

THE LAW FIRM OF SUSAN F. FREMIT, P.C.

9130 Courthouse Road, Spotsylvania, VA 22553
Tel: (540) 322-2594

2111 Wilson Blvd., Suite 700, Arlington, VA, 22201
Tel: (703) 666-9263

The FAQs about an Expungement in Virginia

Below are some of the most frequently asked questions related to an expungement in Virginia.

- 1. Why would I want an expungement?** In Virginia, a conviction for any misdemeanor or felony criminal offense, such as assault, drug possession, DWI/DUI, reckless driving, etc., results in a **record for life**. However, under certain circumstances, these records can be “sealed” through a legal process called a criminal record expungement.
- 2. How is an expungement obtained?** An expungement can only be obtained if you are found **not guilty** by the court (dismissal); the charges are **withdrawn** (nolle prosequi) by the Court on a motion by the Commonwealth; an individual’s name is used in error; or an individual obtained an absolute pardon from a Virginia Governor.
- 3. What is an expungement?** A criminal record [expungement](#) is an action used to delete all police and court records, including electronic records, for a specific criminal case. While an expungement removes these records from public access, they are **not actually destroyed** and can be accessed by court order.
- 4. What are the necessary steps I need to take in order to get my record sealed to find a decent career?** If you were found not guilty after trial or the charge was nolle prosequi’d (dismissed), you can **bring an application for expungement** in the Circuit Court of the county where the charge originated. The form is on the VA courts website; however, like many procedures in criminal law, you would likely be more successful if you retain a local experienced criminal defense attorney to help you because expungement is not automatic, simply because you were not found guilty of the charge. Also, you will need to prove that this conviction is in fact impeding you from finding a decent career.
- 5. How can I get a copy of my expunged record?** Frequently, attorneys will obtain a **copy of the court documents** for a client’s file. Contact him or her to see if that was done.
- 6. I was charged with drunk in public yesterday. Will it show up in my record?** A charge will always show up on your record unless you get it expunged. You can only get it expunged if you go to trial and the judge finds you **not guilty and dismisses the charge or if no finding is found at all** (which generally means no “first offender program” since those usually involve a finding of facts sufficient for guilt) and the charge is dismissed.
- 7. I was charged but not convicted of misdemeanor assault and battery over 8 years ago, which has made it challenging to find employment. Is there anything I can do?** You can write to the County Clerk’s office and request a copy of the court document, which charged you with the assault and battery. If the **boxes indicating “guilty” or “facts sufficient” have not been check marked**, you have a reasonable chance to get the charge expunged. Once you obtain a copy of the court document, set up an appointment with a local criminal defense attorney to see if it is possible to have the charge expunged, which will involve an application to Circuit Court.
- 8. I was found guilty with first class misdemeanor, my jail time was suspended and I have completed my probation. Am I eligible to have the conviction expunged because it’s been over one year?** Unfortunately, regardless of the amount of time you have demonstrated good behavior, you can **never expunge a charge** after

being found guilty in Virginia.

9. **I was found guilty of not properly stopping at stop sign and I have 5+ points on my driving record. How do I get my driving record and points expunged?** Virginia driving records only note convictions for the past 11 years. A driver point balance of 5+ is a “perfect” record. You cannot expunge your driving record, but as long as you don’t accumulate additional points, they will gradually be reduced by **one point each year that you maintain a clean driving record.**
10. **I had a speeding citation five years ago, which has since been removed from my driving records but my employer found it on the County’s website. How do I get the County to take the record down?** In Virginia, even **citations will stay on your record for life.** You cannot get the county to take it off the public website and it could stay there for 10 years or more. Your best option is to contact an experienced local traffic attorney to see if something else can be done about this.
11. **If I took a plea bargain for petit larceny to avoid a harsher charge. Will the details show up if my employer looks into it, since I cannot get it expunged?** You can personally go to the court clerk’s office where you entered your plea to **obtain a copy of your court document** or you can write to them and ask for a copy. If an employer obtains a copy of your court document (and it is a public document), the fact that you served a 5 days jail sentence may send a signal that this was no simple petit larceny.
12. **I was convicted of embezzlement over 22 years ago. I received a Restoration of Rights and a simple pardon from the Governor; however, all the background check databases still show my previous record. What can I do to remove it from the databases?** Unfortunately, unlike some other states, Virginia does not permit expungements of convictions, so background database checks will continue to show your previous record, and any additional convictions you receive in the future. To **combat the inability to expunge your record**, you took the right steps in receiving a simple pardon, which is designed to reduce the conviction’s negative impact on obtaining future employment.
13. **I was charged with a felony drug offense and my sentence was deferred for three years. Now that the charge has been dismissed, can I get it expunged?** You cannot obtain an expungement if the Court found **facts sufficient to support a finding of guilt.** However, you can obtain a copy of the Court order in your case by going to the Circuit Court clerk’s office in the county where the charge was dismissed. Take that document to a local criminal defense attorney to see if you qualify for an expungement.
14. **I had a DUI charge which was amended to reckless driving. Can I get the DUI charge expunged?** Since reckless driving is **not a lesser included offense** of a DUI offense, it is very possible that you qualify to get it expunged, unless a term of negotiation was you giving up your right to expunge that charge. Check with the attorney who represented you on the DUI.
15. **I was charged with assault and battery but it was dismissed on the basis of a satisfaction and accord. Can I get the charge expunged?** In all likelihood, you **did not enter a guilty plea** to the charge, **nor were you found guilty.** If the Court simply dismissed the charge, you qualify for an expungement.
16. **From everything I have read, I can get my charge expunged but that it is not automatic. Is that true?** Expungements are **not automatic.** The applicant must show that the charge itself constitutes a “manifest injustice” [(Dressner v. Commonwealth, 285 Va.1 (2013))].

This Sheet does not constitute legal advice and is meant for information purposes only. Information provided is current as of April 2016 and is subject to legislative change at any time. The author of this Guide is not responsible for providing updates when legislative changes occur.