

## **Setting Aside Record of Arrest Oregon Revised Statute 137.225**

This packet is meant to instruct you on the procedure to file a request to set aside an arrest, not to advise you on Oregon law. Molalla Municipal Court staff cannot give you legal advice. You do not need to hire an attorney to complete this process; however, an attorney should be consulted for any legal advice and to assist in individual situations.

If you need to set aside records of a conviction and an arrest, please request a packet for setting aside records of conviction/arrest.

You may refer to the online version of the Oregon Revised Statutes at [www.leg.state.or.us/ors](http://www.leg.state.or.us/ors).

### **FEES**

You will need to have a complete set of fingerprints taken. Most police agencies offer this service for a fee of \$15-\$20.

### **WHAT IS A MOTION TO SET ASIDE AN ARREST?**

A Motion to Set Aside an Arrest, if granted by the court, sets aside the record of an arrest and the applicant is deemed not to have previously been arrested. The court orders the record of the arrest, and any other official records in the case, to be sealed. In the eyes of the law, the violation that led to the arrest did not occur and the record does not exist. Law enforcement agencies are required to seal their investigative reports of the incident.

### **WHAT TYPES OF ARRESTS QUALIFY FOR A MOTION TO SET ASIDE?**

An arrest for any type of crime, in which no accusatory instrument was filed, or which resulted in either a dismissal of the case or an acquittal (with the exception of DUII if charge was dismissed as the result of successful completion of diversion), may be eligible to be set aside. An arrest related to a conviction which is expunged is also sealable. If you need to set aside a conviction and an arrest, please review the packet for setting aside convictions.

### **WHAT ARE THE OTHER REQUIREMENTS FOR A MOTION TO SET ASIDE AN ARREST?**

A brief summary of eligibility requirements is provided below. It does not include specific advice about your case. You may wish to consult an attorney who will review your criminal history and advise you regarding applicable laws and to proceed with this motion. Refer to ORS 137.225 to determine what requirements must be met to set aside a record of conviction.

- If your case resulted in an acquittal or a dismissal, you can immediately file a motion to set aside the arrest record;
- You must not have any pending criminal charges;
- If your case resulted in no accusatory instrument – for example, a No Complaint – being filed, you must wait one (1) year from the date of your arrest to file a Motion to Set Aside. The one-

year period does not include the time during which you may have made yourself unavailable for arrest;

- You must not have any other arrests within a three (3) year period preceding the filing of a Motion to Set Aside, arrests for conduct associated with the same episode that resulted in the arrest that is being sought to be set aside;
- You must not have had any criminal convictions within a ten (10) year period preceding the filing of a Motion to Set Aside;
- The arrest you want set aside is not a state or municipal traffic offense.
- You will need to have your fingerprints taken on a fingerprint card. Most police agencies offer this service for a fee. The agency will provide a fingerprint card to you, and the person that takes your fingerprints will sign and date the card. That person should fill out the address of the agency in the section for employer and address, below the signature blank where they will sign the card. The reason given for fingerprinting is: Expunction.

### **WHAT ARE THE STEPS FOR CLEARING A RECORD**

Review the attached forms which you are to fill out. Call the Molalla Municipal Court at 503-829-7711 to request copies of court documents in your case which will give you the information needed to fill out the forms. There may be a fee associated with retrieving your court documents.

Fill in the blanks of the three forms attached (Motion, Affidavit, and Order). Look at the blue “EXAMPLE” forms to help you determine what lines need to be filled in.

You must sign the Affidavit in Support of Motion to Set Aside Record of Arrest in front of a notary public or the municipal court clerk (if mailing your documents, you must personally sign before a notary public). Please read the Affidavit carefully before signing as you are swearing to its contents. (Note: A notary public commissioned in Oregon may only notarize documents signed in Oregon, Washington State notary public may only notarize documents signed in Washington State, etc.)

You will also need to submit a card containing a complete set of your fingerprints. Most police agencies offer this service for a fee. The agency will provide a fingerprint card to you, and the person taking your fingerprints will sign and date the card. That person should fill out the address of the agency in the section for employer and address below the signature blank where it is signed. The reason given for fingerprinting is *motion to set aside arrest*.

After completing and signing the forms, **make two copies of the Motion, Affidavit and Order** and distribute the documents as follows:

Original: Submit the original forms (the ones with your original signature) to the Molalla Municipal Court in person or by mail:

Molalla Municipal Court  
117 N. Molalla Ave.  
PO Box 248  
Molalla, OR 97038

First copy/City Attorney: Write **Certified True Copy** at the top of the City Attorney's copy then date and sign it. Submit this copy, along with your fingerprint card, to the Molalla City Attorney's Office in person or by mail:

City Attorney's Office  
117 N. Molalla Ave.  
PO Box 248  
Molalla, OR 97038

If you drop off your documents personally, an employee with the City Attorney's Office can date stamp your copy as proof that you have submitted it.

