



EXPUNGEMENT AND SEALING OF CRIMINAL AND COURT RECORDS

Study Highlights

January 2022

Virginia is now one of:

- 44 states that seal misdemeanor convictions;
- 38 states that seal felony convictions; and,
- 8 states that automatically seal broad classes of criminal offenses.

The Virginia Code currently includes three forms of criminal record relief:

- Expungement;
- Sealing; and,
- Marijuana expungement.

These three forms of criminal record relief are in conflict and must be reconciled to ensure:

- The framework is consistent;
- Individuals have access to the processes;
- Post-relief protections are uniform; and,
- Continuing resources to support the processes are made available.

Contact Us:

<http://vscc.virginia.gov>
vsccinfo@vscc.virginia.gov

Staff continued its work on expungement and sealing of criminal and court records during 2021. Legislation was enacted during Special Session I of the 2021 General Assembly that created new automatic and petition-based processes to seal certain criminal charges and convictions (HB2113/SB1339). These bills also directed the Crime Commission to continue its study and examine the following unresolved matters:

1. Examine the interplay between the expungement and sealing of records.

The Virginia Code now contains three forms of criminal record relief: expungement, sealing, and marijuana expungement. Expungement removes records from public inspection, while sealing and marijuana expungement limit access to and dissemination of records to 25 specific purposes. These forms of relief vary significantly in terms of purpose, process, who has access to each process, and what protections are provided when a record is expunged or sealed. Numerous policy decisions must be made to align these provisions in the Code.

2. Recommend a review process for any changes to expungement or sealing.

Staff recommended that any legislation addressing the expungement or sealing of records be referred to the Crime Commission until the sealing legislation takes effect (July 2025 or earlier). Staff made this recommendation because the sealing legislation requires various stakeholders to provide annual reports to the Crime Commission until the new sealing processes are implemented. No motion was made on this recommendation.

3. Identify methods to educate the public on the new sealing processes.

Staff recommended creating two new full-time positions at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel on the new expungement and sealing laws. The Crime Commission unanimously endorsed this recommendation.

4. Review the permissible uses of expunged and sealed records.

Expunged records can only be accessed and disclosed by court order. Sealed and marijuana expunged records can be accessed and disclosed for 25 purposes.

5. Evaluate the impact of plea agreements on expunged and sealed records.

Staff reviewed the Virginia Code and the criminal record relief laws of other states and identified a variety of competing approaches in regard to how expungement and sealing are impacted by plea agreements. Staff concluded that while plea agreements that restrict a person's ability to expunge or seal a record can be contrary to the intent of criminal record relief laws, there may be times when such an agreement is beneficial to a defendant.

6. Determine the feasibility of destroying expunged or sealed records.

Expunged records in Virginia are not initially destroyed, but rather physical and electronic access to such records is significantly restricted. Conversely, sealed and marijuana expunged records are maintained for 25 specific purposes. Staff determined that destroying expunged or sealed records would be extremely labor intensive, require significant resources from numerous entities, and be contrary to the intent of the new sealing legislation.