

MARGIA M. JOHNSON

FRANKLIN COUNTY
CLERK OF THE CIRCUIT COURT

33 MARKET STREET, SUITE 203
APALACHICOLA, FL 32320



(850) 653-8861
FAX (850) 653-2261

INSTRUCTIONS FOR SEALING/EXPUNGING AN ADULT CRIMINAL COURT RECORD

Complete the following paperwork for this process:

Step 1. Florida Department of Law Enforcement (FDLE) Certificate of Eligibility packet

- A. Obtain this packet from FDLE or the Clerk's Office, and complete the form and fingerprint card. The packet is also located at <http://www.fdle.state.fl.us/expunge/>.
- B. Know the date of arrest, address at time of arrest, arresting charge(s), arresting agency, and arresting agency case number.
- C. Obtain a certified copy of the Final Disposition (judgment & sentence) in your case from the Clerk's Office. *The cost is not included in the Clerk's filing fee.*
- D. Ask the State Attorney's Office, 34 Forbes Street, Suite 3, Apalachicola, FL 32320 (850)653-8181, to complete Section B of the Application for Certification of Eligibility.
- E. Submit this packet, along with a \$75.00 money order or cashier's check to FDLE, Special Services Bureau, ATTN: Expunge Processing, Post Office Box 1489, Tallahassee, FL 32302. FDLE will mail a Certificate of Eligibility to you. Only after you receive the FDLE Certificate of Eligibility may you proceed to step 2.

Step 2. Court forms: Petition to Seal or Expunge, Affidavit, State Attorney Response and Order

- A. Obtain these forms from the Clerk's Office, and sign the petition/affidavit in the presence of a notary public/deputy clerk. A photo ID is required. On the order, fill in your name, case number, current mailing address, and telephone number.
- B. Complete all documents as thoroughly as possible; the Clerk's Office cannot complete these forms for you, or correct any errors you may make. Please understand that incomplete documents sent to the judge could result in a delay or possible denial of the petition.
- C. **Send copies of these forms, and a copy of the Certificate of Eligibility (received from FDLE), to the Franklin County State Attorney's Office with form for the State Attorney to sign. If the State Attorney decides to file a response to the Petition; a hearing with the appropriate judge will be set and a notice will be mailed to you. If the State Attorney does not intend to file a response, the file will be given to the appropriate judge for consideration. (The State Attorney form must be marked and given to the clerk for the packet to be complete).**
- D. File your Petition to Seal or Expunge, the Affidavit, the State Attorney Response, the proposed order, and the **original** FDLE Certificate of Eligibility with the Clerk's Office.
- E. Please be aware that your seal or expunge request will not be processed without payment of the required \$42.00 filing fee. *This does not include fees for copies of the judgment and sentence and seal/expunge packet.*
- F. The Clerk's Office will forward your paperwork to the appropriate judge. If you meet all statutory criteria for sealing or expunging a criminal record, those records will be sealed or expunged pursuant to the court order. However, if you are participating in the Clerk's payment program concerning costs and fines, all documents relating to your participating in the payment program will remain open to the public until payment is made in full. All other aspects of your criminal record will be sealed or expunged pursuant to the court order. Once full payment is made, you must notify the Clerk's Office so that the payment program documents can be sealed or expunged with your case.
- G. The Clerk's Office will send copies of the court order to you, the arresting agency, the State Attorney's Office, The Franklin County Sheriff's Office, and any other applicable parties associated with the case. This is done so that these agencies can take the necessary actions for sealing or expunging their own records.

FAQs: Sealing & Expunging Criminal History Records in Florida

FEW PEOPLE QUALIFY TO HAVE RECORDS SEALED OR EXPUNGED

1. What is the benefit of having my record sealed or expunged?

According to Florida law, you can legally deny or fail to acknowledge the arrests covered by the sealed or expunged record. **However, YOU CANNOT DENY OR FAIL TO ACKNOWLEDGE THE ARREST** if you are applying to change your immigration status, are a defendant in a criminal case or are seeking:

- Employment with a criminal justice agency;
- Employment or contract with, or license by the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
- Employment or use by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly;
- Employment or access to a seaport;
- Admission to The Florida Bar; or petitioning to seal or expunge.

CAUTION: Sealing or expunging your record in Florida will have **no** impact on private company or federal databases. Even if criminal history information is sealed or expunged, it may still be available through private companies that purchase such information from the State and counties. Therefore, employers and the general public may have access to it. Your information may have also been submitted to the national criminal history database by Florida Department of Law Enforcement. Effective July 1, 2006, all Florida judges will have online access to view sealed records.

2. Generally speaking, who qualifies for sealing or expunging?

A person who has NOT been adjudicated guilty (convicted) as an adult, and has not previously sealed or expunged may qualify, but there are many exceptions, see answers to number 3 and 6. Under s. 943.0515, Florida has automatic expunction of a juvenile record, at age 24 or 26, depending on prior history and arrest or conviction as an adult; expunction by petition of some misdemeanors after successful completion of pre- or post-arrest or teen court diversion program under s. 943.0582; and, expunction of an arrest record under s. 943.0581, for persons who have been arrested "contrary to law or by mistake."

