

SETTING ASIDE A CONVICTION

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.

Certain convictions are not able to be set aside. These include:

- Most sex crimes and crimes against children
- Class "A" felonies (*A conviction for manufacture, delivery or possession of marijuana may be able to be set aside, even if it was a Class "A" felony at the time of conviction*)
- Traffic offenses

Convictions cannot be set aside until 3 years have passed from the pronouncement of judgment.

Convictions cannot be set aside if you are still on probation, parole, or post-prison supervision.

Convictions cannot be set aside if you have 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.

Convictions for Class "B" felonies can only be set aside if the offense did not involve firearms used in a felony, is not classified as a person felony, 20 years have elapsed from the date of the conviction or of the release from imprisonment for the conviction, you have not been convicted of or arrested for any other offense (excluding motor vehicle violations) after the date of the conviction of the Class B felony you are seeking to set aside, whichever is later; OR the Class B felony conviction is for unlawful possession of a controlled substance listed in Schedule I.

Convictions cannot be set aside if you are currently charged with the commission of any crime.

If you feel your conviction 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 Conviction. 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 conviction on a special "Applicant Form," even if you were fingerprinted at the time of your arrest.
- 3) Obtain a money order or certified bank check (no cash or personal checks are acceptable) in the amount of \$80.00 made payable to "Department of State Police." You do not get this money back if you lose the motion to set aside your conviction.
- 4) Obtain a money order or check in the amount of \$281.00 made payable to "Josephine County Courts." You must pay this filing fee for each case you are attempting to set aside. You do not get this money back if you lose the motion to set aside your conviction.
- 5) Obtain a copy of your judgment of conviction from the Josephine County Courts. Mark the copy of the judgment of conviction as "Exhibit A" and attach it to the Motion for Setting Aside Conviction.
- 6) Give the completed original Motion with attached judgment of conviction and Affidavit that has your actual signature on it to the Court, along with the \$281.00 filing fee. Also give the court the Order to Set Aside Conviction that you have filled out for the judge's signature.

- 7) Give a copy of the same Motion, attached judgment, Affidavit and Order, and the completed fingerprint card, to the District Attorney's Office.
- 8) Give the \$80.00 fee (payable to the Department of State Police) to the District Attorney's Office.

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

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

District Attorney's Office
Josephine County Courthouse
500 NW 6th St., Rm. 202, Dept. 16
Grants Pass, OR 97526

When the District Attorney's Office receives your paperwork, fingerprint card, and the \$80.00 fee for OSP, your documents 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 conviction 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.

If the District Attorney determines that your conviction 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 conviction 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 record will be sealed.

If the District Attorney determines that your conviction 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 conviction will remain on your CCH.

Under ORS 137.225, victims of crime have the right to be present at a hearing on motions to set aside convictions for crimes in which they were a victim, and to make a statement if they desire. The Court may consider their statement, along with the circumstances and behavior of the defendant and the requirements of law, in deciding whether to set aside the conviction. Regardless of whether or not you are otherwise eligible to set aside your conviction, a hearing will be set if the victim requests one.

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.