VIRGINIA STATE CRIME COMMISSION

Expungement and Sealing of Criminal Records

2020 ANNUAL REPORT

EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

EXECUTIVE SUMMARY

During the 2020 Regular Session of the General Assembly, numerous bills related to criminal conviction relief were referred to the Crime Commission.[1] The Executive Committee of the Crime Commission directed staff to conduct a review of expungement in Virginia and of criminal conviction relief in other states, with a particular focus on the automatic sealing of criminal charges and convictions.

Criminal conviction relief refers to the practice of either removing or limiting access to certain charges or convictions on a person's criminal record. The two most common forms of criminal conviction relief in the United States are sealing and expungement. Sealing is generally defined as preventing access to a record, while expungement is generally defined as erasing or destroying a record. However, these definitions vary considerably by state. In addition, states use a significant array of other terminology to describe their own criminal conviction relief mechanisms. For purposes of this report, unless otherwise noted, the term sealing will be used to describe all criminal conviction relief mechanisms throughout the country.

Various matters intersect when examining criminal conviction relief, such as the collateral consequences of criminal charges and convictions, the disproportionate impact of the criminal justice system on certain racial and ethnic populations, desistance from crime, and redemption time. When examining these intersections, staff found that:

- Criminal charges and convictions can negatively impact a person's life long after they have completed the terms of their sentence;
- Certain racial and ethnic populations are disproportionally represented across the entire criminal justice system;
- Criminal offending varies considerably from individual-to-individual over the course of a lifetime; and,
- If a previously convicted person refrains from further criminal activity, there is a point in time when that person will present no greater threat of committing a new offense than a person with no criminal record.

Criminal conviction relief laws have been proposed as a mechanism to help alleviate the collateral consequences of a criminal record. States generally have two options when implementing criminal conviction relief processes. States can implement a process where an individual must petition a court to have their criminal record sealed (*petition-based*

sealing), or states can create a system whereby an individual's criminal record is automatically sealed at a specified time following the disposition of their case (*automatic sealing*). Both petition-based sealing and automatic sealing require certain conditions to be met before a criminal charge or conviction can be sealed.

Virginia law does not provide a mechanism for criminal conviction relief; however, the Commonwealth does have an expungement process to remove certain charges from criminal history and court records. Virginia's expungement process is petition-based and is only available for charges that did not result in a conviction or a deferred dismissal. Staff identified numerous challenges within Virginia's current expungement process that not only make it difficult to expand the petition-based process, but also act as barriers to implementing an automatic criminal conviction relief process in the Commonwealth. For example, Virginia's expungement process is time and labor intensive, existing electronic records and case management systems are unable to support an automated sealing process, and there is a lack of a uniform standard in regard to which offenses appear on a person's criminal record.

In addition to examining Virginia law, staff conducted a review of various aspects of criminal conviction relief laws across the United States. When reviewing petition-based criminal conviction relief laws for *misdemeanor* convictions, staff found that:

- 41 states allow some misdemeanor convictions to be sealed;
- 11 of these 41 states allow all misdemeanor convictions to be sealed;
- 15 states place no limits on the number of misdemeanor convictions that can be sealed; and,
- The waiting period ranges from the completion of the sentence up to 15 years before a misdemeanor conviction becomes eligible for sealing.

When reviewing petition-based criminal conviction relief laws for *felony* convictions, staff found that:

- 36 states allow some felony convictions to be sealed;
- 16 of these 36 states allow some *violent* felony convictions to be sealed;
- 10 states place no limits on the number of felony convictions that can be sealed; and,
- The waiting period ranges from the completion of the sentence up to 20 years before a felony conviction becomes eligible for sealing.

Staff discovered several significant similarities and differences amongst the criminal conviction relief laws of states with petition-based sealing, including:

- Several states have enacted laws that allow for the sealing of criminal convictions related to specific circumstances, such as sex trafficking, mistaken or stolen identity, marijuana offenses, larceny, and decriminalized offenses;
- Nearly every state excludes convictions for some sex offenses from sealing, and a significant number of states exclude convictions for domestic assault and battery, DUI, and violation of a protective order from sealing;
- The starting point for determining when a conviction is eligible for sealing varies across states;
- States vary on whether restitution must be paid in full before a conviction can be sealed;
- A large majority of states grant courts the discretion to determine whether the requirements for sealing have been met, as opposed to establishing a specific burden of proof for sealing;
- Nearly all states allow individuals to deny that a sealed conviction occurred when applying for employment, while several states address the use of such records by employers; and,
- Every state maintains sealed criminal records for certain specified purposes; however, those purposes vary across states.

When examining automatic sealing laws across the United States, staff found that there are 5 states that have enacted automatic sealing statutes for broad classes of non-convictions and convictions: California, Michigan, New Jersey, Pennsylvania, and Utah. All of these states also have petition-based sealing of non-convictions and convictions. These automatic sealing laws were all enacted in the last few years, with Pennsylvania's automatic sealing legislation being the first in June 2018. It is important to note that Pennsylvania is the only state that has implemented an automated system and has already sealed records of approximately 48 million offenses in over 36 million cases. The remaining states are currently in the process of implementing their automated systems. Furthermore, staff noted that 4 states have enacted more narrow legislation to automatically seal certain minor convictions (Illinois, New York, South Dakota, and Vermont).

Staff also found that the emergence of public and private online criminal record databases has presented a significant challenge to the sealing of criminal records. In the modern information age, criminal records are not only available on state court websites, but are also gathered and distributed by third party vendors who provide background check services to certain entities, such as government agencies and private companies. Additionally, criminal records are often disseminated by news outlets and on social

media, which makes it even more difficult to restrict access to this information. Ten states have enacted legislation to regulate the dissemination of the sealed criminal records by private entities.

Crime Commission members reviewed study findings at the August 31, 2020, Commission meeting. Staff provided Crime Commission members with draft legislation to create an automated process in Virginia to seal criminal history record information and court records for non-convictions, deferred and dismissed charges, and numerous felony and misdemeanor convictions, which was endorsed by the Crime Commission. This legislation was introduced during the 2020 Special Session of the General Assembly (House Bill 5146 - Del. Charniele L. Herring).[2] House Bill 5146 passed the House of Delegates; however, the version of House Bill 5146 that passed the Senate was significantly different because it was conformed to Senate Bill 5043.[3] The bills were sent to a conference committee between the House of Delegates and the Senate where members were unable to resolve the differences. Both bills remained in conference and neither bill was enacted into law by the General Assembly.

During the 2021 Regular Session of the General Assembly, legislation was re-introduced to create an automatic sealing process in Virginia (House Bill 2113 - Del. Charniele L. Herring and Senate Bill 1372 - Sen. L. Louise Lucas).[4] These bills were substantially similar to the version introduced during the 2020 Special Session of the General Assembly; however, the bills included additional language to address the dissemination of criminal and court records by third parties and to provide immunity protections for employers who hire individuals with sealed criminal records. Additionally, legislation was also introduced to create a broad petition-based sealing process and a narrower automatic sealing process (Senate Bill 1339 - Sen. Scott A. Surovell).[5] The Senate Committee on the Judiciary ultimately incorporated Senate Bill 1372 into Senate Bill 1339.

Due to the significant differences between House Bill 2113 and Senate Bill 1339, members of the House of Delegates and the Senate worked with Crime Commission staff in an effort to produce a merged version of the two bills. Compromise legislation was developed that created both an automatic and a petition-based process for the sealing of adult criminal history and court records. Both bills were amended to reflect these compromises and were then passed by the General Assembly and signed into law by the Governor.[6] The enacted legislation addressed seven key measures related to the sealing of criminal history record information and court records in Virginia, including defining the effects of sealing, the creation of both automatic and petition-based sealing processes for certain convictions, establishing waiting periods of 7 years for misdemeanors and 10 years for

felonies before a conviction can be sealed, restrictions on the dissemination and use of sealed records by public and private entities, specific provisions for implementing the new automatic and petition-based sealing processes, and the continued study of the expungement and sealing of criminal records by the Crime Commission.

BACKGROUND

Crime Commission staff engaged in the following activities as part of its study on the expungement and sealing of criminal records both in Virginia and the United States:

- Collected relevant literature and research examining criminal conviction relief and related matters;
- Examined Virginia expungement laws, procedures, and case law;
- Obtained data on the number of expungement orders entered in Virginia annually;
- Conducted a 50 state review of other states' criminal conviction relief statutes, including automatic and petition-based processes;[7]
- Analyzed state and federal laws governing the dissemination of criminal records by third parties;
- Consulted with subject-matter experts, stakeholders, practitioners, and advocates; and,
- Worked with stakeholders to develop a legislative framework for implementing both automatic and petition-based processes for the sealing of criminal history record information and court records in Virginia.

KEY TERMS AND SCOPE OF STUDY

Sealing and expungement are the main terms that describe the various criminal conviction relief mechanisms used across the United States.[8] Sealing is generally defined as preventing access to a record; whereas, expungement is generally defined as erasing or destroying a record.[9] However, states vary substantially in how the terms sealing and expungement are defined in statute. For example, while several states define expungement as "to permanently destroy, delete, or erase a record of an offense from the criminal history record,"[10] other states define expungement as "the sealing of criminal records."[11] Similar contradictions emerge when examining the definition of sealing across state statutes.[12] Additionally, states use other terms beyond sealing and expungement to describe certain criminal conviction relief mechanisms, such as vacatur,[13] set aside,[14] restrict,[15] annulment,[16] order of erasure,[17] order for limited access,[18] and order of non-disclosure.[19] Given the varying terminology used to describe criminal conviction relief

mechanisms across the United States, this report will use the term sealing, unless otherwise indicated, to describe all criminal conviction relief mechanisms used throughout the country.

Additionally, this report will refer to both automatic and petition-based criminal record sealing processes as follows:

- *Automatic sealing* describes the process whereby an individual's criminal record is sealed at a specified time following the disposition of their case, provided that conditions for such automatic sealing have been satisfied.
- *Petition-based sealing* describes the primary sealing process used throughout the United States, whereby an individual petitions a court to have their criminal record sealed, and the court holds a hearing to determine whether to grant or deny the sealing request.

Finally, this report will refer to both non-conviction and conviction records. Within the context of sealing statutes, non-convictions include arrests, as well charges that concluded without a conviction, such as cases that ended with a finding of not guilty, an acquittal, a dismissal, or a *nolle prosequi*.[20] Convictions refer to charges that concluded with a finding of guilt.[21]

OVERVIEW OF RELEVANT LITERATURE AND RESEARCH

Criminal charges and convictions can negatively impact a person's life long after they have completed the terms of their sentence.

Criminal charges and convictions can impose a myriad of collateral consequences on an individual that persist long after that individual is no longer involved in the criminal justice system. The National Inventory of Collateral Consequences of Convictions (NICCC) found that there are over 45,000 federal and state collateral consequences that could potentially stem from a criminal conviction.[22] In Virginia, individuals who are convicted of a felony may face nearly 900 collateral consequences.[23] These collateral consequences can include, but are not limited to, impeding an individual's ability to obtain employment, housing, higher education, financial aid, loan eligibility and credit, and professional licensing.[24] All of these collateral consequences can severely limit an individual's ability to reintegrate back into society following a criminal charge, conviction, or release from incarceration. Additionally, criminal charges and convictions may impose a significant negative social stigma, which serves to amplify the difficulties that individuals face while attempting to rehabilitate their lives.[25]

Certain racial and ethnic populations are disproportionally represented across the entire criminal justice system.

It has been estimated that 78 million Americans, roughly one third of adults in the United States, have a criminal record.[26] In Virginia's Central Criminal Records Exchange (CCRE), there are approximately 2.5 million individuals with a criminal record (arrest and/or conviction).[27] Criminal records have disproportionately impacted certain racial and ethnic populations.[28] Black persons in particular have been disproportionately arrested and incarcerated for crimes as compared to other racial groups at both national and statewide levels. Specifically, when examining the total number of arrests in the United States during 2018, Black persons made up 27% of the arrests despite comprising only 13% of the overall United States population.[29] Furthermore, when examining the racial composition of state and federal prisoners in the United States, 2019 data shows that Black persons comprised 33% of sentenced state prisoners and 37% of sentenced federal prisoners in the United States.[30]

This disproportionate impact is also seen in Virginia, where Black persons comprise close to 20% of the statewide population,[31] but accounted for 42% of the arrests in 2019.[32] Moreover, Black persons comprised 55% of the state responsible offender population in the Commonwealth at the end of FY2019.[33]

In addition, the disproportionate impacts of the criminal justice system reverberate well beyond arrest and incarceration rates. As discussed in the previous section, the collateral consequences of a criminal record can impact many facets of an individual's life, including employment. For example, some evidence suggests that employers are more likely to reject a job application from a Black male with a criminal record than a White male with a comparable criminal record.[34]

Criminal offending varies considerably from individual-to-individual over the course of a lifetime.[35]

A wide array of competing explanations have been developed to determine the correlates of crime and why individuals start criminal offending (onset), continue criminal offending (persistence), or stop criminal offending (desistance).[36] The presence, absence, or combination of certain factors can either mitigate or increase the risk that an individual will engage in criminal activity. Research also strongly emphasizes the impact of the timing, duration, and ordering of life events on an individual's propensity to offend.[37] The following factors, which can generally apply to all types of individuals and criminal

offenses, have been identified by research as impacting the onset, persistence, or desistance of criminal offending:

- Age
- Age at time of first criminal offense
- Anti-social behavior
- Drug/alcohol use or misuse
- Education
- Employment status
- Family environment
- Gender
- History of trauma or abuse
- Housing status
- Juvenile delinquency
- Levels of aggression and self-control
- Marital status
- Mental health status
- Military service
- Neighborhood
- Opportunity
- Parenthood
- Peer group
- Prior criminal history
- Prior incarceration
- Quality of interpersonal relationships
- Religiosity/Spirituality
- Self-esteem
- Self-identity
- Socio-economic status/poverty level

It is generally accepted that the vast majority of criminal offending is limited to adolescence and young adulthood, and that most individuals eventually desist from criminal offending over time.[38] It should be noted that desistance from criminal offending is frequently a gradual process rather than an immediate, one-time event.[39] Furthermore, research has repeatedly demonstrated the link between a person's age at the time of their first criminal offense and the persistence, frequency, and seriousness of criminal offending over time.[40] "Career criminals" tend to begin criminal activity at a younger age, have longer careers, and desist much later than other individuals.[41]

If a previously convicted person refrains from further criminal activity, there is a point in time when that person will present no greater threat of committing a new offense than a person with no criminal record.

Research appears to suggest that previously convicted individuals can reach a point of "redemption," which within the context of criminal offending can be defined as "the process of lifting the burden of the prior record."[42] Redemption time is based on the concept that:

> … recidivism probability declines with time "clean," so there is some point in time when a person with a criminal record who remained free of further contact with the criminal justice system is of no greater risk than any counterpart, an indication of redemption from the mark of an offender.[43]

There are several ways redemption time can be measured to determine the point at which individuals with prior criminal history records resemble the non-offender population in terms of risk for a new contact with law enforcement, arrest, or conviction.[44] Research generally indicates that after a period of approximately 7 to 10 years, individuals with convictions as juveniles or young adults reach redemption.[45] However, the length of time to redemption may vary based on the type of criminal offending, with individuals who commit violent offenses taking longer to reach redemption than individuals who commit property offenses.[46] A wider variance in the length of time to redemption can also be observed when examining the *combined* impact of an individual's age at the time of conviction with their number of prior convictions.[47] The seminal piece of research examining this combined impact on redemption time found that:

- Offenders 32 years of age and older with no prior convictions resembled non-offenders in 2 to 6 years;[48]
- Offenders 17 to 21 years old with 1 to 3 prior convictions resembled non-offenders after 13 to 16 years;[49] and,
- Offenders younger than 37 years of age with 4 or more prior convictions required a minimum of 23 years to potentially resemble non-offenders.[50]

Limitations of redemption time research include variations across the data sources, sample sizes, sample composition, and measures of recidivism used. For instance, researchers noted that there were limitations to some of the foundational studies in terms of demographics, such as race and gender, which have previously been shown to impact recidivism.[51] Research that is more recent has attempted to close this gap. For instance, one study found that male offenders generally reached redemption after a period of 10 years, while female offenders reached redemption after 4 years.[52] When examining the risk of re-arrest among first-time offenders who are male, larger proportions of Black males were at risk of re-arrest in the first 10 years after their initial offense as compared to White males.[53] However, this study also found that after 10 years "there is virtually no difference between whites and blacks in their probabilities of being rearrested."[54]

Criminal conviction relief laws have been proposed as a mechanism to help alleviate the collateral consequences of a criminal record.

