



**TO: Rep. Jason Kropf, Chair
Rep. Tom Andersen, Vice Chair
Rep. Kim Wallan, Vice Chair
Members of House Judiciary Committee**

**FR: Amanda Dalton
Oregon District Attorneys Association**

RE: HB 4097

February 8, 2024

Chair Kropf and Members of the House Judiciary Committee:

Thank you for the opportunity to provide testimony regarding HB 4097. ODAA has participated in a workgroup on this bill convened over the past several months by Representative Tran. The focus of the workgroup was to fix errors, add clarifying language, and further refine SB 397, which was passed in 2021 by a coalition of organizations and stakeholders with the goal of modernizing Oregon's expungement statute.

ODAA agrees with some of the proposed changes in HB 4097, has cost concerns regarding other proposals, and strongly supports adopting language to support survivors by preventing abusers from expunging their records when they have violated Contempt protective orders.

ODAA supports the technical amendment outlined in Section 1(1)(f) which clarifies that if someone is convicted of a reduced offense classification, then the applicable time period for expungement eligibility is the time period of the reduced offense for which they were convicted, not the crime that was initially charged.

We also support the technical amendment language outlined in Section 2(a). Currently SB 397 requires courts to hold a hearing if the District Attorney objects for any reason to the request for expungement. This hearing requirement applies even if the applicant is clearly not eligible for relief of their criminal record under the statute. These hearings result in unnecessary court appearances, are often upsetting for victims, and are a waste of resources. Therefore, we support this technical fix which will result in not needing to have a hearing if someone is technically ineligible under the statute for any reason other than circumstances and behavior objections by the State.

ODAA further supports the amendment to section 3(b) which requires that the Court deny the motion to expunge if there is no request for a hearing and the objections are not based on circumstances and behavior. We further appreciate the clarifying language regarding traffic violations not being eligible for expungement.

ODAA also has concerns about certain aspects of the proposed changes in HB 4097. This includes the timeframe in which the Court is supposed to enter an order given the lack of judicial resources and backlog created by the recent passage of SB 397. As a result, we would support additional funding and staff for OJD to be successful in meeting these additional demands.

Similarly, proposed changes to Section 1(a) of the ORS 137.225, not requiring outstanding fines and fees to the Court be paid, will create a disincentive for anyone to pay fines or fees, which will also create an additional burden on OJD given this loss of revenue. In this same section, the language requiring that compensatory fines and restitution must be paid to victims for a person to be eligible for expungement is very important and should not be changed.

ODAA also continues to have previously expressed concerns about the process in Section 3(a) being amended. This language changes the manner in which the expungement process is to start with the filing of the motion rather than receipt of the motion. People who are seeking to expunge their records may not send their motion to the State. If the State does not know about the motion, then we will not be able to respond. The timeframe should correspond with receipt of the motion through proper service so that District Attorneys are on notice and can properly review the petition, notify victims, and meet filing deadlines.

ODAA also has a question about the proposed 33-day timeframe in Section 3 (a) requiring the district attorney to notify a person about any objections they may have to an expungement request. ODAA would appreciate clarification regarding the reasons behind this proposal.

ODAA objects to changing Section 7(a)(B). We are opposed to removing the “arrest, citation, charge or conviction” language. This would limit the ability of prosecutors to object to an expungement if someone was convicted immediately before the arrest, citation, or charge, which creates a public safety risk.

As shared during the workgroup process, we do support the language requested by the DV Coalition to include violations of restraining orders/contempt in the timelines should be advanced in the short session and the balance of the issues be tabled to allow for further discussions in the interim.

Enclosed is our highlighted feedback to the base bill: red (need more conversations), yellow (questions for proponents), and green (where we agree with the proposed language as technical fix).

DRAFT

SUMMARY

Digest: The Act changes the process for setting aside offense convictions and dismissals. The Act makes the same changes for setting aside GEI judgments. (Flesch Readability Score: 62.7).

Modifies the process for setting aside convictions, dismissals and guilty except for insanity judgments. Modifies when the court is required to hold a hearing on and grant motions to set aside. Requires that the court enter an order within 60 days of granting a motion to set aside. Authorizes the court to waive remaining fines and fees upon entry of the order. Provides that the required time period prior to filing the motion, during which the person is required to have no convictions, applies to motions to set aside convictions only. Provides that the dismissal of a traffic violation citation may not be set aside.

