

VIRGINIA STATE CRIME COMMISSION



Update: Expungement and Sealing of Criminal and Court Records

2021 ANNUAL REPORT

UPDATE: EXPUNGEMENT AND SEALING OF CRIMINAL AND COURT RECORDS

EXECUTIVE SUMMARY

Prior to 2021, the only criminal record relief available in Virginia was for the expungement of non-convictions. During the 2021 Special Session I of the General Assembly, legislation was enacted which created two new criminal record relief processes, sealing (automatic and petition-based)¹ and marijuana expungement (automatic and petition-based).² Additionally, the sealing legislation contained enactment clauses directing the Crime Commission to continue its study of expungement and sealing.

During its review, Crime Commission staff determined that the expungement, sealing, and marijuana expungement statutes contain significant variations, both technical and substantive, that legislators may wish to reconcile in order to ensure that the framework is consistent, individuals have access to the processes, and post-criminal record relief protections are uniform. Staff further noted that additional funding will be needed in order to successfully implement the new processes and provide criminal record relief.

Therefore, staff recommended that the Crime Commission continue to examine this topic in order to identify and reconcile conflicts between the three criminal record relief processes. Additionally, staff recommended that any legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier). No motion was made for either of these recommendations.

Finally, staff recommended creating two new full-time positions at the Virginia Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel on the new expungement and sealing laws (total estimated annual cost: \$215,000).³ Budget amendments were introduced in both the House and Senate, but were not included in the final budget adopted by the General Assembly and signed by the Governor.⁴

BACKGROUND

In 2020, the Executive Committee of the Crime Commission directed staff to conduct a review of expungement in Virginia and of criminal record relief in other states, with a particular focus on the automatic sealing of criminal charges and convictions.⁵ At the time of that study, the

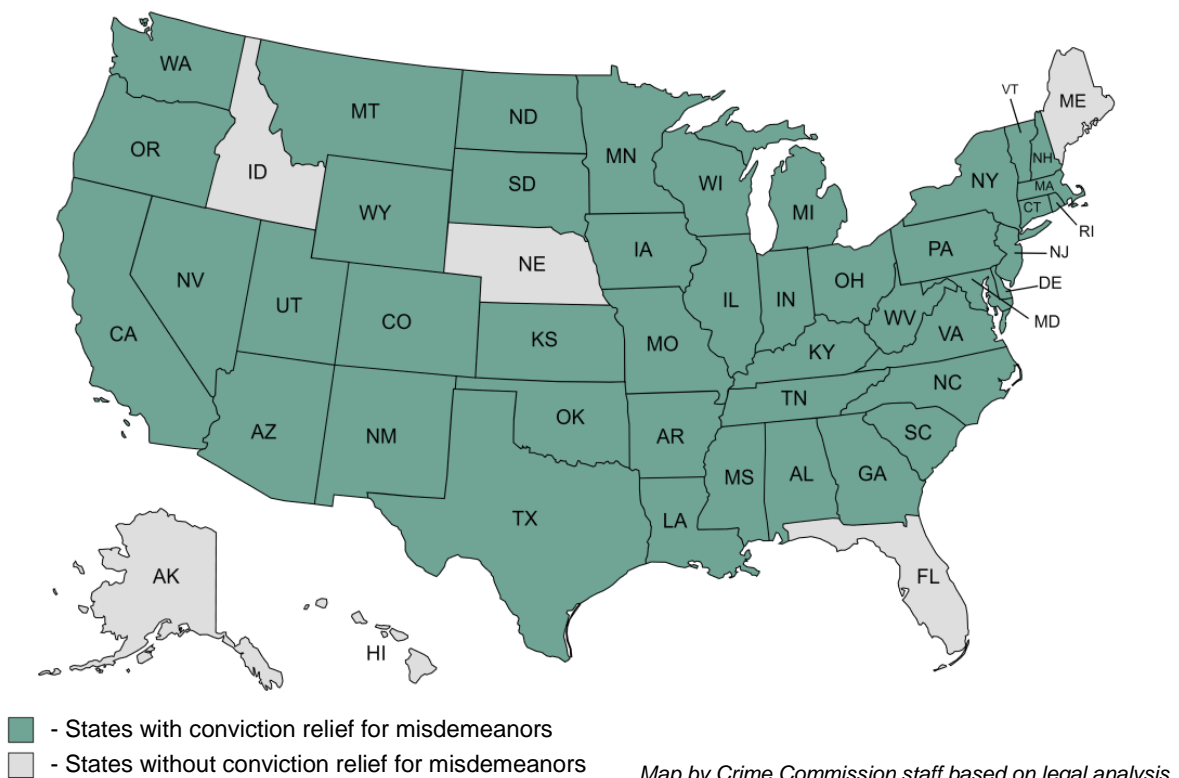
only criminal record relief process available in Virginia was for the expungement of charges that concluded without a conviction (non-convictions).⁶ Virginia law did not include a process to expunge or seal criminal convictions, except in very narrow circumstances involving actual innocence claims.⁷

2021 Study Findings

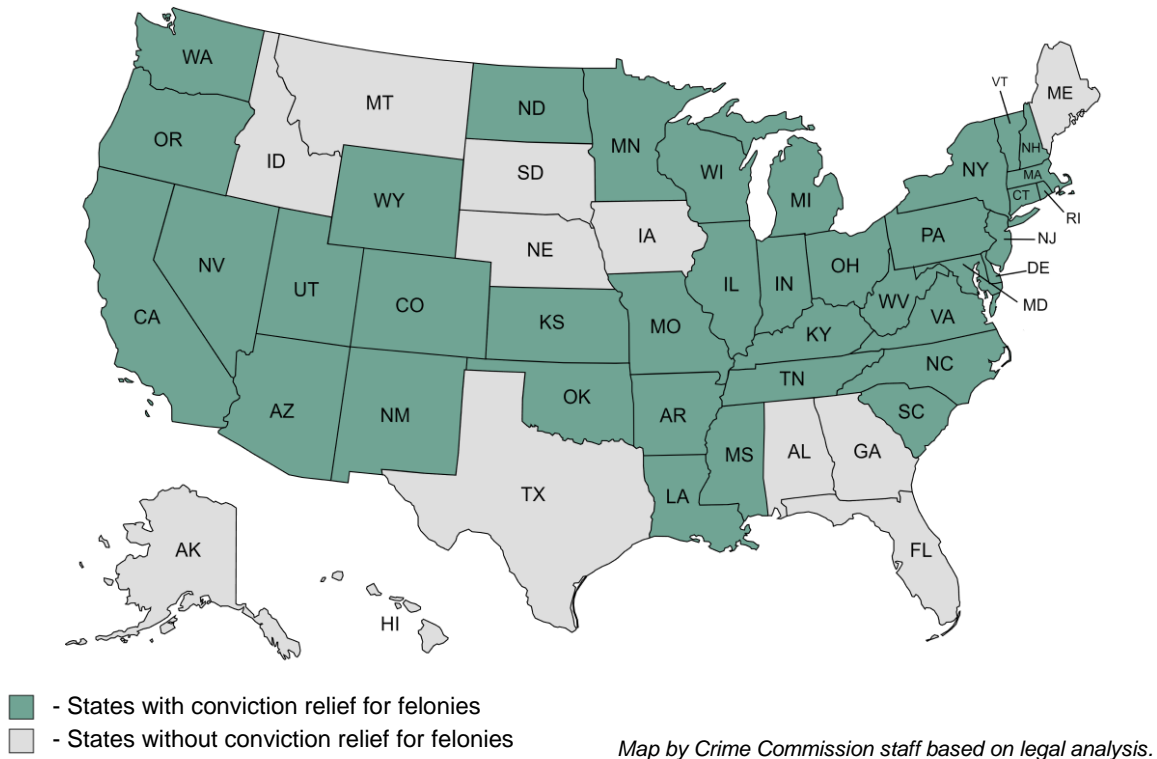
Legislation enacted during the 2021 Special Session I of the General Assembly created an automatic process to seal specific convictions, deferred dismissals,⁸ and non-convictions, as well as a petition-based process to seal a wide variety of convictions and deferred dismissals.⁹ In addition to the new sealing laws, separate legislation enacted during the 2021 Special Session I of the General Assembly allowed for the automatic and petition-based expungement of certain marijuana offenses.¹⁰ With the passage of this new legislation during the 2021 Special Session I of the General Assembly, Virginia is now one of:

- 44 states to provide criminal conviction relief for misdemeanor offenses;¹¹
- 38 states to provide criminal conviction relief for felony offenses;¹²
- 13 states to provide specific criminal conviction relief for marijuana offenses after having legalized the possession of marijuana (both medical and recreational);¹³ and,
- 9 states to provide automatic criminal conviction relief.¹⁴

44 STATES PROVIDE MISDEMEANOR CONVICTION RELIEF



38 STATES PROVIDE FELONY CONVICTION RELIEF



The 2021 sealing legislation required the Crime Commission to continue its study on the expungement and sealing of criminal records.¹⁵ Specifically, the legislation contained six mandates directing the Crime Commission to:

1. Review the interplay between the expungement and sealing of criminal records;
2. Recommend a review process for proposed changes to the expungement or sealing of criminal records;
3. Determine methods to educate the public on the new sealing processes;
4. Study the permissible uses of expunged and sealed criminal records;
5. Review plea agreements in relation to expunged and sealed criminal records; and,
6. Determine the feasibility of destroying expunged or sealed criminal records.

In order to address these legislative mandates, Crime Commission staff reviewed Virginia laws and practices, compared the new and existing Virginia criminal record relief processes, examined relevant laws and practices from other states, updated staff's previous 50 state review of criminal record relief laws, and consulted with stakeholders, practitioners, and advocates.

Legislative Mandate #1: Review the interplay between the expungement and sealing of criminal records.

The sealing legislation directed the Crime Commission to review the interplay between the expungement and sealing of criminal records under Virginia law. Staff found that the Virginia Code now includes three forms of criminal record relief: expungement, sealing, and marijuana expungement.¹⁶ These terms are defined as follows:

- Expungement: this term is not defined in the Virginia Code; however, per the Administrative Code of Virginia, expungement means “to remove, in accordance with a court order, a criminal history record or a portion of a record from public inspection or normal access.”¹⁷
- Sealing: this term is defined in the Virginia Code as restricting the dissemination of criminal history record information and prohibiting the dissemination of court records.¹⁸
- Marijuana expungement: the term “expungement” is not defined in the Virginia Code or the Administrative Code of Virginia as it relates to the automatic or petition-based expungement of marijuana offenses; however, marijuana expungement appears to function more in practice like sealing as opposed to expungement.¹⁹

The new sealing and marijuana expungement processes will not take effect until July 1, 2025; however, these processes can take effect sooner if the new automated systems are operational prior to that date. The expungement process for non-convictions is already available in Virginia.

During its review, staff determined that expungement, sealing, and marijuana expungement statutes contain significant variations, both technical and substantive, that legislators may wish to reconcile in order to ensure that the framework is consistent, individuals have access to the processes, and post-criminal record relief protections are uniform.

I. FRAMEWORK

The framework for the three forms of criminal record relief in the Virginia Code varies significantly in regard to:

- (A) eligible offenses, waiting periods, and criteria for granting relief;
- (B) access to and dissemination of records;
- (C) procedural differences;
- (D) marijuana offenses;

- (E) mistaken identity or unauthorized use of identifying information; and,
- (F) miscellaneous matters.

A. Eligible Offenses, Waiting Periods, and Criteria for Relief

Staff found variations across eligible offenses, waiting periods, and criteria for relief when comparing expungement; sealing (automatic sealing of convictions and deferred dismissals, automatic sealing of non-convictions, and petition-based sealing); and, marijuana expungement (automatic marijuana expungement and petition-based marijuana expungement).