Proponents of criminal conviction relief laws contend that these laws can serve as a tool to help mitigate collateral consequences by allowing previously charged or convicted individuals to more easily reintegrate back into society, stabilize their lives, and become

less likely to commit a new offense.[55] For example, proponents cite recent studies that suggest that the sealing of criminal records can significantly increase an individual's ability to find employment and achieve higher pay.[56] Employment is crucial for stabilizing the lives of former offenders, since individuals who are able to find work following the completion of their criminal sentence are less likely to commit a new criminal offense.[57]

A recent study of Michigan's expungement laws found that expungement recipients tended to see an increase in employment and wages following sealing.[58] However, the Michigan study found that expungement could not definitively be stated to have been the sole cause for the increase in employment and wages for individuals who successfully petitioned for expungement.[59] Another recent study from California similarly found that employment and wages increased significantly for individuals after their criminal records were sealed.[60] The California study examined a small cohort of only 235 individuals,[61] and was only able to capture 3 years of post-sealing data for the cohort.[62] Therefore, the conclusions drawn from both of these studies should be approached with caution.

Opponents of the sealing of criminal records have long stated that the sealing process is inherently flawed because it allows an individual to "falsify history."[63] Not only is the individual denying their own criminal record, but they are also hiding relevant information from employers.[64] Opponents contend that criminal records should be publicly available because employers and professional licensing boards have a common law duty of care to prevent foreseeable harm to others, and thus will look to criminal records as a predictor of future dangerous behavior.[65]

EXPUNGEMENT OF CRIMINAL RECORDS IN VIRGINIA

Current Expungement Process

While Virginia law does not provide for criminal conviction relief, the Commonwealth does have a petition-based expungement process to remove certain charges from criminal history and court records.[66] Statutory and administrative law, along with relevant case law, govern the current expungement process. After criminal and court records have been expunged, access to those records is only permitted by an order from the circuit court that originally entered the order of expungement.[67]

Virginia's expungement process is petition-based and only applies to certain non-convictions.

The term expungement is not defined in the Code of Virginia; however, per the Administrative Code of Virginia, expungement means "to remove, in accordance with a

court order, a criminal history record or a portion of a record from public inspection or normal access."[68] The Code of Virginia only allows for the expungement of certain non-convictions, including charges that concluded in an acquittal, a *nolle prosequi*, or a dismissal.[69] Virginia courts have interpreted these categories of non-convictions fairly narrowly. For example, the Supreme Court of Virginia has denied expungement petitions for acquittals by reason of insanity,[70] dismissals following a plea of *nolo contendere*,[71] and where a finding of evidence sufficient for guilt was made and the charge was deferred before ultimately being dismissed.[72] Furthermore, traffic infractions are not eligible for expungement under the Code of Virginia.[73]

In order to have a charge expunged, a person must file a petition for expungement in the circuit court in the jurisdiction where the charge was concluded.[74] A copy of that petition for expungement must be served on the attorney for the Commonwealth, who then has 21 days to file an objection or answer to the petition.[75] In addition, the petitioner must also obtain a complete set of fingerprints from a law-enforcement agency so that their criminal history record can be provided to the circuit court.[76] After receiving the petition for expungement and the petitioner's criminal history record, the circuit court must conduct a hearing on whether to grant the petition, and "if the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a *manifest injustice* to the petitioner," the court must enter an order requiring the expungement of criminal and court records.[77]

Challenges within Virginia's Current Expungement Process

There are several challenges within Virginia's current expungement process, including time and labor intensive aspects of the process, the inability of current electronic records and case management systems to support an automated sealing process, and the lack of a uniform standard in regard to which offenses appear on a person's criminal record. These challenges not only make it difficult to expand Virginia's current petition-based process, but also act as additional barriers to implementing an automatic process to expunge or seal criminal records. Therefore, any measures to expand Virginia's expungement process or to implement a sealing process, either automatic or petition-based, will require significant time and investment in order to ensure that such processes are properly implemented.

Challenge #1: Virginia's expungement process is time and labor intensive.

The expungement process in Virginia is time and labor intensive because it involves written communications between numerous agencies that maintain criminal history and court records, as well as manual labor to remove and restrict access to both the physical and electronic records.[78] For example, after a petition for expungement is filed, the Virginia State Police must review the petition along with the fingerprints submitted by the petitioner, send the petitioner's criminal history record and related documents to the circuit court, and archive any petition-related documents.[79] If the circuit court then enters an order to expunge the records, the clerk of the circuit court must send a copy of that order to the Virginia State Police.[80] This order begins the process of expunging the criminal history and court records.[81]

The Virginia State Police engage in a wide variety of activities as part of the expungement process, such as reviewing the order of expungement for compliance with existing law, consulting with the circuit court and/or the Office of the Attorney General in regard to any ambiguities or legal issues with the order of expungement, removing the record from the Central Criminal Records Exchange, notifying the FBI of the expungement, removing any mugshot images related to the offense, sealing any fingerprints related to the offense, sending letters to various state and local agencies notifying them of the expungement, and certifying compliance with the order of expungement to the circuit court.[82] The Virginia State Police received approximately 4,000 expungement orders per year for non-convictions (CY2017 to CY2019),[83] and estimate that employees in their expungement section can process approximately 500 expungements per year per employee.[84]

Similarly, both the circuit and the district courts in Virginia undertake numerous responsibilities in relation to the expungement process. The circuit courts receive the petition for expungement, establish a case in the case management system, ensure that a copy of the petition is served on the attorney for the Commonwealth, and conduct hearings on the petition. If an expungement order is entered, the circuit court sends that order to the Virginia State Police, removes related information from the circuit court case management system, and seals and stores court files related to the expunged offense until such files are destroyed.[85] In addition, if the expunged offense was heard in the district court, the district court must also remove related information from its case management system and seal and store related court files related to the expunged offense until such files are destroyed.[86] The Office of the Executive Secretary of the Supreme Court of Virginia estimates that expunging a district court record requires approximately 10 minutes of a clerk's time per expunged offense.[87] Furthermore, as

noted below, various other entities in addition to the Virginia State Police and the Virginia courts may be in possession of records that must be expunged after an order of expungement is entered.

Challenge #2: The current electronic records and case management systems in Virginia are unable to support an automated sealing process.

There are numerous electronic databases and case management systems utilized across various agencies in Virginia that may contain information related to criminal offenses. Such systems include, but are not limited to, the following:

- Virginia State Police, *Central Criminal Records Exchange* (CCRE);
- Office of the Executive Secretary of the Supreme Court of Virginia, *eMagistrate System* (eMag) and *Circuit and District Court Case Management Systems*;
- Fairfax County and Alexandria circuit courts, *individual court case management systems*;
- Virginia Department of Criminal Justice Services, *Pretrial and Community Corrections Case Management System* (PTCC);
- Virginia Department of Corrections, *Corrections Information System* (CORIS);
- Compensation Board, *Local Inmate Data System* (LIDS); and,
- Various other systems maintained by the Department of Motor Vehicles, the Department of Forensic Science, Commonwealth's Attorneys, local law enforcement agencies, local and regional jails, and other criminal justice agencies.

These systems vary in terms of age and functionality, and while some systems are able to communicate with each other, that communication is limited in scope and nature. Due to the age and limitations of these systems, Virginia cannot implement an automated sealing process under its current technological infrastructure.

Challenge #3: Virginia law does not provide a uniform standard in regard to which offenses appear on a person's criminal record.

Virginia law requires a report to be made to the CCRE when a person is arrested for or convicted of certain offenses.[88] Once reported to the CCRE, those arrests or convictions will appear on a person's criminal history record.[89] Offenses that must be reported to the CCRE include treason, any felony, any misdemeanor under Title 54.1 of the Code of Virginia (Professions and Occupations), any misdemeanor under Title 18.2 (Crimes and Offenses Generally), Title 19.2 (Criminal Procedure), or any similar ordinance, or any offense under sixteen other specific Code sections.[90] However, while Virginia law sets forth offenses that must be reported, the law also allows the CCRE to receive and include

charges and convictions on a person's criminal history record that are not required by law to be reported.[91]

These provisions of law have led to inconsistencies as to which offenses appear on an individual's Virginia criminal history record. While certain offenses must be reported statewide, localities differ in the offenses that they voluntarily report to the CCRE. For example, public intoxication is a Class 4 misdemeanor under the Code of Virginia and is therefore punishable by a maximum fine of $250.[92] As such, public intoxication is not required to be reported to the CCRE; however, some localities report this offense while others do not. This practice has resulted in inequities in regard to which offenses appear or do not appear on an individual's criminal history record.

50 STATE REVIEW: PETITION-BASED SEALING OF CRIMINAL RECORDS

Petition-based sealing of criminal records varies across the United States in regard to availability, offenses eligible for sealing, time periods until a conviction can be sealed, the number of convictions that can be sealed, burdens of proof, and the retention and use of sealed records.

Petition-based sealing allows courts to exercise discretion when ruling on sealing requests.

Advocates for a petition-based sealing process argue that such a process is important because it allows judges to have discretion when determining whether a criminal record should be sealed. Additionally, petition-based sealing generally allows prosecutors and victims to have input as to whether a criminal record should be sealed. Finally, advocates contend that the court hearing itself, where the court officially seals an individual's criminal record, can have a significant positive impact on the individual whose criminal record was sealed.[93]

Non-Convictions

Forty-five states allow non-convictions to be sealed.

Forty-five states, including Virginia, allow non-convictions to be sealed.[94] As for the other 5 states, Alaska does not seal non-conviction records, but it does require that certain non-conviction court records be removed from court websites after 60 days.[95] Arizona does not have a sealing statute for non-convictions.[96] Montana has a statute that covers the expungement of an individual's fingerprints and photographs following a non-conviction, but not the person's criminal record.[97] North Dakota does not have a statute that covers

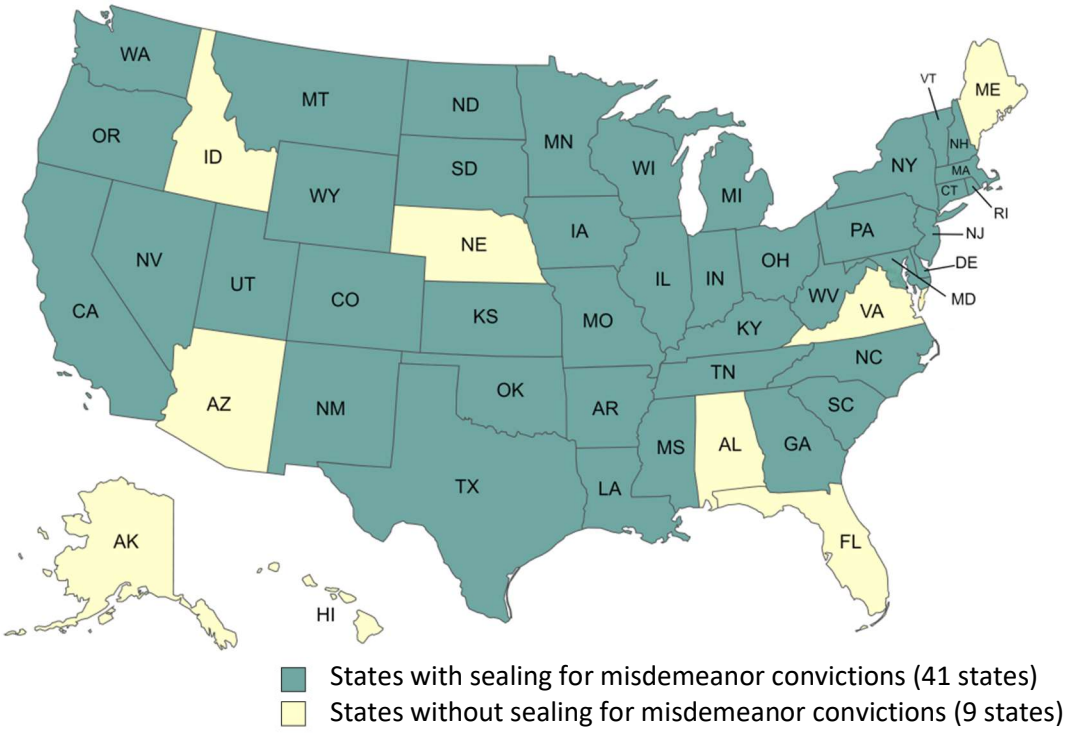
the sealing of non-convictions; however, it does have a court rule addressing the matter.[98] Finally, Maine is the only state with no criminal conviction relief mechanisms.

Misdemeanor Convictions

Forty-one states allow some misdemeanor convictions to be sealed.

Forty-one states allow for the sealing of some misdemeanor convictions. The map below illustrates which states allow for petition-based sealing of misdemeanor convictions.

Sealing of Misdemeanor Convictions



Map prepared by Crime Commission staff.

Eleven of these 41 states allow all misdemeanor convictions to be sealed.

In examining the 41 states that allow for the sealing of misdemeanor convictions, 11 states allow all misdemeanor convictions to be sealed, while 30 states place some restrictions on which misdemeanor convictions can be sealed. These restrictions are detailed later in the report.

The waiting period ranges from the completion of the sentence up to 15 years before a misdemeanor conviction becomes eligible for sealing.

The amount of time before a misdemeanor conviction becomes eligible for sealing varies considerably across states. These waiting periods can range from the completion of the

sentence up to 15 years; however, the waiting periods commonly range from 3 to 5 years. For example, 12 states require individuals to wait 5 years before a misdemeanor conviction can be sealed, while 4 states have a 5 year waiting period for specified misdemeanor convictions. Conversely, 7 states have a 10 year waiting period for misdemeanor convictions.

Fifteen states place no limits on the number of misdemeanor convictions that can be sealed.