A BILL FOR AN ACT

1
2 Relating to expungements; creating new provisions; and amending ORS
3 137.223 and 137.225.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 137.225 is amended to read:

6 137.225. (1)(a) At any time after the person becomes eligible as described
7 in paragraph (b) of this subsection, any person convicted of an offense who
8 has fully complied with and performed the sentence of the court for the of-
9 fense, and whose conviction is described in subsection (5) of this section, by

10 motion may apply to the court where the conviction was entered for entry
11 of an order setting aside the conviction. **A person who is still under super-**
12 **vision or who has outstanding compensatory fines or restitution as part**
13 **of the sentence for the offense that is the subject of the motion has not fully**
14 **complied with or performed the sentence of the court. The fact that a**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 person has outstanding fines and fees other than restitution and
2 compensatory fines that are part of the sentence for the offense that
3 is the subject of the motion may not be considered when determining
4 whether the person has fully complied with or performed the sentence
5 of the court.

6 (b) A person is eligible to file a motion under paragraph (a) of this sub-
7 section:

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

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

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

17 (D) For a Class B or Class C misdemeanor, a violation or the finding of
18 a person in contempt of court, one year from the date of conviction or find-
19 ing or the release of the person from imprisonment for the conviction or
20 finding sought to be set aside, whichever is later.

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

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

1 (e) Notwithstanding paragraph (b) of this subsection, a person whose
2 sentence of probation was revoked may not apply to the court for entry of
3 an order setting aside the conviction for which the person was sentenced to
4 probation for a period of three years from the date of revocation or until the
5 person becomes eligible as described in paragraph (b) of this subsection,
6 whichever occurs later.

7 **(f) If the offense classification of a conviction has been reduced by**
8 **the court, the applicable time period under paragraph (b) of this sub-**
9 **section is the time period associated with the reduced offense classi-**
10 **fication, calculated from the date of conviction or the release of the**
11 **person from imprisonment for the conviction sought to be set aside,**
12 **whichever is later.**

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

15 **(2)(a) A copy of the motion shall be served upon the office of the prose-**
16 **cuting attorney who prosecuted the offense, or who had authority to prose-**
17 **cute the charge if there was no accusatory instrument filed. The prosecuting**
18 **attorney may [object] file an objection to a motion filed under subsection**
19 **(1)(a) of this section [and shall notify the court and the person of the**
20 **objection] within 120 days of the date the motion was filed with the court.**

21 **The prosecuting attorney shall notify the court and the person of the**
22 **objection upon filing, and shall indicate in the objection whether the**
23 **objection is based on the circumstances and behavior of the person.**

24 **If the objection is based on any reason other than ~~not based on the~~**
circumstances and behavior of the

25 **person, the prosecuting attorney shall further notify the person that**
26 **the person has 33 calendar days from the date of the filing of the ob-**
27 **jection to request a hearing.**

28 (b) When a prosecuting attorney is served with a copy of a motion to set
29 aside a conviction under subsection (1)(a) of this section, the prosecuting
30 attorney shall provide a copy of the motion and notice of the hearing date
31 to the victim, if any, of the offense by mailing a copy of the motion and

1 notice to the victim's last-known address. **If the prosecuting attorney filed**
2 **an objection under paragraph (a) of this subsection that is not based**
3 **on the circumstances and behavior of the person, the prosecuting at-**
4 **torney shall notify the victim that the victim has 33 calendar days**
5 **from the date of the filing of the objection to request a hearing on**
6 **objection reasons other than circumstances and behavior of the person.**

6 (c) When a person makes a motion under this section, the person shall
7 forward to the Department of State Police a full set of the person's finger-
8 prints on a fingerprint card or in any other manner specified by the depart-
9 ment.

10 (d) When a person makes a motion under subsection (1)(a) of this section,
11 the person must pay a fee to the Department of State Police for the purpose
12 of the department performing a criminal record check. The department shall
13 establish a fee in an amount not to exceed the actual cost of performing the
14 criminal record check. If the department is required to perform only one
15 criminal record check for the person, the department may only charge one
16 fee, regardless of the number of counties in which the person is filing a
17 motion to set aside a conviction, arrest, charge or citation under this section.
18 The department shall provide a copy of the results of the criminal record
19 check to the prosecuting attorney.

20 (e) The prosecuting attorney may not charge the person a fee for per-
21 forming the requirements described in this section.

