



## Committee for Public Counsel Services Youth Advocacy Division

### EXPUNGEMENT GUIDE

*In April 2018, Massachusetts made sweeping changes to our criminal and juvenile laws. This document addresses the new expungement law for juveniles<sup>1</sup> that went into effect on October 13, 2018. Prior to this date, juvenile records could not be expunged.*

*It is important to consult with a lawyer before you petition to expunge your juvenile record. For example, if you are not a citizen you should speak to an immigration lawyer as to what effect expungement would have on any immigration application or hearings. If your record is expunged, you should always obtain and keep a certified copy of your record prior to expungement, as well as all police reports associated with any entries on your record. Additionally, you want advice as to whether expungement is best for your situation since there could be circumstances in the future where you might want or need access to your juvenile record.*

#### What is Expungement?

The new law states that expungement is “the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency.” This means that your juvenile record is erased – permanently destroyed. (G. L. c. 276 § 100)

If you had a juvenile delinquency, youthful offender, or criminal case before your 21<sup>st</sup> birthday, you can request that the case be expunged. There are particular requirements and exceptions that are explained below.

#### Do You Qualify for Expungement of Your Juvenile Record?

If you want to have your criminal or delinquency record expunged, regardless of whether you were ultimately convicted or adjudicated<sup>2</sup> as a **delinquent or youthful** offender, the following apply<sup>3</sup>(G. L. c. 276 § 100I):

- The offense had to have occurred before your 21st birthday.
- If the offense was a **felony**, it had to have occurred **7 years** before the date you ask the court to expunge the record. The 7 years starts after you are no longer in the custody of DYS or incarcerated, or probation is legally finished – meaning you have to have been “crime free” and “court free” and finished with any sentence or probation for 7 years prior to requesting that the record be expunged.
- If the offense was a **misdemeanor** it had to have occurred **3 years** before the date you ask the court to expunge the record. The 3 years starts after you are no longer in the custody of DYS or incarceration, or probation is legally finished - meaning you have to have been “crime free” and “court free” and finished with any sentence or probation for 3 years prior to requesting that the record be expunged.
- The offense that you are seeking to expunge does not include one of the offenses listed below in the next section.
- When you file the petition for expungement, you must certify that to your knowledge there is no existing criminal investigation against you.

Our reading of the new expungement law is that you can only expunge one case, not including a motor vehicle offense where the penalty does not exceed \$50<sup>4</sup>.

<sup>1</sup> The new expungement law also applies to criminal offenses handled in District and Superior Court. as long as the offense occurred before one’s 21<sup>st</sup> birthday.

<sup>2</sup> “Adjudication” is the term that is used in juvenile court; it is like being found guilty in adult court.

<sup>3</sup> These requirements do not apply when seeking to expunge under (G. L. c. 276 § 100K), see section below referring to Steps to Expungement.

<sup>4</sup> The statute states that “the petitioner does not have any other criminal court appearances, juvenile court appearances or dispositions on file with the commissioner” of probation.

## Are There Certain Crimes That Can't be Expunged?

Many crimes cannot be expunged. In fact most sex crimes, crimes against people, crimes involving harm to another, crimes where weapons have been used, crimes against the elderly or children, and restraining order violations cannot be expunged.