EXPUNGEMENT

The expungement process is only available for certain non-convictions, meaning charges that concluded with an acquittal, a *nolle prosequi*, or a dismissal.²⁰ Virginia courts have interpreted these categories of non-convictions narrowly. For example, the Supreme Court of Virginia has denied expungement petitions for acquittals by reason of insanity,²¹ dismissals following a plea of *nolo contendere*,²² and where a finding of evidence sufficient for guilt was made and the charge was deferred before ultimately being dismissed.²³

There is no waiting period required before a person can petition for expungement of a non-conviction.²⁴ A court shall order the expungement of police and court records if it finds that “the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a *manifest injustice*”²⁵ to the petitioner.”²⁶

AUTOMATIC SEALING OF CONVICTIONS AND DEFERRED DISMISSALS

Convictions under the following nine specified Virginia Code sections will be eligible for automatic sealing beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date:

- § 4.1-305 (underage consumption, purchase, or possession of alcohol);
- § 18.2-96 (petit larceny);
- § 18.2-103 (concealing or taking possession of merchandise);
- § 18.2-119 (trespass);
- § 18.2-120 (instigating trespass by others);
- § 18.2-134 (trespass on posted property);

- § 18.2-248.1 (sell or distribute, or possess with the intent to sell or distribute, marijuana);
- § 18.2-250.1 (possession of marijuana); and,
- § 18.2-415 (disorderly conduct).²⁷

Additionally, violations under Virginia Code §§ 4.1-305 and 18.2-250.1 that were deferred and dismissed will also be eligible for automatic sealing.²⁸

The convictions and deferred dismissals cited above will be sealed after seven years from the date of the conviction or the final dismissal, provided that the person has not been convicted of any additional offense in Virginia requiring a report to the Central Criminal Records Exchange (CCRE) or any out-of-state offense, excluding traffic infractions, during that time period.²⁹ Additionally, a conviction or deferred dismissal will not be automatically sealed if, on the date of such conviction, deferral, or dismissal, the person was convicted of another offense that is ineligible for automatic sealing.³⁰

AUTOMATIC SEALING OF NON-CONVICTIONS

In addition to the above convictions and deferred dismissals, certain misdemeanor non-convictions,³¹ certain felony non-convictions,³² offenses resulting from mistaken identity or unauthorized use of identifying information,³³ and traffic infractions³⁴ will be eligible for automatic sealing beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date.

When the new sealing legislation takes effect, misdemeanor non-convictions moving forward in time must be ordered to be sealed at the time the court enters the acquittal, *nolle prosequi*, or dismissal.³⁵ However, the court does not have to enter an order to seal a misdemeanor non-conviction if any of the following six specific circumstances are brought to the attention of the court: (1) the charge is ancillary to another charge that resulted in a conviction; (2) the non-conviction was reached as result of a plea agreement; (3) another charge arising from the same facts and circumstances is pending against the person; (4) the Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts and circumstances within 3 months; (5) the Commonwealth establishes by a preponderance of the evidence that good cause exists to deny the automatic sealing of the charge; or, (6) the person charged with the offense objects to the automatic sealing.³⁶

Similarly, when the new sealing legislation takes effect, felony offenses moving forward in time that conclude in an acquittal or a dismissal with prejudice may be automatically sealed.³⁷

Following an acquittal or dismissal with prejudice, the defendant may make an oral motion for sealing, and if the attorney for the Commonwealth concurs with the motion, the court must enter an order to automatically seal the offense.³⁸ If the attorney for the Commonwealth does not concur, the felony acquittal or dismissal with prejudice cannot be automatically sealed and the defendant will have to petition for expungement.³⁹

In addition to addressing certain misdemeanor and felony non-convictions moving forward in time, the sealing legislation created a process to automatically seal certain misdemeanor non-convictions *retroactively*.⁴⁰ On at least an annual basis, the Virginia State Police (VSP) must review the CCRE and identify persons with a misdemeanor non-conviction on their criminal history record who (i) have no other criminal convictions in the CCRE on their criminal history record and (ii) have no criminal charges in the CCRE on their criminal history record within the past three years.⁴¹ If these criteria are met, then the misdemeanor non-conviction on the person's criminal history record shall be automatically sealed.⁴²

Aside from the misdemeanor and felony non-convictions previously mentioned, any offense moving forward in time that was based on mistaken identity or unauthorized use of identifying information must be ordered to be automatically sealed at the time when a *nolle prosequi* or dismissal order is entered.⁴³ Finally, traffic infractions are automatically sealed after 11 years from the date of final disposition of the offense, unless such records are required to be maintained by the Virginia Department of Motor Vehicles in order to comply with federal law.⁴⁴

PETITION-BASED SEALING

A person will be able to petition to seal a conviction or deferred dismissal for a misdemeanor, Class 5 or 6 felony, grand larceny (Virginia Code § 18.2-95), and any other felony offense deemed larceny and punished as provided in Virginia Code § 18.2-95 beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date.⁴⁵ Certain offenses are excluded from petition-based sealing, such as domestic assault and battery and DUI-related offenses.⁴⁶

A person who petitions to seal a conviction or deferred dismissal must satisfy *both* the criteria to petition and the criteria to have the petition for sealing granted. First, in order to be eligible to petition, the petitioner (i) cannot ever have been convicted of a Class 1 or 2 felony or any other felony punishable by life imprisonment, (ii) cannot have been convicted of a Class 3 or 4 felony within the past 20 years, and (iii) cannot have been convicted of any other felony

within the past 10 years.⁴⁷ Second, if the person is eligible to petition, then the person must meet the following criteria in order to have the sealing petition granted:

- If the petition is to seal a misdemeanor offense, then 7 years must have passed since the dismissal of the deferred charge, the conviction, or the person's release from incarceration, whichever of these dates occurred latest in time, and the person cannot have been convicted of any additional offense in Virginia which requires a report to the CCRE or any out-of-state offense, excluding traffic infractions, during that time period;⁴⁸
- If the petition is to seal a felony offense, then 10 years must have passed since the dismissal of the deferred charge, the conviction, or the person's release from incarceration, whichever of these dates occurred latest in time, and the person cannot have been convicted of any additional offense in Virginia which requires a report to the CCRE or any out-of-state offense, excluding traffic infractions, during that time period;⁴⁹
- If the petition is to seal an offense that involved the use or dependence on alcohol or any narcotic drug, the court must find that the person has demonstrated their rehabilitation;⁵⁰
- The court must find that the petitioner has not previously had two other convictions or deferred dismissals arising out of different sentencing events sealed via a petition;⁵¹ and,
- The court must find that the continued existence of the charge or conviction "causes or may cause circumstances that constitute a *manifest injustice* to the petitioner."⁵²

AUTOMATIC MARIJUANA EXPUNGEMENT

All records related to an arrest, criminal charge, conviction, or civil offense (both convictions and non-convictions) for possession of marijuana and misdemeanor distribution of marijuana will be eligible for automatic expungement beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date.⁵³ There will be no waiting periods or any other criteria that must be satisfied before either of these offenses are automatically expunged.⁵⁴ All of the eligible offenses contained within the CCRE will be automatically expunged once the new automated systems are in place.

PETITION-BASED MARIJUANA EXPUNGEMENT

Only convictions and deferred dismissals for felony distribution of marijuana (Virginia Code § 18.2-248.1) and misdemeanor sale or possession of drug paraphernalia (Virginia Code § 18.2-265.3(A)) will be eligible for petition-based marijuana expungement beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date.⁵⁵ There will be no waiting period required before a person can petition for expungement of an eligible offense.⁵⁶ As with petitions for the expungement of non-convictions under the traditional expungement process,⁵⁷ a court shall grant a marijuana expungement petition if “the court finds that the continued existence and possible dissemination of information relating to the arrest, charge, conviction, or adjudication of the petitioner causes or may cause circumstances that constitute a *manifest injustice* to the petitioner.”⁵⁸

B. Access to and Dissemination of Records

A police or court record that has been expunged can only be accessed or disclosed via an order from the court that originally ordered the record to be expunged.⁵⁹

Sealed criminal history records in the CCRE can be accessed and disseminated without a court order for 25 specific purposes, which are discussed in greater detail in the “Legislative Mandate #4” section of this report.⁶⁰ Sealed court records can be accessed and disclosed for those same 25 specific purposes; however, a court order is required prior to accessing or disclosing such court records.⁶¹

Records which are expunged via the marijuana automatic and petition-based expungement processes can be accessed and disclosed for the same 25 specified purposes as sealed records.⁶² However, it is unclear whether a court order will also be required to access and disclose marijuana expunged records.⁶³

C. Procedural Differences

There are several procedural differences between the petition-based expungement, petition-based sealing, automatic sealing, and automatic marijuana expungement processes. These differences are discussed below.

PETITION-BASED EXPUNGEMENT AND PETITION-BASED SEALING

The current expungement process for non-convictions is only petition-based.⁶⁴ The process for petition-based marijuana expungement mirrors the current non-conviction expungement

process.⁶⁵ As noted in last year's Crime Commission report, the current expungement process for non-convictions is cumbersome, time consuming, and resource intensive for both the petitioner and the stakeholders.⁶⁶ In particular, the current expungement process requires:

- the petitioner to serve a copy of the petition for expungement on the attorney for the Commonwealth;⁶⁷
- the petitioner to be fingerprinted;⁶⁸
- a copy of the petitioner's criminal history record to be provided to the court by the CCRE based on the petitioner's fingerprints;⁶⁹ and,
- the clerk of court to manually provide a copy of the order of expungement to the VSP if the expungement is granted.⁷⁰

The petition-based sealing process will utilize new procedures, along with the new automated systems being put in place by the VSP and the courts, to allow:

- the petitioner to deliver or mail a copy of the petition to the attorney for the Commonwealth;⁷¹
- the petitioner's criminal history record to be provided to the court by law enforcement or the attorney for the Commonwealth using a name-based search so that fingerprinting is not required;⁷² and,
- the clerk of court and the VSP to electronically share notice of the sealing order so as to alleviate the manual labor required to make such notifications.⁷³

While the new petition-based sealing process is more convenient for both the petitioner and the stakeholders, there are matters that remain unresolved in all of the petition-based expungement and sealing statutes. For example, all of the statutes require the attorney for the Commonwealth to file a response to the petition within 21 days; however, none of the statutes provide a remedy if the attorney for the Commonwealth does not respond within that timeframe.⁷⁴ Furthermore, none of the petition-based sealing statutes contain a specific timeframe within which the court must act on a petition for expungement or sealing.⁷⁵ Finally, while non-convictions can be expunged under the current petition-based expungement process, Virginia law does not include any process that allows a person to *petition* for the sealing or marijuana expungement of a non-conviction.

AUTOMATIC SEALING AND AUTOMATIC MARIJUANA EXPUNGEMENT

Neither automatic sealing nor automatic marijuana expungement require the person who is eligible for the criminal record relief to take any proactive steps to have the offense sealed or

expunged.⁷⁶ If an offense is present within the CCRE and meets the criteria for automatic sealing or automatic marijuana expungement, that offense will be sealed or expunged via communications between the VSP, the courts, and other stakeholders.⁷⁷

It is important to note that the automatic sealing of convictions or deferred dismissals, or the automatic marijuana expungement of eligible offenses, will not occur if an otherwise eligible offense is not contained within the CCRE. For example, if a person was convicted of possession of marijuana and that conviction was transmitted to the CCRE, then that conviction will be expunged under the automatic marijuana expungement statute.⁷⁸ Conversely, if a person was convicted of possession of marijuana and that conviction was not transmitted to the CCRE, then that conviction will not be automatically expunged and the person will need to petition to seal that conviction.⁷⁹

D. Marijuana Offenses: Expungement vs. Sealing

The most critical matter to be resolved in regard to marijuana expungement is whether this process will function in practice as expungement or sealing. As previously noted, while the marijuana expungement statutes use the term “expungement,” the expunged marijuana records remain accessible for the same 25 specified purposes as sealed records.⁸⁰ This is contrary to the current expungement process and to how expunged criminal records have traditionally been handled, with access and dissemination only permitted via a court order.⁸¹ Furthermore, substantial resources would be required to expunge these marijuana offenses under the current expungement process.⁸²

E. Mistaken Identity or Unauthorized Use of Identifying Information

The new sealing statutes include a provision which allows for the automatic sealing of arrests or charges that came as a result of mistaken identity or unauthorized use of identifying information.⁸³ This sealing provision may cause confusion given that the current expungement statute contains a subsection that allows these cases to be expunged upon motion of the improperly arrested or charged person.⁸⁴ Thus, confusion may arise regarding which process to utilize, as well as how to access and disseminate records in these particular cases. As previously noted, a sealed criminal record remains accessible for 25 specified purposes, while an expunged record is available only via court order; therefore, a criminal record which has been both sealed and expunged may lead to conflicts regarding how that record can be accessed and disclosed.

F. Miscellaneous Matters

Staff identified the following additional matters in regard to these three forms of criminal record relief that may need to be resolved:

- the petition-based sealing statute provides that sealing petitions and pleadings are to be maintained under seal by the circuit court clerk unless otherwise ordered by the court, while the expungement and petition-based marijuana expungement statutes do not include such provisions;⁸⁵
- the petition-based marijuana expungement statute does not allow individuals to petition for the common charge of possession or distribution of controlled paraphernalia;⁸⁶ and,
- varying penalties exist across the criminal record relief statutes, such as a Class 2 misdemeanor for intentional unlawful dissemination of an electronic list of automatic marijuana expunged offenses,⁸⁷ a Class 1 misdemeanor for accessing or disclosing an expunged record,⁸⁸ a Class 1 misdemeanor for willfully accessing or disclosing a sealed record,⁸⁹ and a Class 6 felony for maliciously and intentionally accessing or disclosing a sealed record.⁹⁰

II. ACCESS TO THE CRIMINAL RECORD RELIEF PROCESSES

Staff also identified statutory differences in relation to a person's ability to access the various criminal record relief processes, specifically in regard to court-appointed counsel and court fees.

