

MOTION TO SET ASIDE ADULT ARRESTS OR CONVICTIONS

Oregon Revised Statute 137.225 and related case law explain the following:

1. When you are eligible to bring a motion to set aside your adult arrest or conviction; and
2. The type of arrest or conviction that qualifies for a motion to set aside.

A brief summary of eligibility requirements in this statute is provided below. It does not include specific advice about your case. You may wish to consult an attorney who will review your criminal history and advise you regarding applicable laws and how to proceed with this motion.

YOU MAY QUALIFY TO HAVE YOUR CONVICTION SET ASIDE IF:

1. At least three years have passed from the date of conviction; and
2. You fully complied with all requirements of your sentence, including payment of restitution and all other financial obligations; and
3. You have no pending criminal charges; and
4. You have no other convictions (other than minor traffic convictions) within the ten-year period preceding the filing of this motion. Convictions which have previously been set aside or convictions for conduct associated with the conviction you are now seeking to set aside are counted, if they occurred within the ten year period; and
5. The conviction you want set aside is not a state or municipal traffic offense; and
6. The type of conviction your motion is based upon is:
 - a. A Class C felony, except for the type of offense described in section “g” below; or
 - b. Any crime that was punishable as either a felony or misdemeanor by the court at the time of the sentence (regardless of the sentence actually imposed), if committed on or after January 1, 1972, except for the type of offense described in section “G” below: or
 - c. Any conviction for **possession** of marijuana (even if convicted of Class B felony possession or a lesser charge, such as a misdemeanor or violation); or
 - d. A misdemeanor, whether cited under state law, city or county ordinance, except for misdemeanors described in section “G” below; or
 - e. A violation (including non-traffic infractions), whether cited under state law, city or county ordinance; or
 - f. Any conviction for an offense committed before January 1, 1972, which if committed after that date would be classified under categories “a” through “e” above. (The exception in section “g” also applies.)
 - g. **Exceptions:** If the conviction described in section “a” through “f” involves the type of offense listed below, the conviction does not qualify for a motion to set aside:
 - (i) A sex crime: or
 - (ii) One of the following crimes when they would constitute child abuse as defined in ORS 419B.005:
 - (a) Criminal mistreatment in the First Degree under ORS 163.205: or
 - (b) Endangering the Welfare of a Minor under ORS 163.575 (1) (a).

YOU MAY QUALIFY TO HAVE YOUR ARREST RECORD SET ASIDE IF:

- (1) You do not have any pending criminal charges; and
 - (2) You have **no convictions** (other than minor traffic convictions) within the **ten-year period** preceding the filing of this motion. Convictions which have previously been set aside or convictions for conduct associated with the conviction you are now seeking to set aside are counted, if they occurred within the ten year period; and
 - (3) You have no other arrests within a **three year period** preceding the **filing of the motion** (except for minor traffic offenses and arrests for conduct associated with the arrest you are seeking to have set aside); and
 - (4) The arrest you want set aside is not a state or municipal traffic offense; and
 - (5) One of the following applies to the arrest you seek to have set aside:
 - a) No accusatory instrument (charging you with a crime) was ever filed and at least **one year has passed** from the date of arrest to the date you file the motion to set aside. If you “secreted” yourself inside or outside of Oregon, the time in which you did this does not count as part of the one year period; or
 - b) You were charged with a crime but the charges were dismissed or you were acquitted at trial (found not guilty). If this happens you can file the motion to set aside **at any time and do not need to wait one year** from the date of arrest; or
 - c) The arrest you are seeking to have set aside resulted in a conviction of the type described in subsections “a” through “f” of section six, above. It is not a sex crime or a crime involving child abuse, as described in section “g” above. *You meet all the criteria for having a conviction set aside, as described in the preceding sections of this summary.
- * An arrest for a sex crime or a crime involving child abuse may be set aside if it did not result in a conviction.

