

RHODE ISLAND PUBLIC DEFENDER

CRIMINAL RECORDS: EXPUNGEMENT AND SEALING

It is very important for you to understand the expungement and sealing process. This brochure will help you understand how to remove cases from your criminal record.



Rhode Island Public Defender

Main Office: 160 Pine St., Providence, RI, 02903

Phone: (401) 222-3492

Fax: (401) 222-3289

State Locations:

Providence District Court: 458-3050

Providence Superior Court: 222-1540

Family Court: 222-1530

Kent County: 822-6875

Newport County: 841-8320

Washington County: 782-4180

All the information in this brochure is based on Rhode Island General Laws Sections §12-1.3, §12-1-12.1 and §12-10-12. This information should not be interpreted as legal advice.

How do I get a copy of my criminal record?

The only official way to get a criminal record is at the Attorney General's Bureau of Criminal Information (BCI) Office. This office is located at 150 South Main St, Providence and it will cost \$5.00 in check or money order. Unofficial criminal records can also be seen on the RI Judiciary's Website: www.courts.ri.gov.

Warning: if you go to BCI and have a bench warrant, you will be held. Make sure you have cleared your bench warrant before going to BCI. For assistance with this process, call the Public Defender's Office.

What is expungement?

Expungement is a legal procedure that allows eligible individuals to have any and all records relating to their criminal charges removed, both from public records and those of law enforcement agencies.

How do I know if I am eligible for expungement?

In order to be eligible for expungement you must meet all of the following criteria:

- First-time offender
- Not convicted of a "crime of violence"
- Waited the required time

In addition to meeting all three of the above criteria, a person has to be found eligible by a judge based on other qualities, such as "possessing good moral character" and

"being successfully rehabilitated."

What is a "first-time offender"?

The law defines a "first-time offender" as: a person who has not been previously convicted of or placed on probation for a felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.

Anyone convicted or placed on probation on more than one case is **ineligible** for expungement.

It is very important to expunge your record as soon as you are eligible because even a minor charge can make you ineligible.

What is a "crime of violence"? The law provides that any criminal charge, with the exception of a "crime of violence", is eligible for expungement. Anyone convicted of a "crime of violence" is ineligible for "expungement".

The law defines a "crime of violence" as follows: murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

How long do I have to wait to have my criminal record "expunged"?

For misdemeanors - (5) years after the successful completion (no intervening convictions, probation, or pending cases) of your sentence and/or probation.

For felonies - (10) years after the successful completion (no intervening convictions, probation, or pending cases) of your sentence and/or probation.

For dismissals – you should file immediately, unless advised otherwise.

For filings – you will have to wait one (1) full year to file a motion, unless it is a domestic violence filing, in which case you will have to wait three (3) years. In theory, filings should come off automatically and you should not have to file a motion but often this does not happen in practice and you will need to file a motion to expunge yourself.

For deferred sentences – if you pled guilty or nolo contendere and received a deferred sentence in the year 2010 or after, you must wait 5 years without any further charges and you will be eligible for expungement. For cases before 2010, consult with a defense attorney about expunging this case.

For diversion program and drug court programs – upon successful completions, the related charges should be removed from your record.

Who determines if I am eligible to have my criminal record “expunged”?

Your eligibility must be determined by a judge of the court where the case was originally heard.

In addition to the above criteria, the law requires that the court must find that you are deserving of expungement. That is, you must be able to demonstrate to the court’s satisfaction that you are of good moral character; have been rehabilitated and are “deserving”; the expungement of your criminal record is consistent with the public interest, proof of which can include but is not limited to the following:

- o Regular employment and financial and other support of family;
- o Successful completion of substance abuse and/or mental health counseling;
- o Community or other public service;
- o Professional certification or licensing in field of employment.

NOTE: This information is only helpful IF you meet the three core criteria (first-time offender, not convicted of a crime of violence, waited the appropriate time period). No matter what evidence you have of your rehabilitation, if you do not meet all three criteria, a judge cannot expunge your record.

Will I have a record even if my case is dismissed?

Even if your case is dismissed (48A), it will remain on your record until you do something about it. The process for taking a dismissal off a record is slightly different from expungement.

This process, called **sealing**, is an option if:

- your *entire* case resulted in a dismissal (48A), a no information, or a no true bill, OR
 - you were found not guilty on all counts
- AND**
- you do not have a felony conviction* on your record.

* For the purposes of sealing, a conviction is generally interpreted as a sentence by a judge of a period of confinement (incarceration at the ACI or home confinement), suspended sentence, or fine. A conviction also occurs when a defendant pleads guilty or is found guilty after trial.

In general, the process for sealing a case is much faster and easier than expungement. In addition, it does not cost any money to seal a record.

What is the process for expunging/sealing my record?

- 1) Go to the clerk’s office in the court house where the charge was originally heard. Fill out a Motion to Expunge/Seal. This does not cost any money to file. The clerk will give you your court date.
- 2) Mail a copy of the Motion to Expunge/Seal to the arresting police department and the Attorney General’s Office.
- 3) Show up to your court date ready to prove the criteria listed above.
- 4) If granted, you will be asked to pay \$100.00 for the Expungement Order. This payment is not needed if you are sealing your record.
- 5) Mail a copy of your order to the Attorney General’s Office and the arresting police department. It may take the AG’s office several weeks to remove this from your record.
- 6) Obtain a new, clean copy of your BCI. Keep this copy and the original Expungement Order for your records.

The Public Defender’s Office can help you with this process. Call the office in the court where your charge was originally heard for assistance.

Effects:

Once granted, you can state that you have never been convicted of the crime that was expunged.

However, you do need to disclose your charge if you are an applicant for a law enforcement agency position, for admission to the bar of any court, an applicant for a teaching certificate, under chapter 11 of title 12, a coaching certificate under § 16-11.1-1, or the operator or employee of an early childhood educational facility pursuant to chapter 48 1 of title 16.

