



NOTICE:

When you have successfully completed your sentence, you may be eligible to ask for your criminal conviction to be set-aside.

A criminal conviction set-aside is an order by the judge who sentenced you in a criminal case which voids the conviction.

It does not remove the conviction from your criminal record, it does offset it by adding the Order Setting Aside the conviction and a notation to the file.

It is recommended that you consult with an attorney before filing a petition to request a set-aside.

Complete information on:

- being eligible to have the conviction set aside,
- what information you will need to be able to complete the petition,
- how to file, and
- links to the forms and instructions are available here:

<http://nejudicial.com/setaside>

You may use this QR code to access the page on the Nebraska Supreme Court Website.



Getting Started



Information About a Set-Aside

- As part of the decision to set-aside a criminal conviction, a judge must believe that it is in your best interest to do so and that setting aside the conviction is “consistent with the public welfare.”
- The decision is completely up to the judge whether to grant the set-aside.
- While it does not erase a criminal record, it does offset it by adding the Order Setting Aside the conviction and a notation to the file.
 - Since a criminal conviction affects your ability to get a job, a potential employer doing a criminal background check will see the conviction **and** the order which sets aside that conviction.
- Infractions, misdemeanors, and felony criminal convictions can all be set aside.
 - If you have multiple convictions, you must file a separate petition for each conviction you seek to have set aside.
 - You may have a set-aside request approved for one conviction but not all your convictions.

Eligibility to have a criminal record set-aside.

- You are eligible to petition to have your conviction set aside if:
 - You were placed on probation, and you successfully completed the terms of your probation;
 - You were sentenced to community service and successfully completed it;
 - You were sentenced to a term of imprisonment of one year or less and have completed your sentence; **OR**
 - Your sentence was a fine, and you paid the fine.
- If your sentence included a term of imprisonment (this does not include waiting in jail for your trial date, or any jail time that is a condition of probation), then additional eligibility requirements apply. A conviction that resulted in a jail sentence will **not** be eligible to be set aside if:
 - You have any criminal charges pending in the United States or any country.
 - If you are a registered sex offender

- If the conviction was for a misdemeanor or felony motor vehicle offense
- If you have unsuccessfully petitioned to have the conviction set-aside within the last 2 years
- If you have not already completed the *Clean Slate Eligibility Questionnaire*, we suggest you complete it now to determine if a particular criminal record is eligible for a set-aside, or if other relief may be available.
 - If you have already completed the questionnaire, proceed to the tab labeled “How to File”.
- Being **eligible** to petition for a set-aside does not guarantee the petition will be approved by the judge.
- It is completely up to the judge presiding over the hearing whether to grant a petition that has met the minimum eligibility requirements.
- When evaluating whether to grant a petition to set aside a criminal conviction, a judge will consider these factors:
 - Your criminal history since the conviction you want the judge to set aside.
 - The length of time since the offense.
 - The length of time between your last criminal offense and your request for a set-aside.
 - Your conduct since sentencing showing your rehabilitation.
 - Whether it appears likely you will remain law-abiding in the future.
 - Whether setting aside the conviction is in your best interest and consistent with public welfare.
 - Other information the court considers important, like life changes following sentencing (obtaining employment, going to school, completing a certification, attending rehab, volunteering, etc.)

What I Need to Know



To complete the forms and participate in the court hearing, I will need:

- **My personal information:**
 - My full name.
 - My email address.
 - My phone numbers.
 - My complete address, (house or apartment number, street name, city, state, and zip code).

- **Information about the case, including:**

- My case number.
- The county where the charge was filed.
- The date of the offense.
- Whether I completed my sentence (including paying all fines and court costs)
- My sentence (probation, community service, fine, jail)
- The outcome of the criminal charge (not guilty or no contest)
- The offense I was charged with.

If you do not have the above information, you can obtain this information by:

- Obtaining a copy of your criminal history through the [Nebraska State Patrol](#). (There is a small charge to get your record.)
- Doing a [one-time court case search](#) of Nebraska Court records. (There is a small charge to get your record, but it may not be a complete record.)
- Going to the courthouse and using the public access terminal to get information on your record. There will be a charge for copies provided to you by the court.

How to File

Step by Step Instructions:



First Step:

1. Read the [Instructions](#) for and complete the Petition to Set Aside Criminal Conviction ([CC 6:11](#)).
2. Read the [instructions](#) for and complete the Order Setting Aside a Criminal Conviction ([CC 6:11.2](#))

For additional guidance, use [Interactive Forms through Law Help Interactive](#).



