

**PROPOSED AMENDMENTS TO
HOUSE BILL 2320**

1 In line 2 of the printed bill, delete “167.167” and insert “137.225 and
2 419A.262”.

3 Delete lines 4 through 18 and insert:

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
6 of pronouncement of judgment, any defendant who has fully complied with
7 and performed the sentence of the court and whose conviction is described
8 in subsection (5) of this section by motion may apply to the court where the
9 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,
11 if no accusatory instrument was filed, or at any time after an acquittal or
12 a dismissal of the charge, the arrested person may apply to the court that
13 would have jurisdiction over the crime for which the person was arrested,
14 for entry of an order setting aside the record of the arrest. For the purpose
15 of computing the one-year period, time during which the arrested person has
16 secreted himself or herself within or without this state is not included.

17 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints
18 shall be served upon the office of the prosecuting attorney who prosecuted
19 the crime or violation, or who had authority to prosecute the charge if there
20 was no accusatory instrument filed, and opportunity shall be given to contest
21 the motion. The fingerprint card with the notation ‘motion for setting aside
22 conviction,’ or ‘motion for setting aside arrest record’ as the case may be,

1 shall be forwarded to the Department of State Police. Information resulting
2 from the fingerprint search along with the fingerprint card shall be returned
3 to the prosecuting attorney.

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

9 “(c) When a person makes a motion under subsection (1)(a) of this section,
10 the person must pay a fee of \$80 to the Department of State Police. The
11 person shall attach a certified check payable to the Department of State
12 Police in the amount of \$80 to the fingerprint card that is served upon the
13 prosecuting attorney. The office of the prosecuting attorney shall forward
14 the check with the fingerprint card to the Department of State Police.

15 “(d) In addition to the fee established under paragraph (c) of this sub-
16 section, when a person makes a motion under subsection (1)(a) of this section
17 the person must pay the filing fee established under ORS 21.135.

18 “(3) Upon hearing the motion, the court may require the filing of such
19 affidavits and may require the taking of such proofs as the court deems
20 proper. The court shall allow the victim to make a statement at the hearing.
21 Except as otherwise provided in subsection (13) of this section, if the court
22 determines that the circumstances and behavior of the applicant from the
23 date of conviction, or from the date of arrest as the case may be, to the date
24 of the hearing on the motion warrant setting aside the conviction, or the
25 arrest record as the case may be, the court shall enter an appropriate order
26 that shall state the original arrest charge and the conviction charge, if any
27 and if different from the original, date of charge, submitting agency and
28 disposition. The order shall further state that positive identification has been
29 established by the Department of State Police and further identified as to
30 Department of State Police number or submitting agency number. Upon the

1 entry of the order, the applicant for purposes of the law shall be deemed not
2 to have been previously convicted, or arrested as the case may be, and the
3 court shall issue an order sealing the record of conviction and other official
4 records in the case, including the records of arrest whether or not the arrest
5 resulted in a further criminal proceeding.

6 “(4) The clerk of the court shall forward a certified copy of the order to
7 such agencies as directed by the court. A certified copy must be sent to the
8 Department of Corrections when the person has been in the custody of the
9 Department of Corrections. Upon entry of the order, the conviction, arrest
10 or other proceeding shall be deemed not to have occurred, and the applicant
11 may answer accordingly any questions relating to its occurrence.

12 “(5) The provisions of subsection (1)(a) of this section apply to a con-
13 viction of:

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

17 “(b) A Class C felony, except for criminal mistreatment in the first degree
18 under ORS 163.205 when it would constitute child abuse as defined in ORS
19 419B.005 or any sex crime.

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

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

24 “(A) Any sex crime; or

25 “(B) The following crimes when they would constitute child abuse as de-
26 fined in ORS 419B.005:

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

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

29 “(e) A misdemeanor, including a violation of a municipal ordinance, for
30 which a jail sentence may be imposed, except for endangering the welfare

1 of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as
2 defined in ORS 419B.005 or any sex crime.

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

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

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

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

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

10 “(B) A crime punishable as either a felony or a misdemeanor, in the dis-
11 cretion of the court, 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 “(C) A misdemeanor, except for endangering the welfare of a minor under
16 ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS
17 419B.005 or any sex crime.

18 “(D) A violation.

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

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

22 “(b) A person convicted, within the 10-year period immediately preceding
23 the filing of the motion pursuant to subsection (1) of this section, of any
24 other offense, excluding motor vehicle violations, whether or not the other
25 conviction is for conduct associated with the same criminal episode that
26 caused the arrest or conviction that is sought to be set aside. Notwith-
27 standing subsection (1) of this section, a conviction that has been set aside
28 under this section shall be considered for the purpose of determining whether
29 this paragraph is applicable.

