

## PACKET B: Arrested and a case filed with the Court, but later charge(s) were dismissed or acquitted

There is no filing fee charged by the court for this type of set aside. There will be a criminal case number existing in the court records.

### OVERVIEW:

#### Things you will need to complete this process:

- ❖ Determine your eligibility. Carefully read ORS 137.225.
- ❖ Prepare your forms and get a complete set of your fingerprints on a fingerprint card.
- ❖ Deliver copies of your forms to the District Attorney's Office.
- ❖ Deliver a full set of fingerprints on a fingerprint card to the Department of State Police.
- ❖ Pay a fee to the Department of State Police to perform a criminal records check.
- ❖ Deliver and file the original forms with the Jackson County Courts.

### PRIOR TO FILING:

#### Fingerprints:

You only need one fingerprint card regardless of the number of cases you are filing at the time. You may obtain a fingerprint card from either the Jackson County Sheriff Office or Medford Municipal Court.

**Sheriff:** The fingerprint card may be obtained at the Jackson County Sheriff's Office Monday, Tuesday, Thursday and Friday from 10:00 am to 12:30 pm and 1:00 PM to 3:00 pm. There is a fee for this service.

**Medford Police Department:** The fingerprint card may be obtained by **appointment only** at Medford Police Department, 219 S Ivy Street, Medford, OR 97501, Tuesday from 10:00 am to 12:00 pm and Thursday from 1:00 pm to 3:00 pm. The phone number is (541) 774-2250. There is a fee for this service.

If you reside outside of Jackson County, please contact your local police agency for a fingerprint card.

#### Forms:

SIGN all documents where your signature is required. **YOU MUST SIGN THE AFFIDAVIT IN THE PRESENCE OF A NOTARY PUBLIC OR A COURT CLERK. DO NOT SIGN THE AFFIDAVIT IF YOU HAVE BEEN CONVICTED OF A CRIME WITHIN THE PAST TEN (10) YEARS OR THIS WILL BE CONSIDERED FALSE SWEARING AND WILL RESULT IN A CRIMINAL PROCEEDING.** Make sure that your name and address appear on the form.

#### Copies:

Make two copies of the forms. Always retain a copy of all documents for your records. Make an additional copy to serve the District Attorney's Office.

#### Service on the DA:

A copy of the Motion/Affidavit/Order must be served to the District Attorney's office at 815 West 10th, Medford, OR 97501, Telephone: (541) 774-8181.

You must submit the original Motion/Affidavit/Order to the Jackson County Circuit Court, Criminal section, 100 South Oakdale, Medford, OR 97501. You must prepare separate documents for each arrest.

## ***ELIGIBILITY:***

You will need to determine if your arrest is eligible to be set aside. For eligibility refer to Oregon Revised Statutes ORS 137.225. If you sign the affidavit and have been convicted of a crime, it will be considered false swearing which will result in a criminal proceeding; See ORS 137.225 the eligible case types and applicable time frames by charge class.

- A. All arrests that resulted in the District attorney taking no action must wait sixty (60) days from the date that the District Attorney indicates that the state has elected not to proceed with prosecution;
- B. Cases that have been dismissed by the court do not require a time to wait to apply.
- C. Effective 1/1/2010, traffic related charges that are not convicted will be eligible to be set aside. The exception is a DUI Diversion charge that results in a dismissal is not eligible to be set aside.

## ***WHAT HAPPENS NOW?***

The State Police will use the fingerprint card to make a positive identification of the defendant to determine if you had prior criminal cases set aside/sealed and to determine if you have any outstanding warrants.

The DA's office will file an Answer to the motion to set aside/seal with the clerk's office. The Answer will state either that the DA's office has no objection to the Motion, or if there is an objection, the Answer will set out the specific reasons for the objection. The DA's office will provide a copy of the Answer to you or your attorney. Generally, if an objection is filed, a hearing will be set on the matter before the court. The Circuit Court judge will make a decision on your motion. A copy of the Order will be mailed to you and/or your attorney. The Court will distribute copies of the Order to the appropriate agencies who will then comply by sealing their records.

