

Doing Expungements Right

**And Verifying They Were
Done Right!**

What is a Set Aside in Oregon

Upon the entry of the order, the person for purposes of the law **shall be deemed not to have been previously convicted, arrested, cited or charged....**

ORS § 137.225

- 1 Firearm Rights?
- 2 Immigration?
- 3 Records and Background Checks?

Senate Bill 397

ORS 137.225

Effective January 1, 2022

1 Eligibility is a Tiered System

2 B-Felony non-person crimes
Delivery

3 Multiple Crimes don't affect calculation
anymore

4 Incarceration Time Matters

"years from the date of conviction or the release
of the person from imprisonment for the conviction
sought to be set aside, whichever is later" ORS § 137.225

Senate Bill 397

ORS 137.225

Effective January 1, 2022

5

Gray Areas

C and B felony (drug) crimes that can be reduced.

6

Arrests were a Complete Mistake

Arrests are probably not eligible until a conviction would have been!

7

Contempt is Eligible

Andy Simrin clearly established this in case law, and now it is codified.

Liberal Granting

If the person is otherwise eligible for relief under this section, **the court shall grant the motion** and enter an order as described in paragraph (b) of this subsection **unless the court makes written findings, by clear and convincing evidence**, that the circumstances and behavior of **the person**, from the date of the conviction the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating **a risk to public safety**. When determining whether the person's circumstances and behavior create a risk to public safety, **the court may only consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil penalty or other administrative sanction that relate to the character of the conviction sought to be set aside.**

1

By Statute

2

And by case law

"the legislature chose a policy in favor of setting aside the convictions of qualified applicants rather than leaving the decision to judicial discretion." State v. Singleton, 317 Or. App. 49, 51 (Or. Ct. App. 2022)



Partial Set Asides

“ third-degree assault and recklessly endangering another person are not “traffic offenses”

State v. Pohle, 317 Or. App. 76, 88 (Or. Ct. App. 2022)



Driving Cases

Shout out to **Shawn Kollie** for Making this Clear

Fines in other cases not prohibitive

"In sum, under Langan , the trial court erred in relying on defendant's failure to pay his fines in unrelated cases as behavior allowing for the denial of his motion"
State v. Kindred, 314 Or. App. 280, 289 (Or. Ct. App. 2021)

"The court may not consider non-punitive civil liability, monetary obligations and motor vehicle violations." ORS § 137.225

Civilian Background Check Companies

SECTION 5. ORS 646.607 is amended to read:

646.607. A person engages in an unlawful trade practice if in the course of the person's business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation.

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a customer's request, fails to refund money that the customer gave to the person to purchase the undelivered real estate, goods or services and that the person does not retain pursuant to any right, claim or defense the person may assert in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer.

(3) Violates ORS 401.965 (2).

(4) Violates a provision of ORS 646A.725 to 646A.750.

(5) Violates ORS 646A.530.

(6) Employs a collection practice that is unlawful under ORS 646.639.

(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

(8) Violates ORS 646A.093.

(9) Violates a provision of ORS 646A.600 to 646A.628.

(10) Violates ORS 646A.808 (2).

(11) Violates ORS 336.184.

(12) Publishes on a website related to the person's business, or in a consumer agreement related to a consumer transaction, a statement or representation of fact in which the person asserts that the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain, delete or dispose of information that the person requests, requires or receives from a consumer and the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner that is materially inconsistent with the person's statement or representation.

(13) Violates ORS 646A.813 (2).

(14) Violates section 4 (1) of this 2021 Act.

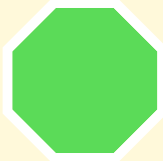
1 They must comply

2 What is their timeline?

3 Provide orders to expedite?

Copy a sticky
note, then type in
your idea.

Easy to Miss Tips and Tricks



- **Marijuana within 1000 feet of a school is usually Eligible**

- What is level of the conduct today?



- **Sex Crimes can be Eligible: ORS 163A.140**

- Five Years and otherwise consensual.
- **Sex Abuse 2 added**
- Rape3, Sex Abuse 3, Contributing to the Sexual Delinquency 3, Sodomy 3, Sexual Misconduct 3.
- Must first get Relief from Registration.



- **Child and Elder Victims**

- **Criminal Mistreatment 1 and 2** *when over 65 or when constitutes Child Abuse*
 - As defined in ORS 419B.005.
 - Was the indictment or judgment clear about age or child abuse?
- **Endangering the welfare of a minor**
 - under ORS 163.575(1)(a), when the offense constitutes child abuse as defined in ORS 419B.005 (Definitions).
 - Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined in ORS 167.060
 - And then only when the offense constitutes child abuse, by definition.

ORS 137.225 and its Five Required Data Points

Why More is Better

Where to Find the Data Needed
to Create a Thorough and
Accurate Set Aside Order

This is what the statute requires:

(b) The court shall... enter an appropriate order containing the **original arrest or citation charge**, the **conviction charge**, if applicable and different from the original, the **date of charge**, the **submitting agency** and the **disposition of the charge**.

1

Original Arrest or Citation Charge

2

Conviction Charge

3

Date of Charge

4

Submitting Agency

5

Disposition of the Charge

But it's not nearly enough -
and by the time we realize it,
it's a nightmare trying to
fix the problem.

