

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1543**

1 On page 1 of the printed bill, line 2, after “ORS” insert “137.225,”.

2 In line 3, after “161.390,” insert “161.705,”.

3 On page 7, after line 17, insert:

4 **“SECTION 7.** ORS 161.705 is amended to read:

5 “161.705. Notwithstanding ORS 161.525, the court may enter judgment of
6 conviction for a Class A misdemeanor and make disposition accordingly
7 when:

8 “(1)(a) A person is convicted of any Class C felony; or

9 “(b) A person convicted of a felony described in paragraph (a) of this
10 subsection, of possession or delivery of marijuana or a marijuana item as
11 defined in ORS 475B.015 constituting a Class B felony, **of possession of a**
12 **controlled substance constituting a Class B felony** or of a Class A felony
13 pursuant to ORS 166.720, has successfully completed a sentence of probation;
14 and

15 “(2) The court, considering the nature and circumstances of the crime and
16 the history and character of the defendant, believes that *[it]* **a felony con-**
17 **viction** would be unduly harsh *[to sentence the defendant for a felony]*.

18 **“SECTION 8.** ORS 137.225 is amended to read:

19 “137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at
20 any time after the lapse of three years from the date of pronouncement of
21 judgment, any defendant who has fully complied with and performed the

1 sentence of the court and whose conviction is described in subsection (5) of
2 this section by motion may apply to the court where the conviction was en-
3 tered for entry of an order setting aside the conviction. A person who is still
4 under supervision, or who is still incarcerated, as part of the sentence for
5 the offense that is the subject of the motion has not fully complied with or
6 performed the sentence of the court.

7 “(b) At any time after the lapse of one year from the date of any arrest,
8 issuance of a criminal citation or criminal charge, if no accusatory instru-
9 ment was filed, or at any time after an acquittal or a dismissal of the charge,
10 the arrested, cited or charged person may apply to the court that would have
11 jurisdiction over the crime for which the person was arrested, cited or
12 charged, for entry of an order setting aside the record of the arrest, citation
13 or charge. For the purpose of computing the one-year period, time during
14 which the person has secreted himself or herself within or without this state
15 is not included.

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

20 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints
21 shall be served upon the office of the prosecuting attorney who prosecuted
22 the crime or violation, or who had authority to prosecute the charge if there
23 was no accusatory instrument filed, and opportunity shall be given to contest
24 the motion. The fingerprint card with the notation ‘motion for setting aside
25 conviction,’ or ‘motion for setting aside arrest, citation or charge record’ as
26 the case may be, shall be forwarded to the Department of State Police. In-
27 formation resulting from the fingerprint search along with the fingerprint
28 card shall be returned to the prosecuting attorney.

29 “(b) When a prosecuting attorney is served with a copy of a motion to set
30 aside a conviction under this section, the prosecuting attorney shall provide

1 a copy of the motion and notice of the hearing date to the victim, if any, of
2 the crime by mailing a copy of the motion and notice to the victim's last-
3 known address.

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

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

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

15 “(3) Upon hearing the motion, the court may require the filing of such
16 affidavits and may require the taking of such proofs as the court deems
17 proper. The court shall allow the victim to make a statement at the hearing.
18 Except as otherwise provided in subsection (12) of this section, if the court
19 determines that the circumstances and behavior of the applicant from the
20 date of conviction, or from the date of arrest, citation or charge as the case
21 may be, to the date of the hearing on the motion warrant setting aside the
22 conviction, or the arrest, citation or charge record as the case may be, the
23 court shall enter an appropriate order that shall state the original arrest or
24 citation charge and the conviction charge, if any and if different from the
25 original, date of charge, submitting agency and disposition. The order shall
26 further state that positive identification has been established by the De-
27 partment of State Police and further identified as to Department of State
28 Police number or submitting agency number. Upon the entry of the order,
29 the applicant for purposes of the law shall be deemed not to have been pre-
30 viously convicted, or arrested, cited or charged as the case may be, and the

1 court shall issue an order sealing the record of conviction and other official
2 records in the case, including the records of arrest, citation or charge
3 whether or not the arrest, citation or charge resulted in a further criminal
4 proceeding.

