26 (a) Abandonment of a child, ORS 163.535.
- 27 (b) Attempted assault in the second degree, ORS 163.175.
- 28 (c) Assault in the third degree, ORS 163.165.
- 29 (d) Coercion, ORS 163.275.
- 30 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 31 (f) Attempted escape in the first degree, ORS 162.165.
- 32 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 33 (h) Intimidation in the first degree, ORS 166.165.
- 34 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 35 (j) Attempted robbery in the second degree, ORS 164.405.
- 36 (k) Robbery in the third degree, ORS 164.395.
- 37 (L) Supplying contraband, ORS 162.185.
- 38 (m) Unlawful use of a weapon, ORS 166.220.

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

40 **SECTION 2. This 2013 Act being necessary for the immediate preservation of the public**  
 41 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 42 **on its passage.**