

Senate Bill 107

Sponsored by Senator THATCHER (at the request of Rosana Sherwood) (Presession filed.)

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 violations to be set aside.
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 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 this state is not included.

15 (2)(a) A copy of the motion and a full set of the [*defendant's*] **applicant's** fingerprints shall be
16 served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who
17 had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity
18 shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside
19 conviction," or "motion for setting aside arrest record" as the case may be, shall be forwarded to
20 the Department of State Police. Information resulting from the fingerprint search along with the
21 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*] **an applicant** makes a motion under subsection (1)(a) of this section, the
27 [*person*] **applicant** must pay a fee of \$80 to the Department of State Police. The [*person*] **applicant**
28 shall attach a certified check payable to the Department of State Police in the amount of \$80 to the
29 fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney
30 shall forward the check with the fingerprint card to the Department of State Police.

31 (d) In addition to the fee established under paragraph (c) of this subsection, when [*a person*] **an**

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 **applicant** makes a motion under subsection (1)(a) of this section the [*person*] **applicant** must pay the
2 filing fee established 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*]
19 **applicant** has been in the custody of the Department of Corrections. Upon entry of the order, the
20 conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may
21 answer accordingly 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
28 a felony only.

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

31 (A) Any sex crime; or

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

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

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

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

38 (f) A violation **or a traffic violation**, whether under state law or local ordinance, **except for**
39 **traffic violations committed by:**

40 (A) **Applicants who hold a commercial driver license of any class or a commercial in-**
41 **struction driver permit of any class; or**

42 (B) **Applicants who were driving a commercial vehicle as defined in ORS 826.001 at the**
43 **time of the offense.**

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

45 (A) A Class C felony, except for any sex crime or for the following crimes when they would

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

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

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

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

11 (D) A violation **or a traffic violation, except for traffic violations committed by:**

12 (A) **Applicants who hold a commercial driver license of any class or a commercial in-**
13 **struction driver permit of any class; or**

14 (B) **Applicants who were driving a commercial vehicle as defined in ORS 826.001 at the**
15 **time of the offense.**

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

18 (a) A conviction for a state or municipal traffic [*offense.*] **crime as defined in ORS 801.545.**

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

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

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

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

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

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

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

37 (a) A Class B felony described in subsection (5)(a) of this section only if:

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

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

- 1 (b) A sex crime listed in ORS 181.830 (1)(a) if:
- 2 (A) The *[person]* **applicant** has been relieved of the obligation to report as a sex offender pur-
- 3 suant to a court order entered under ORS 181.832 or 181.833; and
- 4 (B) The *[person]* **applicant** has not been convicted of, found guilty except for insanity of or found
- 5 to be within the jurisdiction of the juvenile court based on, a crime that a court is prohibited from
- 6 setting aside under this section.
- 7 (c) A sex crime constituting a Class C felony, if:
- 8 (A) The *[person]* **applicant** was under 16 years of age at the time of the offense;
- 9 (B) The *[person]* **applicant** is less than three years older than the victim;
- 10 (C) The victim's lack of consent was due solely to incapacity to consent by reason of being less
- 11 than a specified age;
- 12 (D) The victim was at least 12 years of age at the time of the offense;
- 13 (E) The *[person]* **applicant** has not been convicted of, found guilty except for insanity of or found
- 14 to be within the jurisdiction of the juvenile court based on a crime that a court is prohibited from
- 15 setting aside under this section; and
- 16 (F) Each conviction or finding described in this paragraph involved the same victim.
- 17 (9) The provisions of subsection (1)(b) of this section do not apply to:
- 18 (a) A *[person]* **applicant** arrested within the three-year period immediately preceding the filing
- 19 of the motion for any offense, excluding *[motor vehicle]* **traffic** violations, and excluding arrests for
- 20 conduct associated with the same criminal episode that caused the arrest that is sought to be set
- 21 aside. An arrest that has been set aside under this section may not be considered for the purpose
- 22 of determining whether this paragraph is applicable.
- 23 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
- 24 a result of the *[person's]* **applicant's** successful completion of a diversion agreement described in
- 25 ORS 813.200.
- 26 (10) The provisions of subsection (1) of this section apply to convictions and arrests that oc-
- 27 curred before, as well as those that occurred after, September 9, 1971. There is no time limit for
- 28 making an application.
- 29 (11) For purposes of any civil action in which truth is an element of a claim for relief or affir-
- 30 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
- 31 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
- 32 court for an order requiring disclosure of the official records in the case as may be necessary in the
- 33 interest of justice.
- 34 (12) Upon motion of any prosecutor or defendant in a case involving records sealed under this
- 35 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
- 36 pening and disclosure of any records sealed under this section for the limited purpose of assisting
- 37 the investigation of the movant. However, such an order has no other effect on the orders setting
- 38 aside the conviction or the arrest record.
- 39 (13) Unless the court makes written findings by clear and convincing evidence that granting the
- 40 motion would not be in the best interests of justice, the court shall grant the motion and enter an
- 41 order as provided in subsection (3) of this section if the *[defendant]* **applicant** has been convicted
- 42 of one of the following crimes and is otherwise eligible for relief under this section:
- 43 (a) Abandonment of a child, ORS 163.535.
- 44 (b) Attempted assault in the second degree, ORS 163.175.
- 45 (c) Assault in the third degree, ORS 163.165.

- 1 (d) Coercion, ORS 163.275.
 - 2 (e) Criminal mistreatment in the first degree, ORS 163.205.
 - 3 (f) Attempted escape in the first degree, ORS 162.165.
 - 4 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
 - 5 (h) Intimidation in the first degree, ORS 166.165.
 - 6 (i) Attempted kidnapping in the second degree, ORS 163.225.
 - 7 (j) Attempted robbery in the second degree, ORS 164.405.
 - 8 (k) Robbery in the third degree, ORS 164.395.
 - 9 (L) Supplying contraband, ORS 162.185.
 - 10 (m) Unlawful use of a weapon, ORS 166.220.
 - 11 (14) As used in this section[,]:
 - 12 (a) "Sex crime" has the meaning given that term in ORS 181.805.
 - 13 (b) "Traffic violation" has the meaning given that term in ORS 801.557.
 - 14 **SECTION 2. This 2014 Act being necessary for the immediate preservation of the public**
 - 15 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
 - 16 **on its passage.**
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