

VIRGINIA STATE CRIME COMMISSION



*Update: Expungement and
Sealing of Criminal Records*

2023 ANNUAL REPORT

UPDATE: EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

LEGISLATIVE HISTORY

In 2020, the Executive Committee of the Crime Commission directed staff to review expungement in Virginia and criminal record relief in other states, with a focus on the automatic sealing of criminal charges and convictions.¹ When the study began, the only criminal record relief process available in Virginia was the expungement of charges that concluded without a conviction (non-convictions).² The Virginia Code did not include a process to expunge or seal criminal convictions, except in very narrow circumstances involving actual innocence claims.³

Legislation was enacted during the 2021 Special Session I to create an automatic process to seal specific convictions, specific deferred dismissals,⁴ and all non-convictions, as well as a petition-based process to seal a wide variety of convictions and deferred dismissals.⁵ Additionally, separate legislation enacted during that same Session legalized the recreational possession of marijuana and created automatic and petition-based expungement processes for certain marijuana offenses.⁶

During the 2023 Regular Session, legislation was enacted to improve technical components of the sealing processes.⁷ Additionally, this legislation reconciled conflicts between the sealing and marijuana expungement processes by repealing the marijuana expungement Code sections and moving the marijuana offenses that were eligible for such relief into the sealing statutes.⁸ The legislation did not reduce or expand the availability of these sealing or expungement processes.

PROGRESS ON THE IMPLEMENTATION OF THE SEALING PROCESSES

The 2021 sealing legislation directs the Office of the Executive Secretary of the Supreme Court of Virginia (OES) and the Virginia State Police (VSP) to submit annual reports to the Crime Commission on their progress in implementing the automated systems needed to exchange information for the sealing of criminal records.⁹ Per the 2023 reports, both OES and VSP are on track for implementing these systems by July 1, 2025, as directed in the 2021 sealing legislation.

OES significantly increased the amount of time and resources allocated to the implementation of the sealing processes and was awarded a two-year grant in the amount of \$1.5 million to supplement the implementation costs. As of November 2023, of the 45 electronic databases

managed by OES, 13 had been fully analyzed and appear ready to handle the sealing processes, 25 were being examined to determine the scope of the project, and 7 had either not been analyzed or OES was awaiting information from an external agency. Additionally, OES was working to integrate VSP's new Criminal Rap Back Information System into the courts' electronic systems and databases. Finally, the Fairfax County Circuit Court had tentatively decided to have OES serve as the gateway for the electronic transfer of sealing information between itself and VSP; however, the vendor for Fairfax's case management and imaging system could not meet with OES until January 2024. Therefore, while OES appears to be on schedule for implementation by July 1, 2025, any substantive changes to the sealing processes will require additional time and resources.¹⁰

VSP continues to work towards implementing its new criminal history records system. VSP selected a vendor (GCOM) and, as of September 2023, completed the knowledge transfer of legislative and system requirements to GCOM. Additionally, VSP has made progress on automating the review of out-of-state criminal records to determine sealing eligibility.¹¹

The 2021 sealing legislation also directs the Virginia Court Clerks Association (VCCA) to submit an annual report to the Crime Commission on the necessary staffing and technology costs for implementing the provisions of the sealing legislation.¹² The 2023 VCCA report is substantially similar to the previous year's report, with VCCA requesting approximately \$33 million annually to assist the circuit court clerks with their implementation of the criminal record sealing processes. The report also includes a list of recommendations for consideration. The General Assembly has not provided any funding to circuit court clerks to implement the sealing processes.¹³

During the 2024 Regular Session of the General Assembly, the Governor proposed a budget amendment to remove funding for the Virginia Department of Motor Vehicles (DMV) to implement the sealing legislation. The Governor's proposed budget amendment specifically stated that the "DMV has the authority and ability to perform this [sealing and expungement] with existing resources."¹⁴

Finally, the FY2025 to FY2026 budget included an allocation of \$100,000 in the second year from the general fund to the Sealing Fee Fund, which is intended to pay the fees for court-appointed counsel to assist indigent individuals with the petition-based sealing process.¹⁵

REMAINING SEALING ISSUES

While the sealing processes remain on track for implementation by July 1, 2025, there are still many remaining process and policy issues to be resolved. These issues fall under four broad categories: the scope of sealing, court-appointed counsel for indigent sealing petitioners, public awareness of sealing, and inconsistencies between sealing and expungement.

