

INFORMATION ON APPLICATIONS FOR EXECUTIVE CLEMENCY (PARDONS, COMMUTATIONS, ETC.)

Oregon law gives the Governor executive clemency power. This means that the Governor has the power to grant pardons, commutations, reprieves, and remissions of fines.

You should be aware that clemency will be granted only in exceptional cases when rehabilitation has been demonstrated by conduct as well as words.

You must decide which type of clemency (pardon, commutation, etc.) best applies to your particular situation. You must also provide the Governor with the necessary information to let her make a decision on your application. It is your responsibility to provide the Governor with any information you believe will be helpful. If you do not provide the information required, your application may be denied on that basis alone.

The Types Of Executive Clemency:

The types of clemency are pardons, commutations of sentence, reprieves, and remission of fines:

- 1) A pardon forgives a person for the crime that person committed. Only in extraordinary cases will the Governor consider granting a pardon while a person is still serving a sentence either in a penal institution or on parole.
- 2) A commutation substitutes a less severe punishment for the original sentence that the person was given.
- 3) A reprieve is temporary relief from your punishment.
- 4) The remission of fines is a reduction or cancellation of court-ordered fines imposed against you.

If you have been convicted of multiple crimes, your application should specify which crime or crimes you wish the Governor's power of executive clemency to operate upon; you should also provide separate reasons why the Governor should grant clemency for each crime if seeking clemency for multiple crimes. **Be advised that operation of executive clemency to more than a single conviction is unlikely.**

Additionally, you should be aware that the Governor regards executive clemency as an extraordinary remedy of last resort. Therefore, it is highly unlikely she will consider applications based upon allegedly wrongful convictions where applicants have not fully exhausted their appellate, post-conviction, and habeas corpus remedies. **Thus, if you feel you deserve clemency because you believe you were wrongfully convicted, you should not apply until you have fully exhausted all such available remedies.**

NOTE REGARDING AVAILABILITY OF JUDICIAL EXPUNGEMENT

Generally, the Governor will not exercise her clemency power to pardon applicants for crimes which the law allows a court to set aside; therefore, you should not file an application if you qualify for judicial expungement under ORS 137.225 and have not sought such expungement. A copy of ORS 137.225 follows.

If a court sets aside your conviction, under ORS 137.225 you are able to represent to prospective employers that you have not been convicted of that crime. You may be eligible for such a set-aside if:

- 1) three years have passed since the date judgment was pronounced, and
- 2) you have fully complied with and performed the sentence of the court, and
- 3) the crime for which you were convicted was one of the following:
 - i. a Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.
 - ii. possession of marijuana where that crime was punishable as a felony only;
 - iii. crimes punishable as either a felony or a misdemeanor, with the exception of sex crimes and crimes when they would constitute child abuse as defined in ORS 419B.005;
 - iv. a misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime;
 - v. a violation under state law or local ordinance;
 - vi. certain crimes committed before January 1, 1972, and
- 4) ten years have passed from the date of any conviction other than the one which you wish the court to set aside and the date you petition the court.

The District Attorney of the county of the court you petition may oppose a petition to set aside a conviction; however, this is not the same as having a court deny your petition. **In most cases, the Governor will not exercise her clemency powers upon your application if you qualify under ORS 137.225 and do not complete the entire petition process as outlined in that statute.** If you have had a petition to set aside a conviction denied under ORS 137.225, you should include a copy of the judge's order with your application.

2013 EDITION

137.225 Order setting aside conviction or record of arrest; fees; prerequisites; limitations. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without this state is not included.

(2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction," or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.

(d) In addition to the fee established under paragraph (c) of this subsection, when a person makes a motion under subsection (1)(a) of this section the person must pay the filing fee established under ORS 21.135.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (13) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, the court shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive

identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to its occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction of:

(a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

(b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(c) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; or

(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(f) A violation, whether under state law or local ordinance.

(g) An offense committed before January 1, 1972, that if committed after that date would be:

(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575

(1)(a) when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

(D) A violation.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A conviction for a state or municipal traffic offense.

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction that has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable.

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section do not apply to:

(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of the crime was 65 years of age or older.

(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older.

(c) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony.

(8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section apply to a conviction for:

(a) A Class B felony described in subsection (5)(a) of this section only if:

(A) Twenty years or more have elapsed from the date of the conviction sought to be set aside or of the release of the person from imprisonment for the conviction sought to be set aside, whichever is later; and

(B) The person has not been convicted of or arrested for any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under this section shall be considered for the purpose of determining whether this subparagraph is applicable.

(b) A sex crime listed in ORS 181.830 (1)(a) if:

(A) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 181.832 or 181.833; and

(B) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on, a crime that a court is prohibited from setting aside under this section.

