



*Guide to
Sealing or Expunging a
Criminal Record
& Restoration of
Civil Rights*



Expungement and Sealing of Criminal Records:

In Florida, an individual's criminal records may be sealed or expunged under the authority of the Florida Statutes. Neither the Florida nor the United States Constitution **guarantees** an individual the right to expunge or seal his criminal records. In fact,

Courts have sole discretion as to whether an individual's criminal records are sealed or expunged.

A court of competent jurisdiction has the authority to expunge or seal a criminal history record.

The individual seeking expunction* or the sealing of a criminal incident record may be an adult or a minor.

An individual may seek sealing or expunction of a criminal history record pertaining to one arrest or incident of criminal activity, unless the court decides to order the expunction of more than one arrest, where the additional arrests are directly related to the original offense or arrest. Also, a court has the discretion to order the expunction of a portion of a criminal record as it pertains to an arrest or incident.

* The terms *Expungement* and *Expunction* are often used interchangeably.

You may be eligible to have your record sealed or expunged if any one of these applies to you:

- You were arrested and charges were never filed by the state attorney;
- You were arrested and charges were dropped by the state attorney (nolle prosequere);
- You were arrested and charges were dismissed by the court;
- You were arrested, charged, plead guilty, and received a withhold of adjudication;
- You were arrested, charged, plead no contest (nolo contendere), and received a withhold of adjudication; or
- You were arrested, charged, found guilty by a jury, and received a withhold of adjudication.
- You were arrested, charged, and found NOT guilty by a jury or judge after a trial;
- You were arrested, and completed a pretrial diversion program and the charges were dropped.
- If on probation, you have completed probation and paid all your court costs.

You will not qualify if:

- You were convicted (adjudicated guilty) of the crime you want to seal or expunge;
- You have ever been convicted (adjudicated guilty) of ANY crime (misdemeanor, felony, or criminal ordinance including, DUI, DWI, Driving while license suspended, reckless driving, or any other criminal traffic offense).
- You received a withhold of adjudication and the crime you want to seal or expunge is one of the “ineligible offenses” listed below (you can only expunge these crimes if the charges were dropped, never filed, dismissed, or you were found not guilty).
- You have already had a record sealed or expunged anywhere (administrative expungements are not included);
- You are currently on probation or other court supervision

A request for a certificate of eligibility for an expunction or sealing of a criminal history record will be denied if the defendant was found guilty or pled guilty or nolo contendere, even if the adjudication of guilt was withheld, on any violation of the following:

- Arson
- Aggravated Assault
- Aggravated Battery
- Illegal use of explosives
- Child abuse or Aggravated Child Abuse
- Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult
- Aircraft piracy
- Kidnapping
- Homicide
- Manslaughter
- Sexual Battery
- Robbery
- Carjacking
- Lewd, lascivious, or indecent assault or act upon or in the presence of a child under the age of 16 years
- Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority

- Burglary of a dwelling
- Stalking and Aggravated Stalking
- Act of Domestic Violence as defined in [s. 741.28 F.S.](#)
- Home-invasion Robbery
- Act of Terrorism as defined by [s. 775.30 F.S.](#)
- Manufacturing any substances in violation of chapter 893
- Attempting or conspiring to commit any of the above crimes
- [S.393.135, F.S.](#)
Sexual misconduct with developmentally disabled person and related offenses
- [S.394.4593, F.S.](#)
Sexual misconduct with mental health patient and related offenses
- [S.787.025, F.S.](#)
Luring or enticing a child
- [Chapter 794, F.S.](#)
Sexual Battery and related offenses
- [S.796.03, F.S.](#)
Procuring person under 18 for prostitution
- [S.800.04, F.S.](#)
Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age
- [S. 810.14, F.S.](#)
Voyeurism
- [S.817.034, F.S.](#)
Florida Communication Fraud Act
(Scheme to Defraud or Organized Fraud, as used in s.817.034, F.S.)
- [S.825.1025, F.S.](#)
Lewd or lascivious offense upon or in presence of elderly person or disabled person
- [S.827.071, F.S.](#)
Sexual performance by a child
- [Chapter 839, F.S.](#)
Offenses By Public Officers and Employees.
- [S.847.0133, F.S.](#)
Showing, selling, etc., obscene literature to minor
- [S.847.0135, F.S.](#)
Computer pornography
- [S.847.0145, F.S.](#)
Selling or buying of minors
- [S.893.135, F.S.](#)
Trafficking in controlled substances
- [S 916.1075, F.S.](#)
Sexual misconduct with mentally deficient or mentally ill defendant and related offenses
A violation of any offense qualify for registration as a sexual predator under **s.775.21** or for registration as a sexual offender under **s.943.043**

