

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 497**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 through 5 and insert:

3 **“SECTION 1.** ORS 137.225 is amended to read:

4 “137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at
5 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
7 sentence of the court and whose conviction is described in subsection (5) of
8 this section by motion may apply to the court where the conviction was en-
9 tered for entry of an order setting aside the conviction. A person who is still
10 under supervision, or who is still incarcerated, as part of the sentence for
11 the offense that is the subject of the motion has not fully complied with or
12 performed the sentence of the court.

13 “(b) At any time after the lapse of one year from the date of any arrest,
14 **issuance of a criminal citation or criminal charge**, if no accusatory in-
15 strument was filed, or at any time after an acquittal or a dismissal of the
16 charge, the arrested, **cited or charged** person may apply to the court that
17 would have jurisdiction over the crime for which the person was arrested,
18 **cited or charged**, for entry of an order setting aside the record of the
19 arrest, **citation or charge**. For the purpose of computing the one-year pe-
20 riod, time during which the [arrested] person has secreted himself or herself
21 within or without this state is not included.

1 “(c) A person whose sentence of probation was revoked may not apply to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

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

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

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

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

28 “(e) The prosecuting attorney may not charge the defendant a fee for
29 performing the requirements described in this section.

30 “(3) Upon hearing the motion, the court may require the filing of such

1 affidavits and may require the taking of such proofs as the court deems
2 proper. The court shall allow the victim to make a statement at the hearing.
3 Except as otherwise provided in subsection (12) of this section, if the court
4 determines that the circumstances and behavior of the applicant from the
5 date of conviction, or from the date of arrest, **citation or charge** as the case
6 may be, to the date of the hearing on the motion warrant setting aside the
7 conviction, or the arrest, **citation or charge** record as the case may be, the
8 court shall enter an appropriate order that shall state the original arrest
9 **or citation** charge and the conviction charge, if any and if different from
10 the original, date of charge, submitting agency and disposition. The order
11 shall further state that positive identification has been established by the
12 Department of State Police and further identified as to Department of State
13 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 pre-
15 viously convicted, or arrested, **cited or charged** as the case may be, and the
16 court shall issue an order sealing the record of conviction and other official
17 records in the case, including the records of arrest, **citation or charge**
18 whether or not the arrest, **citation or charge** resulted in a further criminal
19 proceeding.

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

27 “(5) The provisions of subsection (1)(a) of this section apply to a con-
28 viction for:

29 “(a) A Class B felony, except for a violation of ORS 166.429 or any crime
30 classified as a person felony as that term is defined in the rules of the

1 Oregon Criminal Justice Commission, only if:

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

5 “(ii) The person has not been convicted of, [*or*] arrested **or criminally**
6 **cited for or charged with** any other offense, excluding motor vehicle vio-
7 lations, after the date the person was convicted of the offense sought to be
8 set aside. Notwithstanding subsection (1) of this section, a conviction, [*or*]
9 arrest, **citation or charge** that has been set aside under this section shall
10 be considered for the purpose of determining whether this subparagraph is
11 applicable; or

12 “(B) The Class B felony is described in paragraphs (b) to (e) of this sub-
13 section.

14 “(b) Any crime punishable as a misdemeanor, including judgment of con-
15 viction for a misdemeanor pursuant to ORS 161.705.

16 “(c) Unlawful possession of a controlled substance classified in Schedule
17 I.

18 “(d) An offense constituting a violation under state law or local ordi-
19 nance.

20 “(e) An offense committed before January 1, 1972, that, if committed after
21 that date, would qualify for an order under this section.

22 “(6) Notwithstanding subsection (5) of this section, the provisions of sub-
23 section (1)(a) of this section do not apply to a conviction for:

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

26 “(b) Criminal mistreatment in the first degree under ORS 163.205 if the
27 victim at the time of the crime was 65 years of age or older, or when the
28 offense constitutes child abuse as defined in ORS 419B.005.

29 “(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when
30 the offense constitutes child abuse as defined in ORS 419B.005.

1 “(d) Criminally negligent homicide under ORS 163.145, when that offense
2 was punishable as a Class C felony.

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

4 “(f) Any sex crime, unless:

5 “(A) The sex crime is listed in ORS 163A.140 (1)(a) and:

6 “(i) The person has been relieved of the obligation to report as a sex
7 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
8 and

9 “(ii) The person has not been convicted of, found guilty except for insan-
10 ity of or found to be within the jurisdiction of the juvenile court based on
11 a crime for which the court is prohibited from setting aside the conviction
12 under this section; or

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

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

15 “(ii) 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
19 conviction is in the interests of justice and of benefit to the person and the
20 community;

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

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

24 “(v) 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
26 crime for which the court is prohibited from setting aside the conviction
27 under this section; and

28 “(vi) Each conviction or finding described in this subparagraph involved
29 the same victim.

30 “(7) Notwithstanding subsection (5) of this section, the provisions of sub-

1 section (1) of this section do not apply to:

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

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

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

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

17 “(a) A person arrested **or criminally cited for or charged with an of-**
18 **fense** within the three-year period immediately preceding the filing of the
19 motion for any offense, excluding motor vehicle violations, and excluding
20 arrests, **citations or charges** for conduct associated with the same criminal
21 episode that caused the arrest, **citation or charge** that is sought to be set
22 aside. An arrest, **citation or charge** that has been set aside under this sec-
23 tion may not be considered for the purpose of determining whether this
24 paragraph is applicable.

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

28 “(9) The provisions of subsection (1) of this section apply to convictions,
29 [and] arrests, **citations and charges** that occurred before, as well as those
30 that occurred after, September 9, 1971. There is no time limit for making

1 an application.

2 “(10) For purposes of any civil action in which truth is an element of a
3 claim for relief or affirmative defense, the provisions of subsection (3) of this
4 section providing that the conviction, arrest, **citation, charge** or other
5 proceeding be deemed not to have occurred do not apply and a party may
6 apply to the court for an order requiring disclosure of the official records in
7 the case as may be necessary in the interest of justice.

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

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

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

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

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

22 “(d) Coercion, ORS 163.275.

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

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

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

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

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

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

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

30 “(L) Supplying contraband, ORS 162.185.

