

Expunge & Seal from FDLE FAQ

1. How do I have a criminal history record sealed or expunged?

Florida Statutes, s.943.0585 and s.943.059, set forth the criteria that must be met in order to be eligible to have **an adult** criminal history record sealed or expunged. In addition, these statutes also state that in order to have a criminal history record sealed or expunged within the State of Florida, an individual must first make application to the FDLE for a Certificate of Eligibility. Please note that the issuance of a Certificate of Eligibility does not mean that your criminal history record will be ordered sealed or expunged. It merely indicates that you are statutorily eligible for the type of relief that is being requested. **The criminal history record of a minor may also be eligible for other forms of expunction, as noted at Question No. 14, below.**

2. Where can I find the application for Certification of Eligibility?

The FDLE provides applications for Certification of Eligibility to the Clerk of Courts in all sixty-seven (67) counties throughout the State of Florida. These application packages may be obtained from the criminal division within each county courthouse. Please contact your local county Clerk's office for additional information. If you reside outside the State of Florida, you may request that an application package be mailed to you.

3. Why do I have a criminal history record when the charges against me were dropped/dismissed?

The Florida Legislature has determined that Florida criminal history records are public unless the record is sealed or expunged. See Section 943.053(3), Florida Statutes, which provides for public access to criminal history records. The term "criminal history information" is defined, tracking the federal definition, at Section 943.045(4), Florida Statutes. A criminal history record is created when a person is arrested and fingerprinted, and includes the disposition of that arrest, whether it is a conviction, acquittal, dismissal of charges before trial, or other disposition.

4. Should I obtain a copy of my criminal history record prior to applying for a Certificate of Eligibility?

Under Florida and federal law, an individual has the right to request a copy of his or her criminal history record for purposes of review, to ensure that it is both accurate and complete. This process is known as a Personal Review. The requestor may examine the record obtained through Personal Review for accuracy and to challenge any information contained within the criminal history record that the record subject believes is inaccurate or incomplete. No charge is assessed by FDLE for this service. See s.943.056, Florida Statutes. A Personal Review allows an individual to determine which, if any, date(s) of arrest the applicant will be eligible to have sealed or expunged. However, obtaining a personal review is not a prerequisite to applying for a certificate of eligibility to seal or expunge a criminal history record.

5. What is the difference between having a criminal history record sealed vs. expunged?

When a criminal history record is sealed, the public will not have access to it. Certain governmental or related entities, primarily those listed in s. 943.059(4)(a), Florida Statutes, have access to sealed record information in its entirety.

When a record has been expunged, those entities which would have access to a sealed record will be informed that the subject of the record has had a record expunged, but would not have access to the record itself without a court order. All they would receive is a caveat statement indicating that "Criminal Information has been Expunged from this Record".

6. When is my criminal history record sealed or expunged?

Once an order has been issued by the court of competent jurisdiction to seal or expunge your criminal history record and a certified copy of this order has been received by the FDLE, it will be complied with in accordance with state statutes.

7. How many dates of arrest can I have sealed or expunged?

The eligibility criteria for an applicant to have a record sealed or expunged include the requirement that the applicant be able to attest that he or she has never previously had a record sealed or expunged in Florida or in another jurisdiction. This means, in effect, that a person may only seal or expunge one arrest record in one proceeding. More than one record may be sealed or expunged in the same proceeding if the court, in its sole discretion, finds the arrests to be directly related.

A record that is initially ineligible for expunction (e.g., where adjudication is withheld) may become eligible after it has been sealed for 10 years. However, a person may not seal or expunge one arrest record and then, later and in a different proceeding, ask to have a different arrest record sealed or expunged. An expunction or sealing which occurs automatically or by operation of law, without any action on the part of the record subject, is not considered a prior expunction or sealing for this purpose. By law, s. 943.0582(8), Florida Statutes, a juvenile diversion expunge does not prevent the record subject from seeking a judicial expunction or sealing under s. 943.0585 or s. 943.059, Florida Statutes.

