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THE EXPUNGEMENT PROCESS

Expungement proceedings are brought in the Circuit Court for the jurisdiction where the charges occurred. If you have criminal charges eligible for expungement in different courts, you should consult with an attorney to find out if it may be possible to have a request for expungement of multiple records to heard in one court.

Expungement petitions are civil cases. The attorney for the respondent Commonwealth of Virginia is the Office of the Commonwealth Attorney for that jurisdiction, not the Attorney General's office. Local procedures vary, so you will need to check with the Circuit Court web site or the clerk's office for the relevant Circuit Court to find out what procedures are followed to file for an expungement. Even if the Commonwealth Attorney's office does not object to the expungement, the court has the discretion to decline your petition.

Overview of the expungement process:

1. Prepare the petition with attachments (certified copies of warrants, dispositions, and documentation for EACH charge.)
2. File copies of the petition in Circuit Court and pay the filing and service fees OR submit your application for waiver of filing fees (in forma pauperis). The Commonwealth Attorney must be served also, so include a copy for him/her.
3. Take a copy of the petition to a local police station, get fingerprinted, and request a criminal history report from the Central Criminal Records Exchange. In some counties, you may need to contact the Virginia State Police instead of the local law enforcement.

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4. After the criminal history report has been received by the Court, schedule a hearing on your application. Ask the clerk whether the date is selected by the Commonwealth Attorney's office or the criminal docket clerk. Fill out a Praecipe (notice to the clerk to place the matter on the court's calendar) and send a completed copy to the Commonwealth Attorney.
5. Appear at the hearing with all of your proof and explain why you want an expungement. Be sure to be specific about why you are eligible for it. Be sure to bring an Order with you to court so the Judge can sign it.
6. If it is granted, get a copy of the Order to keep for your records.

I believe I am eligible to apply for expungement of my criminal record, what do I need to do?

First, you should obtain a certified copy of the Warrant of Arrest and case disposition (ordinarily on the reverse side of the Warrant) for each charge you would like to have expunged. Usually, for cases brought in either General District Court or the Juvenile and Domestic Relations Court, there will be a single sheet of paper for each criminal charge; if there is more than one charge, there may be separate case numbers, and separate documents that need to be copied and certified. You need to have the clerk's office copy, front and back, and stamp "certified," a copy of each case and/or charge you wish to include in the expungement application.

Second, you will need to prepare a petition containing the following information:

- Your full name, at the time of the arrest
- The date of the arrest
- The arresting agency
- The specific criminal charge sought to be expunged
- The date of final disposition of the charge
- Your date of birth
- If the Warrant of Arrest is not available, state why it is not available
- An allegation that you, the petitioner, are innocent of the criminal charge sought to be expunged
- A statement of the reasons why you are seeking expungement of the records, and
- Your Social Security number and the case number for each case/charge sought to be expunged, and,
- If any of the records are missing, a letter from the clerk's office stating that the records are unavailable

What does it cost to file an expungement petition in Circuit Court?

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The cost of an expungement proceeding can vary a little, based upon local charges. The fee for filing a proceeding is currently around \$84 and the cost of serving the petition on the state is \$12, for a total of \$96. You should call the Circuit Court clerk's office in your jurisdiction, before you go in, to find out the exact amount and whether they require cash or will accept a money order.

If you have limited household income, you may be eligible to ask the court to waive the expenses of filing the petition. This is called filing In Forma Pauperis, or IFP. You may ask the clerk for an application to have the fee waived, or you may find a copy of the form on the Virginia Courts website: <http://www.courts.state.va.us/forms/circuit/civil.html>. If the court grants the application, the filing and service fees will be waived. You will need to get a certified copy of the court's IFP order to take with you to the police station to have the fee to order a copy of your criminal history waived.

If the judge grants your petition and orders your record to be expunged, the clerk of court must refund the costs you paid to file the petition.

Can I save the \$12 service fee by delivering the petition myself to the office of the Commonwealth Attorney?

No – do not do that. The court clerk's office will prepare a summons that is served with the petition. The summons and petition are considered "original process" which should be served by someone who has no interest in the outcome of the case. You could have a private process server do this, but have the clerk's office send the necessary papers to the Sheriff's office and let them serve the papers and file the "return of service" which informs the court that service was made, when it was done, and how it was done. After the initial papers are served, you are permitted to send any other pleadings (i.e., the praecipe) by ordinary mail, fax, or hand-delivery to the Commonwealth Attorney. The original copies of all documents are always given to the court.

