

A-Engrossed House Bill 2492

Ordered by the House April 16
Including House Amendments dated April 16

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes the process for a person to set aside offenses and contempt. (Flesch Readability Score: 65.7).

[Digest: The Act tells the State Court Administrator to look at courts and make a report. (Flesch Readability Score: 78.8).]

[Requires the State Court Administrator to study courts and submit findings to the interim committees of the Legislative Assembly related to the judiciary not later than September 15, 2026.]

[Sunsets on January 2, 2027.]

Modifies the process for setting aside convictions, dismissals and contempt of court findings and guilty except for insanity judgments. Increases the waiting period for setting aside certain types of contempt of court findings. Provides that the required time period prior to filing the motion, during which the person is required to have no convictions or specified contempt findings, 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 courts; creating new provisions; and amending ORS 137.225.

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

4 **SECTION 1.** ORS 137.225, as amended by section 55, chapter 70, Oregon Laws 2024, is amended
5 to read:

6 137.225. (1)(a) At any time after the person becomes eligible as described in paragraph (b) of this
7 subsection, any person convicted of an offense, **or found in contempt of court**, who has fully
8 complied with and performed the sentence of the court for the offense **or contempt finding**, and
9 whose conviction **or finding** is described in subsection (5) of this section, by motion may apply to
10 the court where the conviction **or finding** was entered for entry of an order setting aside the con-
11 viction **or finding**. A person who is still under supervision as part of the sentence for the offense
12 that is the subject of the motion has not fully complied with or performed the sentence of the court.

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

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

16 (B) For a Class C felony **or a finding of a person in contempt of court for violating an order**
17 **related to abuse or a person crime**, five years from the date of conviction **or finding**, or the re-
18 lease of the person from imprisonment for the conviction **or finding** sought to be set aside, which-
19 ever is later.

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

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 (D) For a Class B or Class C misdemeanor, a violation or *[the]* a finding of a person in contempt
2 of court **not described in subparagraph (B) of this paragraph**, one year from the date of con-
3 viction or finding, or the release of the person from imprisonment for the conviction or finding
4 sought to be set aside, whichever is later.

5 (c) If no accusatory instrument is filed, at any time after 60 days from the date the prosecuting
6 attorney indicates that the state has elected not to proceed with a prosecution or contempt pro-
7 ceeding, an arrested, cited or charged person may apply to the court in the county in which the
8 person was arrested, cited or charged, for entry of an order setting aside the record of the arrest,
9 citation or charge.

10 (d) At any time after an acquittal or a dismissal other than a dismissal described in paragraph
11 (c) of this subsection, an arrested, cited or charged person may apply to the court in the county in
12 which the person was arrested, cited or charged, for entry of an order setting aside the record of
13 the arrest, citation or charge.

14 (e) Notwithstanding paragraph (b) of this subsection, a person whose sentence of probation was
15 revoked may not apply to the court for entry of an order setting aside the conviction **or finding** for
16 which the person was sentenced to probation for a period of three years from the date of revocation
17 or until the person becomes eligible as described in paragraph (b) of this subsection, whichever oc-
18 curs later.

19 **(f) If the offense classification of a conviction has been reduced by the court, the appli-**
20 **cable time period under paragraph (b) of this subsection is the time period associated with**
21 **the reduced offense classification, calculated from the date of conviction or the release of**
22 **the person from imprisonment for the conviction sought to be set aside, whichever is later.**

23 *[(f)]* (g) A person filing a motion under this section is not required to pay the filing fee estab-
24 lished under ORS 21.135.

25 (2)(a) A copy of the motion shall be served upon the office of the prosecuting attorney who
26 prosecuted the offense **or charge of contempt**, or who had authority to prosecute the charge if
27 there was no accusatory instrument filed. The prosecuting attorney may object to a motion filed
28 under subsection (1)(a) of this section and shall notify the court and the person of the objection
29 within 120 days of the date the motion was filed with the court.

30 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction **or**
31 **finding** under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the
32 motion and notice of the hearing date to the victim, if any, *[of the offense]* by mailing a copy of the
33 motion and notice to the victim's last-known address.

34 (c) When a person makes a motion under this section, the person shall forward to the Depart-
35 ment of State Police a full set of the person's fingerprints on a fingerprint card or in any other
36 manner specified by the department.

37 (d) When a person makes a motion under subsection (1)(a) of this section, the person must pay
38 a fee to the Department of State Police for the purpose of the department performing a criminal
39 record check. The department shall establish a fee in an amount not to exceed the actual cost of
40 performing the criminal record check. If the department is required to perform only one criminal
41 record check for the person, the department may only charge one fee, regardless of the number of
42 counties in which the person is filing a motion to set aside a conviction, **finding**, arrest, charge or
43 citation under this section. The department shall provide a copy of the results of the criminal record
44 check to the prosecuting attorney.

45 (e) The prosecuting attorney may not charge the person a fee for performing the requirements

1 described in this section.

