

A-Engrossed
House Bill 2557

Ordered by the House February 24
Including House Amendments dated February 24

Sponsored by Representative GREENLICK, Senator GELSER; Representatives BARNHART, FREDERICK, VEGA PEDERSON, WILLIAMSON (Pre-session filed.)

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.

[Directs court, Psychiatric Security Review Board and Oregon Health Authority to consider recovery and community reintegration, in addition to protection of society, in decisions concerning persons found guilty except for insanity and certain young persons with mental illness.]

Creates process by which person found guilty except for insanity can apply to court for order setting aside judgment of guilty except for insanity. Specifies criteria for person to qualify for order.

Adds Psychiatric Security Review Board, Department of Human Services and Oregon Health Authority to certain definitions that apply to expunction of juvenile case records.

A BILL FOR AN ACT

1
2 Relating to persons with mental illness; creating new provisions; and amending ORS 419A.260.

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

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

8 **(2) A person described in subsection (1) of this section may file the motion to set aside**
9 **a judgment of guilty except for insanity any time after three years from the date of entry**
10 **of the judgment of guilty except for insanity, provided that:**

11 **(a) The person is no longer under the jurisdiction of the Psychiatric Security Review**
12 **Board or the Oregon Health Authority; and**

13 **(b) The person has no other findings of guilty except for insanity within the 10 years**
14 **prior to filing the motion and no convictions for offenses other than motor vehicle violations**
15 **within the 10 years prior to filing the motion.**

16 **(3)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served**
17 **upon the office of the prosecuting attorney who prosecuted the offense and opportunity shall**
18 **be given to contest the motion. The fingerprint card with the notation "motion for setting**
19 **aside judgment of guilty except for insanity" shall be forwarded to the Department of State**
20 **Police. Information resulting from the fingerprint search along with the fingerprint card**
21 **shall be returned to the prosecuting attorney.**

22 **(b) When a prosecuting attorney is served with a copy of a motion to set aside a judg-**
23 **ment of guilty except for insanity under this section, the prosecuting attorney shall provide**
24 **a copy of the motion and notice of the hearing date to the victim, if any, of the offense by**

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 mailing a copy of the motion and notice to the victim's last-known address.

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

7 (d) In addition to the fee established under paragraph (c) of this subsection, the person
8 must pay the filing fee established under ORS 21.135.

9 (4)(a) Upon hearing the motion, the court may require the filing of such affidavits and
10 may require the taking of such proofs as the court deems proper. The court shall allow the
11 victim, if any, to make a statement at the hearing.

12 (b) Except as otherwise provided in paragraph (c) of this subsection, if the court deter-
13 mines that the circumstances and behavior of the person from the date of the judgment of
14 guilty except for insanity to the date of the hearing on the motion warrant the court
15 granting the motion, the court shall enter an order setting aside the judgment of guilty ex-
16 cept for insanity.

17 (c) The court may deny the motion if the court makes written findings by clear and
18 convincing evidence that granting the motion would not be in the best interests of justice
19 and the person is seeking to set aside a judgment of guilty except for insanity of an offense
20 described in ORS 137.225 (13).

21 (d) An order entered under this subsection shall state the original arrest charge and the
22 charge for which the person was found guilty except for insanity. The order shall further
23 state that positive identification has been established by the Department of State Police and
24 further identified as to Department of State Police number or submitting agency number.

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

26 (a) The person, for purposes of the law, shall be deemed not to have been previously
27 found guilty except for insanity, and the court shall issue an order sealing the records of the
28 case, including the records of arrest whether or not the arrest resulted in a further criminal
29 proceeding.

30 (b) The court shall inform the person that the person's right to possess, purchase or
31 otherwise acquire a firearm remains prohibited under federal law.

32 (6) The clerk of the court shall forward a certified copy of the order entered under sub-
33 section (5) of this section to such agencies as directed by the court. A certified copy shall
34 be sent to the Psychiatric Security Review Board or the Oregon Health Authority, as ap-
35 propriate. Upon entry of the order, the judgment of guilty except for insanity shall be deemed
36 not to have been entered, and the person may answer accordingly any questions relating to
37 its occurrence.

