

EXPUNGEMENT

Expungement is the removal of police and court records from public inspection. Your records will not be physically destroyed, but they will be sealed and treated as confidential.

HOW CAN MY RECORDS BE EXPUNGED?

- In most cases, you must have pleaded guilty or nolo contendere (no contest) to the offense to qualify.
- You must have been sentenced under a statute that allows for expungement. And you must have completed all the terms and conditions of your probation. Also, you cannot have had prior felony convictions.
- Sexual offenders whose victims were under the age of (18) years are not eligible to have the offense expunged.

WHAT RECORDS CAN BE EXPUNGED?

- **Drug Court Probation:** if you have completed a drug court program, and received aftercare programming, then you may be eligible to receive an expungement. In addition, the judge must have received a recommendation from the prosecuting attorney for expungement and dismissal of the case, and must feel that it is appropriate to grant a petition for expungement. A.C.A. § 16-98-303(g). *(This does not apply if you have pled nolo contendere or guilty to the following: residential burglary, commercial burglary, breaking and entering, or having four or more offenses of DWI).*
- **Minor: Non-violent Felony Offenders:** if you were convicted of a non-violent felony committed while you were under the age of eighteen (18) you may have your record expunged if the court determines that it is in the best interest of the petitioner and the state. A.C.A. §16-90-602
- **Misdemeanor:** a person convicted of a misdemeanor offense shall have their record expunged unless the court is presented with clear and convincing evidence that it shouldn't be. A.C.A. §16-90-904. *(This does not apply to negligent homicide [if a Class A felony], battery in the third degree, indecent exposure, public sexual indecency, sexual assault in the fourth degree, domestic battering in the third degree, or driving while intoxicated. The records mentioned directly above may be expunged after a period of five years has passed since the completion of the person's sentence).*

Nolle Prossed, Dismissed or Acquitted: Any individual who has been charged and arrested for a criminal offense and saw the charges dropped or dismissed and any individual was acquitted at trial may have all arrest records, petitions, orders, docket sheets and any other documents relating to the case expunged. A.C.A. § 16-90-906

Probation: Possession of a Controlled Substance: If a defendant pleads guilty of possession of a controlled substance, the court may place the defendant on probation for a period at least one year. After completing the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. A.C.A. § 5-64-413 *(This does not apply if you have previously plead guilty or nolo contendere or been found guilty of any Controlled Substance offense or any state offense relating to narcotic drugs, marijuana, stimulants, depressants, or hallucinogenic drugs and does not apply for substances listed under Schedule I).*

Probation: First Time Offenders: If a defendant pleads guilty or no contest, the court may place the defendant on probation for a period of at least one year. You must have been sentenced under the act and can only use this act once. After completion of the terms and conditions of probation, the court shall dismiss the case and expunge the record. A.C.A. § 16-93-303. *(This does not apply if you received a fine greater than \$3,500 or if you were sentenced to prison or regional correction facility.)*

Probation or Jail Sentence: Upon a successful completion of probation, commitment to the Department of Correction with judicial transfer to the Community Correction, or a commitment to a county jail for one of the offenses targeted for community correction placement, the court may direct that the record of the offender be expunged. A.C.A. §16-93-1207. *(This does not apply if you were convicted for a capital offense, murder, rape, kidnapping, or aggravated robbery. If your conviction occurred prior to 1993, you must have been specifically sentenced under the act in order to be eligible.)*

HOW TO FILE FOR EXPUNGEMENT

If you are eligible to have an offense expunged then you can file a *petition to seal your records*. The uniform Petition and Order to Seal can be found at www.arlegalservices.org.

You must file the Petition and the Order to Seal in the circuit or district court of the county where the crime was committed.

After you file your petition, a copy will be sent to the prosecutor and the arresting agency. Anyone who is against having your record sealed must file a notice of opposition with the court within 30 days of your petition filing. They must explain why they do not want your record sealed.

The court may grant the petition without a hearing if no one is opposed to it. But if notice of opposition is filed, the court will set a hearing date for you to go before a judge. If the judge decides your record should be sealed, then he or she will sign the *order* (See attached *Order form*) for your records to be sealed. The signed order must be filed with the court clerk.

WHO CAN SEE SEALED RECORDS?

Normally only you or your attorney can have access to your sealed records. But in some cases others may request your records. This could be the case if you apply for a job as a teacher, day care worker, nursing home employee or as an employee of a criminal justice agency. The Arkansas Crime Information Center may have access to your sealed records.

Also, a prosecuting attorney may request to view your sealed records if you are being prosecuted for another crime. And if you are convicted of a crime after your records have been sealed, the judge may request to view your sealed records.

WHAT HAPPENS TO MY RECORDS?

The court clerk will remove all documents relating to your case and place them in a file, in a separate and confidential holding area within the clerk's office. Also, any electronic records must also be sealed.

CAN I NOW CARRY A FIREARM?

Arkansas law does not allow an expungement to restore your right to carry a firearm unless the governor expressly restores it by receiving a pardon. However, if you were sentenced under the First Time Offender Act (listed above), you do not need to get a pardon in order to be eligible to carry a firearm. A.C.A. §5-73-101(2).

IS MY RIGHT TO VOTE RESTORED?

Under Arkansas law, a convicted felon can register to vote without an expungement. They must provide proof to the county clerk that they have been discharged from probation or parole, have paid all probation and parole fees, or have satisfied all terms of imprisonment and paid all fines, court costs and restitution.

This proof can be provided to you by the Arkansas Department of Correction, the Department of Community Corrections, the appropriate probation office or the circuit clerk as applicable.

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*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. **Always do what the court tells you to do.***