

PACKET C

Instructions to Set Aside and Seal Conviction and Record of Arrest/Criminal Charge

Things you will need to complete this process:

- A clear understanding of the law in the matter. Carefully read ORS 137.225.
- The necessary forms to request this action.
- A complete set of your fingerprints.
- A certified check for **\$80** made payable to the Department of State Police (attach to your fingerprint card).
- A court filing fee of **\$281**, which you can pay either in cash, by credit or debit card, or with a personal check or a money order made payable to the State of Oregon.

PRIOR TO FILING

Forms - You may download the forms needed to complete this process from the Court's website. Paper copies are also available in Room 104 of the Benton County Courthouse by asking for "Packet C". You may use these forms as your original forms to file your request, or you may use them as examples to create your own forms.

There should be three forms in the packet: 1) Motion to Set Aside and Seal Conviction and Record of Arrest/Criminal Charge; 2) Declaration in Support of Motion to Set Aside and Seal Conviction and Record of Arrest/Criminal Charge; and 3) Order to Set Aside and Seal Conviction and Record of Arrest/Criminal Charge.

Complete all the information on the Motion, Declaration and the proposed Order to the best of your ability. Court staff will not be able to assist you in completing these documents. Use the original court case number from the criminal case on all the forms.

Fingerprints – You will need to get a complete set of your fingerprints taken. The place and times to get this done in Benton County are:

Benton County Courthouse	Thursdays 6:00 PM – 7:00 PM
120 NW 4 th Street – Room 114	Saturdays 8:00 AM – 9:00 AM
Corvallis, Oregon 97330	

- There is a \$20.00 fee per print card plus \$5.00 for any subsequent print cards, payable by cash, personal check or money order.
- You must bring one piece of picture ID with you.
- The fingerprint card should contain the notation, "Motion for Setting Aside Conviction."

If you are unable to get your fingerprints taken here in Benton County because you live outside the area, you may be able to get a set of fingerprints taken through other law enforcement agencies in your local area, like city police offices, other county sheriff offices or other state police agencies, and their fees for providing this service may vary.

Copies – Before filing your original forms with the Court, you will need copies of the completed Motion, Declaration and proposed Order to provide to the Benton County District Attorney's Office, and you may also wish to make copies for your own records.

Service on the District Attorney – Once you have completed the forms and made the necessary copies, you will need to take or mail the copies of the Motion, Declaration and proposed Order to the

District Attorney's office located on the 3rd floor of the Benton County Courthouse, 120 NW 4th Street, Corvallis OR 97330. Along with their copies, you must provide the set of your fingerprints with the certified check for \$80 payable to the Department of State Police attached to the fingerprint card. You also may wish to provide them with any copies of documentation that confirm your compliance with the terms of your sentence, which could include records of payments and/or certificates of completion.

FILING YOUR PAPERS WITH THE COURT

Submit your original documents and pay your filing fee in person in Room 104 of the Benton County Courthouse, located at 120 NW 4th Street, Corvallis, or by mail to: Benton County Circuit Court, PO Box 1870, Corvallis, Oregon 97339. Make sure that you have completed all the applicable blanks on the Motion, Declaration and proposed Order, including the case number. Make sure that you have signed the Motion and Declaration.

After you have filed your papers with the court and are waiting for the process to be completed, if your mailing address changes, it is important that you notify the court in writing of that change. There is a form for this available in Room 104 of the Courthouse, and also on the Court's website.

WHAT HAPPENS NOW?

The District Attorney has the opportunity to object to your request to have your conviction and records of arrest/criminal charge set aside. First, they will send your fingerprints to the Department of State Police (OSP) to have them confirm your identity and to see if there have been any other incidents that would cause them to want to object to your request. Once the OSP has completed their investigation, they will send the results back to the District Attorney. This process alone can take up to 90 days to complete.

If the District Attorney objects to your request, they will file a written objection with the court and provide you with a copy by mail. At that point, the Court will schedule a hearing to consider your request and their objection, and you will be notified by mail at the address you have provided of the date and time of that hearing. You must appear at that hearing or the Court will grant the objection and deny your request.

If the District Attorney doesn't object to your request, they will file a document with the court, usually titled a Waiver of Appearance, at which time, the Court will then decide, based on the information in your request, whether to grant or deny your request.

If the Court grants your request, a Judge will sign the proposed Order that you submitted which directs that: 1)copies be sent to law enforcement agencies that have records of your conviction, arrest, citation or criminal charge; and 2)directs that the Court's file be sealed. You will receive a certified copy of the signed Order by mail at the address you have provided, and **you should keep this certified copy in a secure location for all future reference**. If you lose the certified copy provided by the Court, you will not be able to obtain another unless you get the Court to sign an Order allowing the sealed file to be opened for a copy to be made, and the Court does not have forms for that, you would have to draw them up yourself or have an attorney do so on your behalf.

If the Court denies your request, or decides to hold a hearing to consider your request, you will be notified about the denial or the hearing by mail at the address you have provided.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

STATE OF OREGON,

Plaintiff,

vs.

Defendant.

