

Expunging a Criminal Record

When a criminal record is "expunged", in most senses the record is treated as if it does not exist. There are limits to expungement - for example, some states maintain separate registries for people who have been convicted of child abuse or sex offenses, and the expungement of a criminal record may not affect those registries. Also, for some subsequent purposes such as applying for a job which requires a government security clearance, the odds are very high that the employer will discover the full criminal history so it may be best to admit having an expunged conviction when applying for such a job.

People seek expungement for a variety of reasons. Some simply wish to remove an embarrassing blot from their personal history. Others want to have their right to vote reinstated, in a state which suspends voting rights for convicted felons. Some wish to have their right to possess a firearm restored, so that they may go hunting. Some require an expungement in order to be eligible for desired employment. As a general rule, chances for successfully obtaining an expungement go up with the demonstration of need, and with evidence of complete rehabilitation.

States have very different policies on expungement. Some states may exclude the possibility of expungement, others may limit its availability to people who have no more than one criminal conviction on their records, while others may be more generous. You will also be required to have been discharged from your sentence for a considerable period of time, without further legal incident. You will need to investigate the policies of the jurisdiction which issued the conviction or convictions, in determining whether you are eligible for expungement.

Expungement is not the only option available to people who wish to clear their criminal records. Most jurisdictions have systems whereby people can apply for pardons. While an expungement is typically issued by the court in which a person was convicted of a crime, a pardon is an executive action which can partially or fully lift the effects of the conviction. Another option is to seal a criminal record, although this usually occurs only with juvenile records (and sometimes even then only if they stay out of trouble during their first few years of adulthood). In some jurisdictions, juvenile records are sealed automatically, while in others it is necessary to bring a motion within a certain number of years of adulthood in order to have the record sealed. It is very unusual for the criminal convictions of adults to be under seal. Finally, it may be possible to bring a "collateral attack" on the conviction, to try to have the conviction set aside. Usually, this is a difficult process, involving a separate court action which must be commenced within a limited period of time after the conviction is entered.

Obtain a Pardon

The system of applying for a pardon or executive clemency varies significantly between jurisdictions. Generally speaking, if your jurisdiction has a more generous expungement law, your first recourse should probably be under that law. If your jurisdiction has a restrictive expungement law, or if you do not qualify, you may consider applying for a pardon as an alternative. As with expungement, some jurisdictions have relatively liberal policies of issuing pardons to people who evidence rehabilitation, while other jurisdictions are very restrictive.

For U.S. federal convictions, pardons are issued by the President. In states, pardons are issued by the governor, with varying levels of control and influence over the pardons process given to state pardons boards. If your conviction is for a U.S. military offense, you will have to apply for clemency with the branch of the military which issued the conviction before you can apply for a pardon with the President. Ordinarily, your pardon application will include extensive personal information, an explanation of the facts of the offense for which you wish to be pardoned, your other criminal history (if any), your rehabilitation, your residences, financial, and employment history, and affidavits from people who know you about your present good character. Ordinarily, you must serve out your sentence in full, including any term of probation or parole, before you will be considered for a pardon.