**You cannot request expungement** for records related to the following offenses (G. L. c. 276 § 100J<sup>5</sup>):

1. Any crime where death or serious bodily injury resulted.
2. Any crime committed with the intent to cause death or serious bodily injury.
3. Any crime that was committed while armed with a dangerous weapon.
4. Any crime committed against an elderly person.
5. Any crime committed against a disabled person.
6. The following sex offenses, sex offenses involving children and sexually violent offenses. G. L. c. 6 § 178C (sex offender registry law) and G. L. c. 123A § 1 (sexually dangerous persons law) list these offenses as:
  - a. an indecent assault and battery on a child under 14 (G. L. c. 265 § 13B);
  - b. aggravated indecent assault and battery on a child under the age of 14, and a repeat adjudication of this offense (G. L. c. 265 §§ 13B½ and 13B¾);
  - c. indecent assault and battery on a mentally retarded person (G. L. c. 265 §13F);
  - d. indecent assault and battery on a person age 14 or over (G. L. c. 265 § 13H);
  - e. rape (G. L. c. 265 § 22);
  - f. rape of a child under 16 with force (G. L. c. 265 § 22A);
  - g. aggravated rape of a child under 16 with force, and a repeat adjudication of this offense (G. L. c. 265 §§ 22B and 22C);
  - h. rape and abuse of a child (G. L. c. 265 § 23);
  - i. aggravated rape and abuse of a child, and a repeat adjudication of this offense (G. L. c. 265 §§ 23A and 23B);
  - j. assault with intent to commit rape (G. L. c. 265 § 24);
  - k. assault of a child with intent to commit rape (G. L. c. 265 § 24B);
  - l. kidnapping of a child and kidnapping of a child under the age of 16 (G. L. c. 265 § 26);
  - m. enticing a child under the age of 16 (G. L. c. 265 § 26C);
  - n. enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity (G. L. c. 265 § 26D);
  - o. trafficking of persons for sexual servitude, and a second or subsequent adjudication of this offense; and trafficking of persons for sexual servitude upon a person under 18 years of age (G. L. c. 265 §§ 50 and 52);
  - p. enticing away a person for prostitution or sexual intercourse (G. L. c. 272 § 2);
  - q. drugging persons for sexual intercourse (G. L. c. 272 § 3);
  - r. inducing a minor into prostitution (G. L. c. 272 § 4A);
  - s. living off or sharing earnings of a minor prostitute (G. L. c. 272 § 4B);
  - t. second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior, excluding a first or single adjudication as a delinquent juvenile before August 1, 1992 (G. L. c. 272 § 16);

<sup>5</sup> The following crimes are excluded but typically do not apply to juveniles in any event: a violation of a restraining order, issued by a probate court in a divorce case, or a violation of an order to vacate the marital home; a violation G. L. c. 209 § 32; married person abandoned by spouse; order prohibiting restraint of personal liberty of spouse; support, custody and maintenance orders; information provided to complainant; domestic violence record search; investigations; factors determining support amount; any violation of a temporary or permanent order including an order to vacate, restraining or no-contact order issued pursuant to G. L. c. 209 § 15.

**Are There Certain Crimes That Can't be Expunged? (cont't)****Ineligible Offenses (cont't):**

- u. incestuous marriage or intercourse and incestuous intercourse involving a person under age 21 (G. L. c. 272 § 17);
  - v. disseminating to a minor matter harmful to a minor, and disseminating or possession with the intent to disseminate to a minor matter harmful to a minor (G. L. c. 272 § 28);
  - w. posing or exhibiting a child in a state of nudity (G. L. c. 272 § 29A);
  - x. dissemination of visual material of a child in a state of nudity or sexual conduct under (G. L. c. 272 § 29B);
  - y. possession of child pornography (G. L. c. 272 § 29C);
  - z. accosting or annoying person of the opposite sex and lewd, wanton and lascivious speech or behavior (G. L. c. 272 § 53);
  - aa. purchase or possession of visual material of a child depicted in sexual conduct (G.L. c. 272 § 29C);
  - bb. unnatural and lascivious acts with a child under 16 (G. L. c. 272 § 35A);
  - cc. aggravated rape (G. L. c. 277 § 39);
  - dd. any attempt to commit the above mentioned offenses or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority or any other offense that the sex offender registry board determines to be a sexually violent offense pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act;
  - ee. kidnapping with the intent to commit a violation of G. L. c. 265 §§ 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B. (various indecent assault and battery charges, rape charges, and assault of a child with intent to rape).
7. Adjudication for operating under the influence of alcohol, marijuana, narcotic drugs, depressants or stimulant substances. (G. L. c. 90 § 24).
  8. Certain violations for the sale and purchase of firearms (G. L. c. 140 §§ 121 – 131Q).
  9. Any violation of a restraining order issued pursuant to G. L. c. 209A.
  10. Any violation of a harassment order issued pursuant to G. L. c. 258E.
  11. An adjudication for assault or assault and battery on a family or household member, and a second and subsequent adjudication for that offense. (G. L. c. 265 § 13M).
  12. A felony adjudication for a crime against a person under G. L. c. 265.
  13. An adjudication for possession of a firearm, carrying a firearm, possession of a machine gun or a second adjudication for these offenses. (G. L. c. 269 § 10 (a), (b), (c), (d)).
  14. An adjudication for distribution, sale or transfer of a firearm. (G. L. c. 269 § 10E).