Filing your request to have your record set-aside.

3. File your Motion in the court where the case was heard.
 - a. Local court rules may apply in your case.
 - i. Check with the clerk's office where your case is located regarding any local rules.
 - ii. If you do not follow the local rules, it may affect your request.
 - b. If you do not have an attorney, you may file the Motion in person, by mail, or by fax.
4. Schedule a hearing.
 - a. If the case was concluded in county court, the clerk's office will typically schedule your petition for hearing.
 - i. When it is scheduled, the clerk will mail you and the prosecutor a copy of a notice stating the hearing date and time.
 - ii. If you don't get notice of the hearing, follow up with the court clerk.
 - b. If the case was concluded in district court, you will need to contact the bailiff for the judge assigned to the case and obtain a hearing date.
 - i. You will then need to file a [Notice of Hearing](#) (DC 1:15) and provide a copy to the prosecutor.



Before Your Hearing

5. Prepare what you are going to say in court.
 - a. It's okay to write out what you want to say ahead of time and read it when you go to court.
 - b. Practice what you want to say so that you won't be too nervous when you go to court.
6. Be prepared to tell the judge why you are asking to have your conviction set-aside.



On Your Court Day

7. You must go to the hearing and testify (talk under oath) in open court about your court record. Once you have testified, the judge will decide if you will get your conviction set-aside.
8. Try to arrive at your hearing at least 15 minutes before your hearing is scheduled.

- a. Once you arrive at the courtroom for your hearing, you should ask the Clerk of the Court how to let the judge know that you are there for your hearing.
9. When the judge calls your name, approach the bench.
 - a. The “bench” is where the judge sits.
 - b. The prosecutor may also be at the bench.
 - You usually can tell who a prosecutor is because that attorney will be at the bench for every case called by the judge.
 - c. In district court, you may instead be instructed to sit at the table during the hearing – just mirror what the prosecutor does.
 - d. When you approach the bench, be respectful. Do not argue with the judge.
10. You will be given an opportunity to explain to the court why you deserve to have your conviction set aside.
 - a. **This is not a hearing to prove your innocence at the original trial. It is just a hearing to set-aside the conviction.**
 - b. You are not asking for a re-trial.
 - c. This is not your chance to argue about the original conviction or charges.
11. At the end of your presentation, the judge may or may not have questions for you.
12. The judge will ask the prosecutor for his/her position on the matter.
 - a. If the prosecutor does not want the court to set aside your conviction, they will object and tell the judge why. **DO NOT INTERRUPT THE PROSECUTOR WHILE HE OR SHE IS TALKING.**
 - i. If the prosecutor does have an objection, the judge will probably give you a chance to respond to the prosecutor’s stated objections.
 - ii. If the judge does not give you that chance, wait until the prosecutor has finished speaking and politely ask the judge if you can respond to what the prosecutor said. Simply state “may I respond?”
 - iii. If the judge says “no,” the judge means “no.”
 - iv. If the judge says “yes,” politely explain why your request should be granted despite the prosecutor’s objections.
 - b. The prosecutor may also express that they have no objection, and in this case no additional statements by you may be necessary.
13. At the end of a hearing, if the judge indicates they are granting your relief, you can provide a copy of the proposed order that you have drafted.
 - a. The judge may accept the order or may instead want to use their own order.
 - b. In most counties, a copy of the signed order will be provided to you after the hearing – often by mail, or by email if you have provided an email address.
 - c. Check with the court clerk to see how you will receive your copy of the order.

It will take a few days after the hearing for the court record to be updated and for the set-aside to appear in the JUSTICE record and your criminal history.

The set-aside order will contain the language that the conviction is “nullified,” meaning it was cancelled out.

Although the conviction is nullified, it does not restore all civil rights. For example, it does not restore gun rights that may have been removed as the result of a felony or a misdemeanor conviction involving domestic violence. Only a pardon from the Board of Pardons can restore these rights once removed.

You should keep a copy of the signed order for your records. You can show this order to potential employers and landlords to prove that your conviction was nullified.

Other tips:

- On the date your motion is scheduled for hearing, it is encouraged to arrive early. But no matter what, do not be late, or the court may deny your motion by default and move on to the next case.
- Dress appropriately.
- It is likely that your case will be set on a court “call” calendar at the same time and in the same courtroom as many other cases are being called. There may not be a particular order in which cases are called. You may spend an entire morning or afternoon in court waiting for your case to be called. Be prepared to wait.