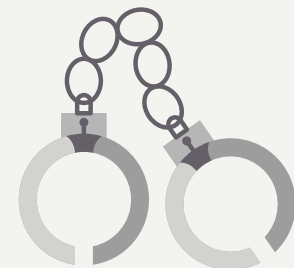
Let's get into **why** it's not
enough, what **is** enough, and
how to include what's needed,
by looking at what we call
"Criminal Records Soup".

Criminal Records Soup: The Simple Set Aside

No subsequent violations
Minimal Agencies Involved
One Fingerprinting Date

Sometimes, a criminal case is as straightforward as this:

Arrested and
Fingerprinted



Arraigned



Convicted



Jail and/or Probation



Criminal Records Soup: The Not-so-Simple Set Aside

Multiple Agencies Involved

Numerous Subsequent Violations

Multiple Fingerprinting Dates

Multiple cases during the same time period

And other times, it looks more like this:



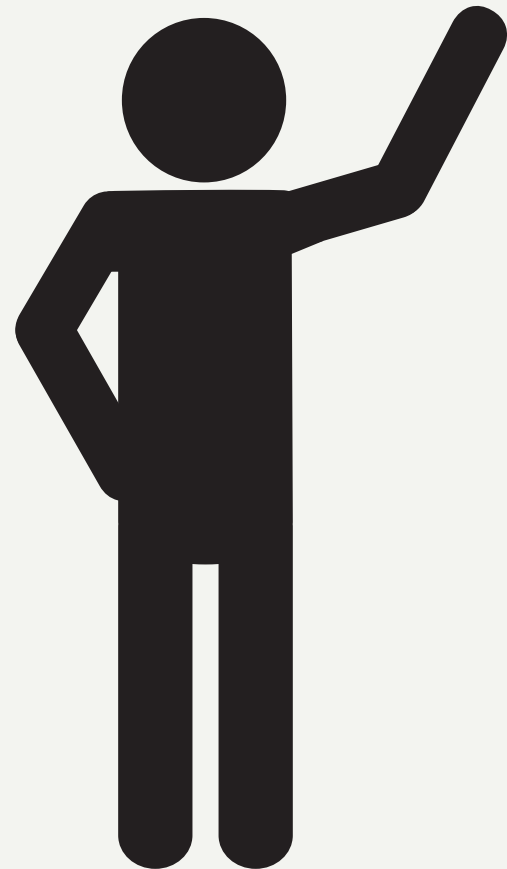
In OECl, the list of case events in a simple case is usually a lot shorter than the list of the case events in a not-so-simple case.

<div> <div>CASE NO. [REDACTED]</div> <div>STATE OF OREGON VS [REDACTED]</div> </div>		
Other Events on This Case	Image	Page Count
02/23/2016 Information	Information	1
02/23/2016 Affidavit - Eligibility - ACP	Affidavit - Eligibility - ACP	4
02/23/2016 Order - Appointing Counsel	Order - Appointing Counsel	1
02/23/2016 Order - Pleading	Order - Pleading	1
02/25/2016 Indictment	Indictment - IN	2
03/01/2016 Order - Pleading	Order - Pleading	1
03/23/2016 Petition - Guilty Plea	Petition - Guilty Plea	2
03/23/2016 Judgment - Offense General Creates Lien	Judgment - UCJ	0
05/20/2022 Motion - Set Aside	Motion - Set Aside - MOAS	4
Other Images on This Case	Image	Page Count
02/23/2016 Public	Public	1
03/01/2016 Public	Public	1
03/17/2016 Public	Public	1