Scope of Sealing

- Uncertainty exists as to how sealing applies to the records of entities beyond VSP, OES, DMV, and circuit courts (e.g., Department of Corrections, Department of Forensic Science, Office of the Attorney General, local law enforcement, Commonwealth's Attorneys, Indigent Defense Commission, local and regional jails, and community corrections programs).¹⁶
- Ancillary matters (e.g., pretrial and post-trial violations, bond appeals, failures to appear, and case transfers) will remain publicly available even after an offense is sealed.
- Possession of marijuana offenses that were not transmitted to the Central Criminal Records Exchange (CCRE) will not be automatically sealed.¹⁷
- Possession of marijuana convictions under Virginia Code § 4.1-1100 are not eligible for automatic sealing and cannot be automatically sealed because the defendant is not fingerprinted and a report is not made to the CCRE.
- The sealing statutes restrict OES' ability to share case file information that is required by statute or necessary in the normal course of business.¹⁸
- A conflict exists in the petition-based sealing statute as to whether a circuit court's ruling on a sealing petition should be treated as an appeal of right to the Court of Appeals.¹⁹
- The petition-based sealing statute does not prohibit persons required to register with the Sex Offender and Crimes Against Minor Registry (Virginia Code § 9.1-902) from having their registration conviction sealed.²⁰
- A determination will need to be made on whether any other agencies or entities will have access to sealed records, and if so, who will make that determination.²¹
- The sealing statutes may require OES and circuit court clerks to seal information beyond the primary criminal case file (co-defendant files, civilly docketed restitution, etc.).²²
- No process exists to address instances when a conviction is eligible for automatic sealing, but the conviction is not automatically sealed for some reason (e.g., the record was not transmitted to the CCRE, a clerical error, etc.).

- No remedy exists to seal a non-conviction that was not ordered to be sealed immediately upon the conclusion of the criminal proceeding.²³
- The sealing statutes do not speak to the role of counsel or an appellate process for instances when a court seals or refuses to seal an offense immediately upon an acquittal, *nolle prosequi*, or dismissal.²⁴

Court-Appointed Counsel for Indigent Sealing Petitioners

- The petition-based sealing statute provides court-appointed counsel to indigent petitioners²⁵ and allows these indigent individuals to file a sealing petition without paying filing fees;²⁶ however:
 - No mechanism exists to determine indigency or screen out petitioners who are ineligible for sealing before appointing counsel and waiving filing fees;
 - Counsel's obligations are unclear when an indigent individual is ineligible to petition under the statute;²⁷
 - The statute does not specifically articulate whether counsel is required to continue representing an indigent individual on appeal, and if so, how that attorney will be compensated;²⁸ and,
 - The statute sets a cap of \$120 on court-appointed counsel compensation;²⁹ whereas, legislation enacted during the 2024 Regular Session increased compensation for court-appoint counsel in felony, misdemeanor, and probation violation cases.³⁰

Public Awareness of Sealing

- No plan has been developed to educate the general public on the new sealing laws.
- No process exists for a person to easily determine whether they qualify for sealing.
- Individuals are not notified when certain offenses on their criminal records are automatically sealed and must pay a fee to obtain their record and determine if an offense was sealed.³¹
- No centralized resource exists to educate criminal practitioners on the sealing statutes and train court-appointed counsel to assist with sealing petitions.
- The sealing statutes do not require collection or reporting of the number of sealed records as a metric to evaluate their effectiveness.
- VSP may need to provide guidance to business screening services on how the process of electronically receiving copies of sealing orders will be implemented and function.³²

