

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

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

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

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

19 **“(2) The entry of judgment of conviction for a Class A misdemeanor**
20 **under this section may be made:**

21 **“(a) At the time of conviction, for offenses described in subsection**

1 **(1)(a)(A) of this section; or**

2 **“(b) At any time after the sentence of probation has been com-**
3 **pleted, for offenses described in subsection (1)(a)(B) of this section.**

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

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

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

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

27 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints
28 shall be served upon the office of the prosecuting attorney who prosecuted
29 the crime or violation, or who had authority to prosecute the charge if there
30 was no accusatory instrument filed, and opportunity shall be given to contest

1 the motion. The fingerprint card with the notation ‘motion for setting aside
2 conviction,’ or ‘motion for setting aside arrest, citation or charge record’ as
3 the case may be, shall be forwarded to the Department of State Police. In-
4 formation resulting from the fingerprint search along with the fingerprint
5 card shall be returned to the prosecuting attorney.

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

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

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

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

22 “(3) Upon hearing the motion, the court may require the filing of such
23 affidavits and may require the taking of such proofs as the court deems
24 proper. The court shall allow the victim to make a statement at the hearing.
25 Except as otherwise provided in subsection (12) of this section, if the court
26 determines that the circumstances and behavior of the applicant from the
27 date of conviction, or from the date of arrest, citation or charge as the case
28 may be, to the date of the hearing on the motion warrant setting aside the
29 conviction, or the arrest, citation or charge record as the case may be, the
30 court shall enter an appropriate order that shall state the original arrest or

1 citation charge and the conviction charge, if any and if different from the
2 original, date of charge, submitting agency and disposition. The order shall
3 further state that positive identification has been established by the De-
4 partment of State Police and further identified as to Department of State
5 Police number or submitting agency number. Upon the entry of the order,
6 the applicant for purposes of the law shall be deemed not to have been pre-
7 viously convicted, or arrested, cited or charged as the case may be, and the
8 court shall issue an order sealing the record of conviction and other official
9 records in the case, including the records of arrest, citation or charge
10 whether or not the arrest, citation or charge resulted in a further criminal
11 proceeding.

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

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

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

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

27 “(ii) The person has not been convicted of, arrested or criminally cited for
28 or charged with any other offense, excluding motor vehicle violations, after
29 the date the person was convicted of the offense sought to be set aside.
30 Notwithstanding subsection (1) of this section, a conviction, arrest, citation

1 or charge that has been set aside under this section shall be considered for
2 the purpose of determining whether this subparagraph is applicable; or

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

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

7 “[c) *Unlawful possession of a controlled substance classified in Schedule*
8 *I.*]

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

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

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

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

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

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

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

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

25 “(f) Any sex crime, unless:

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

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

30 “(ii) The person has not been convicted of, found guilty except for insan-

1 ity of or found to be within the jurisdiction of the juvenile court based on
2 a crime for which the court is prohibited from setting aside the conviction
3 under this section; or

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

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

6 “(ii) The person is:

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

8 “(II) At least two years and 180 days older, but less than three years and
9 180 days older, than the victim and the court finds that setting aside the
10 conviction is in the interests of justice and of benefit to the person and the
11 community;

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

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

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

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

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

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

24 “(b) A person convicted, within the 10-year period immediately preceding
25 the filing of the motion pursuant to subsection (1) of this section, of any
26 other offense, excluding motor vehicle violations, whether or not the other
27 conviction is for conduct associated with the same criminal episode that
28 caused the arrest, citation, charge or conviction that is sought to be set
29 aside. A single violation, other than a motor vehicle violation, within the
30 last 10 years is not a conviction under this subsection. Notwithstanding

1 subsection (1) of this section, a conviction that has been set aside under this
2 section shall be considered for the purpose of determining whether this par-
3 agraph is applicable.

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

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

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

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

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

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

29 “(11) Upon motion of any prosecutor or defendant in a case involving re-
30 cords sealed under this section, supported by affidavit showing good cause,

1 the court with jurisdiction may order the reopening and disclosure of any
2 records sealed under this section for the limited purpose of assisting the in-
3 vestigation of the movant. However, such an order has no other effect on the
4 orders setting aside the conviction or the arrest, citation or charge record.

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

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

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

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

13 “(d) Coercion, ORS 163.275.

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

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

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

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

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

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

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

21 “(L) Supplying contraband, ORS 162.185.

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

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

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

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