CASE NO. [REDACTED]		
STATE OF OREGON VS. [REDACTED]		
Other Events on This Case	Image	Page Count
12/09/2010 Indictment	Indictment	4
12/09/2010 Agreement - Recognizance Forced Release	Agreement - Recognizance Forced Release	1
12/09/2010 Notice - Representation	Notice - Representation	2
12/09/2010 Claim	Claim	3
01/04/2011 Arraignment - Pleading Order	Arraignment - Pleading Order	1
03/09/2011 Petition - No Contest Plea	Plea - No Contest	2
03/09/2011 Notice - Advise Appeal Rights	Notice - Advise Appeal Rights	1
03/09/2011 Uniform Criminal Judgment	Uniform Criminal Judgment	4
03/09/2011 Creates Judgment Lien	Creates Judgment Lien	4
03/09/2011 Sentence	Sentence	3
06/28/2011 Motion - Show Cause	Motion - Show Cause	4
06/28/2011 Order - Show Cause	Order - Show Cause	4
06/28/2011 Warrant - Arrest	Warrant - Arrest	1
06/28/2011 Arraignment - Probation Violation	Arraignment - Probation Violation	1
06/29/2011 Agreement - Security Release	Agreement - Security Release	3
07/06/2011 Return - Service Arrest Warrant	Return - Service Arrest Warrant	2
08/05/2011 Warrant - Failure to Appear	Warrant - Failure to Appear	1
08/05/2011 Motion - Show Cause	Motion - Show Cause	5
08/05/2011 Order - Show Cause	Order - Show Cause	2
08/05/2011 Arraignment - Probation Violation	Arraignment - Probation Violation	1
08/12/2011 Return - Service Bench Warrant	Return - Service Bench Warrant	1
08/17/2011 Creates Judgment Lien	Creates Judgment Lien	3
11/14/2011 Order	Order	1
01/10/2012 Motion - Show Cause	Motion - Show Cause	4
01/10/2012 Order - Show Cause	Order - Show Cause	2
01/10/2012 Warrant - Arrest	Warrant - Arrest	1
01/10/2012 Arraignment - Probation Violation	Arraignment - Probation Violation	1
01/11/2012 Agreement - Security Release	Agreement - Security Release	2
01/17/2012 Return - Service Arrest Warrant	Return - Service Arrest Warrant	1
01/20/2012 Disposition - Probation Violation	Disposition - Probation Violation	3
04/24/2012 Motion - Show Cause	Motion - Show Cause	4
04/24/2012 Order - Show Cause	Order - Show Cause	2
04/24/2012 Warrant - Arrest	Warrant - Arrest	1
04/24/2012 Order - Appointing Counsel	Order - Appointing Counsel	1
04/24/2012 Arraignment - Probation Violation	Arraignment - Probation Violation	1
04/25/2012 Return - Service Arrest Warrant	Return - Service Arrest Warrant	1
04/26/2012 Judgment - Supplemental - Creates Lien	Judgment - Supplemental - Creates Lien	1
05/04/2012 Disposition - Probation Violation	Disposition - Probation Violation	3
Other Images on This Case	Image	Page Count
01/01/1900 Migrated - UCJ	UCJ	4

Meet Jack.

His case events were on the not-so-simple side.



Jack went through some rough times, many years ago.

Now he wants to clean up his criminal record and make a new start.

That's where you come in.

Here's a bit of Jack's history.

You don't need to absorb all this.

Jack was arrested by the **Eugene Police Department** for *Delivering a Controlled Substance* and *Possessing a Controlled Substance*.



After two more arrest warrants were issued, and after the warrants were served and fingerprints taken by the **Springfield Police Department** and the **Lane County Sheriff's Office**, Jack was eventually convicted of *Possession of a Controlled Substance*. He was ordered to report to jail, where he was fingerprinted again.

He was transported to the **Lane County Jail** and then back to court, where he was arraigned on the charge of *Possessing a Controlled Substance*.



Jack violated the terms of his probation three times. His probation sentence was eventually revoked, and he was sentenced to 12 months prison time at **Coffee Creek Correctional Facility**.



The arrest warrant was served by the **Marion County Sheriff's Office** when Jack was arrested for new charges, and he was lodged in the **Marion County Jail**, where he was fingerprinted for the new charges and for the *Possessing a Controlled Substance charge* listed on the warrant.

He skipped his arraignment and a statewide arrest warrant was issued.



He was indicted for *Possessing a Controlled Substance* in **Lane County Circuit Court**.

He was released on Post-Prison Supervision and he reported once more to the **Lane County Parole and Probation Department**, and he completed PPS with no violations.

Now Jack wants to clean up his criminal record.

How many submitting agencies were involved in his case?

At least eight.

How many cycles on Jack's criminal history are part of this case?

At least five.

You don't need to draft Jack's set aside filings, but you need to make sure your filings for your own clients include all of the above information, and more.

Where is all this information found?

Data Sources

Where you find your data point information is what determines the accuracy of your filings.

Let's talk about Initial Background Checks, because it's essential to know what's on the criminal history report before you file.

Which is Better – An “Open Records Check”
from the Oregon State Police,
or an “Identity Summary History Report”
from the Federal Bureau of Investigation?

On the next four slides, a copy of the criminal record
as provided by the FBI is on the left side of the screen.

A copy **as provided by the Oregon State Police**
is on the right side.



The differences between the two types of reports might be as "slight" as a missing charge.

***** CRIMINAL HISTORY *****

===== Cycle 001 =====

Earliest Event Date 1982-05-16

Arrest Date 1982-05-16
Arrest Case Number [REDACTED]
Arresting Agency OR0220000 LINN COUNTY SHERIFFS OFFICE
Subject's Name [REDACTED]

Arrest Type ADULT
Charge 01
Charge Tracking Number 38632
Statute SEX ABUSE 1ST DEG (163.425 OR)
NCIC Offense Code 3600
NCIC Offense Text SEX OFFENSE
Charge 02
Charge Tracking Number 38632
Statute ASSAULT 4TH DEG (163.160 OR)
NCIC Offense Code 1300
NCIC Offense Text ASSLT

Court Disposition (Cycle 001)
Court Agency OR022013J DIS CRT ALBANY
Charge 01
Statute SEX ABUSE 1ST DEG (163.425 OR)
NCIC Offense Code 3600
NCIC Offense Text SEX OFFENSE
Disposition No Complaint Filed

Court Disposition (Cycle 001)
Court Case Number [REDACTED]
Court Agency OR022013J DIS CRT ALBANY
Charge 02
Statute HARASSMENT (166.065 OR)
NCIC Offense Code 5309
NCIC Offense Text HARASSING COMMUNICATION
Disposition Convicted(1982-07-07; CRT PROB)

