

Records Room12: 503.650.3036  
Accounting Dept Room 104: 503.655.8453  
District Attorney Room 7: 503.655.8431  
Expunction Clerk Room 200; 503.650.3046

## **THE EXPUNCTION PROCESS FOR ADULT CONVICTIONS AND ARRESTS**

### **Setting Aside Arrests and Convictions**

#### **Expunction Application Court Filing Fee:**

**Motion to Set Aside a Conviction: \$240.00 per motion to set aside a conviction.**

**Motion to Set Aside an Arrest or a case without conviction: There is no filing fee.**

**The fee must be paid with the court cashier prior to filing, payable by check, money order, cash or Visa/Mastercard, and a copy of the receipt is to be included with the original documents filed with the court. You will also need to include a copy of the receipt with the District Attorney's copies\*\*\***

This packet 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/or 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 has the right to oppose your Motion. You are not required to hire an attorney for the process. Court staff is prohibited by law 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 supporting Affidavit. The **Motion** and **Affidavit** are legal forms, which you may **purchase at any legal stationery store.** The Stevens-Ness Publishing Company prints these legal forms. You will need forms 1131 and 1132 to set aside a conviction and forms 1245 and 1247 to set aside an arrest. If you can not find the forms at a stationery store, you can call (503) 223-3137 or use website [www.stevensness.com](http://www.stevensness.com) to obtain these forms. You must 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), 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 case number can be located in the **Clackamas County Circuit Court File Room 12**. The arrest information can be provided to you by the arresting agency. If you do not know which police agency arrested you, you can call the Oregon State Police at (503) 378-3070 to obtain a copy of your criminal history. There will be a fee for this service. **If you are moving to set aside a conviction, you must submit a copy of the sentencing order to the District Attorney's Office when you submit the Motion and Affidavit.**
  - b) You will need to have your fingerprints taken on a fingerprint card. A list of businesses and agencies that provide this service is attached.
  - c) You will need to provide to the District Attorney's Office an original print out form from the **Accounting Department, Room 104, Clackamas County Courthouse**, showing that all fines, fees, and financial obligations have been satisfied. Include this printout with the copy of the Motion and Affidavit that you provide to the District Attorney's Office.
2. Submit the **original Motion and Affidavit** and a **copy of the fingerprint card** to the Court at the Information Center on the first floor of the Clackamas County Courthouse, 807 Main Street, Oregon City, Oregon, 97045.
  3. Submit a **copy** of the original **Motion and Affidavit**, a **copy** of the **sentencing order**, an **original fingerprint card**, and the **original printout from the Accounting Department** to the District Attorney's Office in Room 7, Clackamas County Courthouse, 807 Main Street, Oregon City, OR 97045. 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, a certified check, or a check from an attorney's trust fund** made payable to the **Department of State Police** in the amount of \$80.00. (You cannot submit 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 three weeks 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, your Motion may be denied or dismissed.**

If the court allows your Motion without a hearing, you will be **notified by mail of the court's decision**. If you filed your Motion and Affidavit without the assistance of an attorney, 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 CONVICTIONS OR ARREST QUALIFY FOR A MOTION TO SET ASIDE?**

You must review of ORS 137.225, to determine if your conviction qualifies to be set aside. A copy of this statute has been included with this packet.

### **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 call toll free 1-800-452-7636.

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.

### **MOTION TO SET ASIDE ADULT ARRESTS OR CONVICTIONS**

Oregon Revised Statute 137.225 outlines when you are eligible to bring a motion to set aside your adult arrest or conviction; and, 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 have 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),
  - 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, 1979, 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 “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 the crime would constitute child abuse as defined in ORS 419B.005:
      - (a) Criminal Mistreatment in the First Degree under ORS 163.205;
      - (b) Endangering the Welfare of a Minor under ORS 163.575 (1)(a).

IF YOU ARE MOVING TO SET ASIDE A CONVICTION, YOU ARE NOT REQUIRED TO FILE A SEPARATE MOTION TO SET ASIDE THE ARREST THAT RESULTED IN THE CONVICTION.

**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 other arrest 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
- (3) The arrest you want set aside is not a state or municipal traffic offense; and

- (4) 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 filed 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.

### **LOCATING THE CASE NUMBER ON CITATION IN LIEU OF CUSTODY OR CHARGES FILED BY THE DISTRICT ATTORNEY**

**If you need the Court to search 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, you will need the associated case numbers. A search request must be made in **Room 12** of the Clackamas County Courthouse. To initiate 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; and
- 3) The arrest date on the charge.

