

# Filing a Petition to Expunge or Seal a Criminal Record

A person may be able to have the record of a Vermont conviction or charge either expunged or sealed under certain limited circumstances. There are several different types of expungement and sealing and the conditions are somewhat different for each type.

## 1. Expungement or Sealing of Criminal Conviction Record

A person may file a petition to expunge or seal the record of a criminal conviction if:

- The petitioner was convicted of a qualifying crime or qualifying crimes out of the same incident or occurrence (see definition of qualifying crimes below); or
- The petitioner was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense.
- The petitioner was convicted of a violation of 23 VSA §1201(a) related to operating under the influence of alcohol or other substance (see section E below).
- The petitioner was convicted under 13 VSA §1201(a) related to burglary when the person was 25 years of age or younger and did not carry a dangerous or deadly weapon during commission of the offense (see section F below)
- Please be advised: If you have a pending criminal case, the court cannot act on a petition to seal or expunge until after the pending charge is resolved

### A. When the Petitioner has not been convicted of another crime since the conviction:

The criminal history record will be expunged by the Court if:

- At least 5 years have elapsed since the petitioner successfully completed the terms of the sentence for the conviction, or if the petitioner successfully completed all terms of an indeterminate sentence which began at least 5 years before the petition is filed;
- Any restitution ordered by the Court has been paid in full; and
- The Court finds that expungement of the criminal history record serves the interest of justice.

The criminal history record will be sealed by the Court if:

- The conditions described above are met; and
- The Court finds that sealing the criminal history record better serves the interest of justice; and
- The petitioner committed the qualifying crime after reaching 19 years of age.

### B. When Petitioner has been convicted of another crime arising out of a new occurrence since the Petitioner was convicted of the qualifying crime:

The criminal history will be expunged if:

- At least 10 years have elapsed since the date on which the petitioner successfully completed the terms and conditions of the sentence for the conviction;
- The petitioner has not been convicted of a felony arising out of a new incident or occurrence since the petitioner was convicted of the qualifying crime;
- The petitioner has not been convicted of a misdemeanor during the past 5 years;
- Any restitution ordered by the Court has been paid
- After considering the particular nature of any subsequent offense, the Court finds that expungement serves the interest of justice.

The criminal history will be sealed if:

- All of the above conditions are met and the Court finds that:
- Sealing of the criminal history record better serves the interests of justice than expungement; and
- The person committed the qualifying crime after 19 years of age

### C. If the petition seeks expungement or sealing of a record when there was no conviction:

A person who was cited or arrested may file a petition for expungement of the criminal history record at any time: The criminal history will be sealed or expunged if:

- The Court finds that sealing or expunging the record serves the interests of justice, or if the parties stipulate

to sealing or expungement of the record.

For those individuals cited or arrested after June 30, 2018, sealings and expungements typically occur without need of filing formal petitions.

**D. If the petition is for expungement of a criminal offense for which the underlying conduct is no longer prohibited by law or designated a criminal offense, the Court will expunge the record if:**

- Petitioner proves that the conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed if the conviction is for possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed;
- Petitioner has served or completed the sentence;
- All court-ordered restitution has been paid;
- Unless the Court finds that expungement of the criminal history record is not in the interest of justice.

**E. If the petition seeks to seal a conviction for violation of 23 V.S.A. §1201(a) related to operating under the influence of alcohol or other substance, the Court will seal the record if:**

- At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously;
- At the time of filing the petition, the person has only one conviction of a violation of 23 V.S.A. §1201;
- At the time of filing the petition, the person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of 23 V.S.A. §1201(a);
- All court-ordered restitution has been paid;
- The court finds sealing serves the interests of justice;
- The violation did not result in serious bodily injury or death to any person other than the operator;
- The violation did not involve operation of a school bus with a blood alcohol concentration of 0.02 or more or operation a commercial vehicle with a blood alcohol concentration of 0.04 or more
- Petitioner is not an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39

**F. If the petition seeks expungement or sealing of a conviction for violation of 13 V.S.A. 1201(c)(3)(A) related to burglary when the person was 25 years of age or younger and the person did not carry a dangerous or deadly weapon during commission of the offense, the Court will grant the petition if:**

- At least 15 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 15 years previously;
- The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of 1201(c)(3)(A);
- All court-ordered restitution has been paid;
- The court finds that expungement or sealing of the criminal history record serves the interests of justice.

