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Expungements

An expungement is the process of erasing or sealing a criminal record related to a particular offense. Virginia does not expunge criminal convictions. Virginia only allows the expungement of criminal charges where the person was found not guilty, the case was dismissed *nolle prosequi* (meaning the Commonwealth's Attorney decided not to pursue the charge), or the charges were otherwise dismissed.

Once a criminal charge has been expunged, the court and police files relating to that charge will be sealed and the charge will no longer show up on background checks or criminal histories.

What type of records can I have expunged?

Criminal charges including, but not limited to, assault, burglary, conspiracy, domestic violence, drug offenses, DUI, fraud, firearms offenses, homicide, robbery, sexual offenses, and traffic offenses can be expunged if you meet all the requirements for an expungement.

Why would I want an expungement?

Having a criminal charge on your record might be preventing you from renting an apartment, getting a job, or receiving a loan. More and more employers, landlords, schools, and lenders request background check reports when you apply for their services and criminal charges often show up on these reports. If you are able to expunge a particular criminal charge, the charge will no longer appear on your background reports and criminal histories and you can treat the charge as if it never happened.

Are charges that were dismissed after the court found evidence sufficient to establish guilt eligible for expungement?

No. Under Virginia law, the expungement process is for innocent persons. If a court at any point finds evidence sufficient to support a conviction then that charge cannot be expunged. This is true even if the charge is ultimately dismissed under a "first offender's" guilty plea or after good conduct during a probation period.

However, you may be able to expunge a charge even though a court takes the charge under advisement as long as there has been no guilty plea and no finding by the court of evidence

sufficient to establish guilt. In this situation, you probably want to consult with an attorney who handles expungements.

What does the expungement process involve?

To obtain an expungement, you must file a lawsuit in the circuit court of the city or county where the charge or charges against you were brought. Petitions for expungement are civil, not criminal, cases. An expungement involves the following steps:

- File the petition for expungement and pay all applicable fees and costs. The petition for expungement (a form is available on the web site of Virginia's Judicial System - <http://www.courts.state.va.us/forms/>) explains why you are eligible for an expungement and lists the specific charges to be expunged. The petition must include a certified copy of the original arrest warrant or indictment if it is reasonably available. If you cannot afford the filing fees and costs, you can file a petition (also available online) asking the court to allow you to file your case without paying costs or fees. When you file your petition, you should bring four copies of the petition and the attachments with you.
- Serve a copy of the petition for expungement on the Commonwealth's Attorney in the county or city where the petition is filed. Ask that the Sheriff's office serve the Commonwealth's Attorney with a copy of the petition.
- Obtain a complete set of your fingerprints from a law-enforcement agency, such as your local police department or the Virginia State Police, and request that your criminal history report be sent to the circuit court. Give the law-enforcement agency a copy of your petition for expungement.
- Schedule a hearing on your petition. Once the circuit court has received a copy of your criminal history report from the Central Criminal Records Exchange, ask the circuit court clerk how dates are selected for hearings on petitions for expungement. You will need to give the Commonwealth's Attorney notice of the hearing.
- Attend the hearing and explain why you want an expungement. Be prepared to explain to the judge why you qualify for an expungement and why having the criminal charge continue to appear on your record is a hardship. Bring an order granting the expungement to the hearing so the judge can sign it.
- Get a copy of the signed expungement order from the clerk's office for your records if the judge grants the expungement.

Does the court have to give me an expungement?

No. The court does not have to grant your petition for an expungement unless the court

finds that the continued availability of information about your criminal charge constitutes a “manifest injustice” to you.

However, it is much easier to get an expungement if you were arrested and charged with a misdemeanor and you have no prior criminal record. In this situation, you will be entitled to the expungement unless the Commonwealth’s Attorney shows that there is good cause not to allow the expungement. If you were charged with a felony, it is your burden to show that not expunging the criminal charge would be a manifest injustice, such as you being denied a job, credit, or housing due to the existence of the criminal charge.

What should I do to prepare for the hearing on my petition for expungement?

You need to make sure that you give the Commonwealth’s Attorney notice of the hearing. Before the hearing, you will need to prepare an order for the judge to sign that would grant you the expungement. You may want to consult with an attorney who is familiar with what local judges expect to hear in order to grant an expungement.

What happens if the court grants my petition for expungement?

If the court enters an order granting your petition for expungement, the court will seal your court file relating to the charge and you and the rest of the public will not be able to access this file. The court will send a copy of the expungement order to the Department of State Police who will remove the information of your arrest and criminal charges from the Central Criminal Records Exchange.

What about the expungement of juvenile court records?

There is a different, automatic process set up for the expungement of the court records of juveniles. The juvenile and domestic relations district courts destroy all records connected with a proceeding concerning a juvenile once the juvenile turns 19 years old and five years have passed since the date of the last hearing. Once these records are destroyed, any violation of law by the juvenile is treated as if it never occurred.

However, if a juvenile was found guilty of a delinquent act that would be a felony if committed by an adult then the records are retained and not destroyed.

The juvenile and domestic relations district courts also have a process to ask for the expungement of records relating to a delinquency or traffic proceeding if the juvenile is found innocent or the proceedings were otherwise dismissed. This motion, which is available as a form on the website of Virginia’s Judicial System, is filed in the juvenile and domestic relations district court where the proceedings occurred. Unless the Commonwealth’s Attorney can show good cause as to why the records should be kept, the court shall grant the motion and order that the records be destroyed.

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