30 “(c) A person who at the time the motion authorized by subsection (1) of

1 this section is pending before the court is under charge of commission of any
2 crime.

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

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

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

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

11 “(8) Notwithstanding subsection (5) of this section, the provisions of sub-
12 section (1)(a) of this section apply to a conviction for:

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

15 “(A) Twenty years or more have elapsed from the date of the conviction
16 sought to be set aside or of the release of the person from imprisonment for
17 the conviction sought to be set aside, whichever is later; and

18 “(B) The person has not been convicted of or arrested for any other of-
19 fense, excluding motor vehicle violations, after the date the person was
20 convicted of the offense sought to be set aside. Notwithstanding subsection
21 (1) of this section, a conviction or arrest that has been set aside under this
22 section shall be considered for the purpose of determining whether this sub-
23 paragraph is applicable.

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

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

27 “(B) The person has not been convicted of, found guilty except for insan-
28 ity of or found to be within the jurisdiction of the juvenile court based on,
29 a crime that a court is prohibited from setting aside under this section.

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

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

2 “(B) The person is:

3 “(i) Less than [*three years*] **two years and 180 days** older than the victim;

4 **or**

5 “(ii) **At least two years and 180 days older, but less than three years**
6 **and 180 days older, than the victim and the court finds that setting**
7 **aside the conviction is in the interests of justice and of benefit to the**
8 **person and the community;**

9 “(C) The victim’s lack of consent was due solely to incapacity to consent
10 by reason of being less than a specified age;

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

12 “(E) The person has not been convicted of, found guilty except for insan-
13 ity of or found to be within the jurisdiction of the juvenile court based on
14 a crime that a court is prohibited from setting aside under this section; and

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

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

18 “(a) A person arrested within the three-year period immediately preceding
19 the filing of the motion for any offense, excluding motor vehicle violations,
20 and excluding arrests for conduct associated with the same criminal episode
21 that caused the arrest that is sought to be set aside. An arrest that has been
22 set aside under this section may not be considered for the purpose of deter-
23 mining whether this paragraph is applicable.

24 “(b) An arrest for driving while under the influence of intoxicants if the
25 charge is dismissed as a result of the person’s successful completion of a
26 diversion agreement described in ORS 813.200.

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

30 “(11) For purposes of any civil action in which truth is an element of a

1 claim for relief or affirmative defense, the provisions of subsection (3) of this
2 section providing that the conviction, arrest or other proceeding be deemed
3 not to have occurred do not apply and a party may apply to the court for
4 an order requiring disclosure of the official records in the case as may be
5 necessary in the interest of justice.

6 “(12) Upon motion of any prosecutor or defendant in a case involving re-
7 cords sealed under this section, supported by affidavit showing good cause,
8 the court with jurisdiction may order the reopening and disclosure of any
9 records sealed under this section for the limited purpose of assisting the in-
10 vestigation of the movant. However, such an order has no other effect on the
11 orders setting aside the conviction or the arrest record.

12 “(13) Unless the court makes written findings by clear and convincing
13 evidence that granting the motion would not be in the best interests of jus-
14 tice, the court shall grant the motion and enter an order as provided in
15 subsection (3) of this section if the defendant has been convicted of one of
16 the following crimes and is otherwise eligible for relief under this section:

17 “(a) Abandonment of a child, ORS 163.535.

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

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

20 “(d) Coercion, ORS 163.275.

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

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

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

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

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

26 “(j) Attempted robbery in the second degree, ORS 164.405.

27 “(k) Robbery in the third degree, ORS 164.395.

28 “(L) Supplying contraband, ORS 162.185.

29 “(m) Unlawful use of a weapon, ORS 166.220.

30 “(14) As used in this section, ‘sex crime’ has the meaning given that term

1 in ORS 181.805.

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

3 “419A.262. (1) An expunction proceeding shall be commenced in the
4 county where the subject person resided at the time of the most recent ter-
5 mination.

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

10 “(a) At least five years have elapsed since the date of the person’s most
11 recent termination;

12 “(b) Since the date of the most recent termination, the person has not
13 been convicted of a felony or a Class A misdemeanor;

14 “(c) No proceedings seeking a criminal conviction or an adjudication in
15 a juvenile court are pending against the person;

16 “(d) The person is not within the jurisdiction of any juvenile court on the
17 basis of a petition alleging an act or behavior as defined in ORS 419B.100
18 (1)(a) to (c) and (f) or 419C.005; and

19 “(e) The juvenile department is not aware of any pending investigation
20 of the conduct of the person by any law enforcement agency.