Case No. _____

MOTION TO SET ASIDE AND SEAL
CONVICTION AND RECORD
OF ARREST/CRIMINAL CHARGE

COMES NOW the Defendant in this matter, and respectfully moves the Court for an Order setting aside and sealing the conviction and record of arrest/criminal charge of the Defendant pursuant to ORS 137.225.

This Motion is based upon the record herein and upon the accompanying Declaration.

Dated this _____ day of _____, 20____.

Signature of Defendant

Defendant's Date of Birth

Defendant's Mailing Address

Defendant's Telephone Number

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

STATE OF OREGON,)	
)	Case No. _____
vs.)	
)	DECLARATION IN SUPPORT OF
)	MOTION TO SET ASIDE AND SEAL
_____)	CONVICTION AND RECORD OF
Defendant.)	ARREST/CRIMINAL CHARGE

I, _____, am the Defendant herein, and I make this Declaration in Support of my Motion to Set Aside and Seal Conviction and Record of Arrest/Criminal Charge.

The arrest/criminal charge I am seeking to have set aside and sealed occurred on or about this date: _____; and is identified by the following Fingerprint Control number (FPN): _____.

The charge(s) I was arrested or cited for on the above date included: _____

_____.

The arresting agency was: _____.

The arresting agency incident number was: _____.

The charge(s) I was convicted of included: _____
_____.

The date of my conviction was: _____.

This conviction occurred more than three [3] years ago and was not for:

- a Class A felony;
- a Class B felony for a violation of ORS 166.429, Furnishing a firearm used in a felony;
- a Class B felony classified as a person felony as defined by OAR 213-003-0001(14);
- Criminal Mistreatment in the First Degree that either constituted child abuse or where the victim at the time of the crime was 65 years of age or older;
- Criminal Mistreatment in the Second Degree, where the victim at the time of the crime was 65 years of age or older;
- Endangering the Welfare of a Minor that constituted child abuse;
- Criminally Negligent Homicide committed when that offense was punishable as a Class C felony (prior to January 1, 2004);
- Assault in the Third Degree where physical injury was intentionally or knowingly caused to a child 10 years of age or younger;
- any sex crime as defined by ORS 163A.005(5), unless I qualify for an exemption described under ORS 137.225(6)(f)(A) or (B);
- a State or municipal traffic offense.

I have no other similar motions currently pending before this or any other court.

I have no other criminal cases currently pending against me in this or any other court.

I have no other criminal convictions within the 10-year period immediately preceding the filing of this Motion, excluding motor vehicle violations.

I have not had another conviction set aside within the 10-year period immediately preceding the filing of this Motion.

I have fully complied with and performed all provisions of the sentence imposed herein.

A copy of this Declaration and a copy of my Motion to Set Aside Conviction and Seal Records of Arrest have been served upon the District Attorney for Benton County.

A complete set of my fingerprints, along with a certified check made payable to the Department of State Police for their processing costs, has been served on the District Attorney for Benton County.

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Dated this _____ day of _____, 20____.

Signature of Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

STATE OF OREGON,)	
)	Case No. _____
vs.)	
)	ORDER TO SET ASIDE AND SEAL
)	CONVICTION AND RECORD
_____)	OF ARREST/CRIMINAL CHARGE
Date of Birth: _____)	
Defendant.)	

THIS MATTER having come before the Court upon the Motion of the Defendant for an Order Setting Aside and Sealing Conviction and Record of Arrest/Criminal Charge, pursuant to ORS 137.225, the State of Oregon appearing by and through the District Attorney for Benton County, and the Court having reviewed the records and being fully advised, finds as follows:

1. A copy of the Motion to Set Aside, Declaration in Support and a complete set of the Defendant's fingerprints was served upon the District Attorney for Benton County.
2. The Department of State Police has made positive identification of this defendant as follows:

Oregon State Identification (SID) #: _____
Fingerprint Control (FPN) #: _____
Date of Arrest/Citation/Charge: _____
Arresting/Citing Agency and their Incident #: _____
Arrested/Cited for charge(s): _____

Date of Conviction: _____
Convicted of charge(s): _____

3. The Defendant has fully complied with and performed all provisions of the sentence imposed herein.
4. The circumstances and behavior of the Defendant from the date of conviction to the date of this Order warrant setting aside and sealing the conviction and record of arrest/criminal charge.

NOW THEREFORE IT IS HEREBY ORDERED that any record of conviction for the charge(s) listed above maintained by any law enforcement agency regarding the Defendant be, and the same is hereby set aside, and the Defendant is deemed not to have been convicted of said charge(s); and

IT IS FURTHER ORDERED that any record of arrest, citation or charge maintained by any law enforcement agency regarding the Defendant and the criminal episode contained herein be, and the same is hereby set aside, and the Defendant is deemed not to have been arrested, cited or charged for said charge(s); and

IT IS FURTHER ORDERED, that the Clerk of the Court shall forward a certified copy of this Order to all appropriate criminal justice agencies; and

IT IS FINALLY ORDERED that thereafter, the record of conviction and arrest herein shall be sealed together with other official Court records in this case, including investigation reports of involved law enforcement agencies concerning the criminal episode.

Dated this _____ day of _____, 20_____.

Circuit Court Judge

Print, Type or Stamp Name of Judge