COURT-APPOINTED COUNSEL

The petition-based sealing statute allows the court to appoint counsel to indigent petitioners to assist them through the sealing process.⁹¹ Additionally, a "Sealing Fee Fund" was created to provide a means of paying court-appointed counsel to assist with the petitions for sealing.⁹² No similar provisions exist in either the expungement statute or the petition-based marijuana expungement statute to provide court-appointed counsel for indigent petitioners.⁹³

COURT FEES

The petition-based sealing statute specifically provides that indigent individuals do not have to pay any court fees or costs in order to file a sealing petition.⁹⁴ In contrast, indigent

individuals who petition for expungement or marijuana expungement must pay the court costs in order to file their petition, but they receive a refund if the expungement petition is granted.⁹⁵

III. POST-RELIEF PROTECTIONS

The newly enacted sealing legislation contains a variety of post-relief protections that are not included in the expungement or marijuana expungement statutes. These protections include:

- restricting the disclosure of sealed criminal records in applications for the sale or rental of housing and in any insurance application;⁹⁶
- providing that no person can be found guilty of perjury if they deny or fail to disclose a sealed conviction, with limited statutory exceptions;⁹⁷ and,
- granting immunity to court clerks from civil lawsuits arising out of the sealing of a court record, except where the court clerk acted with gross negligence or willful misconduct.⁹⁸

Additionally, the sealing legislation includes a provision which governs criminal records held by a “business screening service,” which is defined as “a person engaged in the business of collecting, assembling, evaluating, or disseminating Virginia criminal history records or traffic history records on individuals.”⁹⁹ This business screening service statute:

- requires any business screening service to delete criminal history records that it knows have been sealed;¹⁰⁰
- directs the business screening service to register with the VSP to electronically receive copies of sealing orders;¹⁰¹
- imposes civil liability on a business screening service upon a violation of the statute;¹⁰² and,
- allows the Virginia Attorney General to enforce the statute.¹⁰³

No similar provisions exist in the expungement or marijuana expungement statutes to govern these business screening services.¹⁰⁴

IV. CONTINUING RESOURCES

In addition to the framework, access, and protection issues noted above, the General Assembly will need to provide further resources for the implementation and continuation of the new sealing and marijuana expungement processes. The following entities may require additional resources:

- Virginia State Police (VSP): Funding was provided to the VSP during the 2021 Special Session I of the General Assembly for a one-time replacement of its information technology systems (~\$12.6 million)¹⁰⁵ and for four positions to assist with the new sealing processes (~\$438,000 annually).¹⁰⁶ As a result of this 2021 funding, VSP is in the process of acquiring a new information technology system.¹⁰⁷ VSP may still need additional funding to review out-of-state criminal history records.¹⁰⁸
- Office of the Executive Secretary of the Supreme Court of Virginia (OES): Partial funding was provided to the OES for the implementation of the new sealing processes (~\$1.5 million of the ~\$6 million requested).¹⁰⁹ OES is also in the process of building a “data vault” to store court records that have been sealed and hiring personnel to implement the new processes.¹¹⁰ OES will need additional funding for positions and programming.¹¹¹
- Circuit court clerks: Funding was not provided for clerks as additional time was needed to fully determine their funding and resource needs. At the November Crime Commission meeting, clerks indicated that they will need funding for additional staff.¹¹²
- Department of Motor Vehicles: Funding will be required when the legislation takes effect in July 2025 for additional staffing and new automated processes.

Legislative Mandate 2: Recommend a review process for proposed changes to the expungement or sealing of criminal records.

The sealing legislation directed the Crime Commission to provide a recommendation on how to create a review process for any proposed changes to the expungement or sealing of criminal records. Staff determined that any such review process would involve both policy and technical components. Policy decisions, such as determining which offenses should be eligible for expungement and sealing, will need to be made by legislators. Conversely, stakeholders may be better situated to review any technical changes to the expungement and sealing processes.

With these considerations in mind, staff initially examined the composition of various existing entities, such as the Virginia Department of Criminal Justice Services Board and its committees,¹¹³ the Joint Commission on Technology and Science,¹¹⁴ and the Virginia Code Commission,¹¹⁵ to determine whether any existing entities would be situated to consider future policy and technical changes to the expungement and sealing of criminal records. Staff then explored the option of creating a new entity, similar to the Joint Subcommittee to Study Barrier

Crimes and Criminal History Record Checks,¹¹⁶ which would be responsible for reviewing proposed changes to the expungement and sealing of criminal records.

Staff was unable to identify an existing entity that could sufficiently address both the policy and technical components of any proposed changes to the expungement or sealing processes. Furthermore, staff was concerned about the resources that would be required to create a new entity to solely address the narrow topics of expungement and sealing. Therefore, staff ultimately recommended that any legislation related to the expungement or sealing of criminal records be referred to the Crime Commission at least until the sealing legislation takes effect. Additional information on this staff recommendation is set forth in the “Crime Commission Legislation” section of this report.

Legislative Mandate 3: Determine methods to educate the public on the new sealing processes.

The sealing legislation directed the Crime Commission to consult with stakeholders to determine and recommend methods to educate the public on the new sealing processes and the effects of a sealing order. Staff examined public awareness campaigns generally and found that effective campaigns have well-defined goals and a clear message that reaches the target audience.¹¹⁷ Staff identified various public awareness campaigns that successfully implemented these strategies, such as anti-smoking,¹¹⁸ breast cancer awareness,¹¹⁹ and road safety campaigns.¹²⁰

Efforts are already underway by state and national community stakeholders to educate the public about existing conviction relief laws. In Virginia, the Legal Aid Justice Center has made information about the Commonwealth’s new criminal record sealing laws available on its website.¹²¹ Information about the recently enacted automatic conviction relief processes in Pennsylvania and Michigan is available online through the Community Legal Services of Philadelphia¹²² and Safe and Just Michigan¹²³ websites. The National Expungement Works coalition hosts events throughout the country to provide education about and assistance with conviction relief processes.¹²⁴

In addition to identifying current public awareness efforts by community stakeholders, staff also observed that most states with conviction relief processes include at least some information about the processes on publicly available government websites. This information is typically found on a state’s judicial website, the Attorney General’s website, or a law enforcement website, and usually includes links to forms, FAQs, and summaries of the legal

requirements and processes to qualify for and seek criminal conviction relief. For example, the Rhode Island Attorney General's website provides a link to an application where an individual can be pre-screened to determine if they are eligible for expungement before filing court paperwork.¹²⁵ Similarly, the New Jersey Courts' website allows a petitioner to apply online for free, and the expungement process can be completed in some cases without having to appear in court.¹²⁶

Based on a review of public awareness efforts by both community stakeholders and government entities, staff determined that effectively promoting public awareness of the new criminal record relief laws in Virginia will require collaboration between the community stakeholders and government agencies who are most likely to come into contact with individuals who will benefit from the new sealing law. Therefore, staff recommended that funding be provided for two new full-time employees at the Virginia Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel on the new expungement and sealing laws. Additional information on this staff recommendation is set forth in the "Crime Commission Legislation" section of this report.

Legislative Mandate 4: Study the permissible uses of expunged and sealed criminal records.

The sealing legislation directed the Crime Commission to study the permissible uses of expunged, sealed, and marijuana expunged criminal records. Staff found that access to and disclosure of expunged records is extremely limited and subject to judicial discretion. An expunged record can only be opened, reviewed, or disclosed after obtaining an order from the court that originally ordered the record to be expunged.¹²⁷ Alternatively, sealed and marijuana expunged criminal history record information may be accessed and disseminated for 25 specific reasons as set forth in the Virginia Code, including:

1. Making a determination as to whether a person is eligible to possess or purchase a firearm;
2. Providing a fingerprint comparison using fingerprints maintained in the Automated Fingerprint Information System (AFIS);
3. Research purposes for the Virginia Criminal Sentencing Commission;
4. Screening anyone seeking full-time or part-time employment with any law enforcement agency;

5. Screening by the State Health Commissioner of anyone seeking full-time or part-time employment with any emergency medical services agency;
6. Screening anyone seeking full-time or part-time employment with the Department of Forensic Science;
7. Screening by the chief law-enforcement officer of a locality of anyone seeking to volunteer with or become an employee of an emergency medical services agency;
8. Complying with the Federal Motor Carrier Safety Administration regulations;
9. Complying with any federal law requiring disclosure of a criminal record for employment;
10. Screening anyone seeking a position where access is granted to an area subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President;
11. Screening anyone seeking to engage in the collection of court costs, fines, or restitution;
12. Administering and using the DNA Analysis and Data Bank;
13. Publishing decisions of the Supreme Court, Court of Appeals, or any circuit court;
14. Screening anyone seeking full-time or part-time employment as a clerk, magistrate, or judge;
15. Complying with the Virginia Code or a local ordinance which requires an employer to conduct a criminal background check;
16. Complying with the rules and regulations in Virginia Code §§ 9.1-128 and 9.1-134;
17. Allowing any business screening service to comply with Virginia Code § 19.2-392.16;
18. Complying with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused;
19. Use in a criminal or civil proceeding as authorized by law;
20. Use in a protective order hearing as authorized by law;
21. Allowing the Department of Social Services or any local department of social services to comply with any statutory duties;
22. Use in a proceeding on the care and custody of a child as authorized by law;
23. Determining a person's eligibility to seal a criminal record under the petition process in Virginia Code § 19.2-392.12;
24. Determining a person's eligibility to be empaneled as a juror; and,

25. Use by the person arrested, charged, or convicted of the offense that was sealed or expunged.¹²⁸

Court records related to sealed criminal history record information can be accessed and disseminated for the same 25 reasons previously listed; however, a court order is required prior to accessing or disseminating this information.¹²⁹ Additionally, the newly enacted sealing legislation requires the Virginia Department of Criminal Justice Services to develop regulations governing the dissemination of sealed criminal history record information.¹³⁰

Virginia's approach to the permissible uses of sealed and marijuana expunged criminal history record information is consistent with the practices of other states across the country. Staff found that all states with criminal record relief laws maintain criminal records for at least some specified purposes. For example, 42 states allow access to sealed or expunged criminal records for criminal justice purposes, which can include impeachment or other evidentiary purposes, sentencing, penalty enhancements, law enforcement investigations, or use in future proceedings related to a petition to seal a criminal record.¹³¹ Additionally, 29 states allow certain employers to access sealed or expunged criminal records.¹³² Among the most common employer carve-outs are law enforcement agencies (20 states)¹³³ and professional licensing boards (19 states).¹³⁴

Similarly, Virginia's approach to expunging marijuana records is consistent with other states that have legalized possession of marijuana for both recreational and medical purposes (dual-legalization). Staff identified a total of 13 states that have (i) legalized possession of marijuana for recreational purposes, (ii) legalized possession of marijuana for medical purposes, and (iii) enacted specific criminal record relief statutes for certain marijuana convictions.¹³⁵ Of these 13 states, only California and Connecticut require the complete destruction of the records.¹³⁶ Illinois requires "obliteration" of the petitioner's name from the public record, but the circuit court file is impounded and not destroyed.¹³⁷ The 10 remaining dual-legalized states, including Virginia, allow for at least some level of access to the sealed or expunged marijuana record.¹³⁸

Legislative Mandate 5: Review plea agreements in relation to expunged and sealed criminal records.

The sealing legislation directed the Crime Commission to study plea agreements in relation to the expungement and sealing of criminal records. Staff found that Virginia's newly enacted sealing legislation does contain a provision which addresses plea agreements: misdemeanor non-convictions are to be automatically sealed unless the *nolle prosequi* or dismissal of the

offense was part of a plea agreement.¹³⁹ This provision is similar to statutes in at least five other states which explicitly bar the expungement or sealing of convictions or dispositions reached as a result of a plea agreement.¹⁴⁰ Staff also identified at least four states that statutorily bar waiving the right to expunge or seal a criminal record as part of a plea agreement.¹⁴¹

Staff also examined other provisions relating to plea agreements in the Virginia Code and found that Virginia has adopted varying approaches to plea agreements in criminal cases. For example, in the general deferred adjudication statute, the Commonwealth's Attorney and the defendant must agree that a charge dismissed under that statute will be eligible for expungement.¹⁴² Conversely, in juvenile serious offender cases, Virginia law allows the Department of Juvenile Justice to petition a court for a hearing for the early release of a juvenile and authorizes the court to grant such early release "notwithstanding the terms of any plea agreement."¹⁴³

Ultimately, staff determined that any changes to plea agreements in relation to expungement or sealing is a policy decision to be made by Crime Commission members and the General Assembly. As such, staff noted two competing policy matters for consideration. Allowing plea agreements that restrict a person's ability to expunge or seal a criminal charge or conviction may impact the overall effectiveness of any criminal conviction relief legislation, especially since the vast majority of cases in Virginia that end in a conviction are the result of a guilty plea.¹⁴⁴ However, enacting legislation that limits Commonwealth's Attorneys' plea bargaining abilities may inadvertently lead to adverse consequences for defendants. Certain plea agreements that are advantageous to defendants could be eliminated if statutory restrictions are imposed. For example, a Commonwealth's Attorney may offer to reduce a felony offense to a misdemeanor offense as part of a plea agreement, so long as the defendant agrees not to petition to have the misdemeanor conviction sealed.