**What Are The Steps You Need To Go Through To Ask For Expungement?**

There are 3 ways to try and get your juvenile record expunged, all involve filing a petition either with the Commissioner of Probation or the court. Under all 3, the court has discretion to expunge if expungement is in the best interests of justice, whether or not the district attorney objects.

- I. Once you have determined that the offense is one that can be expunged and the criteria mentioned above (from G. L. c. 276 § 100I) are met, you must do the following (G. L. c. 276 § 100F):

**What Are The Steps You Need To Go Through To Ask For Expungement? (con't)**

- You must fill out a form entitled “Petition to Expunge.” You can get this from the Commissioner of Probation. You can get the forms here:

<https://www.mass.gov/files/documents/2018/12/17/jud-mps-Petition-to-Expunge-Form.pdf> - for petitions under §§ 100F, 100G, 100H.

<https://www.mass.gov/files/documents/2018/12/20/jud-Petition-for-Expungement%2012.20.18.pdf> - for petitions under § 100K.

- You must sign the petition under the penalties of perjury.
- You must send the form to the Commissioner of Probation, One Ashburton Place, Room 405, Boston, MA, 02118.

When the Commissioner receives your petition, the following must occur:

- The Commissioner of Probation will decide if you are legally eligible for expungement.
  - If you are not eligible for expungement the Commissioner will, within 60 days of the request, deny the petition. The denial will be in writing.
  - If you are eligible for expungement the Commissioner will, within 60 days of the request, notify the district attorney in writing that you are eligible for expungement.
  - Within 60 days of the district attorney receiving notice from the Commissioner, the district attorney must notify the Commissioner in writing if they have any objections to expungement.
  - When the district attorney responds to the Commissioner or within 65 days of the notification to the district attorney, whichever occurs first, the petition is sent to the court where you were adjudicated a delinquent or youthful offender.
  - If the district attorney objects to expungement, the objection is sent to the court with the petition.
  - If the district attorney files an objection, the court must conduct a hearing on expungement within 21 days of receiving the petition.
  - If the district attorney does not file an objection, the court can approve the petition without a hearing.
  - If the court orders expungement, the order must be sent immediately to the clerk of the court where the record was created, to the Commissioner, and to the Commissioner of Criminal Justice Information Services, the statewide agency that oversees criminal records information.
- II. You can also petition for expungement on an entry on your record that is not an adjudication, for example if you were previously placed on pre-trial probation or your case was CWOFF'd (Continued without a Finding). (G. L. c. 276 § 100H). If you want to petition for expungement under this section, the process is very similar to petitioning under G. L. c. 276 § 100F, described above in Section I. Here are the differences:
- If you are not eligible for expungement the Commissioner will, within 30 days of the request, deny the petition. The denial will be in writing.
  - If you are eligible for expungement the Commissioner will, within 30 days of the request, notify, the district attorney in writing that you are eligible for expungement.
  - Within 30 days of the district attorney receiving notice from the Commissioner, the district attorney must notify the Commissioner in writing if they have any objections to expungement.

### What Are The Steps You Need To Go Through To Ask For Expungement? (con't)

III. There is another way that your juvenile court record or appearances can be expunged. You can petition the court if there is “clear and convincing evidence that the record was created as a result of” any of the following (G. L. c. 276 § 100K):

- false identification of you or theft of your identification;
- the offense is no longer a crime, except if the elements of the prior offense are now within a different crime;
- “demonstrable errors by law enforcement;”
- “demonstrable errors by civilian or expert witnesses;”
- “demonstrable errors by court employees;” or
- “demonstrable fraud perpetrated upon the court.”

Under this section the court must hold a hearing if either you or the district attorney requests one. If expungement is allowed the court must enter written findings.

