



A Guide to Expungement of Adult Record

## Expungement of an Adult Record

State of Delaware Superior Court

### What is an Expungement?

An expungement is the way in which all law enforcement agency records and court records relating to a case are shielded from general view. If an expungement is granted, you will not be required to disclose that you were arrested for, charged with, or convicted of an offense for which records have been expunged, except as provided in section 4376 of Title 11.

In Delaware, Subchapter VII of Chapter 43 of Title 11 of the Delaware Code governs the process of petitioning for expungement of an adult record.

### [Two Types of Adult Expungement](#)

There are two types of expungements. The first type is a Mandatory Expungement. The second type is a Discretionary Expungement.

**Mandatory Expungements** – The State Bureau of Identification (SBI) handles mandatory expungements. For detailed information on the mandatory expungement process, please see page 8.

**Discretionary Expungement** - Superior Court and Family Court handle discretionary expungements. If your case does not qualify for a mandatory expungement, you may still qualify for a discretionary expungement. A discretionary expungement means that the Attorney General's office will have an opportunity to respond to your petition, and the Court will weigh the facts of your case to determine whether the petition is granted. The Court may choose to hold a hearing to determine whether an expungement will be granted. For detailed information on the discretionary expungement process, please see page 9.

## **In which Court do I file my discretionary expungement petition?**

If all the charges and convictions sought to be expunged were disposed of in Family Court, then you must file in Family Court in the county where your most recent case was terminated. If you have any charges or convictions outside of Family Court, then you must file in Superior Court in the county where your most recent case was terminated for all charges and convictions.

## **Where can I go for help and additional information on the expungement process?**

APEX is a state program funded by the Division of Social Services and the Division of Vocational Rehabilitation. APEX can:

- ❖ Provide an overview of pardons and expungements.
- ❖ Guide you through the process.
- ❖ Assist with obtaining documents and completing paperwork.
- ❖ Offer preparation classes for Board of Pardons hearings.
- ❖ Connect you to the Job Center's free employment classes and resources.

Additional information, including how to contact APEX, can be found at: <https://apex.delawareworks.com/index.php>

## **Are there reasons why I might be unable to request either a mandatory or a discretionary expungement?**

Yes, the law provides that you may not request either a mandatory or a discretionary expungement if any of the following apply:

1. You have pending charges.

*(There is an exception if you are seeking an expungement related to an arrest for which no charges were filed in any Court within a year of that arrest.)*

Additionally, “pending charges” does not include alleged violations of the following: Section 904(e) or (f) of Title 4, Section 4764(c) of Title 16, or Title 21.

2. You are currently serving a term of incarceration, parole, or probation.

3. You received an expungement of a prior conviction within the previous 10 years.  
*(This limitation will not exclude a person from receiving a mandatory expungement if the mandatory expungement application relates to a case which was terminated in favor of the accused. (11 Del. C. §§ 4372(f)(4) and 4373(a)(1).)*
4. You received an expungement for a felony conviction, and you are seeking expungement of a new felony conviction.
5. You owe fines, fees or restitution associated with your conviction.  
*(If the fine is not yet satisfied for reasons other than willful noncompliance, the Court may waive the fines and fees or convert the obligation to a civil judgement. An applicant would have to apply to the Court for this relief.)*
6. You want to expunge Title 21 offenses. A Title 21 offense is not expungable unless it is one of the following:
  - a. Driving after judgment prohibited (21 Del. C. § 2810)
  - b. Reckless driving (21 Del. C. § 4175)
  - c. Operation of a motor vehicle causing death (21 Del. C. § 4176A)
7. You have been convicted of any of the following unless you received an unconditional pardon:
  - a. Vehicular assault in the second degree (11 Del. C. § 628A)
  - b. Incest (11 Del. C. § 766)
  - c. Unlawful sexual contact in the third degree (11 Del. C. § 767)
  - d. Coercion (11 Del. C. § 791)
  - e. Unlawfully dealing with a child (11 Del. C. § 1106)

## Mandatory Expungements

Unless the relevant misdemeanor conviction is listed on **Exhibit A, 11 Del. C. § 4373(b) Exclusions** (pages 12-13), upon application, SBI must expunge felonies, misdemeanors or violations found in Titles 4, 7, 11, 16 or 23 of the Delaware Code in any of the three following situations:

1. When a person is *arrested or charged* with 1 or more felony, misdemeanor or violation crimes and the case is terminated in the person's favor. "Terminated in favor" means any of the following:
  - a. The accused is acquitted of all charges related to the case.
  - b. A *nolle prosequi* is entered on all charges related to the case.
  - c. The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation.
  - d. All charges related to the case are otherwise dismissed.
  - e. The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by the entry of a *nolle prosequi* or otherwise.
  - f. The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for which the person was arrested are filed in any court within 1 year of the arrest.