Legislative Mandate 6: Determine the feasibility of destroying expunged or sealed criminal records.

The sealing legislation directed the Crime Commission to study the feasibility of destroying or purging expunged or sealed criminal records. Staff determined that while destroying these records is feasible, such destruction will be contrary to the intent of Virginia's newly enacted sealing and marijuana expungement legislation, will require substantial changes to the current expungement process, and will require significant resources. Additionally, staff noted that

such destruction would make Virginia an outlier amongst states that allow for criminal conviction relief, as nearly all of the states which provide for such relief retain expunged or sealed criminal records for at least some specified purposes.¹⁴⁵ Only Massachusetts appears to destroy expunged criminal records,¹⁴⁶ but no state destroys sealed criminal records.

Staff also found several impediments to the destruction of expunged or sealed criminal records. First, as previously noted, sealed and marijuana expunged records can be accessed and disseminated for 25 specific purposes.¹⁴⁷ Destroying such records would run counter to the legislative intent of maintaining these records for those 25 specific purposes.

Second, expunged records in Virginia are not initially destroyed, but rather physical and electronic access to such records is significantly restricted.¹⁴⁸ Furthermore, an order of expungement is voidable for up to three years after the entry of such order,¹⁴⁹ so the Library of Virginia record retention schedule requires these expunged records to be retained for at least three years prior to destruction.¹⁵⁰ Destroying expunged records prior to three years from the entry of an expungement order will require a substantive change to Virginia's expungement law.

Third, the newly enacted sealing legislation in Virginia was intentionally drafted in a manner to minimize the resources required to implement the sealing process, as well as to be less time and labor intensive than the traditional expungement process.¹⁵¹ The new sealing statutes require sealed records to be maintained, but sealed records are digitally flagged so that the VSP and the courts know whether the records can be accessed and disclosed.

Finally, many sealed court records can be destroyed after a period of time under current court record retention laws. For example, Virginia law allows district courts to destroy records relating to most misdemeanors, traffic infractions, expunged proceedings, and felonies that were not certified to the grand jury after 10 years.¹⁵² Similarly, circuit courts may destroy a variety of court records after 10 years.¹⁵³ It is important to note that while court records can be destroyed after these time periods, it does not necessarily mean that the court records will be destroyed. Additionally, these record retention and destruction laws apply to court records, but not to criminal history record information that is permanently maintained within the Virginia CCRE.

CRIME COMMISSION LEGISLATION

The Crime Commission met on November 15, 2021, and heard presentations from staff, the Virginia State Police (VSP),¹⁵⁴ the Office of the Executive Secretary of the Supreme Court of Virginia (OES),¹⁵⁵ and the Virginia Court Clerks' Association¹⁵⁶ on the expungement and sealing of criminal and court records.¹⁵⁷ Staff made the following three recommendations:

Recommendation 1: The Crime Commission should continue to examine the expungement and sealing of criminal and court records in order to reconcile conflicts between the three criminal record relief processes now in the Virginia Code.

As noted throughout this report, a variety of conflicts exist in relation to the three forms of criminal record relief (expungement, sealing, and marijuana expungement) currently contained within the Virginia Code. The Crime Commission has been studying expungement and sealing since 2020. Staff is familiar with the subject matter and the stakeholders involved in the processes. Furthermore, the sealing legislation requires VSP, OES, and certain circuit court clerks to report annually to the Crime Commission until the new automated sealing systems have been implemented.¹⁵⁸ Therefore, staff recommended that the Crime Commission continue to examine the expungement and sealing of criminal and court records. No motion was made on this recommendation.

Recommendation 2: Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).

Staff made this recommendation for the same reasons set forth in Recommendation 1 in order to ensure that the Virginia Code will not be in conflict when the new sealing and marijuana expungement processes take effect. Furthermore, staff determined that the Crime Commission is well positioned to address both the policy and technical components involved in the criminal record relief processes. Staff could work with stakeholders to address technical concerns with any such legislation, while also providing Crime Commission members with the information necessary to make any policy decisions related to such legislation. No motion was made on this recommendation.

Recommendation 3: Authorize funding for two new full-time positions at the Virginia Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel on the new expungement and sealing laws (total estimated annual cost: \$215,000).¹⁵⁹

Staff determined that effectively promoting public awareness of the new criminal record relief laws in Virginia will require collaboration between government agencies and community stakeholders who are most likely to come into contact with individuals who will benefit from these new laws. The Virginia Indigent Defense Commission (IDC) currently certifies and provides training to public defenders and court-appointed counsel for indigent criminal defendants, and therefore the IDC seemed to be an ideal location for such positions.¹⁶⁰

Another reason for this recommendation was because Crime Commission staff had made a similar recommendation in 2018 to create a Sex Trafficking Response Coordinator position at the Virginia Department of Criminal Justice Services.¹⁶¹ This coordinator position was ultimately codified into law and now serves as a resource for both government entities and community stakeholders.¹⁶² Staff has received positive feedback on the impact of this position and therefore determined that these two new positions at IDC may be equally as beneficial to the field.

The Crime Commission unanimously endorsed this recommendation. Both Senator John S. Edwards and Delegate Les R. Adams introduced budget amendments for these two positions at the Indigent Defense Commission at an annual total of \$214,980. This budget item was not included in the final budget adopted by the General Assembly and signed by the Governor.¹⁶³

Additionally, staff was directed to draft legislation to clarify that the offenses that are eligible for expungement under the new marijuana expungement statutes are to be expunged and not sealed. As previously noted, these marijuana expungement statutes appear in the expungement chapter of the Virginia Code; however, marijuana expungement functions in practice like sealing where the offenses are maintained and able to be accessed and disseminated for 25 specific purposes.¹⁶⁴ Crime Commission staff worked with the Division of Legislative Services and numerous stakeholders in order to draft legislation as directed by the Crime Commission. Ultimately, it was determined that marijuana offenses could not be expunged under the current expungement process for a variety of reasons, such as the resources required, a potential loss of highway safety funding, and the need for such convictions when conducting federal security clearance investigations. Therefore, legislation

was drafted to remove the marijuana expungement provisions from the expungement chapter of the Virginia Code and insert those provisions into the new sealing chapter.¹⁶⁵ That legislation was introduced as Senate Bill 742 (Sen. Surovell) during the 2022 Regular Session of the General Assembly.¹⁶⁶ The bill passed the Senate, but was left in the House Courts of Justice Committee.

SUMMARY AND CONCLUSION

With the enactment of the new sealing and marijuana expungement legislation, Virginia has significantly expanded the number of individuals who are eligible to obtain criminal record relief. While the new processes, along with the current expungement statute, may provide benefits to individuals who qualify for such relief,¹⁶⁷ these three criminal record relief processes are in conflict. Legislators may wish to consider reconciling these conflicts before the new processes take effect. The major issues to be reconciled include (i) establishing a consistent and streamlined framework for all three criminal record relief processes, (ii) ensuring that individuals are able to access the processes, and (iii) creating uniform post-relief protections. Furthermore, while the Virginia State Police and the Office of the Executive Secretary of the Supreme Court of Virginia have been provided with resources to begin implementation of the new sealing processes, additional funding will be needed in order for those entities and other stakeholders to successfully implement these new processes and to provide criminal record relief.

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Virginia Association of Commonwealth's Attorneys

Virginia Court Clerks' Association

Virginia Department of Corrections

Virginia Department of Motor Vehicles

Virginia Indigent Defense Commission

Virginia State Police

ENDNOTES

¹ 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542. These Acts stemmed from House Bill 2113 and Senate Bill 1339. House Bill 2113 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113>. Senate Bill 1339 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339>.

² 2021 Va. Acts, Sp. Sess. I, ch. 550 and 551. These Acts stemmed from House Bill 2312 and Senate Bill 1406. House Bill 2312 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2312>. Senate Bill 1406 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1406>.

³ Virginia State Crime Commission. (2021, November 15). *2022 Session legislative package*. Available at <http://vscs.virginia.gov/2021/Nov15/VSCC%202022%20Legislative%20Package.pdf>.

⁴ For the amendment to Item 51 #1s of the Senate budget, see <https://budget.lis.virginia.gov/amendment/2022/1/SB30/Introduced/MR/51/1s/>. For the amendment to Item 51 #1h of the House budget, see <https://budget.lis.virginia.gov/amendment/2022/1/HB30/Introduced/MR/51/1h/>.

⁵ Virginia State Crime Commission. (2021). *2020 annual report: Expungement and sealing of criminal records*. Available at

<http://vscs.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>.

⁶ VA. CODE ANN. §§ 19.2-392.1 to 19.2-392.4 (2021). A non-conviction may include such final dispositions as an acquittal, *nolle prosequi*, dismissal, or deferred dismissal. See also VA. CODE ANN. § 19.2-298.02(D) (2021). Under Virginia's general criminal deferred disposition statute, a charge which has been deferred and dismissed may be expunged if both the Commonwealth's Attorney and the defendant agree that the dismissed charge is eligible for expungement. This statute was enacted during the 2020 Special Session I of the Virginia General Assembly.

⁷ Virginia law does allow for criminal conviction relief if a person can prove that they are "actually innocent" of certain felony convictions. See VA. CODE ANN. §§ 19.2-327.2 et. seq. and 19.2-327.10 et. seq. (2020).

⁸ A deferred dismissal refers to a circumstance where a criminal charge is dismissed after the defendant completes certain terms or conditions ordered by the court.

⁹ 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542. These Acts stemmed from House Bill 2113 and Senate Bill 1339. House Bill 2113 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113>. Senate Bill 1339 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339>.

¹⁰ 2021 Va. Acts, Sp. Sess. I, ch. 550 and 551. These Acts stemmed from House Bill 2312 and Senate Bill 1406. House Bill 2312 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2312>. Senate Bill 1406 is available at: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1406>.

¹¹ In addition to Virginia, Alabama (ALA. CODE § 15-27-1 (2021)) and Arizona (ARIZ. REV. STAT. ANN. § 13-911 (2021)) also enacted new conviction relief laws within the last year. See also Virginia State Crime Commission. (2021). *2020 annual report: Expungement and sealing of criminal records*. Available at

<http://vscs.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>. Appendix B of the 2021 Crime Commission report includes information on the other 41 states that allow for the sealing of misdemeanor convictions.

¹² In addition to Virginia, Arizona (ARIZ. REV. STAT. ANN. § 13-911 (2021)) also enacted new conviction relief laws which include felony offenses within the last year. See also Virginia State Crime Commission. (2021). *2020 annual report: Expungement and sealing of criminal records*. Available at

<http://vscs.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>. Appendix C of the 2021 Crime Commission report includes information on the other 36 states that allow for the sealing of felony convictions.

¹³ See Appendix A for a list of 13 states that have enacted marijuana-specific expungement, recreational marijuana legalization, and medical marijuana legalization statutes.

¹⁴ See Appendix B for an overview of states with automatic criminal conviction relief laws.

¹⁵ 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542.

¹⁶ See Appendix C for a table summarizing various aspects of the expungement, sealing, and marijuana expungement processes in Virginia.

¹⁷ 6 VA. ADMIN. CODE § 20-120-20 (2021).

¹⁸ VA. CODE ANN. § 19.2-392.5(A) (2021) (Sealing is defined as "... (i) restricting dissemination of criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by a court order for one or more of the purposes set forth in § 19.2-392.13.").

¹⁹ See VA. CODE ANN. §§ 19.2-392.2:1 and 19.2-392.2 (2021).

²⁰ VA. CODE ANN. § 19.2-392.2(A) (2021).

²¹ *Eastlack v. Commonwealth*, 282 Va. 120 (Jun. 9, 2011).

²² *Commonwealth v. Dotson*, 276 Va. 278 (Jun. 6, 2008); *Commonwealth v. Jackson*, 255 Va. 552 (Apr. 17, 1998).

²³ *Daniel v. Commonwealth*, 268 Va. 523 (Nov. 5, 2004). *But see* VA. CODE ANN. § 19.2-298.02(D) (2021). Under Virginia's general criminal deferred disposition statute, a charge which has been deferred and dismissed may be expunged if both the Commonwealth's Attorney and the defendant agree that the dismissed charge is eligible for expungement. This statute was enacted during the 2020 Special Session I of the Virginia General Assembly.