22 **(3)(a) If an objection based on the circumstances or behavior of the**
23 **person is received to a motion filed under subsection (1)(a) of this section,**
24 **or upon the request of the person or the victim, the court shall hold a**
25 **hearing, and may require the filing of such affidavits and may require the**
26 **taking of such proofs as the court deems proper.** The court shall allow the

27 victim to make a statement at the hearing. If the person is otherwise eligible
28 for relief under this section, the court shall grant the motion and enter an
29 order as described in paragraph [(b)] (c) of this subsection unless the court
30 makes written findings, by clear and convincing evidence, that the circum-
31 stances and behavior of the person, from the date of the conviction the per-

1 son is seeking to set aside to the date of the hearing on the motion, do not
 2 warrant granting the motion due to the circumstances and behavior creating
 3 a risk to public safety. When determining whether the person's circum-
 4 stances and behavior create a risk to public safety, the court may only con-
 5 sider criminal behavior, or violations of regulatory law or administrative
 6 rule enforced by civil penalty or other administrative sanction that relate
 7 to the character of the conviction sought to be set aside. The court may not
 8 consider nonpunitive civil liability, monetary obligations and motor vehicle
 9 ~~violations. Upon granting the motion, the court shall, within 60 days after~~
 10 ~~the date of the hearing,~~ enter an appropriate order containing the original
 11 ~~arrest or citation charge, the conviction charge, if different from the ori-~~
 12 ~~ginal, the date of charge, the submitting agency and the disposition of the~~
 13 ~~charge.~~ Upon the entry of the order, the person for purposes of the law shall
 14 be deemed not to have been previously convicted, and the court shall issue
 15 an order sealing the record of conviction and other official records in the
 16 case, including the records of arrest, citation or charge.

17 **(b) If the court receives an objection that is not based on the cir-**
 18 **cumstances and behavior of the person and no request for a hearing**
 19 **is received, the court shall deny the motion.**

20 ~~[(b)] (c) The court shall grant a motion filed under subsection (1)(c) or~~
 21 ~~(d) of this section, or under subsection (1)(a) of this section if no objection~~
 22 ~~to the motion is received, and shall within 60 days after the conclusion~~
 23 ~~of the time period during which the prosecuting attorney may object~~
 24 ~~under subsection (2)(a) of this section for a motion filed under sub-~~
 25 ~~section (1)(a) of this section, or within 60 days after the date the mo-~~
 26 ~~tion was filed with the court for a motion filed under subsection (1)(c)~~
 27 ~~or (d) of this section,~~ enter an appropriate order containing the original
 28 ~~arrest or citation charge, the conviction charge, if applicable and different~~
 29 ~~from the original, the date of charge, the submitting agency and the dispo-~~
 30 ~~sition of the charge.~~ Upon the entry of the order, the person for purposes
 31 of the law shall be deemed not to have been previously convicted, arrested,

1 cited or charged, and the court shall issue an order sealing all official re-
2 cords in the case, including the records of arrest, citation or charge, whether
3 or not the arrest, citation or charge resulted in a further criminal proceed-
4 ing.

~~5 (d) The court, as part of entering an order under this subsection,
6 may waive any remaining fines and fees owed by the person
on the
7 offense other than compensatory fines payable to the victim of
the
8 offense.~~

97 (4) The clerk of the court shall forward a certified copy of the order to
108 such agencies as directed by the court. A certified copy must be sent to the
119 Department of Corrections when the order concerns a conviction. Upon entry
1210 of the order, the conviction, arrest, citation, charge or other proceeding shall
1311 be deemed not to have occurred, and the person may answer accordingly any
1412 questions relating to its occurrence.

1513 (5) The provisions of subsection (1)(a) of this section apply to a conviction
1614 for:

1715 (a) A Class B felony, except for a violation of ORS 166.429 or any crime
1816 classified as a person felony as defined in the rules of the Oregon Criminal
1917 Justice Commission.

2018 (b) Any misdemeanor, Class C felony or felony punishable as a
2119 misdemeanor pursuant to ORS 161.705.

2220 (c) An offense constituting a violation under state law or local ordinance.

2321 (d) An offense committed before January 1, 1972, that, if committed after
2422 that date, would qualify for an order under this section.

2523 (e) The finding of a person in contempt of court.

