

Senate Bill 954

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon State Police)

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 **as introduced**.

Increases to \$89 amount person must pay Department of State Police when making motion for order setting aside conviction.

Increases fee to \$22 when department conducts fingerprint check of applicant for concealed handgun license.

Increases fee to \$25 when department performs criminal history record check as part of transfer of firearm.

A BILL FOR AN ACT

1
2 Relating to Department of State Police; creating new provisions; and amending ORS 137.225, 166.291
3 and 166.414.

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 lapse of three years from the date of pronouncement of
7 judgment, any defendant who has fully complied with and performed the sentence of the court and
8 whose conviction is described in subsection (5) of this section by motion may apply to the court
9 wherein that conviction was entered for entry of an order setting aside the conviction; or

10 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
11 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
12 son may apply to the court which would have jurisdiction over the crime for which the person was
13 arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing
14 the one-year period, time during which the arrested person has secreted himself or herself within
15 or without the state shall not be included.

16 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
17 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
18 to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to
19 contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or
20 "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
21 of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search
22 along with the fingerprint card shall be returned to the prosecuting attorney.

23 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
24 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
25 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
26 victim's last-known address.

27 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
28 a fee of [~~\$80~~] **\$89**. The person shall attach a certified check payable to the Department of State
29 Police in the amount of [~~\$80~~] **\$89** to the fingerprint card that is served upon the prosecuting attor-

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 ney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the
2 Department of State Police Bureau of Criminal Identification.

3 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
4 the taking of such proofs as it deems proper. The court shall allow the victim to make a statement
5 at the hearing. Except as otherwise provided in subsection (11) of this section, if the court deter-
6 mines that the circumstances and behavior of the applicant from the date of conviction, or from the
7 date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
8 the conviction, or the arrest record as the case may be, it shall enter an appropriate order which
9 shall state the original arrest charge and the conviction charge, if any and if different from the or-
10 iginal, date of charge, submitting agency and disposition. The order shall further state that positive
11 identification has been established by the bureau and further identified as to state bureau number
12 or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law
13 shall be deemed not to have been previously convicted, or arrested as the case may be, and the
14 court shall issue an order sealing the record of conviction and other official records in the case,
15 including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

16 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
17 by the court. A certified copy must be sent to the Department of Corrections when the person has
18 been in the custody of the Department of Corrections. Upon entry of such an order, such conviction,
19 arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer
20 accordingly any questions relating to their occurrence.

21 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

22 (a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
23 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

24 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as
25 a felony only.

26 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
27 for:

28 (A) Any sex crime; and

29 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

30 (i) Criminal mistreatment in the first degree under ORS 163.205; and

31 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

32 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
33 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
34 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

35 (e) A violation, whether under state law or local ordinance.

36 (f) An offense committed before January 1, 1972, which if committed after that date would be:

37 (A) A Class C felony, except for any sex crime or for the following crimes when they would
38 constitute child abuse as defined in ORS 419B.005:

39 (i) Criminal mistreatment in the first degree under ORS 163.205; and

40 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

41 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
42 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
43 in ORS 419B.005:

44 (i) Criminal mistreatment in the first degree under ORS 163.205; and

45 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

1 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
2 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

3 (D) A violation.

4 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
5 do not apply to:

6 (a) A person convicted of, or arrested for, a state or municipal traffic offense;

7 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
8 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
9 whether or not the other conviction is for conduct associated with the same criminal episode that
10 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
11 section, a conviction which has been set aside under this section shall be considered for the purpose
12 of determining whether this paragraph is applicable; or

13 (c) 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 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within
16 the three-year period immediately preceding the filing of the motion for any offense, excluding motor
17 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that
18 caused the arrest that is sought to be set aside.

19 (8) The provisions of subsection (1) of this section apply to convictions and arrests which oc-
20 curred before, as well as those which occurred after, September 9, 1971. There shall be no time limit
21 for making such application.

22 (9) For purposes of any civil action in which truth is an element of a claim for relief or affir-
23 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
24 or other proceeding be deemed not to have occurred shall not apply and a party may apply to the
25 court for an order requiring disclosure of the official records in the case as may be necessary in the
26 interest of justice.