8. What charges may not be sealed?

A list of charges that may not be sealed when adjudication is withheld is included with the application package, and is also enumerated in s. 943.059, Florida Statutes. (The same listing is found in s. 943.0585, because the specified offenses may not be expunged either.) In addition, if a person has been adjudicated guilty of any criminal offense in any jurisdiction (or adjudicated delinquent for any felony or for certain specified misdemeanors), whether or not related to the charge(s) that the person is applying for, the record is ineligible for sealing and the application will be denied.

9. What charges may be expunged?

The same eligibility requirements which apply to sealing also apply to expunction, with certain additional requirements. Any charge, which resulted in a withholding of adjudication or in an acquittal (not guilty verdict) after trial, may not be expunged unless and until it has first been sealed for at least 10 years. See s. 943.0585(2)(h), Florida Statutes. A charge which was dismissed before trial (e.g., no information, nolle prosequi, no bill, etc.) may be expunged immediately provided all charges related to the arrest were so disposed of, and the record is otherwise eligible.

10. Can I appeal the denial of my application for a Certificate of Eligibility to seal or expunge my criminal history record?

If you believe that the denial of your application for Certification of Eligibility is in error, you may ask that the denial be reviewed. If the denial is based on information in your criminal history record that is believed to be in error or incomplete, the procedure for reviewing and correcting that record is given in Rule 11C-8.001, Florida Administrative Code. If you agree that the criminal history information is correct, but believe that the law has been incorrectly applied or interpreted in your case, you may appeal the decision of the FDLE. The appeal of a denial is to be handled within the court of competent jurisdiction.

11. If I receive a full pardon can I have my criminal history record sealed or expunged?

Unless the pardon indicates on its face that it entitles the record subject to seal or expunge his or her criminal history record, the granting of a full pardon does not remove any condition of ineligibility for sealing or expunging a criminal history record imposed by the disposition of the pardoned offense. See **R.J.L. v. State**, 887 So.2d 1268 (Fla. 2004).

12. If I receive clemency, will my record be automatically expunged?

No. Neither a full pardon, nor any other type of clemency, will automatically expunge or facilitate the expungement of your criminal record. You should contact the Florida Department of Law Enforcement at seal-expunge@fdle.state.fl.us for information on the expungement or sealing of records.

13. If I have my civil rights restored, will my criminal history record disappear?

No. In order to have your civil rights restored you had to have been convicted (adjudicated guilty) of a felony that was the basis for your loss of civil rights. Persons who have been convicted (adjudicated guilty) of a felony are not eligible for a seal or expunge of their criminal history under Florida law,

regardless of whether their civil rights have been restored.

14. Do I have to apply for a Certificate of Eligibility to have my juvenile criminal history record sealed or expunged?

The following considerations are relevant to the decision whether to seek the judicial sealing or expunction of a juvenile criminal history record. Prior to October 1, 1994, juvenile arrest records were not maintained by FDLE in the criminal history record system. Juvenile arrests for felonies prior to October 1, 1994, and juvenile arrests for misdemeanors prior to July 1, 1996, are not available to the general public unless the juvenile was treated as an adult. Juvenile records are subject to an abbreviated retention schedule, if certain qualifications are met, which results in the automatic expunction of the record after a specified period, under s. 943.0515, Florida Statutes. Juvenile defendants who successfully complete a qualified diversion program, as set out in s. 943.0582, Florida Statutes, may be eligible for expunction of their record as the term is defined therein. If a person wishes to pursue the judicial sealing or expunction of his or her juvenile record, the eligibility criteria and procedure, which are similar to those for adults, are found in s. 943.059 and s. 943.0585, Florida Statutes.

15. If I have a criminal history record sealed or expunged in another state or jurisdiction, am I still eligible to have a criminal history record sealed or expunged within the State of Florida?

Yes - Effective July 1, 2013, a previous seal or expunction of a criminal record in a jurisdiction outside the state of Florida will not disqualify an applicant to seal or expunge a Florida criminal history record.

16. How long does it typically take to receive a response from my application for a Certificate of Eligibility?

The current processing time is ninety (90) working days or less from the date the application is received, processed, and mailed back to the customer.