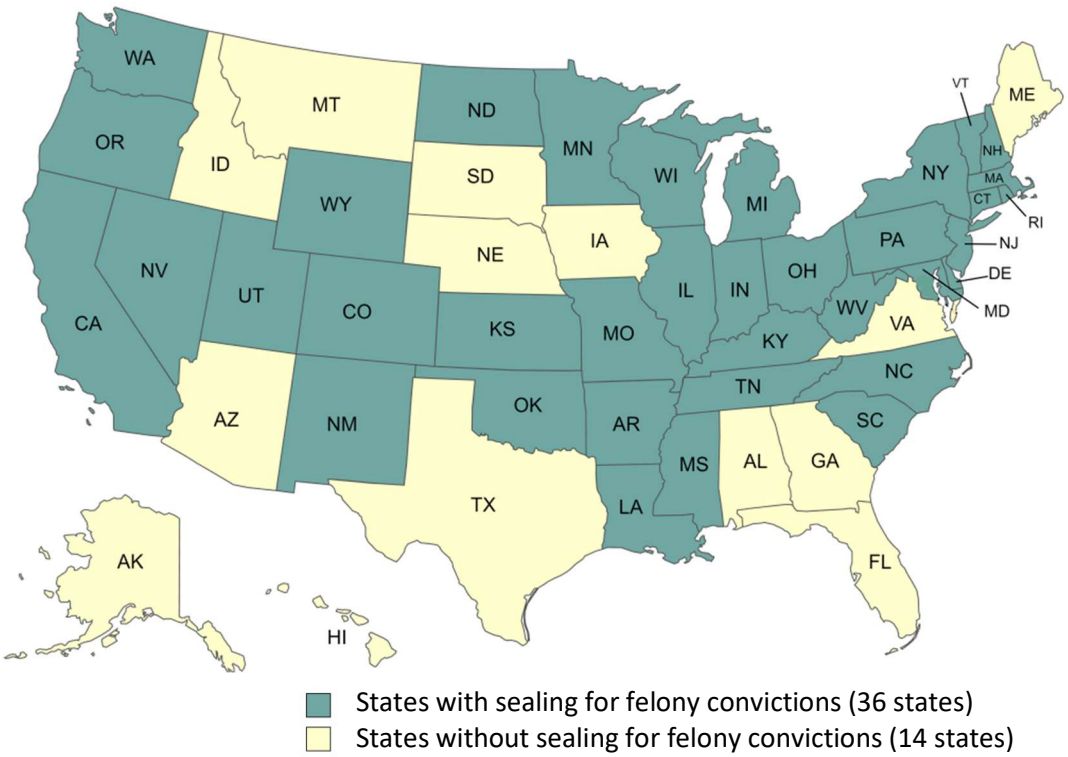
State laws are similarly varied as to whether there are limits on the number of misdemeanor convictions that can be sealed. For example, 15 states place no limits on the number of misdemeanor convictions that can be sealed, while 5 states allow only a first offense to be sealed, and 3 states allow only 1 sealing petition per lifetime.[99]

Felony Convictions

Thirty-six states allow some felony convictions to be sealed.

Thirty-six states allow for the sealing of at least some felony convictions. The map below illustrates which states allow for petition-based sealing of felony convictions.

Sealing of Felony Convictions



Map prepared by Crime Commission staff.

Sixteen of these 36 states allow some violent felony convictions to be sealed.

In examining the 36 states that allow for the sealing of felony convictions, 16 states allow some violent felony convictions to be sealed, while 19 states prohibit the sealing of all violent felony convictions.[100] Only 1 state, Connecticut, allows all convictions to be sealed.

The waiting period ranges from the completion of the sentence up to 20 years before a felony conviction becomes eligible for sealing.

Similar to misdemeanor convictions, states impose a wide range of waiting periods before felony convictions become eligible for sealing. These waiting periods can range from the completion of the sentence up to 20 years; however, the waiting periods commonly range from 5 to 10 years. For example, 13 states require that individuals wait 5 years before a felony conviction can be sealed, and another 7 states impose a 5 year waiting period for specified felonies. Conversely, 11 states require that individuals wait 10 years before a felony conviction can be sealed, and another 6 states impose a 10 year waiting period for specified felonies.

Ten states place no limits on the number of felony convictions that can be sealed.

The number of felony convictions that can be sealed varies by state. For example, 10 states place no limits on the number of felony convictions that can be sealed, while 4 states only allow a first conviction to be sealed, 3 states allow only 1 felony conviction to be sealed, and 2 states provide that specified prior convictions bar a person from having any criminal records sealed.[101]

Specified Types of Convictions

Several states have enacted laws that allow for the sealing of criminal convictions related to specific circumstances, such as sex trafficking, mistaken or stolen identity, marijuana offenses, larceny, and decriminalized offenses.

Several states have enacted criminal conviction relief laws to address convictions that occurred under specific circumstances, such as:

- 45 states allow sex trafficking victims to petition for the sealing, expungement, or vacatur of convictions related to their sex trafficking;
- 17 states allow for the sealing of charges or convictions for individuals who were charged with an offense as a result of mistaken or stolen identity;
- 12 states specifically provide for the sealing of specified marijuana convictions;

- 41 states allow for the sealing of misdemeanor larceny convictions, with 34 of those states also allowing for the sealing of some felony larceny convictions; and,
- 10 states have provisions for the sealing of decriminalized offenses.[102]

Excluded Offenses

Nearly every state excludes convictions for some sex offenses from sealing, and a significant number of states exclude convictions for domestic assault and battery, DUI, and violation of a protective order from sealing.

Of the 41 states that allow for petition-based sealing of convictions, Connecticut is the only state that does not exclude at least some convictions for sex offenses from being eligible for sealing. When looking at other offenses, 20 states exclude felony domestic assault and battery convictions from sealing, with 9 of those states also excluding misdemeanor domestic assault and battery convictions. Additionally, 17 states exclude felony driving under the influence (DUI) convictions from sealing, with 12 of those states also excluding misdemeanor DUI convictions. Finally, 7 states exclude convictions for protective order violations from sealing.[103]

Waiting Periods

The starting point for determining when a conviction is eligible for sealing varies across states.

States begin the waiting period for when a conviction can be sealed at various times. For example, the waiting period in 19 states commences when the person has completed all of the terms and conditions of the sentence, 5 states begin at the date of conviction, and 5 states calculate the time based on when the individual was released from incarceration, probation, or parole. The other states use differing starting points, such as the date of the offense or the date of disposition. All of the states require an individual to remain conviction free during the waiting period in order to qualify for the sealing of a conviction.[104]

Restitution

States vary on whether restitution must be paid in full before a conviction can be sealed.

An examination of state sealing statutes found that 18 states require restitution to be paid in full before sealing of a conviction can be granted, while 5 states allow restitution

to be paid after sealing has been granted. The remaining 18 states did not specifically address restitution in their sealing statutes.[105]

Burden of Proof

A large majority of states that allow for petition-based sealing grant courts the discretion to determine whether the requirements for sealing have been met, as opposed to establishing a specific burden of proof for sealing.

In 29 of the 41 states that allow for the petition-based sealing of convictions, the court has broad discretion to determine whether the petitioner has met the statutory requirements for sealing. In the remaining states, 7 states require the petitioner to prove by clear and convincing evidence that they meet the requirements for sealing, and 5 states require the petitioner to prove that they meet such requirements by a preponderance of the evidence. The specific standards that courts must consider when ruling on a petition for sealing can include whether the harm of the conviction to the defendant outweighs the public interest, whether sealing is in the best interest of justice, and whether the petitioner has been rehabilitated.[106]

Employment Implications

Nearly all states with petition-based sealing allow individuals to deny that a sealed conviction occurred when applying for employment, while several states address the use of such records by employers.

After a conviction has been sealed, 37 of the 41 states with petition-based sealing allow the individual to deny that the conviction occurred when applying for employment. Of these 37 states, 25 states have exceptions where an individual must disclose a sealed conviction to certain employers. Additionally, 14 states specifically limit the questions that employers can ask about sealed criminal records. Finally, 6 states provide liability immunity for employers who hire individuals who have had convictions sealed.[107]

Access to Sealed Records

Every state with petition-based sealing maintains sealed criminal records for certain specified purposes; however, those purposes vary across states.

While states restrict access to and dissemination of sealed criminal records, all states with petition-based sealing maintain such records for specific uses.[108] For example, 39 states allow access to sealed criminal records for criminal justice purposes, which can include

use of such records for impeachment or other evidentiary purposes, sentencing, penalty enhancements, law enforcement investigations, or use in future proceedings related to a petition to seal a criminal record. Additionally, 26 states allow certain employers to access the sealed criminal records. Among the most common employer carve-outs are law enforcement agencies (15 states) and professional licensing boards (19 states).

50 STATE REVIEW: AUTOMATIC SEALING OF CRIMINAL RECORDS

While petition-based sealing is the predominant practice across the United States, states have recently begun to enact legislation to automatically seal certain non-convictions and convictions. As with petition-based sealing, there are variances amongst states in regard to offenses eligible for automatic sealing, time periods until a conviction can be automatically sealed, and restrictions on the automatic sealing of criminal records.

Automatic sealing significantly increases access to the sealing process for qualified individuals.

In recent years, advocacy for automatic sealing has grown because such a process increases access to criminal record sealing by qualified individuals.[109] Advocates for automatic sealing contend that this process increases access to sealing by removing some of the barriers that qualified individuals face under the traditional petition-based process. For example, an automatic sealing process does not require a filing fee;[110] necessitate the assistance of an attorney;[111] or burden qualified individuals with multiple trips to courthouses, police stations, notary offices, and post offices.[112] In fact, qualified individuals do not even need to understand or know how automatic sealing laws work in order to benefit from the process.[113]

Recent data from Pennsylvania supports the contention that automatic sealing provides greater access to the process than petition-based sealing.[114] Pennsylvania implemented an automatic sealing process in June 2019.[115] Under this automatic sealing process, in a year and a half (June 28, 2019, to December 15, 2020), Pennsylvania automatically sealed over 48 million offenses from individuals' criminal records in over 36 million cases. Conversely, during a four-year period (November 2016 to December 2020) that pre-dated and overlapped with the automatic sealing process, Pennsylvania only sealed 3,835 offenses from individuals' criminal records in 1,681 cases under its petition-based sealing process. The massive number of offenses sealed during the first year and a half of the automatic sealing process was due, at least in part, to a significant number of qualifying eligible offenses that had accumulated in Pennsylvania's criminal records system;

however, even accounting for that backlog, far more criminal records were sealed under the automatic process than the petition-based process.[116]

Five states allow broad classes of non-convictions and convictions to be automatically sealed.

There are 5 states that have enacted automatic sealing statutes for broad classes of non-convictions and convictions: California,[117] Michigan,[118] New Jersey,[119] Pennsylvania,[120] and Utah.[121] All of these states also have petition-based sealing of non-convictions and convictions. These automatic sealing laws were all recently enacted, with Pennsylvania's automatic sealing legislation being the first in June 2018. It is important to note that Pennsylvania is the only state that has fully implemented an automated system and begun sealing criminal history records. The remaining states are currently in the process of implementing their automated systems.

California's automatic sealing statute provides that misdemeanors and infractions will be automatically sealed after one year from conviction as long as the individual was not sentenced to probation. Additionally, a felony or misdemeanor offense will be automatically sealed if a person is sentenced to only probation and the person completes that sentence without a revocation of probation. A person will not qualify for automatic sealing if they are a registered sex offender, or if they are on active probation, serving a sentence for another offense, or have pending criminal charges.[122]

Michigan's automatic sealing statute provides that certain misdemeanor convictions will be automatically sealed after 7 years from the imposition of the sentence. Certain felony convictions will be automatically sealed after 10 years from the imposition of the sentence or the completion of any term of imprisonment. Felonies and certain misdemeanors cannot be automatically sealed if a person has charges pending or has been convicted of another offense during the waiting period. No more than 2 felony and 4 misdemeanor convictions in total can be automatically sealed, excluding low-level misdemeanors.[123]

New Jersey's automatic sealing statute provides that all convictions, except for specified exceptions, will be eligible for automatic sealing after 10 years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. A task force has been created to determine the technological, fiscal, and practical issues and challenges of such a system.[124]

Pennsylvania's automatic sealing statute provides that certain misdemeanor convictions are automatically sealed after 10 years if there are no subsequent misdemeanor or felony convictions and all court-ordered restitution has been paid. Certain prior convictions disqualify a person from having a record automatically sealed, such as convictions for a prior felony offense, indecent exposure, a total of 4 misdemeanors, and various other offenses.[125]

Utah's automatic sealing statute provides that certain misdemeanors are sealed after 5 to 7 years. A person will not qualify for automatic sealing if they have unpaid fines, fees, or restitution, pending criminal charges, or certain prior convictions on their criminal records.[126]

Additional information on the automatic sealing statutes in California, Michigan, New Jersey, Pennsylvania, and Utah can be found in Appendix K.

Four states allow convictions for minor offenses to be automatically sealed.

South Dakota allows for automatic sealing of "any charge or conviction resulting from a case where a petty offense, municipal ordinance violation, or a Class 2 misdemeanor was the highest charged offense … after 10 years if all court-ordered conditions on the case have been satisfied."[127] Additionally, Illinois,[128] New York,[129] and Vermont[130] have all enacted statutes which allow for the automatic sealing of specified marijuana convictions.

THIRD PARTY ACCESS TO AND DISSEMINATION OF CRIMINAL RECORDS

While states can restrict access to and dissemination of criminal records in possession of government entities, numerous challenges exist to limiting the sharing and use of criminal record information that has entered the public domain.

Furthermore, the online proliferation of easily accessible criminal records undermines the intention of sealing criminal records. In the modern information age, criminal records are not only available on state court websites, but are also gathered and distributed by third party vendors who provide background check services to subscribers, such as government agencies and private companies. Additionally, criminal records are often disseminated by news outlets and on social media, which makes it even more difficult to restrict access to this information.[131]

The emergence of public and private online criminal record databases presents a significant challenge to the sealing of criminal records.

While numerous states have enacted legislation to seal criminal records, there is growing recognition that the online dissemination of criminal records potentially undermines the rehabilitative goals of sealing. Over the last several decades, criminal records have become increasingly accessible via online court databases, making convictions, as well as non-convictions, open to public inspection.[132] This particular challenge exists in Virginia, as the Code of Virginia requires that non-confidential court case information be made available free of charge online.[133] The increased access to online criminal records has allowed private companies to create their own criminal records databases and provide background checks on individuals using those private databases. This has become a thriving industry, as many employers conduct background checks on prospective employees.

Some of the private companies that currently provide, or have previously provided, these private background checks are larger database servers, such as LexisNexis and Westlaw.[134] These larger database providers are often regulated under the federal Fair Credit Reporting Act (FCRA),[135] which requires that these databases "follow reasonable procedures to assure maximum possible accuracy" of information on their websites.[136] Unfortunately, some research has shown that databases regulated under the FCRA do not always obtain their information from reliable sources, and that even when the source is reliable, these companies do not always remove sealed records from their databases.[137]

Beyond these larger database servers are companies and websites that either purchase information from government websites in bulk or scrape government databases and repackage the information for sale.[138] These companies are not regulated under the FCRA and there are generally few, if any, legal or internal requirements to ensure that the information they provide is accurate.[139] These particular companies and websites are not limited only to criminal records; mugshot image websites, for example, display booking photographs and arrest information of criminal defendants.[140] These companies and websites can be especially damaging to individuals who are seeking to move beyond their criminal records and reintegrate into society, especially since there is little incentive for these companies and websites to ensure the accuracy of the criminal records.[141]

Ten states have enacted legislation to regulate the dissemination of the sealed criminal records by private entities.

Ten states have enacted legislation with the intention of preventing the dissemination of sealed criminal records by private companies: Colorado,[142] Connecticut,[143] Louisiana,[144] Michigan,[145] Minnesota,[146] Nevada,[147] New Jersey,[148] North Carolina,[149] Rhode Island,[150] and Texas.[151] These statutes typically provide that after receiving notice that a criminal record has been sealed, a private company will be subject to civil penalties for disseminating the sealed record.[152] While these states have made efforts to address third party dissemination, state laws and regulations of third party providers face certain limitations, as states cannot preempt, supersede, or contradict federal law or regulations, such as the FCRA or the Gramm-Leach-Bliley Act (15 U.S.C. § 6801-6809).

Public availability and dissemination of sealed criminal records does not eliminate all of the benefits that stem from sealing legislation.

While online and private dissemination of criminal records can undermine the goals of sealing, these challenges do not completely eliminate the benefits of sealing. In fact, some research has found that even with the proliferation of online criminal records, individuals who are able to have their criminal records sealed may still benefit significantly from that sealing. The Michigan expungement study, cited earlier in the report, examined employment and wage trends for individuals who were able to have their criminal records expunged between 1998 and 2011. The study found that employment and wage gains for individuals who obtained expungement remained steady throughout the study timeframe despite the increasing Internet usage during that time.[153]

CRIME COMMISSION LEGISLATION

The Crime Commission met on August 31, 2020, and heard a presentation from staff that included information on the expungement process in Virginia, as well as the automatic and petition-based sealing of criminal records across the United States.[154] Staff provided Crime Commission members with draft legislation to create an automated process in Virginia to seal criminal history record information and court records for non-convictions, deferred and dismissed charges, and numerous felony and misdemeanor convictions. The draft legislation contained a clause to delay implementation of the automatic sealing provisions of the law until July 1, 2024, due to the complexities of implementing this automated process across the data systems of the Virginia State Police, the Office of the Executive Secretary of the Supreme Court of Virginia, and circuit court clerks.