²⁴ VA. CODE ANN. § 19.2-392.2 (2021).

²⁵ In considering an expungement petition, the Virginia Supreme Court has found that "[a] reasonable possibility of a hindrance to obtaining employment, an education, or credit can ... serve as a basis for a finding of manifest injustice." *A.R.A. v. Commonwealth*, 295 Va. 153, 161-62 (Mar. 1, 2018).

²⁶ VA. CODE ANN. § 19.2-392.2(F) (2021). Note that if the petitioner has no prior criminal record and the non-conviction to be expunged was a misdemeanor or civil offense, then the petitioner shall be entitled to expungement of such records, unless the Commonwealth can show good cause why such charge should not be expunged.

²⁷ VA. CODE ANN. § 19.2-392.6(B) (2021). Note that staff has identified a technical concern with the automatic sealing of convictions and deferred dismissals for violations of Virginia Code § 4.1-305 (underage possession of alcohol). All of these offenses have been deleted from the Virginia Central Criminal Records Exchange, and thus such offenses are not able to be automatically sealed under the current statutory process.

²⁸ VA. CODE ANN. § 19.2-392.6(A) (2021).

²⁹ VA. CODE ANN. § 19.2-392.6(C) (2021).

³⁰ VA. CODE ANN. § 19.2-392.6(D) (2021).

³¹ VA. CODE ANN. § 19.2-392.8(A) (2021).

³² VA. CODE ANN. § 19.2-392.8(B) (2021).

³³ VA. CODE ANN. § 19.2-392.9 (2021).

³⁴ VA. CODE ANN. § 19.2-392.17 (2021).

³⁵ VA. CODE ANN. § 19.2-392.8(A) (2021).

³⁶ VA. CODE ANN. § 19.2-392.8(A) (2021).

³⁷ VA. CODE ANN. § 19.2-392.8(B) (2021).

³⁸ VA. CODE ANN. § 19.2-392.8(B) (2021).

³⁹ *Id.* See also VA. CODE ANN. § 19.2-392.2 (2021).

⁴⁰ See VA. CODE ANN. § 19.2-392.11 (2021).

⁴¹ VA. CODE ANN. § 19.2-392.11(A) (2021).

⁴² VA. CODE ANN. § 19.2-392.11 (2021).

⁴³ VA. CODE ANN. § 19.2-392.9 (2021).

⁴⁴ VA. CODE ANN. § 19.2-392.17 (2021).

⁴⁵ VA. CODE ANN. § 19.2-392.12(A) (2021).

⁴⁶ *Id.* The offenses excluded from petition-based sealing include VA. CODE ANN. §§ 18.2-36.1 and 18.2-36.2 (involuntary manslaughter), VA. CODE ANN. §§ 18.2-51.4 and 18.2-51.5 (maiming of another as a result of DUI), VA. CODE ANN. § 18.2-57.2 (domestic assault and battery), and VA. CODE ANN. §§ 18.2-266 and 46.2-341.24 (DUI).

⁴⁷ *Id.*

⁴⁸ VA. CODE ANN. § 19.2-392.12(F)(1)(a) (2021).

⁴⁹ VA. CODE ANN. § 19.2-392.12(F)(1)(b) (2021).

⁵⁰ VA. CODE ANN. § 19.2-392.12(F)(2) (2021).

⁵¹ VA. CODE ANN. § 19.2-392.12(F)(3) (2021).

⁵² VA. CODE ANN. § 19.2-392.12(F)(4) (2021).

⁵³ VA. CODE ANN. § 19.2-392.2:1(A) (2021). *But see* 2021 Va. Acts, Sp. Sess. I, ch. 550 and 551. The legislation that legalized the possession of marijuana required that the provisions relating to the repeal of Va. Code § 18.2-248.1 (distribution of marijuana) be re-enacted during the 2022 Regular Session of the General Assembly. The provisions related to the repeal of Va. Code § 18.2-248.1 were not re-enacted and therefore offenses for misdemeanor distribution of marijuana will not be eligible for automatic expungement unless the General Assembly takes future action.

⁵⁴ VA. CODE ANN. § 19.2-392.2:1 (2021).

⁵⁵ VA. CODE ANN. § 19.2-392.2:2(A) (2021). *But see* 2021 Va. Acts, Sp. Sess. I, ch. 550 and 551. The legislation that legalized the possession of marijuana required that the provisions relating to the repeal of Va. Code § 18.2-248.1 (distribution of marijuana) be re-enacted during the 2022 Regular Session of the General Assembly. The provisions related to the repeal of Va. Code § 18.2-248.1 were not re-enacted and therefore offenses for felony distribution of marijuana will not be eligible for petition-based expungement unless the General Assembly takes future action.

⁵⁶ VA. CODE ANN. § 19.2-392.2:2 (2021). While there is no waiting period to petition for expungement of an eligible marijuana offense, this new Virginia Code section will not take effect until either July 1, 2025, or until the new

expungement and sealing processes are operational, whichever date is sooner. Therefore, a petitioner must wait until the new Code section takes effect before filing a petition.

⁵⁷ VA. CODE ANN. § 19.2-392.2 (2021).

⁵⁸ VA. CODE ANN. § 19.2-392.2:2(E) (2021).

⁵⁹ VA. CODE ANN. § 19.2-392.3 (2021).

⁶⁰ VA. CODE ANN. § 19.2-392.13(C) (2021).

⁶¹ VA. CODE ANN. § 19.2-392.13(D) (2021).

⁶² VA. CODE ANN. §§ 19.2-392.2:1(F) and 19.2-392.2:2(H) (2021).

⁶³ See VA. CODE ANN. § 19.2-392.3 (2021).

⁶⁴ VA. CODE ANN. § 19.2-392.2 (2021).

⁶⁵ VA. CODE ANN. § 19.2-392.2:2 (2021).

⁶⁶ Virginia State Crime Commission. (2021). *2020 annual report: Expungement and sealing of criminal records*. pp. 65-66. Available at

<http://vscc.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>.

⁶⁷ VA. CODE ANN. §§ 19.2-392.2(D) and 19.2-392.2:2(C) (2021).

⁶⁸ VA. CODE ANN. § 19.2-392.2(E) and 19.2-392.2:2(D) (2021).

⁶⁹ VA. CODE ANN. § 19.2-392.2(E) and 19.2-392.2:2(D) (2021).

⁷⁰ VA. CODE ANN. § 19.2-392.2(K) and 19.2-392.2:2(G) (2021).

⁷¹ VA. CODE ANN. § 19.2-392.12(D) (2021).

⁷² VA. CODE ANN. § 19.2-392.12(E) (2021).

⁷³ VA. CODE ANN. § 19.2-392.12(I) (2021).

⁷⁴ VA. CODE ANN. §§ 19.2-392.2(D), 19.2-392.2:2(C), and 19.2-392.12(D) (2021).

⁷⁵ See VA. CODE ANN. §§ 19.2-392.2, 19.2-392.2:2, and 19.2-392.12 (2021).

⁷⁶ VA. CODE ANN. §§ 19.2-392.2:1, 19.2-392.2-6, and 19.2-392.2-7 (2021).

⁷⁷ VA. CODE ANN. §§ 19.2-392.2:1, 19.2-392.2-6, and 19.2-392.2-7 (2021).

⁷⁸ VA. CODE ANN. § 19.2-392.2:1 (2021).

⁷⁹ VA. CODE ANN. §§ 19.2-392.2:1 and 19.2-392.2-12 (2021).

⁸⁰ VA. CODE ANN. §§ 19.2-392.2:1(F) and 19.2-392.2:2(H) (2021).

⁸¹ VA. CODE ANN. § 19.2-392.3 (2021).

⁸² For example, as of October 2021, the Central Criminal Records Exchange maintained by VSP contained approximately 314,262 arrest records for possession of marijuana and misdemeanor distribution of marijuana that will be eligible for automatic expungement. VSP estimates that one employee in their expungement section can process approximately 500 expungements per year. Therefore, VSP will need significant resources for personnel to expunge these offenses. Furthermore, the needs of other entities, such as the Offices of the Executive Secretary of the Supreme Court, circuit court clerks, and numerous other stakeholders, will need to be taken into account.

⁸³ VA. CODE ANN. § 19.2-392.9 (2021).

⁸⁴ VA. CODE ANN. § 19.2-392.2(H) (2021).

⁸⁵ VA. CODE ANN. § 19.2-392.12(M) (2021).

⁸⁶ See VA. CODE ANN. § 54.1-3466 (2021).

⁸⁷ VA. CODE ANN. § 19.2-392.2:1(H) (2021). See also VA. CODE ANN. §§ 9.1-136 and 18.2-11 (2021). A Class 2 misdemeanor is punishable by up to 6 months in jail and a \$1,000 fine.

⁸⁸ VA. CODE ANN. § 19.2-392.3(C) (2021). See also VA. CODE ANN. § 18.2-11 (2021). A Class 1 misdemeanor is punishable by up to 12 months in jail and a \$2,500 fine.

⁸⁹ VA. CODE ANN. § 19.2-392.14(C) (2021). See also VA. CODE ANN. § 18.2-11 (2021). A Class 1 misdemeanor is punishable by up to 12 months in jail and a \$2,500 fine.

⁹⁰ VA. CODE ANN. § 19.2-392.14(C) (2021). See also VA. CODE ANN. § 18.2-10 (2021). A Class 6 felony is punishable by a prison term of 1 to 5 years, or up to 12 months in jail, and up to a \$2,500 fine.

⁹¹ VA. CODE ANN. § 19.2-392.12(L) (2021).

⁹² VA. CODE ANN. § 17.1-205.1 (2021). Note that while this “Sealing Fee Fund” has been established, a funding source has not yet been established for the Fund.

⁹³ See VA. CODE ANN. §§ 19.2-392.2 and 19.2-392.2:2 (2021).

⁹⁴ VA. CODE ANN. § 19.2-392.12(B) (2021).

⁹⁵ VA. CODE ANN. §§ 19.2-392.2(L) and 19.2-392.2:2(J) (2021).

⁹⁶ VA. CODE ANN. §§ 19.2-392.15(D) and 19.2-392.15(F) (2021).

⁹⁷ VA. CODE ANN. § 19.2-392.5(D) (2021).

⁹⁸ VA. CODE ANN. § 19.2-392.5(C) (2021).

⁹⁹ VA. CODE ANN. § 19.2-392.16(A) (2021).

¹⁰⁰ VA. CODE ANN. § 19.2-392.16(B) (2021).

¹⁰¹ VA. CODE ANN. § 19.2-392.16(C) (2021).

¹⁰² VA. CODE ANN. § 19.2-392.16(G) (2021).

¹⁰³ VA. CODE ANN. § 19.2-392.16(H) (2021).

