

Requested by Senator MANNING JR

**PROPOSED AMENDMENTS TO
SENATE BILL 697**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete pages
2 2 through 7 and insert:

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

4 “137.225. (1)(a) At any time after the person becomes eligible as described
5 in paragraph (b) of this subsection, any person convicted of an offense who
6 has fully complied with and performed the sentence of the court for the of-
7 fense, and whose conviction is described in subsection (5) of this section, by
8 motion may apply to the court where the conviction was entered for entry
9 of an order setting aside the conviction. A person who is still under super-
10 vision as part of the sentence for the offense that is the subject of the motion
11 has not fully complied with or performed the sentence of the court. **The fact**
12 **that a person has outstanding fines and fees associated with the of-**
13 **fense that is the subject of the motion, other than restitution and**
14 **compensatory fines payable to the victim of the offense, may not be**
15 **considered when determining whether the person has fully complied**
16 **with or performed the sentence of the court.**

17 “(b) A person is eligible to file a motion under paragraph (a) of this
18 subsection:

19 “(A) For a Class B felony, seven years from the date of conviction or the
20 release of the person from imprisonment for the conviction sought to be set
21 aside, whichever is later.

1 “(B) For a Class C felony, five years from the date of conviction or the
2 release of the person from imprisonment for the conviction sought to be set
3 aside, whichever is later.

4 “(C) For a Class A misdemeanor, three years from the date of conviction
5 or the release of the person from imprisonment for the conviction sought to
6 be set aside, whichever is later.

7 “(D) For a Class B or Class C misdemeanor, a violation or the finding
8 of a person in contempt of court, one year from the date of conviction or
9 finding or the release of the person from imprisonment for the conviction or
10 finding sought to be set aside, whichever is later.

11 “(c) If no accusatory instrument is filed, at any time after 60 days from
12 the date the prosecuting attorney indicates that the state has elected not to
13 proceed with a prosecution or contempt proceeding, an arrested, cited or
14 charged person may apply to the court in the county in which the person
15 was arrested, cited or charged, for entry of an order setting aside the record
16 of the arrest, citation or charge.

17 “(d) At any time after an acquittal or a dismissal other than a dismissal
18 described in paragraph (c) of this subsection, an arrested, cited or charged
19 person may apply to the court in the county in which the person was ar-
20 rested, cited or charged, for entry of an order setting aside the record of the
21 arrest, citation or charge.

22 “(e) Notwithstanding paragraph (b) of this subsection, a person whose
23 sentence of probation was revoked may not apply to the court for entry of
24 an order setting aside the conviction for which the person was sentenced to
25 probation for a period of three years from the date of revocation or until the
26 person becomes eligible as described in paragraph (b) of this subsection,
27 whichever occurs later.

28 **“(f) If the offense classification of a conviction has been reduced**
29 **by the court, the applicable time period under paragraph (b) of this**
30 **subsection is the time period associated with the reduced offense**

1 **classification.**

2 “[f)] (g) A person filing a motion under this section is not required to
3 pay the filing fee established under ORS 21.135.

4 “(2)(a) A copy of the motion shall be served upon the office of the prose-
5 cuting attorney who prosecuted the offense, or who had authority to prose-
6 cute the charge if there was no accusatory instrument filed. The prosecuting
7 attorney may object to a motion filed under subsection (1)(a) of this section
8 and shall notify the court and the person of the objection within 120 days
9 of the date the motion was filed with the court.

10 “(b) When a prosecuting attorney is served with a copy of a motion to set
11 aside a conviction under subsection (1)(a) of this section, the prosecuting
12 attorney shall provide a copy of the motion and notice of the hearing date
13 to the victim, if any, of the offense by mailing a copy of the motion and
14 notice to the victim’s last-known address.

15 “[c) *When a person makes a motion under this section, the person shall*
16 *forward to the Department of State Police a full set of the person’s fingerprints*
17 *on a fingerprint card or in any other manner specified by the department.]*

18 “[d)] (c) When a person makes a motion under subsection (1)(a) of this
19 section, the person must pay a fee to the Department of State Police for the
20 purpose of the department performing a criminal record check. The depart-
21 ment shall establish a fee in an amount not to exceed the actual cost of
22 performing the criminal record check. If the department is required to per-
23 form only one criminal record check for the person, the department may only
24 charge one fee, regardless of the number of counties in which the person is
25 filing a motion to set aside a conviction, arrest, charge or citation under this
26 section. The department shall provide a copy of the results of the criminal
27 record check to the prosecuting attorney.

