

METHODS TO OBTAIN RELIEF FROM THE COLLATERAL CONSEQUENCES OF CONVICTIONS: SUMMARY OF STATE LAWS

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SUMMARY

Collateral consequences are legal, regulatory, and policy barriers imposed against an individual arrested for, charged with, or convicted of a criminal offense that often have no connection to the criminal offense.¹ These consequences include, but are not limited to, loss of particular civil rights, including the rights to vote and serve on a jury, barriers in obtaining housing, employment, professional licenses, federal and state government benefits, including Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits, as well as access to higher education and student loans.² According to the database of the National Inventory of Collateral Consequences of Conviction (NICCC), there are nearly 44,000 state and federal collateral consequences currently in place across the country that have the ability to impact all aspects of a person's life and may affect the lives of individuals' families and loved ones, as well.³ This does not include collateral consequences that may be imposed at the local level. According to the U.S. Commission on Civil Rights, “[c]ollateral consequences exacerbate punishment beyond the criminal conviction after an individual completes the court-imposed sentence,” and while there may be some “valid public safety bases” to support certain consequences, “[m]any . . . are unrelated either to the underlying crime for which a person has been convicted or to a public safety purpose.”⁴ Due to the nature of collateral consequences and their potential to impact an individual's daily life for years, if not the individual's entire life, there is a growing movement to rename them “permanent punishments.”⁵ The [Model Relief from Collateral Consequences of Conviction Act](#), drafted by the Legislative Analysis and Public Policy Association (LAPPA), continues to use the term “collateral consequences” as it is the term most familiar to legislators and others in the field; however, readers should be aware of the movement to change this terminology.

Collateral consequences can attach as soon as an individual is arrested, regardless of the eventual outcome of the arrest, including where no criminal charges against the individual are

¹ See *What are Collateral Consequences?*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Welcome to the NICCC | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](#) and *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities – Briefing Report, Letter of Transmittal*, U.S. COMM'N ON CIV. RTS. (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](#).

² *Id.*

³ *Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Collateral Consequences Inventory | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](#).

⁴ Letter from Catherine E. Lhamon, U.S. Comm'n on C.R. Chair, to President Donald J. Trump, Vice President Mike Pence, and Speaker of the House Nancy Pelosi, in *COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES* (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](#).

⁵ See, e.g., Ermolaev Alexander, *Marlon Chamberlain and the Campaign to End “Permanent Punishments,”* BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST. (April 19, 2023), [Marlon Chamberlain and the Campaign To End “Permanent Punishments” | Bureau of Justice Assistance \(ojp.gov\)](#); and Andrew Wimer, *Permanent Punishments Keep People from Serving Our Communities*, FORBES (Oct. 30, 2023), [Permanent Punishments Keep People From Serving Our Communities \(forbes.com\)](#).

ever filed, where the charges are dismissed, or where the individual is exonerated.⁶ Many individuals are not aware of the existence of collateral consequences until they or their family members are impacted by them. “Collectively, at least 70 to 100 million people nationwide are currently or will be affected by the collateral consequences of incarceration, arrest, or conviction.”⁷ These consequences have a disparate impact on people of color, particularly Black men, who are more likely to come into contact with the criminal justice system.⁸

Collateral consequences fall into two general categories: (1) those classified as collateral sanctions; and (2) those classified as disqualifications.⁹ Collateral sanctions are mandatory and are imposed by operation of law. In many states, loss of the right to vote or the right to possess a firearm are collateral sanctions imposed automatically upon conviction of a felony.¹⁰ In order to regain those rights, many states require that individuals obtain a pardon or take other affirmative steps in order to have those rights restored.¹¹ In contrast, collateral consequences that act as disqualifications are discretionary, where an entity or individual is authorized to impose a consequence against an individual but is not required to do so. Most collateral consequences involving employment and housing are disqualifications and, therefore, discretionary with the decision-maker.¹² As stated by the U.S. Commission on Civil Rights:

⁶ See, e.g., 42 U.S.C. § 1320a-7 (2024), which defines “conviction” to include circumstances where an individual participates in a first offender, deferred adjudication, or other similar program where there is no judgment of conviction entered against the individual, but the individual is still subject to mandatory and/or discretionary disqualification to work as a healthcare provider if convicted, as defined in this statute, of certain controlled substances offenses. See also Eisha Jain, *Arrests as Regulation*, 67 STANFORD L. REV. 809-867 (2015), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2427&context=facpub>.

⁷ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. COMM’N ON C.R. 2-3 (June 2019), [06-13-Collateral-Consequences.pdf \(usccr.gov\)](https://www.usccr.gov/06-13-Collateral-Consequences.pdf) (internal citations omitted).

⁸ See Dennis Schrantz and Jerry McElroy, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, THE SENTENCING PROJECT (Oct. 2000), and Nazgol Ghandnoosh, Celeste Barry, and Luke Trinkka, *One in Five: Racial Disparity in Imprisonment – Causes and Remedies*, THE SENTENCING PROJECT (Dec. 7, 2023), [One in Five: Racial Disparity in Imprisonment — Causes and Remedies – The Sentencing Project](https://www.sentencingproject.org/publications/one-in-five-racial-disparity-in-imprisonment-causes-and-remedies-the-sentencing-project). See also COMM’N ON C.R., *supra* note 17, at 19, FN 103.

⁹ See *ABA Standards for Criminal Justice, Third Edition: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, AM. BAR ASS’N (2004), [collateral-sanctions.pdf \(americanbar.org\)](https://www.americanbar.org/publications/standards_for_criminal_justice/collateral_sanctions_and_discretionary_disqualification_of_convicted_persons).

¹⁰ See *50-State Comparison: Loss & Restoration of Civil/Firearms Rights*, RESTORATION OF RTS. PROJECT, COLLATERAL CONSEQUENCES RES. CTR. (last updated March 2024), [50-State Comparison: Loss & Restoration of Civil/Firearms Rights | Collateral Consequences Resource Center \(ccresourcecenter.org\)](https://www.ccrsourcecenter.org/50-State-Comparison-Loss-&-Restoration-of-Civil-Firearms-Rights-Collateral-Consequences-Resource-Center); and Margaret Colgate Love, *The Reintegration Report Card: Grading the States on Laws Restoring Rights and Opportunities after Arrest or Conviction*, COLLATERAL CONSEQUENCES RES. CTR. (March 2022), [The-Reintegration-Report-Card.3.2122.pdf \(ccresourcecenter.org\)](https://www.ccrsourcecenter.org/The-Reintegration-Report-Card.3.2122.pdf)

¹¹ See *supra* note 27; Andrea Miller, Briana Paige, and Allison Trochesset, *Collateral Consequences of Criminal Records – Caseload Highlights: Special Issue*, CT. STAT. PROJECT, NAT’L CTR. FOR STATE CTS. 9 (Nov. 12, 2021); and *Felon Voting Rights*, NAT’L CONF. OF STATE LEGISLATURES (updated Dec. 5, 2023), [Felon Voting Rights \(ncsl.org\)](https://www.ncsl.org/felon-voting-rights).

