

## SETTING ASIDE AN ARREST

Oregon Revised Statute ORS 137.225 allows some types of records to be erased from a person's Computerized Criminal History (CCH). You are encouraged to read this statute to help you decide if you qualify to have an item taken off your record. A copy of this statute is attached.

You may qualify to have an arrest removed from your record if:

- 1) You were arrested and no charge was ever filed against you. (You must wait one year from the date of arrest to be eligible to set aside the arrest.)

OR

A charge was filed, but it was dismissed or you were acquitted. (You may apply to set aside an arrest at any time after dismissal or acquittal.)

- 2) You have not been arrested or criminally cited for any other offense (excluding motor vehicle violations) within the 3-year period immediately preceding the filing of your motion. Arrests previously set aside do not count against you in determining if you qualify.
  - 3) You have not been convicted of another offense (excluding motor vehicle violations) within the 10-year period immediately preceding the filing of your motion. Convictions which have previously been set aside or convictions for conduct associated with the conviction you are now seeking to set aside are counted, if they occurred within the 10-year period.
- Arrests for state or municipal traffic offenses that do not result in a conviction are eligible to be set aside. However, arrests for Driving While Under the Influence of Intoxicants (DUII) are not able to be set aside if the charge was dismissed as a result of successful completion of a diversion agreement.

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If you feel your arrest qualifies under Oregon Law (ORS 137.225) to be set aside, you need to complete the following:

- 1) Fill out a Motion, Affidavit and Order to Set Aside Arrest. These are available at many stationery stores, from the District Attorney's Office, or from the District Attorney's website at <http://www.co.josephine.or.us/Page.asp?NavID=336>.
- 2) Get fingerprinted at the Civil Department of the Sheriff's Office. You need to be fingerprinted for the purpose of setting aside arrest on a special "Applicant Form," even if you were fingerprinted at the time of your arrest.
- 3) Give the completed Motion and Affidavit that has your actual signature on it to the Court. Also give the court the Order to Set Aside Arrest that you have filled out for the judge's signature.
- 4) Give a copy of the same Motion, Affidavit and Order to the District Attorney.
- 5) Give the completed fingerprint card to the District Attorney.

You may either mail the paperwork or take it to each of the offices in person.

Court Administrator  
Josephine County Courthouse  
500 NW 6<sup>th</sup> St., Dept. 17  
Grants Pass, OR 97526

District Attorney's Office  
Josephine County Courthouse  
500 NW 6<sup>th</sup> St., Room 202, Dept. 16  
Grants Pass, OR 97526

When the District Attorney's Office receives your paperwork and fingerprint card they will be sent to the Oregon State Police Identification Bureau in Salem and processed. The ID Bureau will provide the District Attorney with a copy of your CCH and the results of a comprehensive check that will indicate if you qualify to have your arrest removed from your record. The District Attorney will not know whether or not a record can be set aside until your CCH is received from Salem.

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If the District Attorney determines that your arrest is eligible to be set aside, the court will be notified that the District Attorney does not oppose your Motion. Your Motion, Affidavit and Order will then be submitted to a judge for signature. Once the judge has signed the Order, the arrest shall be deemed not to have occurred, and you may answer accordingly any questions relating to its occurrence. The Court will send a copy of the signed Order to the ID Bureau and the arrest record will be sealed.

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If the District Attorney determines that your arrest is not eligible to be set aside, the court will be notified that the District Attorney opposes your Motion. The court will then set a hearing on the matter. You will be notified of the hearing date and be given the opportunity to appear before a judge. If your Motion is denied by the judge at the hearing, the arrest will remain on your CCH.

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The District Attorney's Office cannot provide legal advice or assist you in filling out the paperwork. However, if you have a general question, you may call this office at (541) 474-5200.