21 “(3)(a) Notwithstanding subsection (2) of this section, upon application
22 of a person who is the subject of a record kept by a juvenile court or juvenile
23 department, upon application of the juvenile department, or upon its own
24 motion, the juvenile court, after a hearing when the matter is contested un-
25 der subsection (13) of this section, shall order expunction if it finds that:

26 “(A) The application requests expunction of only that part of the person’s
27 record that involves a charge, allegation or adjudication based on conduct
28 that if done by an adult would constitute the crime of prostitution under
29 ORS 167.007; and

30 “(B) The person was under 18 years of age at the time of the conduct.

1 “(b) Except as provided in subsections (13) and (14) of this section, there
2 is no waiting period required before the juvenile court orders expunction
3 under this subsection.

4 “(4) In the case of an application by the juvenile department or of the
5 court acting upon its own motion, expunction shall not be ordered if actual
6 notice of expunction has not been given to the person in accordance with
7 subsection (12) of this section unless the person has reached 21 years of age.

8 “(5) When a person who is the subject of a record kept by a juvenile court
9 or juvenile department reaches 18 years of age, the juvenile court, after a
10 hearing when the matter is contested, shall order expunction if:

11 “(a) The person never has been found to be within the jurisdiction of the
12 court; or

13 “(b) The conditions of subsection (2) or (3) of this section have been met.

14 “(6) Expunction shall not be ordered under this section if actual notice
15 of expunction has not been given to the person in accordance with subsection
16 (12) of this section unless the person has reached 21 years of age.

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

19 “(8) Notwithstanding subsections (2), (3) and (5) to (7) of this section,
20 upon application of a person who is the subject of a record kept by a juvenile
21 court or juvenile department, upon application of the juvenile department,
22 or upon its own motion, the juvenile court, after a hearing when the matter
23 is contested, may order expunction of all or any part of the person’s record
24 if it finds that to do so would be in the best interests of the person and the
25 public. In the case of an application by the juvenile department or of the
26 court acting upon its own motion, expunction shall not be ordered if actual
27 notice of expunction has not been given to the person in accordance with
28 subsection (12) of this section unless the person has reached 21 years of age.

29 “(9) Notwithstanding ORS 419A.260 (1)(d)(J)(x), (xiii), **(xix)** or (xviii), a
30 person who has been found to be within the jurisdiction of the juvenile court

1 based on an act that if committed by an adult would constitute:

2 “(a) Rape in the third degree under ORS 163.355, sodomy in the third de-
3 gree under ORS 163.385 or sexual abuse in the third degree under ORS
4 163.415, or an attempt to commit those crimes, may apply for an order of
5 expunction under this section. The court shall order expunction of the re-
6 cords in the case if, after a hearing when the matter is contested, the court
7 finds that the person:

8 “(A) Meets the requirements of subsection (2) of this section;

9 “(B) Has been relieved of the obligation to report as a sex offender pur-
10 suant to a court order entered under ORS 181.832 or 181.833; and

11 “(C) Has not been convicted of, found guilty except for insanity of or
12 found to be within the jurisdiction of the juvenile court based on a crime
13 listed in ORS 419A.260 (1)(d)(J), other than the adjudication that is the sub-
14 ject of the motion.

15 “(b) A sex crime that is a Class C felony may apply for an order of
16 expunction under this section. The court shall order expunction of the re-
17 cords in the case if, after a hearing when the matter is contested, the court
18 finds that:

19 “(A) The person meets the requirements of subsection (2) of this section;

20 “(B) The person was under 16 years of age at the time of the offense;

21 “(C) The person is:

22 “(i) Less than [*three years*] **two years and 180 days** older than the victim;

23 **or**

24 “(ii) **At least two years and 180 days older, but less than three years**
25 **and 180 days older, than the victim and the expunction is in the in-**
26 **terests of justice and of benefit to the person and the community;**

27 “(D) The victim’s lack of consent was due solely to incapacity to consent
28 by reason of being less than a specified age;

29 “(E) The victim was at least 12 years of age at the time of the offense;

30 “(F) Each finding described in this paragraph involved the same victim;

1 and

2 “(G) The person has not been convicted of, found guilty except for in-
3 sanity of or found to be within the jurisdiction of the juvenile court based
4 on a crime listed in ORS 419A.260 (1)(d)(J) or an offense the court is pro-
5 hibited from setting aside under ORS 137.225, other than the adjudication
6 that is the subject of the motion.

7 “(10) When an expunction proceeding is commenced by application of the
8 person whose records are to be expunged, the person shall set forth as part
9 of the application the names of the juvenile courts, juvenile departments,
10 institutions and law enforcement and other agencies that the person has
11 reason to believe possess an expungible record of the person. The juvenile
12 department shall provide the names and addresses of the juvenile courts,
13 juvenile departments, institutions and law enforcement and other agencies
14 that a reasonable search of department files indicates have expungible re-
15 cords.

