

# **CRIMINAL SET-ASIDE**

**(ADULT CASES)**



A set-aside is sometimes called expungement or expunction. It means that the court record of a criminal or contempt case is sealed by the court and will not appear in official court records. You should be aware that set-aside cases can be unsealed in certain limited circumstances.

If you were a minor (under 18) at the time of the arrest or citation or were charged as a minor, use the juvenile expunction forms available here:

[www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx](http://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx)

**NOTE:** Oregon circuit courts cannot set aside:

- a conviction for a state or municipal traffic offense
- actions brought by federal, tribal, or other state's law enforcement
- actions brought in a local court (not a Circuit Court)

If you aren't sure whether your case was or would have been brought in Circuit Court, you may need to talk to a lawyer. Court staff cannot tell you where to file or who to serve. Additional exceptions are listed at the end of this document.

## **Important Contact Information**

Oregon Judicial Department - [www.courts.oregon.gov](http://www.courts.oregon.gov)

Oregon State Bar Lawyer Referral Service - [www.oregonstatebar.org](http://www.oregonstatebar.org)

**Phone:** 503.684.3763 or toll-free in Oregon at 800.452.7636



If you are deployed or about to be deployed, contact the Oregon State Bar Military Assistance Panel ([www.osbar.org/docs/ris/militaryflier.pdf](http://www.osbar.org/docs/ris/militaryflier.pdf)) for information about special rights and rules that may apply to you.

## **CAN I ASK THE COURT TO ORDER A SET-ASIDE IN MY CASE?**

You can file a *Motion* with the court to ask for a set-aside if you were:

- convicted of a crime or violation
- found guilty except for insanity
- charged with a crime or cited for a violation
- arrested but not charged **or**
- found in contempt of court

**AND**

- you have fully complied with and completed all elements of your sentence including restitution, post-prison supervision, and probation
- you have not been charged with or convicted of another crime (other than a motor vehicle violation) or found guilty except for insanity of any crime or for more than one violation for the years before filing your motion as listed below
- you do not have any charges pending at the time of filing **and**
- no other exception applies (see below for other exceptions)

**BUT the following waiting periods apply:** (Note that any prior set-asides granted will be counted when calculating the waiting periods below)

Waiting periods for CONVICTIONS or FINDINGS OF GUILTY EXCEPT FOR INSANITY\*:

For charge of:	Years since date of conviction or release from prison:	You cannot have been charged with or convicted of a crime other than a motor vehicle violation or found guilty except for insanity for the previous:
Class B felony	7 years	7 years
Class C felony	5 years	5 years
Class A misdemeanor	3 years	3 years
Class B or C misdemeanor, violation, or finding of contempt of court	1 year	1 year

*\*For findings of Guilty Except for Insanity (GEI), the above timelines apply from the date of the finding, entry of judgment, or release from the jurisdiction of the Psychiatric Security Review Board (PSRB), whichever is later. If you were found GEI you remain prohibited from possessing or purchasing a firearm under federal law even if you are granted a set-aside.*

**Probation Revocation:** If your sentence of probation was revoked, you cannot ask for a set-aside until 3 years after the date of revocation or until you are otherwise eligible under the timelines above, whichever is later

Waiting periods for ARRESTS, CHARGES, or CITATIONS that are not pursued:

- Anytime after 60 days from the date the prosecuting attorney indicates that the state will not proceed with prosecution or contempt charge

*Arrests and charges for Driving Under the Influence of Intoxicants (DUII) are not eligible for set-aside if charges are not pursued because you completed a diversion agreement*

Waiting periods for ACQUITTALS or DISMISSED CHARGES:

- Anytime after the acquittal or dismissal

*Arrests and charges for Driving Under the Influence of Intoxicants (DUII) are not eligible for set-aside if charges are not pursued because you completed a diversion agreement*

## **HOW DO I ASK FOR A SET-ASIDE?**

Fill out the *Motion to Set Aside and Declaration in Support*

Your case number is the same as the original case number for the case with your conviction. If you never had a court case number, leave that line blank. The court will create a new case to process your *Motion*.