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

STATE OF OREGON,

Plaintiff

Case Number: \_\_\_\_\_

vs

**MOTION FOR ORDER TO SET ASIDE AND  
SEAL ARREST**

\_\_\_\_\_ ,

Defendant

The above-named plaintiff moves the Court for an Order to Set Aside and Seal the ARREST in the following matter.

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Charge	Arrest Date	Agency	Disposition	Sentencing Date

(List all charges related to arrest or citation to be set aside.)

This motion is based on ORS 137.225, the records and files contained herein, and the attached affidavit.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

Prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

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

STATE OF OREGON,

Plaintiff

Case Number: \_\_\_\_\_

vs

**AFFIDAVIT IN SUPPORT OF MOTION TO SET  
ASIDE AND SEAL ARREST; CERTIFICATE OF  
SERVICE**

\_\_\_\_\_

Defendant

I, being first duly sworn on oath, depose and say:

1. That I am the plaintiff in the above entitled matter. I submit this affidavit in support of the attached Motion to Set Aside and Seal Arrest;
2. A copy of the attached Affidavit and Motion to Set Aside Arrest Record has been served on the District Attorney of Jackson County.
3. A complete set of fingerprints has been served on the Department of State Police.
4. The information pertaining to this matter as set out in the Motion is true to the best of my knowledge and belief;
5. \_\_\_\_ More than sixty (60) days has elapsed since the District Attorney indicated that the state has elected not to proceed with a prosecution or contempt proceeding, or;  
\_\_\_\_ An accusatory instrument was filed against me and has been dismissed, or;  
\_\_\_\_ An accusatory instrument was filed against me, but I was acquitted of all charges.
6. Within the applicable time period immediately preceding the filing of this Motion, I have not been convicted of any other offense, including any charges previously Set Aside and excluding motor vehicle violations.
  - Class B Felony: Seven (7) years
  - Class C Felony: Five (5) years
  - Class A Misdemeanor: Three (3) years
  - Class B or Class C Misdemeanor, Violation, or Finding of Contempt of Court: One (1) year
7. I do not have criminal charges pending against me at this time.

\_\_\_\_\_  
Signature

SUBSCRIBED AND SWORN TO BEFORE ME ON \_\_\_\_\_ in Jackson County, Oregon.  
DATE

Trial Court Administrator

By: \_\_\_\_\_ Court Clerk/Notary Public

My commission expires: \_\_\_\_\_

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

STATE OF OREGON,

Plaintiff

Case Number: \_\_\_\_\_

vs

**ORDER TO SET ASIDE AND SEAL ARREST**

\_\_\_\_\_ ,

Defendant

The above-named plaintiff moves the Court for an Order to Set Aside and Seal the ARREST in the following matter.

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Charge	Arrest Date	Agency	Disposition	Sentencing Date

(List all charges related to arrest or citation to be set aside.)

The Court, being fully advised, makes the following findings of fact:

1. A certified copy of the plaintiff's **M o t i o n** was served on the District Attorney, who has declined the opportunity to contest the Motion.
2. The circumstances and behavior of the plaintiff from the date of arrest warrant setting aside the arrest.
3. Positive identification of the plaintiff has been established by Dept. of the State Police Bureau of Identification as provided to the Jackson County District Attorney office.

**IT IS ORDERED** that:

1. The above **ARREST** is set aside;
2. The Clerk of the Court is directed to seal all files and records relating to said proceeding including the arrest resulting in the criminal proceeding;
3. The Clerk of the Court is directed to send a copy of this Order to the arresting agency named above and the Central Bureau of Criminal Investigation of the Department of State Police. The public agencies receiving a copy of this Order shall seal their records and order the arresting agency to seal its records. The Central Bureau of Criminal Investigation of the Department of State Police shall request the return of arrest date, including fingerprints from the Federal Bureau of Investigation.

Allow \_\_\_\_\_ Deny \_\_\_\_\_

\_\_\_\_\_