¹² See *Collateral Consequences Inventory*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION (2024), [Collateral Consequences Inventory | National Inventory of Collateral Consequences of Criminal Conviction \(nationalreentryresourcecenter.org\)](https://www.nationalreentryresourcecenter.org/collateral-consequences-inventory).

Collateral consequences may serve public safety or regulatory purposes; examples include prohibiting convicted sex offenders¹³ from managing day care centers or forcing public officials convicted of bribery to resign from office. Some collateral consequences directly relate to the specific crime, such as driver's license suspensions for people convicted of a serious traffic offense. Other collateral consequences apply regardless of any connection between the consequence and the nature or severity of the crime, how long ago the crime was committed, or the individual's post-conviction record.¹⁴

According to the NICCC, of the nearly 44,000 state and federal collateral consequences identified, roughly 62 percent attach for an indefinite period of time.¹⁵ For example, there are nearly 10,000 collateral consequences that affect occupational and professional licensure or certification that last for an indefinite period, and nearly 3,400 of those are imposed automatically.¹⁶

The imposition of collateral consequences may negatively impact public safety due to the risk of recidivism.¹⁷ The effects of collateral consequences can be felt across nearly all aspects of an individual's life. For example, federal law restricts both SNAP and TANF benefits if an individual is convicted of felony possession, use, or distribution of drugs.¹⁸ Given the high rate of people convicted of and incarcerated for drug offenses, parents convicted of drug offenses may find themselves unable to qualify for such benefits, or may only qualify on behalf of their children, potentially affecting their ability to feed, clothe, and house themselves and their children, particularly since "people with criminal convictions face barriers to employment [and] are more likely to need financial assistance to survive and avoid recidivism."¹⁹ States may elect to opt out of or modify the federal bans on TANF and SNAP benefits; however, some of the state-adopted modifications can result in additional hardships.²⁰ The inability to access benefits can also impact an individual's ability to obtain housing, employment, and certain types of loans.²¹

There are various types of relief available to individuals subject to the imposition of collateral consequences, including pardons, record sealing and/or expungement, restoration of certain civil rights, and the issuance of various types of certificates relieving the individual of

¹³ Note that this is the term used in this quote for individuals charged with or convicted of a sex offense and that such term is considered dehumanizing. See, *Words Matter: Using Humanizing Language*, THE FORTUNE SOC'Y, [Words Matter: Using Humanizing Language | The Fortune Society](#).

¹⁴ U.S. COMM'N ON C.R., *supra* note 17, at 10-11 (internal citations omitted).

¹⁵ NICCC, *supra* note 29.

¹⁶ *Id.*

¹⁷ U.S. COMM'N ON C.R., *supra* note 17, at 133.

¹⁸ 21 U.S.C. § 862a (2023).

¹⁹ U.S. COMM'N ON C.R., *supra* note 17, at 26.

²⁰ Margaret Love and Nick Sibilla, *Access to SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws*, COLLATERAL CONSEQUENCES RES. CTR. (Dec. 2023), [Accessing SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws | Collateral Consequences Resource Center \(ccresourcecenter.org\)](#).

²¹ Miller et al, *supra* note 28.

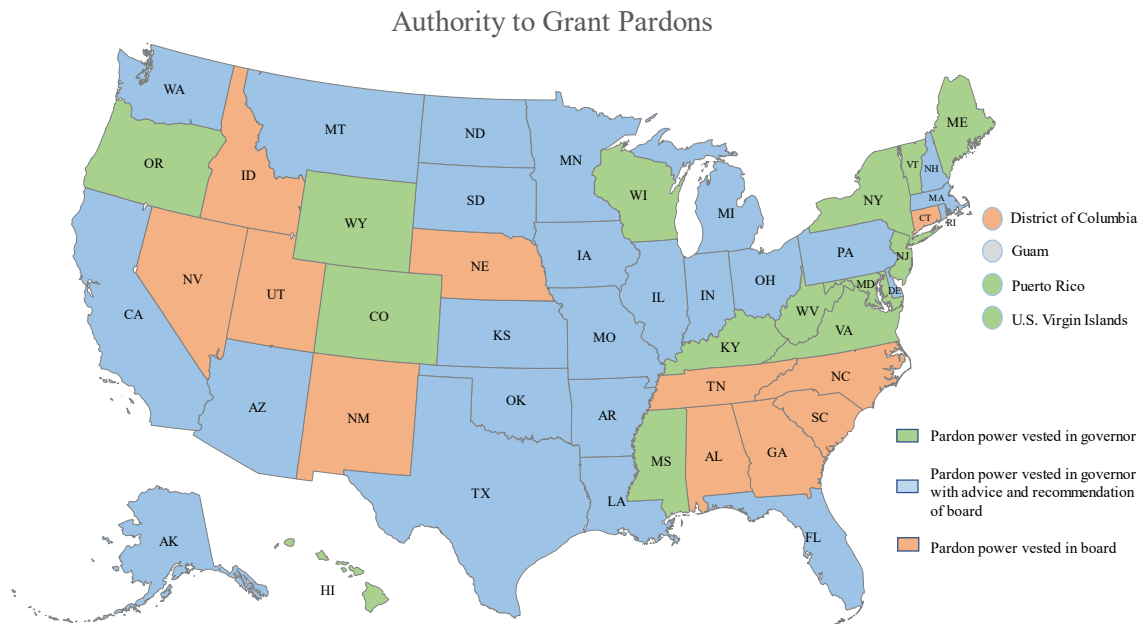
some or all of the consequences imposed.²² Despite the availability of these various forms of relief, individuals who are eligible for one or more types of relief are oftentimes unaware that relief is available, or the process for obtaining relief is unclear, complex, or unduly onerous.²³ Additionally, relief might only be available for certain types of records (*e.g.*, arrest records) or might involve unduly long waiting periods.

A pardon is a process by which an individual's conviction is "forgiven" by the governor or the state board of pardons, board of probation and parole, or a similar agency. A pardon can be conditional or unconditional. An unconditional pardon typically restores an individual to all rights and privileges lost as a result of a criminal conviction. A conditional pardon only serves to restore some rights and privileges as set forth in the pardon. If the individual to whom a pardon is granted violates the terms of a conditional pardon, the pardon is revoked, and any benefits obtained as a result of the pardon are lost. Every state, the District of Columbia, and U.S. territories (with the exception of Guam, for which there is no information available) have provisions related to the granting of pardons; however, the mechanism by which pardons are granted vary.