The Crime Commission voted to endorse the draft legislation for introduction during the 2020 Special Session of the General Assembly.

2020 Special Session Legislation

Legislation endorsed by the Crime Commission to create an automatic sealing process was introduced during the 2020 Special Session of the General Assembly (House Bill 5146 - Del. Charniele L. Herring).[155] Additionally, during the 2020 Special Session of the General Assembly, the Senate passed a petition-based sealing bill (Senate Bill 5043 - Sen. Creigh R. Deeds).[156] This Senate legislation allowed for the petition-based sealing of certain drug and alcohol convictions and deferred dispositions, as well as offenses when a person had been granted a simple pardon by the Governor. Due to the significant differences between these two bills, the legislation was sent to a conference committee consisting of members of the House of Delegates and the Senate. Both bills remained in conference and neither bill was enacted into law by the General Assembly.

2021 Regular Session Legislation

During the 2021 Regular Session of the General Assembly, legislation was re-introduced to create an automatic sealing process (House Bill 2113 - Del. Charniele L. Herring and Senate Bill 1372 - Sen. L. Louise Lucas).[157] These bills were substantially similar to the version introduced during the 2020 Special Session of the General Assembly; however, the bills included additional language to address the dissemination of criminal and court records by third parties and to provide immunity protections for employers who hire individuals with sealed criminal records. Additionally, legislation was also introduced to create a broad petition-based sealing process for convictions and a narrower automatic sealing process (Senate Bill 1339 - Sen. Scott A. Surovell).[158] The Senate Committee on the Judiciary ultimately incorporated Senate Bill 1372 into Senate Bill 1339.

Due to the significant differences between House Bill 2113 and Senate Bill 1339, a group of members from the House of Delegates and Senate worked with Crime Commission staff to produce a merged version of the two bills. Staff drafted compromise legislation as agreed upon by members to create both an automatic and a petition-based process for the sealing of adult criminal history and court records. Both bills were passed by the General Assembly and signed into law by the Governor.[159]

In addition, staff recognized that these new sealing processes would require a substantial cost to implement. Staff worked closely with the impacted state agencies, namely the Virginia State Police, the Office of the Executive Secretary of the Supreme Court of

Virginia, the Department of Motor Vehicles, and others, to identify the necessary costs. Staff determined that there would be significant one-time expenses to purchase systems and perform technology upgrades, as well as recurring personnel expenses, all of which were funded by the General Assembly.

The enacted legislation addressed seven key measures related to the sealing of criminal history record information and court records, which are described in greater detail below. Unless otherwise noted, these changes to Virginia law will take effect on July 1, 2025; however, the legislation can take effect sooner if the new automated systems are operational prior to that date.

1. Sealing: Definition and Effects

The term "sealing" is defined as restricting dissemination of criminal history record information and prohibiting dissemination of court records, including records relating to an arrest, charge, or conviction. Sealed criminal history record information and court records are maintained and may be accessed or used for twenty-five specified purposes.

After a charge or conviction is sealed, a person is generally allowed to deny that the charge or conviction occurred; however, a person cannot deny the sealed record under the following circumstances:

- When applying for employment as a law enforcement officer;
- Where disclosure is required for employment under federal or state law;
- When being considered for jury service;
- During proceedings related to the care and custody of a child; and,
- In accordance with any other regulations adopted in relation to the new sealing provisions.

2. Automatic Sealing Process

The legislation creates an automatic sealing process for convictions or deferred dispositions of 9 misdemeanor offenses, including:

- Purchase or possession of alcohol by a minor;[160]
- Petit larceny;[161]
- Concealing or taking possession of merchandise;[162]
- Trespass;[163]
- Instigating trespass;[164]
- Trespass on posted property;[165]
- Misdemeanor distribution of marijuana;[166]

- Possession of marijuana;[167] and,
- Disorderly conduct.[168]

Additionally, various non-convictions will be automatically sealed, including:

- Misdemeanor offenses and mistaken identity offenses moving forward in time;
- Misdemeanor offenses retroactively, if the person has no convictions on their Virginia criminal history record and no charges in the past 3 years; and,
- Acquittals and dismissals with prejudice of felony offenses, with the concurrence of the attorney for the Commonwealth, moving forward in time.

Finally, all traffic infractions will be automatically sealed after 11 years.

3. Petition-Based Sealing Process

The legislation also creates a new petition-based process for the sealing of convictions and deferred dispositions for all misdemeanors, all Class 5 and Class 6 felonies, and all felony offenses punishable as larceny; however, DUI-related convictions and domestic assault and battery convictions are not eligible for sealing. The various requirements for petition-based sealing are set forth in the new statute.

4. Waiting Periods

The legislation establishes waiting periods of 7 years for misdemeanors and 10 years for felonies before a conviction or deferred disposition is eligible for sealing. In order to qualify for automatic sealing, a person cannot have been convicted of a crime in Virginia that requires a report to the Central Criminal Records Exchange (CCRE) or of a crime in any other jurisdiction during that time period. In order to qualify for petition-based sealing, a person must also remain conviction-free during the waiting period, and must satisfy other criteria for eligibility as set forth in the statute.

5. Restrictions: Employers and Third Parties

The bill prohibits state and local governments, private employers, educational institutions, housing sales and rental agencies, and insurance companies from inquiring about sealed charges or convictions, except in law enforcement hiring and when required for employment under federal or state law. Furthermore, third parties that collect and disseminate Virginia criminal history records and traffic records must delete any such records that have been sealed or face civil liability to the impacted person and enforcement action by the Attorney General.

6. New Processes: Implementation and Reporting

The legislation contains several provisions directing how the new sealing processes are to be implemented. These provisions include:

- Directing the Virginia State Police, the Office of the Executive Secretary of the Supreme Court of Virginia, and circuit court clerks to develop automated systems in order to implement these new sealing processes;
- Requiring the Virginia Department of Criminal Justice Services to develop regulations regarding the sealing and dissemination of criminal history record information;
- Requiring any criminal charge or conviction on a person's Virginia criminal record to be removed by July 1, 2021, if it was not required to be reported to the CCRE;
- Permitting only CCRE reportable criminal offenses to be included on a person's Virginia criminal record beginning July 1, 2021; and,
- Requiring magistrates and law enforcement officers to note the corresponding Virginia Code section on a warrant or summons when issuing a charge for a local ordinance violation beginning July 1, 2021.

In addition, the bill directs various entities to provide annual reports to the Crime Commission on the status of the implementation of these new processes, beginning November 1, 2021, as follows:

- Virginia State Police, the Office of the Executive Secretary of the Supreme Court of Virginia, and any circuit court clerk with a case management system must report on the progress of the development of automated systems to implement the new sealing processes;
- Virginia State Police must also report on the feasibility and cost of implementing an automated system to review out-of-state criminal history records; and,
- Virginia Court Clerks' Association must report on the necessary staffing and technology costs of implementing the new automatic and petition-based sealing processes.

7. Continued Study of Expungement and Sealing of Criminal Records

Finally, the legislation requires the Crime Commission to continue its study on the expungement and sealing of criminal records and to examine the following matters:

- Methods to educate the public on the sealing processes and the effects of an order to seal an arrest, charge, or conviction;

- The interplay between Virginia's current expungement statutes and the sealing of criminal history record information and court records;
- The feasibility of destroying or purging expunged or sealed criminal history record information and court records;
- Permissible uses of criminal history record information and court records;
- Plea agreements in relation to the expungement or sealing of criminal history record information and court records; and,
- Any other relevant matters that arise during the course of the study.

The Crime Commission must report its findings on the continued study of expungement and sealing of criminal records by December 15, 2021. The report is also required to include a recommendation on the creation of a review process for any future changes to the expungement or sealing of criminal history record information or court records.[169]

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State Corporation Commission

Virginia Association of Commonwealth's Attorneys

Virginia Court Clerks' Association

Virginia Criminal Sentencing Commission

Virginia Department of Motor Vehicles

Virginia Indigent Defense Commission

Virginia State Police

ENDNOTES

[1] House Bills 31, 32, 50, 91, 102, 128, 254, 255, 267, 268, 293, 294, 320, 476, 647, 830, 865, 1033, 1207, 1433, 1517, 1692; Senate Bills 223, 306, 808, 914, and 947; and House Joint Resolution 28.
[2] House Bill 5146 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5146.
[3] Senate Bill 5043 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5043.
[4] House Bill 2113 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113. Senate Bill 1372 is available at https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb1372.
[5] Senate Bill 1339 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339.
[6] 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542.
[7] The database of sealing laws compiled by the Restoration of Rights Project (https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/ (last updated Jan. 24, 2021)) was utilized as a key resource for the 50 state review. Every state's laws were reviewed on LexisNexis and staff conducted additional searches on LexisNexis within each state's statutes to identify all relevant laws.
[8] *But see* WASH. REV. CODE §§ 9.94A.640 and 9.96.060 (2020). Washington is the only state that uses vacatur as its primary conviction relief mechanism.
[9] *Sealing of Records*, BLACK'S LAW DICTIONARY (9th ed. 2009) ("act or practice of officially preventing access to particular records, in the absence of a court order"); *Expunge*, *Id.* ("to erase or destroy"); *Expungement of Record*, *Id.* ("the removal of a conviction from a person's criminal record").
[10] MONT. CODE ANN. § 46-18-1103(1) (2020); *see also* DEL. CODE ANN. tit. 11, § 4372(c)(3) (2020); 20 ILL. COMP. STAT. 2630/5.2(a)(1)(E) (2020); KY. REV. STAT. ANN. § 431.079(3) (LexisNexis 2020); MD. CODE ANN., CRIM. PROC. § 10-101(d) and (e) (LexisNexis 2020); and, TENN. CODE ANN. § 40-32-101(g)(12)(A) (2020).
[11] OKLA. STAT. tit. 22, § 18(B) (2020); *see also* LA. CODE CRIM. PROC. ANN. art. 972(1) (2020); MINN. STAT. § 609A.01 (2020); N.J. STAT. ANN. § 2C:52-1 (West 2020); S.D. CODIFIED LAWS § 23A-3-26 (2020); and, UTAH CODE ANN. § 77-40-102(9) (LexisNexis 2020).
[12] *See* ARK. CODE ANN. § 16-90-1404(4)(A) (2020). "Seal" means to expunge, remove, sequester, and treat as confidential the record or records in question according to the procedures established by this subchapter.
[13] WASH. REV. CODE § 9.96.060(6)(a) (2020).
[14] CAL. PENAL CODE § 1203.4(a)(1) (West 2020); MICH. COMP. LAWS SERV. § 780.622(1) (LexisNexis 2021); NEB. REV. STAT. ANN. § 29-2264(4) (LexisNexis 2020); and, OR. REV. STAT. § 137.225(3) (2020).
[15] GA. CODE ANN. § 35-3-37(a)(6) (2020).
[16] N.H. REV. STAT. ANN. § 651:5(X)(a) (LexisNexis 2020).
[17] CONN. GEN. STAT. § 54-142a(d)(1) (2020).
[18] 18 PA. CONS. STAT. § 9122.5 (2020).
[19] TEX. GOV'T CODE ANN. § 411.0755 (West 2020).

[20] *Nolle prosequi*, BLACK'S LAW DICTIONARY (9th ed. 2009) ("A legal notice that a lawsuit or prosecution has been abandoned").
[21] This report does not include an analysis on the sealing of deferred charges. In Virginia, the term "deferred" describes the process when a court withholds imposition of a sentence and places conditions on the defendant that, when met, allow for a charge to be dismissed. Other states have similar practices, but the terminology varies considerably across jurisdictions, such as "diverted" [TENN. CODE ANN. § 40-32-101 (2020)], "suspended" [MO. REV. STAT. § 557.011 (2020)], "discharged" [N.C. GEN. STAT. § 15A-145.2 (2020)], and "conditionally discharged" [N.M. STAT. ANN. § 31-20-13 (LexisNexis 2020)] charges. Due to the varying terminology for such deferred dispositions, this report focuses solely on sealing statutes for non-convictions and convictions.
[22] National Inventory of Collateral Consequences of Conviction. (2021). Retrieved from https://niccc.nationalreentryresourcecenter.org/. Many of the identified collateral consequences impact employment or professional licensing, with the remainder affecting business opportunities, housing and residency, public benefits, family relationships, education, motor vehicle licensure and registration, and civic participation.
[23] The Commission to Examine Racial Inequity in Virginia Law. (2020). *Identifying and addressing the vestiges of inequity and inequality in Virginia's laws*, at p. 47 (hereinafter "Racial Inequity Report"). Retrieved from https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/2020-Commission-Report---Inequity-and-Inequality-in-Virginia-Law.pdf.
[24] Adams, E., Chen, E.Y., & Chapman, R. (2017). Erasing the mark of a criminal past: Ex-offenders' expectations and experiences with record clearance. *Punishment & Society*, *19*(1), 23-52, at p. 25-26; Roberts J. (2015). Expunging America's rap sheet in the information age. *Wisconsin Law Review, 2*(321), 321-347, at pp. 327-328; Prescott, J.J., & Starr, S.B. (2020). *Expungement of criminal convictions: An empirical study*. *Harvard Law Review, 133*(8), 2460- 2555, at p. 2462; Solomon, A. (2012), In search of a job: Criminal records as barriers to employment, *NIJ Journal*, *270*, 42-51, at pp. 44-46; Haber, E. (2018). Digital expungement. *Maryland Law Review*, *77*(337), 337-385, at pp. 342-344 (provides a list of collateral consequences faced by those who have a criminal record).
[25] Roberts, *supra* note 24, at pp. 329-330 (access to criminal records has "helped create a tiered society in which individuals with a criminal history are effectively second-class citizens.").
[26] Federal Bureau of Investigation. (March 2021). *March 2021 Next Generation Identification (NGI) System Fact Sheet*. Retrieved from https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi; *see also* https://www.fbi.gov/file-repository/ngi-monthly-fact-sheet/view.
[27] Virginia State Police, personal communication, August 5, 2020.
[28] See, e.g., Brame, R., Bushway, S.D., Paternoster, R., & Turner, M.G. (2014). Demographic patterns of cumulative arrest prevalence by ages 18 and 23. *Crime & Delinquency*, *60*(3), 471-486, at p. 471 (The authors of this 2014 study found that "about 30% of Black males have experienced at least one arrest by age 18 (vs. about 22% for White males) [and] by age 23 about 49% of Black males have been arrested (vs. about 38% for White males)."); *see also* Selbin, J., McCrary, J., & Epstein, J. (2018). Unmarked? Criminal record clearing and employment outcomes. *Journal of Criminal Law and Criminology*, *108*(1), 1-72 at p. 4 ("Evidence suggests that by the age of twenty-three, almost one-half of all African-American and Latino men, more than one-third of white men, and almost one in eight women have been arrested.").

