

Sealing and Expunction of Criminal Records in Florida

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When many successful professionals or business people find themselves charged in a criminal case, one of their questions often is “Can I get this off my record?” The question, and the concerns underlying it, are valid and important: A criminal record can raise licensure issues, hurt employment or business prospects, and is, of course, embarrassing. When loved ones have run into trouble, these concerns are often magnified – “Will my child still be able to get into a good school? What does this mean for the future?” The first priority must always be winning the case – whether by an acquittal at trial, a dismissal, or some other favorable resolution. After that, we can turn to the question of whether we can “get this off your record.” In Florida, there are processes that may allow us to address that issue: Sealing and expunction. This is a highly technical area of the law that is driven by Florida statutes. There are strict eligibility requirements, and strict processes that must be followed. And as we will discuss below, a sealing or expunction is a once-in-a-lifetime opportunity. Therefore, the decision whether to seal or expunge a criminal record should always be made in consultation with an attorney, and that decision should not be made reflexively.

The Effect of Sealing or Expunging a Criminal Record When a criminal record is sealed, the public will no longer be able to access it through government databases. Certain government agencies, however, will still be able to access the record. Expunction is more effective: The expunged criminal records that are in the possession of a criminal justice agency (such as the arresting police department) are “physically destroyed or obliterated.” [§ 943.0585\(4\), Fla. Stat. \(2010\)](#). A governmental agency trying to look at your criminal record would see the caveat statement that “Criminal Information has been Expunged from this Record.” The [Florida Department of Law Enforcement](#) does retain a copy of the record, but it is not available to any person or entity without a court order. Subject to some exceptions listed in the Florida statutes, sealing or expunction of a criminal record generally allows you to lawfully deny the fact of your arrest. Some of the notable times when you cannot deny the prior arrest include applying for admission to [The Florida Bar](#), applying for a job with a criminal justice agency, applying for a job working with children, or applying for a change in immigration status. See [§ 943.0585, Fla. Stat. \(2010\)](#) and [§ 943.059, Fla. Stat. \(2010\)](#).

Limitations and Eligibility Requirements Not every person qualifies for sealing or expunction, and not every criminal record can be sealed or expunged. You do not qualify for sealing or expunction if you have ever been adjudicated guilty of a criminal offense, including criminal traffic offenses such as driving with a suspended license or criminal

ordinance violations. If you were ever adjudicated delinquent of certain offenses as a juvenile, you will not later qualify to have a record sealed or expunged. If you have had a prior sealing or expunction – even in another state – you do not qualify. And if you have a pending petition for sealing or expunction, you don't qualify. The result here is that under Florida law, you have only a once-in-a-lifetime chance to seal or expunge a record (though if you have a record sealed for 10 years, you are then eligible to have *that record* expunged). Though the requirements for sealing and expunction are very similar, there is a key difference: If adjudication was withheld on the record at issue (this might happen as a result of a favorable plea agreement) or if you were found not guilty after a trial, then sealing may be appropriate. If you were arrested but never charged, or if the charges were dismissed, then expunction may be appropriate. Records relating to many of the most serious crimes cannot be sealed or expunged; including kidnapping, homicide, and robbery. Sex crimes, such as possession of child pornography, are also not eligible. Of particular importance for a person accused of certain white collar crimes, records related to organized schemes to defraud, see [§ 817.034, Fla. Stat. \(2010\)](#), or certain offenses by public officials and employees, see [Chapter 839, Fla. Stat. \(2010\)](#), cannot be sealed or expunged. These eligibility requirements can be confusing for someone not familiar with the justice system. One helpful way of thinking about whether you might qualify for a records sealing or expunction is to frame the issue as what you would have to be able to swear to in an affidavit your lawyer submits in support of the petition to seal or the petition to expunge. Below, we include an excerpt of a sample affidavit that would accompany a petition. This excerpt is for a petition to expunge (note that an affidavit in support of a petition to seal would look somewhat different because the eligibility requirements, though similar, are not the same): . . . 2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes. 3. I was arrested on (DATE) by (THE NAME OF THE ARRESTING AGENCY), and I have not been adjudicated guilty of, nor adjudicated delinquent for committing, any of the acts stemming from that arrest or the alleged criminal activity surrounding my arrest. 4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court. 5. I have never secured a prior records expunction or sealing under any law. 6. My record of arrest for this date has been sealed for at least 10 years; or an indictment, information, or other charging document was not filed against me for the above criminal transaction; or an indictment, information, or other charging document filed against me was dismissed by the prosecutor or the court. . . . **The Process** If, after consultation with a lawyer, you determine that you are eligible (and proceeding with a petition is wise), please be aware that sealing and expunction are long processes – you should assume about five to seven months. The first step is for your lawyer to obtain a certificate of eligibility from the [Florida Department of Law Enforcement](#) confirming that you meet the requirements for sealing or expunction established by the Florida statutes. The next step is for your lawyer to file a petition for sealing or expunction in the court that had jurisdiction over the record of the offense you want sealed or expunged (and your affidavit in support of the same). For example, if you were charged with a crime in Miami-Dade County, and you are eligible to have that record sealed or expunged, the petition must be filed in Miami-Dade County. A court hearing on

the petition to seal or expunge may or may not be necessary; this is largely a function of whether the prosecutor's office in the county where the petition is filed objects to the petition. We find that in some jurisdictions, prosecutors object almost as a matter of course. In other jurisdictions, the prosecutors are more selective, and only object for (what they perceive as) valid reasons. When the court orders a criminal record sealed or expunged, it is ordering the *State* to take action. It's important to note that in this process, the court has no jurisdiction over private entities, such as background check companies. If one of these companies already has information about your criminal case in its database, that information is unaffected by the court's order – and potential business partners and employers might still learn of it. And of course, any media coverage remains available. Also, please be aware that a State-ordered sealing or expunction also does not impact any *federal* databases. As a result, even though you may lawfully deny your criminal record after it's been sealed or expunged, there are situations where you may not want to do so. When information about your criminal record is otherwise discoverable, you may find that in some situations the better business or employment decision is to acknowledge that you were accused of a violation of the criminal law, but that it was subsequently sealed or expunged. We have seen responses like the following hypothetical: "I was accused of driving under the influence. Ultimately, the charges against me were dismissed. I had the record of that expunged, and under Florida statutes, I can now lawfully deny that criminal record. But because I respect you and value our business relationship so highly, I want to let you know." Of course, pursuant to Florida statutes, you may instead simply deny the existence of the criminal record (subject to the exceptions listed in the statute).

Once-in-a-Lifetime Opportunity One very important note of caution is that you only get *one* sealing/expunction in a lifetime (though if a criminal record has been sealed for 10 years, you are then eligible to have that sealed record expunged). As a result, the decision to seal or expunge must be used wisely. Many people waste their once-in-a-lifetime opportunity on a record that is relatively minor or which can be easily explained away. While arrests for crimes such as possession of marijuana or disorderly intoxication may be embarrassing, they are often not problematic enough to justify using your *one* sealing or expunction. This is especially true with respect to young people, who may well have another, more serious, youthful indiscretion or mistake left in them. Because everyone's circumstances are different, the decision to seal or expunge a record should be made in consultation with an attorney, and should never be made reflexively.

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