Fourteen states (Colorado, Hawaii, Kentucky, Maine, Maryland, Mississippi, New Jersey, New York, Oregon, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming), Puerto Rico, and the U.S. Virgin Islands vest sole power to grant pardons in the governor. This includes states where the governor can request an investigation or a recommendation from the state board of pardons or similar board but is not required to make such a request or abide by the recommendation. An additional 25 states (Alaska, Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, and Washington) vest the power to grant pardons in the governor with the advice and recommendation of the state board of pardons, board of probation and parole or similar agency, or the state legislature. Finally, 11 states (Alabama, Connecticut, Georgia, Idaho, Nebraska, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, and Utah) and the District of Columbia vest the power to grant pardons in the state board of pardons, board of probation and parole, or similar agency. In those states, the governor may be a member of the board making the decision to grant or deny pardon.

²² See *infra*, Section VI and its Commentary for more information on certificates of relief. See also the many 50-State Comparisons setting out the different types of relief available across the country which can be found on the Restoration of Rights Project website ([Restoration of Rights Project \(ccresourcecenter.org\)](http://ccresourcecenter.org)) published by the Collateral Consequences Resource Center.

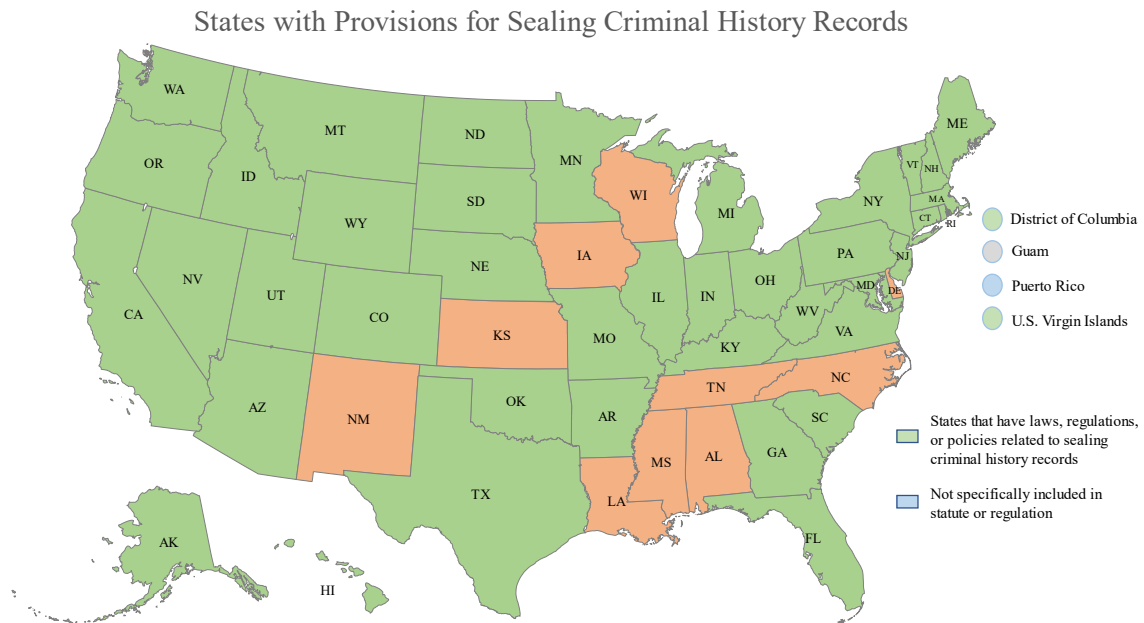
²³ *Model Law on Non-conviction Records*, COLLATERAL CONSEQUENCES RES. CTR., n.12 and 13 (Dec. 2019).



Sealing criminal history records does not destroy them; it simply removes them from the public domain, although some information may remain on the internet or in published court opinions. Records remain available for inspection for limited, typically criminal justice, purposes or pursuant to a court order. Sealing provides relief to individuals by allowing them, in most cases, to exclude mention of the arrest, charge, and/or conviction in response to an inquiry on, for example, an employment application or during a job interview with the exception of certain professions (typically law enforcement and childcare). Only 10 states (Alabama, Delaware, Iowa, Kansas, Louisiana, Mississippi, New Mexico, North Carolina, Tennessee, and Wisconsin) and Puerto Rico do not expressly permit the sealing of any criminal history records. In a number of states, sealing is only available for non-conviction records; that is, criminal history records where the arrest or charge resulted in an acquittal or dismissal of all charges, or where the prosecutor entered a *nolle prosequi*, for example. Non-conviction records might also include situations where the individual successfully completed a deferred prosecution or diversion program.

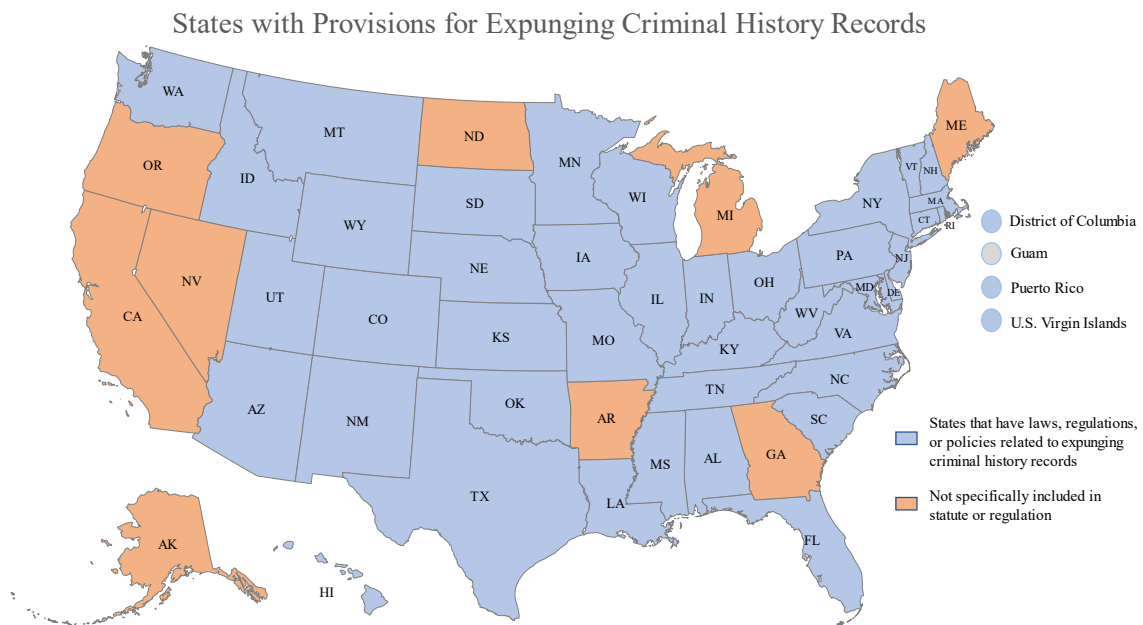
The six states in this paragraph limit sealing to certain records after an order of expungement has been granted. Hawaii, Indiana, West Virginia, and Wyoming require court records to be sealed without a petition once an order granting a petition to expunge criminal history records has been entered, as the order to expunge does not otherwise affect records held by the state courts. Kentucky also limits sealing to court records after an order of expungement has been entered; however, certain records of drug convictions are also eligible to be automatically sealed. Finally, South Carolina requires that law enforcement and prosecution agencies and detention and correctional facilities retain certain criminal history records under seal for a period of three years and 120 days after the entry of an order of expungement.