What is the difference between having a criminal history record sealed vs. expunged?

When a criminal history record is **sealed**, the public will not have access to it. However, it will still exist in a legal and physical sense. Certain **governmental or related entities**, primarily those listed in s. 943.059(4)(a), Florida Statutes, have access to sealed record information in its entirety.

When a record has been **expunged**, those entities which would have access to a sealed record will be informed that the subject of the record has had a record expunged but would not have access to the record itself without a court order. Such entities would receive only a caveat statement indicating that "Criminal Information has been Expunged from this Record". Additionally, the criminal record would be deleted by both the Clerk of Court and the Arresting Agency. The Florida Department of Law Enforcement will be the only agency that retains a copy of the arrest.

Effects of Sealing a Criminal Record:

- The criminal record is sealed and is available only to the person who is the subject of the incident, his or her attorney or criminal justice agencies for criminal justice purposes.
- The individual may lawfully deny or fail to acknowledge the sealed incident.*
- The individual does not commit perjury or make a false statement by failing to acknowledge the sealed criminal incident.*
- Information relating to the sealed criminal incident is confidential.*

*Note: In certain circumstances, the sealed criminal activity is not confidential, and the individual may not lawfully deny or fail to acknowledge the expunged incident.

These circumstances occur when the individual is:

- A defendant in a criminal prosecution.
- Making an additional petition for expunction
- Seeking admission to the Florida Bar
- Seeking employment with a criminal justice agency, the Department of children and Family Services, the Department of Juvenile Justice, or a position involving direct contact with children, the developmentally disabled, and the elderly
- Seeking employment or a license from the Office of Teacher Education, Certification, Staff Development, and Professional Practice of the Department of Education, any district school board, or any local government entity that licenses child care facilities

Process to Seal / Expunge a Criminal Record:

Certificate of Eligibility

The individual must apply for and receive a certificate of eligibility. Locally, a packet with instructions and forms is usually available at the Clerk of Courts, Criminal Division. To obtain a certificate of eligibility, a person must:

- Submit a \$75.00 processing fee, unless the fee is waived
- Submit a certified copy of the final disposition of the charge that is the subject matter of the petition, as it is found at the office of the criminal Clerk of Court
- Show that the arrest in question does not relate to a “dangerous crime” where the individual was found guilty or pled guilty or no contest to the incident of criminal activity
- Show that the individual has never had a criminal history record sealed or expunged in any jurisdiction, in or out of the state of Florida
- Show that the individual is no longer under court supervision as a result of the criminal incident or arrest that is the subject matter of the petition
- Show that the subject matter of the petition is not a charge in which the individual is required to wait a minimum of ten (10) years in order to be eligible for an expunction or sealing.
- Submit to the criminal justice department a written, certified statement from the state attorney’s office indicating that charges were dismissed or not filed in the case or if filed or issued, that the charge was dismissed or Nolle Prosequi.