Sentencing (Cycle 001)
Sentencing Agency
Charge 02
Sentence FINE - 142
Sentence PROB - 6M

FBI

Cycle 1 of 3: Date of Arrest: 1982-05-16 | Arrest Seq within Date: N/A | FPN: N/A | Arresting Agency: LINN COUNTY SHERIFFS OFFICE | Arresting ORI: OR0220000

Person Information

FPN [REDACTED] Name [REDACTED]
Arrest Cycle DOB [REDACTED]
Weight [REDACTED] Height [REDACTED]
Hair Color [REDACTED] Eye Color [REDACTED]

Arrest Information

Date of Arrest 1982-05-16 Arrest Seq within Date [REDACTED]
Arresting Agency LINN COUNTY SHERIFFS OFFICE Arresting ORI OR0220000
Local Agency Number 38632 Originating Case Number [REDACTED]
Date of Offense [REDACTED]

Charge 1: ORS: 163.160 | ORS Literal: ASSAULT 4TH DEG | Arrest NCIC Code: 1300 | Arrest NCIC Literal: ASSLT | Severity: N/A

Charge Information

ORS 163.160 ORS Literal ASSAULT 4TH DEG
Arrest NCIC Code 1300 Arrest NCIC Literal ASSLT
Severity [REDACTED]
Arrest Charge Comments [REDACTED]

Court 1: Court Determination Date: 1982-07-07 | Court Determination: 310 | Court Determination Literal: CONVICTED | Judicial Agency: DIS CRT ALBANY | Judicial ORI: OR022013J | ORS: 166.065 | ORS Literal: HARASSMENT | Court NCIC Code: 5309 | Court NCIC Literal: HARASSING COMMUNICATION | Severity: N/A | Court Disposition Name: N/A | Court Disposition DOB: N/A

Court Information

Court Determination Date 1982-07-07 Court Case/Docket Number [REDACTED]
Judicial Agency DIS CRT ALBANY Judicial ORI OR022013J
Court Determination 310 Court Determination Literal CONVICTED
ORS 166.065 ORS Literal HARASSMENT
Court NCIC Code 5309 Court NCIC Literal HARASSING COMMUNICATION
Severity [REDACTED] Order Certify Brady Compliance [REDACTED]
Court Disposition Name [REDACTED] Court Disposition DOB [REDACTED]
Court Offense Comments [REDACTED]
Court Provision Comments CRT PROB

Authentication ID: [REDACTED] | 12/03/2021 13:36 Page 5 of 6

Sentence Information

Jail Time [REDACTED] Jail Suspended Time [REDACTED]
Probation 6M Fine 142
Prison Time [REDACTED] Prison Time Suspended [REDACTED]

OSP

Or, entire cycles might be missing.

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Arrest Date	2007-06-14
Arresting Agency	OR022015G LINN COUNTY PAROLE & PROBATION
Subject's Name	
Offender Id Number	FPN/
Arrest Type	ADULT
Charge	01
Charge Tracking Number	138155
Charge Description	ASLT III
Statute	PROBATION VIOLATION (137.545 OR)
NCIC Offense Code	5012
NCIC Offense Text	PROB VIOLATION - SEE MIS

Court Disposition	(Cycle 004)
Charge	01
Charge Description	ASLT III
Statute	PROBATION VIOLATION (137.545 OR)
NCIC Offense Code	5012
NCIC Offense Text	PROB VIOLATION - SEE MIS
Disposition	Convicted(9D SANCTION)
===== Cycle 005 =====	
Earliest Event Date	2007-08-01

Arrest Date	2007-08-01
Arresting Agency	OR0220000 LINN COUNTY SHERIFFS OFFICE
Subject's Name	
Offender Id Number	FPN/
Arrest Type	ADULT
Charge	01
Charge Tracking Number	138155
Charge Description	ALST III
Statute	PROBATION VIOLATION (137.545 OR)
NCIC Offense Code	5012
NCIC Offense Text	PROB VIOLATION - SEE MIS
===== Cycle 006 =====	
Earliest Event Date	2007-12-18

Arrest Date	2007-12-18
Arresting Agency	OR0220000 LINN COUNTY SHERIFFS OFFICE
Subject's Name	
Offender Id Number	FPN/
Arrest Type	ADULT
Charge	01
Charge Tracking Number	138155
Charge Description	PROBATION VIOLATION (137.545 OR)
Statute	PROBATION VIOLATION (137.545 OR)
NCIC Offense Code	5012
NCIC Offense Text	PROB VIOLATION - SEE MIS
===== Cycle 007 =====	
Earliest Event Date	2009-01-09

Arrest Date	2009-01-09
Arresting Agency	OR0220000 LINN COUNTY SHERIFFS OFFICE
Subject's Name	
Offender Id Number	FPN/
Arrest Type	ADULT
Charge	01
Charge Tracking Number	138155
Charge Description	PAROLE VIOLATION (144.350 OR)
Statute	PAROLE VIOLATION (144.350 OR)
NCIC Offense Code	5011
NCIC Offense Text	PAROLE VIOLATION - SEE MIS
===== Cycle 008 =====	
Earliest Event Date	2009-09-09