Oklahoma, South Dakota, Utah, and the Virgin Islands are included on both the sealing and expungement maps (see below) as permitting those processes. Readers should note, however, that the reason for that is that in Oklahoma, “seal” and “expunge” are used interchangeably, and in South Dakota, Utah, and the Virgin Islands, “expunge” is specifically defined to mean the sealing of records.

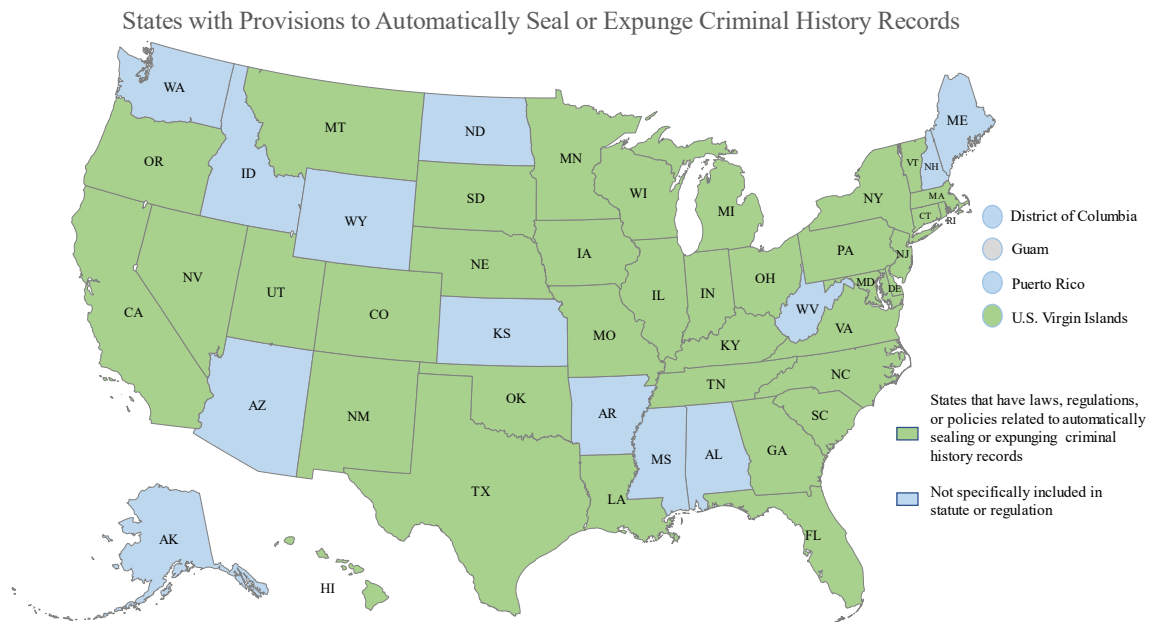


The primary difference between sealing and expungement of criminal history records is that expunging records may result in their destruction (depending on the jurisdiction), and expunged records are typically not available for any purpose, including law enforcement purposes. Therefore, the waiting periods before an individual’s records are eligible to be expunged tend to be longer than those for sealing records. As with sealing, an individual whose records have been expunged can answer any inquiry regarding the arrest, charge, and/or conviction in the negative (with some exceptions for certain professions) and requires that any agency to which a request for criminal history records is made respond that no such records exist. Nine states (Alaska, Arkansas, California, Georgia, Maine, Michigan, Nevada, North Dakota, and Oregon) do not have any provisions for the expungement of criminal history records. The remaining states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have processes in place for the expungement of records; however, they may include limits on the types of records that are eligible. For example, Arizona limits expungement to drug charges only, while Hawaii limits it to property offenders and non-conviction records. Colorado only provides expungement for records related to cases of mistaken identity, and New Hampshire only permits the expungement of DNA records. In most states, however, expungement is available for various types of criminal history records after the required time period has elapsed.

As mentioned above, Oklahoma, South Dakota, Utah, and the Virgin Islands are included on both the sealing and expungement maps (see below) as permitting those processes. Readers should note, however, that the reason for that is that in Oklahoma, “seal” and “expunge” are used interchangeably, and in South Dakota, Utah, and the Virgin Islands, “expunge” is specifically defined to mean the sealing of records.



In addition to those states that have processes in place that allow an individual to petition or otherwise request the sealing or expungement of criminal history records, 37 states and the U.S. Virgin Islands require that certain records be automatically sealed or expunged in certain circumstances. For example, Montana law requires that certain non-conviction records be automatically expunged and that records related to a deferred imposition of a sentence, where the individual successfully completed a program, be made “confidential” and unavailable to the public after the expiration of the required time periods. Texas provides for the automatic expunction of records if an individual’s conviction is reversed or he or she is granted a pardon on the basis of actual innocence. Records are also automatically expunged upon an individual’s successful completion of a veterans treatment or mental health court program. More information on each state’s provisions can be found in the tables in the following pages.



Finally, 22 states and Puerto Rico offer a process by which an individual who meets the requirements can obtain a certificate of relief (also referred to as a certificate of second chance, certificate of rehabilitation, certificate of employability, and order of limited relief). Certificates of relief are granted to individuals who may not otherwise be eligible for other forms of relief, or may not be eligible yet, and are intended to show that the individual has been rehabilitated and is entitled to provide relief from certain collateral consequences. The relief provided by such certificates may be limited to only certain collateral consequences, those related to housing or employment, for example, or may be broad enough to relieve an individual of all collateral consequences. Certificates of relief do not relieve an individual from the obligation to disclose a citation, arrest, charge, or conviction and may be modified or revoked.

LAPPA designed this document to: (1) provide a single resource for each jurisdiction's laws; (2) allow for comparison of the laws between jurisdictions; and (3) identify and highlight any interesting or novel provisions. Please note that the information contained in the profile for each jurisdiction uses the terms (*e.g.*, "convict," "offender," "addict") used in the language of the state statute or regulation.

