



EXPUNGEMENT OF A JUVENILE RECORD

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>

Family Court Contact Information

New Castle County

Leonard L Williams
Justice Center
500 N. King Street
Wilmington, DE 19801
302-255-0300

Kent County

Family Courthouse
400 Court Street
Dover, DE 19901
302-672-1000

Sussex County

Family Courthouse
100 East Market St
Georgetown, DE
19947
302-855-7400

All Family Court Forms, FAQs, Filing Instruction Packets, and additional information can be found on the Family Court Website at:
<https://courts.delaware.gov/family>

What is an Expungement?

An order expunging a juvenile criminal case or record erases that juvenile criminal case or record. When an expungement order is entered, the Court will order the State Bureau of Identification (“SBI”) to delete all records of the identified case(s). Once the identified case(s) has been expunged, you are legally entitled to report that you have never been arrested, adjudicated, or convicted for the expunged case(s).

An expungement can occur in one of two ways. First, during any Family Court proceeding where any felony, misdemeanor, or violation case is terminated in favor of a child, the Court *sua sponte*, or upon request of any party, **may** immediately order the expungement of either (1) the case before the Court that is being terminated in favor of the child or (2) the entire juvenile criminal history, if otherwise eligible. This is called an Immediate Expungement. The Court has complete discretion in determining whether to order an immediate expungement or to require the filing of a mandatory expungement petition.

The second way an expungement may occur is by filing a Petition for Expungement of a Juvenile Record. In Delaware, Sections 1014-1019 of Title 10 of the Delaware Code govern the process of petitioning for expungement of a juvenile case or record. The remainder of this guide provides information on how to file a Petition for Expungement.

Important Terms Related to Expungements:

Not all criminal records or charges qualify for an expungement. The law sets out specific circumstances for the expungement of juvenile records and specific charges that may be expunged. For example, Title 21 offenses (i.e. driving offenses) cannot be expunged. To determine whether your case might qualify for an expungement under the law, you must understand certain terms.

“Terminated in favor of the child” means that (1) you were acquitted of all charges related to your case; or (2) a nolle prosequi was entered on all charges related to your case; or (3) the charges were dismissed for any reason. (The dismissal might be because you successfully completed Arbitration, Probation Before Adjudication of Delinquency, or any Court approved diversion program); (4) you were arrested for the commission of 1 or more crimes and no charges related to the matter for which you were arrested were filed within 1 year of arrest; or (5) a charge or case is 7 or more years old and there is no disposition indicated or the disposition is listed as unknown, unobtainable, or pending. For (5) to apply there cannot be an active warrant in the case or any documented case activity within the last 12 months, nor can the case include any other charges that were not terminated in your favor.

A “case” is defined by statute as a charge or set of charges related to a complaint or incident that were joined for prosecution, or could have been joined for prosecution.

“Adjudication of delinquency” means you were found guilty after a trial, or you entered a plea of nolo contendere.

“Adult conviction” means a finding of guilt or nolo contendere entered by a Court for a charge or charges following a plea or trial. Only offenses for which a period of incarceration may be imposed shall be considered an adult conviction for purposes of a juvenile expungement. Other than felony convictions for driving a vehicle while under the influence, convictions for Title 21 offenses shall not be considered a conviction for purposes of a juvenile expungement.

“Sex offense” means any offense listed in Section 4121(a)(4) of Title 11. The list includes offenses in Sections 765 through 780, 787(b)(3) -(4), 1100A, 1108 through 1112B, 1335(a)(6), 1335(a)(7), 1352(2), 1353(2) or 1361(b) of Title 11.

<http://delcode.delaware.gov/title11/c041/sc03/index.shtml#4121>

<http://delcode.delaware.gov/title11/c005/sc02/index.shtml> (Section 765 through 787(b)(3)-(4))

<http://delcode.delaware.gov/title11/c005/sc05/index.shtml> (Section 1100 through 1112A)

<http://delcode.delaware.gov/title11/c005/sc07/index.shtml> (Section 1335 (a)(6) through 1361(b))

“Misdemeanor sex offense” means any misdemeanor offense listed in Section 4121(a)(4) of Title 11.

“Felony sex offense” means any felony offense listed in Section 4121(a)(4) of Title 11.

<http://delcode.delaware.gov/title11/c041/sc03/index.shtml#4121>

“Violent felony” is defined as any offense listed in Section 4201 of Title 11.

<http://delcode.delaware.gov/title11/c042/index.shtml#4201>

Two Types of Juvenile Expungement Petitions:

I. Mandatory Expungement:

For certain crimes, the expungement is mandatory once you obtain your criminal record from SBI and you file a Petition for Expungement of Juvenile Record (Mandatory) in Family Court (Form 282M).