Arrest Date	2009-09-09
Arresting Agency	OR0220000 LINN COUNTY SHERIFFS OFFICE
Subject's Name	
Offender Id Number	FPN/
Arrest Type	ADULT
Charge	01
Charge Tracking Number	138155
Charge Description	PAROLE VIOLATION (144.350 OR)
Statute	PAROLE VIOLATION (144.350 OR)

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Page 2 of 6

Arrest Cycles

Cycle 3 of 3:

Date of Arrest: 2007-06-14 | Arrest Seq within Date: N/A | FPN: 45104548 | Arresting Agency: LINN COUNTY PAROLE & PROBATION | Arresting ORI: OR022015G

Person Information

FPN

45104548

Name

Arrest Cycle DOB

Weight

Height

Hair Color

Eye Color

Arrest Information

Date of Arrest

2007-06-14

Arrest Seq within Date

Arresting Agency

LINN COUNTY PAROLE & PROBATION

Arresting ORI

OR022015G

Local Agency Number

138155

Originating Case Number

Date of Offense

Charge 1:

ORS: 137.545 | ORS Literal: PROBATION VIOLATION | Arrest NCIC Code: 5012 | Arrest NCIC Literal: PROB VIOLATION - SEE MIS | Severity: N/A

Charge Information

ORS

137.545

ORS Literal

PROBATION VIOLATION

Arrest NCIC Code

5012

Arrest NCIC Literal

PROB VIOLATION - SEE MIS

Severity

Arrest Charge Comments

ASLT III

Court 1:

Court Determination Date: N/A | Court Determination: 310 | Court Determination Literal: CONVICTED | Judicial Agency: N/A | Judicial ORI: N/A | ORS: 137.545 | ORS Literal: PROBATION VIOLATION | Court NCIC Code: 5012 | Court NCIC Literal: PROB VIOLATION - SEE MIS | Severity: N/A | Court Disposition Name: N/A | Court Disposition DOB: N/A

Court Information

Court Determination Date

Court Case/Docket Number

Judicial Agency

Judicial ORI

Court Determination

310

Court Determination Literal

CONVICTED

ORS

137.545

ORS Literal

PROBATION VIOLATION

Court NCIC Code

5012

Court NCIC Literal

PROB VIOLATION - SEE MIS

Severity

Order Certify Brady Compliance

Court Disposition Name

Court Disposition DOB

Court Offense Comments

ASLT III

Court Provision Comments

9D SANCTION

Sentence Information

Jail Time

Jail Suspended Time

Probation

Fine

Prison Time

Prison Time Suspended

Authentication ID:

12/03/2021 13:36

Page 2 of 6

Cycle 2 of 3:

Date of Arrest: 2006-09-15 | Arrest Seq within Date: N/A | FPN: 45063902 | Arresting Agency: OSP - ALBANY AREA COMMAND | Arresting ORI: OR0SP2300

Person Information

FPN

45063902

Name

Arrest Cycle DOB

NCIC Offense Text	DRIVING UNDER INFLUENCE ALCOHOL
Severity	M MISDEMEANOR

Court Disposition	(Cycle 006)
Court Case Number	[REDACTED]
Court Agency	OR020061J SPRINGFIELD MUNICIPAL COURT
Charge	01
Statute	DIVERSION-DUII (813.200 OR)
NCIC Offense Code	5013
NCIC Offense Text	CONDIT RELEASE VIOLATION
Disposition	Dismissed(2012-08-13;)

===== Cycle 007 =====

Earliest Event Date	2011-02-09	Incident Date	2011-02-09
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Arrest Date	2011-02-09
Arresting Agency	OR0200600 SPRINGFIELD POLICE DEPARTMENT
Subject's Name	[REDACTED]
Offender Id Number	FPN/JLAN
Arrest Type	ADULT
Charge	01
Charge Tracking Number	41543383
Statute	UNL POSSESS METHYLENEDIOXYMETH (475.874 OR)
NCIC Offense Code	3599
NCIC Offense Text	DANGEROUS DRUGS
Severity	F FELONY

Charge	02
Charge Tracking Number	41543383
Statute	UNL DELIVER METHYLENEDIOXYMETH (475.870 OR)
NCIC Offense Code	3599
NCIC Offense Text	DANGEROUS DRUGS
Severity	F FELONY

Charge	03
Charge Tracking Number	41543383
Statute	UNL POSSESS METHYLENEDIOXYMETH (475.874 OR)
NCIC Offense Code	3599
NCIC Offense Text	DANGEROUS DRUGS
Severity	F FELONY

Charge	04
Charge Tracking Number	41543383
Statute	UNL DELIVER METHYLENEDIOXYMETH (475.870 OR)
NCIC Offense Code	3599
NCIC Offense Text	DANGEROUS DRUGS
Severity	F FELONY