<u>ALABAMA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ALA. CODE §§ 12-26-1 to 12-26-11 (2024) (collectively “Occupational Licensing Order of Limited Relief”) • ALA. CODE §§ 15-22-36 and 15-22-36.1 (2024) (included within “Pardons and Paroles”) • ALA. CODE § 15-22-40 (2024) (when pardon, etc., null and void) • ALA. CODE §§ 15-27-1 to 15-27-21 (2024) (collectively “Expungement”) • ALA. ADMIN. CODE r. 640-X-7-.01 and 640-X-7-.02 (2024) (included within “Pardons”) • ALA. ADMIN. CODE r. 640-X-8-.01 (2024) (remission of fines)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1951 (§ 15-22-40) • July 2014 (§§ 15-27-3, 15-27-6, 15-27-12 to 15-27-18) • August 1, 2016 (§ 15-22-36.1) • August 1, 2017 (§§ 15-27-19 and 15-27-20) • September 1, 2019 (§§ 12-26-1 to 12-26-11 and 15-22-36) • March 16, 2020 (640-X-7-.01, 640-X-7-.02, 640-X-8-.01) • July 1, 2021 (§§15-27-2, 15-27-4, 15-27-5, 15-27-7 to 15-27-11, 15-27-19, and 15-27-21) • October 1, 2024 (§ 15-27-1)
Pardon provisions	<p>Provisions related to pardons and parole can be found in §§ 15-22-20 to 15-22-40. Certain specific statutes are discussed in more detail below.</p> <p>§ 15-22-36 (authority to grant pardons and paroles, remit fines and forfeitures, etc.; notice of board action) – in all cases, except treason and impeachment and cases in which a sentence of death is imposed and not commuted, the Board of Pardons and Paroles may grant pardons and paroles and remit fines and forfeitures.</p> <p>Provides that pardons shall not relieve any civil or political disabilities unless specifically set forth in the pardon. No pardon shall be granted unless the individual has successfully completed at least three years of permanent parole or until the expiration of his or her sentence if the sentence was for less than three years. Notwithstanding the foregoing, a pardon based on innocence may be granted upon the unanimous affirmative vote of the board.</p> <p>Requires that the board give notice at least 30 days before rendering a decision to various individuals involved in the criminal case or in the jurisdiction where the crime occurred</p>

<u>ALABAMA</u>	
Pardon provisions, cont'd	<p>and the Crime Victims Compensation Commission. If a victim, victim's representative, or other interested individual has provided a preferred method of communication to the board, at least 45 days prior to the board's actions, the board may not approve a pardon unless the board has been provided to the victim, victim's representative, or other interested individual at least 30 days prior to rendering a decision.</p> <p>If pardon is granted, the board shall send notice to all individuals who promptly requested notice.</p> <p>§ 15-22-40 – any pardon ordered or made contrary to the provisions of this article shall be null and void and shall have no force or effect.</p> <p>640-X-7-.01 – sets forth the requirements for applying for a pardon, with or without restoration of civil and political rights. The board will consider pardons for convictions for violations of Alabama law, federal law, or the laws of other states if, at the time of application and consideration, the petitioner is an Alabama resident.</p> <p>To be considered for pardon, an applicant must either have completed his or her sentence or have successfully served at least three years on parole for the sentence for which the applicant seeks pardon. Notwithstanding the foregoing, a pardon based on innocence may be granted upon the unanimous affirmative vote of the board following receipt and filing of clear proof of innocence of the crime for which the applicant was convicted and the written approval of the judge or district attorney. If the board declines to grant a pardon and/or to restore any or all civil and political rights, the applicant may not reapply until at least two years have passed from the date of board action, unless otherwise expressly ordered by the board.</p>
Is sealing of records available?	Not pursuant to statute or regulation.
Is expungement of records available?	Yes. § 15-27-1 (petition to expunge records—misdemeanor criminal offense, traffic violation, municipal ordinance violation) – limited to: misdemeanor offense, a violation, a traffic violation, or a municipal ordinance violation. Provides that a person may file a petition in the criminal division of

<u>ALABAMA</u>	
Is expungement of records available?, cont'd	<p>the circuit court to expunge records relating to the charge when:</p> <ol style="list-style-type: none"> (1) The charge has been dismissed with prejudice and more than 90 days have passed; (2) The charge has been billed by a grand jury and more than 90 days have passed; (3) The person has been found not guilty of the charge and more than 90 days have passed; (4) The charge has been nolle prossed without conditions, more than 90 days have passed, and the charge(s) have not been refiled; (5) The indictment has been quashed and the statute of limitations has expired or the prosecuting agency confirms that the charge(s) will not be refiled; (6) The charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court program, or any other court-approved deferred prosecution program. A petition may be filed one year from the date of successful completion of the program; (7) The charge was dismissed without prejudice more than one year prior and has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous two years; or (8) The person proves by a preponderance of the evidence that the person is a victim of human trafficking, that the person committed the offense during the period the person was being trafficked, and the person would not have committed the offense but for being trafficked. <p>A person may receive an unlimited number of expungements for circumstances set forth in paragraphs (1) – (5), (7), and (8) above, but may only be granted two expungements under (6) (<i>see</i> § 15-27-2.1 related to limitations on number of expungements granted).</p> <p>If the person does not qualify for expungement under any of the foregoing paragraphs, a person may file a petition to</p>

<u>ALABAMA</u>	
Is expungement of records available?, cont'd	<p>expunge records relating to the charge and conviction if all of the following occur:</p> <ol style="list-style-type: none"> (1) Except as otherwise provided by law, all probation or parole requirements have been completed, including payment of all fines, costs, restitution, and other court-ordered amounts; (2) Three years have passed from the date of conviction; and (3) The person was not convicted of certain listed offenses. <p>A person may only be granted two expungements under this provision (<i>see</i> § 15-27-2.1).</p> <p>Records may be disclosed to a criminal justice agency, district attorney, or prosecuting authority for criminal investigation purposes; to a utility; to the Department of Human Resources for the purpose of investigation or assessment in order to protect children or vulnerable adults; or to any entity or service providing information to banking, insurance, and other financial institutions as required by state and federal law.</p> <p>Any criminal charges expunged or pending expungement shall be available for use by any attorney, officer of the court, or the court itself in civil matters related to the criminal charges that are the subject of the expungement. At the conclusion of the pending civil matter, all references to the criminal charges expunged or to be expunged shall be redacted in the event the criminal charges are expunged.</p> <p>Effective October 1, 2024, expungement will be available for a person who has been adjudged a youthful offender where the underlying charge is a misdemeanor offense, violation, traffic violation, or municipal ordinance violation.</p> <p>§ 15-27-2 (petition to expunge records—felony offense) – permits a person with a felony offense to file a petition to expunge records relating to the charge when any of the circumstances set forth in paragraphs (1) – (6) and (8) above are met, or when the charge was dismissed without prejudice more than five years ago and has not been refiled and the person has not been convicted of any other felony or</p>

<u>ALABAMA</u>	
Is expungement of records available?, cont'd	<p>misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.</p> <p>As with § 15-27-1, a person may receive unlimited expungements for the circumstances set forth in paragraphs (1) – (5), (7), and (8) above, but may only be granted two expungements under (6) (<i>see</i> § 15-27-2.1 related to limitations on number of expungements granted).</p> <p>Provides that convictions for certain offenses classified as “violent” may be expunged if the person shows that he or she committed the offense during the period the person was trafficked, and that the person would not have committed such offense but for being trafficked. The offenses are: promoting prostitution in the first degree, domestic violence in the third degree, and production of obscene matter involving a person under 17 years of age. A person may receive an unlimited number of expungements under this provision (<i>see</i> § 15-27-2.1).</p> <p>If none of the circumstances listed above apply, a person may still file a petition for expungement if all of the following occur:</p> <ol style="list-style-type: none"> (1) The person has been granted a certificate of pardon with restoration of civil and political rights; (2) All civil and political rights that were forfeited as a result of the conviction have been restored; (3) 180 days have passed from the date of issuance of the certificate of pardon; (4) Except as otherwise provided, the conviction is not one of the listed exceptions. <p>A person may only be granted one expungement under this provision (<i>see</i> § 15-27-2.1).</p> <p>Any criminal charges expunged or pending expungement shall be available for use by any attorney, officer of the court, or the court itself in civil matters related to the criminal charges that are the subject of the expungement. At the conclusion of the pending civil matter, all references to the criminal charges expunged or to be expunged shall be redacted in the event the criminal charges are expunged.</p>

