

## **SETTING ASIDE ARRESTS AND CONVICTIONS**

The following information is provided through the joint community service of the African American Chamber of Commerce, Multnomah County District Attorneys Office, Multnomah County Public Defenders office, Independent Development Enterprise Alliance and the Alliance of Minority Chambers of Commerce

**This paper is meant to inform, not to advise on Oregon Law.** An attorney should be consulted about individual situations. This is 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 conviction. (Two separate processes – may be completed at the same time, but two different forms are needed and you will have to request them.) 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, housing and school applications, acquiring bonding, and other situations that question an individual's record. The process, while not complicated is lengthy.

A motion to set aside is not automatically granted. The DA's office has the right to oppose your motion. You are not required to hire an attorney for the process. Court staff and the DA's Office however, are 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 DA and denied by the court.

**Note: No state or municipal traffic offense (whether it is a felony, misdemeanor or infraction) can be set aside.**

To see if your arrest or conviction qualifies for a motion to set aside, refer to Oregon Revised Statute 137.225 or consult your attorney. Legal Aid offices may be able to assist: Multnomah County – 503.224.4086, Clackamas County – 503.655.2518, Washington County – 503.648.7163

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

#### **CONVICTION:**

1. Most Class C felonies except see below
2. Most Crimes that were punishable as a felony or misdemeanor by the court at the time of the sentence (regardless of the sentence actually imposed). except see below
3. Any past conviction or violation based on possession or marijuana.
4. Most misdemeanor crimes, including violation of city or county ordinances. except see below
5. Any violation under state or local law.
6. Most convictions for an offense committed before January 1, 1972 (effective date of Oregon Criminal Code of 1971) which present law would classify under Categories 1-5 above. except see below

## **Exceptions – not expungeable:**

1. Any sex crime
2. Criminal Mistreatment I or Endangering the Welfare of a Minor if the crime constituted child abuse as defined in ORS 419B.005.

## **ARREST:**

1. An arrest, which resulted in a conviction, listed in the six sections above.
2. Any arrest, which resulted in no action, a dismissal or an acquittal.

**Notice:** The 1995 Oregon Legislature has amended the statute which pertains to the expungement process (ORS 137.225). The amendment requires an **\$80 fee for each conviction expungement. The payment must be in the form of a certified check or money order, and is to be made payable to the “Oregon State Police”.** The payment must be included with the fingerprint card, which is presented to the District Attorney’s Office. Expungements of arrest records will continue to be done without charge.

## **Forms that are required:**

**For Conviction: Forms 1131 and 1132 Motion and Affidavit to Set Aside Conviction**

**For an Arrest: Forms 1245 and 1247 Motion and Affidavit to Set Aside Arrest**

These forms are available at many office supply outlets, two of which are located at: Office Supplies - 706 SE 6<sup>th</sup> and Stevens & Ness – 916 SW Fourth in Portland – you may also look in the yellow pages under Legal Forms.

## **WHAT ARE THE STEPS IN A MOTION TO SET ASIDE**

1. Preferably, hire an attorney to determine your eligibility and prepare the motion and affidavit. If you are preparing the papers yourself, obtain the necessary forms. Legal Aid has application information and can/will mail out what is needed. Legal Aid Multnomah County – 503.224.4086, Clackamas County – 503.665.2518. You will need to obtain court records of your conviction and arrest; will need a copy of your judgment order and release papers from parole and probation if applicable. The public defender’s office can assist you with this process. Court records are searchable by date of conviction and/or arrest, and you will most likely have to do this search yourself at the county courthouse.
2. Have your fingerprints taken by a police department. Your fingerprint card must contain your date of birth and physical description. Your fingerprints are used by the Oregon State Police in Salem to check your identity and criminal record and will be returned to you after the procedure is completed.
3. File your original Motion and Affidavit in Room 106, Multnomah County Courthouse, 1021 SW 4<sup>th</sup> Ave. Portland, OR 97204.
4. Mail or deliver copies of the Motion and Affidavit together with the **original fingerprint card** to the D.A.’s office: Office of the District Attorney, Rm. 600, Multnomah County Courthouse, 1021 SW 4<sup>th</sup> Ave. Portland, OR 97204. (Note: the phone number of the D.A. expungement desk is: (503) 988-5313).