You must pick up this information in person. If you are not able to pick up this information in person you may make your request in writing. **Information will not be provided on the phone.** There will be a charge of 25 cents per page for any copies of court records provided. There is a charge of \$5.00 plus 25 cents per page for any record that you want certified.

**137.225 Order setting aside conviction or record of arrest; fees; prerequisites; limitations.** (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state is not included.

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

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

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police bureau of criminal identification.

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

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

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

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

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

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

(A) Any sex crime; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) A violation.

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

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

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

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

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

(8) The provisions of subsection (1) of this section apply to convictions and arrests that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

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

(10) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of

assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest record.

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

- (a) Abandonment of a child, ORS 163.535.
- (b) Attempted assault in the second degree, ORS 163.175.
- (c) Assault in the third degree, ORS 163.165.
- (d) Coercion, ORS 163.275.
- (e) Criminal mistreatment in the first degree, ORS 163.205.
- (f) Attempted escape in the first degree, ORS 162.165.
- (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- (h) Intimidation in the first degree, ORS 166.165.
- (i) Attempted kidnapping in the second degree, ORS 163.225.
- (j) Criminally negligent homicide, ORS 163.145.
- (k) Attempted robbery in the second degree, ORS 164.405.
- (L) Robbery in the third degree, ORS 164.395.
- (m) Supplying contraband, ORS 162.185.
- (n) Unlawful use of a weapon, ORS 166.220.

(12) As used in this section, “sex crime” has the meaning given that term in ORS 181.594. [1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265; 1975 c.548 §10; 1975 c.714 §2; 1977 c.286 §1; 1983 c.556 §1; 1983 c.740 §17; 1987 c.320 §31; 1987 c.408 §1; 1987 c.864 §6; 1989 c.774 §1; 1991 c.830 §6; 1993 c.546 §98; 1993 c.664 §2; 1995 c.429 §9; 1995 c.743 §1; 1999 c.79 §1; 2007 c.71 §35]

## FINGERPRINTING SERVICES

### POLICE AGENCIES:

#### **Oregon State Police**

Bureau of Criminal Identification  
3772 Portland Road NE Bldg C  
Salem, Oregon 97303  
1 – (503) 378-3070  
[www.oregon.gov/osp/id](http://www.oregon.gov/osp/id)

Monday through Friday  
8:00am – 4:30pm  
\$20.00 per card (Exact cash,  
check or money order only)  
Cards provided (if needed)

#### **Public Safety Training Center**

12700 SE 82<sup>nd</sup> Avenue  
Clackamas, Oregon 97015  
(503) 353-4649

**By appointment only**  
8:30am – 3:30pm (11 - 12 Lunch)  
\$15.00 per card (cash only)  
ODL or picture ID issued by DMV

#### **Washington County Sheriff's Office**

215 SW Adams Avenue  
Hillsboro, Oregon 97123  
(503) 846-2794

Monday through Friday  
9:00am – 4:30pm  
\$15.00 first card, \$2.00 add'l card  
Cards provided (if needed)

#### **Beaverton Police Department**

4755 SW Griffith Drive  
Beaverton, Oregon 97005  
(503) 550-3486

Monday through Thursday  
11:30am – 1:30 pm  
\$15.00 per card (cash or check)

### PRIVATE BUSINESSES:

(Check yellow pages under **FINGERPRINTING**)

#### **Fingerprinting Services (State Cert.)**

319 SW Washington, Suite 508  
Portland, Oregon 97204  
(503) 228-4311

Call first to check for current hours  
\$15.00 first card, \$10.00 add'l card  
Cards provided (if needed)

#### **Inter-Asia Service Center (State Cert. & \*Approved INS processing)**

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

Monday through Friday  
9:00am – 5:00pm. (10 – 5 Sat.)  
\$10.00 per card, \$16.00 for two

#### **Luthern Family Services (State Cert.)**

605 SE 39<sup>th</sup> Avenue  
Portland, Oregon 97214  
(503) 233-0042

**By appointment only**  
\$15.00 first card, \$10.00 for 2nd  
cash or check  
Cards provided (if needed)

#### **Passport & Photo (State Cert.)**

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

Monday through Friday  
7:30am – 5:30pm, (9 – 3 Sat)  
\$10.00 per card, \$18.00 for two

**\*INS APPLICANTS MUST BE PROCESSED THROUGH AN INS OFFICE OR AN APPROVED LOCAL CRIMINAL JUSTICE AGENCY (Approved List available at INS Office).**