



North Penn
LEGAL SERVICES

How to Remove Barriers to Employment

What you need to know about Expungements, Limited Access (Record Sealing), Pardons and overcoming barriers to employment when you have a criminal record.



TOPICS INCLUDE

Expungements

Limited Access
(Record Sealing)

Pardons

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Completing Employment Applications

What should I disclose about my criminal record?

A conviction is a guilty plea, a “no contest” plea or a court or jury finding of guilt for a crime or offense. Pennsylvania law requires that you disclose conviction and arrest information if you are asked by a prospective employer about your criminal history. If the employer asks about arrests, you must disclose all arrests that have not been expunged—even if they did not result in convictions. If asked about a conviction and/or arrest, tell the truth. Keep in mind that employers often do their own background check. **NOTE:** After your record has been expunged, you will be able to say no if asked about an arrest and/or conviction.

Seeking a job that has a statutory bar or license requirement

Some convictions prohibit people from obtaining certain jobs. (For example, school districts can deny employment for job applicants with specific felony convictions. Otherwise, many felony and misdemeanor convictions disqualify the job applicant for hire until a certain amount of time has elapsed since expiration of sentence (3, 5, or 10 years).

Licensing Boards may consider criminal convictions in licensing decisions. For example, a conviction involving a crime of dishonesty may disqualify you for a license with the Pennsylvania Gaming Commission.

A criminal record should not automatically disqualify you for employment. It is generally unlawful for employers to disqualify you for employment without proof of a business necessity.

“Business necessity” generally means an employer must show that your conviction is substantially related to your suitability for the job. Arrests not leading to convictions **cannot** be used to deny employment. **This advice also applies to a person seeking any job.**

Ex-offenders considering training for specific professions should contact the appropriate licensing board to find out whether a particular policy or restriction will make a license in a particular field difficult or impossible to obtain.

Expungements

NPLS will assist clients seeking to obtain an expungement as a way to facilitate reentry into the workplace.

What is an expungement?

An expungement is a method of removing convictions and/or arrests from a person's criminal history.

What is criminal history record information?

Criminal history record information includes criminal justice agency information arising from criminal proceedings. For example, court, arrest and conviction records.

What kinds of records can be expunged?

Non-conviction data, such as acquittals, dismissals, and ARD, can be expunged from your criminal history. Juvenile adjudications of delinquency may be expunged if you meet certain criteria.

Can convictions be expunged?

- Generally, a conviction for a summary offense can be expunged from your record. However, you must have remained free from arrest, and/or prosecution for five years following the summary offense conviction. All court costs and fines must be paid in full.
- A conviction for underage drinking can be expunged.
- A conviction for a person who is 70 or older, and has been free of arrest or prosecution for ten years following final release from confinement or supervision can be expunged.
- The record of a person who has been dead for at least three years can also be expunged.
- Generally, other convictions cannot be expunged unless first pardoned by the Governor of Pennsylvania. If granted a pardon, you can then petition the appropriate court for an expungement.
- You may also be eligible for a partial expungement. If your case contains convictions and dismissals, there is an opportunity to erase the dismissed charges.
- Please note there are special rules for expunging child abuse reports. Further, there are specific procedures and deadlines which must be followed in order to preserve your child abuse expungement rights.

How can I get a copy of my PA Criminal Record?

You can get a copy of your record from the PA State Police. Mail the request form (#SP4-170) and money order or certified check for \$10 made payable to the Commonwealth of Pennsylvania to the Pennsylvania State Police, Central Repository-RCPU, 1800 Elmerton Avenue, Harrisburg, PA 17110-9758. This form is called “Access and Review” and should show your juvenile history as well as your adult arrest and conviction history.

Act 5 of 2016 – Limited Access (Record Sealing)

What records can be sealed under Act 5?

Effective November 14, 2016 specific Misdemeanor convictions became eligible for sealing under Act 5 of 2016. Act 5 came about through many years of hard work by advocates working to assist people with a criminal record overcome stifling barriers to employment resulting from old criminal records. It is important to note this law was passed with overwhelming bi-partisan support in the House and Senate of Pennsylvania before being sent to Governor Wolf for his signature.

New options:

Misdemeanors Two, (M2), Misdemeanors Three, (M3), and Ungraded Misdemeanors (M)-punishable by no more than two years in prison will be eligible for sealing under the new law. In addition, a Simple Assault case will only be considered if it is an M3.

When will my case qualify for sealing?

One must be free of arrest or conviction following release from confinement or supervision, whichever is later, for a period of ten (10) years.