THE EXPUNCTION PROCESS FOR ADULT CONVICTIONS AND ARRESTS

Setting Aside Arrests and Convictions

This is meant to provide a brief overview of the process for having a conviction or an arrest record set aside, commonly known as an EXPUNCTION. A Motion To Set Aside is a legal proceeding for sealing a record of a criminal arrest and conviction. After such a motion is granted, all official records of the arrest and conviction are sealed. In the eyes of the law, the arrest or conviction did not occur and the record does not exist. This is beneficial for job and school applications, acquiring bonding, and other situations that question an individual's records. The process, while not complicated is lengthy. This brief explanation is meant to inform, not advise, on Oregon Law. **An attorney should be consulted about individual situations.**

A Motion to Set Aside is not automatically granted. The District Attorney's Office, representing the people of the State of Oregon, has the right to oppose your Motion. You are not required to hire an attorney for the process. Law, however, prohibits Court staff, from giving you **advice on legal matters**, including how to fill out the Motion and Affidavit. If you need help, you will have to research the law yourself, or consult an attorney. If the Motion does not comply with the law or your papers are filled out improperly, your Motion may be opposed by the District Attorney and denied by the Court.

The following is a general outline for the process:

1. If you do not have an attorney to do this work for you, fill out a Motion to Set Aside a conviction or arrest record and a supporting Affidavit. The **Motion** and **Affidavit** are legal forms which you may **purchase at any legal stationery store.** Have the Affidavit notarized or you must bring it to the courthouse and in the presence of a deputy clerk of the court, swear to the truth of what you have written and sign the Affidavit in the presence of the clerk. Make sure that your **current mailing address is on the forms.**
 - a) You will need the case number (for a conviction, dismissed charge or acquittal), which can be found in the **Multnomah County Circuit Court File Room 131**, or the arrest number of the arresting agency or the citation in lieu of custody number if there was an arrest with no charging instrument (Complaint, information or indictment) ever being filed. The arrest information can be provided to you by the arresting agency.
 - b) You will need to have your fingerprints taken on a fingerprint card. A list of businesses and agencies which provide this service is attached.
2. Submit the **original of the Motion and Affidavit** to the Court in **Room 106**, Multnomah County Courthouse, 1021 SW Fourth Avenue, Portland, Oregon 97204. For each application to set aside a conviction the court requires a \$240 filing fee. Make checks payable to the "State of Oregon."
3. Submit a **copy** of the original **Motion** and **Affidavit**, plus the **original fingerprint card to the District Attorney's Office in room 600**, Multnomah County Courthouse, 1021 SW Fourth Avenue, Portland, Oregon 97204. If you are moving to set aside **a conviction**, rather than an arrest, dismissal or acquittal, then you must attach to the fingerprint card that is served upon the prosecution attorney with a **money order or a check from an attorneys trust fund** made payable to the **Department of State Police** in the amount of **\$80.00**. (This cannot be a personal check). This payment is mandatory and cannot be waived by the Court. Retain a copy of all **papers for your own records.**
4. After the District Attorney responds to your Motion, the Court may allow your Motion without a hearing. If a hearing is to be held, you will be notified by mail of the date, time and location; the date will be at least one month away from the time you submit your Motion to the Court. Unless waived by the Court, an appearance at this hearing will be required. If a hearing is necessary, and you **fail to appear, then your Motion may be denied or dismissed.**

If the Court allows your Motion without a hearing, you will be **notified by mail of its decision**. The District Attorney's Office will prepare a final Order to be signed by the appropriate judge. The District Attorney's Office will mail a copy of the final Order to you. Certified copies of this Order will be mailed to the police agencies.

After the Motion is granted, your record is considered clear, and you have the **legal right to answer "no" to any questions** which ask if you were ever arrested or convicted of a crime.

Both you and the District Attorney have the right to appeal the Court's decision. An appeal must be made within 30 days by filing a Notice of Appeal in the Oregon Court of Appeals.

WHAT TYPES OF CONVICTION OR ARREST QUALIFY FOR A MOTION TO SET ASIDE:

You must review ORS 137.225, to determine if your conviction qualifies to be set aside.

WHAT ARE THE OTHER REQUIREMENTS FOR A MOTION TO SET ASIDE:

The legal requirements to file a Motion to set aside a conviction are set out in ORS 137.225. You should also review this statute to determine what requirements must be met to set aside a record of dismissal, acquittal or arrest.