[29] For arrest data, *see* Federal Bureau of Investigation. *Table 43A: Arrests by Race and Ethnicity, 2018.*, Available at: https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43 (last visited Apr. 30, 2021). This 2018 data shows that Black persons made up 27% of arrests (2,115,381 Black persons were arrested out of a total of 7,710,900 people arrested) despite comprising only 13% of the overall United States population; For 2018 U.S. population totals, *see* United States Census Bureau. *ACS Demographic and Housing Estimates*, *2018*. Available at: https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP05 (last visited Apr. 30, 2021).
[30] *See* Carson, E. A. (2020). *Prisoners in 2019*. Bureau of Justice Statistics, at pp. 20-23. Available at: https://www.bjs.gov/content/pub/pdf/p19.pdf. According to this report, Black persons comprised approximately 33% (409,600 of 1,249,700) of sentenced state prisoners in the United States on December 31, 2018 and 37% (57,900 of 158,107) of sentenced federal prisoners in the United States on September 30, 2019.
[31] For Virginia population statistics, see United States Census Bureau, *Virginia*, https://data.census.gov/cedsci/profile?g=0400000US51 (last visited Apr. 30, 2021).
[32] For Virginia arrest statistics, *see* Virginia State Police. *Crime in Virginia 2019*. Virginia Department of State Police, at p. 65. Available at: https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime_In_Virginia_2019.pdf (last visited Apr. 30, 2021). In 2019, 42% (114,738 of 274,636) of those arrested in Virginia were Black persons.
[33] For corrections data, *see* Virginia Department of Corrections. *State Responsible Offender Population Trends: FY2015 – FY2019* at p. 7. Available at https://vadoc.virginia.gov/media/1473/vadoc-offender-population-trend-report-2015-2019.pdf (last visited Apr. 30, 2021). This report shows that, as of June 30, 2019, Black inmates comprised 55% (19,198 of 34,719) of the total state responsible confined population.
[34] Ipsa-Landa, S., & Loeffler, C.E. (2016). Indefinite punishment and the criminal record: Stigma reports among expungement-seekers in Illinois. *Criminology*, *54*(3), 387-412, at p. 392.
[35] *See,* e.g., Dean, C.W., Brame, R., & Piquero, A. (1996). Criminal propensities, discrete groups of offenders, and persistence in crime. *Criminology, 34(4),* 547-574.
[36] There are a number of competing theories that attempt to explain criminal onset, persistence, and desistance, including but not limited to: life course theory, general theories of crime, social bond theory, strain theory, attachment theory, social learning theory, labeling theory, social control, developmental theories, criminal career/typologies, routine activity theory, self-derogation theory, and feminist theories. For an excellent overview of the various theories drawn upon to examine developmental and life course explanations of criminal offending, please *see* McGee, T.R., & Farrington, D.P. (2019). Developmental and life-course explanations of offending. *Psychology, Crime, & Law*, *25(6)*, 609-625; Sampson, R.J., & Laub, J.H. (2016). Turning points and the future of life-course criminology: Reflections on the 1986 criminal careers report. *Journal of Research in Crime and Delinquency, 53(3)*, 321-335.
[37] *See,* e.g., Moffitt, T.E. (1993). Adolescence-limited and life-course-persistent antisocial behavior: A developmental taxonomy. *Psychological Review, 100*, 674-701.
[38] Sampson, R.J, & Laub, J.H. (2003). Life-course desisters? Trajectories of crime among delinquent boys followed to age 70. *Criminology, 41*, 555-592; Piquero, A.R. Farrington, D.P., & Blumstein, A. (2003). The criminal career paradigm. In M. Tonry (ed.), *Crime and justice: A review of research*, pp. 359-506.

[39] Metcalfe, C.F., & Baker, T. (2014). The drift from convention to crime: Exploring the relationship between co-offending and intermittency. *Criminal Justice & Behavior, 41(1),* 75-90.
[40] *See,* e.g., Moffitt, T.E. (1993). Adolescence-limited and life-course-persistent antisocial behavior: A developmental taxonomy. *Psychological Review, 100*, 674-701.
[41] *See,* e.g., Gottfredson, M.R., & Hirschi, T. (2016). The criminal career perspective as an explanation of crime and a guide to crime control policy: The view from general theories of crime. *Journal of Research in Crime and Delinquency, 53(3)*, 406-419.
[42] Blumstein, A., & Nakamura, K. (2010). *Potential of redemption in criminal background checks: Final report to the National Institute of Justice*., at p. 2. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/232358.pdf.
[43] *Id*.
[44] Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, *47*(2), 327-359; Kurleychek, M., Brame, R., & Bushway, S. D. (2006). Does an old criminal record predict future offending? *Criminology & Public Policy*, *5*(3), 483-504 at p.485; Kurlychek, M. C., Brame, R., & Bushway, S. D. (2007). Enduring risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency*, *53*(1), 64-83; Bushway, S. D., Nieuwbeerta, P., & Blokland, A. (2011). The predictive value of criminal background checks: Do age and criminal history affect time to redemption? *Criminology*, *49*(1), 27-60; Soothill, K., & Francis, B. (2009). When do ex-offenders become like non-offenders. *The Howard Journal of Crime and Justice*, *48*(4), 373-387.
[45] *Id.*
[46] Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, *47*(2), 327-359.
[47] Bushway, S. D., Nieuwbeerta, P., & Blokland, A. (2011). The predictive value of criminal background checks: Do age and criminal history affect time to redemption? *Criminology*, *49*(1), 27-60.
[48] *Id*.
[49] *Id*.
[50] *Id*. In other words, if an offender had four or more convictions and then committed another offense (the 1977 conviction per the study baseline), it would take a minimum of 23 years from the 1977 conviction before reaching redemption.
[51] *See,* e.g., Curcio, G., Pattavina, A., & Fisher, W. (2018). Gender differences on the road to redemption. *Feminist Criminology*, *13*(2), 182-204.; Blumstein, A., & Nakamura, K. (2012). *Extension of current estimates of redemption times: Robustness testing, out–of-state arrests, and racial differences*. Washington, DC: National Institute of Justice. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf.
[52] Curcio, G., Pattavina, A., & Fisher, W. (2018). Gender differences on the road to redemption. *Feminist Criminology*, *13*(2), 182-204.
[53] Blumstein, A., & Nakamura, K. (2012). *Extension of current estimates of redemption times: Robustness testing, out–of-state arrests, and racial differences*. Washington, DC: National Institute of Justice. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf.
[54] *Id*. at p. 76.
[55] Haber, *supra* note 24, at p. 346. ("Expungement statutes generally have four goals: (1) reducing recidivism and thereby enhancing public safety; (2) enabling rehabilitation; (3) reducing illegal discrimination against presumptively rehabilitated individuals; and, (4) rewarding those who prove they have been rehabilitated.")

[56] Prescott, *supra* note 24, at p. 2533 ("Our analysis demonstrates that expungement is associated with large improvements in the employment rate and wages on average….").
[57] Adams, *supra* note 24, at p. 25 ("Employment is key to successful reentry…" back into society); Uggen, C. (2000). Work as a turning point in the life course of criminals: A duration model of age, employment, and recidivism. *American Sociological Review*, *67*(1), 529-546, at p. 542, available at http://users.cla.umn.edu/~uggen/Uggen_asr_00.pdf ("Work appears to be a turning point in the life course of criminal offenders over 26 years old. Offenders who are provided even marginal employment opportunities are less likely to reoffend than those not provided such opportunities."); Solomon, A.L., Johnson, K., Travis, J., & McBride, E.C. (2000). *From prison to work: The employment dimensions of prisoner reentry*. Urban Institute Justice Policy Center, 1-32 at pp. 4-5, available at https://www.urban.org/sites/default/files/publication/58126/411097-From-Prison-to-Work.PDF (evidence shows that stable employment is correlated with aiding former offenders in re-integrating back into society).
[58] Prescott, *supra* note 24, at pp. 2467, 2528, & 2533-2534.
[59] Prescott, *supra* note 24, at pp. 2533-2534.
[60] Selbin, *supra* note 28, at pp. 8 & 46.
[61] *Id.* at p. 41.
[62] *Id.* at pp. 48-49.
[63] Kogon, B., & Loughery, D.L., Jr. (1971). Sealing and expungement of criminal records – The big lie. *Journal of Criminal Law and Criminology*, *61*(3), 378-392 at p. 385; *see also* Jacobs, J.B. (2006). Mass incarceration and the proliferation of criminal records. *University of St. Thomas Law Journal, 3*(3), 387-420 at p. 411 ("In effect, it seeks to rewrite history, establishing that something did not happen although it really did. The problem is compounded if the expungement policy allows or requires lying to support the false history.").
[64] Jacobs, *supra* note 63, at pp. 411-412.
[65] Connor, T. G., & White, K.J. (2013). The consideration of arrest and conviction records in employment decisions: A critique of the EEOC guidance. *Seton Hall Law Review*, *43(3)*, 971-1005, at pp. 972 & 974 ("There are solid business reasons to consider [criminal histories]. Criminological studies demonstrate that nothing predicts future criminal activity more accurately than a history of past criminal activity. An employer's concern about loss of business assets or danger to persons exposed to its employees is well justified. Failure to identify and assess possible risks may expose the business to ruinous theft or result in serious harm to others.")
[66] VA. CODE ANN. § 19.2-392.2 (2020). *But see* VA. CODE ANN. §§ 19.2-327.2 *et. seq.* and 19.2-327.10 *et. seq.* (2020). Virginia law does allow for criminal conviction relief if a person can prove that they are "actually innocent" of certain felony convictions.
[67] VA. CODE ANN. § 19.2-392.3 (2020).
[68] 6 VA. ADMIN. CODE § 20-120-20 (2020).
[69] VA. CODE ANN. § 19.2-392.2(A) (2020).
[70] Eastlack v. Commonwealth, 282 Va. 120, 710 S.E.2d 723 (Jun. 9, 2011).
[71] Commonwealth v. Dotson, 276 Va. 278, 661 S.E.2d 473 (Jun. 6, 2008); Commonwealth v. Jackson, 255 Va. 552, 499 S.E.2d 276 (Apr. 17, 1998).
[72] Daniel v. Commonwealth, 268 Va. 523, 604 S.E.2d 444 (Nov. 5, 2004).
[73] VA. CODE ANN. § 19.2-392.2(A) (2020).
[74] VA. CODE ANN. § 19.2-392.2(C) (2020).
[75] VA. CODE ANN. § 19.2-392.2(D) (2020).
[76] VA. CODE ANN. § 19.2-392.2(E) (2020).

[77] VA. CODE ANN. § 19.2-392.2(F) (emphasis added). The circuit court may enter an order of expungement without conducting a hearing under certain circumstances with the consent of the attorney for the Commonwealth.
[78] *See* 6 VA. ADMIN. CODE § 20-120-80 (2020).
[79] Virginia State Police, personal communication, July 21, 2020.
[80] VA. CODE ANN. § 19.2-392.2(K) (2020).
[81] 6 VA. ADMIN. CODE § 20-120-80 (2020).
[82] Virginia State Police, personal communication, July 21, 2020.
[83] Virginia State Police, personal communication, August 5, 2020.
[84] *See* Senate Bill 5043, Fiscal Impact Statement (Special Session of the 2020 General Assembly). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?202+oth+SB5043FS1122+PDF.
[85] Office of the Executive Secretary of the Supreme Court of Virginia, personal communication, July 24, 2020.
[86] *Id.*
[87] *See* Senate Bill 5043, Fiscal Impact Statement (Special Session of the 2020 General Assembly). Available at https://lis.virginia.gov/cgi-bin/legp604.exe?202+oth+SB5043FS1122+PDF. Court records, which are not the criminal history records maintained in the CCRE, are destroyed after statutorily set time frames in VA. CODE ANN. §§ 16.1-69.55 and 17.1-213 (2020). Generally, misdemeanor and traffic court records are maintained for ten years regardless of outcome. Felony court records, as well as court records for misdemeanor domestic assault and battery and protective order violation cases, are generally maintained for twenty years. Court records for specified misdemeanor cases, including sexual battery, prostitution, and indecent exposure, as well as felony cases for violent and sexually violent offenses, are maintained for fifty years.
[88] VA. CODE ANN. § 19.2-390(A)(1) (2020).
[89] *Id.*
[90] *Id.* The specific Code sections requiring a report to the CCRE include VA. CODE ANN. §§ 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 16.1-253.2, 20-61, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, and 63.2-1727.
[91] VA. CODE ANN. § 19.2-390(D) (2020).
[92] VA. CODE ANN. § 18.2-388 (2020). *See also* VA. CODE ANN. § 18.2-11 (2020).
[93] Adams, *supra* note 24, at p. 42 ("More so than just the outcome (a clear record), the actual process of preparing for, and successfully completing, the record clearance application and hearing can have a powerful effect.").
[94] *See* Appendix A for non-conviction sealing laws by state.
[95] ALASKA STAT. § 22.35.030 (2020).
[96] Arizona uses the term "set aside" in its statutes. This term was not included in the list in note 14 because a conviction which is set aside in Arizona is not required to be redacted or removed from a person's criminal record, and therefore it is not actually sealed. ARIZ. REV. STAT. ANN. § 13-905 (2020). Arizona does seal records for individuals who have been wrongfully arrested or charged ARIZ. REV. STAT. ANN. § 13-4051 (2020). Arizona also vacates convictions for sex trafficking victims ARIZ. REV. STAT. ANN. § 13-909 (2020).
[97] MONT. CODE ANN. 44-5-202(8) (2020).
[98] N.D. SUP. CT. ADMIN. R. 41(5)(f) (2020). Available at https://www.ndcourts.gov/legal-resources/rules/ndsupctadminr/41.
[99] *See* Appendix B for misdemeanor conviction sealing laws by state.

[100] Generally, in examining whether a state included violent offenses in its sealing statutes, staff referred to Virginia's definition of violent offenses in VA. CODE ANN. § 17.1-805 (2020). *See* Appendix C for additional information on violent felony convictions.
[101] *See* Appendix C for a felony conviction sealing laws by state.
[102] *See* Appendix D for sealing provisions for specific convictions by state.
[103] *See* Appendix E for commonly excluded offenses by state.
[104] *See* Appendix F for waiting periods for sealing by state.
[105] *See* Appendix G for restitution requirements for sealing by state.
[106] *See* Appendix H for burdens of proof for sealing by state.
[107] *See* Appendix I for employment sealing provisions by state.
[108] *See* Appendix J for the maintenance of sealed criminal records by state.
[109] Prescott, *supra* note 24, at p. 2551 ("Taken together, our findings strongly support increasing the availability of expungement — and particularly efforts to make expungements automatic, or at least procedurally easy to obtain."); Kessler, A. (2015). Excavating expungement law: A comprehensive approach. *Temple Law Review*, *87*(1), 403-446, at p. 437 ("Automatic expungement saves judicial and individual resources, and mitigates the problem of unawareness of the expungement remedy.").
[110] Prescott, *supra* note 24, at p. 2504 (discussing the difficulty that many people face when filing fees are required in order to initiate a conviction relief process).
[111] *Id.* at pp. 2505-2506 ("Although expungement applications can be filed *pro se*, the process is far less difficult to navigate for an experienced attorney. Yet, too often, none are available… [and paid attorneys are out of reach for most people with records."); Kessler, *supra* note 109, at p. 445 ("Hiring a lawyer to petition a court for expungement is often unaffordable for record holders.").
[112] Prescott, *supra* note 24, at pp. 2503-2504 ("Taking time away from work and childcare responsibilities to go to a police station to be fingerprinted, to make several trips to a courthouse, to find a notary, and to mail all these materials to the right addresses may be simply impossible, or at least difficult enough to be strongly discouraging.").
[113] *Id.* at p. 2502 (Examining Michigan's petition-based expungement laws, the authors found that "[m]any [people] do not know that the expungement law exists at all. Others may have a vague idea that expungement is possible, but they do not know that they are eligible or they are unfamiliar with what they need to do to pursue one (or how to find out)."). The authors found that, as a result of the access issues present in Michigan's expungement system, only 6.5% of individuals eligible for expungement in Michigan were able to have their convictions expunged within five years of eligibility. *Id.* at pp. 2489 & 2501-2506.
[114] *See* Appendix L for data from Pennsylvania and other states that publish such data.
[115] *See* Appendix K for additional information on Pennsylvania's automatic sealing process.
[116] For additional information on Clean Slate in Pennsylvania, s*ee* The Unified Judicial System of Pennsylvania. *Clean slate, expungement and limited access*. Retrieved from http://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access. For data on automatic and petition-based sealing in Pennsylvania, *see* The Unified Judicial System of Pennsylvania. (Dec. 16, 2020). *Processed Clean Slate Counts by County (June 28, 2019 – December 15, 2020)*. Retrieved from https://www.pacourts.us/Storage/media/pdfs/20210224/160628-processedcleanslatenumberscounty-008210.pdf.