Special Note: If the application is not complete at the time of submission the application will be returned. This will cause the application process to be delayed beyond the ninety (90) working day period.

17. If I had a criminal history record sealed or expunged, and then had it vacated, could I apply to have a new date of arrest sealed or expunged?

As s. 943.0585(2)(f) and s. 943.059(2)(e), Florida Statutes require that an applicant have never secured a prior sealing or expunction of a criminal history record under current or former law, having an earlier seal or expunge order vacated does not remove this disqualification.

18. Will FDLE notify the agencies involved with my case that the record has been sealed or expunged?

If the record is eligible and the court grants relief, FDLE will comply with the certified court order and seal or expunge the appropriate criminal history record. Once FDLE seals or expunges the criminal history record, a notification letter will be sent by FDLE to the arresting agency or agencies involved with your case. The notification letter is to inform the agencies that FDLE has received and has complied with the order in accordance with the seal or expunge statutes.

19. What type of background check is conducted by FDLE to determine my eligibility to have a criminal history record sealed or expunged?

FDLE conducts criminal history record checks in Florida through the Florida Crime Information Center (FCIC), national record checks through the National Crime Information Center (NCIC), local Court databases, and driving history checks through the Florida Department of Highway Safety and Motor Vehicles (DHSMV). These databases are utilized to determine the eligibility of an individual to have a criminal history record sealed or expunged.

20. Why is the Florida Department of Highway Safety and Motor Vehicles checked to determine my eligibility to have my criminal history record sealed or expunged?

A criminal offense such as DUI, Driving While License Suspended/canceled/revoked, or reckless driving may appear in the DHSMV database even though it may not be entered in the criminal history record system maintained by FDLE. Although non-criminal traffic offenses (such as careless driving) have no affect on eligibility to seal or expunge a criminal history record, an adjudication of guilty for any criminal offense renders the record ineligible for either form of relief.

21. Who should receive a copy of the order to seal or expunge a criminal history record?

If the record is eligible and the court grants relief, the Clerk of the Court by statute is responsible to certify a copy of the court order to the State Attorney's Office or the Statewide Prosecutors Office and the arresting agency or agencies. The arresting agency is then responsible for sending a certified copy of the court order to all agencies that are known to have received the criminal history information. In addition to FDLE, these agencies may include the Department of Corrections, Teen Courts, and Department of Juvenile Justice.

22. What do I do with my Certificate of Eligibility?

Once FDLE has issued the Certificate of Eligibility to seal or expunge a criminal history record, the next step is to file a petition for relief, along with the Certificate of Eligibility and the required affidavit, in the court in the county of the arrest. The issuance of the Certificate of Eligibility is not the

final step in the Sealing/Expunction process, nor does it guarantee that a criminal history record will be sealed or expunged. The final decision to Seal/Expunge your criminal history is placed by law in the sound discretion of the court.

23. What information is required to complete the application for Certification of Eligibility?

In order to obtain a Certificate of Eligibility to petition the court to seal or expunge a criminal history record, the following requirements must be met pursuant to s.943.0585(2) and s.943.059(2), Florida Statutes:

- A. Section A of the application must be completed and signed in the presence of a notary public.
- B. The applicant must be fingerprinted by authorized law enforcement personnel or a criminal justice agency. The fingerprint card must include the applicant's name, race, sex, date of birth, social security number, and signature, prior to submission to FDLE.
- C. The applicant must provide a certified disposition of the case that he/she is applying to have sealed or expunged.
- D. A NONREFUNDABLE money order or cashier's check for \$75.00 made payable to the FDLE must accompany the application.
- E. If you are requesting an expunction of a criminal history record, the State Attorney or Statewide Prosecutor with jurisdiction over your case must complete Section B of the application. (If not completed, the application will be processed as a sealing of your criminal history record).

*Special Note: All of the items listed above are required at the time that the application is submitted. If an item is missing or the application or fingerprint card is not completed, the application will be returned unprocessed.