

# FAQs: Sealing & Expunging Criminal History Records in Florida

## FEW PEOPLE QUALIFY TO HAVE RECORDS SEALED OR EXPUNGED

### 1. What is the benefit of having my record sealed or expunged?

According to Florida law, you can legally deny or fail to acknowledge the arrests covered by the sealed or expunged record. **However, YOU CANNOT DENY OR FAIL TO ACKNOWLEDGE THE ARREST** if you are applying to change your immigration status, are a defendant in a criminal case or are seeking:

- Employment with a criminal justice agency;
- Employment or contract with, or license by the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
- Employment or use by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly;
- Employment or access to a seaport;
- Admission to The Florida Bar; or petitioning to seal or expunge.

**CAUTION:** Sealing or expunging your record in Florida will have **no** impact on private company or federal databases. Even if criminal history information is sealed or expunged, it may still be available through private companies that purchase such information from the State and counties. Therefore, employers and the general public may have access to it. Your information may have also been submitted to the national criminal history database by Florida Department of Law Enforcement. Effective July 1, 2006, all Florida judges will have online access to view sealed records.

### 2. Generally speaking, who qualifies for sealing or expunging?

A person who has NOT been adjudicated guilty (convicted) as an adult, and has not previously sealed or expunged may qualify, but there are many exceptions, see answers to number 3 and 6. Under s. 943.0515, Florida has automatic expunction of a juvenile record, at age 24 or 26, depending on prior history and arrest or conviction as an adult; expunction by petition of some misdemeanors after successful completion of pre- or post-arrest or teen court diversion program under s. 943.0582; and, expunction of an arrest record under s. 943.0581, for persons who have been arrested “contrary to law or by mistake.”

### 3. What would disqualify me from having my record sealed or expunged?

- If you have been **adjudicated guilty (convicted as an adult)** of a criminal offense, including a criminal traffic offense (e.g., DUI, DWLS), criminal ordinance violation, misdemeanor or felony.
- If you were **adjudicated delinquent (as a juvenile) on charges of:** assault; battery; petit theft; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified personnel; cruelty to animals; arson; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property.
- If you were adjudicated guilty (convicted as an adult) or adjudicated delinquent (as a juvenile) for the offense you seek to seal or expunge;
- If you were placed on probation or community control, but later violated the terms of your sentence and the judge converted the “withhold” to an “adjudication.”
- If you were found guilty, pled guilty or no contest and have a “withhold of adjudication” on certain offenses, even as a minor. See list of the disqualifying offenses in question number 6.
- If you ever had a prior record sealed or expunged in any jurisdiction (even in another state). Automatic expunction of juvenile records, expunction of records (pre and post arrest diversion), and expunction of arrest “contrary to law or by mistake” do not count as a prior expunged record.
- If you have a seal or expunge petition currently pending in another case.
- If you have an open criminal case, are on probation or community control, owe community service hours or have an unsatisfied court-ordered financial obligation such as court costs or restitution.

**4. I have been arrested several times but have never been convicted of a crime or pled guilty or no contest, can I have all the arrest records sealed?**

No. Floridians are at a disadvantage in this respect. For purposes of sealing and expunging, Florida does not honor the concept of “innocent until proven guilty.” Even if you have been acquitted by a jury of the crimes charged (found not guilty), in Florida, you can only petition once to seal or expunge in your lifetime unless the court decides that an additional arrest is directly related to the original arrest.

**5. What is the difference between sealing and expunging a criminal history record? See sections 943.0585 and 943.059, Florida Statutes (2005).**

- When a record is sealed, the public will not have access to it through the government databases. That means most employers will not have access to the information. However, city, county, state and federal government and agencies, including the police and military, have a legal right to access criminal history records even if they are sealed. See “**CAUTION**” above.
- When a record is expunged, agencies that would have access to a sealed record will be able to know that criminal information has been expunged from the record, and would only have access to the record through a court order. See “**CAUTION**” above.

**6. The judge gave me a “withhold of adjudication,” can I seal or expunge my record?**

Not always. If you pled guilty or no contest or were found guilty at trial as a juvenile or adult, and the judge entered a withhold of adjudication on the charge to any of the charges below (including attempting or conspiring to commit them), you will not be able to seal or expunge it.

- Abuse or aggravated abuse of an elderly person or disabled adult;
- Act of domestic violence as defined in s. 741.28, Florida Statutes;
- Aggravated assault/aggravated battery; Arson; Burglary of a dwelling; Carjacking;
- Child abuse or aggravated child abuse; Computer pornography involving a child; Drug Trafficking;
- Hijacking; Home invasion robbery; Homicide; Illegal use of explosives; Kidnapping; Lewd, lascivious, or indecent assault or act upon or in the presence of a child; Manslaughter;
- Offenses by public officers and employees; Organized fraud; Robbery;
- Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority; Sexual battery, Stalking and aggravated stalking; Use of a child in a sexual performance;
- Promoting a sexual performance by a child; Possession with the intent to promote any photograph, motion picture, exhibition, show, representation, or presentation, which includes sexual conduct by a child; Possession of a photograph, motion picture, exhibition, show, representation, or presentation, which includes sexual conduct by a child; and, Voyeurism.

**7. What can I do about my juvenile charges?**

For juvenile offenses, Florida has automatic expunction (s. 943.0515) of a juvenile record, at age 24 or 26, depending on prior history and arrest or conviction as an adult; expunction by petition of some misdemeanors after successful completion of pre- or post-arrest or teen court diversion program under s. 943.0582; and, expunction of an arrest record under s. 943.0581, for persons who have been arrested “contrary to law or by mistake.”

**Important Note:** If you have been convicted of a felony and want to have your civil rights restored, including the right to vote, you will need to apply for clemency. Unless you have been convicted of a felony, you may still have the right to vote in all local, state and federal elections in Florida even if you cannot seal or expunge your criminal record.

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