

House Bill 3372

Sponsored by Representative FREDERICK; Representative WITT

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**.

Provides for reduction of sentence for inmate convicted of crime related to marijuana and sentenced before July 1, 2015, who would not be culpable, or who would be culpable of committing lesser offense, if inmate had been sentenced on or after July 1, 2015.

Makes changes to law with respect to expungement of crime related to marijuana.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to marijuana; amending ORS 137.225; and declaring an emergency.

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

REDUCTION OF SENTENCE

SECTION 1. (1) An inmate convicted of a crime under ORS 475.856, 475.860 or 475.864 and sentenced before July 1, 2015, who would not be culpable of committing the crime if the inmate had been sentenced on or after July 1, 2015, or who would be culpable of committing a lesser offense if the inmate had been sentenced on or after July 1, 2015, is eligible for a reduction in sentence as described in this section.

(2)(a) The Oregon Criminal Justice Commission shall adopt rules providing for a reduction in sentence for an inmate described in subsection (1) of this section.

(b) Rules adopted under this subsection must provide for a reduction of sentence that is equivalent to the difference between the sentence an inmate is serving and the sentence an inmate would be serving had the inmate been sentenced for a crime described in subsection (1) of this section on or after July 1, 2015.

(c) Rules adopted under this subsection must provide for a partial reduction in sentence if the inmate is serving a sentence for a crime described in subsection (1) of this section concurrently with a crime not described in subsection (1) of this section.

(d) Rules adopted under this subsection may not provide for a reduction in sentence for any inmate convicted of a person felony as that term is used in the rules of the commission.

(3) In consideration of the rules adopted under subsection (2) of this section, the Department of Corrections shall determine if an inmate in a department institution is eligible for a reduction of sentence. If the department determines that an inmate is eligible for a reduction of sentence, the department shall notify the inmate of the reduction of sentence.

(4) If a reduction of sentence under this section will result in the release of the inmate from a department institution in 75 or fewer days, the department shall submit a proposed release plan to the State Board of Parole and Post-Prison Supervision as soon as reasonably practicable prior to the inmate's release from the department institution. If the board rejects

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 proposed release plan, the department shall submit a revised release plan to the board
 2 as soon as reasonably practicable prior to the inmate's release from the department insti-
 3 tution.

4 (5) Notwithstanding any reduction of sentence required by this section, the department
 5 may defer the release of an inmate from a department institution for no more than 90 days
 6 when, in the judgment of the department, the deferral is necessary or advisable in order for
 7 the department to provide for transitional planning related to the health or mental health
 8 of the inmate.

9 (6) The post-prison supervision term of an inmate who is released from a department
 10 institution after having been granted a reduction of sentence under this section commences
 11 on the date that the inmate is released from the department institution.

12 (7) The Oregon Criminal Justice Commission shall adopt rules as described in subsection
 13 (2) of this 2015 Act no later than January 1, 2016.

14 **SECTION 2.** Section 1 of this 2015 Act is repealed on January 2, 2018.

15 16 EXPUNGEMENT

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18 **SECTION 3.** ORS 137.225 is amended to read:

19 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 20 judgment, any defendant who has fully complied with and performed the sentence of the court and
 21 whose conviction is described in subsection (5) of this section by motion may apply to the court
 22 where the conviction was entered for entry of an order setting aside the conviction; or

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

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

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

40 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 41 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
 42 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
 43 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
 44 gerprint card to the Department of State Police.

45 (d) In addition to the fee established under paragraph (c) of this subsection, when a person

1 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
 2 under ORS 21.135.

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 the court deems proper. The court shall allow the victim to make a
 5 statement at the hearing. Except as otherwise provided in subsection (13) of this section, if the court
 6 determines that the circumstances and behavior of the applicant from the date of conviction, or from
 7 the 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, the court shall enter an appropriate order
 9 that shall state the original arrest charge and the conviction charge, if any and if different from the
 10 original, date of charge, submitting agency and disposition. The order shall further state that posi-
 11 tive identification has been established by the Department of State Police and further identified as
 12 to Department of State Police number or submitting agency number. Upon the entry of the order,
 13 the applicant for purposes of the law shall be deemed not to have been previously convicted, or ar-
 14 rested as the case may be, and the court shall issue an order sealing the record of conviction and
 15 other official records in the case, including the records of arrest whether or not the arrest resulted
 16 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 B felony, except for a violation of ORS 166.429 or any crime classified as a person
 24 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

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

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

29 **(c) Unlawful manufacture of marijuana under ORS 475.856, unlawful delivery of marijuana**
 30 **under ORS 475.860 and unlawful possession of marijuana under ORS 475.864.**

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

33 (A) Any sex crime; or

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

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

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

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

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

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

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

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

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

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

8 (D) A violation.

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

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

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

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

20 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 21 tion do not apply to:

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

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

26 (c) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a
 27 Class C felony.

28 (8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 29 tion apply to a conviction for:

30 (a) A Class B felony, **other than unlawful manufacture of marijuana under ORS 475.856,**
 31 **unlawful delivery of marijuana under ORS 475.860 and unlawful possession of marijuana un-**
 32 **der ORS 475.864,** described in subsection (5)(a) of this section only if:

33 (A) Twenty years or more have elapsed from the date of the conviction sought to be set aside
 34 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
 35 ever is later; and

36 (B) The person has not been convicted of or arrested for any other offense, excluding motor
 37 vehicle violations, after the date the person was convicted of the offense sought to be set aside.
 38 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
 39 this section shall be considered for the purpose of determining whether this subparagraph is appli-
 40 cable.

41 (b) A sex crime listed in ORS 181.830 (1)(a) if:

42 (A) The person has been relieved of the obligation to report as a sex offender pursuant to a
 43 court order entered under ORS 181.832 or 181.833; and

44 (B) The person has not been convicted of, found guilty except for insanity of or found to be
 45 within the jurisdiction of the juvenile court based on, a crime that a court is prohibited from setting

1 aside under this section.

2 (c) A sex crime constituting a Class C felony, if:

3 (A) The person was under 16 years of age at the time of the offense;

4 (B) The person is less than three years older than the victim;

5 (C) The victim's lack of consent was due solely to incapacity to consent by reason of being less
6 than a specified age;

7 (D) The victim was at least 12 years of age at the time of the offense;

8 (E) The person has not been convicted of, found guilty except for insanity of or found to be
9 within the jurisdiction of the juvenile court based on a crime that a court is prohibited from setting
10 aside under this section; and

11 (F) Each conviction or finding described in this paragraph involved the same victim.

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

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

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

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

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

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

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

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

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

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

40 (d) Coercion, ORS 163.275.

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

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

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

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

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

- 1 (j) Attempted robbery in the second degree, ORS 164.405.
- 2 (k) Robbery in the third degree, ORS 164.395.
- 3 (L) Supplying contraband, ORS 162.185.
- 4 (m) Unlawful use of a weapon, ORS 166.220.
- 5 (14) As used in this section, "sex crime" has the meaning given that term in ORS 181.805.

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CAPTIONS

9 **SECTION 4. The unit captions used in this 2015 Act are provided only for the convenience**
10 **of the reader and do not become part of the statutory law of this state or express any leg-**
11 **islative intent in the enactment of this 2015 Act.**

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EMERGENCY CLAUSE

15 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
17 **on its passage.**

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