

## GETTING YOUR RECORD EXPUNGED

1. The following information is not meant to replace the advice of an attorney. Many of the laws regarding expunction are subject to frequent change. If you have further questions, you may need to research the statutes or hire an attorney for legal advice.
2. The record of your arrest and charges in Juvenile Court will be kept by the court, the police, DHS (Department of Human Services), OYA (Oregon Youth Authority), and any other agency to which your records have been given (group homes, counselors, etc.). The law requires that these records be kept confidential, and that the public be given only very limited information about your juvenile court record, but in reality, it is impossible to assure that information about your record will not get out. Many persons have been discriminated against in employment, educational opportunities, housing and enlistment in the military service because of having a juvenile court record.
3. The best way to make sure that your record won't haunt you in the future is to go through the process called expunction (or expungement). You can get your record expunged by submitting an Application for Expunction at the Juvenile Court. You can see the Application used in Multnomah County here: <https://multco.us/file/46993/download>. This process is almost never automatic; you must request it. Expunction means the removal and destruction of all your records with the court.
4. Some juvenile records cannot be expunged. If found guilty in juvenile court of one of the following crimes, you cannot get that record expunged:
  - Murder
  - Aggravated Murder
  - Attempt, solicitation, or conspiracy to commit murder or aggravated murder
  - Manslaughter I and II
  - Criminally Negligent Homicide
  - Assault I
  - Criminal Mistreatment I
  - Kidnapping I
  - Rape I, II or III
  - Sodomy I, II or III
  - Sexual Penetration I or II
  - Sex Abuse I, II or III
  - Promoting Prostitution
  - Compelling Prostitution
  - Aggravated driving while suspended or revoked
  - Aggravated vehicular homicide
  - Any attempt to commit a crime listed (other than Manslaughter II and Criminally Negligent Homicide)

5. **EXCEPTION:** Even if you were adjudicated as a juvenile of Rape III, Sodomy III, Sex abuse III, or an attempt to commit those crimes, you may still apply for expunction under special conditions. In those cases, the court must order expunction if ALL of the following criteria are met:

- You meet the circumstances described in paragraph 6 of this information sheet; AND
- You have been relieved of your obligation to report as a sex offender; AND
- You have not been convicted of any other crime listed in paragraph 4 of this fact sheet besides the one you are attempting to expunge.

6. You can submit an application to have your juvenile record expunged any time after you are no longer under juvenile court supervision (placement, probation, or parole) as long as your record doesn't include any of the offenses listed in paragraph 4. However, the District Attorney may oppose your motion. As long as you meet the following circumstances, a judge **MUST** order expunction, even if there is opposition:

- Your case was dismissed without adjudication.
- Your case was dismissed after a conditional postponement.
- Your case was handled informally or through a Formal Accountability Agreement.
- Five years have passed since you were adjudicated, your probation ended, and/or your status as a ward of the court ended.
- You have no pending criminal charges.
- You weren't convicted of a felony or class A misdemeanor since your juvenile adjudication, probation, and/or wardship with the court ended.
- You aren't presently under the jurisdiction of the juvenile court.
- No petition is pending in juvenile court.

7. Even if there is opposition to your application, or you do not meet all of the criteria listed in the above paragraph, a judge may still grant your Application for Expunction, in which case your record, or part of your record, would successfully be expunged. You may apply to have your record expunged at any time if you have some specific reason for needing it expunged, i.e., in order to get a job, to get into the military service, to get into college or get financial aid for college, or for some other reason you would be unfairly limited by having the record. If you apply for this type of expunction called "expunction in the public interest," it is basically up to the judge to decide whether or not your record will be expunged.

8. Even if you were convicted of a sex crime that is a Class C felony, the court must order expunction in **special circumstances**. The special circumstances include the following, and you must meet ALL circumstances:

- You meet all the criteria listed in paragraph 6 of this information sheet;
- You were under 16 years old at the time the offense was committed;
- You are less than two and a half years older than the victim; OR
- If the judge rules the expunction is in the interest of justice, you were at least two and half years older but no more than three and a half years older than the victim;
- The victim’s lack of consent was due solely to incapacity to consent because of age; AND
- The victim was at least 12 years old at the time the offense was committed.

Each of these pieces must involve the same victim.

9. One further **exception** applies. If you were convicted of a crime in which possession, delivery, or production of marijuana was an element of the crime, you do not have to wait five years or have a case for “public interest expunction” before you can begin the expunction procedure. Instead, you will only have to wait one year as long as:

- You have not been convicted or adjudicated on any other offense excluding motor vehicle violations, AND
- You have complied with all conditions of your adjudication.

10. It is a simple process to ask for your record to be expunged. It only requires that you fill in the blank spaces on the form provided by the Juvenile Court. You can see the form used in Multnomah County here: <https://multco.us/file/46993/download>. After you have completed the form, take it to the Juvenile Courthouse. Most expunctions are processed without a court hearing. However, as noted above, if the judge does not want to grant your application or if the District Attorney objects to your record being expunged, a hearing will be held. You will be notified of this hearing and you should request that an attorney be appointed to represent you in the hearing.

11. Records that can be expunged include fingerprint or photograph files, reports, exhibits or other material which contains information relating to a person’s contact with any law enforcement agency or juvenile court or juvenile department and is kept manually, through the use of electronic data processing equipment, or by any other means by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon. “Record” does not include the following items, and they will not be expunged:

- A transcript of a student’s Youth Corrections Education Program academic record

- Material on file with a public agency which is necessary for obtaining federal financial participation regarding financial assistance or services on behalf of a person who has had a contact
- Records kept or disseminated by the Department of Transportation, State Marine Board and State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation
- Police and court records related to an order of waiver to adult court where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order
- Records related to a support obligation
- Medical records other than those related to a finding of responsible except for insanity under ORS 419C.411
- Records of a proposed or adjudicated termination of parental rights and adoption;
- Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court
- Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;
- Blood samples, buccal samples, and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, ORS 181A.155 or ORS 419C.473
- Sex offender records maintained in the Law Enforcement Data System under ORS 163A.035

12. Once the court orders your record expunged, all the charges against you are treated as though they never occurred. This means that you may answer questions or talk about your past as though you never had any contact with the police, juvenile court or other agency. If an employer or other person somehow finds out that you had a juvenile record and discriminates against you in employment, you may have a right to sue them. However, if you are applying for the military or a federal job, you will have to acknowledge that you did have a juvenile court record.

\*If you are convicted of a crime as an adult, your juvenile record can be used to increase the sentence you receive by as much as several years, depending on the crime.

## Resources

Oregon Revised Statutes (2013) – [Oregonlaws.org/ors](http://Oregonlaws.org/ors)

Statutes –

ORS 419A.260 – Definitions for expunction

ORS 419A.262 – Expunction proceedings

ORS 419A.265 – Expunction involving marijuana

ORS 419C.005 – Jurisdiction of juvenile court

ORS 419B.100 – Jurisdiction