===== Cycle 008 =====

Earliest Event Date	2013-06-14	Incident Date	2013-06-14
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Arrest Date	2013-06-14
Arresting Agency	OR0200600 SPRINGFIELD POLICE DEPARTMENT
Subject's Name	[REDACTED]
Offender Id Number	FPN/JSFF
Arrest Type	ADULT
Charge	01
Charge Tracking Number	41702785
Statute	DRIVE UNDER INFLUENCE INTOX (813.010 OR)
NCIC Offense Code	5404
NCIC Offense Text	DRIVING UNDER INFLUENCE ALCOHOL
Severity	M MISDEMEANOR

Charge	02
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FBI

OSP

Or, the difference might be the *entire record*.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

DC000001Z
TCN WVFBIJM0Z-[REDACTED]-EDO-0000-12027

NCN [REDACTED]

THE ENCLOSED RECORD, DATED 2022/02/11, WITH THE FBI UCN [REDACTED] AND
NGI CONTROL NUMBER (NCN) [REDACTED] IS BEING PROVIDED AS THE
RESULT OF CIVIL RETURN IDENT TEN-PRINT SUBMISSION.
THE TENPRINT BIOGRAPHICS AS SUBMITTED IN THE ORIGINAL TRANSACTION ARE:
NAME: [REDACTED] DOB [REDACTED]

DATA RELATED TO THIS RECORD WAS REQUESTED FROM THE FOLLOWING:

OREGON - STATE ID/OR [REDACTED]
FBI - FBI/[REDACTED]

SINCE THIS RESPONSE CONTAINS NATIONAL FINGERPRINT FILE (NFF) AND/OR III
PARTICIPANT STATE(S) REGULATED DATA, THE RESPONSE MAY NOT BE COMPLETE.
HOWEVER THE FBI MAINTAINED DATA FROM THE NON-RESPONDING III PARTICIPANT
STATE(S) IS INCLUDED IN THE RESPONSE.

FBI

 **Oregon**

Department of State Police
Criminal Justice Information Services
3565 Trelstad Avenue SE
Salem, OR 97317
(503) 378-3070 (Voice/TTY)
FAX (503) 378-2121

[REDACTED]

LOHRKE LAW, LLC
ATTN: ELIZABETH LOHRKE
188 WEST 'B' STREET; BUILDING 'P'
SPRINGFIELD, OR 97477

This letter acknowledges receipt of your request for Oregon criminal offender information on

Name: [REDACTED]
DOB: [REDACTED]

No Oregon criminal record was found based upon the information you have provided for the above name.

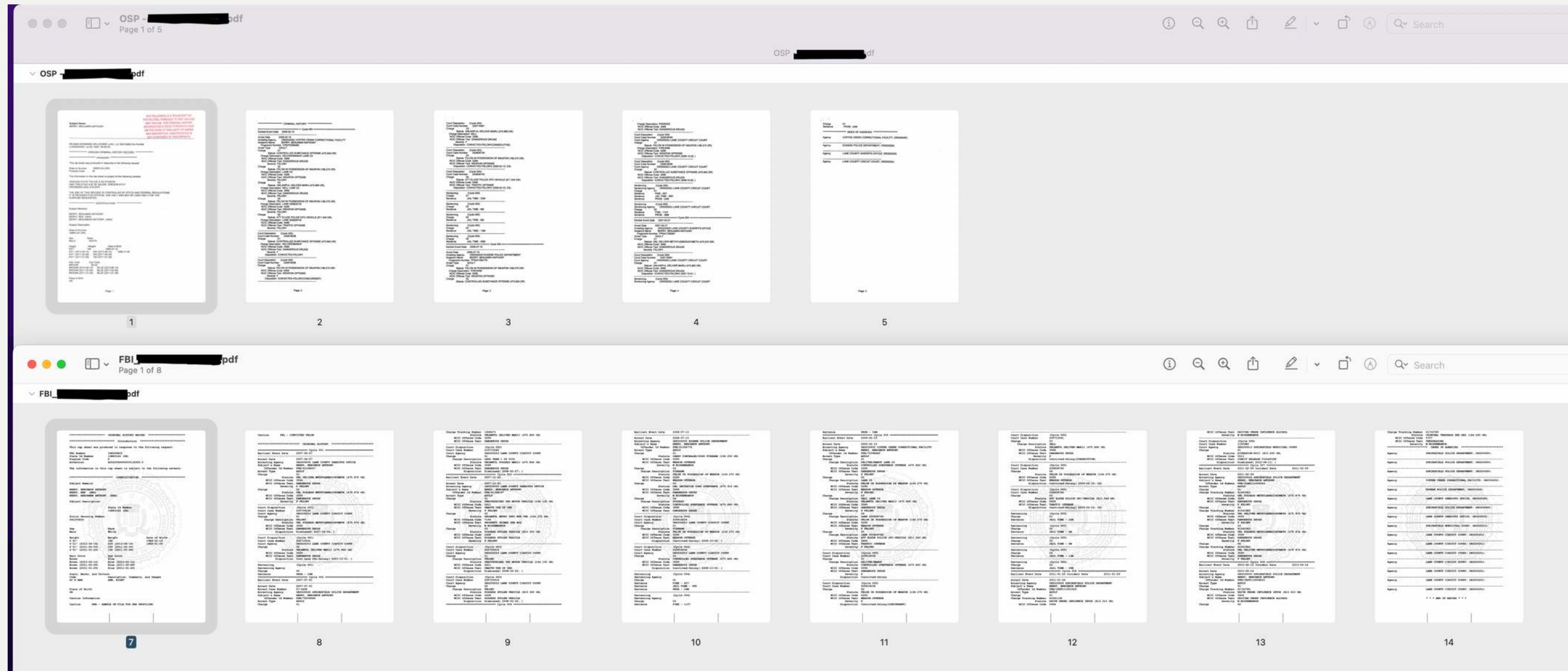
ORS 181A.245(2) If the department holds no criminal offender information on an individual, or the department's compiled criminal offender information on the individual consists only of nonconviction data, the department shall respond to a request under this section that the individual has no criminal record and shall release no further information.