Second copy: This copy is for your records.

If you have any questions about the process or filling out your forms, please contact Molalla Municipal Court at 503-829-7711.

You have now filed your motion. **The entire process can take several months from the time of filing before an order is signed by the Municipal Court Judge and your record is sealed.**

### **WILL A COURT HEARING BE SCHEDULED?**

Objection: If the City Prosecutor objects to your Motion, a hearing will be scheduled before the Municipal Court Judge. You will be notified by mail of the hearing date. You should be prepared to state why you believe you are eligible to have your record sealed. The City Prosecutor will argue why you may not be eligible. The Municipal Court Judge will then decide whether or not your record can be sealed. You may represent yourself or hire an attorney for this hearing. The court does not appoint attorneys for these matters.

No objection: If the City Prosecutor has no objection to your application, the Order will be forwarded to the Municipal Court Judge for signature without a formal hearing. You will receive a certified copy of the signed Order in the mail. Upon receipt of the signed Order, you will know that your record will be sealed.

### **HOW DOES MY RECORD GET SEALED?**

Upon receipt of the signed Order, the Municipal Court Clerk enters the Order, seals the court record and removes it from public records. The clerk then sends a certified copy of the Order to agencies such as the FBI, Oregon State Police, the arresting police agency, the sheriff's office, and any others as directed by the court. These agencies are required to seal their investigative reports concerning the incident.

### **CAN THE RECORD BE RE-OPENED?**

Setting aside an arrest record does not absolutely eliminate the record. The court could be asked to unseal your record, but only exceptional circumstances would warrant this request. A court order is required to unseal the record.

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON, )  
 )  
 Plaintiff, ) No. \_\_\_\_\_  
 v. )  
 )  
 \_\_\_\_\_, ) AFFIDAVIT IN SUPPORT OF  
 ) MOTION TO SET ASIDE RECORD OF  
 Defendant. ) ARREST

STATE OF \_\_\_\_\_ )  
 ) ss.  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, do hereby depose and say that:

1. I am the defendant herein, and I am filing this affidavit in support of the motion to set aside record of arrest pursuant to ORS 137.225.

2. This arrest occurred on \_\_\_\_\_. The charge was dismissed or an acquittal was entered on \_\_\_\_\_, or did not result in the filing of an accusatory instrument.

3. I have no criminal cases presently pending against me in any court.

4. I have not been convicted of any other offense, excluding motor vehicle violations, during the ten-year period immediately preceding the filing of the motion.

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5. I have not had any conviction set aside within the ten-year period immediately preceding the filing of this motion.

6. I have not had any other arrest within the three-year period immediately preceding the filing of the motion, excluding motor vehicle violations and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

7. Attached hereto is a copy of the full set of my fingerprints to be served on the City Attorney's Office along with a copy of the motion to set aside record of arrest and affidavit in support of the motion.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public of \_\_\_\_\_/ Court Clerk  
My Commission expires: \_\_\_\_\_

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON,	)	
	)	
Plaintiff,	)	No. _____
v.	)	
	)	
_____,	)	MOTION TO SET ASIDE RECORD OF
	)	ARREST
Defendant.	)	

Pursuant to the provisions of ORS 137.225, the above-named defendant hereby moves the Court for an Order Setting Aside the Record of Arrest herein and sealing the official records in this case.

This motion is based upon the record herein and upon the facts set forth in the Affidavit filed herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON, )  
 )  
 Plaintiff, ) No. \_\_\_\_\_  
 v. )  
 )  
 \_\_\_\_\_, )  
 Defendant. ) ORDER SETTING ASIDE RECORD OF  
 ) ARREST  
 )

THIS MATTER having come before the Court upon the Motion of the defendant for an Order Setting Aside Record of Arrest, pursuant to ORS 137.225, and the Court having reviewed the records and file herein, and now being fully advised, the Court finds as follows:

1. That the defendant was arrested and convicted as follows:

Original Arrest Date: \_\_\_\_\_

Original Arrest Charge: \_\_\_\_\_

Arresting Agency: \_\_\_\_\_

Date of Dismissal or  
Acquittal: \_\_\_\_\_

2. That positive identification of the defendant has been established as follows:

FBI Identification Number: \_\_\_\_\_

Oregon State  
Identification Number: \_\_\_\_\_

Arresting Agency Number: \_\_\_\_\_

3. That the circumstances and behavior of the defendant since the date of arrest are found to warrant setting aside the record of that arrest.

