



# UPDATE: SEALING AND EXPUNGEMENT OF CRIMINAL RECORDS

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## Background

- ▶ Legislation was enacted in 2021 to create criminal record sealing processes in Virginia by July 1, 2025:
  - Automatic sealing
    - Certain misdemeanor convictions
    - Felony and misdemeanor non-convictions
  - Petition-based sealing
    - Misdemeanor convictions
    - Certain felony convictions
- ▶ Additional legislation was enacted in 2023 that made technical changes to address conflicts in the Code and better facilitate the sealing processes.



## Sealing Implementation Status

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- ▶ Virginia State Police
  - On schedule for July 2025 implementation.
  - Significant progress made towards automating out-of-state criminal record checks.
- ▶ Office of the Executive Secretary (Supreme Court)
  - On schedule for July 2025 implementation.
  - Significant programming work remains.
- ▶ Virginia Court Clerks Association
  - Resource concerns exist in regard to implementation.



## Sealing Challenges

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- ▶ While sealing is on track to take effect in July 2025, numerous process and policy issues still exist:
  - Scope of sealing;
  - Court-appointed counsel;
  - Public awareness; and,
  - Inconsistencies between sealing and expungement.



## Expungement Eligibility

- ▶ A recent Virginia Supreme Court decision, *Williams v. Commonwealth* (Apr. 20, 2023), highlighted a significant challenge within the expungement process.
- ▶ Three case outcomes are eligible for expungement:
  - Acquittal;
  - *Nolle prosequi*; and,
  - “Otherwise dismissed.”
- ▶ “Otherwise dismissed” is not defined in the expungement statute, and if the General Assembly does not adopt a definition, courts will continue to craft a definition through case law.

Virginia State Crime Commission

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## DISCUSSION