Inconsistencies between Sealing and Expungement

- Unlike petition-based sealing, court-appointed counsel is not provided and filing fees are not waived for indigent expungement petitioners.³³
- Private businesses that provide background checks will receive notice when an offense has been sealed, but they will not receive notice when an offense has been expunged.³⁴
- Sealed records cannot be considered in the sale or rental of a dwelling or in an application for insurance; however, there is no explicit prohibition against the use of expunged records for such purposes.³⁵

EXPUNGEMENT ELIGIBILITY

In addition to the sealing issues, a substantive change recently occurred within expungement case law. In April 2023, the Virginia Supreme Court issued an opinion in the case of *Williams v. Commonwealth* which addressed how the phrase “otherwise dismissed” is defined for purposes of expungement.³⁶

Per the expungement statute, three case outcomes are eligible for expungement: acquittal, *nolle prosequi*, and otherwise dismissed.³⁷ While the definitions of the first two terms are clear, the phrase “otherwise dismissed” is not defined in the expungement statute and has been debated by Virginia courts for decades. Virginia courts have ruled that “otherwise dismissed” includes charges dismissed without any finding that the evidence was sufficient to establish guilt.³⁸ Virginia courts have also held that “otherwise dismissed” does not include charges dismissed after completion of a first offender program,³⁹ charges concluded in a plea of *nolo contendere*,⁴⁰ and charges dismissed following a defendant being found not guilty by reason of insanity.⁴¹

The *Williams* opinion focuses on cases where a person is convicted of a different offense than the one with which they were originally charged (e.g., a person charged with felony accessory-to-murder but convicted of misdemeanor obstruction of justice). Prior to the *Williams* decision, the Virginia Supreme Court had developed a fairly bright-line approach to determine whether the original charge could be considered “otherwise dismissed.” If the defendant pled guilty to a lesser-included offense (e.g., a person originally charged with felony assault on law enforcement but convicted of misdemeanor assault and battery),⁴² the dismissed charge was not “otherwise dismissed” and was therefore ineligible for expungement.⁴³ However, if the defendant pled guilty to a non-lesser-included offense, the dismissed charge was “otherwise dismissed” and was therefore eligible for expungement. For example, in its 2013 *Dressner* decision, the Virginia

Supreme Court held that a charge of possession of marijuana which was amended to and concluded as a conviction for reckless driving was “otherwise dismissed”, and therefore the possession of marijuana charge was eligible for expungement.⁴⁴ The *Dressner* decision allowed for a “partial expungement” where the initial charge could be expunged, but not the ultimate conviction.

The Virginia Supreme Court’s bright-line approach was overturned by the *Williams* decision. Now, instead of determining whether a defendant was convicted of a lesser-included offense, courts must use a new “completely separate and unrelated” charges test. This is a two-part test which requires a court to “(1) compare the conceptual similarities and differences between the original charge and the amended charge and (2) examine whether the two charges share a common nucleus of operative facts.”⁴⁵

As noted in the concurring opinion in *Williams*, this new test is more complex than the previous lesser-included offense analysis, and it may place a heavy burden on expungement petitioners.⁴⁶ The new test is not part of Virginia’s expungement statute, and other states’ expungement statutes which contain the term “otherwise dismissed” do not require any kind of “factual-relatedness test” to determine the connection between the original charge and the conviction.⁴⁷ Because of the complexity of the new test and the lack of clarity within Virginia’s expungement statute, the concurring opinion concludes by asking the General Assembly clarify the term “otherwise dismissed” in the expungement statute.⁴⁸ If the General Assembly does not clarify the meaning of “otherwise dismissed,” Virginia courts will continue to craft the definition.

ENDNOTES

¹ Virginia State Crime Commission. (2021). *2020 Annual report: Expungement and sealing of criminal records*, <http://vscc.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Expungement%20and%20Sealing.pdf>.

² VA. CODE ANN. §§ 19.2-392.1 to 19.2-392.4 (2023). 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.