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

43 (8) Upon motion of any prosecutor or defendant in a case involving records sealed under
44 this section, supported by affidavit showing good cause, the court with jurisdiction may order
45 the reopening and disclosure of any records sealed under this section for the limited purpose

1 **of assisting the investigation of the movant. However, such an order has no other effect on**
2 **the orders setting aside the judgment of guilty except for insanity.**

3 **SECTION 2.** ORS 419A.260 is amended to read:

4 419A.260. (1) As used in this section and ORS 419A.262:

5 (a) "Contact" means any instance in which a person's act or behavior, or alleged act or behav-
6 ior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to
7 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-
8 section.

9 (b) "Expunction" means:

10 (A) The removal and destruction or sealing of a judgment or order related to a contact and all
11 records and references; and

12 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-
13 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in
14 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a
15 stamp or statement identifying the name of the individual, the date of expunction and instruction
16 that no further reference shall be made to the material that is subject to the expunction order ex-
17 cept upon an order of a court of competent jurisdiction.

18 (c) "Person" includes a person under 18 years of age.

19 (d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which
20 contains information relating to a person's contact with any law enforcement agency, [or] juvenile
21 court or juvenile department, **the Psychiatric Security Review Board, the Department of Hu-**
22 **man Services or the Oregon Health Authority** and is kept manually, through the use of elec-
23 tronic data processing equipment, or by any other means by a law enforcement or public
24 investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon.
25 "Record" does not include:

26 (A) A transcript of a student's Youth Corrections Education Program academic record;

27 (B) Material on file with a public agency which is necessary for obtaining federal financial
28 participation regarding financial assistance or services on behalf of a person who has had a contact;

29 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and
30 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

31 (D) Police and court records related to an order of waiver where the matter is still pending in
32 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

33 (E) Records related to a support obligation;

34 (F) Medical records **other than those related to a finding of responsible except for insanity**
35 **under ORS 419C.411;**

36 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;

37 (H) Any law enforcement record of a person who currently does not qualify for expunction or
38 of current investigations or cases waived to the adult court;

39 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

40 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
41 within the jurisdiction of the court based upon the person's commission of an act which if done by
42 an adult would constitute one of the following offenses:

43 (i) Aggravated murder under ORS 163.095;

44 (ii) Murder under ORS 163.115;

45 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;

- 1 (iv) Manslaughter in the first degree under ORS 163.118;
2 (v) Manslaughter in the second degree under ORS 163.125;
3 (vi) Criminally negligent homicide under ORS 163.145;
4 (vii) Assault in the first degree under ORS 163.185;
5 (viii) Criminal mistreatment in the first degree under ORS 163.205;
6 (ix) Kidnapping in the first degree under ORS 163.235;
7 (x) Rape in the third degree under ORS 163.355;
8 (xi) Rape in the second degree under ORS 163.365;
9 (xii) Rape in the first degree under ORS 163.375;
10 (xiii) Sodomy in the third degree under ORS 163.385;
11 (xiv) Sodomy in the second degree under ORS 163.395;
12 (xv) Sodomy in the first degree under ORS 163.405;
13 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
14 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
15 (xviii) Sexual abuse in the third degree under ORS 163.415;
16 (xix) Sexual abuse in the second degree under ORS 163.425;
17 (xx) Sexual abuse in the first degree under ORS 163.427;
18 (xxi) Promoting prostitution under ORS 167.012;
19 (xxii) Compelling prostitution under ORS 167.017;
20 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
21 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
22 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
23 second degree and criminally negligent homicide;
- 24 (K) Blood samples, buccal samples and other physical evidence and identification information
25 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
26 181.085 or 419C.473; or
- 27 (L) Records maintained in the Law Enforcement Data System under ORS 181.810.
- 28 (e) "Termination" means:
- 29 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
30 the final disposition of a case by informal means, by a decision not to place the person on probation
31 or make the person a ward of the court after the person has been found to be within the court's
32 jurisdiction[,] or by a discontinuance of probation, [or] of the court's wardship **or of the jurisdic-**
33 **tion of the Psychiatric Security Review Board, the Oregon Health Authority or the Depart-**
34 **ment of Human Services.**
- 35 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
36 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
37 disposition of the person's most recent contact with a law enforcement agency.
- 38 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
39 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
40 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
41 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
42 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
43 a sex offender provided under ORS 181.823, at the following times:
- 44 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
45 ment;

- 1 (b) At the time of termination;
- 2 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
- 3 department or motion on a juvenile court; and
- 4 (d) At the time of notice of execution of an expunction order.

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