

## HOW TO SET ASIDE (EXPUNGE) AN ARREST/CONVICTION RECORD FOR CLACKAMAS CIRCUIT COURT

You do not need to hire an attorney to complete this process; however, an attorney should be consulted for any legal advice and to assist in individual situations. Court clerks **cannot** give you legal advice. This packet is meant to instruct you on the set aside procedure, not to advise you on Oregon law.

- There is a \$281 filing fee to be made payable to the court for each case you are requesting to set aside. (Fee is not refundable if motion is denied)

*\*If you cannot pay the fee at the time of filing, you may apply for a fee deferral/waiver. If a fee deferral is granted, you will have six months to pay the deferred amount.*

- There is an \$80 fee required payable to the Department of State Police for each case you are requesting to set aside. **This must be made in the form of a certified check, money order or check from an attorney's trust fund.** This payment is mandatory and cannot be waived by the court. If you are filing a Motion to Set Aside a Conviction on more than one case at the same time, only one \$80 fee is required, but a fingerprint card must be attached to each case.
- You may refer to the Oregon Revised Statutes at <http://www.leg.state.or.us/ors/137.html>

### **WHAT IS A MOTION TO SET ASIDE A CONVICTION?**

A Motion to Set Aside a Conviction, if granted by the court, sets aside the record of conviction and the applicant is deemed not to have been previously convicted. The court orders the record of the conviction and any other official records in the case, to be sealed. In the eyes of the law, the incident that led to the conviction did not occur and the record does not exist. Law Enforcement agencies are required to seal their investigative reports of the incident.

### **WHAT TYPES OF CONVICTIONS QUALIFY FOR A MOTION TO SET ASIDE?**

A brief summary of eligibility requirements 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 to proceed with this motion. Refer to ORS 137.225 to determine what requirements must be met to set aside a record of conviction.

- A Class "C" felony;
- Any misdemeanor, including any violations of county or city ordinances;
- Any crime punishable as either a misdemeanor or a felony at the discretion of the court;
- Any violation (under state or local law);
- Crime of possession marijuana;
- An offense committed before January 1, 1972, which present law would classify under the categories listed, except for any sex crime or any crime which would constitute child abuse as defined in ORS 419B.005, Criminal Mistreatment 1 (ORS 163.205), or Endangering the Welfare of a Minor (ORS 153.5751A).

### **WHAT TYPES OF CONVICTIONS DO NOT QUALIFY FOR A MOTION TO SET ASIDE?**

- No convictions for traffic offenses may be set aside (including DUII); and,
- No convictions for Class A and B felonies may be set aside.

## WHAT ARE THE OTHER REQUIREMENTS FOR A MOTION TO SET ASIDE?

If you have only one conviction, you must wait three (3) years from the date of the conviction. You must have fully complied with and performed the sentence of the court. You must not have any pending criminal charges.

If you have more than one conviction, including any convictions for conduct associated with the conviction sought to be set aside, you must wait ten (10) years preceding the filing of this motion. Also, you must not have had any conviction(s) set aside within the 10-year period preceding the filing of this motion. The court determines if the circumstances and the behavior of the applicant from the date of the conviction warrant the conviction to be set aside.

## WHAT ARE THE STEPS TO SETTING ASIDE A RECORD?

1. Look at the Set Aside forms. Look at the example form to help you determine what needs to be filled in.
2. You will need to have your fingerprints taken on a fingerprint card. Most police agencies offer this service for a fee. The agency will provide a fingerprint card to you, and the person that takes your fingerprints will sign and date the card. That person should fill out the address of the agency in the section for employer and address, below the signature blank where they will sign the card. The reason given for fingerprinting is: Expunction.
3. You will need the case number of the case which you are requesting to be Set Aside. The case number can be found by going to the Records Center, Room 12, on the ground floor of the Clackamas Courthouse. Please check for the hours of operation before making a trip to the courthouse. **You must submit a copy of the Judgment of Conviction to the District Attorney's Office when you submit the Motion and Affidavit.** There will be a charge of \$.25 per page for any copies of court records.
4. You will need to provide documentation showing all fines / fees and financial obligations associated with the case(s) you are requesting to be set aside have been satisfied. To do this, you will need to request that information from the Accounting Unit which is located on the first floor of the courthouse, at the Cashier window.
5. You must sign the Affidavit in Support of Motion to Set Aside Record of Conviction in front of a Notary Public or a court clerk.
6. After completing the forms, make two (2) copies of the Motion, Affidavit and Order and file the documents as follows:

File the **original** Motion, Affidavit, Order, a **copy** of the fingerprint card and the \$281 filing fee with the court.

### **In person:**

Clackamas Circuit Court  
807 Main Street – **Room 104, Court Cashier Window**  
Oregon City, OR 97045

### **By mail:**

Clackamas Circuit Court  
Attn: Set Aside Clerk  
807 Main Street  
Oregon City, OR 97045

7. Submit a **copy** of the Motion and Affidavit, a **copy** of the sentencing order, the **original** fingerprint card, the **original** printout from the Accounting Unit to the District Attorney's Office, and your **\$80.00 certified check or money order** made payable to the **Department of State Police**, with the Clackamas County District Attorney's Office.

**In person:**

Clackamas County District Attorney's Office  
807 Main Street, Room 7  
Oregon City, OR 97045

**By mail:**

Clackamas County District Attorney's Office  
Attn: Set Aside Clerk  
807 Main Street, Room 7  
Oregon City, OR 97045

The second copy of the documents is for your records.

If you have questions regarding the process or filling out your forms, please contact the Set Aside clerk at 503.655.8643, option 1. Please check the hours of operation for the courthouse before calling or coming to the court.

You have now filed your motion. The entire process may take approximately 3 to 6 months to process.

A hearing will be scheduled approximately 90 days from the date your Motion is filed. If the District Attorney's Office has no objection to your Motion, the Order will be forwarded to the judge for signature and the hearing will be cancelled.

If the District Attorney's Office objects to your Motion, your appearance at the hearing will be required. **If you fail to appear at the scheduled hearing, your Motion may be denied or dismissed.** At the hearing the judge will decide whether or not your record(s) can be sealed.

If your Motion has been granted, you will receive a certified copy of the signed Order. Upon receipt of the signed order, you will know that your record(s) will be sealed. **Please consult an attorney if you have any questions about your legal rights.**

**HOW DO MY RECORDS GET SEALED?**

Upon receipt of the signed Order, the court clerk enters the Order, seals the court records and removes them from public records. The clerk then sends a certified copy of the Order to agencies such as the FBI, Oregon State Police, arresting police agency, the Sheriff's office, the Probation office, and any others as directed by the court. These agencies are required to destroy or seal their investigative reports concerning the incident.

**CAN THE RECORD BE RE-OPENED?**

Setting aside a conviction record does not absolutely eliminate the record. The court could be asked to unseal your record, but only exceptional circumstances would warrant this. A court order is required to unseal the record.