³ 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). *See also* 2024 Va. Acts, ch. 755. Senate Bill 20 (2024 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB20>, which amends VA. CODE ANN. § 19.2-298.02(D) to specify that a charge can be expunged if the original charge was reduced or was dismissed after a plea or stipulation of the facts that would justify a finding of guilt.

⁴ A deferred dismissal refers to a circumstance where a charge is dismissed after the defendant completes certain terms or conditions ordered by the court.

⁵ 2021 Va. Acts, Sp. Sess. I, chs. 524 and 542. House Bill 2113 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113>. Senate Bill 1339 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339>.

⁶ 2021 Va. Acts, Sp. Sess. I, chs. 550 and 551. House Bill 2312 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2312>. Senate Bill 1406 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1406>.

⁷ 2023 Va. Acts chs. 554 and 555. House Bill 2400 (2023 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB2400>. Senate Bill 1402 (2023 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+SB1402>. *See also* Virginia State Crime Commission. (2023). *2022 Annual report: Update: Expungement and sealing of criminal records*, <https://vscc.virginia.gov/Annual%20Reports/2022%20VSCC%20Annual%20Report%20-%20Update%20on%20Expungement%20and%20Sealing%20of%20Criminal%20Records.pdf>.

⁸ *Id.*

⁹ *See* 2021 Va. Acts, Sp. Sess. I, chs. 524 and 542. House Bill 2113 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113>. Senate Bill 1339 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339>.

¹⁰ Office of the Executive Secretary of the Supreme Court. (2023, November 1). *Criminal sealing project status: 2023 progress report to the Crime Commission*, <https://vscc.virginia.gov/2023/Supreme%20Court%20of%20Virginia%202023%20Sealing%20Progress%20Report.pdf>.

¹¹ Virginia Department of State Police. (2023, October). *Automated out-of-state record checks, Progress on development feasibility and cost: A report to the Virginia State Crime Commission*, <https://vscc.virginia.gov/2023/VSP%202023%20Sealing%20Progress%20Report.pdf>.

¹² *See* 2021 Va. Acts, Sp. Sess. I, chs. 524 and 542. House Bill 2113 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113>. Senate Bill 1339 (2021 Sp. Sess. I), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339>.

¹³ Virginia Court Clerks Association. (2023, November 1). *HB 2113 and SB 1339 sealing and expungement legislation*, <https://vscc.virginia.gov/2023/Virginia%20Court%20Clerks%20Association%20Sealing%20Progress%20Report%20023.pdf>.

¹⁴ House Bill 30 (2024 Sess.). Governor's amendments, Amendment 178, Item 426, <https://budget.lis.virginia.gov/amendment/2024/1/HB30/Enrolled/GR/>.

¹⁵ 2024 Va. Acts, Sp. Sess. I, ch. 2. House Bill 6001 (2024 Sp. Sess. I), Item 33(J), <https://budget.lis.virginia.gov/item/2024/2/HB6001/Chapter/1/33/>. See also VA. CODE ANN. § 19.2-392.12(L) (2023).

¹⁶ VA. CODE ANN. § 19.2-392.13(A) (2023) (“Upon receipt of such electronic notification [that a court has ordered a record to be sealed], the Department of State Police shall electronically notify *those agencies and individuals known to maintain or to have obtained such a record* that such record has been ordered to be sealed and may only be disseminated for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained shall be considered sealed, provided that such records are accessible only to the manager of the records or their designee.”) (emphasis added).

¹⁷ See VA. CODE ANN. §§ 19.2-392.6 and 19.2-392.7 (2023). In order to automatically seal a criminal record, that record must have been transmitted to the CCRE.

¹⁸ With a few exceptions, VA. CODE ANN. § 19.2-392.13 provides that a court order is required before a sealed court record can be disseminated. This may hinder OES’ ability to fulfill its statutory obligations, such as the requirement in VA. CODE ANN. § 19.2-349 for OES to provide monthly reports on fines, costs, forfeitures, penalties, and restitution owed by defendants to several entities.