The Open Records Unit provides criminal history information based only on the similarity of names and descriptive information. Results of this request have not been confirmed by fingerprints.

The CJIS Division of the Department of State Police is designated by law as the central repository for criminal offender information for the State of Oregon.

OSP

The differences between a background check provided by the Oregon State Police and a background check provided by the FBI can be significant.



OSP

FBI

An OSP Open Records Background Check Report **will** show:

- Convictions, if the convictions are already on the CCH.
- Open arrests from within the last year.

An OSP Open Records Background Check Report **will not** show:

- "Open" arrests outside of the previous year. An open arrest cycle is one in which the arrest event has been entered onto the criminal history but the disposition event has not.
- "Open" charges from any arrest outside of the previous year. For any cycle in which there are more arrest charges than disposed charges, the "open" arrest charges are redacted.
- Non-conviction dispositions. Any charge that has a disposition other than "Convicted" is redacted.

An FBI Criminal Identity Summary Check Report **will** show:

All records that have been indexed into the FBI's Interstate Identification Index (III) Database.

This means that the FBI's "indexed record" is included in the Summary Report response, as well as all criminal history reports referenced in the index.

So if someone has a criminal record in more than one state, you'll receive copies of their criminal records in each state where records were indexed in the FBI's III database.

An FBI Criminal Identity Summary Check Report **will not** show:

"Wants and Warrants" entered into other databases, such as the NCIC or NICS databases.

FBI Identity History Summary Reports are the clear choice.

Data Point #1: Original Arrest or Citation Charge

Original Arrest or
Citation Charge

Best Source: a combination of the criminal history report and/or the original citation.

Do not rely on OEI exclusively when determining what the original arrest/citation charges were - one of the biggest mistakes made by attorneys and the Courts is using OEI as the sole source of data for original charges. The only reliable source of this information is a combination of the criminal history report and/or the original citation.

Data Point #2: Conviction Charge

An orange rounded rectangle with the text "Conviction Charge" centered inside it.

Conviction
Charge

Best Source: OECI

For cases that pre-date Odyssey and for municipal/justice court cases, the criminal history as provided by the FBI may be used.

Data Point #3: Date of Charge

Less is not more.

One county is not like
another.

We break down the
Date of Charge into
four separate dates.

Incident Date(s)

Best Source: DA's Information, Court-Accepted PC Statement, OECI Case Register, Criminal History Report as provided by the FBI.

Fingerprinting Date(s)

Best Source: Criminal History Report as provided by the FBI, used alongside OECI case register.

Arraignment Date(s)

Best Source: OECI Case Register.

Conviction Date(s)

Best Source: OECI Case Register, Judgment of Conviction.

Data Point #4:

Submitting Agency

It's often not just one agency, but multiple agencies.

It's not found using the criminal history report alone.

And Submitting Agencies won't receive a copy of the set aside order unless the Court knows to include them.

Best Source: Criminal History as provided by the FBI, DA's Information, Indictment, OECl Case Register of Events, Warrant Service records



Data Point #5: Disposition of the Charge

Disposition of the Charge

The Disposition is more than just
"Convicted" or "Dismissed" - it is also:

Warrant Service Events
Violation of Release Agreement Events
Probation/Parole Violation Events
Prison Intake Events

The disposition tells the story - the more
information given in the order, the more accurate
the set aside order will be.

Best Source: OECI case register, combined with criminal history report.



Data Point #6: Fingerprint Control Number

A Fingerprint Control Number is OSP's Gold Standard of information – the “mailing address” of nearly every record in their repository. It uniquely identifies not only an individual, but a specific event on that individual's criminal history.

Best Source: Criminal history report as provided by the FBI.

If there's no FPN listed on the report, the arrest cycle predated the existence of FPNs.

FPN

Try it Out Another Way:

Let's send a letter to a colleague.

Take an ordinary mailing envelope and fill in your colleague's mailing address information in the following order:

Country – you've just narrowed the list of possible recipients down to one specific country.

State– you've narrowed the list of potential recipients down to a specific state within that country.

City and Zip Code – you've narrowed the list of potential recipients down to a generalized geographical area within a city, within a state, within a country.

Street address – you've narrowed the recipient down to a specific street address within a city, a state, and a country.

Name – you've now included all pieces of information necessary to deliver that envelope to your colleague, out of all potential recipients in the world.

