



VIRGINIA
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SOCIETY

EXPUNGEMENTS IN VIRGINIA

WHAT IS EXPUNGEMENT?

Expungement is a process where an individual who has been arrested and charged with a crime, but who was NOT convicted, can have police and court records of the arrest and charges sealed from public view. This does NOT mean the records are destroyed. The records are taken away from public view and can only be seen if the court gives permission (such as to a law enforcement officer).

WHO IS ENTITLED TO OBTAIN AN EXPUNGEMENT?

- A defendant in a criminal case who pleads “not guilty” and is then acquitted by a judge or jury.
- A person in a civil action who is charged with contempt of court, but is found not guilty.
- A defendant in a criminal case that the Commonwealth Attorney’s office decides not to prosecute (*nolle prosequi*) for all charges.
- A defendant charged with assault and battery or other misdemeanor for which the defendant could also be sued in a civil action, if the injured person states in writing s/he has received satisfaction for the injury and the case is dismissed.
- A person whose name or identification has been used without consent or authorization in a criminal case (identity theft).
- A defendant convicted of a crime who later receives an absolute pardon.

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HOW DO I OBTAIN AN EXPUNGEMENT?

In order to obtain an expungement, you will have to bring a court action (file a petition) in the circuit court for the jurisdiction where the charge(s) were made. If you have a mistaken identity conviction, the petition should be filed in the court where the case was decided (even if the case was heard in general district court or juvenile court). It is very difficult to obtain an expungement in Virginia, unless you fit the criteria above. Even if the judge is sympathetic to your reason for needing an expungement, the judge can only grant an expungement if your situation meets the requirements for an expungement.

You may always file the case without an attorney ("pro se"). Your circuit court may be able to provide you with the necessary forms for filing your petition; however the courts are not allowed to give you any legal advice about your case. You should seek advice from a private attorney to see whether you qualify for expungement.

IF I HAVE BEEN ACQUITTED OF A CRIMINAL CHARGE, AM I AUTOMATICALLY ENTITLED TO HAVE IT EXPUNGED?

No. You are then eligible to request that the court expunge the record, but the commonwealth's attorney could object, and a judge will need to decide. If your application is a simple one where there have been no other convictions and the charge you were acquitted of was a misdemeanor, the judge will usually grant expungement except when the commonwealth's attorney presents a very good reason why it should not be granted. If you have a felony charge or multiple charges, the burden is then on you to show it would be "manifest injustice" to you if the record(s) are not expunged. Basically, it is easier to get expungement if there is only one simple misdemeanor charge against you.

WHAT DOES "NOLLE PROSEQUI" MEAN AND CAN I GET MY CRIMINAL RECORD EXPUNGED IF THIS HAPPENED IN MY CASE?

You should be entitled to get your criminal record expunged in this situation. "Nolle prosequi" means that the commonwealth's attorney decided not to prosecute the charges against you. Since guilt was not determined, you can then claim innocence.

CAN I GET MY CRIMINAL RECORD EXPUNGED IF I BELIEVE I WAS UNFAIRLY CONVICTED OF A CRIME?

No. An expungement only applies to those found innocent or not convicted. An expungement does not apply to those who have been convicted of a crime, unless the

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conviction is later overturned or an absolute pardon is granted. Absolute pardons are granted only in rare cases by the governor.

IF I GOT A PLEA BARGAIN FOR MY CASE, CAN I GET MY CRIMINAL RECORD EXPUNGED?

Probably not. Usually a plea agreement is undertaken to settle a case where the person is guilty or in return for a lighter sentence or community service. You should see an attorney for more specific advice about your situation.

CAN I GET A CRIMINAL RECORD EXPUNGED IF I PLED “NOLO CONTENDERE” INSTEAD OF GUILTY?

No. A plea of “nolo contendere” (no contest) is not a guilty plea, however the courts have decided that it is not consistent with claiming to be innocent of the crime charged. The same holds true for an “Alford” plea, whereby the defendant maintains innocence, but concedes there is sufficient evidence to establish guilt. So, if you pled “nolo contendere” or entered an “Alford” plea, you cannot get those records expunged.

IF A CRIMINAL CHARGE AGAINST ME WAS DISMISSED, CAN I GET MY CRIMINAL RECORD EXPUNGED?