Once I have prepared an expungement petition, what do I need to do to file a case in Circuit Court?

Procedures vary a little from court to court. Generally, you will want to make four photocopies of the petition and the attachments. The original petition will be filed with the clerk's office; one copy will be sent to be served by the Sheriff's office on the Commonwealth Attorney's office. The Sheriff's office may want a second copy of the petition for what is called the return of service (the Sheriff's office may return a copy of the petition with the information about the date and time of service to the clerk's office). The clerk's office will date stamp two photocopies of the petition, with the court's file number written on the first page, and return them to you.

In some jurisdictions there may be other documents to complete. Contact your local Circuit Court to obtain any additional required forms.

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What happens after the petition is filed with the court?

The two photocopies of the petition that you will have when you leave the clerk's office are for you and the local police department, or the State Police. You need to go to a local police station, or the State Police, in order to be fingerprinted. Call first, as some police stations set aside limited times, or only certain days of the week, when they are willing to fingerprint people who are not being arrested. The fingerprinting is necessary to order a report of your criminal history from the Central Criminal Records Exchange in Richmond. You will need to leave one copy of the petition with the police department to send with the fingerprints to Richmond to order your criminal history. The cost for fingerprinting and for the report is currently \$13.

It takes about a month for the Central Criminal Records Exchange to forward a sealed copy of your criminal history to the Circuit Court. After the report is received, then the case can be set for a hearing. You will probably need to check with the Court Clerk's office after about a month to see if the report has been received from Richmond.

What do I need to do to set a hearing on my petition?

A praecipe is a notice to the clerk's office to place the expungement petition on the court's calendar for a hearing. Local procedures vary: there are different days and times to schedule these hearings, and sometimes you need to go through either the Commonwealth Attorney's office to set a date or through the criminal docket clerk, or comply with another local procedure. Before you fill out a form praecipe, after your criminal history has been filed with the court, you should speak with either a civil or criminal docket clerk to find out what the local procedure is. Even if the hearing is set through the Commonwealth Attorney's office, you need to send them a copy of the praecipe and complete the affidavit of service on the form.

Once I have selected a hearing date and have both served and filed a notice scheduling the hearing, what do I have to do to prepare for the court appearance?

You should prepare to take to court for the hearing a draft Order approving the expungement relief, in case the judge grants your application.

If your expungement application is more complicated than a simple request and you have decided to proceed without representation by an attorney, you should give very serious consideration to at least scheduling a consultation with a knowledgeable attorney to find out what local judges expect to be presented to get an application for expungement approved. You may obtain a 30 minute consultation with a private attorney for a \$35 fee, by calling Virginia Lawyer Referral Service at 1-800-552-7977.

What do I have to do to present my request in court?

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First, make sure you are on time. In some Circuit Courts, the civil cases on the docket are heard at the first call of the calendar when the judge goes through the docket to find out what parties are present. You might be asked when your case is called how much time the hearing will take. Ordinarily, an expungement application does not take more than five minutes. A simple, uncontested expungement may be resolved in two minutes.

You should be prepared to explain to the judge why you are seeking an expungement (to help simplify a search for a job, etc.). If you are making a simple expungement application (one criminal case, no prior or subsequent criminal record and the charge was a misdemeanor), the judge may not require you to have to answer questions or to testify. The judge may simply ask the Commonwealth Attorney's representative if they have any objection, and if there is none, ask you to hand the court officer (bailiff) the Order you prepared. You should hand the draft order to the Commonwealth Attorney, for the attorney to sign, before handing it to the court officer. At that point you are through.

If the judge grants my application for expungement, what happens next? What do I need to do?

The Circuit Court file for the expungement will be returned by the judge's staff to the clerk's office. Later in the day, or the following day, you should stop by the clerk's office to get a copy of the order, with the judge's signature. Once the file is expunged (sealed) you will not be able to get access to it. The Circuit Court clerk's office will process the order and send instructions to the court where the case was brought that the records must be sealed. The Circuit Court order will later be sent to the Department of Criminal Justice Services in Richmond, to have the state criminal records information also sealed. The Department of State Police may send a confirming letter to you once the records are sealed. This process can take up to six months to complete, although you can legally rely upon the expungement order once it has been signed by a judge. Eventually, the national crime records, maintained by the Federal Bureau of Investigation, are also updated and corrected to reflect the Virginia expungement process.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)

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