### Does The Court Have To Expunge My Record If It's An Eligible Offense?

**No.** The court has discretion to allow or deny a petition for expungement of an eligible offense based on what is in the best interest of justice. This applies whether the district attorney objects or not. Whether the judge allows or denies your request to expunge, the decision must be in writing. The court cannot expunge an ineligible offense. (G. L. c. 276 §§ 100F, 100H, 100I, 100J, 100K).

### What Happens If The Court Agrees To Expunge My Juvenile Record?

The clerk of the court where the record was created, the Commissioner, and the Commissioner of Criminal Justice Information Services will receive the order to expunge and they must do the following (G. L. c. 276 § 100L):

- expunge the record within their care, custody, and control AND
- order all criminal justice agencies to expunge all publicly available police logs within their care, custody, or control (G. L. c. 41 § 98F)

Any criminal justice agency that receives the order to expunge must do so immediately **and** if anyone asks these agencies about a record that has been expunged, they must respond that “no record exists.”

### Will My Job or Other People Find Out About My Record That Has Been Expunged?

“A record expunged ... shall not operate to disqualify a person in any examination, appointment or application for employment with any county agency, municipal agency or state agency.” G. L. c. 276 § 100N. If you apply for a job with any county agency, municipal agency or state agency and are asked if you have a record, you can legally answer that you have “no record.”

Your expunged record cannot be used at any hearing before any boards or commissions or in determining suitability for the practice of any trade or profession requiring licensure. When applying for a job or for “examination” with a county agency, municipal agency or state agency, you cannot be required to tell them about your expunged record.<sup>6</sup> (G. L. c. 276 § 100N).

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<sup>6</sup> Any application for employment that asks about a prior record or arrest must contain the following language: “An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions,” and if your record has been expunged you should answer “no record.”

### Can My Expunged Record Be Used In A Court Proceeding?

No. An expunged record is not admissible in evidence or used in any way in any court proceedings. (G. L. c. 276 § 100N).

### What Is The Difference Between Expungement and Sealing?

Expunged records are permanently destroyed - no one can have access to them as they are no longer available. That is not the case with a sealed record. If a court or police department asks the Commissioner of Probation about a person's record, if the offense has been sealed the Commissioner must report "sealed delinquency record over three years old." If other persons or entities, who are allowed to inquire about a delinquency or youthful offender record, ask about a sealed record the Commissioner will respond that the person has "no record". (G. L. c. 276 § 100B). While having a record sealed does not protect you as much as having a record expunged, you may consider it as an alternative if you are ineligible for expungement. Getting advice from an attorney on what would be a good for you is strongly recommended. If you are not a citizen of the US you should speak to an immigration attorney before you start the expungement or sealing process.

For more information about sealing your juvenile or youthful offender record see Greater Boston Legal Services "How To Seal Your Massachusetts Juvenile And Youthful Offender Records" [www.gbls.org/self-help/cori](http://www.gbls.org/self-help/cori).

### Resources

#### Legal Aid Offices:

1. **Northeast Legal Aid/ Northeast Justice Center** (with offices in Lawrence, Lowell, and Lynn) - 978-458-1465, Monday-Thursday 9-5, and Fridays 9-1.
2. **Greater Boston Legal Services CORI & Re-entry Project** (Boston and nearby areas)  
Intake number 617-603-1700 or 617-371-1234 from 9am to noon  
Roxbury courthouse walk-in clinic hours on 2<sup>nd</sup> floor: 3<sup>rd</sup> Thursday of the month from 9 am to noon  
Dorchester courthouse walk-in clinic on 1<sup>st</sup> floor—2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of the month from 9am to noon.
3. **South Coastal Counties Legal Services, Bristol County** - 508-676-5022.
4. **Community Legal Aid, CORI and Reentry Project**, Worcester, MA- 508-425-2810.

#### Youth Advocacy Division Offices:

Fall River - 508-484-5777	Roxbury - 617-445-7581	Worcester - 508-368-1870
Hyannis - 508-815-5710	Salem - 978-825-2090	
Lowell - 978-458-7161	Somerville - 617- 863-5190	
Quincy - 617-689-1091	Springfield - 413-750-1640	

*This is not intended as the final authority on the new expungement law in Massachusetts. It is important to keep up-to-date on any changes.*

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