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Is expungement of records available?, cont'd	<p>The following additional provisions apply to expungement of records:</p> <ul style="list-style-type: none"> ➤ § 15-27-3 – sets forth the requirements for filing a petition for expungement. ➤ § 15-27-4 – provides that the required filing fee(s) can be waived if the court finds that the petitioner is indigent or if the court in the original case made a clear and unequivocal finding that the arrest had no foundation of probable cause. ➤ § 15-27-5 – provides that the court shall only hold a hearing if the prosecuting attorney or victim files an objection to the petition. Sets forth the factors the court shall consider in making a determination. Further provides that there is no right to the expungement of any criminal record, and any request for expungement may be denied at the sole discretion of the court and shall have discretion over the number of cases that may be expunged after the first case is expunged. The ruling of the court may not be reversed absent a showing of abuse of discretion. If no objection is filed, the court shall rule on the merits of the petition without a hearing and shall grant the petition if it is reasonably satisfied that the petitioner has complied with and satisfied all requirements. ➤ § 15-27-7 – requires that expunged records be digitally archived by the Alabama State Law Enforcement Agency, who shall retain the records indefinitely (<i>see</i> § 15-27-8). Provides that the records may not be used for any non-criminal justice purpose except as otherwise authorized (<i>see</i> § 15-27-6, below). ➤ § 15-27-9 – provides that “record” includes arrest and conviction records; booking or arrest photographs of the petitioner; index references for public records search; records relating to administrative suspension, including driver license suspension records; and other data relating to the arrest, charge, or conviction. ➤ § 15-27-10 – permits criminal justice and law enforcement agencies to retain certain files. Further provides that the Department of Human Resources can maintain any documentation needed for the protection of children or vulnerable adults.

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Is expungement of records available?, cont'd	<ul style="list-style-type: none"> ➤ § 15-27-11 – provides that certain personal information of the petitioner may be expunged, including, but not limited to, the petitioner’s true name, aliases, current address, date of birth, social security number, or any other vital identifier. ➤ § 15-27-12 – requires that all terms and conditions, including court ordered restitution, be satisfied and paid in full, including interest, court costs, fines, and statutory fees, unless there is a finding of indigency by the court, before an order of expungement may be granted. ➤ § 15-27-13 – requires the Administrative Office of the Courts, upon request, to provide an annual report to the legislature regarding expungements requested, number granted, list of the offenses expunged, and a list of the offenses not expunged. ➤ § 15-27-17 – an order of expungement based on a petition filed under false pretenses shall be reversed and the record restored. ➤ § 15-27-18 – records shall be disclosed by applicants for any position in law enforcement or corrections. ➤ § 15-27-21 – a certified record of expungement is admissible in a criminal trial. Prior to its introduction, the court shall hold an in-camera hearing to determine its admissibility. <p>§ 15-27-6 (order of expungement; certification; inspection of expunged records) – sets out the records that are not subject to an order of expungement and provides that, after expungement, the proceedings regarding the charge shall be deemed never to have occurred. Except as otherwise provided by law, the court and other agencies shall reply to any inquiry that no record exists on the matter, and the petitioner shall not have to disclose the fact of the record on an application for employment, credit, or other type of application. However, the petitioner shall disclose the fact of the record to any government regulatory or licensing agency, any utility, or any bank or other financial institution, which shall have the right to inspect the expunged records after filing notice with the court.</p> <p>§ 15-27-16 (disclosure of information from expunged file without a court order; liability) – an individual who knowingly, maliciously, and intentionally divulges, makes</p>

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Is expungement of records available?, cont'd	<p>known, reveals, gives access to, makes public, uses, or otherwise discloses the contents of an expunged file without a court order is guilty of a Class B misdemeanor.</p> <p>An agency, department, custodian of records, corporation, business entity, or individual that makes public or disseminates a record that has been expunged is immune from civil liability absent unreasonable, wanton, willful, or intentional conduct.</p> <p>An agency, department, custodian of records, corporation, business entity, or individual that employs, hires, contracts with, or holds any business or contractual relationship with an individual and is unaware of the existence of a criminal record due to an expungement shall be immune from civil liability for damages caused by the person absent unreasonable, wanton, willful, or intentional conduct.</p> <p>§ 15-27-20 (release of expunged records for use in certain civil suits; hearing) – records that have been expunged shall be released for use in a civil suit filed by a person for whom expungement was granted that is related to, or arising from, the arrest or conviction that was the subject of the expungement. Upon a request from any party for the release of any expunged records, the court having jurisdiction over the pending civil matter shall hold an in camera hearing to determine: (1) if the request has been made in good faith; (2) the nature and scope of the requested records; and (3) the relevance of the records to the pending civil matter.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	<p>Yes. §§ 12-26-1 to 12-26-11 set forth the provisions related to petitioning for, and granting or denying, an order of limited relief.</p> <ul style="list-style-type: none"> ➤ § 12-26-1 defines “order of the limited relief” to mean an order concerning an individual convicted of a crime that relieves the individual of some or all of the collateral consequences associated with that conviction within Alabama. ➤ § 12-26-2 provides that this chapter does not provide a basis for invalidating a plea, conviction, or sentence; provide a cause of action for damages; or

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Does the state offer a certificate of relief or similar document?, cont'd	<p>affect an individual's responsibilities under the sex offender registration act, licensure requirements imposed by an interstate compact, a claim or right of the victim of an offense, or a right or remedy under law, other than this chapter, available to an individual convicted of a crime.</p> <ul style="list-style-type: none"> ➤ §§ 12-26-3 to 12-26-5 provide that an individual convicted in Alabama of a misdemeanor or felony, an individual convicted in federal court, or an individual who has been convicted in the court of another state or country who has received an order of limited relief or similar document or ruling from that jurisdiction may file a petition to obtain an order of limited relief in this state. ➤ § 12-26-6 provides that an individual may not file a petition if the petitioner: (a) is serving a custodial sentence with more than six months remaining; (b) is currently charged with a felony; or (c) is currently charged with a Class A misdemeanor that is alleged to have occurred within the past 12 months. Further, a court's rejection of a petition to obtain an order of limited relief on its merits shall be preclusive as to the related convictions for a period of two years, unless otherwise ordered at the court's discretion. ➤ § 12-26-7 sets forth the requirements for the filing of a petition and the contents of a post-sentence report, if any. ➤ § 12-26-8 provides for a filing fee of \$100 and permits the petitioner to pay over time via a court-established payment plan if the petitioner is indigent. ➤ § 12-26-9 provides that the court may rule on the petition with or without a hearing and sets forth the factors that the court may consider in making its decision. When an order of limited relief is granted, an occupational licensing board may still consider the conduct underlying the conviction in determining whether to deny, revoke, or suspend a license. ➤ § 12-26-10 provides that an order of relief may be revoked if a court makes a determination that a petition was filed under false pretenses or supported by false evidence or if the petitioner subsequently violates the terms or conditions of probation. Further, subsequent conviction of a Class A, B, or C felony shall void an order.

