



Statutory Requirements for Sealing of Criminal History Records

Presentation to the Virginia Criminal Sentencing Commission

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Overview

- Sealing of Convictions
- Expungement of Marijuana Convictions
- Records Dissemination



Sealing of Convictions

- Automatic and petition-based sealing processes were created during the 2021 Special Session I (HB2113/SB1339)
- The new sealing processes take effect on July 1, 2025, or earlier if possible



Sealing of Convictions

- **Automatic sealing of convictions and deferred dismissals**
- **Petition-based sealing of convictions and deferred dismissals**
- Post-July 2025 non-convictions
- Pre-July 2025 non-convictions
- Traffic infractions



Sealing of Convictions

➤ Sealing defined:

- Restricting dissemination of criminal history record information contained in the Central Criminal Records Exchange (CCRE)
- Prohibiting dissemination of court records



Sealing of Convictions

- Sealing procedures:
 - Criminal history record information is retained in the CCRE with limited access
 - Court records are retained and destroyed in accordance with current record retention laws and schedules
 - Sealed court records are removed from the OES online case information system.



Automatic Sealing of Convictions

➤ Eligible offenses:

- 9 misdemeanor statutes:
 - Underage alcohol-related offenses
 - Larceny and concealment
 - Trespass offenses
 - Disorderly conduct
 - Possession and distribution of marijuana



Automatic Sealing of Convictions

➤ Criteria:

- 7 years have elapsed from the date of conviction or final dismissal with no Virginia CCRE reportable convictions or any criminal convictions in other jurisdictions



Automatic Sealing of Convictions

- Process (on at least a monthly basis):
 - VSP reviews CCRE for eligible offenses
 - VSP sends list to OES and Circuit Court Clerks
 - OES sends list to Circuit Court Clerks
 - Chief Judge of Circuit Court enters order
 - Circuit Court Clerks send orders to VSP
 - VSP notifies other agencies and seals records



Petition-Based Sealing of Convictions

➤ Eligible offenses:

- All misdemeanors
- All Class 5 and 6 felonies
- All felony offenses punishable as larceny

➤ Excluded offenses:

- DUI-related
- Domestic assault and battery



Petition-Based Sealing of Convictions

- **Criteria to file a petition:**
 - No prior Class 1 or 2 felony convictions or convictions for an offense punishable by life
 - No Class 3 or 4 felony convictions within the past 20 years
 - No other felony convictions within the past 10 years



Petition-Based Sealing of Convictions

➤ Criteria to grant sealing:

- 7 years (misdemeanor) or 10 years (felony) have elapsed from the date of conviction, final dismissal, or release from custody (latest date), with no Virginia CCRE reportable convictions or criminal convictions in other jurisdictions
- Demonstrated rehabilitation (alcohol or drug)
- No more than two prior petition-based sealings of different sentencing events
- Manifest injustice to petitioner



Petition-Based Sealing of Convictions

➤ Process:

- Petition filed in the Circuit Court
- Copy of petition to the Commonwealth's Attorney
- Court conducts hearing (may grant without hearing if Commonwealth's Attorney concurs)
- Circuit Court Clerk sends electronic order to VSP
- VSP notifies other agencies and seals records



Expungement of Marijuana Convictions

- Automatic and petition-based expungement processes for certain marijuana convictions and deferred dismissals were created during the 2021 Special Session I as part of the legislation to legalize the possession and sale of marijuana (HB2312/SB1406)
- The new expungement processes take effect on July 1, 2025, or earlier if possible



Expungement of Marijuana Convictions

- Expungement defined:
 - “...to remove, in accordance with a court order, a criminal history record or a portion of a record from public inspection or normal access”

- Expungement procedures:
 - Criminal history information records are removed from the CCRE and court records are physically sealed and later destroyed



Automatic Expungement of Marijuana Convictions

- Eligible offenses:
 - Misdemeanor possession and distribution of marijuana

- Criteria:
 - No waiting period or good behavior provisions

- Process:
 - Same as automatic sealing



Petition-Based Expungement of Marijuana Convictions

- Eligible offenses:
 - Misdemeanor distribution of drug paraphernalia (marijuana-related)
 - Felony distribution of marijuana (subject to reenactment in 2022)

- Criteria:
 - Manifest injustice to the petitioner

- Process:
 - Tracks current expungement process



Records Dissemination

- Sealed and expunged marijuana criminal history record information can be disseminated and used for 25 specific purposes
- Such records can be disseminated to and used by “*the Virginia Criminal Sentencing Commission for its research purposes*”
 - Sealed electronic court records may be provided to the VCSC without a court order



Unauthorized Records Dissemination

- Sealed records:
 - Class 1 misdemeanor: willful violation
 - Class 6 felony: malicious and intentional violation

- Expunged marijuana records:
 - Class 1 misdemeanor: willful disclosure of an expunged record
 - Class 2 misdemeanor: willful disclosure of an automatic expungement order



Continuing Study

- The Crime Commission is continuing to examine various aspects of the expungement and sealing processes:
 - Interplay between expungement and sealing
 - Permissible uses of criminal history record information and court records



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