***\*SBI shall expunge a case terminated in favor of the accused even if a person has prior or subsequent convictions that are ineligible for expungement.***

2. When:
  - a. A person is *convicted* of 1 or more violations relating to the same case.
  - b. 3 years have passed since the date of conviction; and
  - c. A person has "no prior or subsequent convictions."  
*(Prior or subsequent convictions for a Title 21 offense or offenses under Sections 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under Section 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana) are excluded from the definition of "prior or subsequent convictions.")*

3. When:
  - a. A person is *convicted* of one (1) or more misdemeanors or violations relating to the same case.
  - b. Five (5) years have passed since the date of conviction; and
  - c. A person has “no prior or subsequent convictions.”  
*(Prior or subsequent convictions for a Title 21 offense or offenses under Sections 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under Section 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana) are excluded from the definition of “prior or subsequent convictions.”)*
4. When a person prior to 12/18/2015 was convicted of a single offense under Section 4764 of Title 16 or such similar statute, law, or ordinance, provided the applicant is otherwise eligible for a mandatory expungement as provided in Section 4373 of Title 11.

### Discretionary Expungement

If you are ineligible for a mandatory expungement through SBI, you may be eligible for a discretionary expungement through the Court. You may petition the Court to expunge all charges related to a case if one (1) of the following applies:

1. 3 years have passed from the date of your conviction or release from incarceration whichever is later, and
  - a. you have no other “prior or subsequent convictions,”  
*(Prior or subsequent convictions for a Title 21 offense or offenses under Sections 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under Section 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana) are excluded from the definition of “prior or subsequent convictions.”) and*
  - b. you were convicted of one **(1) or more misdemeanors, relating to the same case**, which is **not** listed on **Exhibit A, 11 Del. C. § 4373(b) Exclusions** (pages 12-13).

2. 7 years have passed from the date of your conviction or release from incarceration whichever is later, and
    - a. you have no “prior or subsequent convictions,”
 

*(Prior or subsequent convictions for a Title 21 offense or offenses under Sections 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under Section 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana) are excluded from the definition of “prior or subsequent convictions.”) and*
    - b. you were convicted of **1 or more misdemeanors, relating to the same case,** which is listed on **Exhibit A, 11 Del. C. § 4373(b) Exclusions** (pages 12-13).
  
  3. 7 years have passed from the date of your conviction or release from incarceration whichever is later, and
    - a. you have no “prior or subsequent convictions,”
 

*(Prior or subsequent convictions for a Title 21 offense or offenses under Sections 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under Section 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana) are excluded from the definition of “prior or subsequent convictions.”) and*
    - b. you were convicted of **a single felony** for any crime other than the following felonies:
      - i. A Title 11 felony listed in Section 4201(c)
      - ii. A felony under Section 1136 of Title 16
      - iii. A felony under Section 3913 of Title 31
      - iv. A “felony conviction involving physical or sexual assault crimes” as defined in Section 309 of Title 31 (regarding the Beau Biden Child Protection Act)
 

*(“Felony convictions involving physical or sexual assault crimes” shall include: §§ 604-607, 612-613, 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803, 1100A-1102, 1103A-1103B, 1105, 1108-1112B of Title 11, felony convictions of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31. 31 Del. C. § 309(10).)*

**The above listed felonies are not eligible for a discretionary expungement unless you have already received an unconditional pardon from the Governor.**
- ❖ Refer to page 9 for convictions that cannot be expunged even after an unconditional pardon.

## **How will the Court decide whether to grant my Petition for Discretionary Expungement?**

If you are otherwise eligible, the Court will grant a discretionary expungement if it finds that the continued existence and giving out of the related criminal information causes, or may cause, you a manifest injustice.

### **What is manifest injustice?**

Manifest injustice essentially means hardship. Manifest injustice on the expungement petition refers to the harm caused by having a record, not the circumstances surrounding your arrest.