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

30 “(3)(a) If an objection is received to a motion filed under subsection (1)(a)

1 of this section, the court shall hold a hearing, and may require the filing of
2 such affidavits and may require the taking of such proofs as the court deems
3 proper. The court shall allow the victim to make a statement at the hearing.
4 If the person is otherwise eligible for relief under this section, the court
5 shall grant the motion and enter an order as described in paragraph (b) of
6 this subsection unless the court makes written findings, by clear and con-
7 vincing evidence, that the circumstances and behavior of the person, from
8 the date of the conviction the person is seeking to set aside to the date of
9 the hearing on the motion, do not warrant granting the motion due to the
10 circumstances and behavior creating a risk to public safety. When deter-
11 mining whether the person's circumstances and behavior create a risk to
12 public safety, the court may only consider criminal behavior, or violations
13 of regulatory law or administrative rule enforced by civil penalty or other
14 administrative sanction that relate to the character of the conviction sought
15 to be set aside. The court may not consider nonpunitive civil liability,
16 monetary obligations and motor vehicle violations. Upon granting the mo-
17 tion, the court shall, **within 30 days after the date of the hearing**, enter
18 an appropriate order containing the original arrest or citation charge, the
19 conviction charge, if different from the original, the date of charge, the
20 submitting agency and the disposition of the charge. Upon the entry of the
21 order, the person for purposes of the law shall be deemed not to have been
22 previously convicted, and the court shall issue an order sealing the record
23 of conviction and other official records in the case, including the records of
24 arrest, citation or charge.

25 “(b) The court shall grant a motion filed under subsection (1)(c) or (d) of
26 this section, or under subsection (1)(a) of this section if no objection to the
27 motion is received, and shall, **within 30 days after the conclusion of the**
28 **time period during which the prosecuting attorney may object under**
29 **subsection (2)(a) of this section for a motion filed under subsection**
30 **(1)(a) of this section, or within 30 days after the date the motion was**

1 **filed with the court for a motion filed under subsection (1)(c) or (d)**
2 **of this section**, enter an appropriate order containing the original arrest
3 or citation charge, the conviction charge, if applicable and different from the
4 original, the date of charge, the submitting agency and the disposition of the
5 charge. Upon the entry of the order, the person for purposes of the law shall
6 be deemed not to have been previously convicted, arrested, cited or charged,
7 and the court shall issue an order sealing all official records in the case,
8 including the records of arrest, citation or charge, whether or not the arrest,
9 citation or charge resulted in a further criminal proceeding.

10 **“(c) The court, as part of entering an order under this subsection,**
11 **shall waive any remaining fines and fees owed by the person on the**
12 **offense other than compensatory fines payable to the victim of the**
13 **offense.**

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

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

22 **“(a) A Class B felony, except for a violation of ORS 166.429 or any crime**
23 **classified as a person felony as defined in the rules of the Oregon Criminal**
24 **Justice Commission.**

25 **“(b) Any misdemeanor, Class C felony or felony punishable as a**
26 **misdemeanor pursuant to ORS 161.705.**

27 **“(c) An offense constituting a violation under state law or local ordi-**
28 **nance.**

29 **“(d) An offense committed before January 1, 1972, that, if committed after**
30 **that date, would qualify for an order under this section.**

1 “(e) The finding of a person in contempt of court.

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

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

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

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

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

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

14 “(f) Any sex crime, unless:

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

16 “(i)(I) The person has been relieved of the obligation to report as a sex
17 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
18 **or**

19 **“(II) The person has been relieved of the obligation to report as a**
20 **sex offender by the State Board of Parole and Post-Prison Supervision**
21 **under ORS 163A.125, 163A.130 or 163A.135 and the offense meets the**
22 **criteria described in ORS 163A.140 (2); 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)(a) Notwithstanding subsection (5) of this section, the provisions of
15 subsection (1)(a) of this section do not apply to:

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

17 “[b] (B) A person convicted, within the following applicable time period
18 immediately preceding the filing of the motion pursuant to subsection (1)(a)
19 of this section, of any other offense, excluding motor vehicle violations,
20 whether or not the other conviction is for conduct associated with the same
21 criminal episode that caused the arrest, citation, charge or conviction that
22 is sought to be set aside:

23 “[A] (i) For a motion concerning a Class B felony, seven years.

24 “[B] (ii) For a motion concerning a Class C felony, five years.

25 “[C] (iii) For a motion concerning a Class A misdemeanor, three years.

26 “[D] (iv) For a motion concerning a Class B or Class C misdemeanor
27 **or** a violation [*or a finding of contempt of court*], one year.