There are three ways in which you may be eligible for a mandatory expungement.

First, under Section 1017(a)(1) of Title 10, eligibility can be based on having a case or case terminated in your favor.

Second, under Section 1017(a)(2) of Title 10, eligibility can be based on having a case or cases that resulted in an adjudication of delinquency only for 1 or more of the following:

- a. Underage possession or consumption of alcohol under Section 904 (e) or (f) of Title 4.
- b. Possession of marijuana under Section 4764 of Title 16.
- c. Possession of drug paraphernalia under Section 4771 of Title 16.

Please note: A mandatory expungement petition may contain multiple cases that qualify under either or both Section 1017(a)(1) or (a)(2) of Title 10. Expungements under Subsections (a)(1) or (a)(2) are **not subject** to the statutory exclusions historically applicable to a mandatory expungement. It is important to understand that when an expungement is granted under Subsection (a)(1) or (a)(2), the eligible cases will be expunged. However, ineligible cases will remain on your criminal record.

Third, under Section 1017(a)(3), you may be eligible if you have no more than one case that is a felony, misdemeanor, or violation case, which resulted in an adjudication of delinquency and at least three (3) years have passed since the date of adjudication. The adjudication cannot have been for a violent felony, felony sex offense, or misdemeanor sex offense as defined by Section 1016 of Title 10. Additionally, to be eligible under this Subsection, you may not have any other adjudications of delinquency or adult convictions in any Court and you may not have any pending delinquency or criminal charges.

II. Discretionary:

If your case does not qualify for a mandatory expungement as explained above, 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 or not an expungement will be granted.

Like the mandatory expungements, to qualify for a discretionary expungement **you must not have an adult conviction (as defined above) or any pending criminal charges. Additionally, you must not have been adjudicated delinquent of first-degree murder (§ 636 of Title 11), second-degree murder (§ 635 of Title 11), first-degree kidnapping (§ 783A of Title 11), manslaughter under either Section 632(2) or 632(5) of Title 11, rape first-degree (§ 773 of Title 11), rape second-degree (§ 772 of Title 11), arson first-degree (§ 803 of Title 11), or an attempt to commit any of the aforementioned offenses.**

To have the Court order an expungement, your juvenile criminal history must also indicate:

- A single case that resulted in an adjudication of delinquency for a misdemeanor sex offense or violent felony and at least three (3) years have passed since adjudication.

OR

- No more than one case which resulted in an adjudication of delinquency for a felony sex offense and at least five (5) years have passed since adjudication.

OR

- Multiple adjudications for cases, except Title 11 violent felonies and felony sex offenses, and at least five (5) years have passed since the last adjudication.

OR

- Multiple adjudications for cases, that include Title 11 violent felonies and felony sex offenses, and at least seven (7) years have passed since the last adjudication.

AND

- You must show a manifest injustice if the charges were to remain on your arrest record.

How to File

Step 1: Obtain a certified copy of your Delaware criminal record.

Whether you are filing for a mandatory or discretionary expungement, in both instances, you will need a certified copy of your Delaware criminal history.

- To obtain a copy of your Certified State Criminal History, you must schedule a fingerprinting appointment in advance at one of the SBI locations. Walk-in services will not be accepted.
- Scheduling:** To schedule an appointment, go to <https://dsp.delaware.gov/obtaining-a-certified-criminal-history/>. Don't have access to the internet? You can still schedule an appointment by calling **866-761-8069**.
- Fees:** There is a fee to obtain your fingerprints and your certified criminal history report. Personal checks or cash will NOT be accepted at any location.
- Receiving Results:** You will receive your certified criminal history report through email. You will receive a letter in the mail from SBI with your expungement eligibility. The correspondence will not include another copy of your criminal history.
- Additional Information** can be found at <https://dsp.delaware.gov/obtaining-a-certified-criminal-history/>.

Step 2: Determine Which Expungement Type You Could Be Eligible to File with Your Charges

Once you've received the certified copy of your Criminal History, review the guide and FAQ and determine if your charges fall within any of the categories described. If your charges do not meet the criteria for mandatory expungement, review the guide and FAQ to determine whether your charges are eligible for a discretionary expungement. If your charges do not meet the requirements for either, you are not eligible to have your juvenile record expunged.

IF YOU ARE NOT ABLE TO DETERMINE WHETHER OR NOT YOUR CHARGES FALL WITHIN THE DESIGNATED CATEGORIES, YOU MAY NEED TO CONSULT WITH AN ATTORNEY.

