

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.

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 completed the terms of the sentence for the conviction, or if the petitioner 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;
- If 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 for a qualifying crime or qualifying crimes out of the same incident or occurrence may file a petition for expungement of the criminal history record if:

- No criminal charge is filed by State and the statute of limitations has expired; or
- The Court does not find probable cause or dismisses the charge at the time of arraignment and the statute of limitations has expired; or
- The charge is dismissed before trial without prejudice and the statute of limitations has expired or the charge is dismissed with prejudice (meaning it cannot be refiled at a later time); or
- The State and the petitioner agree that the Court may grant the petition to expunge; and
- The Court finds that expungement of the criminal history record serves the interest of justice.

The record will be sealed if:

- The Court finds that sealing the criminal history record better serves the interest of justice than expungement; and
- The person committed the qualifying crime after reaching 19 years of age.

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 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.

2. Crimes that Qualify for Expungement or Sealing:

- All misdemeanor offense 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:
 - Unlawful Mischief
 - Grand Larceny
 - Burglary (except for Burglary into an Occupied Dwelling)
 - Violation of 18VSA 4223 related to fraud or deceit (Effective 1/1/18)

Frequently Asked Questions (FAQs)

What does expungement mean?

Expungement 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 the criminal history record is 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 post-judgment filing fee that must be filed with your petition. 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.
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 a certificate 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.