(c) A sex crime constituting a Class C felony, if:

(A) The person was under 16 years of age at the time of the offense;

(B) The person is less than three years older than the victim;

(C) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;

(D) The victim was at least 12 years of age at the time of the offense;

(E) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime that a court is prohibited from setting aside under this section; and

(F) Each conviction or finding described in this paragraph involved the same victim.

(9) The provisions of subsection (1)(b) of this section do not apply to:

(a) A person arrested within the three-year period immediately preceding the filing of the motion for any offense, 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. An arrest that has been set aside under this section may not be considered for the purpose of determining whether this paragraph is applicable.

(b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as a result of the person's successful completion of a diversion agreement described in ORS 813.200.

(10) The provisions of subsection (1) of this section apply to convictions and arrests that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

(11) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

(12) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest record.

(13) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

(a) Abandonment of a child, ORS 163.535.

(b) Attempted assault in the second degree, ORS 163.175.

(c) Assault in the third degree, ORS 163.165.

(d) Coercion, ORS 163.275.

(e) Criminal mistreatment in the first degree, ORS 163.205.

(f) Attempted escape in the first degree, ORS 162.165.

(g) Incest, ORS 163.525, if the victim was at least 18 years of age.

(h) Intimidation in the first degree, ORS 166.165.

(i) Attempted kidnapping in the second degree, ORS 163.225.

(j) Attempted robbery in the second degree, ORS 164.405.

(k) Robbery in the third degree, ORS 164.395.

(L) Supplying contraband, ORS 162.185.

(m) Unlawful use of a weapon, ORS 166.220.

(14) As used in this section, "sex crime" has the meaning given that term in ORS 181.805. [1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265; 1975 c.548

§10; 1975 c.714 §2; 1977 c.286 §1; 1983 c.556 §1; 1983 c.740 §17; 1987 c.320 §31;
1987 c.408 §1; 1987 c.864 §6; 1989 c.774 §1; 1991 c.830 §6; 1993 c.546 §98; 1993
c.664 §2; 1995 c.429 §9; 1995 c.743 §1; 1999 c.79 §1; 2007 c.71 §35; 2009 c.360 §1;
2009 c.560 §1; 2011 c.196 §1; 2011 c.533 §1; 2011 c.547 §29; 2011 c.595 §87; 2012
c.70 §4; 2013 c.390 §1]

HOW TO APPLY FOR CLEMENCY:

No particular form is required for your application, but you may use the form headed “CLEMENCY APPLICATION” which is attached to these information sheets. Be sure you sign the application. Also sign the bottom of each extra page.

When you have completed and signed your application, attach it to the form “CLEMENCY AFFIDAVIT”. You must take both documents before a Notary Public and sign the affidavit in the Notary’s presence.

Before you can apply for clemency Oregon law requires that you must first mail a copy of your application to the following:

- (1) Director of the Department of Corrections;
- (2) State Board of Parole;
- (3) The District Attorney for the county in which you were convicted; and
- (4) If you are confined in a correctional facility, the District Attorney for the county in which you are confined.

You are advised (but not required) to mail these copies by certified mail, return receipt requested. After mailing these copies, then mail your affidavit and application to the Governor.

Do not expect a prompt response to your application. Before making a decision, the Governor will gather additional information on your case. The process ordinarily takes up to six months.

WHAT INFORMATION SHOULD YOUR APPLICATION CONTAIN?

Indicate which type of clemency you are applying for (pardon, commutation, etc.). Then provide the following information.

- (1) State your full name.
- (2) If you are now, or you were ever, an inmate at any state correctional facility, provide your identifying number and state the institutions and dates of your incarceration.
- (3) State your address.
- (4) State your home/cell telephone numbers.
- (5) State your date of birth.
- (6) Provide your social security number.
- (7) State whether you are a U.S. citizen. If you are naturalized, give details.
- (8)
 - a. State the crime(s) you were convicted of.
 - b. State the date the crime(s) were committed.
 - c. State the county in which you were convicted.
 - d. State the date of your conviction.
 - e. State the court case number(s).
 - f. Did you file an appeal? If so, please give details as to when it was filed and what the outcome was.
 - g. Describe any other post-conviction legal proceedings.
 - h. Briefly and accurately explain the events surrounding your offense. If your version differs from the official version of events, you must give the official version before explaining the way in which your view differs. Do not go into the question of your guilt or innocence, but explain any mitigating circumstances.
- (9) State whether you have applied to have your conviction set aside under ORS 137.225 and the outcome. If you have not applied, explain why not.