28 “(C) **A person who at the time the motion described in this section**
29 **is pending before the court is under charge of commission of any**
30 **crime.**

1 “[~~(c)~~] **(b)** A single violation, other than a motor vehicle violation, within
2 the time period specified in paragraph [~~(b)~~] **(a)(B)** of this subsection is not
3 a conviction under this subsection. Notwithstanding subsection (1) of this
4 section, a conviction that has been set aside under this section shall be
5 considered for the purpose of determining whether paragraph [~~(b)~~] **(a)(B)** of
6 this subsection is applicable.

7 “[~~(d)~~] *A person who at the time the motion authorized by subsection (1) of*
8 *this section is pending before the court is under charge of commission of any*
9 *crime.*]

10 “(8) The provisions of subsection (1)(c) or (d) of this section do not apply
11 to:

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

15 “**(b) The dismissal of a citation for a traffic violation.**

16 “**(c) A person who at the time the motion described in this section**
17 **is pending before the court is under charge of commission of any**
18 **crime.**

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)(a) Upon motion of any prosecutor or defendant in a case involving
30 records 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 “(b) Notwithstanding paragraph (a) of this subsection, when an arrest,
6 citation or charge described in subsection (1)(c) of this section is set aside,
7 a prosecuting attorney may, for the purpose of initiating a criminal pro-
8 ceeding within the statute of limitations, unseal the records sealed under
9 this section by notifying the court with jurisdiction over the charge, record
10 of arrest or citation. The prosecuting attorney shall notify the person who
11 is the subject of the records of the unsealing under this paragraph by sending
12 written notification to the person’s last known address.

13 “(12) The State Court Administrator shall create forms to be used
14 throughout the state for motions and proposed orders described in this sec-
15 tion.

16 “(13) As used in this section:

17 “(a) ‘Affidavit’ includes a declaration under penalty of perjury.

18 “(b) ‘Sex crime’ has the meaning given that term in ORS 163A.005.

19 **“SECTION 2.** ORS 137.223 is amended to read:

20 “137.223. (1) A person who has been found guilty except for insanity of
21 an offense for which, if convicted, the person could apply for entry of an
22 order setting aside the conviction pursuant to ORS 137.225, may by motion
23 apply to the court for entry of an order setting aside the judgment finding
24 the person guilty except for insanity of the offense.

25 “(2)(a) A person described in subsection (1) of this section may file the
26 motion to set aside a judgment of guilty except for insanity any time after
27 the following time periods:

28 “(A) For a judgment of guilty except for insanity on a Class B felony,
29 seven years from the date of entry of the judgment or the date the person
30 is no longer under the jurisdiction of the Psychiatric Security Review Board,

1 whichever is later.

2 “(B) For a judgment of guilty except for insanity on a Class C felony, five
3 years from the date of entry of the judgment or the date the person is no
4 longer under the jurisdiction of the board, whichever is later.

5 “(C) For a judgment of guilty except for insanity on a Class A
6 misdemeanor, three years from the date of entry of the judgment or the date
7 the person is no longer under the jurisdiction of the board, whichever is
8 later.

9 “(D) For a judgment of guilty except for insanity on a Class B or Class
10 C misdemeanor, one year from the date of entry of the judgment or the date
11 the person is no longer under the jurisdiction of the board, whichever is
12 later.

13 “(b) A person is eligible to have a judgment of guilty except for insanity
14 set aside under this section if the person has no other findings of guilty ex-
15 cept for insanity and no convictions for offenses other than motor vehicle
16 violations within the following time periods prior to filing the motion:

17 “(A) For a motion concerning a judgment of guilty except for insanity on
18 a Class B felony, seven years.

19 “(B) For a motion concerning a judgment of guilty except for insanity on
20 a Class C felony, five years.

21 “(C) For a motion concerning a judgment of guilty except for insanity on
22 a Class A misdemeanor, three years.

23 “(D) For a motion concerning a judgment of guilty except for insanity on
24 a Class B or Class C misdemeanor, one year.

25 “(3)(a) A copy of the motion shall be served upon the office of the prose-
26 cuting attorney who prosecuted the offense. The prosecuting attorney may
27 object to the motion filed and shall notify the court and the person of the
28 objection within 120 days of [*receiving the motion*] **the date the motion was**
29 **filed with the court.**

30 “(b) When a prosecuting attorney is served with a copy of a motion to set

1 aside a judgment of guilty except for insanity under this section, the prose-
2 cuting attorney shall provide a copy of the motion and notice of the hearing
3 date to the victim, if any, of the offense by mailing a copy of the motion and
4 notice to the victim's last-known address.