IT IS HEREBY ORDERED that the defendant's arrest herein should be and the same is set aside, pursuant to ORS 137.225, and hereafter the defendant, for all purposes of the law, shall be deemed not to have been previously arrested.

IT IS FURTHER ORDERED that the Municipal Court Clerk shall forward a certified copy of this Order to all law enforcement agencies mentioned in the court's file, including the following:

- (a) Federal Bureau of Investigation,
- (b) Oregon State Police,
- (c) State of Oregon Department of Corrections, and
- (d) Molalla Police Department.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Municipal Court Judge

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON, )  
)  
Plaintiff, ) No. [COURT CASE NUMBER]  
v. )  
)  
[YOUR FULL NAME] ) AFFIDAVIT IN SUPPORT OF  
) MOTION TO SET ASIDE RECORD OF  
) ARREST  
Defendant. )

STATE OF [FILL IN] )  
) ss.  
County of [FILL IN] )

I, [PRINT FULL NAME], do hereby depose and say that:

1. I am the defendant herein, and I am filing this affidavit in support of the motion to set aside record of arrest pursuant to ORS 137.225.
2. This arrest occurred on [ARREST DATE]. The charge was dismissed or an acquittal was entered on [JUDGMENT DATE], or did not result in the filing of an accusatory instrument.
3. I have no criminal cases presently pending against me in any court.
4. I have not been convicted of any other offense, excluding motor vehicle violations, during the ten-year period immediately preceding the filing of the motion.

//

5. I have not had any conviction set aside within the ten-year period immediately preceding the filing of this motion.

6. I have not had any other arrest within the three-year period immediately preceding the filing of the motion, excluding motor vehicle violations and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

7. Attached hereto is a copy of the full set of my fingerprints to be served on the City Attorney's Office along with a copy of the motion to set aside record of arrest and affidavit in support of the motion.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*[YOUR SIGNATURE \*\*MUST BE SIGNED IN FRONT OF NOTARY OR COURT CLERK]*

Signature

\_\_\_\_\_  
Print Name

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public of \_\_\_\_\_ / Court Clerk  
My Commission expires: \_\_\_\_\_

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON, )  
 )  
 Plaintiff, ) No. [COURT CASE NUMBER]  
 v. )  
 )  
 [YOUR FULL NAME], ) MOTION TO SET ASIDE RECORD OF  
 ) ARREST  
 Defendant. )

Pursuant to the provisions of ORS 137.225, the above-named defendant hereby moves the Court for an Order Setting Aside the Record of Arrest herein and sealing the official records in this case.

This motion is based upon the record herein and upon the facts set forth in the Affidavit filed herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[YOUR SIGNATURE]

Print your:

[FULL NAME]

[STREET ADDRESS]

[CITY, STATE, ZIP]

[PHONE NUMBER]

IN THE MUNICIPAL COURT OF THE CITY OF MOLALLA  
FOR THE STATE OF OREGON, COUNTY OF CLACKAMAS

STATE OF OREGON, )  
)  
Plaintiff, ) No. [COURT CASE NUMBER]  
v. )  
)  
[YOUR FULL NAME], )  
) ORDER SETTING ASIDE RECORD OF  
) ARREST  
Defendant. )

THIS MATTER having come before the Court upon the Motion of the defendant for an Order Setting Aside Record of Arrest, pursuant to ORS 137.225, and the Court having reviewed the records and file herein, and now being fully advised, the Court finds as follows:

1. That the defendant was arrested and convicted as follows:

Original Arrest Date: [FILL IN]

Original Arrest Charge: [FILL IN]

Arresting Agency: [FILL IN]

Date of Dismissal or  
Acquittal: [FILL IN]

2. That positive identification of the defendant has been established as follows:

FBI Identification Number: [LEAVE BLANK]

Oregon State  
Identification Number: [LEAVE BLANK]

Arresting Agency Number:           [LEAVE BLANK]          

3. That the circumstances and behavior of the defendant since the date of arrest are found to warrant setting aside the record of that arrest.

IT IS HEREBY ORDERED that the defendant's arrest herein should be and the same is set aside, pursuant to ORS 137.225, and hereafter the defendant, for all purposes of the law, shall be deemed not to have been previously arrested.

IT IS FURTHER ORDERED that the Municipal Court Clerk shall forward a certified copy of this Order to all law enforcement agencies mentioned in the court's file, including the following:

- (a) Federal Bureau of Investigation,
- (b) Oregon State Police,
- (c) State of Oregon Department of Corrections, and
- (d) Molalla Police Department.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Municipal Court Judge