- ¹⁰⁴ *But see* VA. CODE ANN. § 9.1-135 (2021). This Code section provides civil remedies for the unlawful distribution of expunged records.
- ¹⁰⁵ 2021 Va. Acts, Sp. Sess. I, ch. 552, Item 425(Q). Retrieved from <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/425/>.
- ¹⁰⁶ 2021 Va. Acts, Sp. Sess. I, ch. 552, Item 425(R). Retrieved from <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/425/>.
- ¹⁰⁷ Virginia State Police. (2021, November 15). *Project CRIS: A presentation to the Virginia State Crime Commission*. Available at <http://vscc.virginia.gov/2021/Nov15/VSP%20Presentation%20-%20Project%20CRIS.pdf>.
- ¹⁰⁸ Virginia State Police. (2021, October). *Automated out-of-state record checks; Progress on development feasibility and cost*. Retrieved from <https://rga.lis.virginia.gov/Published/2021/RD502/PDF>.
- ¹⁰⁹ 2021 Va. Acts, Sp. Sess. I, ch. 552, Item 39(Q). Retrieved from <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/39/>.
- ¹¹⁰ Office of the Executive Secretary of the Supreme Court of Virginia. (2021, October 29). *Letter to the Virginia State Crime Commission*. Available at <https://rga.lis.virginia.gov/Published/2021/RD585/PDF>.
- ¹¹¹ *Id.*
- ¹¹² Virginia Court Clerks' Association. (2021, November 15). *Memorandum to the Virginia State Crime Commission*. Available at <http://vscc.virginia.gov/2021/Nov15/VCCA%20Memorandum.pdf>.
- ¹¹³ See Virginia Department of Criminal Justice Services. *Boards & committees*. Retrieved from <https://www.dcjs.virginia.gov/about-dcjs/boards-committees>.
- ¹¹⁴ See Joint Commission on Technology and Science. Retrieved from <https://studies.virginiageneralassembly.gov/studies/179>.
- ¹¹⁵ See Virginia Code Commission. Retrieved from <http://codecommission.dls.virginia.gov/>.
- ¹¹⁶ See Joint Subcommittee to Study Barrier Crimes and Criminal History Records Checks. Retrieved from <https://studies.virginiageneralassembly.gov/studies/546>.
- ¹¹⁷ Christiano, A., & Neimand, A. (2017). Stop raising awareness already. *Stanford Social Innovation Review*, 15(2), 34-41, at p. 39 (To create a successful public awareness campaign, you must “target your audience as narrowly as possible; create compelling messages with clear calls to action; develop a theory of change; and use the right messenger.” Retrieved from https://ssir.org/articles/entry/stop_raising_awareness_already; Wakefield, M., Laken, B., & Hornik, R.C. (2010). Use of mass media campaigns to change health behavior. *The Lancet*, 376(1), 1261-1271, at p. 1262 (In discussing the success of anti-smoking campaigns, the authors found that “[c]omprehensive reviews of controlled field experiments and population studies show that mass media campaigns were associated with a decline in young people starting smoking and with an increase in the number of adults stopping. Smoking prevention in young people seems to have been more likely when mass media efforts were combined with programmes in schools, the community, or both. Many population studies have documented reductions in adult smoking prevalence when mass media campaigns have been combined with other tobacco control strategies, such as increases in tobacco taxation or smoke-free policies.”).
- ¹¹⁸ Wakefield, *supra* note 117, at p. 1262.
- ¹¹⁹ Jacobsen, G.D., & Jacobsen, K.H. (2011). Health awareness campaigns and diagnosis rates: Evidence from National Breast Cancer Awareness Month. *Journal of Health Economics*, 30(1), 55-61, at p. 56 (“[O]ur findings suggest that the breast cancer awareness movement has been successful in promoting earlier detection of disease. The success is likely due both to an increase in immediate diagnoses in response to specific events (as tested for in this paper) during the early years of the campaign and to cumulative increases in public awareness that led to year-round behavioral changes in more recent years.”).
- ¹²⁰ Wakefield, *supra* note 117, at p. 1267 (“Road safety mass media campaigns have promoted reductions in the frequency of road accidents and deaths through increases in uses of seat belts, booster seats for children, and helmets for bicyclists, skateboarders, and motorcyclists, and reductions in speeding, driver fatigue, and drink driving. The average associated decline in vehicle crashes has been estimated to be at least 7%, and of alcohol-impaired driving to be 13%. Results of designated driver programmes have been less conclusive. The most notable road safety campaigns have promoted seat belt use. The Click It or Ticket programme in North Carolina, USA, was associated with an increase in seat belt use from 63% to 80% and lowered rates of highway deaths, and became a model for other state and national programmes. A version in Washington state, USA, reported gains from 83% up to 95% of seat belt use. Law enforcement and repeated cycles of short-term mass media exposure seem, therefore, to have been important components of road safety campaign effectiveness.”).
- ¹²¹ Legal Aid Justice Center. *Virginia’s 2021 record-sealing law*. Retrieved May 11, 2022, from <https://www.justice4all.org/new-record-sealing-law-information/>.
- ¹²² Community Legal Services of Philadelphia. Retrieved May 11, 2022, from <https://mycleanslatepa.com/>.
- ¹²³ Safe & Just Michigan. Retrieved May 11, 2022, from <https://www.safeandjustmi.org/>.
- ¹²⁴ National Expungement Works. Retrieved May 11, 2022 from <https://newxnow.org/>.
- ¹²⁵ Attorney General State of Rhode Island. *Expungement online application*. Retrieved May 11, 2022, from https://docs.google.com/forms/d/e/1FAIpQLSfl-ySNQNHbTTZafe7z2qEbPABU9snzwepc_acGYlwEjUNrOw/viewform.

¹²⁶ New Jersey Courts. *Expunging your court record*. Retrieved May 11, 2022, from <https://www.njcourts.gov/selfhelp/expungement.html>.

¹²⁷ VA. CODE ANN. § 19.2-392.3 (2021). Note that an *ex parte* order may be obtained under subsection B when the expunged record is needed by law enforcement either for conducting a background check on a potential law enforcement employee, or for a pending investigation where the investigation will be jeopardized, or life or property will be endangered, without immediate access to the expunged record.

¹²⁸ VA. CODE ANN. §§ 19.2-392.2:1(F), 19.2-392.2:2(H), and 19.2-392.13(C) (2021).

¹²⁹ VA. CODE ANN. § 19.2-392.13(D) (2021).

¹³⁰ 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542.

¹³¹ Alabama (ALA. CODE §§ 15-27-7 and 15-27-10 (2021)), Arizona (ARIZ. REV. STAT. ANN. § 13-911 (2021)), Arkansas (ARK. CODE ANN. § 16-90-1417 (2019)), California (CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.425, and 1210.1 (2021)), Colorado (COLO. REV. STAT. § 24-72-703 (2021)), Connecticut (CONN. GEN. STAT. §§ 54-142a and 54-142c (2021)), Delaware (DEL. CODE ANN. tit. 11, § 4376 (2019)), Georgia (GA. CODE ANN. § 35-3-37 (2021)), Illinois (20 ILL. COMP. STAT. 2630/5.2, 2630/12, and 2630/13 (2021)), Indiana (IND. CODE § 35-38-9-6 (2022)), Iowa (IOWA CODE § 901C.3 (2019)), Kansas (KAN. STAT. ANN. § 21-6614 (2021)), Louisiana (LA. CODE CRIM. PROC. ANN. art. 973 (2018)), Maryland (MD. CODE ANN., CRIM. PROC. § 10-108 (2001)), Massachusetts (MASS. GEN. LAWS ch. 276, §§ 100A, 100C, and 100D (2018)), Michigan (MICH. COMP. LAWS §§ 780.622 and 780.623 (2021)), Minnesota (MINN. STAT. § 609A.03 (2021)), Mississippi (MISS. CODE ANN. § 99-19-71 (2019)), Missouri (MO. REV. STAT. §§ 610.120 and 610.140 (2021)), Montana (MONT. CODE ANN. § 46-18-1103 (2019)), Nevada (NEV. REV. STAT. § 179.295 (2019)), New Hampshire (N.H. REV. STAT. ANN. § 651:5 (2020)), New Jersey (N.J. STAT. ANN. §§ 2C:52-19 and 2C:52-22 (1979)), New York (N.Y. CRIM. PROC. LAW § 160.59 (2017)), North Carolina (N.C. GEN. STAT. § 15A-145.5 (2021)), North Dakota (N.D. CENT. CODE § 12-60.1-01 (2021)), Ohio (OHIO REV. CODE ANN. § 2953.32 (2021)), Oklahoma (OKLA. STAT. tit. 22, §§ 18 and 19 (2019)), Oregon (OR. REV. STAT. § 137.225 (2021)), Pennsylvania (18 PA. CONS. STAT. § 9121 (2018)), Rhode Island (R.I. GEN. LAWS § 12-1.3-4 (1993)), South Carolina (S.C. CODE ANN. § 22-5-910 (2018)), South Dakota (S.D. CODIFIED LAWS § 23A-3-34 (2021)), Tennessee (TENN. CODE ANN. § 40-32-101 (2021)), Texas (TEX. CODE CRIM. PROC. art. 55.03 (2005); TEX. GOV'T CODE ANN. §§ 411.076, 411.0765, and 411.0775 (2019)), Utah (UTAH CODE ANN. § 77-40-109 (2019)), Vermont (VT. STAT. ANN. tit. 13, § 7607 (2019)), Virginia (VA. CODE ANN. §§ 19.2-392.2:1, -392.2:2, -392.3, and -392.13 (2021)), Washington (WASH. REV. CODE §§ 9.94A.640 and 9.96.060 (2021)), West Virginia (W. VA. CODE § 61-11-26 (2020)), Wisconsin (WIS. STAT. § 973.015 (2016) and *State v. Leitner*, 646 N.W.2d 341, 352 (Wis. 2002)), and Wyoming (WYO. STAT. ANN. § 7-13-1401 (2019)).

¹³² Alabama (ALA. CODE § 15-27-6 (2014)), Arizona (ARIZ. REV. STAT. ANN. § 13-911 (2021)), Arkansas (ARK. CODE ANN. § 16-90-1417 (2019)), California (CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.425, and 1210.1 (2021)), Colorado (COLO. REV. STAT. § 24-72-703 (2021)), Delaware (DEL. CODE ANN. tit. 11, § 4376 (2019)), Georgia (GA. CODE ANN. § 35-3-37 (2021)), Illinois (20 ILL. COMP. STAT. 2630/12 (2018)), Indiana (IND. CODE § 35-38-9-6 (2022)), Kansas (KAN. STAT. ANN. § 21-6614 (2021)), Louisiana (LA. CODE CRIM. PROC. ANN. art. 973 (2018)), Michigan (MICH. COMP. LAWS § 780.623 (2021)), Minnesota (MINN. STAT. § 609A.03 (2021)), Mississippi (MISS. CODE ANN. § 99-19-71 (2019)), Missouri (MO. REV. STAT. §§ 610.120 and 610.140 (2021)), Nevada (NEV. REV. STAT. § 179.301 (2017)), New Hampshire (N.H. REV. STAT. ANN. § 651:5 (2020)), New Jersey (N.J. STAT. ANN. § 2C:52-2 (2019)), New Mexico (N.M. STAT. ANN. § 29-3A-7 (2019)), New York (N.Y. CRIM. PROC. LAW § 160.59 (2017)), North Carolina (N.C. GEN. STAT. § 15A-153 (2021)), North Dakota (N.D. CENT. CODE § 12-60.1-04 (2021)), Ohio (OHIO REV. CODE ANN. § 2953.32 (2021)), Pennsylvania (18 PA. CONS. STAT. § 9121 (2018)), Rhode Island (R.I. GEN. LAWS § 12-1.3-4 (1993)), Texas (TEX. GOV'T CODE ANN. §§ 411.076 and 411.0765 (2019)), Utah (UTAH CODE ANN. § 77-40-109 (2019)), Virginia (VA. CODE ANN. §§ 19.2-392.2:1(F), 19.2-392.2:2(H), and 19.2-392.13(C)), and West Virginia (W. VA. CODE § 61-11-26 (2020)).

¹³³ Alabama (ALA. CODE § 15-27-6 (2014)), Arizona (ARIZ. REV. STAT. ANN. § 13-911 (2021)), Arkansas (ARK. CODE ANN. § 16-90-1417 (2019)), California (CAL. PENAL CODE §§ 1203.425 and 1210.1 (2021)), Delaware (DEL. CODE ANN. tit. 11, § 4376 (2019)), Georgia (GA. CODE ANN. § 35-3-37 (2021)), Illinois (20 ILL. COMP. STAT. 2630/12 (2018)), Kansas (KAN. STAT. ANN. § 21-6614 (2021)), Michigan (MICH. COMP. LAWS § 780.623 (2021)), Minnesota (MINN. STAT. § 609A.03 (2021)), Missouri (MO. REV. STAT. §§ 610.120 and 610.140 (2021)), New Hampshire (N.H. REV. STAT. ANN. § 651:5 (2020)), New York (N.Y. CRIM. PROC. LAW § 160.59 (2017)), North Carolina (N.C. GEN. STAT. § 15A-153 (2021)), Ohio (OHIO REV. CODE ANN. § 2953.32 (2021)), Rhode Island (R.I. GEN. LAWS § 12-1.3-4 (1993)), Texas (TEX. GOV'T CODE ANN. §§ 411.076 and 411.0765 (2019)), Utah (UTAH CODE ANN. § 77-40-109 (2019)), Virginia (VA. CODE ANN. §§ 19.2-392.2:1(F), 19.2-392.2:2(H), and 19.2-392.13(C)), and West Virginia (W. VA. CODE § 61-11-26 (2020)).

¹³⁴ Alabama (ALA. CODE § 15-27-6 (2014)), Arkansas (ARK. CODE ANN. § 16-90-1417 (2019)), California (CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.425, and 1210.1 (2021)), Colorado (COLO. REV. STAT. § 24-72-703 (2021)), Indiana (IND. CODE § 35-38-9-6 (2022)), Kansas (KAN. STAT. ANN. § 21-6614 (2021)), Louisiana (LA. CODE CRIM. PROC. ANN. art. 973 (2018)), Michigan (MICH. COMP. LAWS § 780.623 (2021)), Minnesota (MINN. STAT. § 609A.03 (2021)), Missouri (MO. REV. STAT. §§ 610.120 and 610.140 (2021)), Nevada (NEV. REV. STAT. § 179.301 (2017)), New Jersey (N.J. STAT. ANN. § 2C:52-2 (2019)), New Mexico (N.M. STAT. ANN. § 29-3A-7 (2019)), North Dakota (N.D. CENT. CODE § 12-60.1-04 (2021)), Ohio (OHIO REV. CODE ANN. § 2953.32 (2021)),

Pennsylvania (18 PA. CONS. STAT. § 9121 (2018)), Rhode Island (R.I. GEN. LAWS § 12-1.3-4 (1993)), Texas (TEX. GOV'T CODE ANN. §§ 411.076 and 411.0765 (2019)), Utah (UTAH CODE ANN. § 77-40-109 (2019)), and West Virginia (W. VA. CODE § 61-11-26 (2020)).

