

THE EXPUNCTION PROCESS FOR ADULT CONVICTIONS AND ARRESTS

Multnomah County District Attorney's Office Expungement Desk phone #: 503-988-5313

The following is a brief overview of the process for having a conviction or arrest record set aside, commonly known as an Expungement. A Motion to Set Aside is a legal proceeding for sealing a record of criminal arrest and/or conviction. After such a motion is granted, most official records related to the filing are sealed. In the eyes of law, the arrest and/or conviction did not occur, and the record does not exist. Be aware, however, that some federal agencies will still have access to the case information for their own purposes.

This explanation is meant to inform, not advise, on Oregon law. You are not required to hire an attorney for the process, but law prohibits Court and District Attorney's Office staff members from giving legal advice, including how to fill out the Motion and Declaration. If the Motion or Declaration is incomplete or incorrect, your Motion may be opposed by the District Attorney and denied by the Court. If you are unsure of your eligibility before filing, you will have to research the law yourself or consult an attorney. **Any fees paid as part of the filing process are NOT refundable if your motion is denied.**

If you wish to consult an attorney, you can call the **Oregon State Bar Lawyer Referral Service at (503) 684-3763. Outside the Portland area, 1-800-452-7636 (toll free).**

A Motion to Set Aside is not automatically granted. The District Attorney's Office, representing the people of the State of Oregon, reviews every motion filed in Multnomah County and has the right to oppose your Motion. In the event that the District Attorney's Office objects to your motion, a hearing before a judge may be scheduled. If the District Attorney's Office does not object to your expungement, you will likely not need to appear in court. The setting aside of a record of 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, and a court order is required.

Filing for Expungement:

1. Read carefully ORS 137.225 or ORS 475B.401 (otherwise known as SB 420) and the eligibility requirements that apply to your case. A summary of the requirements begins on Page 3 of this document. This is only a summary and is not intended as legal advice. If you would like help determining if you are eligible, you must consult an attorney. Court and District Attorney's Office staff members cannot review your eligibility for you or provide legal advice.
2. Before filing, you must have the Circuit Court case number or citation number, date of arrest and/or conviction, charge, and arresting agency. **You can obtain this information by emailing the courts at mul.records@ojd.state.or.us or calling the courts at 971-274-0570.**
3. If filing under ORS 137.225, you are required to submit a fingerprint card to the Oregon State Police. See the enclosed Request for Set Aside Criminal Record Check form and instructions. Search for "fingerprinting services" to find agencies and businesses in your area that provide this service.
 - a. No fingerprint card is required when filing under ORS 475B.401 (SB 420).
4. Fill out the Motion and Declaration to Set Aside for each case you are seeking to expunge. These are legal documents, downloadable at: <https://www.mcda.us/index.php/caseinformation/criminal-record-expunction/>, or available for pick-up from the District Attorney's Office. **Make sure your current mailing address is included in full on all forms.**
 - a. Be advised that you will be asked to swear under penalty of perjury that the information you provide on these forms is true to the best of your knowledge.

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5. Submit the **original of the Motion and Declaration** to the Court either in person or by mail to:

Multnomah County Circuit Court
1200 SW 1st Ave
Portland, Oregon 97204

a. Electronic filing is also available. See <https://oregon.tylerhost.net/> for more information. There is no separate cost to e-file. If you chose to e-file, you must still complete Steps 6 & 7.

6. Submit a **copy of the Motion and Declaration** to the District Attorney’s Office either in person or by mail to:

Multnomah County DA’s Office
Attn: Expungements
1200 SW 1st Ave, Suite 5200
Portland, Oregon 97204

a. You may also serve the District Attorney via email at Expungements@mcdca.us.
b. Be aware that failure to promptly serve the District Attorney’s Office may be cause for objection.

7. Fill out the Oregon State Police Request for Set Aside Criminal Record Check form enclosed and submit with a fingerprint card by mail to:

Oregon State Police, CJIS – Unit 11
Attn: Set Aside
P.O. Box 4395
Portland, Oregon 97208

a. **When filing a Motion to Set Aside Conviction, include the \$33 fee with your fingerprint card.**
b. There are no fees for submitting a Motion and Declaration to Set Aside Arrest Record, and no fees when filing under SB 420.
c. Be aware that failure to promptly submit your fingerprints to OSP may be cause for objection.

8. If the District Attorney does not object, the Court may allow your Motion without a hearing. An Order Setting Aside will be prepared and submitted to the judge, and a courtesy unsigned copy sent to you for your records. After being signed by the judge, the Order will then be distributed to agencies that maintain criminal records and a certified copy will be mailed to you. **For this reason, it is important to update any changes to the address on your original filing motion.** Upon receipt of the certified copy, you have the legal right to answer “no” to any questions that ask if you were ever arrested or convicted for this crime.