[117] CAL. PENAL CODE § 1203.425 (West 2020).
[118] MICH. COMP. LAWS SERV. § 780.621g (LexisNexis 2021).
[119] N.J. REV. STAT. § 2C:52-5.4 (2020).
[120] 18 PA. CONS. STAT. § 9122.2 (2020).
[121] UTAH CODE ANN. §§ 77-40-102(5) (2020) and 77-40-114 (LexisNexis 2020).
[122] CAL. PENAL CODE § 1203.425 (2020).
[123] MICH. COMP. LAWS SERV. § 780.621g (2021).
[124] N.J. REV. STAT. § 2C:52-5.4 (2020).
[125] 18 PA. CONS. STAT. § 9122.2 (2020).
[126] UTAH CODE ANN. § 77-40-114 (LexisNexis 2020).
[127] S.D. CODIFIED LAWS § 23A-3-34 (2020).
[128] 20 ILL. COMP. STAT. 2630/5.2(i) (2020).
[129] N.Y. CRIM. PROC. LAW § 160.50 (LexisNexis 2020).
[130] In Vermont, Governor Scott signed S.234 into law on October 7, 2020. Section 31 of this bill establishes a process to automatically expunge certain marijuana offenses by January 1, 2022. The bill is available at: https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT167/ACT167%20As%20Enacted.pdf.
[131] Corda, A., & Lageson, S. (2020). Disordered punishment: Workaround technologies of criminal records disclosure and the rise of a new penal entrepreneurialism. *The British Journal of Criminology*, *60*(2), 254-264 at p.259; Haber, *supra* note 24, at pp. 356-357.
[132] Selbin, *supra* note 28, at pp.12-13; Roberts, *supra* note 24, at pp.328-329.
[133] VA. CODE ANN. § 17.1-293.1 (2020).
[134] Haber, *supra* note 24, at pp.356-357; Prescott, *supra* note 24, at p.2470.
[135] 15 U.S.C. § 1681 *et seq.* (2020).
[136] 15 U.S.C. § 1681e(b) (2020). *See also* 15 U.S.C. § 1681s–2(a)(1)(A) (2020) ("A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.")
[137] Roberts, *supra* note 24, at p. 345; *see also* Haber, *supra* note 24, at p.357 (discussing that the FCRA has been ineffective in regulating online criminal history record dissemination).
[138] Corda, *supra* note 131, at p. 249; Kessler, *supra* note 109, at pp.412-413.
[139] Haber, *supra* note 24, at pp.357-358.
[140] *Id.* at 357; Roberts, *supra* note 24, at pp. 329-330.
[141] Haber, *supra* note 24, at 362-363 (Haber argues that, in fact, these websites have an incentive to maintain inaccurate information. The customers who purchase information from these websites, including "many employers, landlords, and educational institutions would prefer to obtain a criminal history record that contains expunged conduct to know the complete criminal history of a prospect, regardless of the state's rationale for expunging it.").
[142] COLO. REV. STAT. § 24-72-703 (2020).
[143] CONN. GEN. STAT. § 54-142e (2020).
[144] LA. CODE CRIM. PROC. ANN. art. 974 (2020).
[145] MICH. COMP. LAWS § 780.623 (2021).
[146] MINN. STAT. § 332.70 (2020).
[147] NEV. REV. STAT. ANN. § 179.275 (LexisNexis 2021).
[148] N.J. REV. STAT. § 2C:52-30 (2020).

[149] N.C. GEN. STAT. § 15A-152 (2020).
[150] 12 R.I. GEN. LAWS § 12-1.3-4 (2020).
[151] TEX. GOV'T CODE ANN. § 411.075 (West 2020).
[152] *See* LA. CODE CRIM. PROC. ANN. art. 974(A) and (C) (2020); MINN. STAT. § 332.70(3) and (5) (2020); and, N.C. GEN. STAT. § 15A-152(a) and (c) (2020).
[153] Prescott, *supra* note 24, at pp.2541-2542 (2020) ("…[O]ur results suggest that it is possible for record clearing to generate substantial benefits for individuals with records notwithstanding the search tools currently available to employers.")
[154] Virginia State Crime Commission. (Aug. 31, 2020). *Automatic expungement*. Available at http://vscc.virginia.gov/2020/VSCC%20Presentation%20-%20Automatic%20Expungement.pdf.
[155] House Bill 5146 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=hb5146.
[156] Senate Bill 5043 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5043.
[157] House Bill 2113 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2113. Senate Bill 1372 is available at https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb1372.
[158] Senate Bill 1339 is available at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1339.
[159] 2021 Va. Acts, Sp. Sess. I, ch. 524 and 542.
[160] VA. CODE ANN. § 4.1-305 (2020).
[161] VA. CODE ANN. § 18.2-96 (2020).
[162] VA. CODE ANN. § 18.2-103 (2020).
[163] VA. CODE ANN. § 18.2-119 (2020).
[164] VA. CODE ANN. § 18.2-120 (2020).
[165] VA. CODE ANN. § 18.2-134 (2020).
[166] VA. CODE ANN. § 18.2-248.1(a)(1) (2020).
[167] VA. CODE ANN. § 18.2-250.1 (2019).
[168] VA. CODE ANN. § 18.2-415 (2020).
[169] *See supra* note 160.

APPENDIX A: State Non-Conviction Sealing Laws (45 States)

STATE	STATUTE(S)	WAITING PERIOD
Alabama	ALA. CODE §§ 15-27-1, 15-27-2	Immediate to 5 years
Arkansas	ARK. CODE ANN. §§ 16-90-1409, 16-90-1410	Immediate to 1 year
California	CAL. PENAL CODE §§ 851.91, 851.93	Immediate to 3 years
Colorado	COLO. REV. STAT. §§ 24-72-704, 24-72-705	Immediate to after the statute of limitations has run
Connecticut	CONN. GEN. STAT. § 54-142a	Immediate to 13 months
Delaware	DEL. CODE ANN. tit. 11, §§ 4372, 4373	Immediate to 1 year
Florida	FLA. STAT. §§ 943.0585, 943.059, 943.0595	Immediate sealing (10 years to seal)
Georgia	GA. CODE ANN. § 35-3-37	Immediate to 7 years
Hawaii	HAW. REV. STAT. § 831-3.2	Immediate
Idaho	IDAHO CODE § 67-3004	Immediate to 1 year
Illinois	20 ILL. COMP. STAT. 2630/5.2	Immediate
Indiana	IND. CODE § 35-38-9-1	1 year
Iowa	IOWA CODE § 901C.2	180 days
Kansas	KAN. STAT. ANN. § 22-2410	Immediate
Kentucky	KY. REV. STAT. ANN. § 431.076	30 days to 3 years
Louisiana	LA. CODE CRIM. PROC. ANN. art. 976	Immediate to after the statute of limitations has run
Maryland	MD. CODE ANN., CRIM. PROC. §§ 10-103, 10-103.1, 10-104, 10-105	Immediate to 3 years
Massachusetts	MASS. GEN. LAWS ch. 276, § 100H	Immediate
Michigan	MICH. COMP. LAWS § 28.243	Immediate to 60 days
Minnesota	MINN. STAT. §§ 299C.11, 609A.02	Immediate (certain non-convictions automatically sealed after 10 years)
Mississippi	MISS. CODE ANN. §§ 99-15-59, 99-19-71	Immediate to 1 year
Missouri	MO. REV. STAT. §§ 610.122, 610.140	3 years
Nebraska	NEB. REV. STAT. § 29-3523	Immediate to 1 year
Nevada	NEV. REV. STAT. ANN. § 179.255	Immediate to after the statute of limitations has run
New Hampshire	N.H. REV. STAT. ANN. § 651:5	30 days
New Jersey	N.J. STAT. ANN. § 2C:52-6	Immediate
New Mexico	N.M. STAT. ANN. § 29-3A-4	1 year
New York	N.Y. CRIM. PROC. LAW § 160.50	5 days

STATE	STATUTE(S)	WAITING PERIOD
North Carolina	N.C. GEN. STAT. § 15A-146	Immediate
Ohio	OHIO REV. CODE. ANN. §§ 2953.52, 2953.521	Immediate to 2 years
Oklahoma	OKLA. STAT. tit. 22, § 18	Immediate to after the statute of limitations has run
Oregon	OR. REV. STAT. § 137.225	Immediate to 1 year
Pennsylvania	18 PA. CONS. STAT. §§ 9122, 9122.2	Immediate
Rhode Island	R.I. GEN. LAWS § 12-1-12	60 days
South Carolina	S.C. CODE ANN. § 17-1-40	Immediate
South Dakota	S.D. CODIFIED LAWS § 23A-3-27	Immediate to 1 year
Tennessee	TENN. CODE ANN. § 40-32-101	Immediate
Texas	TEX. CODE CRIM. PROC. ANN. art. § 55.01	Immediate to 3 years
Utah	UTAH CODE ANN. §§ 77-40-104, 77-40-114	Immediate to after the statute of limitations has run
Vermont	VT. STAT. ANN. tit. 13, § 7603	Immediate
Virginia	VA. CODE ANN. § 19.2-392.2	Immediate
Washington	WASH. REV. CODE § 10.97.060	2 years to 3 years
West Virginia	W. VA. CODE § 61-11-25	60 days
Wisconsin	WIS. STAT. § 165.84	Immediate
Wyoming	WYO. STAT. ANN. § 7-13-1401	180 days

APPENDIX B: State Misdemeanor Conviction Sealing Laws (41 States)

STATE	STATUTE(S)	EXCLUDE OFFENSES (Y/N)*	WAITING PERIOD	QUANTITY LIMITS**
Arkansas	ARK. CODE ANN. § 16-90-1405	Y	Upon completion of sentence to 5 years	None
California	CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.41, 1203.425	Y	1 year	None
Colorado	COLO. REV. STAT. §§ 24-72-703, 24-72-706	Y	1 year to 3 years	One petition every 12 months
Connecticut	CONN. GEN. STAT. § 54-142a	N	3 years	None
Delaware	DEL. CODE ANN. tit. 11, §§ 4373, 4374	Y	5 years to 7 years	No prior convictions
Georgia	GA. CODE ANN. § 35-3-37	Y	4 years	Up to two misdemeanor convictions
Illinois	20 ILL. COMP. STAT. 2630/5.2	Y	3 years	None
Indiana	IND. CODE §§ 35-38-9-2, 35-38-9-9	Y	5 years	One petition per lifetime
Iowa	IOWA CODE § 901C.3	Y	8 years	One petition per lifetime
Kansas	KAN. STAT. ANN. § 21-6614	Y	3 years	No sealing of any record while offender is required to register
Kentucky	KY. REV. STAT. ANN. § 431.078	Y	5 years	None
Louisiana	LA. CODE CRIM. PROC. ANN. art. 977	Y	5 years	One petition every 5 years
Maryland	MD. CODE ANN., CRIM. PROC. §§ 10-105, 10-110	Y	4 years to 15 years	None
Massachusetts	MASS. GEN. LAWS ch. 276, §§ 100A, 100G, 100I	Y	3 years	None
Michigan	MICH. COMP. LAWS §§ 780.621, 780.621c, 780.621g, 780.624	Y	3 years to 7 years	Up to four misdemeanor convictions
Minnesota	MINN. STAT. § 609A.02	N	2 years to 4 years	None
Mississippi	MISS. CODE ANN. § 99-19-71	N	Upon completion of sentence	First offense only
Missouri	MO. REV. STAT. § 610.140	Y	3 years	Up to two misdemeanor convictions
Montana	MONT. CODE ANN. § 46-18-1104	N	5 years	One petition per lifetime
Nevada	NEV. REV. STAT. ANN. § 179.245	N	1 year to 7 years	None

STATE	STATUTE(S)	EXCLUDE OFFENSES (Y/N)*	WAITING PERIOD	QUANTITY LIMITS**
New Hampshire	N.H. REV. STAT. ANN. § 651:5	N	1 year to 3 years	One petition every 3 years
New Jersey	N.J. STAT. ANN. §§ 2C:52-2, 2C:52-3, 2C:52-5.3, 2C:52-14	N	5 years to 10 years	Up to five misdemeanor convictions
New Mexico	N.M. STAT. ANN. § 29-3A-5	Y	2 years to 4 years	None
New York	N.Y. CRIM. PROC. LAW § 160.59	N	10 years	Up to two misdemeanor convictions
North Carolina	N.C. GEN. STAT. § 15A-145.5	Y	5 years	First offense only
North Dakota	N.D. CENT. CODE § 12-60.1-02	Y	3 years	None
Ohio	OHIO REV. CODE. ANN. § 2953.31	Y	1 year	Up to two misdemeanor convictions
Oklahoma	OKLA. STAT. tit. 22, § 18	N	Upon completion of sentence to 5 years	No prior felony convictions
Oregon	OR. REV. STAT. § 137.225	N	3 years	No prior convictions within the past 10 years
Pennsylvania	18 PA. CONS. STAT. §§ 9122.1, 9122.2	Y	10 years	Certain prior convictions bar sealing
Rhode Island	R.I. GEN. LAWS § 12-1.3-2	Y	5 years to 10 years	Up to six misdemeanor convictions
South Carolina	S.C. CODE ANN. §§ 22-5-910, 22-5-920	Y	3 years to 5 years	None
South Dakota	S.D. CODIFIED LAWS §§ 23A-3-33, 23A-3-34	Y	10 years	None
Tennessee	TENN. CODE ANN. § 40-32-101	Y	5 years	No prior convictions
Texas	TEX. GOV'T CODE ANN. § 411.0735	Y	Upon completion of sentence to 2 years	First offense only
Utah	UTAH CODE ANN. §§ 77-40-102, 77-40-105, 77-40-114	Y	3 years to 7 years	Certain prior convictions bar sealing
Vermont	VT. STAT. ANN. tit. 13, §§ 7041, 7601, 7602	Y	5 years to 10 years	None
Washington	WASH. REV. CODE § 9.96.060	Y	3 years	None
West Virginia	W. VA. CODE § 61-11-26	Y	1 year to 2 years	Can only obtain sealing once
Wisconsin	WIS. STAT. § 973.015	N	Upon completion of sentence	First offense only
Wyoming	WYO. STAT. ANN. § 7-13-1501	Y	5 years	Can only obtain sealing once

* For "Exclude Offenses", Y denotes that the state excludes at least some misdemeanor offenses from being eligible for sealing, while N denotes that the state does not exclude any misdemeanor offenses from such eligibility.

** Generally, where states limit the number of convictions that can be sealed, those states provide an exception for instances when multiple convictions stemmed from the same event.