3. What would disqualify me from having my record sealed or expunged?

- If you have been **adjudicated guilty (convicted as an adult)** of a criminal offense, including a criminal traffic offense (e.g., DUI, DWLS), criminal ordinance violation, misdemeanor or felony.
- If you were **adjudicated delinquent (as a juvenile) on charges of:** assault; battery; petit theft; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified personnel; cruelty to animals; arson; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property.
- If you were adjudicated guilty (convicted as an adult) or adjudicated delinquent (as a juvenile) for the offense you seek to seal or expunge;
- If you were placed on probation or community control, but later violated the terms of your sentence and the judge converted the "withhold" to an "adjudication."
- If you were found guilty, pled guilty or no contest and have a "withhold of adjudication" on certain offenses, even as a minor. See list of the disqualifying offenses in question number 6.
- If you ever had a prior record sealed or expunged in any jurisdiction (even in another state). Automatic expunction of juvenile records, expunction of records (pre and post arrest diversion), and expunction of arrest "contrary to law or by mistake" do not count as a prior expunged record.
- If you have a seal or expunge petition currently pending in another case.
- If you have an open criminal case, are on probation or community control, owe community service hours or have an unsatisfied court-ordered financial obligation such as court costs or restitution.

4. I have been arrested several times but have never been convicted of a crime or pled guilty or no contest, can I have all the arrest records sealed?

No. Floridians are at a disadvantage in this respect. For purposes of sealing and expunging, Florida does not honor the concept of "innocent until proven guilty." Even if you have been acquitted by a jury of the crimes charged (found not guilty), in Florida, you can only petition once to seal or expunge in your lifetime unless the court decides that an additional arrest is directly related to the original arrest.

5. What is the difference between sealing and expunging a criminal history record? See sections 943.0585 and 943.059, Florida Statutes (2005).

- When a record is sealed, the public will not have access to it through the government databases. That means most employers will not have access to the information. However, city, county, state and federal government and agencies, including the police and military, have a legal right to access criminal history records even if they are sealed. See "**CAUTION**" above.
- When a record is expunged, agencies that would have access to a sealed record will be able to know that criminal information has been expunged from the record, and would only have access to the record through a court order. See "**CAUTION**" above.

6. The judge gave me a "withhold of adjudication," can I seal or expunge my record?

Not always. If you pled guilty or no contest or were found guilty at trial as a juvenile or adult, and the judge entered a withhold of adjudication on the charge to any of the charges below (including attempting or conspiring to commit them), you will not be able to seal or expunge it.

- Abuse or aggravated abuse of an elderly person or disabled adult;
- Act of domestic violence as defined in s. 741.28, Florida Statutes;
- Aggravated assault/aggravated battery; Arson; Burglary of a dwelling; Carjacking;
- Child abuse or aggravated child abuse; Computer pornography involving a child; Drug Trafficking;
- Hijacking; Home invasion robbery; Homicide; Illegal use of explosives; Kidnapping; Lewd, lascivious, or indecent assault or act upon or in the presence of a child; Manslaughter;
- Offenses by public officers and employees; Organized fraud; Robbery;
- Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of a person in familial or custodial authority; Sexual battery, Stalking and aggravated stalking; Use of a child in a sexual performance;
- Promoting a sexual performance by a child; Possession with the intent to promote any photograph, motion picture, exhibition, show, representation, or presentation, which includes sexual conduct by a child; Possession of a photograph, motion picture, exhibition, show, representation, or presentation, which includes sexual conduct by a child; and, Voyeurism.

7. What can I do about my juvenile charges?

For juvenile offenses, Florida has automatic expunction (s. 943.0515) of a juvenile record, at age 24 or 26, depending on prior history and arrest or conviction as an adult; expunction by petition of some misdemeanors after successful completion of pre- or post-arrest or teen court diversion program under s. 943.0582; and, expunction of an arrest record under s. 943.0581, for persons who have been arrested "contrary to law or by mistake."

Important Note: If you have been convicted of a felony and want to have your civil rights restored, including the right to vote, you will need to apply for clemency. Unless you have been convicted of a felony, you may still have the right to vote in all local, state and federal elections in Florida even if you cannot seal or expunge your criminal record.

This Document Was Developed for Educational Purposes Only and Does Not Constitute Legal Advice. For Additional Information, Please Call the Public Defender's Redemption Helpline 305.545.1616.

Compiled by Carlos J. Martinez and Carl Young

August 10, 2009

MARGIA M. JOHNSON

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CLERK OF THE CIRCUIT COURT

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SERVING THE STATE ATTORNEY'S OFFICE
WHEN SEALING/EXPUNGING A CRIMINAL HISTORY RECORD

Sections 943.0585 and 943.059, Florida Statutes, require a person seeking to seal or expunge a criminal history record to serve the State Attorney's Office:

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

- (a) In judicial proceedings under this section, a copy of the completed Petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

Make sure to provide the State Attorney's Office with a copy of your petition before filing it with our office. For Franklin County, the address of the State Attorney's Office is 34 Forbes Street, Suite 3, Apalachicola, FL 32320.

