

The Adult Expungement Law
Discretionary Expungement Process & Eligibility

Process:

1. A petitioner must **obtain a certified criminal history report** and letter from the State Bureau of Identification which is valid for 45 days.
2. The **petition and all supporting documents must be filed with the court** in the county where the case was terminated, disposed of or concluded. Petitions for discretionary expungements are made to the Superior Court or Family Court. If all of the charges and convictions sought to be expunged were disposed of in Family Court, the petition is filed in Family Court. Otherwise, the petition is filed in Superior Court. Filing instructions and required documents can be found with the Court.
3. **Petitions are then reviewed by the Department of Justice (DOJ)** to confirm the petitioner's eligibility under the statute. In addition, DOJ shall contact the victim of the crime of eligible petitioners to give them an opportunity to provide their position on the expungement and inform them of the court's decision. Finally, DOJ will provide a response to the application to the court. DOJ has 120 days to respond to the petition.
4. If the DOJ does not oppose the petition, the Prothonotary's Office will send the **petition to the assigned Judge, who will grant or deny the petition.**
5. **If the DOJ opposes the petition, the petitioner will have 30 days to file a response.** After 30 days the Prothonotary's Office/Court Clerk will send the **petition (and response, if filed) to the Judge for decision.** If the Court deems necessary, a hearing will be scheduled.
6. If the petition is granted, the **Prothonotary's Office/Court Clerk will send, by regular mail, a copy of the signed Order** to the petitioner or the petitioner's attorney, the Department of Justice, and the State Bureau of Identification.

Please remember that if your client doesn't qualify for an expungement, they still will likely qualify for a pardon. Also if your client would like to try for an expungement before they have the necessary years they can obtain a pardon first, which can allow them to skip the wait time

Eligibility:

No, you are not eligible for a discretionary expungement under the following circumstances:

1. You have pending criminal charges.
 - a. One Year Rule Exception: Where the accused is arrested for the commission of 1 or more crimes and no charges relating to the matter for which the person was arrested are filed in any court within 1 year of the arrest.
2. You may not expunge Title 21 offenses.
 - a. Title 21 Exceptions: These Title 21 offenses are expungable.
 - i. § 2810 Driving after judgment prohibited
 - ii. § 4175 Reckless driving
 - iii. § 4176A Operation of a motor vehicle causing death
3. You may not expunge convictions for the following offenses even if an unconditional pardon is obtained:
 - a. § 632 Manslaughter
 - b. § 635 Murder in the second degree
 - c. § 636 Murder in the first degree
 - d. § 772 Rape in the second degree
 - e. § 773 Rape in the first degree
 - f. § 778(1), (2), or (3) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the first degree
4. If you have received an expungement of a prior conviction in the previous 10 years, you are not eligible for another expungement.
5. If you have received an expungement for a felony conviction, you are not eligible for an expungement of a new felony conviction.
6. If you are currently serving a term of incarceration, parole or probation.
7. If you have not paid restitution associated with your conviction.
8. If you have not paid fine and fees associated with your conviction.
 - a. Except if the court waives the fines or fees or converts them to a civil judgement.

Yes, you are eligible for an discretionary expungement under the following circumstances:

1. If 3 years has passed from your date of conviction or release from incarceration whichever is later, and you have no other prior or subsequent convictions, you are eligible for an expungement if convicted of **1 or more misdemeanors, relating to the same case**, other than those crimes listed in the **Misdemeanor Exception List**.
2. If 7 years has passed from your date of conviction or release from incarceration whichever is later, and you have no prior or subsequent convictions, you are eligible for an expungement if convicted of **1 or more misdemeanors, relating to the same case from the Misdemeanor Exception List**.
3. If 7 years has passed from your date of conviction or release from incarceration whichever is later, and you have no prior or subsequent convictions, if you were convicted of a **single felony**, except for those offenses that require an unconditional pardon to be obtained first. **Pardon First Exception List**.

Misdemeanor Exception List: For any of these misdemeanor crimes, 7 years must pass from your date of conviction or release from incarceration whichever is later before you are eligible for a discretionary expungement.

1. A misdemeanor crime of domestic violence.
 - a. This means the offense was committed by any of the following:
 - i. A member of the victim's family, as "family" is defined under § 901 of Title 10, regardless, however, of the state of residence of the parties.
 - ii. A former spouse of the victim.
 - iii. A person who cohabited with the victim at the time of or within 3 years before the offense.
 - iv. A person with a child in common with the victim.
 - v. A person with whom the victim had a substantive dating relationship, as defined under § 1041 of Title 10, at the time of or within 3 years before the offense.
 - b. And the conviction was for one of the following offenses:
 - i. § 601 Offensive touching
 - ii. § 602 Menacing
 - iii. § 603 Reckless endangering in the second degree
 - iv. § 611 Assault in the third degree
 - v. § 614 Abuse of a sports official
 - vi. § 621 Terroristic threatening
 - vii. § 628A Vehicular assault in the second degree
 - viii. § 781 Unlawful imprisonment in the second degree
 - ix. § 785 Interference with custody
 - x. § 791 Acts constituting coercion
 - xi. § 804 Reckless burning or exploding
 - xii. § 811 Criminal mischief
 - xiii. § 821 Criminal trespass in the third degree
 - xiv. § 822 Criminal trespass in the second degree
 - xv. § 823 Criminal trespass in the first degree
 - xvi. § 1311 Harassment
2. Offenses where the victim is a child.
3. Offenses where the victim is a "vulnerable adult", as defined under § 1105 of this title.
4. Misdemeanor offense under any of the following sections:
 - § 625 Unlawfully administering drugs, when the charged in conjunction with a sexual offense, as defined in § 761(f) of Title 11
 - § 763 Sexual harassment
 - § 764 Indecent exposure in the second degree
 - § 765 Indecent exposure in the first degree
 - § 820 Trespassing with intent to peer or peep into a window or door of another
 - § 841B Organized retail crime
 - § 916 Home improvement fraud
 - § 917 New home construction fraud
 - § 1205 Giving unlawful gratuities