27 (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this
28 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
29 pening and disclosure of any records sealed under this section for the limited purpose of assisting
30 the investigation of the movant. However, such an order shall have no other effect on the orders
31 setting aside the conviction or the arrest record.

32 (11) Unless the court makes written findings by clear and convincing evidence that granting the
33 motion would not be in the best interests of justice, the court shall grant the motion and enter an
34 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
35 following crimes and is otherwise eligible for relief under this section:

36 (a) Abandonment of a child, ORS 163.535.

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

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

39 (d) Coercion, ORS 163.275.

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

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

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

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

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

45 (j) Criminally negligent homicide, ORS 163.145.

1 (k) Attempted robbery in the second degree, ORS 164.405.

2 (L) Robbery in the third degree, ORS 164.395.

3 (m) Supplying contraband, ORS 162.185.

4 (n) Unlawful use of a weapon, ORS 166.220.

5 (12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

6 **SECTION 2.** ORS 166.291 is amended to read:

7 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed
8 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set
9 out in this section, shall issue the person a concealed handgun license if the person:

10 (a)(A) Is a citizen of the United States; or

11 (B) Is a legal resident alien who can document continuous residency in the county for at least
12 six months and has declared in writing to the Immigration and Naturalization Service the intent to
13 acquire citizenship status and can present proof of the written declaration to the sheriff at the time
14 of application for the license;

15 (b) Is at least 21 years of age;

16 (c) Has a principal residence in the county in which the application is made;

17 (d) Has no outstanding warrants for arrest;

18 (e) Is not free on any form of pretrial release;

19 (f) Demonstrates competence with a handgun by any one of the following:

20 (A) Completion of any hunter education or hunter safety course approved by the State Depart-
21 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
22 of the course;

23 (B) Completion of any National Rifle Association firearms safety or training course if handgun
24 safety was a component of the course;

25 (C) Completion of any firearms safety or training course or class available to the general public
26 offered by law enforcement, community college, or private or public institution or organization or
27 firearms training school utilizing instructors certified by the National Rifle Association or a law
28 enforcement agency if handgun safety was a component of the course;

29 (D) Completion of any law enforcement firearms safety or training course or class offered for
30 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
31 cers if handgun safety was a component of the course;

32 (E) Presents evidence of equivalent experience with a handgun through participation in organ-
33 ized shooting competition or military service;

34 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
35 revoked; or

36 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
37 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
38 was a component of the course;

39 (g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295,
40 of a felony;

41 (h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS
42 161.295, of a misdemeanor within the four years prior to the application;

43 (i) Has not been committed to the Department of Human Services under ORS 426.130;

44 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that
45 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

1 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,
2 while a minor, the person was found to be within the jurisdiction of the juvenile court for having
3 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
4 volving violence, as defined in ORS 166.470; and

5 (L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,
6 107.700 to 107.732 or 163.738.

7 (2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or
8 has had the person’s record expunged under the laws of this state or equivalent laws of other ju-
9 risdications is not subject to the disabilities in subsection (1)(g) to (k) of this section.

10 (3) Before the sheriff may issue a license:

11 (a) The application must state the applicant’s legal name, current address and telephone number,
12 date and place of birth, hair and eye color and height and weight. The application must also list the
13 applicant’s residence address or addresses for the previous three years. The application must contain
14 a statement by the applicant that the applicant meets the requirements of subsection (1) of this
15 section. The application may include the Social Security number of the applicant if the applicant
16 voluntarily provides this number. The application must be signed by the applicant.

17 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff
18 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to
19 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal
20 records check is necessary, the sheriff shall request the Department of State Police to conduct the
21 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal
22 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records
23 check and may not keep any record of the fingerprints. The Department of State Police shall report
24 the results of the fingerprint-based criminal records check to the sheriff. The Department of State
25 Police shall also furnish the sheriff with any information about the applicant that the Department
26 of State Police may have in its possession from its central bureau of criminal identification includ-
27 ing, but not limited to, manual or computerized criminal offender information.