APPENDIX C: State Felony Conviction Sealing Laws (36 States)

STATE	STATUTE(S)	INCLUDE VIOLENT FELONIES (Y/N)*	WAITING PERIOD	QUANTITY LIMITS**
Arkansas	ARK. CODE ANN. §§ 16-90-1406, 16-90-1408	Y	Upon completion of sentence to 5 years	No more than one previous felony conviction
California	CAL. PENAL CODE §§ 1203.4, 1203.4a, 1203.41, 1203.425	Y	End of probation period	None
Colorado	COLO. REV. STAT. §§ 18-1.3-103.5, 24-72-703, 24-72-706	Y	3 years to 5 years	One petition every 12 months
Connecticut	CONN. GEN. STAT. § 54-142a	Y (all offenses)	5 years	None
Delaware	DEL. CODE ANN. tit. 11, §§ 4372, 4374, 4375	N	7 years	No prior convictions
Illinois	20 ILL. COMP. STAT. 2630/5.2	Y	3 years or until petitioner is no longer required to register	No prior felony convictions
Indiana	IND. CODE §§ 35-38-9-3, 35-38-9-4, 35-38-9-5, 35-38-9-9	Y	3 years to 10 years	One petition per lifetime
Kansas	KAN. STAT. ANN. § 21-6614	Y	3 years to 5 years	No sealing of any record while offender is required to register
Kentucky	KY. REV. STAT. ANN. § 431.073	N	5 years	Only one felony conviction
Louisiana	LA. CODE CRIM. PROC. ANN. art. 978	N	10 years	One petition every 15 years
Maryland	MD. CODE ANN., CRIM. PROC. § 10-110	Y	7 years to 15 years	None
Massachusetts	MASS. GEN. LAWS ch. 276, §§ 100A, 100G, 100I	Y	7 years	None
Michigan	MICH. COMP. LAWS §§ 780.621, 780.621c, 780.621g, 780.624	Y	5 years to 10 years	Up to two felony convictions
Minnesota	MINN. STAT. § 609A.02	Y	5 years	None
Mississippi	MISS. CODE ANN. § 99-19-71	N	5 years	Only one felony conviction
Missouri	MO. REV. STAT. § 610.140	N	7 years	Only one felony conviction
Nevada	NEV. REV. STAT. ANN. § 179.245	Y	2 years to 10 years	None

STATE	STATUTE(S)	INCLUDE VIOLENT FELONIES (Y/N)*	WAITING PERIOD	QUANTITY LIMITS**
New Hampshire	N.H. REV. STAT. ANN. § 651:5	N	2 years to 10 years	One petition every 3 years
New Jersey	N.J. STAT. ANN. §§ 2C:52-2, 2C:52-5.3, 2C:52-14	Y	5 years to 10 years	Only one felony conviction
New Mexico	N.M. STAT. ANN. § 29-3A-5	N	4 years to 10 years	None
New York	N.Y. CRIM. PROC. LAW § 160.59	N	10 years	Only one felony conviction
North Carolina	N.C. GEN. STAT. § 15A-145.5	N	10 years	First offense only
North Dakota	N.D. CENT. CODE § 12-60.1-02	Y	5 years	None
Ohio	OHIO REV. CODE. ANN. §§ 2953.31, 2953.32, 2953.36	N	3 years to 5 years	Up to five felony convictions
Oklahoma	OKLA. STAT. tit. 22, § 18	N	5 years to 10 years	No prior felony convictions up to two felony convictions
Oregon	OR. REV. STAT. § 137.225	Y	3 years to 20 years	No prior convictions within the past 10 years
Pennsylvania	18 PA. CONS. STAT. § 9122.1	N	10 years	Certain prior convictions bar sealing
Rhode Island	R.I. GEN. LAWS §§ 12-1.3-1, 12-1.3-2	N	10 years	First offense only
South Carolina	S.C. CODE ANN. § 22-5-920	N	5 years	First offense only
Tennessee	TENN. CODE ANN. § 40-32-101	N	5 years to 10 years	No prior convictions
Utah	UTAH CODE ANN. § 77-40-105	N	5 years to 10 years	Certain prior convictions bar sealing
Vermont	VT. STAT. ANN. tit. 13, §§ 7601, 7602	Y	5 years to 10 years	None
Washington	WASH. REV. CODE § 9.94A.640	Y	5 years to 10 years	None
West Virginia	W. VA. CODE § 61-11-26	N	5 years	Can only obtain sealing once
Wisconsin	WIS. STAT. § 973.015	N	Upon completion of sentence	First offense only
Wyoming	WYO. STAT. ANN. § 7-13-1502	N	10 years	Can only obtain sealing once

* For "Include Violent Felonies," Y denotes that the state allows specified violent offense convictions to be sealed, while N denotes that the state does not allow any violent offense convictions to be sealed.

** Generally, where states limit the number of convictions that can be sealed, those states provide an exception for instances when multiple convictions stemmed from the same event.

APPENDIX D: State Sealing of Specified Convictions

SPECIFIED CONVICTIONS	STATES
Sex Trafficking Victims	Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming (45)
Felony Larceny	Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming (34)
Mistaken or Stolen Identity	Alaska, Arizona, Colorado, D.C., Florida, Illinois, Kansas, Massachusetts, Missouri, Montana, Nebraska, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Virginia (17)
Marijuana	California, Delaware, Illinois, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Oregon, Washington (12)
Decriminalized Offenses	California, Connecticut, Delaware, D.C., Illinois, Maryland, Massachusetts, Nevada, Rhode Island, Vermont (10)

APPENDIX E: Offenses Commonly Excluded from State Sealing Statutes

DOMESTIC ASSAULT & BATTERY AND PROTECTIVE ORDER VIOLATIONS		
FELONY DOMESTIC A&B	**MISDEMEANOR DOMESTIC A&B**	**PROTECTIVE ORDER VIOLATIONS**
Arkansas, Colorado, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, West Virginia, Wyoming (20)	Colorado, Illinois, Iowa, Missouri, North Carolina, Rhode Island, Tennessee, Utah, West Virginia (9)	Illinois, Kentucky, Massachusetts, Missouri, Tennessee, Vermont, Washington (7)

DRIVING UNDER THE INFLUENCE	
FELONY DUI OFFENSES	**MISDEMEANOR DUI OFFENSES**
Colorado, Illinois, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Pennsylvania, Rhode Island, Tennessee, Utah, Washington, West Virginia (17)	Colorado, Illinois, Iowa, Maryland, Michigan, Missouri, New Mexico, North Carolina, Rhode Island, Tennessee, Utah, West Virginia (12)

APPENDIX F: State Waiting Periods for Sealing of Convictions

COMMENCEMENT OF WAITING PERIOD	
WAITING PERIOD BEGINS AT:	**STATE**
Completion of Sentence	Arkansas, Georgia, Illinois, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin (19)
Date of Conviction	Indiana, Iowa, Oregon, Pennsylvania, Utah (5)
Date of Offense	Massachusetts, South Dakota (2)
Date of Disposition	Connecticut (1)
End of Probation and/or Parole	California (1)
Latest time period of either completion of sentence or release from probation/parole	Colorado, Kansas, Kentucky, Louisiana, Michigan (5)
Latest time period of either conviction and sentencing or release from incarceration	Delaware, New York (2)
Latest time period of either release from custody or discharge from probation/parole	Nevada, North Dakota (2)
Latest time period of either conviction, payment of restitution, completion of probation/parole, or release from incarceration	New Jersey, Wyoming (2)
Latest time period of either conviction, completion of sentence, or end of supervision	North Carolina, West Virginia (2)

APPENDIX G: State Restitution Requirements for Sealing

Restitution must be paid before sealing	Arkansas, Colorado, Indiana, Iowa, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, Wyoming (18)
Restitution may be paid after sealing	Delaware, Illinois, Michigan, Minnesota, New Jersey (5)
Restitution not specifically addressed in sealing statutes	California, Connecticut, Georgia, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New York, Oregon, South Carolina, South Dakota, Washington, Wisconsin (18)

APPENDIX H: State Burdens of Proof for Sealing (Non-Convictions and Convictions)

COURT DISCRETION WHETHER STATUTORY REQUIREMENTS HAVE BEEN SATISFIED	CLEAR AND CONVINCING EVIDENCE	PREPONDERANCE OF THE EVIDENCE
California, Colorado, Connecticut, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, Wyoming (29)	Arkansas, Kentucky, Minnesota, North Dakota, South Dakota, Utah, West Virginia (7)	Delaware, Georgia, Indiana, Louisiana, Montana (5)

APPENDIX I: State Employment Sealing Provisions

EMPLOYMENT PROVISIONS*	STATES
Person may deny existence of a sealed conviction without exceptions	Delaware, Kentucky, Maryland, Mississippi, Montana, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Washington (12)
Person may deny existence of a sealed conviction with exceptions	Arkansas, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, West Virginia (25)
Person cannot deny existence of a sealed conviction	Georgia, Iowa, Wisconsin, Wyoming (4)
Law limits questions that employers may ask regarding sealed convictions	California, Colorado, Connecticut, Illinois, Indiana, Massachusetts, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Vermont (14)
Law limits liability for employers who hire persons with sealed convictions	Indiana, Massachusetts, Michigan, Minnesota, Pennsylvania, South Carolina (6)

* The term “person” refers to an individual who has had a criminal conviction sealed.

APPENDIX J: State Maintenance of Sealed Records for Criminal Justice and Employment Purposes

CRIMINAL JUSTICE PURPOSES	
States that maintain sealed records for criminal justice purposes*	Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming (39)
Access to sealed records granted by court order	Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, West Virginia (23)
Law enforcement investigations	Colorado, Delaware, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New York, Ohio, Oklahoma, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, Wyoming (20)
Sentencing and/or penalty enhancement	Arkansas, California, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington (20)
Impeachment or other evidentiary purpose	Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, Ohio, Texas (17)
Use for determining or preventing future sealing requests	Colorado, Delaware, Kansas, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Oklahoma, South Carolina (12)

* Several states maintain sealed records for multiple criminal justice purposes, and therefore these states are included in multiple categories within this table.

EMPLOYMENT PURPOSES	
States which maintain sealed records for employment purposes*	Arkansas, California, Colorado, Delaware, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, West Virginia (26)
Professional licensing boards	Arkansas, California, Colorado, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, West Virginia (19)
Law enforcement background checks	Arkansas, Delaware, Georgia, Illinois, Kansas, Michigan, Minnesota, Missouri, New Hampshire, New York, North Carolina, Rhode Island, Texas, Utah, West Virginia (15)

* Several states maintain sealed records for multiple employment purposes, and therefore these states are included in multiple categories within this table.

APPENDIX K: States with Automatic Sealing Laws (5 States)

CALIFORNIA	
Code Section:	CAL. PENAL CODE § 1203.425
Enacted:	October 8, 2019; amended August 6, 2020
Implementation Date:	July 1, 2022
Overview	Creates an automatic sealing process for: • Non-convictions after varying timeframes, which are based on whether criminal proceedings were initiated; • Misdemeanors and infractions after 1 year from conviction if not sentenced to probation; • Any offense if a person is sentenced only to probation and the person completes that sentence without a revocation of probation. A person will not qualify for automatic sealing if they are a registered sex offender, on active probation, serving a sentence for another offense, or have pending criminal charges. California's clean slate process will only apply to offenses that occurred on or after January 1, 2021 (not retroactive).

MICHIGAN	
Code Section:	MICH. COMP. LAWS § 780.621g
Enacted:	October 13, 2020
Implementation Date:	April 11, 2023
Overview	Creates an automatic sealing process for: • Non-convictions, subject to certain conditions; • Certain misdemeanor convictions 7 years from the imposition of the sentence; • Certain felony convictions after 10 years from the imposition of the sentence or the completion of any term of imprisonment. Felonies and certain misdemeanors cannot be automatically sealed if a person has charges pending or has been convicted of another offense. No more than 2 felony and 4 misdemeanor convictions in total can be automatically sealed, excluding low-level misdemeanors.

NEW JERSEY	
Code Section:	N.J. STAT. ANN. § 2C:52-5.4
Enacted:	December 18, 2019
Implementation Date:	There is currently no projected date for implementation.
Overview	Enacted legislation in 2019 to implement an automated sealing system. A task force was created to examine technological, fiscal, and practical issues and challenges of such a system.

PENNSYLVANIA	
Code Sections:	18 PA. CONS. STAT. §§ 9122.2 & 9122.3
Enacted:	June 28, 2018
Implementation Date:	June 28, 2019
Overview	**Pennsylvania is the only state that has actually implemented an automatic conviction relief system.** Creates an automatic sealing process for: • Non-convictions; • Certain misdemeanor convictions after 10 years if there are no subsequent misdemeanor or felony convictions and all court-ordered restitution has been paid. Certain prior convictions will disqualify a person from automatic sealing, such as a felony, four misdemeanors, indecent exposure, and various other offenses.

UTAH	
Code Sections:	UTAH CODE ANN. §§ 77-40-102, 77-40-114, 77-40-115, & 77-40-116
Enacted:	March 28, 2019
Implementation Date:	In the developmental phase - it is uncertain when it will be completely implemented.
Overview	Creates an automatic sealing process for: • Non-convictions (not guilty, nolle prosequi, or dismissed); • Specified traffic offenses; • Dismissals without prejudice after 180 days; • Certain misdemeanor convictions after 5 – 7 years. A person will not qualify for automatic sealing if they have unpaid fines, fees, or restitution, pending criminal charges, or certain prior convictions on their criminal record

APPENDIX L: State Sealing Data

PENNSYLVANIA AUTOMATIC SEALING DATA: JUNE 28, 2019 TO DECEMBER 15, 2020*	
TYPES OF CASES AND OFFENSES	**TOTAL CASES AND OFFENSES EXPUNGED**
Non-conviction Cases	16,354,636
Non-conviction Offenses	28,858,513
Conviction Summary Cases**	19,615,037
Conviction Summary Offenses**	19,830,748
Conviction Misdemeanor Cases	94,109
Conviction Misdemeanor Offenses	116,612
Total Cases Expunged	**36,065,463**
Total Offenses Expunged	**48,809,708**

Data from this table is available online at http://www.pacourts.us/assets/files/setting-7047/file-8210.pdf?cb=5fb88e (document can be accessed via the Pennsylvania courts website: http://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access).

*Pennsylvania uses the term "limited access," which is similar to sealing.

**A summary offense is generally punished by a fine of under $1,000, imprisonment of 90 days or less, or both.

PENNSYLVANIA SEALING DATA (PETITION-BASED): NOVEMBER 2016 TO DECEMBER 2020*	
Cases Expunged by Petition	1,681
Offenses Expunged by Petition	3,835

Data from this table is available online at http://www.pacourts.us/assets/files/setting-7047/file-8210.pdf?cb=5fb88e (document can be accessed via the Pennsylvania courts website: http://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access).

*Pennsylvania uses the term "limited access," which is similar to sealing.

ILLINOIS EXPUNGEMENT AND SEALING DATA (PETITION-BASED)		
YEAR	**ORDERS FOR EXPUNGEMENT RECEIVED BY THE STATE POLICE**	**ORDERS FOR SEALING RECEIVED BY THE STATE POLICE**
2014	9,229	4,594
2015	9,905	6,483
2016	7,911	6,660
2017	10,231	5,942
2018	12,084	4,447
2019	15,877	7,316

Data from this table is available on the Illinois State Police website: https://isp.illinois.gov/BureauOfIdentification/Expungements.

MARYLAND EXPUNGEMENT DATA (PETITION-BASED)		
Year	**DISTRICT COURT EXPUNGEMENT PETITIONS FILED**	**CIRCUIT COURT EXPUNGEMENT PETITIONS FILED**
2014	35,737	4,025
2015	32,726	2,448
2016	39,706	4,706
2017	47,697	6,811

Data from this table was found in a Senate Bill report filed by the Maryland Department of Legislative Services, which is available at http://mgaleg.maryland.gov/2018RS/fnotes/bil_0001/sb0101.pdf.

NORTH CAROLINA EXPUNCTION DATA (PETITION-BASED)	
FISCAL YEAR	**EXPUNCTION ORDERS***
2014-15	7,972
2015-16	11,032
2016-17	12,438
2017-18	12,751
2018-19	15,545
2019-20	13,520
Total Expunction Orders	**73,258**

Data from this table was found in a 2020 Expunctions Report prepared by the North Carolina Administrative Office of the Courts, which is available at https://www.nccourts.gov/assets/documents/publications/NCAOC-Report-on-Expunctions-20200901.pdf?cH1pLi_Z0ANAmrTLkHf9TEgyfuKw1udi.