Maybe. A dismissal does not automatically mean that a person was innocent. Innocence is necessary for eligibility for expungement. Dismissal of the case simply means that the case is over and no longer active on the court’s docket. You should see an attorney for more specific advice about your situation.

IF I WAS UNDER 18 WHEN I WAS CONVICTED OF A CRIME, CAN I GET THE RECORD EXPUNGED?

Yes. Most juvenile records are expunged automatically once the person turns 19, if it has been 5 years since the date of the last hearing. However, if the juvenile was convicted of an act that would have been a felony if committed by an adult, the records are not automatically destroyed. DMV records regarding juveniles are destroyed when the person turns 29. A juvenile can apply for expungement earlier without waiting for the automatic process if s/he was the subject of a delinquency or traffic proceeding, was found innocent, or the proceeding was otherwise dismissed. Juveniles found guilty in circuit court of delinquency do not lose their civil rights and are not automatically disqualified from employment by state or local governmental agencies.

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HOW DO I FIND OUT WHAT IS BEING LISTED ON MY CRIMINAL RECORD SO THAT I CAN DETERMINE WHETHER OR NOT I AM ELIGIBLE FOR AN EXPUNGEMENT?

In order to obtain your criminal record, you will have to complete a "Criminal History Record Check" application form. This application is available at your local police department and/or by contacting the Virginia State Police department. You can also complete the application via the internet. To obtain your criminal record, you have to send your application to:

Virginia State Police
Central Criminal Records Exchange
P. O. Box 85076
Richmond, VA 23261-5076

There is a \$15.00 - \$20.00 charge for obtaining your criminal record. This fee is subject to change. If you are requesting your criminal record by mail, please allow time for them to process your request.

CAN I GET ONLY PART OF MY CRIMINAL RECORD EXPUNGED?

Maybe. However, the more convictions in your history, the less likely you will be granted partial expungement. The more time that has passed since your last criminal charge was brought, the more sympathetic the judge may be to expunging a criminal charge for you. The criminal charge will still have to follow the rules of expungement, whereby you were found to be innocent and/or not convicted of the charges.

HOW CAN I GET MY CRIMINAL RECORD EXPUNGED IF I AM A VICTIM OF IDENTITY THEFT?

Identity theft is affecting more and more people every year. Sometimes victims have their identities stolen and crimes are committed in their names. Identity theft occurs when someone illegally uses your name, date of birth, Social Security number, and/or driver's license number.

Virginia has set up a special process for identity theft victims to correct criminal records that mistakenly cite identifying information that belongs to an innocent party. An identity theft victim can bring an expungement action in any court in which the criminal charge was made, even if it was a lower court (general district or juvenile). This is helpful, since other expungement applicants must file in circuit court which takes longer.

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Once an order for expungement based upon mistaken identity is entered, you may submit a certified copy of the order to the attorney general's office so that an "identity theft passport" can be prepared. The identity theft passport may then be sent to DMV to correct any mistaken information there and to the state police department and other governmental agencies as needed.

IS THERE A SPECIAL WAY I CAN GET MY DMV RECORD CORRECTED WITHOUT GETTING A COURT EXPUNGEMENT?

Depending upon the nature of the mistaken information, DMV may agree to correct its listing without court action. However, if the record contains mistaken entries about alleged convictions in other states, you may have to contact the other state(s) to get them to make the corrections and then have them submit it to the Virginia DMV to correct the record. If you have a complicated issue in your transcript, it may be necessary to go to court for expungement first.

MAY I GET A FEDERAL CRIMINAL RECORD EXPUNGED?

Yes, however you will have to meet the criteria for eligibility. Federal law is similar to Virginia law on expungement of records. Relief is generally limited to persons who can claim innocence of criminal charges brought against them. Generally, granting expungement under federal law is very limited in scope and will not be available even for someone who has been pardoned by the president.

I HAVE OBTAINED A COPY OF MY CRIMINAL RECORD AND THERE ARE CHARGES LISTED THAT DO NOT BELONG TO ME OR THE INFORMATION IS LISTED FOR ANOTHER PERSON. HOW DO I CORRECT THIS INFORMATION?

In instances where it comes to an individual's attention that his/her name or other descriptive information is a matter of record in the Central Criminal Records Exchange (CCRE) and he/she is not the person of the record, then he/she may initiate a "challenge of a record." This process is accomplished by reporting this information to your local sheriff, police or State Police Headquarters and requesting to be fingerprinted for the purpose of challenging a criminal record.

