

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 (but see section 7 if your conviction was a Class B felony); and
2. You fully complied with all requirements of your sentence (if your probation was revoked, then you must wait ten years from the date of revocation), including payment of restitution and all other financial obligations; and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 traffic violation convictions or a single non-traffic violation conviction) 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 “h” below; or
 - b. A conviction for the Class B felony offense of the 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 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
 - d. 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
 - e. A misdemeanor, whether cited under state law, city or county ordinance, except for misdemeanors described in section “h” below; or
 - f. A violation (including non-traffic infractions), whether cited under state law, city or county ordinance; or
 - g. Any conviction for an offense committed before January 1, 1972, which if committed after that date would be classified under categories “a” through “f” above. (The exception in section “h” also applies.)

- h. **Exceptions:** If the conviction described in section “a” through “g” involves the type of offense listed below, the conviction does not qualify for a motion to set aside:
 - i. A sex crime; 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:
 - 2. 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: or
 - 3. Endangering the Welfare of a Minor under ORS 163.575 (1)(a).

- 7. If your conviction was for a Class B felony (other than the Unlawful Possession of a Controlled Substance in Schedule I), then you must have satisfied sections 2, 3 and 5; and
 - a. 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
 - b. Twenty years or more have elapsed since the time of conviction or your release from prison, whichever is later: and
 - c. You have not been arrested or convicted (excluding motor vehicle violations) for any other offense since the date you were convicted.

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 traffic violation convictions or a single non-traffic violation conviction) 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 to have set aside is not for a DUII that resulted in successful completion of diversion; 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;
 - 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 “g” of section six, above. It is not a sex crime or a crime involving child abuse, as described in section “h” 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

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, all official records related to the filing are sealed. In the eyes of the law, the arrest and/or conviction did not occur, and the record does not exist.

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 Affidavit. If the Motion or Affidavit does not comply with the law or is filled out incorrectly, 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).**

This process, while not complicated, is lengthy. 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. In the event that the District Attorney's Office objects to your expungement, you will be given the opportunity to request a hearing before a judge. If the District Attorney's Office does not object to your expungement, you will 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. Before filing, you must have the Circuit Court case number or citation number, date of arrest and/or conviction, charge, and arresting agency. A search for this information can be done in Room 131 of the Multnomah County Courthouse. **You can also obtain this information by calling the courts at 503-988-3003 to request a search.** Be aware that there is a fee of \$0.25 per page if you are requesting copies of court records.
2. You will need to have a fingerprint card prepared. A partial list of agencies and businesses that provide this service is attached.
3. If you do not have an attorney to do it for you, fill out the Motion and Affidavit to Set Aside a Conviction or the Motion and Affidavit to Set Aside a Record of Arrest. These are legal forms, available for pick-up from the Multnomah County District Attorney's Office, for download at: <http://mcda.us/index.php/case-information/criminal-record-expunction/> or for sale at most legal stationary stores. **Make sure your current mailing address is included in full on all forms.**
 - a. If filing by mail or e-filing, the affidavit portion must be notarized.
 - b. If filing in person, you may sign it in the presence of a Deputy Clerk of the Court.

4. Submit the **original of the Motion and Affidavit** to the Court either in person or by mail to:
Multnomah County Circuit Court
1021 SW 4th Ave, Room 106
Portland, Oregon 97204
 - a. Electronic filing is also now available. See <https://oregon.tylerhost.net/> for more information. There is no separate cost to e-file. If you chose to e-file, be aware you must still complete Step 5.
5. Submit a **copy of the Motion and Affidavit along with your fingerprint card** to the District Attorney's Office either in person or by mail to:
Multnomah County District Attorney's Office
Attn: Expungements
1021 SW 4th Ave, Room 600
Portland, Oregon 97204
6. **If you are filing a Motion and Affidavit to Set Aside a Conviction, there are fees:**
 - a. The Courts require a filing fee of \$252, payable at the time of filing.
 - i. For information about the possibility of having part or all of this fee waived, contact the Multnomah County Circuit Court at 503-988-3235.
 - b. Separately, the Oregon State Police charge a fee of \$80. This must come in the form of a money order, cashier's check, or check from an attorney's trust account, payable to the Department of State Police. This payment must be submitted with your fingerprint card to the District Attorney's Office.
 - c. **There are no fees for filing a Motion and Affidavit to Set Aside Arrest Record.**
7. If the District Attorney does not object, the Court may allow your Motion without a hearing. In that situation, an Order Setting Aside will be prepared and submitted, 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. When this process is complete, 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, your record is considered clear, and you have the legal right to answer "no" to any questions that ask if you were ever arrested or convicted for this crime.
8. If the District Attorney finds cause to object to your Motion, you will be notified and given the opportunity to request a hearing. 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. Unless waived by the court, your appearance will be required. If you fail to appear at this hearing, your Motion may be dismissed.
9. 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.

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)

LAW ENFORCEMENT AGENCIES:

Oregon State Police

Bureau of Criminal Identification
3772 Portland Road NE
Salem Oregon 97303 (Exit 258 I-5 SB)
1-503-378-3070

Monday through Friday
8:00 am – 4:30 pm
\$20 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 first card, \$2 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 per card
First come, first serve

PRIVATE BUSINESSES: (For more options, search "fingerprinting services" online or in yellow pages.)

@ a Moment's Notice

1033 SW Yamhill St, Suite 205
Portland, Oregon 97204
503-481-5847

CALL FOR TIMES Monday - Sunday
\$10 per card
momentsnotice@comcast.net

Fingerprinting Services

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

Business hours subject to change
Call first to check for current hours
\$20 per card

Inter-Asia Service Center

8436 SE Division Street
Portland, Oregon 97266
503-788-3433

Monday through Friday 9:00am -5:00pm
\$8 per card

Lutheran Community Services

605 SE Cesar E Chavez Blvd
Portland, Oregon 97214
503-231-7480

By appointment only
\$20 per card

Passport Immigration Photo, ID & Fingerprints

439 NW Broadway
Portland, Oregon 97209
503-224-5014

Monday through Friday 7:30am – 5:30pm
Saturday 10:00 am – 3:00 pm
\$11 per card

Stevens-Ness Law Publishing Co.

916 SW 4th Ave
Portland, Oregon 97204-2092
503-223-3137

Monday through Friday 9:00am-12:00pm and 1:30pm- 4:00pm
\$15 per card
www.stevensness.com