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

21 (b) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or under
22 subsection (1)(a) of this section if no objection to the motion is received, and shall enter an appro-
23 priate order containing the original arrest or citation charge, the conviction charge, if applicable
24 and different from the original, the date of charge, the submitting agency and the disposition of the
25 charge. Upon the entry of the order, the person for purposes of the law shall be deemed not to have
26 been previously convicted, arrested, cited or charged, and the court shall issue an order sealing all
27 official records in the case, including the records of arrest, citation or charge, whether or not the
28 arrest, citation or charge resulted in a further criminal proceeding.

29 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
30 by the court. A certified copy must be sent to the Department of Corrections when the order con-
31 cerns a conviction. Upon entry of the order, the conviction, arrest, citation, charge or other pro-
32 ceeding shall be deemed not to have occurred, and the person may answer accordingly any questions
33 relating to its occurrence.

34 (5) The provisions of subsection (1)(a) of this section apply to [*a conviction for*] **the following**
35 **convictions and findings:**

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

38 (b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS
39 161.705.

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

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

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

44 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
45 tion do not apply to a conviction for:

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

3 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
4 crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS
5 419B.005.

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

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

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

11 (f) Any sex crime, unless:

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

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

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

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

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

20 (ii) The person is:

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

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

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

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

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

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

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

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

35 [(b)] (B) A person convicted[, *within the following applicable time period immediately preceding*
36 *the filing of the motion pursuant to subsection (1) of this section,*] of any other offense, excluding mo-
37 tor vehicle violations and unlawful possession of a controlled substance constituting a drug
38 enforcement misdemeanor as described in section 35, chapter 70, Oregon Laws 2024, **or found in**
39 **contempt of court for violating an order related to abuse or a person crime, within the fol-**
40 **lowing applicable time period immediately preceding the filing of the motion pursuant to**
41 **subsection (1)(a) of this section**, whether or not the other conviction is for conduct associated
42 with the same criminal episode that caused the [*arrest, citation, charge or*] conviction, **or with the**
43 **same course of conduct that caused the finding**, that is sought to be set aside:

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

45 [(B)] (ii) For a motion concerning a Class C felony **or a finding of a person in contempt of**

1 **court for violating an order related to abuse or a person crime**, five years.

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

3 [(D)] (iv) For a motion concerning a Class B or Class C misdemeanor a violation or a finding
4 of contempt of court **not described in sub-subparagraph (ii) of this subparagraph**, one year.

5 **(C) A person who at the time the motion described in this section is pending before the**
6 **court is under charge of commission of any crime or contempt of court for violating an order**
7 **related to abuse or a person crime.**

8 [(c)] (b) A single violation, other than a motor vehicle violation, within the time period specified
9 in paragraph [(b)] (a)(B) of this subsection is not a conviction under this subsection.
10 Notwithstanding subsection (1) of this section, a conviction that has been set aside under this sec-
11 tion shall be considered for the purpose of determining whether paragraph [(b)] (a)(B) of this sub-
12 section is applicable.

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

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

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

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

20 **(c) A person who at the time the motion described in this section is pending before the**
21 **court is under charge of commission of any crime or contempt of court for violating an order**
22 **related to abuse or a person crime.**

23 (9) The provisions of subsection (1) of this section apply to convictions, **findings**, arrests, cita-
24 tions and charges that occurred before, as well as those that occurred after, September 9, 1971.
25 There is no time limit for making an application.

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

31 (11)(a) Upon motion of any prosecutor or defendant in a case involving records sealed under this
32 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
33 pening and disclosure of any records sealed under this section for the limited purpose of assisting
34 the investigation of the movant. However, such an order has no other effect on the orders setting
35 aside the conviction **or finding**, or the arrest, citation or charge record.

36 (b) Notwithstanding paragraph (a) of this subsection, when an arrest, citation or charge de-
37 scribed in subsection (1)(c) of this section is set aside, a prosecuting attorney may, for the purpose
38 of initiating a criminal proceeding within the statute of limitations, unseal the records sealed under
39 this section by notifying the court with jurisdiction over the charge, record of arrest or citation.
40 The prosecuting attorney shall notify the person who is the subject of the records of the unsealing
41 under this paragraph by sending written notification to the person's last known address.

42 (12) The State Court Administrator shall create forms to be used throughout the state for
43 motions and proposed orders described in this section.

44 (13) As used in this section:

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

- 1 **(b) “Order related to abuse or a person crime” means:**
2 **(A) A court order issued under ORS 107.095 (1)(c) or (d), 107.700 to 107.735, 124.005 to**
3 **124.040, 133.035, 135.247 or 163.760 to 163.777; or**
4 **(B) A court order arising from a criminal case involving:**
5 **(i) A sex crime;**
6 **(ii) Stalking under ORS 163.732; or**
7 **(iii) A person felony or person Class A misdemeanor, as those terms are defined in the**
8 **rules of the Oregon Criminal Justice Commission, committed against the person’s family or**
9 **household member as defined in ORS 135.230.**

10 **[(b)] (c) “Sex crime” has the meaning given that term in ORS 163A.005.**

11 **SECTION 2. The amendments to ORS 137.225 by section 1 of this 2025 Act apply to**
12 **motions filed on or after the effective date of this 2025 Act.**

13