

Expungement

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In the common law legal system, an expungement proceeding is a type of lawsuit in which a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, thereby making the records unavailable through the state or Federal repositories. If successful, the records are said to be "expunged". Black's Law Dictionary defines "expungement of record" as the "Process by which record of criminal conviction is destroyed or sealed from the state or Federal repository." While expungement deals with an underlying criminal record, it is a civil action in which the subject is the petitioner or plaintiff asking a court to declare that the records be expunged.

A very real distinction exists between an expungement and a pardon. When an expungement is granted, the person whose record is expunged may, for most purposes, treat the event as if it never occurred. A pardon (also called "executive clemency"), on the other hand, does not "erase" the event. Rather, it constitutes forgiveness. In the United States, an expungement can be granted only by a judge, while a pardon can be granted only by a governor (for state law offenses) or the President (for federal offenses). In Nebraska pardons are by vote of the governor, attorney general and secretary of state.

Each jurisdiction whose law allows expungement has its own definitions of expungement proceedings. Generally, expungement is the process to "remove from general review" the records pertaining to a case. In many jurisdictions, however, the records may not completely "disappear" and may still be available to law enforcement, to sentencing judges on subsequent offenses, and to corrections facilities to which the individual may be sentenced on subsequent convictions.

Who can get a court record expunged?

Eligibility for an expungement of an arrest, investigation, detention, or conviction record will be based on the law of the jurisdiction in which the record was made. Ordinarily, only the subject of the record may ask that the record be expunged. Often, the subject must meet a number of conditions before the request will be considered. Some jurisdictions allow expungement for the deceased.

Requirements often include one or more of the following:

- Fulfilling a waiting period between the incident and expungement;
- Having no intervening incidents;
- Having no more than a specified number of prior incidents;
- That the conviction be of a nature not considered to be too serious;
- That all terms of the sentence be completely fulfilled;
- That no proceedings be pending;
- That the incident was disposed without a conviction; and
- That the petitioner complete probation without any incidents.

Types of convictions that are often not eligible for expungement include:

Felonies and first degree misdemeanors in which the victim is under 18 years of age

Rape

Sexual battery

Corruption of a minor

Sexual imposition

Obscenity or pornography involving a minor

In some jurisdictions, all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system can be expunged. Each state sets its own guidelines for what records can be expunged, or for whether expungements are available at all. The petitioner requesting an expungement of all or part of their record will have to complete forms and instructions to submit to the appropriate authority. The petitioner may choose to hire an attorney to guide them through the process, or he/she can decide to represent themselves. This is called appearing pro se.

Most jurisdictions have laws which allow - or possibly even require - the expungement of juvenile records once the juvenile reaches a certain age. In some cases, the records are destroyed; sometimes they simply are "sealed." The purpose of these laws is to allow a minor who was accused of criminal acts, or in the language of many juvenile courts, "delinquent acts," to erase his record, typically at the age of 17 or 18. The idea is to allow the juvenile offender to enter adulthood with a "clean slate," shielding him or her from the negative effects of having a criminal record.