



AUTOMATIC EXPUNGEMENT

Study Highlights

January 2021

A criminal charge or conviction can impact many areas of a person's life, such as:

- Employment
- Higher education
- Financial aid
- Housing
- Immigration
- Loan eligibility and credit
- Professional licensing
- Social stigma

Expungement provides a mechanism to:

- Address the collateral consequences caused by a criminal charge or conviction; and,
- Allow conviction relief for individuals in communities that have been disparately impacted by the criminal justice system.

There are approximately 1.59 million individuals in the Central Criminal Records Exchange with *at least* one criminal conviction as of July 31, 2020 according to the Virginia State Police.

Crime Commission Legislation

Crime Commission members endorsed legislation for introduction during the 2020 Special Session and the 2021 Regular Session of the General Assembly to:

1. Create an automatic expungement process to remove specified felony and misdemeanor convictions, deferred dispositions, non-convictions, and incidents of mistaken identity and unauthorized use of identifying information from criminal history records and to seal related court records.
2. Limit access and dissemination of expunged criminal and court records.
3. Provide protections in relation to employment, education, and housing applications for individuals who have had their criminal records expunged.
4. Require that third parties who collect and disseminate criminal records must delete records that have been expunged or face civil liability.
5. Provide employers with liability immunity when hiring workers who have had their criminal records expunged.

What is Virginia's expungement process?

Virginia law currently authorizes a petition-based process only for expungement of non-convictions from criminal history records (Virginia Code § 19.2-392.2). The current expungement process in Virginia requires the individual charged with the offense to file a petition and fingerprints with the circuit court, pay a filing fee, and possibly attend a hearing on the matter. Generally, the circuit court has broad discretion in whether to grant or deny the petition for expungement. If granted, the charge is removed from the person's criminal history record, access to the record is restricted, and a court order is required to view the sealed record.

How many expungement orders are granted each year?

Virginia State Police received an average of approximately 4,000 expungement orders per year for non-convictions (CY2017 to CY2019).

How do other states address expungement?

Virginia law does not currently allow for expungement of convictions or deferred dispositions; whereas, a sizeable number of states authorize such actions:

- 41 states allow misdemeanor convictions to be expunged or sealed; and,
- 36 states allow felony convictions to be expunged or sealed.

States that allow for expungement or sealing of convictions typically place some limitations on the type and number eligible offenses, the timeframe for relief, and whether restitution must be paid before a conviction can be expunged or sealed. For instance, misdemeanor convictions are generally eligible for expungement or sealing after 3-5 years and felony convictions after 5-10 years.

5 states have enacted legislation to automatically expunge numerous criminal charges and convictions:

- California
- Michigan
- New Jersey
- Pennsylvania
- Utah

Currently, only Pennsylvania is automatically expunging large numbers of criminal records in an automated manner.

New Jersey has allocated \$15 million for the implementation of an automatic expungement system.

Other states with more limited automatic expungement processes include Illinois, New York, South Dakota, and Vermont.

Other states considering the enactment of automatic expungement laws include Connecticut, Louisiana, North Carolina, and Washington.

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What is automatic expungement?

Automatic expungement is initiated by the Commonwealth and allows for a defendant to receive conviction relief without having to file a petition or pay any fees. Access to an individual's expunged criminal history and court records would be limited to specific purposes as determined by the General Assembly.

Do other states automatically expunge criminal records?

Staff identified 5 states that have enacted legislation to automatically expunge convictions and non-convictions for various criminal offenses:

California

- Timeframes for automatic expungement of non-convictions vary based on whether criminal proceedings were initiated.
- Misdemeanors and infractions are automatically expunged after 1 year from conviction if not sentenced to probation.
- An offense is automatically expunged if a person is sentenced only to probation and the person completes that sentence without a revocation of probation.
- A person will not qualify for automatic expungement if they are a registered sex offender, on active probation, serving a sentence for another offense, or have pending criminal charges.

Michigan

- Non-convictions are automatically expunged, subject to certain conditions.
- Certain misdemeanor convictions are automatically expunged after 7 years from the imposition of the sentence.
- Certain felony convictions are automatically expunged after 10 years from the imposition of the sentence or the completion of any term of imprisonment.
- Felonies and certain misdemeanors cannot be automatically expunged if a person has charges pending or has been convicted of another offense.
- No more than 2 felony and 4 misdemeanor convictions in total can be automatically expunged, excluding low-level misdemeanors.

New Jersey

- Enacted legislation in 2019 to implement an automated expungement system. A task force has been created to examine technological, fiscal, and practical issues and challenges of such a system.

Pennsylvania

- Non-convictions are automatically expunged.
- Certain misdemeanor convictions are automatically expunged after 10 years if there are no subsequent misdemeanor or felony convictions and all court-ordered restitution has been paid.
- Certain prior convictions will disqualify a person from automatic expungement, such as a felony, four misdemeanors, indecent exposure, and various other offenses.

Utah

- Non-convictions are automatically expunged.
- Dismissals without prejudice are automatically expunged after 180 days.
- Certain misdemeanor convictions are expunged after 5 – 7 years.
- A person will not qualify for automatic expungement if they have unpaid fines, fees, or restitution, pending criminal charges, or certain prior convictions on their criminal records.