**2. Crimes that Qualify for Expungement or Sealing:**

- All misdemeanor offenses except:
  - Stalking
  - Domestic Assault
  - Prostitution
  - Prohibited Conduct
  - Reckless Endangerment
  - Violation of an Abuse Prevention Order
  - Abuse, Unlawful Restraint, Neglect, Sexual Abuse or Financial Exploitation of a Vulnerable Adult
  - Predicate Offense
  - An Attempt to Commit any of these listed misdemeanors

- The following felonies qualify for expungement or sealing:
  - Violation of 13 VSA §3701(a) related to criminal mischief
  - Violation of 13 VSA § 2501 related to grand larceny
  - Violation of 13 VSA § 1201 related to burglary (except for Burglary into an Occupied Dwelling)
  - Violation of 18 VSA §4223 related to fraud or deceit
  - Violation of 13 VSA §1802 related to uttering a forged or counterfeited instrument
  - Violation of 18 VSA §4230(a) related to possession of marijuana
  - Violation of 18 VSA §4231(a) related to possession of cocaine
  - Violation of 18 VSA §4232(a) related to possession of LSD
  - Violation of 18 VSA §4233(a) related to possession of heroin
  - Violation of 18 VSA §4234(a) related to possession of depressant, stimulant, and narcotic drugs
  - Violation of 18 VSA §4234a(a) related to possession of methamphetamine
  - Violation of 18 VSA §4234b(a) related to possession of ephedrine and pseudoephedrine
  - Violation of 18 VSA §4235(b) related to possession of hallucinogenic drugs
  - Violation of 18 VSA §4235a(a) related to possession of ecstasy
  - Any offense for which a person has been granted an unconditional pardon from the Governor.

## Frequently Asked Questions (FAQs)

### What does expungement mean?

If your case has been expunged, this means that all the records related to your criminal charge are physically destroyed by court order. This includes all information documenting your contact with the criminal justice system including police reports, records in the prosecutor's office and court records.

### What is the difference between expungement and sealing?

Sealing and expungement are similar in many respects. In either case:

- You must be treated as though you had never been charged or convicted of the offense.
- You cannot be required to answer questions about your criminal history record in employment or license applications.
- You cannot be required to answer questions about the offense or incident if called as a witness.
- If the court or law enforcement agency receives a question about a record which has been expunged or sealed, the response mandated by law is: "No record exists."
- You will receive a certificate from the court stating that all records of arrest, conviction and sentence have been annulled.

The major difference between expungement and sealing is what happens to the records themselves. If all charges in a criminal history record are expunged all records in the possession of the court, department of corrections, law enforcement and the prosecutor must be physically destroyed as described above. If your criminal history record is sealed, the records are placed in a confidential file, but are not physically destroyed. The entity in possession of a sealed record, such as law enforcement or a prosecutor, can use the records for future criminal investigations.

### What is the process for filing a Petition to Expunge or Seal?

1. Request to view your file from the Court: You may want to review your file. Some files may be stored at Public Records, in which case, the clerk will have to make a request to send the file to the court. There is a charge for retrieving a record that is stored in public records. The retrieval fee must be paid prior to ordering files stored at Public Records. The unpaid retrieval fees could delay the expungement or sealing process. If you send a written request to the court to view your file, you should also include a check or money order payable to the Vermont Superior Court. Your request should also include a phone number so that the clerk can notify you when your file arrives. The court will be able to tell you if the file is in public records.
2. Restitution and Fines: Any restitution ordered by the Court and any fines or fees assessed must be paid in full prior to the determination whether your criminal case qualifies for expungement or sealing.
3. Form -Petition to Expunge or Seal Criminal History: Complete and file a Petition to Expunge or Seal Criminal History form. The Petition is a court form that can be obtained from the Court or on the Vermont Judiciary website. There is a \$90 fee to file a petition to seal a conviction of a violation of **23 V.S.A. §1201(a)**. If you are unable to pay the filing fee, you may complete and file the form Application to Waive Filing Fees. The Court will notify you if you qualify to have the filing fee waived. As of July 1, 2019, there is no fee required for filing all other petitions to seal or expunge.
4. Respondent: The respondent in an expungement case is the prosecutor who brought the criminal charge. The Clerk will provide the respondent with a copy of your petition.
5. Response from Prosecutor: The prosecutor is entitled to file a response to your petition. If the prosecutor agrees with your request for expungement, your petition may be granted without a hearing. If the prosecutor is opposed to your request, the court will schedule the matter for a hearing. You must attend any hearings scheduled in your case. Failure to attend could result in the dismissal of your petition.

6. Response from Victim: The law requires the Prosecutor to make a reasonable effort to notify any known victim(s) of the offense which you are seeking to expunge or seal. A victim of the offense has the right to provide a statement to the prosecutor and the court.
7. If your Petition is Granted: If your petition is granted, the court will issue an order which you can use in the event you need to prove that the offense has been expunged or sealed.
8. If your Petition is Denied: If your petition for expungement is denied by the court, no further petition shall be brought for at least two (2) years, unless a shorter duration is authorized by the Court.