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Does the state offer a certificate of relief or similar document?, cont'd	<p>➤ § 12-26-11 permits the Administrative Office of the Courts to establish a standard order of limited relief form to be used by all courts in the state. Provides that, upon request, the Administrative Office of the Courts shall provide an annual report to the legislature specifying by jurisdiction the number of applicants requesting an order of limited relief, the number granted, and a list of the underlying offenses for which an order was granted.</p> <p>Additionally, § 15-22-36.1 and 640-X-7-.02 (Certificate of Eligibility to Register to Vote) provide that, notwithstanding any other provision of law, any person, regardless of the date of his or her sentence, may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote if the individual meets the requirements set forth in the statute; has paid all fines, court costs, fees, and restitution ordered by the sentencing court; and any one of the following is true: (1) the person has been released upon completion of sentence; (2) the person has been pardoned; or (3) the person has successfully completed probation or parole and has been released from compliance by the ordering entity. If an investigation determines that the person has not met the requirements for issuance of a certificate, the board shall notify the person of the reason(s) why the application for a certificate was denied, and the person may reapply at any time if he or she has met the criteria. The statute sets forth a list of crimes which disqualify a person from receiving a certificate. It also requires that each state or county correctional facility, prison, or jail post materials to be prepared by the Secretary of State and the board notifying incarcerated individuals of the requirements and procedures for having one's voting rights restored.</p>
Are drug convictions eligible for relief?	Yes, under the laws permitting pardon or expungement of records related to misdemeanors and felonies.
Miscellaneous provisions	640-X-8-.01 – provides that the board may grant remission of fines in conjunction with a pardon. Provides that the board will exercise its authority to remit fines only in cases to which the State of Alabama is a party. The board may deny remission entirely, remit a portion of the fine, or remit the entire fine.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ALASKA CONST. Art. 3, § 21 (West 2024) (executive clemency) • ALASKA STAT. ANN. § 12.62.160 (West 2024) (release and use of criminal justice information; fees) • ALASKA STAT. ANN. § 12.62.180 (West 2024) (sealing of criminal justice information) • ALASKA STAT. ANN. § 12.62.190 (West 2024) (purging of criminal justice information) • ALASKA STAT. ANN. § 22.35.030 (West 2024) (records concerning criminal cases resulting in acquittal or dismissal) • ALASKA STAT. ANN. §§ 33.20.070 and 33.20.080 (West 2024) (included within “Power of Governor to Grant Pardons, Commutations, and Reprieves”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1961 (§ 33.20.070) • 1994 (§§ 12.62.180 and 12.62.190) • May 21, 2007 (§ 33.20.080) • June 21, 2009 (§ 12.62.160) • October 1, 2016 (§ 22.35.030)
Pardon provisions	<p>Art. 3, § 21 provides that, subject procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. Provides that this power does not extend to impeachment.</p> <p>§ 33.20.070 (governor may grant pardons, commutations, and reprieves) – provides that the governor may grant pardons, commutations of sentence, and reprieves, and suspend and remit fines and forfeitures, in whole or in part, for offenses against the laws of Alaska.</p> <p>§ 33.20.080 (required notices and investigation by the board of parole) – prohibits the governor from granting executive clemency unless notice of consideration has first been provided to the board of parole for investigation and at least 120 days have elapsed since the notice required by this law has been provided. The board shall send notice of the governor’s consideration of executive clemency to the Department of Law, the office of victims’ rights, and the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree within five business days. The board shall investigate each case and, not later than 120 days after receipt of the notice of consideration, submit a report to the governor of the</p>

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Pardon provisions, cont'd	investigation, together with all information the board has regarding the person.
Is sealing of records available?	<p>Yes. § 22.35.030 provides that the Alaska Court System may not publish a court record of a criminal case on a publicly available website if 60 days have elapsed from the date of acquittal or dismissal and:</p> <ol style="list-style-type: none"> (1) The defendant was acquitted of all charges filed in the case; (2) All criminal charges against the defendant in the case have been dismissed and were not dismissed as part of a plea agreement in another criminal case under the Alaska Rules of Criminal Procedure; (3) The defendant was acquitted of some of the criminal charges in the case and the remaining charges were dismissed; or (4) All criminal charges against the defendant in the case have been dismissed after a suspended entry of judgment. <p>Further, § 12.62.180 provides that a criminal justice agency may seal records of past conviction or current offender information, as defined in § 12.62.900, upon submission of a written request to the head of the agency responsible for maintaining such information, if such information, beyond a reasonable doubt, resulted from mistaken identity or false accusation. A person whose information is sealed under this section may deny the existence of the information and of an arrest, charge, conviction, or sentence shown in the information. Information sealed under this section may be provided to another person or agency only:</p> <ol style="list-style-type: none"> (1) For record management purposes, including auditing; (2) For criminal justice employment purposes; (3) For review by the subject of the record; (4) For research and statistical purposes; (5) When necessary to prevent imminent harm to a person; or (6) For a use authorized by statute or court order. <p>Additionally, § 12.62.160 provides that, except as otherwise limited or prohibited by another law or rule, criminal justice information may not be released if the information is non-conviction information.</p>