- (10) Describe your family situation and responsibilities, indicating whether you are single, married, or divorced, and whether you have dependent children or other people for whom you are financially responsible.
- (11) Describe your employment before and after conviction.
 - a. Give the name and addresses of past employers. Describe what kind of work you did and tell why you left.
 - b. If you are presently employed describe where and for whom you are working now.
 - c. Describe your plans for future employment.
- (12) Tell about your involvement with public service or community activities. List any special accomplishments.
- (13) Describe your past criminal record, if any.
- (14) List any debts you owe. Tell how you plan to pay them.
- (15) List three or four character references, including names and addresses and each reference's relationship with you (for example, employer, neighbor, etc.) Do not list relatives.

If possible, these individuals should be aware of the crime. Whether they know about the crime or not, they must be familiar with your present circumstances and activities.

- (16) Explain the reason(s) for your application and why you believe the Governor should use her power to grant you clemency.

EXECUTIVE CLEMENCY APPLICATION

_____, 20____
(Date)

The Honorable Kate Brown
Governor of Oregon
900 Court Street NE
Salem, OR 97301-4047

Dear Governor Brown:

Pursuant to ORS 144.650, I hereby apply for a:

- _____ PARDON
- _____ COMMUTATION
- _____ REPRIEVE
- _____ REMISSION OF FINES

I have served copies of my application on the Director of the Corrections Department, the State Board of Parole, the District Attorney for the county in which I was sentenced, and (if I am confined in a correctional facility) the District Attorney for the county in which I am confined.

(1) Full Name: _____

(2) Institutional history and identifying number, if now or formerly an inmate at any state correctional facility. Please provide the names of the institutions and the dates of your incarceration.

(3) Current Address: _____

(4) Home phone: _____
Cell phone: _____

(5) Date of Birth: _____

- (6) Social Security Number: _____
- (7) Are you a U.S. citizen? ____ Yes ____ No. Are you naturalized? If yes, give details.
- (8) a. State the crime(s) you were convicted of.
- b. State the date the crime(s) was/were committed.
- c. State the county/counties in which you were convicted.
- d. State the date(s) of your conviction(s).
- e. State the court case number(s).
- f. Did you file an appeal? If so, please give details as to when it was filed and what the outcome was.
- g. Describe any other post-conviction legal proceedings.
- h. Briefly and accurately explain the events surrounding your offense. If your version differs from the official version of events, you must give the official version before explaining the way in which your view differs. Do not go into the question of your guilt or innocence, but explain any mitigating circumstances.
- (9) Have you applied to have your conviction set aside under ORS 137.225?

Yes, my petition was denied. A copy of the denial order is enclosed.

No. Reason _____

Other. Explain: _____

(10) Describe your family situation and responsibilities, indicating whether you are single, married, or divorced, and whether you have dependent children or other people for whom you are financially responsible.

(11) Describe your employment before and after conviction.

a. Give the name and addresses of past employers. Describe what kind of work you did and tell why you left.

b. If you are presently employed describe where and for whom you are working now.

c. Describe your plans for future employment.

(12) Tell about your involvement with any public service or community activities. List any special accomplishments.

(13) Describe your past criminal record, if any.

(14) List any debts you owe and how you plan to pay them.

(15) Character References. Do not list relatives. If possible, these individuals should be aware of your crime. Whether they know about the crime or not, they must be familiar with your present circumstances and activities. Attach additional pages if necessary. (You may submit letters of recommendation from these references, or from other individuals, if you would like to; however, you are not required to do so.)

Name, address, relationship

Name, address, relationship

Name, address, relationship

Name, address, relationship

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- (16) The reason(s) for my application are as follows: (Explain why you believe the Governor should use her power to grant you clemency.)

Use extra sheets as necessary. Sign your name at the bottom of this and **each additional page**.

Signature

Date: _____

CLEMENCY AFFIDAVIT

_____ Pardon (Choose One)
_____ Commutation

_____ Reprive
 _____ Remission of Fines

STATE OF _____)
) ss.
 COUNTY OF _____)

I, _____, being first duly sworn, depose and say as follows:
 (Print Full Name)

Pursuant to ORS 144.650, I certify that I have served copies of my clemency application on the:

- (1) Director of the Department of Corrections;
- (2) State Board of Parole;
- (3) District Attorney for the county in which I was convicted; and
- (4) If I am incarcerated, the District Attorney for the county in which I am confined.

I solemnly swear that the statements made in this affidavit and in the application signed by me and attached to this affidavit, are true and correct to the best of my knowledge and belief, and that I will be a law-abiding person in the future and will support and defend the Constitution of the United States and the State of Oregon and the law thereof, so help me God.

 (Signature of Applicant)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

 Notary Public for _____
 My Commission Expires: _____