¹⁹ See VA. CODE ANN. §§ 17.1-405(A)(3), 17.1-407(B), and 19.2-392.12(H) (2023). The petition-based sealing statute provides that any aggrieved party may appeal a ruling on a sealing petition as provided by law in civil cases. Therefore, it appears that a ruling on a sealing petition is an appeal of right to the Court of Appeals. *But see* VA. CODE ANN. § 392.12(E) (2023), which provides that a person’s criminal history record used for purposes of ruling on a sealing petition shall be destroyed unless an appeal is noted to the Supreme Court of Virginia.

²⁰ See VA. CODE ANN. § 19.2-392.12 (2023).

²¹ See VA. CODE ANN. § 19.2-392.13(C) (2023). Sealed records can be disclosed for 25 specified reasons. If access to such records is to be expanded, a decision will need to be made as to who will determine the scope of the expansion, such as the General Assembly, VSP, or some other agency or entity.

²² VA. CODE ANN. § 19.2-392.13(A) (2023) (“Upon electronic notification that a court order for sealing has been entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.11, or 19.2-392.12, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange, including *any records relating to an arrest, charge, or conviction*, that was ordered to be sealed, except for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.”) (emphasis added).

²³ See VA. CODE ANN. § 19.2-392.8 (2023).

²⁴ See VA. CODE ANN. § 19.2-392.8 (2023).

²⁵ See VA. CODE ANN. § 19.2-392.12(L) (2023).

²⁶ See VA. CODE ANN. § 19.2-392.12(B) (2023).

²⁷ See VA. CODE ANN. § 19.2-392.12(A) (2023). A person can petition to seal certain offenses, “...provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, and (c) not been convicted of any other felony within the past 10 years of his petition.”

²⁸ See VA. CODE ANN. §§ 17.1-405(A)(3), 17.1-407(B), and 19.2-392.12(H) (2023). The petition-based sealing statute provides that any aggrieved party may appeal a ruling on a sealing petition as provided by law in civil cases. Therefore, it appears that a ruling on a sealing petition is an appeal of right to the Court of Appeals. *See also* VA. CODE ANN. § 19.2-392.12(L) (2023), which sets a cap of \$120 on court-appointed attorney compensation from the Sealing Fee Fund.

²⁹ VA. CODE ANN. § 19.2-392.12(L) (2023).

³⁰ 2024 Va. Acts, chs. 714 and 770. House Bill 102 (2024 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=bil&val=hb102>. Senate Bill 356 (2024 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=sen&val=sb356>.

[bin/legp604.exe?241+sum+SB356](#). For example, compensation for adult felonies punishable by less than 20 years will be up to \$834 and adult misdemeanors (other than DUI-related) up to \$330.

³¹ See VA. CODE ANN. § 19.2-389(11) (2023).

³² See VA. CODE ANN. § 19.2-392.16(C) (2023).

³³ VA. CODE ANN. § 19.2-392.2(L) (2023). The expungement statute only allows for the refund of certain costs to the petitioner if the expungement petition is granted.

³⁴ See VA. CODE ANN. § 19.2-392.16 (2023).

³⁵ See VA. CODE ANN. §§ 19.2-392.4 (expunged record protections) and 19.2-392.15 (sealed record protections) (2023).

³⁶ *Williams v. Commonwealth*, 302 Va. 172, 885 S.E.2d 457 (2023).

³⁷ See VA. CODE ANN. § 19.2-392.2(A) (2023).

³⁸ *Brown v. Commonwealth*, 278 Va. 92, 677 S.E.2d 220 (2009).

³⁹ *Gregg v. Commonwealth*, 227 Va. 504, 316 S.E.2d 741 (1984).

⁴⁰ *Commonwealth v. Jackson*, 255 Va. 552, 499 S.E.2d 276 (1998).

⁴¹ *Eastlack v. Commonwealth*, 282 Va. 120, 710 S.E.2d 723 (2011).

⁴² A lesser-included offense is a “crime that is composed of some, but not all, of the elements of a more serious crime and that is necessarily committed in carrying out the greater crime.” *Black’s Law Dictionary* 1187 (9th ed. 2009).

