

# CLEARING YOUR CRIMINAL RECORD

*A GUIDE TO OBTAINING AN  
EXPUNGEMENT IN  
ALLEGHENY COUNTY*

NLSA

Neighborhood Legal Services Association

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## A Guide on How to Obtain an Expungement in Allegheny County

**WORD OF CAUTION:** The laws mentioned here were correct at the time of printing (December 2011), but laws do change and some may be different by the time you read this. You should always check to be sure that any law or principle mentioned is current before relying on it. This manual contains general information about the law and does not provide specific advice about a particular legal problem you may have. This should not act as a substitute for seeing a lawyer, and if you are in doubt as to whether you need one, please talk to one.

*Please Note: The information in this manual applies to state criminal charges that arose in Allegheny County. If you were arrested and charged in a different county, different procedures for expungement may apply.*

### **A. What is an expungement?**

In Pennsylvania, you may have your criminal record cleared or “expunged” if you satisfy certain requirements under Pennsylvania law (18 Pa. C. S. § 9122). If you are granted an expungement, your criminal record will be removed from the Department of Court Records’ files as well as the files of other criminal justice agencies. In essence, there will be no record that you were ever charged with a crime.

### **B. Why should I seek an expungement?**

Under Pennsylvania law, employers are permitted to conduct background checks on job applicants during the hiring process. If you were arrested, charged, or convicted of a crime, it may appear on your criminal record.

The law states that employers should only consider *misdemeanor and felony convictions* and only to the extent that those convictions relate to the duties and responsibilities of the specific job you are applying to. Additionally, if an employer decides to deny employment based on your criminal record, the employer **MUST** inform you that the reason for the denial is because of your criminal record.

Although employers should not consider arrests or charges that were ultimately dropped, it can be difficult to review a criminal record properly and there is a risk that an employer will consider information on your record that they shouldn’t. As a result, if you can clear or

minimize your record through the expungement process, you should.

If an arrest or criminal charge is appearing on your criminal record, it may also affect your ability to obtain housing. You can use the expungement process to clear your record for that purpose as well.

### **C. What charges are eligible for expungement?**

To determine which charges on your record can be removed through the expungement process, you must look at the *disposition* or outcome of the case. If you were convicted, typically the disposition will be listed as *pled guilty or found guilty*. If the charges against you were dropped, the disposition may say *dismissed*.

Charges with the following dispositions *may* be eligible for expungement:

- Withdrawn
- Dismissed
- Nolle Prossed
- Not Guilty
- Disposition Unreported/No Further Action Taken

Additionally, if you pled guilty or were found guilty of a *summary* offense, the conviction for that summary offense may be eligible for expungement if you have remained free from arrest or prosecution for 5 years following the conviction.

To obtain an expungement, you must file a Petition for Expungement with the court and request that a judge issue an order directing the reporting agencies to destroy your record.

**\*\*Please note that before you can file for an expungement in a particular case, you must pay off any outstanding fines, costs, or restitution for that case. If you still owe fines and costs, the Department of Court Records will not allow you to file your petition.**

In Allegheny County, the following programs offer expungement as part of their plea bargain package: Accelerated Rehabilitative Disposition (ARD), Probation Without Verdict (PWOV), and Allegheny Service Institute (ASI).

When all fines are paid and the program is completed successfully, an expungement should occur automatically for a first time offender in the PWOV or ARD programs. If your expungement has not been processed automatically, you may need to file an expungement petition and include documentation to show that you have successfully completed the program.

If you participated in ASI, expungement is not automatic and you must file a motion with the court and pay a fee to obtain your expungement

NOTE: If you participated in ARD prior to 1990, expungement was not automatic and you must file an expungement petition.

**D. What is the difference between a full and partial expungement?**

A *full petition for expungement* is used when none of the charges in a particular case on your criminal record resulted in a conviction.

A *partial petition for expungement* is used when you have both conviction and non-conviction dispositions in the same case. Samples of both of the petitions are attached to this document. When you go to the courthouse, the Department of Court Records - Criminal Division should give you the appropriate petition based on what your criminal record contains.

- Examples:
1. Ms. Smith was charged with both child endangerment and disorderly conduct in the same case. Ms. Smith was convicted of disorderly conduct and the child endangerment charge was dismissed. Ms. Smith would be able to obtain a *partial expungement* to have the child endangerment charge expunged, but the disorderly conduct conviction would remain on her record.
  2. Mr. Jones was charged with retail theft and fraud. Both charges were withdrawn. Mr. Jones would be able to obtain a *full expungement* to have both charges removed from his record.