### **What do I have to explain to show manifest injustice?**

You must explain why having a record is causing you difficulties in your life or holding you back in some way, including but not limited to:

- ◆ Problems with Finding a Job
- ◆ Gaining Admission to College or Vo-Tech Programs

*\*\*\* NOTE: When completing your petition, please do not use the space provided to discuss the facts of your arrest or the circumstances concerning the charges. \*\*\**

## **If I file a Petition for Discretionary Expungement, will the Court grant the expungement automatically?**

Not necessarily. Once your petition is filed, a copy of your petition will be provided to the Attorney General's Office. The Attorney General's Office will then have 120 days to file an Answer. In its Answer, the Attorney General's Office will have the opportunity to oppose your request. If the Attorney General's Office files an Answer, you will then have 30 days to file a Reply. The Court will consider both your position and that of the Attorney General's Office in deciding your petition.

## **Will the Court hold a hearing regarding my Petition for Discretionary Expungement?**

The Court will hold a hearing only if the Court believes it is necessary. If the Court finds your petition is eligible for a discretionary expungement and that the continued giving out of the record causes you a manifest injustice, it will enter an order requiring the expungement of the police and court records. Otherwise, it will deny the Petition. Often this is done without a hearing.

## **What if I qualify for both a mandatory expungement and a discretionary expungement?**

You may apply to both SBI, for the mandatory expungement, and the Court, for the discretionary expungement. You may also include a case that is eligible for mandatory expungement in your petition for discretionary expungement. The Court may address both the mandatory and discretionary expungement requests. 11 *Del. C.* § 4374(d)(2).

## **What will happen if my expungement is granted?**

If the Court enters an Order granting your Petition for Discretionary Expungement, then all law-enforcement agency records and Court records relating to the case(s) and the charge or set of charges related to that case(s), including fingerprints and photographs, will be shielded from view.

If a potential employer does a criminal background check through the State Bureau of Identification, there will be no evidence on record with the Court or other State agencies relating to the expunged case(s) and the charge or set of charges related to that case(s).

## **What is a pardon?**

A pardon is an official statement of forgiveness of your offense issued by the Governor. A pardon does NOT remove the conviction from your official records; however, a pardon will generally restore your civil rights, such as the rights to vote and hold public office. A pardon may remove barriers to employment, professional licensing, public housing, social services, education, and other opportunities.

## **I received a pardon from the Governor, am I eligible to apply for a discretionary expungement?**

If you received an unconditional pardon from the Governor, you are eligible to request a discretionary expungement unless you would be seeking to expunge any of the following:

- a) Manslaughter (11 *Del. C.* § 632)
- b) Murder in the second degree (11 *Del. C.* § 635)
- c) Murder in the first degree (11 *Del. C.* § 636)
- d) Rape in the second degree (11 *Del. C.* § 772)
- e) Rape in the first degree (11 *Del. C.* § 773)
- f) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the first degree (11 *Del. C.* § 778(1), (2), or (3)).

As with any discretionary expungement petition, the Court has the discretion whether to grant the expungement.

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### **Required Forms for Adult Expungement**

- [Expungement Petition Form](#) (Form CIV\_EXP\_02\_A )
- [Expungement Order Granting Form](#) (Form CIV\_EXP\_04\_A)

## Exhibit A

### **11 Del. C. § 4373(b) Exclusions**

1. **Domestic Misdemeanors.** SBI cannot mandatorily expunge “misdemeanor crimes of domestic violence,” defined as crimes meeting criteria set forth in A and B:
  - A. The misdemeanor is one of the following:
    - i. Offensive Touching (11 Del. C. § 601)
    - ii. Menacing (11 Del. C. § 602)
    - iii. Reckless Endangering Second Degree (11 Del. C. § 603)
    - iv. Assault Third Degree (11 Del. C. § 611)
    - v. Abuse of Sports Official (11 Del. C. § 614)
    - vi. Terroristic Threatening (11 Del. C. § 621)
    - vii. Unlawful Administering Drugs (11 Del. C. § 625)
    - viii. Vehicular Assault Second Degree (11 Del. C. § 628A)
    - ix. Unlawful Imprisonment Second Degree (11 Del. C. § 781)
    - x. Interference with Custody (11 Del. C. § 785)
    - xi. Coercion (11 Del. C. § 791)
    - xii. Reckless Burning or Exploding (11 Del. C. § 804)
    - xiii. Criminal Mischief (11 Del. C. § 811)
    - xiv. Criminal Trespass all degrees (11 Del. C. § 821-23)
    - xv. Criminal Contempt (under 11 Del. C. § 1271(3) only)
    - xvi. Criminal Contempt of a Domestic Violence Protection Order or Lethal Violence Protection Order (11 Del. C. § 1271A)
    - xvii. Harassment (11 Del. C. § 1311)
    - xviii. Noncompliance with Conditions of Release Bond (11 Del. C. § 2133)