⁴³ See *Necaise v. Commonwealth*, 281 Va. 666, 708 S.E.2d 864 (2011).

⁴⁴ *Dressner v. Commonwealth*, 285 Va. 1, 736 S.E.2d. 735 (2013).

⁴⁵ *Williams*, 885 S.E.2d at 461.

⁴⁶ *Id.* at 465 n.6.

⁴⁷ *Id.* at 462-463. The concurrence cites the “otherwise dismissed” language in expungement statutes in Iowa (IOWA CODE § 901C.2 (2023)), Delaware (DEL. CODE ANN. TIT. 11, § 4372 (2023)), and Maryland (MD. CODE ANN., CRIM. PROC. §§ 10-105 & 10-107 (LexisNexis 2023)).

⁴⁸ *Id.* at 462 and 467.

APPENDIX A: 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 Notice ⁴
Expungement (Non-Convictions)	Non-convictions ⁵	None	Manifest Injustice ⁶	3 specific purposes ⁷	No	Refunded if granted ⁸	No
Automatic Sealing (Convictions)	7 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 seal 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 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 ²⁴	No Virginia CCRE reportable charges in the past 3 years ²⁵	25 specific purposes ²⁶	N/A	N/A	Yes
Petition-Based Sealing (Convictions and Deferred Dismissals)	Misdemeanors, Class 5 and 6 felonies, grand larceny, or any felony larceny offense (excludes DUI-related and domestic assault) ²⁷	7 years for misdemeanors; 10 years for felonies ²⁸	Criteria to petition based on criminal record ²⁹ Criteria to grant can based on various factors ³⁰	25 specific purposes ³¹	Yes ³²	Not required if indigent ³³	Yes

¹ Expungement is the only process currently available in Virginia. *But see* VA. CODE ANN. §§ 19.2-327.2 *et. seq.* and 19.2-327.10 *et. seq.* (2023). Virginia law does allow for criminal conviction relief if a person can prove that they are “actually innocent” of certain felony convictions. The sealing processes will take effect beginning July 1, 2025, or sooner if the new automated systems are operational prior to that date. *See also* VA. CODE ANN. § 19.2-392.17 (2023). One additional sealing process, the statutory sealing of traffic infractions, is not included in this list. Traffic infractions will be sealed by law after 11 years unless federal law prohibits the Virginia Department of Motor Vehicles from sealing the infraction.

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

³ Denotes whether a petitioner 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 provided notice if the criminal record relief is granted. *See* VA. CODE ANN. § 19.2-392.16 (2023). 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.” Business screening services will be provided notice of sealed records but not expunged records.

⁵ VA. CODE ANN. § 19.2-392.2(A) (2023). *But see* VA. CODE ANN. § 19.2-298.02(D) (2023). 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. Additionally, 2024 Va. Acts, ch. 755. Senate Bill 20 (2024 Sess.), <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB20>, amends VA. CODE ANN. § 19.2-298.02(D) to specify that a charge can be expunged if the original charge was reduced or dismissed after a plea or stipulation of the facts that would justify a finding of guilt.

⁶ VA. CODE ANN. § 19.2-392.2(F) (2023).

⁷ VA. CODE ANN. § 19.2-392.3 (2023). An expunged record can be accessed with a court order for purposes of an employment application with a law-enforcement agency or for a pending criminal investigation. Beginning July 1, 2025, the person who was charged with the expunged offense can petition for a court order to access their expunged records.

⁸ VA. CODE ANN. § 19.2-392.2(L) (2023).

⁹ VA. CODE ANN. § 19.2-392.6(A) (2023). The 7 specified code sections are VA. CODE ANN. §§ 18.2-96 (petit larceny), 18.2-103 (larceny by concealing), 18.2-119 (trespass), 18.2-120 (instigating trespass by others), 18.2-134 (trespass on posted property), misdemeanor violations of 18.2-248.1 (distribution of marijuana), and 18.2-415 (disorderly conduct). Additionally, per VA. CODE ANN. § 19.2-392.6(D), violations of former VA. CODE ANN. § 18.2-250.1 (possession of marijuana) will be automatically sealed after July 1, 2025, regardless of the final disposition and without a waiting period or any other criteria., if such records are in the Central Criminal Records Exchange (CCRE), the electronic criminal records database maintained by Virginia State Police.

