

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.osb.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 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 our 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:

<u>For charge of:</u>	<u>Years since date of conviction or release from prison:</u>	<u>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:</u>
Class B felony	7 years	7 years
Class C felony	5 years	5 years

Class A misdemeanor	3 years	3 years
<u>Class B or C misdemeanor, violation or finding of contempt of court</u>	1 year	1 year

Probation Revocation: If your sentence of probation was revoked, you cannot ask for a set-aside until 3 years after the date of revocation or until you are otherwise eligible under the timelines above, whichever is later.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 City will not proceed with prosecution or contempt charge

Arrests for 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.

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:
 - “City of Lebanon” 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: (John Tre’ Kennedy, The Morley, Thomas Law Firm, 80 E. Maple Street, Lebanon, OR 97355).

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 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

WHERE DO I FILE?

File in the Lebanon Municipal Court, 40 N. Second Street, Suite 300, Lebanon, OR 97355.

Mail a copy of the *Motion* and *Declaration* to the prosecuting attorney: John Tre' Kennedy, The Morley, Thomas Law Firm, 80 E. Maple Street, Lebanon, OR 97355. 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.

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 an attorney 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."