**E. What is the difference between Petition for Expungement (Rule 790) and Petition for Expungement (Rule 490)?**

In December 2010, new rules were issued to govern the expungement process in Pennsylvania. Under these rules, two separate petitions were drafted. The first is a Petition for Expungement Pursuant to Pennsylvania Rule of Criminal Procedure 790 and the second is a Petition for Expungement Pursuant to Pennsylvania Rule of Criminal Procedure 490.

If the only charges in a particular case were *summary* offenses, you can use the Petition for Expungement Pursuant to **Rule 490**.

If you have any *misdemeanor or felony* charges in a case, you must use the Petition for Expungement Pursuant to **Rule 790**. You must use the 790 petition even if your case contains some summary charges along with the more serious charges.

Whether a charge was a summary (S), misdemeanor (M), or felony (F) can be found under the grade section of your docket sheet or state police report.

You can obtain the appropriate petition form from the Department of Court Records or online at the Administrative Office of Pennsylvania Courts website:  
<http://www.aopc.org/Forms/Default.htm>

**F. What charges CANNOT be expunged?**

If you pled guilty or were found guilty of a misdemeanor or felony offense, you must apply for a Governor's Pardon. Misdemeanor and felony convictions are NOT eligible for expungement.

The first step in the pardon process is to write to the Board of Pardons and request an application. You must include an \$8.00 money order, cashier's check or certified check payable to the Commonwealth of Pennsylvania, and a self-addressed, business size envelope with \$0.63 postage on it. The application, \$8.00 fee, and self-addressed envelope should be mailed to:

Board of Pardons  
333 Market Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17126

After you send the letter, the Board of Pardons will send you an application along with instructions on how to proceed. Please be aware that the pardon process can take a long time, and there is no guarantee that the Board of Pardons will grant you a pardon.

*For more information call (717) 787-2596 or review NLSA's pardon brochure.*

**BEGINNING**

**THE**

**EXPUNGEMENT**

**PROCESS**

1. **You must first obtain an “Access and Review” copy of your criminal record history from the Pennsylvania State Police.** To get your record, fill out form SP 4-164 (available at [www.psp.state.pa.us](http://www.psp.state.pa.us)) and be sure to check the “Access & Review” box located at the bottom of the form. **DO NOT** check any other boxes! Mail the form to the Pennsylvania State Police Central Repository at the address listed on the form. Be sure to include a \$10 certified check or money order payable to the Commonwealth of Pennsylvania.

***Once you receive your Access and Review copy of your criminal record, it will be valid for expungement purposes for 60 days.*** This means that you must look at the date of dissemination of the record (listed on the first page) and file your expungement petition with the court within 60 days of the date listed.

*Please Note: You can only obtain an Access and Review copy of your record by submitting the paper request form by mail. DO NOT try to request your Access and Review record through the online request service!*

2. **Obtain an expungement petition package and instructions from the Department of Court Records - Criminal Division.** The Department of Court Records - Criminal Division is located in the Allegheny County Courthouse, 436 Grant Street, Rm. 114, Pittsburgh, PA 15219. You can reach the Department of Court records by phone at (412) 350-5322.
3. By law, your Access and Review criminal record history and the expungement petition are the only documents that you are required to file. However, the District Attorney prefers that you also include:
  - A certified copy of your criminal record. Copies of summary cases can be obtained from the office of the Magisterial District Judge who disposed of your case. You can get copies of cases disposed of by the Court of Common Pleas from the Department of Court Records, located in the County Courthouse in Rm. 220. You will be charged a \$10 fee for these records.
  - A certified record showing that you have paid all fines and costs associated with your case. You can obtain this document from the Cashier located in the Courthouse, Rm. 114.

The Department of Court Records’ hours are Monday - Friday, 8:30 AM to 4:30 PM.

***Please be aware that you must complete a separate expungement petition for each case in which you are seeking to have charges expunged.*** For example, if you have a 2001 case in which charges were dropped and a 2005 case in which charges were dropped, you need to file two separate petitions.