You may leave this instruction sheet with their office, and that office may file this sheet with our office to indicate whether they will be filing a response in your case. Make sure to note your name and case number below.

Defendant Name: _____

Case Number: _____

- The State Attorney's Office will be filing a response to the Petition to Seal or Expunge.
- The State Attorney's Office will not be filing a response to the Petition to Seal or Expunge.

Assistant State Attorney

Copy to:
Clerk
Judge

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR FRANKLIN
COUNTY, FLORIDA

CASE #: _____

STATE OF FLORIDA,

vs.

Name of Defendant/Petitioner

Current Mailing Address

City /State/Zip

Home Phone / Work Phone

PETITION TO SEAL

The defendant/petitioner, _____ by and through the undersigned attorney, petitions this court, pursuant to Florida Rule of Criminal Procedure 3.692 and Section 943.059, Florida Statutes, to seal all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the defendant/petitioner's arrest on the _____ day of _____, _____, by the _____ (arresting agency), for _____ (charges), and as grounds therefore shows:

1. The full name and address of the defendant/petitioner at the time of the arrest was:

_____.
2. The defendant/petitioner is a _____ (race) _____ (sex), whose date of birth is _____.
3. The defendant/petitioner has not been adjudicated guilty of any of the charges stemming from this arrest or alleged criminal activity.

4. The defendant/petitioner has not been previously adjudicated guilty of a criminal offense or a comparable ordinance violation.
5. The defendant/petitioner has not secured a prior records expunction or sealing under Section 943.0585, or 943.059, Florida Statutes; former section 943.058, Florida Statutes; former section 893.14, Florida Statutes; former section 901.33, Florida Statutes; or any other law, rule, or authority.

WHEREFORE, the defendant/petitioner moves to seal any criminal history record information and any official court records regarding the arrest by the _____(arresting agency), for _____(charges), on the ____ day of _____, _____.

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on the following prosecuting authority (check one):____State Attorney for the Second Judicial Circuit;____Special Prosecutor; or ____Statewide Prosecutor; and the _____(arresting agency); the _____(sheriff of county where defendant/petitioner was arrested, if different); and the Florida Department of Law Enforcement, this ____ day of _____, _____.

Defendant/Petitioner Signature

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR FRANKLIN
COUNTY, FLORIDA

STATE OF FLORIDA,

CASE#: _____

vs.

Name of Defendant/Petitioner

Current Mailing Address

City/State/Zip

Home Phone / Work Phone

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF FRANKLIN

I, _____, am the defendant/petitioner in the above-styled case, and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.
2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation.
3. I was arrested on the _____ day of _____, _____, by the _____ (arresting agency), and I have not been adjudicated guilty of the charges stemming from that arrest or the alleged criminal activity surrounding my arrest.
4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petitions to expunge or seal pending before any court.
5. I have never secured a prior records expunction or sealing under any law.

Defendant/Petitioner

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public/Deputy Clerk Signature
My Commission Expires:

Print/Type Notary/Deputy Clerk Name

_____ Personally known or _____ Produced ID

Type of ID Produced _____

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR FRANKLIN
COUNTY, FLORIDA

CASE #: _____

Arrest Agency Case # _____

STATE OF FLORIDA,

vs.

Name of Defendant/Petitioner

Current Mailing Address

City /State/Zip

Date of Birth

**ORDER TO EXPUNGE PURSUANT TO SECTION 943.0585, FLORIDA STATUTES,
and FLORIDA RULE OF CRIMINAL PROCEDURE 3.692**

THIS CAUSE was considered upon a petition to expunge certain records of the defendant/petitioner's arrest on the _____ day of _____, _____, by the _____ (arresting agency), for _____ (charges).

Having reviewed the record and/or having heard argument of the defendant/petitioner or counsel and being otherwise fully advised in the premises, the court finds the following:

1. The defendant/petitioner has never previously been adjudicated guilty of a criminal offense or a comparable ordinance violation.
2. The defendant/petitioner was not adjudicated guilty of charges stemming from the arrest of criminal activity to which this expunction petition pertains.
3. The defendant/petitioner has not secured a prior records expunction or sealing.

THEREFORE, it is

ORDERED and ADJUDGED that the petition to seal records is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in the Florida Rule of Criminal Procedure 3.692.

ORDERED and ADJUDGED that the clerk of this court shall forward a certified copy of this order to the prosecuting authority (check one): _____ State Attorney of the Second Judicial Circuit; _____ Special Prosecutor; or _____ Statewide Prosecutor, and _____ the arresting agency and the Sheriff of Franklin County, all of whom will comply with the procedures set forth in section 943.059, Florida Statutes, and appropriate regulations of the Department of Law Enforcement, and all of whom will forward a copy of this order to any agency that their records reflect has received the instant criminal history record information.

ORDERED and ADJUDGED that the _____(arresting agency) shall seal all information concerning indicia of arrest or criminal history record information regarding this defendant/petitioner in accordance with the procedures set forth in section 943.059, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

DONE and ORDERED at Apalachicola, Franklin County, Florida this _____ day of _____, _____.

CIRCUIT JUDGE