

NEXT STEPS

CRIMINAL SET-ASIDE



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.

Important Contact Information

Oregon Judicial Department - www.courts.oregon.gov

Oregon State Bar Lawyer Referral Service - 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) for information about special rights and rules that may apply to you.

WHAT DO I DO AFTER I FILE?

Make 3 copies of your forms - one for your records, one to serve on the prosecuting attorney (usually the District Attorney. Refer to your charging instrument or citation for the prosecuting attorney's information), and one to file with the court after service is completed.

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

HOW DO I SERVE COPIES?

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. This is your proof of service.

There is no fee to file this *Motion*

Go to 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.

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 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)