9. If the District Attorney finds cause to object to your Motion, you will be notified and a hearing can be set. When the hearing is scheduled, you will be informed of the date, time and location, and provided with a copy of the District Attorney’s objection memorandum.

10. 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.

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. The following time has passed from the date of conviction or release from imprisonment (whichever is later):
 - a. For Class B or C misdemeanors, violations, or contempt of court charges – at least 1 year;
 - b. For Class A misdemeanors – at least 3 years;
 - c. For Class C felonies – at least 5 years;
 - d. For Class B felonies – at least 7 years; and
2. You fully complied with all requirements of your sentence, including payment of restitution and all other financial obligations, and including completion of any term of incarceration or supervision ordered by the court. If your probation was revoked, you are not eligible to set aside your case until **three years** have passed from the date of revocation or until you would otherwise be eligible as set forth in paragraph 1 above (whichever is later); and
3. You have no pending criminal charges; and
4. You have no other convictions (other than traffic violation convictions or a single non-traffic violation conviction) within the time period set forth in paragraph 1 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 applicable time 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 types of offenses described in section “f” below; or
 - b. A conviction for Unlawful Possession of a Controlled Substance in Schedule I (which includes Heroin, Psilocybin, 3,4-Methylenedioxymethamphetamine, and all other Schedule I controlled substances); or
 - c. Any misdemeanor, Class C felony, or felony punishable as a misdemeanor pursuant to ORS 161.705, except for the type of offense described in section “e” below, and except for offenses described in section “f” below; or
 - d. A violation (including non-traffic infractions), whether cited under state law, city or county ordinance; or
 - e. A finding of contempt of court; 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 exceptions in section “g” also apply.)

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- g. **Exceptions:** If the conviction described in section “a” through “e” involves the type of offense listed below, the conviction does not qualify for a motion to set aside:
 - i. A sex crime (unless certain exceptions apply); or
 - ii. Criminally Negligent Homicide under ORS 163.145; or
 - iii. Assault in the Third Degree, as defined by ORS 163.165(1)(h); or
 - iv. One of the following crimes when they would constitute child abuse as defined in ORS 419B.005:
 - 1. Criminal mistreatment in the First Degree under ORS 163.205 if the victim was a child as defined in ORS 419B.005, or
 - 2. Endangering the Welfare of a Minor under ORS 163.575 (1)(a).
 - v. Criminal Mistreatment in the Second Degree under ORS 163.200 or in the First Degree under ORS 163.205 if the victim was over 65 years of age:
- 7. If your conviction was for a Class B felony (other than the Unlawful Possession of a Controlled Substance in Schedule D), then you must have satisfied sections 2, 3, 4, and 5. Additionally, the crime was not classified as a Person Crime as defined by the Oregon Criminal Justice Commission or a violation of ORS 166.429; and
- 8. **Marijuana Convictions:** For more information on convictions involving marijuana, please see ORS 475B.401 (SB 420) or ORS 137.226.

YOU MAY QUALIFY TO HAVE YOUR MARIJUANA CONVICTION SET ASIDE PURSUANT TO (ORS 475B.401) SB 420 IF:

- 1. Your conviction is a qualifying marijuana conviction, meaning:
 - a. It is based on conduct described in ORS 475B.301; or
 - b. Possession of less than one ounce of the dried leaves, stems or flowers of marijuana.
- 2. The offense was committed prior to July 1, 2015; and
- 3. You completed and fully complied with or performed the sentence of the court.

ORS 475B.401 (SB 420) establishes procedures for persons with qualifying marijuana convictions to file motion requesting court to set aside their conviction. This became law in Oregon on January 1, 2020. Please note that if this section applies to you, you will need to fill out the specific SB 420 Motion and Declaration. **You do not need to submit a fingerprint card or pay a filing fee.**

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

1. You do not have any pending criminal charges; and
2. The arrest you want to have set aside is not for a DUII that resulted in successful completion of diversion; and
3. 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 **sixty days have passed** from the date of arrest to the date you file the motion to set aside.; 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 after the case was dismissed or acquitted**; and
4. You have not been convicted of a crime (other than traffic violation convictions or a single non-traffic violation conviction) within the following time period:
 - a. For a motion concerning Class B or C misdemeanors, violations, or contempt of court charges – at least 1 year;
 - b. For a motion concerning Class A misdemeanors – at least 3 years;
 - c. For a motion concerning Class C felonies – at least 5 years;
 - d. For a motion concerning Class B felonies – at least 7 years.