3. Once you complete the Petition for Expungement, you must file it with the Department of Court Records. You need 3 copies of the petition and a \$100 filing fee. Make an extra copy of the petition for yourself.
  - a. What to do if you do not have the \$100 filing fee
    - i. If you cannot pay the \$100 filing fee, you can ask the court to waive the fee by filing what is called an In Forma Pauperis Petition (IFP). This petition tells the court why you cannot afford to pay the fee.
      1. In the IFP you must list the reasons you are unable to pay the fee and provide proof of your limited income and your expenses. You need to attach pay stubs or copies of award letters for benefits such as public assistance or social security.
      2. Take the IFP and your completed Petition for Expungement to Harry Lorenzi, Motions Clerk for the Criminal Division. His office is located at the Allegheny County Courthouse, 436 Grant Street, Fifth floor, Room 534, Pittsburgh, PA 15219.
      3. Schedule a time with the Motions Clerk Office to present your IFP request to a judge.
      4. If the judge agrees to remove the filing fee, he or she will sign an order stating that you can file your Petition for Expungement without paying the fee. You must then file the order and the completed Petition for Expungement with the Department of Court Records- Criminal Division.
4. After you have filed the Petition for Expungement plus two copies with the Department of Court Record, the Department of Court Records will send a copy to the District Attorney's Office.

If the only charges on your record were *summary* charges, the District Attorney's Office will have 30 days to review your petition and decide whether to object.



If you were charged with more serious offenses (*misdemeanors or felonies*), the District Attorney's Office has 60 days to decide whether to object.

- a. What happens if the D.A. disagrees or opposes the petition for expungement?
  - i. If the District Attorney's Office disagrees with your Petition for Expungement, you will be notified and will need to schedule a hearing to present your petition to a judge.

To schedule a hearing, you need to contact Harry Lorenzi, who is the Motions Clerk for the Criminal Division. The Motions Clerk- Criminal Division is located at the Allegheny County Courthouse, 436 Grant Street, Fifth floor, Room 534, Pittsburgh, PA 15219.

- b. What happens if the D.A. does not object to the petition for expungement?
  - i. If the District Attorney's Office does not oppose your Petition for Expungement, once the appropriate review period has passed (either 30 or 60 days) the judge has 14 days to grant or deny the petition. Typically, if the D.A. does not object, the judge will grant the petition.

After the judge signs the order granting the expungement, the District Attorney will have an additional 30 day appeal period. Once that has passed, the Department of Court Records will mail you a copy of the signed order.

***You should keep a copy of this order for your records in case there is an error in processing your expungement with any of the reporting agencies. This order is your proof that your expungement was granted!***

The Department of Court Records will also mail the order to various reporting agencies such as the Pennsylvania State Police, the arresting agency and the magisterial district judge that handled the case. The reporting agencies will destroy their copies of your record and send a signed affidavit back to the Department of Court Records confirming that they have complied with the expungement order.

\*\* It can take up to one year to have your record expunged from all of the different criminal justice agencies. The best way to ensure that your criminal record is clear is to contact the

Pennsylvania State Police and ask for your criminal record. To do this, you must complete another Criminal History Request Form - SP - 164. This form is attached to this manual. You can also get the form from the Pennsylvania State Police website:

<http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&PageID=458621&mode=>

2. You will need to submit a \$10 fee along with this request.

*ATTENDING*

*THE*

*EXPUNGEMENT*

*HEARING*

If the District Attorney's Office opposes your Petition for Expungement, you will be notified by mail. If you wish to continue pursuing the expungement, you must contact Harry Lorenzi, the Motions Clerk for the Criminal Division, so you can get a hearing before a judge. You should tell the Motions Clerk that you need to schedule an expungement hearing.

Typically, you will be scheduled for a hearing date within two weeks. The hearings are held at the County Courthouse and once you are scheduled for a hearing, it is very important for you to attend. At the hearing, you will have the opportunity to tell the judge why you believe your record should be cleared. The District Attorney will also have an opportunity to tell the judge why he or she feels the charges should remain on your record.

The judge will consider:

1. The strength of the District Attorney's original criminal case against you
2. The reasons the District Attorney gives for wanting to keep the charges on your record
3. Your age, criminal record, and employment history
4. How much time has passed between the arrest and your Petition for Expungement
5. The reasons why you need your record cleared. (Examples: not getting employment, housing, damage to your reputation, etc.)
  - If you have specific examples of jobs you have applied for and have been denied, you should make a list so that you can provide it to the judge.

The judge will then decide whether your right to be free from the harm caused by keeping the charges on your record outweighs the District Attorney's interest in keeping the charges on your record.