

The Advocacy Foundation, Inc.

Preparing Individuals, Organizations and Communities to Achieve Their Full Potential



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Expungement and Pardons

Eligibility | Application Process | HB 402

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Isaiah 55: 7 (NIV)

⁷Let the wicked forsake their ways, and the unrighteous their thoughts. Let them turn to the LORD, and he will have mercy on them, and to our God, for he will freely pardon.

Romans 3: 23-24

²³for all have sinned and fall short of the glory of God, ²⁴and all are justified freely by his grace through the redemption that came by Christ Jesus.

Introduction

In the common law system, an expungement proceeding is a type of lawsuit in which a first time offender of a prior criminal conviction seeks that the record(s) be sealed, thereby making them unavailable through State or Federal repositories. Where successful, the records are said to be "expunged".

Black's Law Dictionary defines "expungement of record" as the "Process by which [a] record of criminal conviction is destroyed or sealed from the State or Federal repository."

While expungement deals with an underlying *criminal* record, it is a *civil* action in which the petitioner, or plaintiff, is asking a court to declare that the records be expunged.

Eligibility for Expungement

In the US, criminal records may be expunged, though eligibility criteria varies by state. Several types of offenses may be expunged, including felonies. Once sealed or expunged, all records of an arrest and/or subsequent court case are removed from the *public* record, and the individual may legally deny or fail to acknowledge ever having been arrested for or charged with any crime which has been expunged. When applying for a state professional license or job that is considered a public office or high security position (such as security guard, law enforcement, or related to national security), however, you must confess that you have an expunged conviction or else be denied clearance by the DOJ. There is no *post-conviction* relief available in the *federal* system, other than a presidential pardon.

Application Process

Each state sets its own guidelines for what records can be expunged, or for whether expungements are available at all. The petitioner requesting an expungement of all or part of their record will have to complete forms and instructions to submit to the appropriate authority (arresting agency). The petitioner may choose to hire an attorney to guide them through the process, or he/she can decide to represent themselves.

Most jurisdictions have laws which allow, or even require, the **expungement of juvenile records** once the juvenile reaches a certain age. In some cases, the records are destroyed; sometimes they are "sealed." The purpose of these laws is to allow a minor accused of criminal, or "delinquent acts", to erase the record, typically at the age of 17 or 18. The idea is to allow the juvenile offender to enter adulthood with a "clean slate," shielding him or her from the negative effects of having a criminal record.

O.C.G.A. § 35-3-37

Formerly HB 402²⁰¹¹

O.C.G.A. § 35-3-37, formerly HB 402²⁰¹¹ is an expungement law in Georgia that enlarges the pool of people eligible for expungement of their criminal record(s). Prior to its revision, nothing automatically "fell off" your criminal record at the state level. Defendants were ineligible for expungement if there was a guilty plea to *any* charge after arrest, even if the charges were dismissed or the defendant was found "not guilty", unless s/he had the permission of the prosecuting attorney.

The new statute eliminated the expungement application "process" in some cases, making it automatic for those who were wrongfully accused of a crime to seal the arrest on their record, and thereby keeping it from negatively affecting their job and school prospects. It also guarantees that the arrest record and disposition record are *automatically* sealed in any case that does not involve a conviction, and it allows for expungement of misdemeanor convictions upon showing of a hardship due to the criminal history.

Next Issue: Pardons

Always feel welcome to contact me directly with any questions, comments, or great ideas!

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ADVOCACY
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*Helping Individuals, Organizations & Communities
Achieve Their Full Potential*

Our Mission

The Mission of The Advocacy Foundation
is Threefold:

To Rescue

Young persons from the prison pipeline
and help redirect and restore their lives;

To Teach

New and fledgling nonprofit organizations to become
fundable, to thrive, and to maintain compliance;

To Train

Qualified Juvenile Justice Professionals with a passion
for effective careers in the Juvenile Justice system.

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