¹³⁵ See Appendix A for a list of 13 states that have enacted marijuana-specific expungement, recreational marijuana legalization, and medical marijuana legalization statutes.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ VA. CODE ANN. § 19.2-392.8(A)(2) (2021).

¹⁴⁰ *Id.*

¹⁴¹ See Appendix D for tables describing state laws on plea agreements in relation to expunged or sealed records.

¹⁴² VA. CODE ANN. § 19.2-298.02(D) (2021). In a criminal case, a deferred disposition is when, with the agreement of the Commonwealth's Attorney and the defense, a court can delay reaching a verdict and continue the case until the defendant has met agreed upon or court-imposed terms and conditions. If the defendant satisfies the terms and conditions and commits no other criminal offenses, the court may dismiss the charge.

¹⁴³ VA. CODE ANN. §§ 16.1-285.1(F) and 16.1-285.2(D) and (E) (2021). A juvenile serious offender is a juvenile "who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more...." VA. CODE ANN. § 16.1-285.1 (2021).

¹⁴⁴ Virginia Criminal Sentencing Commission. (2021). *2021 annual report*, at p. 25. ("During the last fiscal year, 91% of Guideline cases were sentenced following guilty pleas...."). Retrieved from <http://www.vcsc.virginia.gov/2021AnnualReport.pdf>

¹⁴⁵ See *supra* notes 131 to 134.

¹⁴⁶ See MASS. GEN. LAWS ch. 276, § 100E (2018) ("Expunge", "expunged", or "expungement", the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased."); see also Mass.gov (2021), *Expunge your criminal record*, ("Having a criminal record expunged means that the record will be permanently destroyed so that it's no longer accessible by the court or any other state, municipal, or county agencies. *It's not the same as having a record sealed.*"). Retrieved from <https://www.mass.gov/expunge-your-criminal-record>

¹⁴⁷ VA. CODE ANN. §§ 19.2-392.2:1(F), 19.2-392.2:2(H), and 19.2-392.13(C) (2021).

¹⁴⁸ VA. CODE ANN. § 19.2-392.2(K) (2021); 6VAC20-120-80 (2021).

¹⁴⁹ VA. CODE ANN. § 19.2-392.2(M) (2021).

¹⁵⁰ Library of Virginia. (2011, November 21). *Records retention and disposition schedule. General schedule No. 12. Circuit court records*. Retrieved from https://www.lva.virginia.gov/agencies/records/sched_local/GS-12.pdf.

¹⁵¹ Virginia State Crime Commission (2021). *2020 annual report: Expungement and sealing of criminal records*. pp. 65-66. Available at <http://vscc.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>.

¹⁵² VA. CODE ANN. §§ 16.1-69.55(A)(1) and 16.1-69.55(A)(2) (2021).

¹⁵³ VA. CODE ANN. § 17.1-213 (2021).

¹⁵⁴ Virginia State Crime Commission. (2021, November 15). *Project CRIS*. Available at <http://vscc.virginia.gov/2021/Nov15/VSP%20Presentation%20-%20Project%20CRIS.pdf>.

¹⁵⁵ Virginia State Crime Commission. (2021, November 15). *Office of the Executive Secretary Report*. Available at <https://rga.lis.virginia.gov/Published/2021/RD585/PDF>.

¹⁵⁶ Virginia State Crime Commission. (2021, November 15). *Circuit Court Clerks' Association memorandum*. Available at <http://vscc.virginia.gov/2021/Nov15/VCCA%20Memorandum.pdf>.

¹⁵⁷ Virginia State Crime Commission. (2021, November 15). *Expungement and sealing of criminal and court records*. Staff presentation. Available at <http://vscc.virginia.gov/2021/Nov15/VSCC%202021%20Expungement%20and%20Sealing%20Presentation.pdf>.

¹⁵⁸ 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542.

¹⁵⁹ Virginia State Crime Commission. (2021, November 15). *2022 Session legislative package*. Available at <http://vscc.virginia.gov/2021/Nov15/VSCC%202022%20Legislative%20Package.pdf>.

¹⁶⁰ See Virginia Indigent Defense Commission. Retrieved from <http://www.vadefenders.org/>.

¹⁶¹ Virginia State Crime Commission. (2019). *2018 annual report: Sex trafficking in Virginia*. p. 89. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Sex%20Trafficking%20in%20Virginia.pdf>.

¹⁶² VA. CODE ANN. § 9.1-116.5 (2021).

¹⁶³ For the amendment to Item 51 #1s of the Senate budget, see

<https://budget.lis.virginia.gov/amendment/2022/1/SB30/Introduced/MR/51/1s/>. For the amendment to Item 51 #1h of the House budget, see <https://budget.lis.virginia.gov/amendment/2022/1/HB30/Introduced/MR/51/1h/>.

¹⁶⁴ VA. CODE ANN. §§ 19.2-392.2:1 and 19.2-392.2:2 (2021).

¹⁶⁵ VA. CODE ANN. § 19.2-392.5 *et. seq.* (2021).

¹⁶⁶ Senate Bill 742 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=sb742>.

¹⁶⁷ Prescott, J.J., & Starr, S.B. (2020). Expungement of criminal convictions: An empirical study. *Harvard Law Review*, 133(8), 2460- 2555, at p. 2533-2534 ("Our analysis demonstrates that expungement is associated with large improvements in the employment rate and wages on average — and, in particular, a reversal of the pre-expungement downward trend that we observe for recipients as a group."); Selbin, J., McCrary, J., & Epstein, J. (2018). Unmarked? Criminal record clearing and employment outcomes. *Journal of Criminal Law and Criminology*, 108(1), 1-72, at p. 46 ("...we found that: (1) the record clearing intervention appears to boost both average employment rates and real earnings, though the durability of these increases is not yet known; and (2) participants sought the record clearing remedy after a period of suppressed earnings, in spite of relatively active and stable employment rates.").

APPENDIX A: States That Have Enacted Marijuana-Specific Expungement, Recreational Marijuana Legalization, and Medical Marijuana Legalization Statutes

State	Marijuana-Specific Expungement Statute	Recreational Marijuana Legalization Statute	Medical Marijuana Legalization Statute
Arizona	ARIZ. REV. STAT. ANN. § 36-2862 (2020)	ARIZ. REV. STAT. ANN. § 36-2852 (2020)	ARIZ. REV. STAT. ANN. §§ 36-2801 – 36-2822 (2022)
California	CAL. HEALTH & SAFETY CODE § 11361.8 (2022)	CAL. HEALTH & SAFETY CODE § 11362.1 (2017)	CAL. HEALTH & SAFETY CODE § 11362.5 (1996)
Colorado	COLO. REV. STAT. § 24-72-706 (2022)	COLO. CONST. art. XVIII, § 16	COLO. CONST. art. XVIII, § 14
Connecticut	CONN. GEN. STAT. § 54-142d (2022)	CONN. GEN. STAT. §§ 21a-420 – 21a-422s (2022)	CONN. GEN. STAT. §§ 21a-408 – 21a-410 (2022)
Illinois	20 ILL. COMP. STAT. 2630/5.2 (2021)	410 ILL. COMP. STAT. 705/1-1 – 705/999-99 (2022)	410 ILL. COMP. STAT. 130/1 – 130/999 (2022)
Michigan	MICH. COMP. LAWS § 780.621E (2021)	MICH. COMP. LAWS §§ 333.27951-333.27967 (2022)	MICH. COMP. LAWS §§ 333.26421-333.26430 (2022)
Montana	MONT. CODE ANN. § 16-12-113 (2022)	MONT. CODE ANN. § 16-12-106 (2021)	MONT. CODE ANN. §§ 16-12-501 – 16-12-533 (2021)
New Jersey	N.J. STAT. ANN. § 2C:52-6.1 (2022)	N.J. CONST. art. IV § VII	N.J. STAT. ANN. §§ 24:6I-1 – 24:6I-56 (2022)
New Mexico	N.M. STAT. ANN. § 29-3A-8 (2021)	N.M. STAT. ANN. 26-2C-25 (2022)	N.M. STAT. ANN. § 26-2B-1 – 26-2B-10 (2022)
New York	N.Y. CRIM. PROC. LAW § 160.50 (2021)	N.Y. CAN. LAW §§ 61 – 89 (2022)	N.Y. CAN. LAW §§ 30 – 45 (2022)
Oregon	OR. REV. STAT. § 137.226 (2017)	OR. REV. STAT. §§ 475C.001 – 475C.529 (2022)	OR. REV. STAT. §§ 475C.770 – 475C.919 (2022)
Virginia	VA. CODE ANN. §§ 19.2-392.2:1 and 19.2-392.2:2 (2021)	VA. CODE ANN. § 4.1-1100 (2021)	VA. CODE ANN. § 18.2-251.1 (1979)
Washington	WASH. REV. CODE § 9.96.060 (2022)	WASH. REV. CODE § 69.50.4013 (2022)	WASH. REV. CODE §§ 69.51A.005 – 69.51A.900 (2022)

Appendix by Crime Commission staff based on legal analysis.

APPENDIX B: States With Automatic Criminal Conviction Relief Laws (Updated June 2022)

CALIFORNIA	
Code Section:	CAL. PENAL CODE § 1203.425 (2022)
Enacted:	October 8, 2019; amended August 6, 2020
Implementation Date:	July 1, 2022
Overview	<p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Non-convictions after varying timeframes, which are based on whether criminal proceedings were initiated; • Misdemeanors and infractions after 1 year from conviction if not sentenced to probation; • Any offense if a person is sentenced only to probation and the person completes that sentence without a revocation of probation. <p>A person will not qualify for automatic sealing if they are a registered sex offender, on active probation, serving a sentence for another offense, or have pending criminal charges.</p> <p>California's clean slate process will only apply to offenses which occurred on or after January 1, 2021 (not retroactive).</p>

CONNECTICUT	
Code Section:	CONN. GEN. STAT. § 54-142a (2022)
Enacted:	June 10, 2021
Implementation Date:	January 1, 2023
Overview	<p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Non-convictions after varying timeframes, which are based on the type of non-conviction outcome; • Any classified or unclassified misdemeanors after seven years from the date on which the court entered the convicted person's most recent judgment of conviction; • Any class D or E felony or an unclassified felony offense carrying a term of imprisonment of not more than five years after ten years from the date on which the court entered the convicted person's most recent judgment of conviction. <p>Family violence offenses, nonviolent sexual offenses, and sexually violent offenses are not eligible for automatic sealing.</p> <p>Connecticut's clean slate process will only apply to offenses which occurred on or after January 1, 2000 (partially retroactive).</p>

DELAWARE	
Code Sections:	DEL. CODE ANN. tit. 11, §§ 4372, 4373, and 4373A (2022)
Enacted:	November 8, 2021
Implementation Date:	August 1, 2024
Overview	<p>Creates an automatic expungement process for:</p> <ul style="list-style-type: none"> • Non-convictions; • Misdemeanor convictions (with specified exceptions) after 5 years from the date of conviction; • Felony drug possession after 5 years from the date of conviction; • Certain felony convictions after 10 years from the date of conviction or the date of release from incarceration, which is later. <p>No records can be automatically expunged while a person has pending criminal charges.</p> <p>The granting of an expungement for a felony conviction will bar the expungement of any subsequent felony convictions. Additionally, a person will not be eligible for expungement if the person has been granted an expungement for a prior conviction in the past 10 years.</p>

MICHIGAN	
Code Section:	MICH. COMP. LAWS § 780.621g (2021)
Enacted:	October 13, 2020
Implementation Date:	April 11, 2023
Overview	<p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Non-convictions, subject to certain conditions; • Certain misdemeanor convictions 7 years from the imposition of the sentence; • Certain felony convictions after 10 years from the imposition of the sentence or the completion of any term of imprisonment. <p>Felonies and certain misdemeanors cannot be automatically sealed if a person has charges pending or has been convicted of another offense.</p> <p>No more than two felony and four misdemeanor convictions in total can be automatically sealed, excluding low-level misdemeanors.</p>

NEW JERSEY	
Code Section:	N.J. STAT. ANN. § 2C:52-5.4
Enacted:	December 18, 2019
Implementation Date:	Unknown
Overview	Enacted legislation in 2019 to implement an automated sealing system. A task force has been created to examine technological, fiscal, and practical issues and challenges of such a system. There is currently no projected date for implementation.