### **Parties**

- If you are filing about an arrest record with no charges filed:
  - YOU are the Plaintiff
  - The prosecuting attorney is the Defendant

- If you are filing for any other reason:
  - “State of Oregon” is the Plaintiff
  - YOU are the Defendant

Make 2 copies of your forms - one for your records, and one to serve on the prosecuting attorney (usually the District Attorney. Refer to your charging instrument or citation for the prosecuting attorney’s information).

**IMPORTANT: You must also have your fingerprints taken on a fingerprint card (or as specified by the Department of State Police) and**

- send them to the Department of State Police
- pay the fee that the department charges for a criminal record check, *and*
- complete the department’s *Request for Set Aside* form

The department will send the results to the prosecuting attorney.

Additional information is available on the department’s website:

[www.oregon.gov/osp/programs/cjis/Pages/Criminal-Justice-Information-Services.aspx](http://www.oregon.gov/osp/programs/cjis/Pages/Criminal-Justice-Information-Services.aspx)

### WHERE DO I FILE?

File in the county where you were charged or where your citation was filed. If you were not charged, file in the circuit court for the county where charges would have been brought.

Mail a copy of the *Motion* and *Declaration* to the prosecuting attorney. Complete the *Certificate of Mailing* section on the copy you will file with the court and on your copy.

There is no fee to file this *Motion*

Go to [www.courts.oregon.gov/courts/Pages/default.aspx](http://www.courts.oregon.gov/courts/Pages/default.aspx) for the location and address of each circuit court in the state. Some county District Attorneys have contact information available at [www.oregonda.org/profiles-of-prosecutors-1](http://www.oregonda.org/profiles-of-prosecutors-1).

### WHAT HAPPENS NEXT?

The prosecuting attorney has 120 days after you file to notify the court if they object to your *Motion*. If an objection is filed, the court will hold a hearing. Be sure the court always has contact information where they can reach you. If a hearing is scheduled and you do not appear, you may not be granted a set-aside.

If your request is granted the court will send copies of the *Order* to the necessary agencies. The record of the proceeding you asked to set aside will be sealed, meaning it will not be viewable through official court records or by court staff. Be aware that sealed records can be unsealed under certain limited circumstances. Talk to a lawyer if you are concerned about unsealing records in the future.

If your request for set-aside is granted, ORS 137.255(4) states that “upon entry of the order, the conviction, arrest, citation, charge or other proceeding [ordered set aside by the court] shall be deemed not to have occurred, and [you] may answer accordingly any questions relating to its occurrence.”

## EXCEPTIONS

You cannot use these forms to ask for a set-aside if any of the following apply:

- *For convictions:* violation of ORS 166.429 or any crime classified as a person felony as defined in the rules of the Oregon Criminal Justice Commission
- Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of the crime was 65 years of age or older
- Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS 419B.005
- Endangering the welfare of a minor under ORS 163.575 (1)(a), when the offense constitutes child abuse as defined in ORS 419B.005
- Criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony
- Assault in the third degree under ORS 163.165 (1)(h)
- Any sex crime, unless:
  - the sex crime is listed in ORS 163A.140 (1)(a) *and*
    - you have been relieved of the obligation to report as a sex offender by a court order entered under ORS 163A.145 or 163A.150 *and*
    - you have not been convicted of, found guilty except for insanity of, or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section
  - the sex crime constitutes a Class C felony ***unless***
    - you were under 16 years of age at the time of the offense
    - you are less than 2 years and 180 days older than the victim
    - more than 2 years and 180 days older but less than 3 years and 180 days older than the victim and the court finds that a set-aside is in the interest of justice and of benefit to you and to the community
    - the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age
    - the victim was at least 12 years of age at the time of the offense
    - you have not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section

*and*

  - each conviction or finding described in this subparagraph involved the same victim
- A conviction for a state or municipal traffic offense
- Actions brought by federal, tribal, or other state's law enforcement
- Actions brought in a local court (not a Circuit Court)