

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO  
B-ENGROSSED HOUSE BILL 2320**

1 On page 2 of the printed B-engrossed bill, line 2, after “181.840” insert  
2 “and section 1, chapter 462, Oregon Laws 2015 (Enrolled Senate Bill 908)”.

3 On page 31, after line 23, insert:

4 **“SECTION 32a. If Senate Bill 908 becomes law, section 1, chapter**  
5 **462, Oregon Laws 2015 (Enrolled Senate Bill 908) (amending ORS**  
6 **137.225) is repealed and ORS 137.225, as amended by section 32 of this**  
7 **2015 Act, is amended to read:**

8 “137.225. (1)(a) **Except as provided in paragraph (c) of this subsection,**  
9 at any time after the lapse of three years from the date of pronouncement  
10 of judgment, any defendant who has fully complied with and performed the  
11 sentence of the court and whose conviction is described in subsection (5) of  
12 this section by motion may apply to the court where the conviction was en-  
13 tered for entry of an order setting aside the conviction[; *or*]. **A person who**  
14 **is still under supervision, or who is still incarcerated, as part of the**  
15 **sentence for the offense that is the subject of the motion has not fully**  
16 **complied with or performed the sentence of the court.**

17 “(b) At any time after the lapse of one year from the date of any arrest,  
18 if no accusatory instrument was filed, or at any time after an acquittal or  
19 a dismissal of the charge, the arrested person may apply to the court that  
20 would have jurisdiction over the crime for which the person was arrested,  
21 for entry of an order setting aside the record of the arrest. For the purpose  
22 of computing the one-year period, time during which the arrested person has

1 secreted himself or herself within or without this state is not included.

2 **“(c) A person whose sentence of probation was revoked may not**  
3 **apply to the court for entry of an order setting aside the conviction**  
4 **for which the person was sentenced to probation for a period of 10**  
5 **years from the date of revocation.**

6 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints  
7 shall be served upon the office of the prosecuting attorney who prosecuted  
8 the crime or violation, or who had authority to prosecute the charge if there  
9 was no accusatory instrument filed, and opportunity shall be given to contest  
10 the motion. The fingerprint card with the notation ‘motion for setting aside  
11 conviction,’ or ‘motion for setting aside arrest record’ as the case may be,  
12 shall be forwarded to the Department of State Police. Information resulting  
13 from the fingerprint search along with the fingerprint card shall be returned  
14 to the prosecuting attorney.

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

20 “(c) When a person makes a motion under subsection (1)(a) of this section,  
21 the person must pay a fee of \$80 to the Department of State Police. The  
22 person shall attach a certified check payable to the Department of State  
23 Police in the amount of \$80 to the fingerprint card that is served upon the  
24 prosecuting attorney. The office of the prosecuting attorney shall forward  
25 the check with the fingerprint card to the Department of State Police.

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

29 “(3) Upon hearing the motion, the court may require the filing of such  
30 affidavits and may require the taking of such proofs as the court deems

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

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

23 “(5) The provisions of subsection (1)(a) of this section apply to a con-  
24 viction [of] **for:**

25 “(a) A Class B felony, except for a violation of ORS 166.429 or any crime  
26 classified as a person felony as that term is defined in the rules of the  
27 Oregon Criminal Justice Commission, **only if:**

28 “(A)(i) **Twenty years or more have elapsed from the date of the**  
29 **conviction sought to be set aside or of the release of the person from**  
30 **imprisonment for the conviction sought to be set aside, whichever is**

1 **later; and**

2 **“(ii) The person has not been convicted of or arrested for any other**  
3 **offense, excluding motor vehicle violations, after the date the person**  
4 **was convicted of the offense sought to be set aside. Notwithstanding**  
5 **subsection (1) of this section, a conviction or arrest that has been set**  
6 **aside under this section shall be considered for the purpose of deter-**  
7 **mining whether this subparagraph is applicable; or**

8 **“(B) The Class B felony is described in paragraphs (b) to (e) of this**  
9 **subsection.**

10 *“(b) A Class C felony, except for criminal mistreatment in the first degree*  
11 *under ORS 163.205 when it would constitute child abuse as defined in ORS*  
12 *419B.005 or any sex crime.]*

13 *“(c) The crime of possession of the narcotic drug marijuana when that*  
14 *crime was punishable as a felony only.]*

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

17 *“(A) Any sex crime; or]*

18 *“(B) The following crimes when they would constitute child abuse as de-*  
19 *finied in ORS 419B.005:]*

