

Setting Aside/Expunction of Arrest or Conviction

IMPORTANT NOTE: THE FOLLOWING MATERIAL IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED TO REPLACE LEGAL ADVICE FROM AN ATTORNEY. AN ATTORNEY CAN ANSWER QUESTIONS FOR YOU AND PREPARE ANY DOCUMENTS YOU NEED.

If you chose to prepare your own documents, please read Oregon Revised Statute 137.225 to decide if your arrest or conviction can be expunged. Oregon laws are available at libraries or online at www.leg.state.or.us/ors/

What type of arrests and convictions *can* be set aside?

- C Felonies except for Criminally Negligent Homicide, Criminal Mistreatment in the first degree when it would constitute child abuse (ORS 163.205) or any sex crime.
- Possession of marijuana when that crime was punishable as a felony only.
- Crimes that could be punished as either a felony or misdemeanor at the discretion of the Court except for sex crimes, Criminal Mistreatment in the First Degree and Endangering the Welfare of a minor.
- Misdemeanors, except for Endangering the Welfare of a Minor when it is child abuse (ORS 163.575(1)(a))
- Violations
- Offenses that were committed before January 1, 1972 which the present law would classify as an offense eligible for expunction.
- Arrests for traffic offenses which do not result in conviction, except for Driving Under the Influence of Intoxicant charges resulting in dismissal upon successful completion of diversion.

What type of arrests and convictions *cannot* be set aside?

- Unclassified felonies, A felonies and B felonies except for marijuana possession as set out above.
- Convictions for state or municipal traffic offenses.

When can an arrest or conviction be set aside?

- **Convictions:** If you have not been convicted of any other crime within the past ten years, you may move to set aside your arrest and conviction any time after three years from the date of judgment of conviction so long as you are no longer on probation or post prison supervision.
- **Arrests:** If you have not been arrested for any other crime except for motor vehicle offenses within the past three years, you can move to set aside your arrest any time after one year of the arrest if no accusatory instrument was filed, or any time after acquittal or dismissal of the charge, except that if you were wanted, that time is not included in the one year time period.

What will you need to file?

- \$250.00 Filing fee.
- Money order for \$80.00 payable to the Oregon State Police (see <http://www.oregon.gov/OSP/ID/Expungments>)
- Motion to Set Aside Conviction or Arrest
- Signed and Notarized Affidavit Supporting Motion to Set Aside Conviction or Arrest
- Completed Order for the Court to sign Setting Aside Conviction or Arrest
- Fingerprint Card with the notation “Motion for setting aside conviction” or “motion for setting aside arrest record” on it.
- Complete set of the above paperwork including the fingerprint card for service upon the District Attorney who prosecuted the crime or violation, or had authority to prosecute in the case of arrests without charges.

Will there be a hearing before the Court?

If your conviction was for a crime with a victim, the District Attorney will notify your victim and a hearing date will be set. You will receive a notice from the Court of the date and time. Be sure the Court has your current address!

When can the Court refuse to grant my motion to set aside?

If the Court finds by clear and convincing evidence that granting your motion would not be in the best interests of justice, the Court can deny your motion if you otherwise qualify if your conviction is for any of the following: Abandonment of a Child (ORS 163.535), Attempted Assault in the Second Degree (ORS 163.165), Coercion (ORS 163.275) Criminal Mistreatment in the First Degree (ORS 163.205), Attempted Escape in the First Degree (ORS 162.165), Incest (ORS 163.525 if the victim was at least 18 years old, Intimidation in the First Degree (ORS 166.165), Attempted Kidnapping in the Second Degree (ORS 163.225), Attempted Robbery in the Second Degree (ORS 164.405), Robbery in the Third Degree (ORS.164.395 and Unlawful Use of a Weapon (ORS 166.220).

How long will this take?

It may take as long as six weeks, especially if a hearing is necessary.

If you have any questions, consult an attorney. We cannot give you legal advice.