

Criminal Records and Expungement

Rhode Island Public Defender

Criminal Records

- How do I access a criminal record?
 - The only way to obtain an official RI criminal record is by going to the **Bureau of Criminal Identification (BCI) at the Attorney General's Office** on 150 South Main Street Providence, RI 02903.
 - Bring \$5.00 in check or money order and photo ID to obtain a copy of the record. If an individual is disabled or 62 years old or older, bring a copy of a proof of disability (for example, a SSI/SSDI award letter) or a photo ID showing age to have the \$5.00 fee waived.
 - If a third party is accessing the record, s/he will need a signed and notarized consent and photocopy of photo ID, and the fee.
 - *If you have a bench warrant, you will be detained at BCI. Confirm that you do not have a bench warrant with the Clerk's Office or with your attorney before going to BCI.*
 - Criminal records can also be viewed [online at the RI Judiciary Website: courtconnect.courts.ri.gov](http://courtconnect.courts.ri.gov). These, however, are not the official records.

Criminal Records (cont'd)

- Often, employers see criminal records through [private criminal background checks](#). Under the Fair Credit and Reporting Act, applicants have the right to see copies of the background check that is used by the employer in making an adverse hiring decision. Since these sometimes have errors, it is important to review this record to be sure it is accurate!
- Individuals can also obtain copies of their [national fingerprint check \(VCIF\)](#) at the AG's BCI office if they are applying for specific types of jobs in Rhode Island such as work as nurses, massage therapists, or as employees at alarm and private security companies and school departments, among others. These checks cost \$35.00.

Definition 1: “Conviction”

A conviction is a sentence by a judge of a period of confinement (incarceration at the ACI or home confinement), suspended sentence, or fine. Any plea of guilty or finding of guilt by a judge or jury is also a conviction.

- Common misconceptions:

- *Pleading ‘nolo contendere’ is not a conviction.*

Incorrect: “Nolo contendere” is a plea, a position taken by the defendant related to their criminal charges, and a conviction is a sentence by a judge or jury. Pleading “nolo contendere” does not automatically mean that a person will not be convicted of a charge.

- *A sentence of straight probation is a conviction.*

Incorrect: A period of straight probation (i.e. without suspended jail time or a fine) imposed after a plea of nolo contendere is not a conviction.

Definition 1: “Conviction”

Can I be asked: “Have you ever been arrested?” by an employer?

– No, it is illegal for an employer to ask this question in Rhode Island.

• Can I be asked: “Have you ever been convicted of a crime?” by an employer?

– On July 15, 2013, Governor Chafee signed into law “Ban the Box.” As of January 1, 2014, an employer cannot ask this question on initial job applications.

Definition 2: “Expungement”

Expungement is a legal procedure that allows eligible individuals to have any and all records relating to their criminal charges removed, both from **public** records and those of law enforcement agencies. It is granted by a judge in the original court in which the charge was heard.

Expungement is different from sealing a record, which may occur after a defendant has been exonerated of a charge, however sometimes these terms are used interchangeably and the practical consequences are very similar.

See Rhode Island General Law sections 12-1-12, 12-1-12.1, 12-1.3-1 to 12-1.3-4, the sections on expungement and sealing in RI law.

Eligibility

- **3 Central Questions:**

- Are you a first-time offender?
- Have you not been convicted of a ‘crime of violence’?
- Have you waited the required period?

*In order to be eligible for expungement, you must be able to answer “yes” to **all three** of the above questions*

Eligibility

- **3 Central Questions:**

- Are you a first-time offender?

- The law defines a “first offender” as follows: a person who has not been previously convicted of or placed on probation for a felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.
- Anyone convicted or placed on probation on more than one occasion is **ineligible** for expungement.

- Have you not been convicted of a ‘crime of violence’?

- Have you waited the required period?

First-Time Offender Exception for Prostitution Charges

Prostitution or Loitering for Prostitution cases charged on or after November 3, 2009 can be expunged one year after completion of sentence (RIGL 11-34.1-5) even if person does not meet the definition of “first-time offender”.

Eligibility

- **3 Central Questions:**

- Are you a first-time offender?

- Have you not been convicted of a 'crime of violence'?

- A 'crime of violence' is defined as

- Murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

- Have you waited the required period?

Eligibility

- **3 Central Questions:**

- Are you a first-time offender?

- Have you not been convicted of a 'crime of violence'?