¹⁰ VA. CODE ANN. § 19.2-392.6(B) (2023). The waiting period begins on the date of conviction.

¹¹ *Id.* Per VA. CODE ANN. § 19.2-392.6(C) (2023), an offense will not be automatically sealed if the person was convicted of a non-eligible offense on the same date as the conviction for the eligible offense.

¹² VA. CODE ANN. §§ 19.2-392.7(F) and 19.2-392.13(C) (2023).

¹³ VA. CODE ANN. § 19.2-392.8(A) (2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ VA. CODE ANN. §§ 19.2-392.8(E) and 19.2-392.13(C) (2023).

¹⁷ *See* VA. CODE ANN. §§ 19.2-159 and 19.2-163.3 (2023). The decision whether to seal an offense under this process is made immediately upon the conclusion of the criminal case; however, court-appointed counsel and public defenders on the criminal case are not explicitly permitted to assist with the civil sealing processes.

¹⁸ VA. CODE ANN. § 19.2-392.8(B) (2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ VA. CODE ANN. §§ 19.2-392.8(E) and 19.2-392.13(C) (2023).

²² See VA. CODE ANN. §§ 19.2-159 and 19.2-163.3 (2023). The decision whether to seal an offense under this process is made immediately upon the conclusion of the criminal case; however, court-appointed counsel and public defenders on the criminal case are not explicitly permitted to assist with the civil sealing processes.

²³ VA. CODE ANN. § 19.2-392.11(A) (2023).

²⁴ *Id.* The Virginia State Police must review the Central Criminal Records Exchange on at least an annual basis for eligible offenses.

²⁵ *Id.*

²⁶ VA. CODE ANN. §§ 19.2-392.11(F) and 19.2-392.13(C) (2023).

²⁷ VA. CODE ANN. § 19.2-392.12(A) (2023). The offenses excluded from petition-based sealing are VA. CODE ANN. §§ 18.2-36.1 and 18.2-36.2 (DUI involuntary manslaughter), VA. CODE ANN. §§ 18.2-51.4 and 18.2-51.5 (DUI maiming), 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) (2023). The waiting period begins on the date of the deferred dismissal, conviction, or release from incarceration, whichever date occurred latest in time.

²⁹ VA. CODE ANN. § 19.2-392.12(A) (2023). In order to be eligible to petition for sealing, a person can (1) never have been convicted of a Class 1 or 2 felony or any other felony punishable by life in prison, (2) not have been convicted of a Class 3 or 4 felony within the past 20 years, and (3) not have been convicted of any other felony within the past 10 years.

³⁰ VA. CODE ANN. § 19.2-392.12(F) (2023). In order to qualify to have an offense sealed, a person must (1) not have any in-state convictions reportable to the CCRE or any out-of-state convictions, excluding traffic infractions, during the waiting period, (2) demonstrate their rehabilitation if the offense involved the use or dependence on alcohol or drugs, and (3) show a manifest injustice. Additionally, a person is limited to having two sealing petitions granted in their lifetime. However, VA. CODE ANN. § 19.2-392.12(C) provides two exceptions to this limit: violations of VA. CODE ANN. § 4.1-305 (underage alcohol) and VA. CODE ANN. § 18.2-265.3(A) (marijuana-related drug paraphernalia).

³¹ VA. CODE ANN. §§ 19.2-392.12(M) and 19.2-392.13(C) (2023).

³² VA. CODE ANN. § 19.2-392.12(L) (2023). *See also* VA. CODE ANN. § 17.1-205.1 (2023). Court-appointed counsel will be paid from the Sealing Fee Fund.

³³ VA. CODE ANN. § 19.2-392.12(B) (2023).