Sworn Statement

The individual must make a sworn statement that the individual:

- Has never been found guilty of a criminal offense or been found delinquent for committing a felony or specified misdemeanor, prior to the date the petition was filed.
- Has never been found guilty of the alleged criminal activity which is the subject of the petition
- Has never had a criminal record sealed or expunged from any jurisdiction outside of Florida
- Is eligible for sealing or expunction, to the best of the individual's knowledge, and does not have another petition to seal a criminal record before any court.

A person who knowingly provides false information in the sworn statement commits a felony and is subject to punishment.

The state attorney or prosecutor must be given a copy of the petition and have the opportunity to respond to the court regarding expunction.

If the petition is granted, the court will certify copies of the order to the appropriate state officials, who are then responsible for informing the appropriate arresting agency and the F.D.L.E.

Exemption from Disqualification

The Agency for Health Care Administration provides that any individual employed or seeking employment within a nursing home, home health agency, assisted living facility or nurse registry that has been notified by the employer that they have been found guilty of, entered a plea of guilty or nolo contendere to any of the dangerous crimes listed above, may be eligible for an exemption from disqualification.

Information on exemption from disqualification can be found online at:
http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/Background_Screening/exemption.shtml

Facility owners, administrators and chief financial officers, as well as personnel that are unlicensed and/or uncertified receive more information by contacting:

Agency for Healthcare Administration
2727 Mahan Drive'
Tallahassee, Florida 32308
(888) 419-3456

All CNA's with state certification must receive an exemption through:

C N A Registry
Department of Health
4052 Bald Cypress Way, Bin #C-13
Tallahassee, Florida 32399-3263
(850) 245-4125

All RN'S and LPN"s employed or seeking employment within a healthcare facility must receive an exemption through:

Board of Nursing
4052 Bald Cypress Way Bin C-02
Tallahassee, Florida 32399
(850) 488-0595

Restoration of Civil Rights:

Any person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship, including voting rights, if he or she has:

- Received a full pardon from the board of pardons;
- Served the maximum term of the sentence imposed; or
- Been granted final release by the Parole Commission

Prior to the time an offender is discharged from supervision, an authorized agent of the Department of Corrections shall assist the offender in completing the forms required for the restoration of civil rights and shall ensure that the application and all necessary materials are forwarded to the Governor before the offender is discharged.

Florida Statutes §§ 940.05, 944.293

For more information contact:

Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500
(850) 488-5021

To verify the restoration of civil rights, contact the Office of Executive Clemency (next section).

Executive Clemency:

By executive order, the Governor of Florida may grant full or conditional pardons, restore civil rights, and commute punishment, among other things. A person intending to apply for executive clemency shall request an application from the Parole Commission.

Florida Statutes §§ 940.01, 940.03

More information can be found online at:

<https://fpc.state.fl.us/Clemency.htm>

or by contacting:

Office of Executive Clemency
2601 Blainstone Road, Building C
Tallahassee, FL 32399-2450
(850) 488-2952

Resources:

Florida Department of Law Enforcement (FDLE)

<http://www.fdle.state.fl.us/>

Florida Department of Law Enforcement (FDLE) – Seal and Expunge Process:

<http://www.fdle.state.fl.us/Content/Seal-and-Expunge-Process/Menu/Seal-and-Expunge-Home.aspx>

If you would like to schedule an appointment to meet with a Community Law Program Volunteer Attorney in a Free Legal Clinic to learn more about Criminal Record Sealing or Expungement, please contact us using the information listed below. We also assist with post-sealing or expunction issues such as wiping booking photos and removing the record from employer searches.

What is the Community Law Program?

The Community Law Program was formed by the St. Petersburg Bar Association in 1989 as a 501(c) (3) non-profit corporation to expand access to the legal system for those financially unable to afford legal representation. Local volunteer attorneys offer their assistance at our legal clinics. They receive no financial compensation for their pro bono efforts. Funding is provided by the Legal Services Corporation, Pinellas County, and the City of St. Petersburg, the Florida Bar Foundation, donations and annual dues.



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