- **Have you waited the required period?**

- For misdemeanors - (5) years after the successful completion (no intervening convictions, probation, or pending cases) of your sentence and/or probation.
- For felonies - (10) years after the successful completion (no intervening convictions, probation, or pending cases) of your sentence and/or probation
- For filings – you will have to wait one (1) full year to file a motion, unless it is a domestic violence filing, in which case you will have to wait three (3) years. This is supposed to be automatic, but in practice you should follow-up yourself. (RIGL 12-10-12)
- For deferred sentences -- if you plead guilty or nolo contendere and received a deferred sentence, you must wait five (5) years without any further charges and you will be eligible for expungement. If you plead to this charge before 2010, contact an attorney about the process to expunge this charge.

Eligibility

A final question:

- Was your case dismissed (48A), was there a no true bill, no information or were you otherwise exonerated?
 - If yes, you still have to file a motion to seal/motion to expunge!
 - A common misconception is that a dismissal (48A) is the same thing as an expungement. This is not true. If your case is dismissed, you will still have to file for expungement.
 - If yes, AND you have not been convicted of a felony, this charge and all associated records **must come off your record by law** (RIGL § 12-1-12.1), no matter how many misdemeanor convictions you may have.
- If you have a previous felony charge and are looking to expunge a dismissed case, you should consult a criminal defense lawyer to evaluate your eligibility .

Procedure

- The expungement process can take several months to complete.
- **STEP 1:** Obtain your records from BCI and confirm eligibility.
- **STEP 2:** File a motion with the clerk (this form is available at the clerk's office in each court house) at the original court house where charges were brought. At this time, you will be given a court date.*

** For assistance, call Emmett Hardiman at the Public Defender's Office (222-1525) – we will help you through this process and try to answer any questions you may have.*

Procedure

- **STEP 3:** Give notice of date of hearing to police department that arrested you and the Department of the Attorney General. If it is an old charge, you may want to go to the Judicial Records Center located at 5 Hill Street in Pawtucket (721-2641) to get the old arrest records yourself in order to speed up the process. This costs \$3.00 per case for a certified copy.
 - *Sometimes the clerk will take care of this for you, so you should ask what you should do next.*

“Clerks rule the world”

Procedure

- **STEP 4:** Go to your court date and be ready to prove that you :
 - are a first-time offender
 - have not committed a ‘crime of violence’
 - exhibit good moral character
 - have been successfully rehabilitated,
 - AND, that the expungement of your record is consistent with the public interest.

Process

- What does “good moral character” and “successful rehabilitation” mean?
 - Ultimately, this is decided by the judge, but here are some suggestions about ways to demonstrate rehabilitation and moral character.

Proof of...

- o Regular employment and financial and other support of family*
- o Successful completion of substance abuse and/or mental health counseling.*
- o Community or other public service*
- o Professional certification or licensing in field of employment*

Procedure

- **STEP 5:** If the judge grants your motion to expunge, you must mail a copy of the order to the Attorney General's Office *and* to the police department that brought your charge. Keep the original.
 - You also will be charged \$100.00 for the court processing costs (unless the motion to expunge was for a dismissed charge or you were acquitted). This fee may be waived if you are represented by the RI Public Defender.
- **STEP 6:** Make sure the paperwork was processed. A month or two after the motion is granted, get an official copy of your BCI to confirm that your record was expunged.

Effects

- Once expungement is granted, you will no longer have to disclose that you were convicted of the charge that was expunged.
- Exceptions:
 - According to RIGL § 12-1 3-4 (b), any person who is an applicant for:
 - a law enforcement agency position
 - admission to the bar of any court
 - a teaching certificate or a coaching certificate
 - the operator or employee of an early childhood educational facilityis required to disclose the fact of a conviction.

Effects

Just because expunged material is removed from *public* view does not mean that it disappears entirely.

Under RIGL § 12-1 3-4 (c), certain individuals or organizations have access to expunged records. These include:

- the individual whose record was expunged
- a sentencing court following the conviction of the individual for the commission of a different crime
- a bar agency which is considering a bar admission, character and fitness, or disciplinary matter
- the commissioner of elementary and secondary education
- any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense.
- by order of a court

Effects

- It is **illegal** for an organization or person to release or allow access to records which have been expunged and is if someone has done this **they can be sued** in civil court. (Section 12-1.3-4)

Questions?

- Contact:

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