20 *“(i) Criminal mistreatment in the first degree under ORS 163.205; and]*

21 *“(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]*

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

26 *“(f) A violation, whether under state law or local ordinance.]*

27 *“(g) An offense committed before January 1, 1972, that if committed after*  
28 *that date would be:]*

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

1       “[(i) Criminal mistreatment in the first degree under ORS 163.205; and]  
2       “[(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]  
3       “[(B) A crime punishable as either a felony or a misdemeanor, in the dis-  
4 cretion of the court, except for any sex crime or for the following crimes when  
5 they would constitute child abuse as defined in ORS 419B.005:]  
6       “[(i) Criminal mistreatment in the first degree under ORS 163.205; and]  
7       “[(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).]  
8       “[(C) A misdemeanor, except for endangering the welfare of a minor under  
9 ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS  
10 419B.005 or any sex crime.]  
11       “[(D) A violation.]  
12       “(b) Any crime punishable as a misdemeanor, including judgment  
13 of conviction for a misdemeanor pursuant to ORS 161.705.  
14       “(c) Unlawful possession of a controlled substance classified in  
15 Schedule I.  
16       “(d) An offense constituting a violation under state law or local  
17 ordinance.  
18       “(e) An offense committed before January 1, 1972, that, if commit-  
19 ted after that date, would qualify for an order under this section.  
20       “(6) Notwithstanding subsection (5) of this section, the provisions  
21 of subsection (1)(a) of this section do not apply to a conviction for:  
22       “(a) Criminal mistreatment in the second degree under ORS 163.200  
23 if the victim at the time of the crime was 65 years of age or older.  
24       “(b) Criminal mistreatment in the first degree under ORS 163.205 if  
25 the victim at the time of the crime was 65 years of age or older, or  
26 when the offense constitutes child abuse as defined in ORS 419B.005.  
27       “(c) Endangering the welfare of a minor under ORS 163.575 (1)(a),  
28 when the offense constitutes child abuse as defined in ORS 419B.005.  
29       “(d) Criminally negligent homicide under ORS 163.145, when that  
30 offense was punishable as a Class C felony.

1       **“(e) Assault in the third degree under ORS 163.165 (1)(h).**

2       **“(f) Any sex crime, unless:**

3       **“(A) The sex crime is listed in ORS 181.830 (1)(a) and:**

4       **“(i) The person has been relieved of the obligation to report as a sex**

5 **offender pursuant to a court order entered under ORS 181.832 or**

6 **181.833; and**

7       **“(ii) The person has not been convicted of, found guilty except for**

8 **insanity of or found to be within the jurisdiction of the juvenile court**

9 **based on a crime for which the court is prohibited from setting aside**

10 **the conviction under this section; or**

11       **“(B) The sex crime constitutes a Class C felony and:**

12       **“(i) The person was under 16 years of age at the time of the offense;**

13       **“(ii) The person is:**

14       **“(I) Less than two years and 180 days older than the victim; or**

15       **“(II) At least two years and 180 days older, but less than three years**

16 **and 180 days older, than the victim and the court finds that setting**

17 **aside the conviction is in the interests of justice and of benefit to the**

18 **person and the community;**

19       **“(iii) The victim’s lack of consent was due solely to incapacity to**

20 **consent by reason of being less than a specified age;**

21       **“(iv) The victim was at least 12 years of age at the time of the of-**

22 **fense;**

23       **“(v) The person has not been convicted of, found guilty except for**

24 **insanity of or found to be within the jurisdiction of the juvenile court**

25 **based on a crime for which the court is prohibited from setting aside**

26 **the conviction under this section; and**

27       **“(vi) Each conviction or finding described in this subparagraph in-**

28 **volved the same victim.**

29       **“[(6)] (7) Notwithstanding subsection (5) of this section, the provisions**

30 **of subsection (1) of this section do not apply to:**

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

2       “(b) A person convicted, within the 10-year period immediately preceding  
3 the filing of the motion pursuant to subsection (1) of this section, of any  
4 other offense, excluding motor vehicle violations, whether or not the other  
5 conviction is for conduct associated with the same criminal episode that  
6 caused the arrest or conviction that is sought to be set aside. **A single vi-**  
7 **olation, other than a motor vehicle violation, within the last 10 years**  
8 **is not a conviction under this subsection.** Notwithstanding subsection (1)  
9 of this section, a conviction that has been set aside under this section shall  
10 be considered for the purpose of determining whether this paragraph is ap-  
11 plicable.