**\*\*\*Retain a copy of all papers for your own records.\*\*\***

5. After your motion is correctly filed, a hearing will be scheduled. A judge will hear whatever you, your lawyer and the District Attorney wish to present. If the motion is denied, the judge may allow you to apply again at some later time. 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.
6. If 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.

### **FINAL STEPS:**

The Clerk of the Court enters the order.

Court records of the case are sealed and removed from public access.

The Clerk of the Court sends a certified true copy of the order with a cover memorandum to agencies such as the FBI, Oregon State Police, Portland Police Bureau, Sheriff's Office, probation office, and others as directed by the Court. These agencies must seal your records in the case and remove them from public access.

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

#### **CONVICTION:**

1. At least three (3) years must have passed from the date of conviction.
2. You must have fully complied with all of the court's orders and have performed the conditions of your sentence, including completion of probation, payment of restitution and other financial obligations.
3. You do not have any pending criminal charges.
4. You have no other convictions (except traffic convictions) within the ten-year period preceding the filing of the motion. Convictions which have previously been set aside or convictions for conduct associated with the conviction sought to be set aside, are counted as convictions if they occurred within the ten-year period.

#### **ARREST:**

1. At least one (1) year must have passed from the date of arrest if no accusatory instrument was filed. The one- (1) year period does not include the time during which you have secreted yourself within or without the state.
2. If any accusatory instrument was filed, then a motion to set aside can be filed any time after an acquittal or dismissal of that charge.
5. You do not have any pending criminal charges.
6. You have no convictions (except traffic violations) within the ten-year period preceding the filing of the motion. Convictions which have previously been set aside or convictions for conduct associated with the conviction sought to be set aside, are counted as convictions if they occurred within the ten-year period.

7. You have no other arrest within a three-year period preceding the filing of the motion (except for traffic offenses and arrests for conduct associated with the arrest sought to be set aside).

### **WHO SHOULD PREPARE THE LEGAL PAPERS AND ADVISE ME?**

An Attorney is recommended. If you have no regular attorney, you can call the Oregon State Bar Lawyer Referral Services at 684-3763. Outside the Portland area 1-800-452-7636 (toll free).

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.

### **FINGER PRINTING AGENCIES**

**(Many agencies require an appointment; therefore, it is suggested that applicants call first)**

Beaverton Police Dept  
4755 SW Griffith Dr  
Beaverton, OR 97005  
Ph: 503/526-2260

Tuesdays **Only**  
11:30 am to 1:30 PM  
\$10.00 per card

Clackamas County Courthouse  
Clackamas County Sheriff's Office Civil  
Division  
807 Main Street, Rm 100  
Oregon City, OR  
Ph: 503/655-8351

Monday and Friday Morning **ONLY**  
9:00 am to 12:00 PM  
\$7.50 per card  
**By Appointment Only**

Gresham Police Dept.  
1333 NW Eastman Parkway  
Gresham, OR 97030  
(Must reside or work in Gresham)  
Ph: 503/669-2318

Tuesday and Thursday  
2:00 PM to 3:45 PM  
\$5.00 per card  
**By Appointment Only**

Finger Print Services  
418 SW Washington #403  
Portland, OR  
Ph: 503/228-4311

Monday and Wednesday  
4:30 PM to 5:30 PM  
Friday – 12:00 PM to 3:00 PM  
\$10.00 per card

Washington County Sheriff's Office  
150 North First Street  
Hillsboro, OR 97123  
Ph: 503/648-8700

Monday through Friday  
11:00 am to 12:00 PM and 1:00 to 2:00pm  
\$7.00 for the first two cards  
\$1.00 per card thereafter

Multi-Cultural Community Services  
(Lutheran Family Services)  
605 SE 39<sup>th</sup> Avenue  
Portland, OR  
Ph: 503/233-0042

Monday through Thursday  
8:30 am to 5:00 PM  
Friday 9:00 am to 4:30 PM  
\$5.00 per card