CRIMINAL SET-ASIDE

(ADULT CASES)



What is a Set-Aside?

A set-aside (also called expungement) means the court seals your criminal or contempt record. Once sealed, it will not show up in official court records. However, they may show up in certain federal background checks, and in rare cases the court can unseal them.

The information below is not legal advice. Please read ORS 137.225 and other relevant Oregon laws for the most recent and accurate information about sealing criminal records. Court staff are not allowed to give you legal advice, so please consult a lawyer if you need advice or legal representation.

The requirements to be eligible can be complicated. The information listed here are just the most basic eligibility requirements. Please be aware that there may be unique requirements and exceptions depending on your individual case.

Who can use this process?

You can ask the court to set aside your record if:

- You were arrested, charged, convicted of a violation or crime, found guilty except for insanity, found in contempt of court, or your case was dismissed or acquitted
- 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*

You may qualify for a set aside if you were convicted, and:

- You **finished your sentence**, including probation and paying restitution and fines
- You **haven't been convicted of another crime** during the required waiting period (except traffic violations or a single violation offense)
- You **don't have any open criminal charges or open abuse/person-related contempt proceedings such as violation of a restraining order**
- Your case is **not one of the exceptions listed in ORS 137.225. Convictions for Class A felonies, many sex crimes, several child abuse crimes, and many others are not eligible.** Please read ORS 137.225 for the full list. Other laws may apply to your case.
- Your case was **not for a traffic offense conviction**
- Your case was **not handled in federal, tribal, out-of-state court, or local court**

How long do I have to wait to file for a set aside?

It depends. If you were **convicted** of an offense, use the longest timeline for your situation:

Type of Case	Wait Time (since conviction or release from prison)	If New Offense Committed, the Wait Time Extends by:
Class B Felony	7 years	7 years
Class C Felony; Contempt for abuse/person crime	5 years	5 years
Class A Misdemeanor	3 years	3 years
Class B/C Misdemeanor; Violation; Contempt unrelated to abuse/person crime	1 year	1 year

If you were found **guilty except for insanity (GEI)**, different laws may apply. Refer to ORS 137.223 for the most recent and accurate information regarding GEI.

If your **probation was revoked**, you must wait **3 years** from the revocation date or follow the timelines above—whichever is longer

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If you were arrested or cited for an offense but the prosecutor did not proceed to filing a case:

- You can file 60 days after the prosecutor says they won't file charges, or you can file any time after your case was dismissed or you were acquitted

Driving under the influence of intoxicants (DUII) cases are not eligible if charges were dismissed because you completed a diversion program

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How do I file?

1. **Get fingerprinted** and:
    - **Oregon State Police fingerprinting instructions available here:** https://www.oregon.gov/osp/programs/cjis/Pages/Criminal-Justice-Information-Services.aspx
    - Send your fingerprint card to the **Oregon State Police.**
    - Pay the **Oregon State Police fee** if you are asking the court to seal a conviction.
    - Fill out the **Oregon State Police Request for Set Aside form.**

- **Oregon State Police will send the results to the prosecuting attorney.**

2. Fill out the Oregon Judicial Department's **Motion** to Set Aside and **Declaration** in Support.
3. **Make 2 copies** of the Motion and Declaration:
    - One for your records
    - One to send to the **District Attorney (see step 4)**
4. Mail a copy of motion and declaration to the **Prosecuting Attorney** in the county where charges were or could have been filed, or arrest occurred. Mailing address for Oregon District Attorneys: http://www.oregonda.org/copy-of-contact
5. **Fill out the certificate of mailing** at the bottom of the form
6. **File your forms** in the **circuit court** where the case happened or would have happened. Information about how to file: http://www.courts.oregon.gov/courts/Pages/default.aspx

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What happens next?

- The District Attorney typically has 120 days to object. If they object, the court will schedule a hearing. You may receive a hearing notice from the court.
- If the court grants your request:
    - Your record is sealed. 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."
    - You will receive a copy of the judicial document sealing your case.

Do you need a referral to legal advice or representation?

Contact the Oregon State Bar Lawyer Referral Service: www.oregonstatebar.org

Are you deployed or about to be deployed?

Contact the Oregon State Bar Military Assistance Panel for information about special rights and rules that may apply to you: https://www.osbar.org/_docs/ris/militaryflier.pdf