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

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

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

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

21       “[(c) Criminally negligent homicide under ORS 163.145, when that offense  
22 was punishable as a Class C felony.]

23       “[(8) Notwithstanding subsection (5) of this section, the provisions of sub-  
24 section (1)(a) of this section apply to a conviction for:]

25       “[(a) A Class B felony described in subsection (5)(a) of this section only  
26 if:]

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

30       “[(B) The person has not been convicted of or arrested for any other offense,

1 *excluding motor vehicle violations, after the date the person was convicted of*  
2 *the offense sought to be set aside. Notwithstanding subsection (1) of this sec-*  
3 *tion, a conviction or arrest that has been set aside under this section shall be*  
4 *considered for the purpose of determining whether this subparagraph is ap-*  
5 *plicable.]*

6 *“(b) A sex crime listed in ORS 181.830 (1)(a) if:]*

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

10 *“(B) The person has not been convicted of, found guilty except for insanity*  
11 *of or found to be within the jurisdiction of the juvenile court based on, a crime*  
12 *that a court is prohibited from setting aside under this section.]*

13 *“(c) A sex crime constituting a Class C felony, if:]*

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

15 *“(B) The person is:]*

16 *“(i) Less than two years and 180 days older than the victim; or]*

17 *“(ii) At least two years and 180 days older, but less than three years and*  
18 *180 days older, than the victim and the court finds that setting aside the con-*  
19 *viction is in the interests of justice and of benefit to the person and the com-*  
20 *munity;]*

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

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

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

27 *“(F) Each conviction or finding described in this paragraph involved the*  
28 *same victim.]*

29 *“(9) (8) The provisions of subsection (1)(b) of this section do not apply*  
30 *to:*



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

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

10       “[(10)] **(9)** The provisions of subsection (1) of this section apply to con-  
11 victions and arrests that occurred before, as well as those that occurred af-  
12 ter, September 9, 1971. There is no time limit for making an application.

13       “[(11)] **(10)** For purposes of any civil action in which truth is an element  
14 of a claim for relief or affirmative defense, the provisions of subsection (3)  
15 of this section providing that the conviction, arrest or other proceeding be  
16 deemed not to have occurred do not apply and a party may apply to the court  
17 for an order requiring disclosure of the official records in the case as may  
18 be necessary in the interest of justice.

19       “[(12)] **(11)** Upon motion of any prosecutor or defendant in a case in-  
20 volving records sealed under this section, supported by affidavit showing  
21 good cause, the court with jurisdiction may order the reopening and disclo-  
22 sure of any records sealed under this section for the limited purpose of as-  
23 sisting the investigation of the movant. However, such an order has no other  
24 effect on the orders setting aside the conviction or the arrest record.

25       “[(13)] **(12)** Unless the court makes written findings by clear and con-  
26 vincing evidence that granting the motion would not be in the best interests  
27 of justice, the court shall grant the motion and enter an order as provided  
28 in subsection (3) of this section if the defendant has been convicted of one  
29 of the following crimes and is otherwise eligible for relief under this section:

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

- 1 “(b) Attempted assault in the second degree, ORS 163.175.  
2 “(c) Assault in the third degree, ORS 163.165.  
3 “(d) Coercion, ORS 163.275.  
4 “(e) Criminal mistreatment in the first degree, ORS 163.205.  
5 “(f) Attempted escape in the first degree, ORS 162.165.  
6 “(g) Incest, ORS 163.525, if the victim was at least 18 years of age.  
7 “(h) Intimidation in the first degree, ORS 166.165.  
8 “(i) Attempted kidnapping in the second degree, ORS 163.225.  
9 “(j) Attempted robbery in the second degree, ORS 164.405.  
10 “(k) Robbery in the third degree, ORS 164.395.  
11 “(L) Supplying contraband, ORS 162.185.  
12 “(m) Unlawful use of a weapon, ORS 166.220.  
13 “[~~(14)~~] **(13)** As used in this section, ‘sex crime’ has the meaning given that  
14 term in ORS 181.805.”.

15 On page 45, after line 16, insert:

16

17 **“APPLICABILITY PROVISIONS**

18

19 **“SECTION 49. The amendments to ORS 137.225 by section 32a of this**  
20 **2015 Act become operative January 1, 2016.”.**

21 In line 20, delete “49” and insert “50”.

22 In line 26, delete “50” and insert “51”.

23