2624 (6) Notwithstanding subsection (5) of this section, the provisions of sub-
2725 section (1)(a) of this section do not apply to a conviction for:

2826 (a) Criminal mistreatment in the second degree under ORS 163.200 if the
2927 victim at the time of the crime was 65 years of age or older.

3028 (b) Criminal mistreatment in the first degree under ORS 163.205 if the

~~3129~~ victim at the time of the crime was 65 years of age or older, or when the

1 offense constitutes child abuse as defined in ORS 419B.005.

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

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

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

7 (f) Any sex crime, unless:

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

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

12 (ii) The person has not been convicted of, found guilty except for insanity
13 of or found to be within the jurisdiction of the juvenile court based on a
14 crime for which the court is prohibited from setting aside the conviction
15 under this section; or

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

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

18 (ii) The person is:

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

20 (II) At least two years and 180 days older, but less than three years and
21 180 days older, than the victim and the court finds that setting aside the
22 conviction is in the interests of justice and of benefit to the person and the
23 community;

24 (iii) The victim's lack of consent was due solely to incapacity to consent
25 by reason of being less than a specified age;

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

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

31 (vi) Each conviction or finding described in this subparagraph involved

1 the same victim.

2 (7)(a) Notwithstanding subsection (5) of this section, the provisions of
3 subsection (1)(a) of this section do not apply to:

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

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

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

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

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

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

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 [(c)] (b) A single violation, other than a motor vehicle violation, within
20 the time period specified in paragraph [(b)] (a)(B) of this subsection is not
21 a conviction under this subsection. Notwithstanding subsection (1) of this
22 section, a conviction that has been set aside under this section shall be
23 considered for the purpose of determining whether paragraph [(b)] (a)(B) of
24 this subsection is applicable.

25 [(d) A person who at the time the motion authorized by subsection (1) of
26 this section is pending before the court is under charge of commission of any
27 crime.]

28 (8) The provisions of subsection (1)(c) or (d) of this section do not apply
29 to:

30 (a) An arrest or citation for driving while under the influence of
31 intoxicants if the charge is dismissed as a result of the person's successful

1 completion of a diversion agreement described in ORS 813.200.

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

3 **(c) A person who at the time the motion described in this section**
4 **is pending before the court is under charge of commission of any**
5 **crime.**

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

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

16 (11)(a) Upon motion of any prosecutor or defendant in a case involving
17 records sealed under this section, supported by affidavit showing good cause,
18 the court with jurisdiction may order the reopening and disclosure of any
19 records sealed under this section for the limited purpose of assisting the in-
20 vestigation of the movant. However, such an order has no other effect on the
21 orders setting aside the conviction or the arrest, citation or charge record.

22 (b) Notwithstanding paragraph (a) of this subsection, when an arrest, ci-
23 tation or charge described in subsection (1)(c) of this section is set aside, a
24 prosecuting attorney may, for the purpose of initiating a criminal proceeding
25 within the statute of limitations, unseal the records sealed under this section
26 by notifying the court with jurisdiction over the charge, record of arrest or
27 citation. The prosecuting attorney shall notify the person who is the subject
28 of the records of the unsealing under this paragraph by sending written no-
29 tification to the person's last known address.

30 (12) The State Court Administrator shall create forms to be used
31 throughout the state for motions and proposed orders described in this sec-

1 tion.

2 (13) As used in this section:

3 (a) "Affidavit" includes a declaration under penalty of perjury.

4 (b) "Sex crime" has the meaning given that term in ORS 163A.005.

5 **SECTION 2.** ORS 137.223 is amended to read:

6 137.223. (1) A person who has been found guilty except for insanity of an
7 offense for which, if convicted, the person could apply for entry of an order
8 setting aside the conviction pursuant to ORS 137.225, may by motion apply
9 to the court for entry of an order setting aside the judgment finding the
10 person guilty except for insanity of the offense.

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

14 (A) For a judgment of guilty except for insanity on a Class B felony,
15 seven years from the date of entry of the judgment or the date the person
16 is no longer under the jurisdiction of the Psychiatric Security Review Board,
17 whichever is later.

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

21 (C) For a judgment of guilty except for insanity on a Class A
22 misdemeanor, three years from the date of entry of the judgment or the date
23 the person is no longer under the jurisdiction of the board, whichever is
24 later.

25 (D) For a judgment of guilty except for insanity on a Class B or Class
26 C misdemeanor, one year from the date of entry of the judgment or the date
27 the person is no longer under the jurisdiction of the board, whichever is
28 later.

