



Oregon

Kate Brown, Governor

Psychiatric Security Review Board

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TO: PSRB INTERESTED PARTIES
FR: Alison Bort, J.D., Ph.D., Executive Director
Psychiatric Security Review Board
RE: Expungement of GEI (Motion to set aside GEI Finding)

DATE: September 3, 2019

FACT SHEET

LANGUAGE OF BILL: See ORS 137.223

SUMMARY: In 2016, ORS 137.223 went into effect. The statute permits those who have been adjudicated "Guilty Expect for Insanity" (GEI) of certain crimes to request expungement of that finding from their criminal record. If the court grants expungement, all GEIs from the person's criminal history will be sealed and the record will appear as though the person were never found GEI. The GEI expungement law mirrors previously-existing expungement law for those convicted of crimes¹.

WHO MAY REQUEST EXPUNGMENT: A person who has been found GEI MAY APPLY for expungement IF:

1. At least 3 years have passed since the most recent GEI adjudication; and
2. The person found GEI is no longer under PSRB jurisdiction; and
The person has no other findings of GEI in the 10 years immediately prior to filing the motion
3. AND no convictions (for offenses other than motor vehicle violations) in the 10 years immediately prior to filing the motion.

WHAT OFFENSES ARE ELIGIBLE FOR EXPUNGEMENT?

Class B felonies², under the following conditions:

- It has been at least twenty years since the conviction or release from jail/prison, whichever is later; **AND**
- The person has not been convicted of, arrested or criminally cited for, or charged with any subsequent offenses (aside from traffic violations) since the conviction in question. (Note: for purposes of this requirement, expunged convictions, arrests, citations, and charges will be considered); **OR**
- The Class B felony is one of the following:
 - o A misdemeanor, Class C. felony, or felony punishable as a misdemeanor
 - o Unlawful possession of a controlled substance classified in Schedule I
 - o A violation of a state or local ordinance
 - o An offense the person committed before January 1, 1972 that would have qualified under this section if the person had committed it after that date.

¹ See ORS 137.225

² Except when the Class B violation also involves: 1) transporting, receiving, selling, or giving a firearm to someone with knowledge or reasonable belief that the person will commit a felony; or 2) "person crimes" under the Criminal Justice Commission

ARE CERTAIN CRIMES EXCLUDED FROM EXPUNGEMENT? Yes. Generally speaking, unclassified offenses (murder), Class A felonies, and sex offenses cannot be expunged. In addition, some Class B and C felonies cannot be expunged; however, there are many exceptions.³

WHERE IS THE EXPUNGEMENT PETITION FILED: Expungement petitions must be filed with the court in the county in which the applicant was determined to be GEI.

HOW TO REQUEST EXPUNGEMENT: You may file an expungement motion at the courthouse in the county where the GEI was adjudicated. You will also be required to submit a full set of fingerprints (with a notation reading, “motion for setting aside judgement of guilty except for insanity”), and to serve the appropriate county’s District Attorney with a copy of the petition and the fingerprint card.

HOW TO GET PSRB RECORDS NEEDED FOR THE PETITION: PSRB staff cannot advise potential petitioners on how to apply for expungement; however, we can provide PSRB records to a petitioner with a signed release. Contact PSRB staff at 503-229-5596 for more information.

WHAT ARE THE VICTIMS’ RIGHTS AT AN EXPUNGEMENT HEARING? The law requires the district attorney to notify named victims when an applicant serves an expungement petition on its office. Victims may make statements at the expungement hearing. The PSRB likely has the most recent contact information for a victim. In a case with named victims, the PSRB encourages District Attorney staff to contact the PSRB or the Department of Justice’s Appellate Advocacy Program.

IF THE BOARD GRANTS EXPUNGEMENT, DOES IT AUTOMATICALLY RESTORE MY FIREARM PRIVILEGES? No. Gun relief is separate from the expungement process. Under federal and state law, the PSRB is the designated gun relief authority for individuals who have a mental health determination. Contact the PSRB for more information about the gun relief process. Please see the gun relief page of [PSRB's website](#).

IF THE BOARD GRANTS EXPUNGEMENT, WILL THE PSRB DISCLOSE THAT THE PERSON WAS EVER UNDER PSRB JURISDICTION? No. If the PSRB receives notification that a former GEI client was granted expungement, it will seal its records and respond to any inquiries with “we do not have records matching that name.” The exception to this is if the person is subsequently found GEI of a new criminal charge and is again placed under Board jurisdiction.

RESOURCES FOR POTENTIAL PETITIONERS: If you need assistance hiring an attorney (not required for an expungement hearing), contact the Oregon State Bar (www.osbar.org) at **503-684-3763** (Portland area), **800-452-7636** (outside the Portland area) or Disability Rights Oregon at **503-243-2081, 1-800-452-1694** or www.droregon.org.

RESOURCES FOR VICTIMS: Victims may call PSRB staff at 503-229-5596 or the Department of Justice’s Appellate Advocacy Program at (503) 378-4284. Through the Appellate Advocacy Program, you can speak with a Victim Advocate about your rights and options.

³ The law provides that for individuals convicted of crimes listed in [ORS 137.225\(12\)](#) who are otherwise eligible for relief under the statute, the court shall grant the petitioner’s motion to expunge the record of a GEI finding, unless the court finds by clear and convincing evidence that granting the motion would not be in the best interests of justice.