* "'Expunction' and 'expungement' mean the same thing. North Carolina's expunction statutes use both terms interchangeably." North Carolina Judicial Branch, *Expunction*, available at https://www.nccourts.gov/help-topics/court-records/expunctions#:~:text=An%20expunction%20is%20a%20legal,charge%2C%20and%2For%20conviction


VIRGINIA STATE
CRIME COMMISSION

Expungement and Sealing of Criminal Records

Study Highlights

Revised June 2021

A criminal charge or conviction can impact many areas of a person's life, such as:

- Employment
- Higher education
- Financial aid
- Housing
- Immigration
- Loan eligibility and credit
- Professional licensing
- Social stigma

Expungement provides a mechanism to:

- Address the collateral consequences caused by a criminal charge or conviction; and,
- Allow conviction relief for individuals in communities that have been disparately impacted by the criminal justice system.

There are approximately 1.59 million individuals in the Central Criminal Records Exchange with *at least* one criminal conviction as of July 31, 2020 according to the Virginia State Police.

Crime Commission Legislation

Crime Commission members endorsed legislation for introduction during the 2020 Special Session and the 2021 Regular Session of the General Assembly to:

1. Create an automatic expungement process to remove specified felony and misdemeanor convictions, deferred dispositions, non-convictions, and incidents of mistaken identity and unauthorized use of identifying information from criminal history records and to seal related court records.
2. Limit access and dissemination of expunged criminal and court records.
3. Provide protections in relation to employment, education, and housing applications for individuals who have had their criminal records expunged.
4. Require that third parties who collect and disseminate criminal records must delete records that have been expunged or face civil liability.
5. Provide employers with liability immunity when hiring workers who have had their criminal records expunged.

What is Virginia's expungement process?

Virginia law currently authorizes a petition-based process only for expungement of non-convictions from criminal history records (Virginia Code § 19.2-392.2). The current expungement process in Virginia requires the individual charged with the offense to file a petition and fingerprints with the circuit court, pay a filing fee, and possibly attend a hearing on the matter. Generally, the circuit court has broad discretion in whether to grant or deny the petition for expungement. If granted, the charge is removed from the person's criminal history record, access to the record is restricted, and a court order is required to view the sealed record.

How many expungement orders are granted each year?

Virginia State Police received an average of approximately 4,000 expungement orders per year for non-convictions (CY2017 to CY2019).

How do other states address expungement?

Virginia law does not currently allow for expungement of convictions or deferred dispositions; whereas, a sizeable number of states authorize such actions:

- 41 states allow misdemeanor convictions to be expunged or sealed; and,
- 36 states allow felony convictions to be expunged or sealed.

States that allow for expungement or sealing of convictions typically place some limitations on the type and number eligible offenses, the timeframe for relief, and whether restitution must be paid before a conviction can be expunged or sealed. For instance, misdemeanor convictions are generally eligible for expungement or sealing after 3-5 years and felony convictions after 5-10 years.

5 states have enacted legislation to automatically expunge numerous criminal charges and convictions:

- California
- Michigan
- New Jersey
- Pennsylvania
- Utah

Currently, only Pennsylvania is automatically expunging large numbers of criminal records in an automated manner.

New Jersey has allocated $15 million for the implementation of an automatic expungement system.

Other states with more limited automatic expungement processes include Illinois, New York, South Dakota, and Vermont.

Other states considering the enactment of automatic expungement laws include Connecticut, Louisiana, North Carolina, and Washington.

Contact Us:
vscc.virginia.gov
vsccinfo@vscc.virginia.gov

What is automatic expungement?

Automatic expungement is initiated by the Commonwealth and allows for a defendant to receive conviction relief without having to file a petition or pay any fees. Access to an individual's expunged criminal history and court records would be limited to specific purposes as determined by the General Assembly.

Do other states automatically expunge criminal records?

Staff identified 5 states that have enacted legislation to automatically expunge convictions and non-convictions for various criminal offenses:

California

- Timeframes for automatic expungement of non-convictions vary based on whether criminal proceedings were initiated.
- Misdemeanors and infractions are automatically expunged after 1 year from conviction if not sentenced to probation.
- An offense is automatically expunged if a person is sentenced only to probation and the person completes that sentence without a revocation of probation.
- A person will not qualify for automatic expungement if they are a registered sex offender, on active probation, serving a sentence for another offense, or have pending criminal charges.

Michigan

- Non-convictions are automatically expunged, subject to certain conditions.
- Certain misdemeanor convictions are automatically expunged after 7 years from the imposition of the sentence.
- Certain felony convictions are automatically expunged after 10 years from the imposition of the sentence or the completion of any term of imprisonment.
- Felonies and certain misdemeanors cannot be automatically expunged if a person has charges pending or has been convicted of another offense.
- No more than 2 felony and 4 misdemeanor convictions in total can be automatically expunged, excluding low-level misdemeanors.

New Jersey

- Enacted legislation in 2019 to implement an automated expungement system. A task force has been created to examine technological, fiscal, and practical issues and challenges of such a system.

Pennsylvania

- Non-convictions are automatically expunged.
- Certain misdemeanor convictions are automatically expunged after 10 years if there are no subsequent misdemeanor or felony convictions and all court-ordered restitution has been paid.
- Certain prior convictions will disqualify a person from automatic expungement, such as a felony, four misdemeanors, indecent exposure, and various other offenses.

Utah

- Non-convictions are automatically expunged.
- Dismissals without prejudice are automatically expunged after 180 days.
- Certain misdemeanor convictions are expunged after 5 – 7 years.
- A person will not qualify for automatic expungement if they have unpaid fines, fees, or restitution, pending criminal charges, or certain prior convictions on their criminal records.

Expungement and Sealing of Criminal and Court Records

November 15, 2021

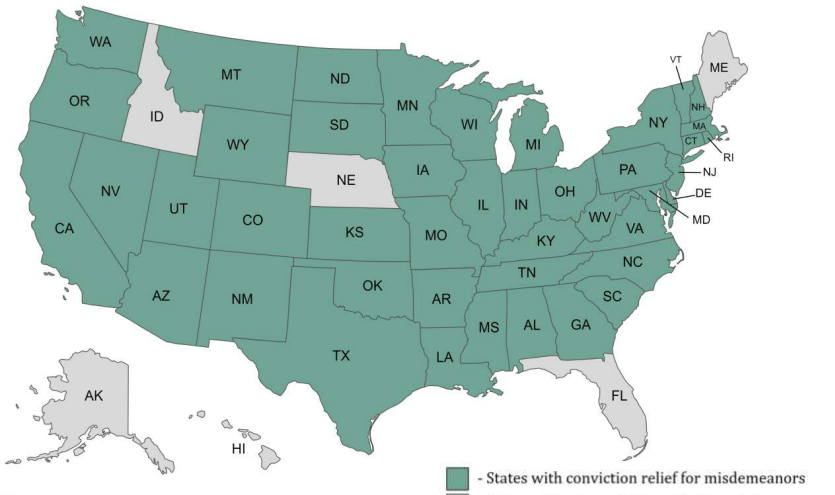
Virginia Sealing Legislation

- Legislation was enacted in 2021 to create five new processes for sealing criminal and court records:
  - Automatic sealing of convictions;
  - Petition-based sealing of convictions;
  - Automatic sealing of misdemeanor non-convictions;
  - Automatic sealing for mistaken identity or unauthorized use of identity; and,
  - Sealing of traffic infractions by law after 11 years.
- Becomes effective July 2025, or earlier if possible.

Automatic Sealing of Convictions

- Eligible misdemeanor convictions include:
  - Underage alcohol-related offenses
  - Larceny and concealment
  - Trespass
  - Instigating trespass by others
  - Trespass on posted property
  - Disorderly conduct
  - Possession and distribution of marijuana
- Automatic sealing occurs after 7 years if the person is not convicted of any new crimes.

44 States Seal Misdemeanor Convictions



Map by Crime Commission staff based on legal analysis.

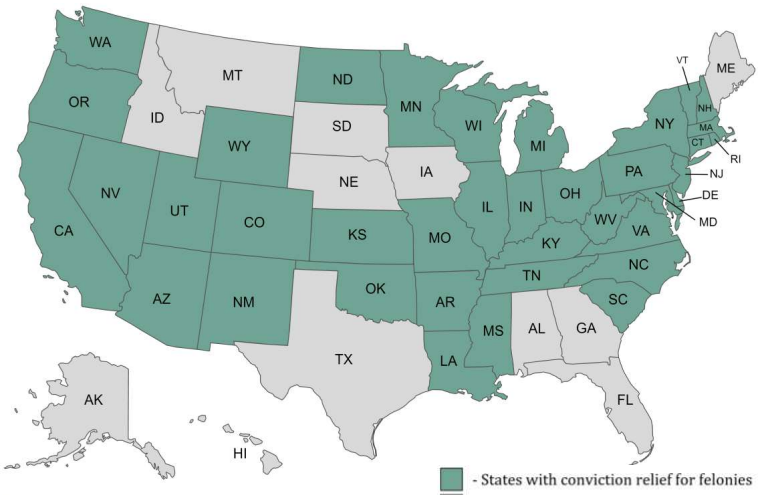
Petition-Based Sealing of Convictions

- Eligible convictions:
  - All misdemeanors
  - All Class 5 and 6 felonies
  - All felonies punishable as larceny
- Excluded convictions:
  - DUI-related offenses
  - Domestic assault and battery

Petition-Based Sealing of Convictions

- Multiple criteria for petition-based sealing:
  - Eligibility to file based on prior criminal record
  - Requirements to grant the sealing petition:
    - No new convictions for 7 years (misdemeanor) or 10 years (felony) from the date of conviction, final dismissal, or release from custody
    - Demonstrate rehabilitation (alcohol or drug)
    - No more than two prior petition-based sealings of different sentencing events
    - Manifest injustice to petitioner

38 States Seal Felony Convictions



Map by Crime Commission staff based on legal analysis.

Legislative Directives

- HB2113 and SB1339 required the Crime Commission to examine six specific matters in relation to the current expungement process and the newly created sealing processes.
- While Virginia law now allows for the sealing of criminal convictions, many complex issues related to the expungement and sealing of criminal and court records still remain.

Legislative Directive 1

- **Directive 1:** Study the interplay between the expungement statute and the sealing of criminal and court records.
  - The Virginia Code now contains three forms of criminal record relief:
    1. Expungement
    2. Sealing
    3. Marijuana expungement

Legislative Directive 1

1. Expungement: removing records from public inspection. Traditionally for non-convictions.
2. Sealing: limits access to and dissemination of records to 25 specific purposes.
3. Marijuana expungement: referred to as expungement, but functions in practice as sealing.
   - Newly created automatic and petition-based expungement for certain marijuana-related charges and convictions.

Legislative Directive 1

- These three forms of criminal record relief vary substantially in terms of:
  - Purpose
  - Process
  - Access
  - Protections
- Numerous policy decisions must be made to align the criminal record relief provisions in the Code.

Legislative Directive 2

- **Directive 2**: Recommend a review process for any proposed changes to the expungement or sealing of criminal or court records.
  - *Recommendation:* Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).

Legislative Directive 3

- **Directive 3:** Consult with stakeholders to determine and recommend methods to educate the public on the new sealing processes.
  - *Recommendation:* Authorize funding for 2 new FTE's at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel, educate the public, and serve as a resource for attorneys, government agencies, and community stakeholders on expungement and sealing (total estimated cost: $215,000).

Legislative Directive 4

- **Directive 4:** Study the permissible uses of criminal and court records that have been expunged or sealed.
  - The permissible uses of expunged and sealed records vary significantly and any changes will require numerous policy decisions.
    - Expunged records: access and dissemination based on a court order.
    - Sealed and marijuana expunged records: access and dissemination for 25 specific purposes.

Legislative Directive 5

- **Directive 5:** Study plea agreements in relation to the expungement or sealing of criminal and court records.
  - Laws governing plea agreements in Virginia and in other states vary.
  - Any limitations on plea agreements must be weighed cautiously.
    - Effectiveness of sealing laws could be undermined.
    - However, plea agreements, even with sealing restrictions, may still be favorable to defendants.

Legislative Directive 6

- **Directive 6:** Study the feasibility of destroying or purging expunged or sealed criminal and court records.
  - The sealing legislation was drafted to not require the destruction of records due to the significant resources needed.
  - Destroying sealed records is contrary to the provisions of the new legislation which allows access to and dissemination of sealed records for 25 specific purposes.

Legislative Directive 6

- Expunged records are not destroyed, but rather physical and electronic access to such records is significantly restricted.
- Staff only identified one state that completely destroys expunged records and did not identify any states that completely destroy sealed records.
- Destroying expunged or sealed criminal or court records in Virginia will require numerous policy decisions and significant additional resources.

Summary

- The Virginia Code now includes three forms of criminal record relief with conflicting policies and processes which must be reconciled to ensure that:
  - The framework is consistent;
  - Individuals have access to the processes;
  - Post-relief protections are uniform; and,
  - Continuing resources are available.

Recommendations

Recommendations

- **Recommendation 1:** The Crime Commission should continue to examine the expungement and sealing of criminal and court records in order to reconcile conflicts between the three criminal conviction relief processes now in the Virginia Code.

Recommendations

- **Recommendation 2:** Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).

Recommendations

- **Recommendation 3:** Authorize funding for 2 new FTE's at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel, educate the public, and serve as a resource for attorneys, government agencies, and community stakeholders on expungement and sealing (total estimated cost: $215,000).

Expungement and Sealing of Criminal and Court Records

Study Highlights

January 2022

Virginia is now one of:

- 44 states that seal misdemeanor convictions;
- 38 states that seal felony convictions; and,
- 8 states that automatically seal broad classes of criminal offenses.

The Virginia Code currently includes three forms of criminal record relief:

- Expungement;
- Sealing; and,
- Marijuana expungement.

These three forms of criminal record relief are in conflict and must be reconciled to ensure:

- The framework is consistent;
- Individuals have access to the processes;
- Post-relief protections are uniform; and,
- Continuing resources to support the processes are made available.

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Staff continued its work on expungement and sealing of criminal and court records during 2021. Legislation was enacted during Special Session I of the 2021 General Assembly that created new automatic and petition-based processes to seal certain criminal charges and convictions (HB2113/SB1339). These bills also directed the Crime Commission to continue its study and examine the following unresolved matters:

1. Examine the interplay between the expungement and sealing of records.
The Virginia Code now contains three forms of criminal record relief: expungement, sealing, and marijuana expungement. Expungement removes records from public inspection, while sealing and marijuana expungement limit access to and dissemination of records to 25 specific purposes. These forms of relief vary significantly in terms of purpose, process, who has access to each process, and what protections are provided when a record is expunged or sealed. Numerous policy decisions must be made to align these provisions in the Code.

2. Recommend a review process for any changes to expungement or sealing.
Staff recommended that any legislation addressing the expungement or sealing of records be referred to the Crime Commission until the sealing legislation takes effect (July 2025 or earlier). Staff made this recommendation because the sealing legislation requires various stakeholders to provide annual reports to the Crime Commission until the new sealing processes are implemented. No motion was made on this recommendation.

3. Identify methods to educate the public on the new sealing processes.
Staff recommended creating two new full-time positions at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel on the new expungement and sealing laws. The Crime Commission unanimously endorsed this recommendation.

4. Review the permissible uses of expunged and sealed records.
Expunged records can only be accessed and disclosed by court order. Sealed and marijuana expunged records can be accessed and disclosed for 25 purposes.

5. Evaluate the impact of plea agreements on expunged and sealed records.
Staff reviewed the Virginia Code and the criminal record relief laws of other states and identified a variety of competing approaches in regard to how expungement and sealing are impacted by plea agreements. Staff concluded that while plea agreements that restrict a person's ability to expunge or seal a record can be contrary to the intent of criminal record relief laws, there may be times when such an agreement is beneficial to a defendant.

6. Determine the feasibility of destroying expunged or sealed records.
Expunged records in Virginia are not initially destroyed, but rather physical and electronic access to such records is significantly restricted. Conversely, sealed and marijuana expunged records are maintained for 25 specific purposes. Staff determined that destroying expunged or sealed records would be extremely labor intensive, require significant resources from numerous entities, and be contrary to the intent of the new sealing legislation.