28 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-
29 quest. The forms shall be uniform throughout the state in substantially the following form:

30 _____
31
32 APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

33 Date_____

34 I hereby declare as follows:

35 I am a citizen of the United States or a legal resident alien who can document continuous res-
36 idency in the county for at least six months and have declared in writing to the Immigration and
37 Naturalization Service my intention to become a citizen and can present proof of the written dec-
38 laration to the sheriff at the time of this application. I am at least 21 years of age. I have been
39 discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I
40 was found to be within the jurisdiction of the juvenile court for having committed an act that, if
41 committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined
42 in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under
43 ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years,
44 been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a
45 misdemeanor. There are no outstanding warrants for my arrest and I am not free on any form of

1 pretrial release. I have not been committed to the Department of Human Services under ORS
2 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from
3 purchasing or possessing a firearm because of mental illness. If any of the previous conditions do
4 apply to me, I have been granted relief or wish to petition for relief from the disability under ORS
5 166.274 or 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a ci-
6 tation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.732 or 163.738.
7 I understand I will be fingerprinted and photographed.

8
9 Legal name _____
10 Age _____ Date of birth _____
11 Place of birth _____
12 Social Security number _____

13 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-
14 thorized under ORS 166.291. It will be used only as a means of identification.)

15
16 Proof of identification (Two pieces of current identification are required, one of which must bear a
17 photograph of the applicant. The type of identification and the number on the identification are to
18 be filled in by the sheriff.):

- 19 1. _____
- 20 2. _____

21
22 Height _____ Weight _____
23 Hair color _____ Eye color _____

24
25 Current address _____

(List residence addresses for the
past three years on the back.)

26
27
28
29 City _____ County _____ Zip _____
30 Phone _____

31
32 I have read the entire text of this application, and the statements therein are correct and true.
33 (Making false statements on this application is a misdemeanor.)

34 _____
35 (Signature of Applicant)

36
37 Character references.

38 _____

Name	Address
Name	Address

40 _____

41
42
43 Approved _____ Disapproved _____ by _____

44
45 Competence with handgun demonstrated by _____ (to be filled in by sheriff) Date _____ Fee

1 Paid _____

2 License No. _____

3

4

5 (5)(a) Fees for concealed handgun licenses are:

6 (A) [~~\$15~~] **\$22** to the Department of State Police for conducting the fingerprint check of the ap-
7 plicant.

8 (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

9 (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

10 (b) The sheriff may enter into an agreement with the Department of Transportation to produce
11 the concealed handgun license.

12 (6) No civil or criminal liability shall attach to the sheriff or any authorized representative en-
13 gaged in the receipt and review of, or an investigation connected with, any application for, or in the
14 issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful
15 performance of duties under those sections.

16 (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff
17 shall enter the applicant's name into the Law Enforcement Data System indicating that the person
18 is an applicant for a concealed handgun license or is a license holder.

19 (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section
20 for a resident of a contiguous state who has a compelling business interest or other legitimate
21 demonstrated need.

22 **SECTION 3.** ORS 166.414 is amended to read:

23 166.414. (1) The Department of State Police may adopt a fee schedule for criminal history record
24 checks required under ORS 166.412 and collect a fee for each criminal history record check re-
25 quested. The fee schedule shall be calculated to recover the cost of performing criminal history re-
26 cord checks required under ORS 166.412, but may not exceed [~~\$10~~] **\$25** per record check.

27 (2) Fees collected under this section shall be paid into the State Treasury and deposited in the
28 General Fund to the credit of the State Police Account.

29 **SECTION 4.** (1) **The amendments to ORS 137.225 by section 1 of this 2005 Act apply to**
30 **motions filed on or after the effective date of this 2005 Act.**

31 (2) **The amendments to ORS 166.291 by section 2 of this 2005 Act apply to applications**
32 **filed on or after the effective date of this 2005 Act.**

33 (3) **The amendments to ORS 166.414 by section 3 of this 2005 Act apply to criminal history**
34 **record checks requested on or after the effective date of this 2005 Act.**

35