What are the exceptions?

One does not qualify if they have ever been convicted of: Simple Assault (unless a Misdemeanor 3); Any Misdemeanor One (M1) or Felony; Four or more offenses punishable by imprisonment of one or more years; An offense punishable by imprisonment of more than two years; Other less common offenses: Sex with animals; Impersonating a public official; Intimidation or retaliation against a witness or victim; retaliation or obstruction in child abuse cases, and any offense that requires registration as a sex offender.

What is required to file?

A petition has to be filed with the Court, and a fee of \$132 (in addition to any local fees) is required. This also applies to regular expungement petitions.

What is the effect of sealing?

Records will be available to law enforcement officials, but not available to the public.

State licensing boards will still be able to access these records. One does not need to disclose sealed records for employment or other purposes.

Pardons

NPLS staff can discuss your options and determine whether an application for a pardon is appropriate for your situation.

The Board of Pardons consists of five members:

The Lieutenant Governor, who serves as the Chairperson; the Attorney General; and three members appointed by the Governor, who must be approved by a majority of State Senators. The appointed members include a corrections expert, a crime victim representative, and a doctor of medicine, psychiatrist or psychologist.

What is a pardon?

A pardon is an act by the Governor of Pennsylvania that forgives an offense and restores the offender's rights and privileges lost as a result of the offense.

Who can get a pardon?

Anyone who has a criminal record may apply for a pardon. Typically, serious crimes are only pardoned if substantial time has passed since the crime was committed.

What happens after you apply?

After you apply, your application goes through a merit review process by the Board of Pardons. A public hearing will be granted if at least two of the five Board members agree. Please note that attempted crimes of violence and offenses committed while in visible possession of a firearm where a sentence is imposed, requires the approval of three members in order to receive a public hearing.

After the public hearing, if a majority of the Board (three), votes in favor of an application, the Board recommends favorable action to the Governor. Crimes of violence require a unanimous vote by the Board to be recommended to the Governor. The Governor has the discretion to approve or disapprove a favorable recommendation from the Board. Once the Secretary of the Board of Pardons receives the Governor's decision, all interested parties will be notified.

How long is the process and what does it cost?

The pardons process takes approximately four to five years; but if successful, you will have a clean record. It is important to be patient. It will cost \$8 for an application, \$25 to file, \$10 for your Pennsylvania State Police criminal history "Access and Review", \$9 for a full PENNDOT driver history (DL-503), costs for a 2"x2" sized color headshot photo, and copies of court records.

What factors does the Board of Pardons consider?

The Board evaluates every application on a case-by-case basis to determine if a pardon is appropriate, but some factors that are frequently considered include: time elapsed since the crime, proof of positive changes and rehabilitation, successful completion of all court-imposed requirements such as parole and fines, the reason for wanting the pardon, and the impact the pardon would have on victims of the offense.

Tips for the pardon process:

- Carefully review your application before the hearing. Your presentation before the Board of Pardons must be consistent with the information submitted in the application.
- Dress appropriately for the hearing.
- Provide the details of your crime. Don't minimize the crimes or lie about what happened. Remember, the Board knows about your entire criminal history. Take responsibility for your actions.
- Feel free to bring witnesses who can tell the Board about positive changes you have made in your life. However, the witnesses must be brief in their statement on your behalf since you only have fifteen minutes for your entire presentation.

The expungement, Limited Access (Record Sealing), and pardon processes take time and effort. If successful, however, you will find it a worthwhile experience. Your record can be erased; thus opening the door to employment, housing, and other privileges.

Criminal Background Checks

The information provided in criminal background checks, regardless of the source, may often be incorrect. You should always carefully review your criminal record to ensure it is correct. An inaccurate criminal record should always be challenged.

REMEMBER: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice. Please use the information found in this brochure carefully since the law is constantly changing and the information may not accurately reflect any changes in the law that occurred following the creation and publication of the brochure.

Employment Discrimination? We Can Help.

The North Penn Legal Services Criminal Records Mitigation Project will provide legal assistance or representation for the following cases:

Correcting errors in police records

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Correcting errors in state records due to criminal identity theft

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Correcting inaccurate criminal background reports by commercial vendors

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Intervening when employers or job trainers improperly deny employment or job training opportunities based on a criminal history

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Enforcing ex-offenders rights under state law and fair credit reporting

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Equal Employment Opportunity Complaints + Community Education

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Pardons + Expungements + Limited Access (Record Sealing)



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