5 “(c) When a person files a motion under this section, the person must pay
6 a fee to the Department of State Police for the purpose of the department
7 performing a criminal record check[, *and shall forward to the department a*
8 *full set of the person's fingerprints on a fingerprint card or in any other*
9 *manner specified by the department*]. The department shall establish a fee in
10 an amount not to exceed the actual cost of performing the criminal record
11 check. If the department is required to perform only one criminal record
12 check for the person, the department may only charge one fee, regardless of
13 the number of counties in which the person is filing a motion to set aside
14 a conviction, arrest, charge or citation under this section. The department
15 shall provide a copy of the results of the criminal record check to the pros-
16 ecuting attorney.

17 “(d) A person filing a motion under this section is not required to pay the
18 filing fee established under ORS 21.135.

19 “(4)(a) If an objection is received to a motion filed under this section, the
20 court shall hold a hearing, and may require the filing of such affidavits and
21 may require the taking of such proofs as the court deems proper. The court
22 shall allow the victim to make a statement at the hearing. If the person is
23 otherwise eligible for relief under this section, the court shall grant the
24 motion and, **within 30 days after the date of the hearing**, enter an order
25 as described in paragraph [(b)] (c) of this subsection unless the court makes
26 written findings, by clear and convincing evidence, that the circumstances
27 and behavior of the person, from the date of the judgment the person is
28 seeking to set aside to the date of the hearing on the motion, do not warrant
29 granting the motion due to the circumstances and behavior creating a risk
30 to public safety. When determining whether the person's circumstances and

1 behavior create a risk to public safety, the court may only consider criminal
2 behavior, or violations of regulatory law or administrative rule enforced by
3 civil penalty or other administrative sanction that relate to the character
4 of the conviction sought to be set aside. The court may not consider nonpu-
5 nitive civil liability, monetary obligations and motor vehicle violations.

6 **“(b) If no objection to a motion filed under this section is received,**
7 **the court shall grant the motion and, within 30 days after the con-**
8 **clusion of the time period during which the prosecuting attorney may**
9 **object under subsection (3)(a) of this section, enter an order as de-**
10 **scribed in paragraph (c) of this subsection.**

11 “[*b*] (c) An order entered under this subsection shall state the original
12 arrest charge and the charge for which the person was found guilty except
13 for insanity. The order shall further state that positive identification has
14 been established by the Department of State Police and further identified as
15 to Department of State Police number or submitting agency number.

16 **“(d) The court, as part of entering an order under this subsection,**
17 **shall waive any remaining fines and fees owed by the person on the**
18 **case.**

19 “(5)(a) Upon the entry of an order under subsection (4) of this section:

20 “(A) The person, for purposes of the law, shall be deemed not to have been
21 previously found guilty except for insanity, and the court shall issue an or-
22 der sealing the records of the case, including the records of arrest, whether
23 or not the arrest resulted in a further criminal proceeding.

24 “(B) The court shall inform the person that the person’s right to possess,
25 purchase or otherwise acquire a firearm remains prohibited under federal
26 law.

27 “(b) For purposes of this subsection, records of the case do not include
28 medical records that are in the possession of the Psychiatric Security Review
29 Board, including medical evaluations and reports submitted from other
30 agencies concerning the status or compliance of the person.

1 “(6) The clerk of the court shall forward a certified copy of the order
2 entered under subsection (5) of this section to such agencies as directed by
3 the court. A certified copy shall be sent to the Psychiatric Security Review
4 Board. Upon entry of the order, the judgment of guilty except for insanity
5 shall be deemed not to have been entered, and the person may answer ac-
6 cordingly any questions relating to its occurrence.

7 “(7) For purposes of any civil action in which truth is an element of a
8 claim for relief or affirmative defense, the provisions of subsection (6) of this
9 section providing that the judgment of guilty except for insanity be deemed
10 not to have been entered do not apply and a party may apply to the court
11 for an order requiring disclosure of the official records in the case as may
12 be necessary in the interests of justice.

13 “(8) Upon motion of any prosecutor or defendant in a case involving re-
14 cords sealed under this section, supported by affidavit showing good cause,
15 the court with jurisdiction may order the reopening and disclosure of any
16 records sealed under this section for the limited purpose of assisting the in-
17 vestigation of the movant. However, such an order has no other effect on the
18 orders setting aside the judgment of guilty except for insanity.

19 “(9) A prosecuting attorney may not condition an agreement not to object
20 to the entry of a judgment of guilty except for insanity on an agreement by
21 a person to waive the ability to set aside the judgment under this section.

22 “(10) As used in this section, ‘affidavit’ includes a declaration under
23 penalty of perjury.

24 **“SECTION 3. This 2023 Act takes effect on the 91st day after the**
25 **date on which the 2023 regular session of the Eighty-second Legislative**
26 **Assembly adjourns sine die.”**

27