WHO SHOULD PREPARE THE LEGAL PAPERS AND ADVISE ME?

An **attorney is recommended**. If you do not have a regular attorney, you can call the **Oregon State Bar Lawyer Referral Services** at (503) 684-3763. Outside the Portland area 1-800-452-7636 (toll free).

As in other legal proceedings, you have the right to represent yourself without an attorney. This may be unwise, particularly if the State intends to oppose your Motion to Set Aside.

CAN THE RECORD BE REOPENED

The setting aside of an arrest or a conviction does not absolutely close the records. The Court could be asked to unseal your record, but only exceptional circumstances would justify this. A Court Order is required to unseal a record.

LOCATING THE CASE NUMBER ON CITATIONS IN LIEU OF CUSTODY OR CHARGES FILED BY THE DISTRICT ATTORNEY

If you need the Court to search for the case number or citation number associated with the charge which you are seeking to set aside, or require a copy of the judgment of conviction, dismissal or acquittal, you must make a search request. These documents are not necessary for your Motion, however, only the associated case numbers. A search request must be made in **Room 131** of the Multnomah County Courthouse (503) 988-3003. To make the search, Court staff must have the following information:

1. Your complete name and any alias names under which you may have been charged.
2. Your date of birth, and any dates of birth associated with any alias under which you may have been charged.
3. The arrest date on the charge.

Allow **ten (10) working days** for the search request to **be completed**. Unless you live outside the Portland Metropolitan area, your request **will not be mailed** to you; you must pick it up in person. There will be a **charge of 25 cents per page** for any copies of Court records provided.

FINGERPRINTING SERVICES *****INS APPLICANTS MUST BE PROCESSED THROUGH AN INS OFFICE OR APPROVED LOCAL CRIMINAL JUSTICE AGENCY (other than Portland PD, Multnomah County SO or Washington County SO) (Approved list available at INS office...the agencies below may or may not be on the INS approved list) (Above INS requirements effective 12/6/1997)

POLICE AGENCIES:

Oregon State Police

Bureau of Criminal Identification
3772 Portland Road NE \$2
Salem Oregon 97303 (Exit 258 I-5 SB)
1- (503) 934-2315

Monday thru Friday
8:00 am – 4:30 pm
0.00 per card (Exact cash,
check, or money order only)
Cards provided (if needed)

Clackamas County Sheriff's Office

807 Main Street Room 102
Oregon City Oregon 97045
(503) 655-8277 (record info for call back)

By appointment only
Monday through Thursday only
8:30 am – 4:00 pm (every 15 minutes)
\$7.50 per card (Cards provided)

Washington County Sheriff's Office

215 SW Adams Ave
Hillsboro, Oregon 97123
(503) 846-2700

Monday through Friday
9:00 am – 3:45 pm
\$10.00 first card \$2.00 additional cards
Cards provided (if needed)

Beaverton Police Department

Private Party in Lobby - Kathy Semke
4755 SW Griffith Drive
Beaverton Oregon 97005
(503) 550-3486

Monday, Tuesday & Wednesday
11:30 am – 1:30 pm
\$10.00 per card
First come first serve

PRIVATE BUSINESSES:

(Check yellow pages of phone book under heading **FINGERPRINTING**)

Fingerprinting Services

319 SW Washington St, Suite 606
Portland Oregon 97204
(503) 228-4311

Business hours will change monthly
Call first to check for current hours
Cards are provided (if needed)

Inter-Asia Service Center

8436 SE Division Street
Portland Oregon 97266
(503) 788-3433

Monday through Friday 9 am -5 pm
\$8.00 per card
Cards provided if needed

Lutheran Family Services

605 SE 39th Ave (near Washington St)
Portland Oregon 97214
(503) 233-0042

By appointment only
\$8.00 per card
\$8.00 per photo
Cards provide (if needed)

Passport & Photo

439 NW Broadway
Portland Oregon 97209
(503) 224-5014

Monday through Friday
7:30 am – 5:30 pm
Saturday 10:00 am – 3:00 pm
\$8.00 per card (cards provided)