16 “(11) When an expunction proceeding is commenced by application of the
17 juvenile department or upon the court’s own motion, the application or mo-
18 tion shall set forth the names and addresses of the juvenile courts, juvenile
19 departments, institutions and law enforcement and other agencies that a
20 reasonable search of department files indicates have expungible records and
21 those provided by the subject person.

22 “(12)(a) Notice and a copy of an application for expunction under sub-
23 sections (2) to (8) of this section shall be given to:

24 “(A) The district attorney of the county in which the expunction pro-
25 ceeding is commenced and the district attorney of each county in which the
26 record sought to be expunged is kept; and

27 “(B) The person who is the subject of the record if the person has not
28 initiated the expunction proceeding.

29 “(b) A district attorney who receives notice under this subsection shall
30 notify the victim of the acts that resulted in the disposition that is the sub-

1 ject of the application for expunction and shall mail a copy of the applica-
2 tion for expunction to the victim’s last known address.

3 “(13)(a) Within 30 days of receiving the notice of application for
4 expunction under subsection (12) of this section, a district attorney shall give
5 written notice of any objection and the grounds therefor to the person whose
6 records are to be expunged and to the juvenile court.

7 “(b) Except as provided in subsection (14)(c) of this section, if no ob-
8 jection is filed the court may decide the issue of expunction either without
9 a hearing or after full hearing under subsections (14) to (17) of this section.

10 “(14) When an expunction is pending under subsections (2) to (8) of this
11 section, the court may proceed with or without a hearing, except that:

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

15 “(b) The court may not deny an expunction without a hearing if the pro-
16 ceeding is based on an application of the subject; and

17 “(c) The court shall proceed without a hearing if:

18 “(A) No objection is filed under subsection (13) of this section;

19 “(B) The application requests expunction of only that part of the person’s
20 record that involves a charge, allegation or adjudication based on conduct
21 that if done by an adult would constitute the crime of prostitution under
22 ORS 167.007; and

23 “(C) The person was under 18 years of age at the time of the conduct.

24 “(15)(a) Notice of a hearing on a pending expunction shall be served on
25 the subject and any district attorney filing a timely objection under sub-
26 section (13) of this section.

27 “(b) When a district attorney receives notice of a hearing for expunction
28 of a record concerning a youth or youth offender proceeding under ORS
29 chapter 419C, if the victim of the acts that resulted in the disposition that
30 is the subject of the application for expunction requests, the district attorney

1 shall mail notice of the hearing to the victim's last-known address.

2 “(16) The court shall conduct a hearing on a pending expunction in accord
3 with the provisions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208,
4 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall be as in
5 a hearing to establish juvenile court jurisdiction and as defined in ORS
6 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party
7 contesting expunction.

8 “(17) At the conclusion of a hearing on a pending expunction, the court
9 shall issue judgment granting or denying expunction.

10 “(18) The juvenile court or juvenile department shall send a copy of an
11 expunction judgment to each agency subject to the judgment. Upon receipt
12 of a copy of the judgment, the agency shall comply and, within 21 days of
13 the date of receipt, return the copy to the juvenile court or juvenile depart-
14 ment with an indorsement indicating compliance.

15 “(19) When all agencies subject to an expunction judgment have indicated
16 their compliance or in any event no later than six weeks following the date
17 the judgment was delivered as required by subsection (18) of this section, the
18 juvenile court shall provide the person who is the subject of the record with
19 a copy of the expunction judgment, a list of complying and noncomplying
20 agencies, and a written notice of rights and effects of expunction. The juve-
21 nile court and juvenile department then shall expunge forthwith all records
22 which they possess and which are subject to the judgment, except the ori-
23 ginal expunction judgment and the list of complying and noncomplying
24 agencies which must be preserved under seal.

25 “(20) In addition to those agencies identified in ORS 419A.260 (1)(d), the
26 juvenile, circuit, municipal and justice courts, and the district and city at-
27 torneys of this state, are bound by an expunction judgment of any juvenile
28 court of appropriate jurisdiction in this state issuing an expunction judg-
29 ment.

30 “(21) Upon entry of an expunction judgment, the contact that is the sub-

1 ject of the expunged record shall not be disclosed by any agency. An agency
2 that is subject to an expunction judgment shall respond to any inquiry about
3 the contact by indicating that no record or reference concerning the contact
4 exists.

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

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

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

21 “(25) A subject has a right of action against any person who intentionally
22 violates the confidentiality provisions of this section. In the proceeding, pu-
23 nitive damages up to an amount of \$1,000 may be sought in addition to any
24 actual damages. The prevailing party shall be entitled to costs and reason-
25 able attorney fees.

26 “(26) Intentional violation of the confidentiality provisions of this section
27 by a public employee is cause for dismissal.

28 “(27) A person who intentionally releases all or part of an expunged re-
29 cord commits a Class C misdemeanor.”.

30