PENNSYLVANIA	
Code Sections:	18 PA. CONS. STAT. §§ 9122.2 and 9122.3 (2020)
Enacted:	June 28, 2018
Implementation Date:	June 28, 2019
Overview	<p>Pennsylvania is the only state that has actually implemented an automatic conviction relief system.</p> <p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Non-convictions; • Certain misdemeanor convictions after 10 years if there are no subsequent misdemeanor or felony convictions and all court-ordered restitution has been paid. <p>Certain prior convictions will disqualify a person from automatic sealing, such as a felony, four misdemeanors, indecent exposure, and various other offenses.</p>

SOUTH DAKOTA	
Code Section:	S.D. CODIFIED LAWS § 23A-3-34 (2021)
Enacted:	March 10, 2016; amended March 25, 2021
Implementation Date:	Unknown
Overview	<p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Any charge or conviction resulting from a case where a petty offense, municipal ordinance violation, or a Class 2 misdemeanor was the highest charged offense after five years. <p>A person will qualify for automatic sealing only if all court-ordered conditions on the case have been satisfied and they have not been convicted of any further offenses within those five years.</p>

UTAH	
Code Sections:	UTAH CODE ANN. §§ 77-40-102, 77-40-114, 77-40-115, and 77-40-116 (2022)
Enacted:	March 28, 2019
Implementation Date:	Unknown
Overview	<p>Utah's automated sealing system is in the developmental phase and it is uncertain when it will be completely implemented.</p> <p>Creates an automatic sealing process for:</p> <ul style="list-style-type: none"> • Non-convictions (not guilty, <i>nolle prosequi</i>, or dismissed); • Specified traffic offenses; • Dismissals without prejudice after 180 days; • Certain misdemeanor convictions after 5 to 7 years. <p>A person will not qualify for automatic sealing if they have unpaid fines, fees, or restitution, pending criminal charges, or certain prior convictions on their criminal record.</p>

VIRGINIA	
Code Sections:	VA. CODE ANN. §§ 19.2-392.2:1 and 19.2-392.6 – 19.2-392.11 (2021)
Enacted:	April 7, 2021
Implementation Date:	July 1, 2025 (or sooner if automated systems implement earlier)
Overview	<p>Virginia has enacted two automatic criminal record relief processes. The first is an automatic expungement process for all arrests, criminal charges, convictions, or civil offenses (both convictions and non-convictions) for possession of marijuana. All eligible offenses in the Virginia CCRE will be automatically expunged when the law takes effect.</p> <p>The second is an automatic sealing process for:</p> <ul style="list-style-type: none"> • Specified criminal convictions and deferred and dismissed dispositions after 7 years; • Non-convictions (acquittal, <i>nolle prosequi</i>, or otherwise dismissed) both going forward in time and retroactively; • Traffic offenses after 11 years; and, • Mistaken identity and unauthorized use of identifying information cases. <p>A person will not qualify for automatic sealing of a conviction or deferred and dismissed disposition if:</p> <ul style="list-style-type: none"> • they are convicted of an offense which requires a report to the CCRE during the seven year waiting period; or, • they were convicted of any offense which does not qualify for automatic sealing on the date of their conviction or on the date of the deferral or dismissal of their charge.

Appendix by Crime Commission staff based on legal analysis.

APPENDIX C: Criminal Record Relief Processes in Virginia

Process ¹	Eligible Offenses	Waiting Period	Criteria for Relief	Access and Disclosure	Court-Appointed Counsel ²	Filing Fees ³	3 rd Party Notification ⁴
Expungement (Non-Convictions)	Non-convictions ⁵	None	Manifest Injustice ⁶	Court order ⁷	No	Refunded if granted ⁸	No
Automatic Sealing (Convictions and Deferred Dismissals)	9 specified Virginia Code sections ⁹	7 years ¹⁰	No Virginia CCRE reportable or out-of-state convictions ¹¹	25 specific purposes ¹²	N/A	N/A	Yes
Automatic Sealing (Misdemeanor Non-Convictions - 7/1/25 onward)	Any misdemeanor non-conviction, excluding Title 46.2 traffic infractions ¹³	None ¹⁴	Must be granted unless any of the 6 disqualifying criteria apply ¹⁵	25 specific purposes ¹⁶	On underlying criminal case ¹⁷	N/A	Yes
Automatic Sealing (Felony Non-Convictions - 7/1/25 onward)	Any felony concluding in an acquittal or dismissal with prejudice ¹⁸	None ¹⁹	Concurrence of the Commonwealth's Attorney ²⁰	25 specific purposes ²¹	On underlying criminal case ²²	N/A	Yes
Automatic Sealing (Misdemeanor Non-Convictions Retroactively)	Any misdemeanor non-conviction ²³	None – VSP shall review the CCRE on at least an annual basis ²⁴	No charges in the past 3 years for any violation of Virginia law that requires a report to the CCRE ²⁵	25 specific purposes ²⁶	N/A	N/A	Yes
Petition-Based Sealing (Convictions and Deferred Dismissals)	Misdemeanors, Class 5 or 6 felonies, grand larceny, or any felony larceny offense, except DUI-related and domestic assault ²⁷	7 years for misdemeanors; 10 years for felonies ²⁸	Criteria to file; and, Criteria to grant can vary based on type of offense ²⁹	25 specific purposes ³⁰	Yes ³¹	Not required if indigent ³²	Yes
Automatic Marijuana Expungement (Arrests, Criminal Charges, Convictions, and Civil Offenses)	Possession of marijuana and misdemeanor distribution of marijuana ³³	None ³⁴	None	25 specific purposes ³⁵ Possibly a court order ³⁶	N/A	N/A	No
Petition-Based Marijuana Expungement (Convictions and Deferred Dismissals)	Felony distribution of marijuana and misdemeanor sale or possession of drug paraphernalia ³⁷	None	Manifest Injustice ³⁸	25 specific purposes ³⁹ Possibly a court order ⁴⁰	No	Refunded if granted ⁴¹	No

Appendix by Crime Commission staff based on legal analysis.

¹ Only the expungement process is currently available in Virginia. The sealing and marijuana expungement processes will take effect beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date. Note that one additional sealing process, the automatic sealing of traffic infractions, is not included in this list. See VA. CODE ANN. § 19.2-392.17 (2021). Traffic infractions are sealed by law after 11 years unless federal law prohibits the Virginia Department of Motor Vehicles from sealing the infraction. See also VA. CODE ANN. §§ 19.2-392.2(H) and 19.2-392.9 (2021). The expungement process and the automatic sealing process are in conflict in relation to non-convictions based on mistaken identity or unauthorized use of identifying information.

² Denotes whether an indigent person has access to court-appointed counsel to assist with the criminal record relief process.

³ Denotes whether an indigent person is required to pay court filing fees as part of the criminal record relief process.

⁴ Denotes whether a third-party business screening service is notified if the criminal record relief is granted. See VA. CODE ANN. § 19.2-392.16 (2021). A business screening service is defined as “a person engaged in the business of collecting, assembling, evaluating, or disseminating Virginia criminal history records or traffic history records on individuals” but “does not include any government entity or the news media.”

⁵ VA. CODE ANN. § 19.2-392.2(A) (2021).

⁶ VA. CODE ANN. § 19.2-392.2(F) (2021).

⁷ VA. CODE ANN. § 19.2-392.3 (2021).

⁸ VA. CODE ANN. § 19.2-392.2(L) (2021).

⁹ VA. CODE ANN. § 19.2-392.6(A) and (B) (2021).

¹⁰ VA. CODE ANN. § 19.2-392.6(C) (2021). The waiting period begins at the date of conviction or dismissal.

¹¹ *Id.* Note that CCRE refers to the Central Criminal Records Exchange maintained by the Virginia State Police. Also note that per VA. CODE ANN. § 19.2-392.6(D) (2021), an offense will not be automatically sealed if the person was convicted of a non-eligible offense on the same date of the deferral, dismissal, or conviction as the eligible offense.

¹² VA. CODE ANN. §§ 19.2-392.7(F) and 19.2-392.13 (2021).

¹³ VA. CODE ANN. § 19.2-392.8(A) (2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ VA. CODE ANN. §§ 19.2-392.8(E) and 19.2-392.13 (2021).

¹⁷ See VA. CODE ANN. §§ 19.2-159 and 19.2-163.3 (2021). The decision on whether to seal an offense under this process is made immediately upon the conclusion of the criminal case; however, it is unclear whether the public defender or court-appointed counsel on the criminal case will be permitted to assist with the civil automatic sealing process.

¹⁸ VA. CODE ANN. § 19.2-392.8(B) (2021).

¹⁹ *Id.*

²⁰ *Id.*

²¹ VA. CODE ANN. §§ 19.2-392.8(E) and 19.2-392.13 (2021).

²² See VA. CODE ANN. §§ 19.2-159 and 19.2-163.3 (2021). The decision on whether to seal an offense under this process is made immediately upon the conclusion of the criminal case; however, it is unclear whether the public defender or court-appointed counsel on the criminal case will be permitted to assist with the civil automatic sealing process.

²³ VA. CODE ANN. § 19.2-392.11(A) (2021).

²⁴ *Id.* Note that VSP refers to the Virginia State Police.

²⁵ *Id.*

²⁶ VA. CODE ANN. §§ 19.2-392.11(F) and 19.2-392.13 (2021).

²⁷ VA. CODE ANN. § 19.2-392.12(A) (2021). The offenses excluded from petition-based sealing include VA. CODE ANN. §§ 18.2-36.1 and 18.2-36.2 (involuntary manslaughter), VA. CODE ANN. §§ 18.2-51.4 and 18.2-51.5 (maiming of another as a result of DUI), VA. CODE ANN. § 18.2-57.2 (domestic assault and battery), and VA. CODE ANN. §§ 18.2-266 and 46.2-341.24 (DUI).

²⁸ VA. CODE ANN. § 19.2-392.12(F)(1) (2021). The waiting period begins at the date of conviction, dismissal, or release from incarceration, whichever date occurred latest in time.

²⁹ VA. CODE ANN. § 19.2-392.12(A) and (F) (2021).

³⁰ VA. CODE ANN. §§ 19.2-392.12(M) and 19.2-392.13 (2021).

³¹ VA. CODE ANN. § 19.2-392.12(L) (2021).

³² VA. CODE ANN. § 19.2-392.12(B) (2021).

³³ VA. CODE ANN. § 19.2-392.2:1(A) (2021). Note that the provisions of marijuana expungement related to distribution of marijuana were not re-enacted as required during the 2022 Regular Session of the General Assembly; therefore, distribution of marijuana offenses will not be eligible for expungement absent further action by the General Assembly.

³⁴ See VA. CODE ANN. §§ 19.2-392.2:1(B), (C), and (D) (2021). Virginia State Police must provide a list of offenses in the CCRE that meet the requirements for expungement to the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the State Police no later than July 1, 2025.

³⁵ VA. CODE ANN. § 19.2-392.2:1(F) (2021).

³⁶ See VA. CODE ANN. § 19.2-392.3 (2021). It is unclear whether a court order is required to access and disseminate a marijuana expunged record.

³⁷ VA. CODE ANN. § 19.2-392.2:2(A) (2021). Note that the provisions of marijuana expungement related to distribution of marijuana were not re-enacted as required during the 2022 Regular Session of the General Assembly; therefore, distribution of marijuana offenses will not be eligible for expungement absent further action by the General Assembly.

³⁸ VA. CODE ANN. § 19.2-392.2:2(E) (2021).

³⁹ VA. CODE ANN. § 19.2-392.2:2(H) (2021).

⁴⁰ See VA. CODE ANN. § 19.2-392.3 (2021). It is unclear whether a court order is required to access and disseminate a marijuana expunged record.

⁴¹ VA. CODE ANN. § 19.2-392.2:2(J) (2021).

APPENDIX D: State Laws on Plea Agreements in Relation to Expunged or Sealed Records

STATES BARRING WAIVER OF RIGHT TO EXPUNGE OR SEAL IN A PLEA AGREEMENT

Colorado	COLO. REV. STAT. § 24-72-703 (2021)
Indiana	IND. CODE ANN. § 35-38-9-11 (2014)
Massachusetts	MASS. GEN. LAWS ch. 276, § 100R (2018)
New York	N.Y. CRIM. PROC. LAW § 160.59 (2017)

STATES BARRING EXPUNGEMENT OR SEALING FOLLOWING A PLEA AGREEMENT

Georgia	GA. CODE ANN. § 35-3-37 (2021)
New Jersey	N.J. STAT. ANN. § 2C:52-6 (2020)
North Carolina	N.C. GEN. STAT. § 15A-146 (2021)
Pennsylvania	<i>Commonwealth v. Lutz</i> , 788 A.2d 993, 1000 (Sup. Ct. Penn., Nov. 21, 2001)
West Virginia	W. VA. CODE § 61-11-25 (2012)

Appendix by Crime Commission staff based on legal analysis.