1

So, the Relevant Data that was
once submitted like this:

Original arrest or citation charge: Possession of a Controlled Substance

The conviction charge, if applicable and different from the original: Possession of a Controlled Substance

The date of charge: Arrest Date 8/10/2000

The submitting agency: Lane County Jail

The disposition of the charge: Convicted

Sources of Data:

- Oregon State Police Open Records Request Records Response
- OEI



Has Now Evolved Into This.

Charge(s) Information:

Original Arrest/Citation Charge(s): Possession of a Controlled Substance, Delivery of a Controlled Substance, Manufacture of a Controlled Substance

Arrest/Citation Charge(s) Not Filed: Delivery of a Controlled Substance

Disposition(s) Information:

Convicted Charge(s): Possession of a Controlled Substance

Dismissed Charge(s): Manufacture of a Controlled Substance

Charge(s) Ineligible to be Set Aside: None

Date(s) Information:

Incident Date(s): 08/09/2000

Arraignment Date(s): 08/11/2000

Conviction Date(s): 06/20/2001

Fingerprinting Date(s): 08/10/2000, 10/15/2000, 12/14/2000, 03/09/2001, 06/22/2001, 10/10/2001, 01/01/2002, 06/06/2003

Submitting Agency/Agencies Information:

Submitting Agencies: Eugene Police Department, Lane County Sheriff's Office, Springfield Police Department, Oregon State Police - Salem Area Command, Coffee Creek Correctional Facility, Linn County Sheriff's Office

Criminal History Fingerprint Control Number(s) Information:

FPN/Event: 00000000, JSPFXXXXXXXXXX, JLANXXXXXXXXXX, JLANXXXXXXXXXX, JEUGXXXXXXXXXX, XXXXXXXX, ICFCXXXXXXXXXX, JLINXXXXXXXXXX

Sources of Data:

- All of them.

Are you thinking, "OSP already has all the info it needs to process a set aside order, and I don't need to include anything I haven't already been including"?

Think again - because many criminal histories look more like pieces of a puzzle than a completed puzzle.

An arrest cycle that was a warrant served on an earlier arrest cycle isn't often reported as being warrant service - it just looks like its own separate event.

Dispositions aren't always reported and entered onto a criminal history.

Almost all law enforcement agencies fingerprint people for multiple cases in one arrest cycle.

Charges that a DA elects not to file aren't always reported to OSP as not being filed.

Many criminal cases show up as multiple arrest cycles on someone's criminal history report, because fingerprints were transmitted to OSP more than once - but the dispositions of those arrest cycles were never reported.

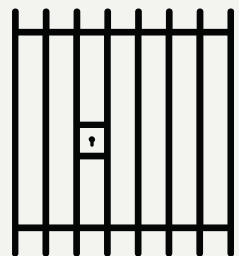
Many cases don't have fingerprint-supported records at all, because the fingerprints were never transmitted to OSP.

*Bottom Line - Do not assume that OSP has all the information they need to process a set aside order in its entirety. **They store the criminal information, but the criminal information has to be sent to their storage facility first.***

The best kind of set aside order is the one that includes data points from all available sources.



OEI



Jail



Court



Police
Department



Sheriff's
Office



Department of
Corrections



P&P



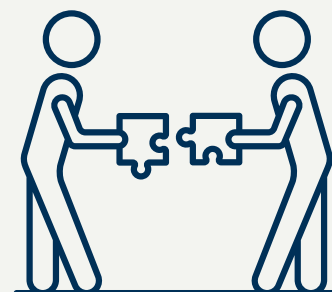
DA



FBI/OSP

It's easier for agencies to process an order that includes all this information.

By ensuring your set aside orders contain all of the information we've just talked about, you've provided a solution to a lot of the problems stemming from an incomplete criminal history.



Remember those differences between an initial background check provided by OSP and a background check provided by the FBI?

They're important again when it's time to get a **final** background check done for your client, and for the same reasons -

plus one more.



Agency Compliance.

Ordering a final background check from the FBI will show you the complete Oregon record without redactions.

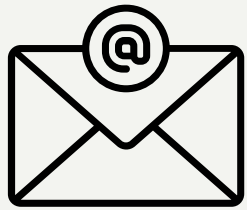
You won't have to wonder, "Did this order get processed by the State Police?" because the report will show you exactly what's been removed and what's still on the report.

And if the criminal history report contains any vestiges of the case that's been set aside, you can move forward knowing that your order contained everything needed to be processed completely and accurately.

Sometimes we miss things - and by the time we realize what we missed, the case has been sealed.

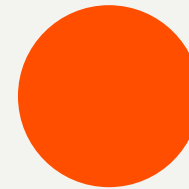
There's no case left in Odyssey or OECl for us to file an amended order into - but the data that we missed is still on the criminal history report.

We've got a few suggestions for situations just like this.



If the order included language about sealing the entire arrest record, - but it didn't list the charges that weren't filed - try sending documentation to OSP.

Documentation that demonstrates that the un-filed charges were part of the incident that's already been set aside may be all that's needed to get those charges off the criminal history record.



File to unseal the case - but only so you can file for an amended order.



File a new motion to set aside a new matter - just leave the case number blank so the Court can assign a civil case number to the matter.

The reward for work well done
is the opportunity to do more.

-Jonas Salk

What is once well done, is done forever.

- Henry David Thoreau

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