

Expungement Eligibility Determination Guide

Eligibility Determination for §16-802 ACTUAL INNOCENCE ANALYSIS FOR ALL CASES

- (1) Was the client convicted in the case?
 - a. Yes → **This case is NOT ELIGIBLE under 16-802**
 - b. No → go to (2)
- (2) Has it been more than 4 years since the termination of the case?
 - a. Yes → **This case is ELIGIBLE UNDER 16-802 if the client can prove that he or she is innocent**
 - i. The burden of proof is clear and convincing evidence
 - b. No → **This case is ELIGIBLE under 16-802 if the client can prove that he or she is innocent**
 - i. The burden of proof is preponderance of the evidence

Cheat Sheet for §16-803 Interest of Justice Analysis for FELONY Cases

- (1) Is it a felony other than a BRA?
 - a. If yes, go to (2)
 - b. If no, use the 16-803 analysis for *ineligible* misdemeanors (if it is a non-conviction) and the 16-803 analysis for *eligible* misdemeanors (if it is a conviction)
- (2) Is it a conviction?
 - a. Yes → **NOT ELIGIBLE** under 16-803 (felony convictions other than for BRA are never eligible)
 - b. No → go to (3)
- (3) Was the case papered?
 - a. Yes → go to (4)
 - b. No → go to (5)
- (4) Has it been 4 years since the client has been off papers in this case?
 - a. Yes → go to (6)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (5) Has it been 3 years since the client has been off papers in this case?
 - a. Yes → go to (6)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (6) Has it been 5 years since the client has been off papers for *any* misdemeanor conviction (other than for a minor offense listed in §16-801(10)), 10 years since the client has been off papers for *any* felony conviction, and does the client not have any pending cases (other than for a minor offense listed in §16-801(10))?
 - a. Yes → **ELIGIBLE** under 16-803

No → **NOT YET ELIGIBLE** under 16-803

Expungement Eligibility Determination Guide

§16-803 Interest of Justice Analysis for MISDEMEANOR Cases

- (1) Is it at an “ineligible” misdemeanor under §16-801(9)
 - a. If yes, go to (2)
 - b. If no, go to (3)
- (2) Is it a conviction?
 - a. Yes → **INELIGIBLE** under 16-803
 - b. No → go to (5)
- (3) Is it a conviction?
 - a. Yes → go to (11)
 - b. No → go to (4)
- (4) Has it been 2 years since the case was terminated?
 - a. Yes → go to (8)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (5) Was the case papered?
 - a. Yes → go to (6)
 - b. No → go to (7)
- (6) Has it been 4 years since the client has been off papers in this case?
 - a. Yes → go to (8)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (7) Has it been 3 years since the client has been off papers in this case?
 - a. Yes → go to (8)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (8) Has it been 5 years since the client has been off papers for *any* misdemeanor conviction, 10 years since the client has been off papers for *any* felony conviction, and does the client not have any pending cases (other than a minor offense listed in 16-801(10))?
 - a. Yes → go to (9)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (9) Did client successfully complete a deferred sentencing agreement (DSA) in this case?
 - a. Yes → go to (10)
 - b. No → **ELIGIBLE** under 16-803
- (10) Was client ever convicted of any offense (other than a minor offense as defined in §16-801(10)) after this case or ever been convicted of an ineligible misdemeanor or felony other than a BRA?
 - a. Yes → **NOT ELIGIBLE** under 16-803
 - b. No → **ELIGIBLE** under 16-803
- (11) Has client ever been convicted of any offense (other than a minor offense as defined in §16-801(10)) after this conviction or ever been convicted of an ineligible misdemeanor or felony other than a BRA?
 - a. Yes → **NOT ELIGIBLE** under 16-803
 - b. No → go to (12)
- (12) Has the client ever been convicted of felony BRA?
 - a. No → go to (14)
 - b. Yes → go to (13)
- (13) Has it been 10 years since the client has been off papers in the felony BRA case?

Expungement Eligibility Determination Guide

- a. Yes → go to (14)
 - b. No → **NOT YET ELIGIBLE** under 16-803
- (14) Does the client have any pending cases (other than for minor offenses in §16-801(10))?
- a. Yes → **NOT YET ELIGIBLE** under 16-803
 - b. No → go to (15)
- (15) Has it been 8 years since the client has been off papers in this case?
- a. Yes → **ELIGIBLE** under 16-803
 - b. No → **NOT YET ELIGIBLE** under 16-803