

# Expungement FAQs

## **What offenses will the state expunge?**

The state will expunge qualifying crimes committed in Vermont from your state record.

### Qualifying Crimes

1. Most misdemeanors (see below for exceptions)
2. Four types of felony offenses: Felony Burglary (not in a home), Grand Larceny, Prescription Fraud, and Criminal Mischief

### NON-Qualifying Crimes

1. Violent or sex offense misdemeanors:
  - a. A crime listed in 13 V.S.A 5301 (7) [see handout].
  - b. An offense involving sexual exploitation of children.
  - c. An offense involving the violation of a protection order.
  - d. An offense involving prostitution or lewd behavior [see handout].
  - e. A “predicate” offense [see handout].
2. Most felony offenses (except the four listed above).
3. Traffic-related offenses like DUIs.

## **What are the eligibility requirements for expungement?**

If the State's Attorney “stipulates” or agrees to your expungement, then any qualifying crime can be expunged. If the State's Attorney does not agree to sign off, then it is a “non-stipulated” petition.

### For “non-stipulated” petitions, the court will expunge your **qualifying** crime if:

1. You have no later offenses, and
  - a. 5 years have passed since you completed your sentence, and
  - b. You made all payments
2. You were later convicted of another crime, and
  - a. 10 years have passed since you completed your sentence, and
  - b. You have not been convicted of a misdemeanor in the last 5 years or a felony within the last 7 years, and
  - c. You made all payments
3. Your offense is no longer illegal
  - a. NOTE: if you were convicted for possession of marijuana under one ounce, you must show the court that the amount you possessed was under one ounce by attaching a copy of the police affidavit or document of charges.

## **What about crimes committed by young people?**

The court treats criminal records of crimes committed by people under 21 differently. If you committed a crime before turning 21, you may be eligible to SEAL any record unless at any time you were convicted of a sexual or violent offense as listed in 13 V.S.A. § 5301 (7).

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## Eligibility for sealing crimes committed before turning 21

- I. You may seal any crime committed before turning 21\* if
  - a. 2 years have passed since you completed your sentence, and
  - b. You did not later commit a violent or sex offense listed in 13 V.S.A. § 5301
  - c. You made all payments
  - d. \*The judge will also consider your rehabilitation since the crime when deciding.

## **Will the court seal or expunge dismissed charges?**

Yes. As of July 1, 2018, the court will expunge ALL dismissed charges. This will happen automatically for new charges, but charges from before that date require filing a petition.

## **What is the difference between sealing and expungement?**

### Expungements:

- I. When the court grants an Expungement Order, a person whose record is expunged can legally say they have NEVER been arrested, charged, or convicted of the crime expunged, EXCEPT in immigration processes (see below).
2. An Expungement Order destroys any arrest, charge, or conviction information held by any criminal records archive.
3. No one (the public or in law enforcement) can access the records of criminal justice incidents that have been expunged.

### Sealing:

- I. A Sealing Order has the same effect as an Expungement order: a person whose record is sealed can lawfully say they have NEVER been arrested, charged, or convicted of the crime expunged.
2. BUT, when a record is sealed, it is maintained by the courts and law enforcement and can be used by law enforcement for any purpose.

## **Does expungement help the immigration process?**

No. Expunging a conviction does not eliminate the conviction for immigration purposes. Furthermore, when seeking an immigration benefit, the applicant must prove that they are eligible for that benefit and not subject to negative immigration consequences because of arrests or convictions. For example, when applying for citizenship, applicants must prove they meet the 5 years' "good moral character" requirement. If applicants expunge their records, (1) they cannot claim on their application they were never arrested or convicted; and (2) they have to prove that they meet the good moral character requirement. If records have been expunged or destroyed, proof of eligibility is made unavailable.

Non-citizens considering having their records sealed or expunged should first consult with an immigration attorney and should always obtain multiple certified copies of their records before having them expunged permanently or sealed.

## **How can I get an expungement?**

It is possible to file a petition for expungement with an attorney or on your own. In either case, it is important to first review the information above to determine if your crime qualifies for expungement and if you meet the eligibility requirements.

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## With an attorney

1. Review the qualifying crimes and eligibility requirements and determine if your offense(s) can be sealed or expunged.
2. Call Vermont Legal Aid to find out when and where the next expungement clinic will be and make an appointment. The phone number is 802-424-4701.
3. Attend the clinic
  - a. Fill out an intake form.
  - b. Review your record with an advocate/lawyer.
  - c. Complete the petition.
  - d. Get the State's Attorney's signature for a "stipulated" petition.
  - e. Pay the \$90 filing fee or complete a fee waiver [see below for more information].
4. If the clinic is not held in a courthouse, Vermont Legal Aid will file the petition with the court

## On your own (without an attorney)

1. Fill out a petition form provided by the court clerks or the Vermont Judiciary website
2. Pay the \$90 filing fee or complete a fee waiver [see below for more information]
3. File the petition with the court
4. \*\*Note: you may want to consult with an attorney to ensure that your conviction is eligible for expungement. **If your petition is declined, you will have to wait 2 years from the date you filed it before you may file again.**

## **Is there a fee to file an expungement or seal a record?**

Yes. You will need to pay \$90 per "incident" or docket, unless you are eligible for a fee waiver. You can get the fee waiver form online at the Vermont Judiciary website or from a court clerk. You are eligible for a fee waiver if your income is under 150% of the poverty line.

2018 Poverty Guidelines		
Persons in Household	48 Contiguous States and D.C.	
	100%	150%
1	\$12,140	\$18,210
2	\$16,460	\$24,690
3	\$20,780	\$31,170
4	\$25,100	\$37,650
5	\$29,420	\$44,130
6	\$33,740	\$50,610
7	\$38,060	\$57,090
8	\$42,380	\$63,570
Add \$4,320 for each person after 8		

Source:

<https://www.federalregister.gov/documents/2018/01/18/2018-00814/annual-update-of-the-hhs-poverty-guidelines>

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**If I cannot expunge or seal some of my records, what are my other options?**

A Governor's Pardon

1. You can consider applying for a governor's pardon.
2. The form is available on the governor's website and Vermont Legal Aid can help you submit the application.

Petition for Relief

1. If a state agency or institution denies you an opportunity because of a criminal record, you may be able to request relief from the court under the Collateral Consequence of Conviction law.
2. Contact Vermont Legal Aid for more information and assistance.