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

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

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, only if:

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

20 “(ii) The person has not been convicted of, arrested or criminally cited for
21 or charged with any other offense, excluding motor vehicle violations, after
22 the date the person was convicted of the offense sought to be set aside.
23 Notwithstanding subsection (1) of this section, a conviction, arrest, citation
24 or charge that has been set aside under this section shall be considered for
25 the purpose of determining whether this subparagraph is applicable; or

26 “(B) The Class B felony is described in paragraphs (b) to [(e)] **(d)** of this
27 subsection.

28 “(b) Any misdemeanor, Class C felony or felony punishable as a
29 misdemeanor pursuant to ORS 161.705.

30 “[c) *Unlawful possession of a controlled substance classified in Schedule*

1 I.]

2 “[*(d)*] (c) An offense constituting a violation under state law or local or-
3 dinance.

4 “[*(e)*] (d) An offense committed before January 1, 1972, that, if committed
5 after that date, would qualify for an order under this section.

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

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

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

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

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

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

18 “(f) Any sex crime, unless:

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

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

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

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

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

29 “(ii) The person is:

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

1 “(II) At least two years and 180 days older, but less than three years and
2 180 days older, than the victim and the court finds that setting aside the
3 conviction is in the interests of justice and of benefit to the person and the
4 community;

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

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

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

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

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

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

17 “(b) A person convicted, within the 10-year period immediately preceding
18 the filing of the motion pursuant to subsection (1) of this section, of any
19 other offense, excluding motor vehicle violations, whether or not the other
20 conviction is for conduct associated with the same criminal episode that
21 caused the arrest, citation, charge or conviction that is sought to be set
22 aside. A single violation, other than a motor vehicle violation, within the
23 last 10 years is not a conviction under this subsection. Notwithstanding
24 subsection (1) of this section, a conviction that has been set aside under this
25 section shall be considered for the purpose of determining whether this par-
26 agraph is applicable.

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

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

1 “(a) A person arrested or criminally cited for or charged with an offense
2 within the three-year period immediately preceding the filing of the motion
3 for any offense, excluding motor vehicle violations, and excluding arrests,
4 citations or charges for conduct associated with the same criminal episode
5 that caused the arrest, citation or charge that is sought to be set aside. An
6 arrest, citation or charge that has been set aside under this section may not
7 be considered for the purpose of determining whether this paragraph is ap-
8 plicable.

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

12 “(9) The provisions of subsection (1) of this section apply to convictions,
13 arrests, citations and charges that occurred before, as well as those that
14 occurred after, September 9, 1971. There is no time limit for making an ap-
15 plication.

16 “(10) For purposes of any civil action in which truth is an element of a
17 claim for relief or affirmative defense, the provisions of subsection (3) of this
18 section providing that the conviction, arrest, citation, charge or other pro-
19 ceeding be deemed not to have occurred do not apply and a party may apply
20 to the court for an order requiring disclosure of the official records in the
21 case as may be necessary in the interest of justice.

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

28 “(12) Unless the court makes written findings by clear and convincing
29 evidence that granting the motion would not be in the best interests of jus-
30 tice, the court shall grant the motion and enter an order as provided in

1 subsection (3) of this section if the defendant has been convicted of one of
2 the following crimes and is otherwise eligible for relief under this section:

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

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

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

6 “(d) Coercion, ORS 163.275.

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

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

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

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

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

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

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

14 “(L) Supplying contraband, ORS 162.185.

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

16 “(13) As used in this section, ‘sex crime’ has the meaning given that term
17 in ORS 163A.005.”.

18 In line 18, delete “7” and insert “9”.

19