- § 1206 Receiving unlawful gratuities
- § 1207 Improper influence
- § 1211 Official misconduct
- § 1212 Profiteering
- § 1221 Perjury in the third degree
- § 1233 Making a false written statement
- § 1250 Offenses against law-enforcement animals
- § 1256 Promoting prison contraband
- § 1257 Resisting arrest
- § 1257A Use of an animal to avoid capture
- § 1266 Tampering with a juror
- § 1267 Misconduct by a juror
- § 1271 Criminal contempt
- § 1271A Criminal contempt of domestic violence protective order or lethal violence protective order
- § 1273 Unlawful grand jury disclosure
- § 1304 Hate crime
- § 1313 Malicious interference with emergency communication
- § 1332 Abusing a corpse
- § 1335 Violation of privacy
- § 1341 Lewdness
- § 1343 Patronizing a prostitute
- § 1355 Permitting prostitution
- § 1443 Carrying a concealed dangerous instrument
- § 1445 Unlawfully dealing with a dangerous weapon
- § 1456 Unlawfully permitting a minor access to a firearm
- § 1457 Possession of a weapon in a Safe School and Recreation Zone

Pardon First Exception List: Not eligible for discretionary expungement without obtaining an unconditional pardon first.

1. A Title 11 felony listed in § 4201(c) of this title:
 - § 513 Conspiracy First Degree
 - § 602 Aggravated Menacing
 - § 604 Reckless Endangering First Degree
 - § 605 Abuse of a Pregnant Female in the Second Degree
 - § 606 Abuse of a Pregnant Female in the First Degree
 - § 607 Strangulation
 - § 612 Assault in the Second Degree
 - § 613 Assault in the First Degree
 - § 614 Assault on a Sports Official
 - Former § 615 Assault by Abuse
 - § 617 Criminal Youth Gangs
 - § 629 Vehicular Assault First Degree
 - § 630 Vehicular Homicide in the Second Degree
 - § 630A Vehicular Homicide in the First Degree
 - § 631 Criminally Negligent Homicide
 - § 633 Murder by Abuse or Neglect in the Second Degree
 - § 634 Murder by Abuse or Neglect in the First Degree
 - § 645 Promoting Suicide
 - § 768 Unlawful Sexual Contact in the Second Degree
 - § 769 Unlawful Sexual Contact in the First Degree
 - § 770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree
 - § 771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree
 - § 774 Sexual Extortion
 - § 775 Bestiality
 - § 776 Continuous Sexual Abuse of Child
 - § 777 Dangerous Crime Against a Child
 - § 777A Sex Offender Unlawful Sexual Conduct Against a Child
 - § 778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree
 - § 778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree
 - § 782 Unlawful Imprisonment in the First Degree
 - § 783 Kidnapping in the Second Degree
 - § 783A Kidnapping in the First Degree
 - § 787 Trafficking of an Individual, Forced Labor and Sexual Servitude
 - § 802 Arson in the Second Degree
 - § 803 Arson in the First Degree
 - § 825 Burglary in the Second Degree
 - § 826 Burglary in the First Degree

- [Former] § 826A Home Invasion
 - § 831 Robbery in the Second Degree
 - § 832 Robbery in the First Degree
 - [Former] § 835 Carjacking in the Second Degree
 - [Former] § 836 Carjacking in the First Degree
 - § 846 Extortion
 - § 1108 Sexual Exploitation of a Child
 - § 1109 Unlawfully Dealing in Child Pornography
 - § 1112A Sexual Solicitation of a Child
 - § 1112B Promoting Sexual Solicitation of a Child
 - § 1250 Assault in the First Degree Against a Law-Enforcement Animal
 - § 1253 Escape After Conviction, if convicted as a Class C Felony or a Class B Felony
 - § 1254 Assault in a Detention Facility
 - § 1256 Promoting Prison Contraband (Deadly Weapon)
 - § 1257(a) Resisting Arrest with Force or Violence
 - § 1302 Riot
 - § 1304 Hate Crimes
 - § 1312 Stalking
 - § 1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices
 - § 1339 Adulteration (Causing Injury or Death)
 - § 1353 Promoting Prostitution in the First Degree
 - § 1442 Carrying a Concealed Deadly Weapon (Firearm Offense)
 - § 1444 Possessing a Destructive Weapon
 - § 1445 Unlawfully Dealing With a Dangerous Weapon
 - § 1447 Possessing a Deadly Weapon During the Commission of a Felony
 - § 1447A Possessing a Firearm during the Commission of a Felony
 - § 1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).
 - § 1449 Wearing Body Armor During the Commission of a Felony
 - § 1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)
 - § 1503 Racketeering
 - § 3533 Aggravated Act of Intimidation
2. § 1136 of Title 16 related to abuse, neglect, mistreatment or financial exploitation of residents or patients in long-term care facilities
 3. § 3913 of Title 31 related to abuse, neglect, exploitation or mistreatment of an adult who is impaired
 4. A "felony conviction involving physical or sexual assault crimes" as defined in § 309 of Title 31 (regarding the Beau Biden Child Protection Act)
 5. § 628A Vehicular assault in the second degree
 6. § 766 Incest
 7. § 767 Unlawful sexual contact in the third degree
 8. § 791 Coercion
 9. § 1106 Unlawfully dealing with a child