It will be necessary for you to be fingerprinted after presenting a valid photo identification, such as a valid state issued drivers license and/or state issued identification card. The official taking the fingerprints must document on letterhead paper that he/she has reviewed the personal identification or photo identification and obtained the fingerprints.

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This letter and the fingerprints are to be mailed to Manager, Central Criminal Records Exchange, Virginia State Police, P. O. Box 27472, Richmond, Virginia 23261-7472. Within 5 workdays, the individual that initiated the challenge will receive written confirmation of the fingerprint search results.

I AM NOT ABLE TO OBTAIN AN EXPUNGEMENT BUT THERE IS INCORRECT INFORMATION LISTED ON MY CRIMINAL RECORD. HOW DO I CORRECT MY CRIMINAL RECORD?

It is the policy of the Central Criminal Records Exchange (CCRE) to correct or otherwise modify a criminal record after receiving notification from the agency that sent the information for the record of the change to be initiated. When information is received that there is an error in the record, the CCRE staff will start an audit of the record and coordinate corrections or modifications directly with the contributing agency. The time to complete this process varies depending on how expeditiously CCRE is officially advised by the contributor that a change to a record is appropriate.

CCRE will not accept corrections or changes to a criminal record from sources other than the criminal justice agency (contributor) that submitted the record.

I AM HAVING A HARD TIME FINDING EMPLOYMENT BECAUSE OF MY CRIMINAL RECORD. IS THERE A WAY THAT I CAN HAVE MY RECORD EXPUNGED SO THAT I CAN FIND EMPLOYMENT?

Unless the convictions fall in the category for those that are eligible for expungements, you are not eligible to obtain an expungement. When applying for a job, take letters of reference from past employers and friends and attach them to your application. Be prepared to explain to any potential employer that you have stayed out of trouble since your last conviction. If there is a mistake on your criminal report and you are in the process of getting the information corrected, you may want to attach a copy of your criminal report and a certified court copy of the judge's disposition of the case to your application and explain to potential employers that there is a mistake on your criminal record and you are in the process of getting the record corrected.

There is no federal or state law that prohibits employers from asking job applicants if they have ever been convicted of a criminal offense. Employers may legally consider an applicant's conviction(s) in making hiring decisions but they cannot discriminate against

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someone on the basis of their sex, race, age (40 and over), gender, disability, national origin, and religion. If an applicant provides false information about his/her criminal history in an interview or on an application, that can also be grounds for the employer to deny employment or terminate the individual.

Applicants should also be aware that certain employers are legally entitled to obtain copies of applicants' and employees' criminal history records from Virginia's Central Criminal Records Exchange. Federal, state and local governmental agencies, including the Commonwealth of Virginia, are entitled to obtain these records. In addition, some health care professions require that in order to be licensed the applicant cannot have any felony convictions.

WHAT IS A “PARDON” AND HOW CAN I GET ONE?

You may want to petition the governor for a “Simple Pardon”. A simple pardon is granted by the governor on behalf of the Commonwealth and declares that a person convicted of a crime has been officially forgiven for that crime. While it does not expunge or remove the conviction from the record, a notation will appear on the person’s criminal record stating that the crime has been forgiven.

To petition for a simple pardon the applicant must be free of all conditions set by the court for a period of ten years. If any felonies were involved, the applicant must have applied for and been granted a Restoration of Civil Rights before petitioning for the simple pardon. If these conditions have all been met, the applicant must then include the following information in a letter to the governor:

- Full name and any previous names and aliases;
- Social Security number;
- Date of birth;
- Mailing and street address;
- Phone numbers;
- Dates regarding court appearances and convictions, sentences, or other dispositions of all misdemeanor and felony convictions;
- A complete statement regarding the details for each conviction; and
- An explanation of why the governor should grant a pardon.

The letter that is sent to the governor serves as the official petition; there is no official form that needs to be filled out. The applicant needs to provide all the relevant information that they wish to have considered. The petition process does not include any hearing, meeting or conference with the petitioner or persons on the petitioner’s behalf.

Simple pardon petitions are sent to the Virginia Parole Board. If the Board finds a petition has merit, it will conduct a thorough investigation. These investigations may take as long

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as a year to complete. If a petition is denied, another cannot be filed for two years after the date of the denial.

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Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

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

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