Step 3: Complete and file your Petition for Expungement with the Court

Your Petition for Expungement, whether it be Mandatory or Discretionary, must be filed in the County where the most recent case was resolved. Your petition must include the certified copy of your criminal history from SBI.

IF you are filing for a **Discretionary Expungement**, there will be two additional steps:

1. Within the petition you will need to describe to the Court why the existence of your criminal history has created a **manifest injustice**. You have the burden of stating specific facts to support why having these charges on your record is causing you hardship. Space has been provided toward the bottom of the petition for this purpose. **YOU MUST COMPLETE THIS SECTION**
2. You must serve the Deputy Attorney General's office with a copy of your petition by mailing them a copy of the ENTIRE pleading (including your criminal history.) The address to the Deputy Attorney General's office in each County is listed at the top of the Petition for Discretionary Juvenile Expungement. An Affidavit of Mailing is also attached to the Petition which you will have notarized and filed with the Court upon mailing the filing to the Attorney General's Office.

Will I need to attend a Court hearing?

If you filed for a discretionary expungement, the Court may hold a hearing, or may grant your request without a hearing. If the Court decides to have a hearing, you will receive notice of the date and time.

What will happen if my adjudication of delinquency is expunged?

If the Court enters an Order granting your Petition for Expungement of Juvenile Record, then all evidence of your adjudication of delinquency and arrest record relating to the adjudication will be shielded from view. In addition, you will not have to disclose the arrest on the expunged charge(s) for any reason.

When a potential employer does a criminal background check, there will be no evidence on record with the Court or other State agencies relating to the expunged adjudication.

Where can I get a Petition for Expungement?

Petitions for Expungement of Juvenile Record both Mandatory and Discretionary are available at Family Court or on the Family Court website <http://courts.delaware.gov/family>.

Can I email my petition and related paperwork?

Petitions and papers may be emailed to Family Court. To file your petition by email, you must send the petition and all required forms to: FC_Expungement@delaware.gov

Below is a list of Court Forms. Although you can file these documents with the Court by email, you must still serve copies of the documents to the Attorney General's Office.

****Before filing by email, please review the Civil Filing by Email FAQ: <https://courts.delaware.gov/family/faqs>**

Required Forms and documents for Juvenile Expungement

- [Petition for Expungement of a Juvenile Record – Discretionary](#) (Form 282D)
- [Petition for Expungement of a Juvenile Record – Mandatory](#) (Form 282M)
- [Petition for Expungement of a Juvenile Record – Charge Sheet](#) (Form 282E)
- [Information Sheet](#) (Form 240)
- Certified Copy of Criminal History

ATTACHED. YOU WILL FIND AN ADDITIONAL GUIDE TO ASSIST YOU WITH UNDERSTANDING YOUR CRIMINAL HISTORY AND DETERMINING WHETHER YOUR CHARGE(S) QUALIFY FOR AN EXPUNGEMENT.

Please note that the Delaware Office of Defense Services may be able to provide assistance with juvenile expungements. More information can be found at the Office of Defense Services website at ods.delaware.gov/expungements.

Criminal History Guide

Once you receive your criminal history from SBI, use this guide to help you better understand the document. This can help you to determine if your charges qualify for an expungement.

Name of Individual: John Doe

Date of Birth: 11/15/1970

FBI Number: 0000000000

SBI Number: 0000000000000

John Doe

Alias of the Individual

Charge History

Date of Arrest: 09/11/2008 Charging Agency: New Castle County PD

Complaint: 0192837453 Charge Sequence: 001 Charge: DE: 11 : 0601 : 00a1 : M :

Case #: 0888992211 Court of Record: New Castle County Family Court

Date of Disposition: 11/9/2008

Disposition: Dismissed

DE : 11 : 0601 : 00a1 : M :

This indicates the **Title** of the Delaware Code in which the charge is defined. (In this example, Title 11.)

This indicates the **section** of the Delaware Code in which the charge is defined. (In this example, Section 601.)

This indicates the **sub section** of the Delaware Code in which the charge is defined. (In this example Sub Section (a)(1))

This indicates whether the charge is a **misdemeanor** or **felony**
M = Misdemeanor
F = Felony

Date of Disposition: 11/9/2008

This is the date that your case was concluded.

Disposition: Dismissed

This is the outcome of your case:

IF the case was terminated in your favor, the Disposition would read: Dismissed, Dismissed with Prejudice, Dismissed without Prejudice, Not Guilty, No Violation, Nolle Prosequi, Juvenile Found Not Guilty or Juvenile Found Not Delinquent

IF the case was NOT terminated in your favor, the Disposition would read: Juvenile found delinquent, Guilty, Nolo Contendere or Found in Violation