B. The defendant was:

- i. a member of the victim's family<sup>1</sup> regardless of where the parties are living;
  - ii. a former spouse of the victim;
  - iii. a person who cohabitated with the victim at the time or within 3 years before the offense;
  - iv. a person with a child in common with the victim; or
  - v. a person with whom the victim had a substantive dating relationship<sup>2</sup> at the time or within 3 years before the offense.
2. Offenses where the victim was a child
  3. Offenses where the victim was a "vulnerable adult"<sup>3</sup>
  4. Giving Unlawful Gratuities (11 Del. C. § 1205)
  5. Receiving Unlawful Gratuities (11 Del. C. § 1206)
  6. Improper Influence (11 Del. C. § 1207)
  7. Official Misconduct (11 Del. C. § 1211)
  8. Profiteering (11 Del. C. § 1212)
  9. Perjury (all degrees) (11 Del. C. §§ 1221-23)
  10. Making a false written statement (11 Del. C. § 1233)
  11. Tampering with a juror (11 Del. C. § 1266)
  12. Misconduct by a juror (11 Del. C. § 1267)
  13. Criminal contempt (both generally and with a criminal contempt of a DV Protection from Abuse order or Lethal Violence Protection order) (11 Del. C. §§ 1271 and 1271A)
  14. Unlawful grand jury disclosure (11 Del. C. § 1273)
  15. Unlawfully administering drugs, under 11 Del. C. § 625 when charged in conjunction with a sexual offense, as defined in 11 Del. C. § 761(f)

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<sup>1</sup> Family is defined by 10 *Del. C.* § 901 as "spouses; a couple cohabitating in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:" mother; father; mother-in-law; father-in-law; brother; sister; brother-in-law; sister-in-law; son; daughter; son-in-law; daughter-in-law; grandfather; grandmother; grandson; granddaughter; stepfather; stepmother; stepson; stepdaughter.

<sup>2</sup> 10 *Del. C.* § 1041(2) states that "substantive dating relationship" means: "neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a substantive dating relationship. Factors to consider for a substantive dating relationship may include the length of the relationship, or the type of relationship, or the frequency of interaction between the parties."

<sup>3</sup> "Vulnerable adult" is defined in 11 *Del. C.* § 1105 as "a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term 'vulnerable adult' includes any adult for whom a guardian or the person or property has been appointed."

16. Sexual harassment (11 Del. C. § 763)
17. Indecent exposure (First and Second Degree) (11 Del. C. §§ 764-765)
18. Trespassing with intent to peer or peep into a window or door of another (11 Del. C. § 820)
19. Organized retail crime (11 Del. C. § 841B)
20. Home improvement fraud (11 Del. C. § 916)
21. New home construction fraud (11 Del. C. § 917)
22. Offenses against law-enforcement animals (11 Del. C. § 1250)
23. Promoting prison contraband (11 Del. C. § 1256)
24. Resisting arrest (11 Del. C. § 1257)
25. Use of an animal to avoid capture (11 Del. C. § 1257A)
26. Hate crime (11 Del. C. § 1304)
27. Malicious interference with emergency communication (11 Del. C. § 1313)
28. Abusing a corpse (11 Del. C. § 1332)
29. Violation of privacy (11 Del. C. § 1335)
30. Lewdness (11 Del. C. § 1341)
31. Patronizing a prostitute (11 Del. C. § 1343)
32. Permitting prostitution (11 Del. C. § 1355)
33. Carrying a concealed dangerous instrument (11 Del. C. § 1443)
34. Unlawfully dealing with a dangerous weapon (11 Del. C. § 1445)
35. Unlawfully permitting a minor access to a firearm (11 Del. C. § 1456)
36. Possession of a weapon in a Safe School and Recreation Zone (11 Del. C. § 1457)
37. Title 21 offenses or their “equivalent”
38. Vehicular Assault Second Degree (11 Del. C. § 628A)
39. Incest (11 Del. C. § 766)
40. Unlawful Sexual Contact Third Degree (11 Del. C. § 767)
41. Coercion (11 Del. C. § 791)
42. Unlawfully dealing with a child (11 Del. C. § 1106)