29 (b) A person is eligible to have a judgment of guilty except for insanity
30 set aside under this section if the person has no other findings of guilty ex-
31 cept for insanity and no convictions for offenses other than motor vehicle

1 violations within the following time periods prior to filing the motion:

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

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

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

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

10 (3)(a) A copy of the motion shall be served upon the office of the prose-
11 cuting attorney who prosecuted the offense. The prosecuting attorney may
12 [object] **file an objection** to the motion [filed and shall notify the court and
13 the person of the objection] within 120 days of [receiving the motion] **the date**
14 **the motion was filed with the court.** The prosecuting attorney shall
15 **notify the court and the person of the objection upon filing, and shall**
16 **indicate in the objection whether the objection is based on the cir-**
17 **cumstances and behavior of the person. If the objection is not based**
18 **on the circumstances and behavior of the person, the prosecuting at-**
19 **torney shall further notify the person that the person has 33 calendar**
20 **days from the date of the filing of the objection to request a hearing.**

21 (b) When a prosecuting attorney is served with a copy of a motion to set
22 aside a judgment of guilty except for insanity under this section, the prose-
23 cuting attorney shall provide a copy of the motion and notice of the hearing
24 date to the victim, if any, of the offense by mailing a copy of the motion and
25 notice to the victim's last-known address. **If the prosecuting attorney filed**
26 **an objection under paragraph (a) of this subsection that is not based**
27 **on the circumstances and behavior of the person, the prosecuting at-**
28 **torney shall notify the victim that the victim has 33 calendar days**
29 **from the date of the filing of the objection to request a hearing.**

30 (c) When a person files a motion under this section, the person must pay
31 a fee to the Department of State Police for the purpose of the department

1 performing a criminal record check, and shall forward to the department a
2 full set of the person's fingerprints on a fingerprint card or in any other
3 manner specified by the department. The department shall establish a fee in
4 an amount not to exceed the actual cost of performing the criminal record
5 check. If the department is required to perform only one criminal record
6 check for the person, the department may only charge one fee, regardless of
7 the number of counties in which the person is filing a motion to set aside
8 a conviction, arrest, charge or citation under this section. The department
9 shall provide a copy of the results of the criminal record check to the pro-
10 secuting attorney.

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

13 (4)(a) If an objection based on the circumstances or behavior of the
14 person is received to a motion filed under this section, or upon the request
15 of the person or the victim, the court shall hold a hearing, and may re-
16 quire the filing of such affidavits and may require the taking of such proofs
17 as the court deems proper. The court shall allow the victim to make a
18 statement at the hearing. If the person is otherwise eligible for relief under
19 this section, the court shall grant the motion and, within 60 days after the
20 date of the hearing, enter an order as described in paragraph (b) (d) of
21 this subsection unless the court makes written findings, by clear and con-
22 vincing evidence, that the circumstances and behavior of the person, from
23 the date of the judgment the person is seeking to set aside to the date of the
24 hearing on the motion, do not warrant granting the motion due to the cir-
25 cumstances and behavior creating a risk to public safety. When determining
26 whether the person's circumstances and behavior create a risk to public
27 safety, the court may only consider criminal behavior, or violations of regu-
28 latory law or administrative rule enforced by civil penalty or other admin-
29 istrative sanction that relate to the character of the conviction sought to
30 be set aside. The court may not consider nonpunitive civil liability, mone-
31 tary obligations and motor vehicle violations.

1 (b) If no objection to the motion filed under this section is received,
2 the court shall grant the motion and, within 60 days after the con-
3 clusion of the time period during which the prosecuting attorney may
4 object under subsection (3)(a) of this section, enter an order as de-
5 scribed in paragraph (d) of this subsection.

6 (c) If the court receives an objection that is not based on the cir-
7 cumstances and behavior of the person and no request for a hearing
8 is received, the court shall deny the motion.

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

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

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

19 (B) The court shall inform the person that the person's right to possess,
20 purchase or otherwise acquire a firearm remains prohibited under federal
21 law.

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

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

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

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

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

16 (10) As used in this section, "affidavit" includes a declaration under pen-
17 alty of perjury.

18 **SECTION 3. The amendments to ORS 137.223 and 137.225 by sections**
19 **1 and 2 of this 2024 Act apply to motions filed on or after the effective**
20 **date of this 2024 Act.**

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