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Is expungement of records available?	No. Pursuant to § 12.62.190, criminal justice information may be purged only if the agency determines that the information is devoid of usefulness to a criminal justice agency due to the death of the subject of the information, age of the information, nature of the offense or information, or the volume of the agency's records or other record management considerations.
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ARIZ. CONST. Art. V, § 5 (2024) (reprieves, commutations, and pardons) • ARIZ. REV. STAT. ANN. § 13-905 (2024) (setting aside judgment of convicted person on discharge; application; release from disabilities; certificate of second change; firearm possession; exceptions) • ARIZ. REV. STAT. ANN. § 13-911 (2024) (sealing of arrest, conviction, and sentencing records; requirements; fee; appeal; definition) • ARIZ. REV. STAT. ANN. §§ 31-401 to 31-404 and 31-441 to 31-446 (2024) (included within “Executive Clemency”) • ARIZ. REV. STAT. ANN. § 36-2862 (2024) (expungement; petition; appeal; dismissal of complaints; rules) • ARIZ. ADMIN. CODE R5-4-201 (2024) (pardon)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 1, 1978 (§ 31-443) • May 4, 1990 (§ 31-445) • January 1, 1994 (§§ 31-441 and 31-442) • April 5, 2008 (R5-4-201) • August 6, 2016 (§ 31-401) • November 30, 2020 (§ 36-2862) • September 24, 2022 (§ 31-402) • October 30, 2023 (§ 13-905) • September 14, 2024 (§ 13-911)
Pardon provisions	<p>Art. V, § 5 – gives the governor the power to grant pardons, after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as may be provided by law.</p> <p>§§ 31-401 and 31-402 – establish the board of executive clemency consisting of five members whose powers and duties include:</p> <ol style="list-style-type: none"> (1) For persons who committed felony offenses before January 1, 1994, the board has exclusive power to pass on and recommend reprieves, commutations, paroles, and pardons. Prohibits the grant of a reprieve, commutation, or pardon by the governor unless it is first recommended by the board. (2) For persons who committed felony offenses before January 1, 1994, all applications for reprieves, commutations, and pardons made to the governor shall be immediately transmitted to the chairperson of the board, and the board shall return applications with its recommendation to the governor. All applications

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Pardon provisions, cont'd	<p>must include documentation that the victim or the victim's family was notified.</p> <p>(1) For persons who committed felony offenses on or after January 1, 1994, the board has the powers listed above in addition to a list of additional powers that do not specifically relate to pardons.</p> <p>§ 31-441 (application for pardon; statement of facts proved at trial) – provides that when an application is made for a pardon, the board may require the court or county attorney to furnish the board with a statement of facts proved on the trial and any other facts having reference to the propriety of granting or refusing the pardon.</p> <p>§ 31-442 (application for pardon; notice; exceptions) – requires that the person applying for a pardon serve written notice of the intention to apply on the county attorney at least 10 days before the board acts upon the application for pardon, and proof of service must be presented to the board by affidavit. Also requires that, unless dispensed with by the governor, a copy of the notice be published for 30 days in a paper in the county in which the conviction was made. The provisions of this section do not apply when there is imminent danger of death of the person convicted or imprisoned or when the term of imprisonment of the applicant is within 10 days of expiration.</p> <p>§ 31-443 (power of governor to grant reprieves, commutations, and pardons) – vests the governor with the power, subject to any limitations provided by law, to grant pardons, after conviction, for all offenses except impeachment with any conditions, restrictions, and limitations the governor may deem proper.</p> <p>§ 31-445 (publication of reasons for granting a commutation, pardon, reprieve, stay, or suspension of execution) – when the governor grants a pardon, the governor shall cause to be published in a newspaper of general circulation in the county where the conviction was had and file with the secretary of state for publication in the Arizona administrative register a statement setting forth the reasons for granting a pardon.</p> <p>§ 31-446 (report to legislature) – at the beginning of every regular session, the governor shall communicate to the</p>

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Pardon provisions, cont'd	<p>legislature every case of pardon, stating the name of the prisoner, the crime for which he or she was convicted, the sentence and its date, and the date of the pardon with the reasons for granting it.</p> <p>R5-4-201 provides that, unless prohibited by law, an individual who was convicted of an Arizona felony offense may apply for a pardon via submission of a completed application form to the board of executive clemency. Upon receipt of a completed application, the board shall schedule a hearing and provide notice to the applicant. At the hearing, the board shall either vote to deny recommending that the governor grant a pardon or vote to recommend that the governor grant a pardon. If the board recommends grant of a pardon, it shall send the governor a letter of recommendation that sets forth the reasons for voting to recommend pardon. Board members who voted to deny recommending pardon may submit letters of dissent. If the governor denies a pardon, the board shall notify the applicant in writing. If the board votes not to recommend a pardon or if the governor denies the grant of a pardon, the applicant shall not apply again for three years from the date of the board's decision</p>
Is sealing of records available?	<p>Yes. § 13-911 provides that a person may file a petition to seal all case records related to a criminal offense if the person was:</p> <ol style="list-style-type: none"> (1) Convicted of a criminal offense and has completed all of the terms and conditions of the sentence that was imposed by the court, including the payment of all monetary obligations and restitution to all victims; (2) Charged with a criminal offense and the charge was subsequently dismissed or resulted in a not guilty verdict at trial; or (3) Arrested for a criminal offense and no charges were filed. <p>Pursuant to subsection B of this statute, sealed records may still be alleged as an element of an offense, used as a historical prior felony conviction, admissible for impeaching any party or witness at a subsequent trial, used to enhance the sentence for a subsequent felony, used to enhance the sentence pursuant to §§ 28-1381 and 28-1382, pleaded and proved in any subsequent prosecution of the person by this state or a political subdivision of this state, and used as a</p>

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Is sealing of records available?, cont'd	<p>conviction if the conviction would be admissible if not sealed.</p> <p>Prohibits the court from granting or denying a petition unless 60 calendar days have passed since the court received the petition unless the court receives notice that both the prosecutor and all victims who have made a request for post-conviction notice do not object to the petition. Unless a hearing is requested by the petitioner, prosecutor, or a victim, the court may render a decision without a hearing.</p> <p>Requires that the court inform the person in writing at the time of sentencing that he or she may be eligible to petition the court for an order sealing all case records related to the person's arrest, conviction, and sentence that are related to the offense. The individual may petition to seal his or her record after the required time period has passed since the person completed the non-monetary conditions of probation or sentence and was discharged by the court. Time periods range from two years for a class 2 or 3 misdemeanor to 10 years for a class 2 or 3 felony. The petitioner must have paid all court-ordered fines, fees, and restitution at the time of filing the petition to be eligible for sealing.</p> <p>If the person is subsequently convicted of a felony offense, the person may petition the court to seal those records after the applicable time period has passed (5-10 years for certain felonies) and an additional five years have passed.</p> <p>Once the records are sealed, the department of public safety shall designate the case records as sealed within the department's records and inform all appropriate state and federal law enforcement agencies of the sealing. A person whose records are sealed may state, in all instances, that the person has never been arrested for, charged with, or convicted of the crime that is the subject of the arrest or conviction, including in response to questions on employment, housing, financial aid, or loan applications, unless any of the listed exceptions applies. Exceptions include, but are not limited to, submitting an application that requires a fingerprint clearance card, the sealed records involve certain specific crimes that relate to an employment position for which the person is applying, or the disclosure is</p>

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Is sealing of records available?, cont'd	<p>required by state or federal law. The person's employer is not liable for hiring or contracting with the person.</p> <p>If records are sealed pursuant to this section, the records shall be made available for the purposes listed in subsection B (see above) and to the following:</p> <ol style="list-style-type: none"> (1) The person whose records are sealed and any attorney who has filed a notice of appearance on behalf of such person; (2) The victim in the case if the victim has exercised victims' rights pursuant to § 13-1414; and (3) Any of the following if the purpose relates to the operation of the requesting party's official duties or internal hiring practices, or both: (a) law enforcement agency; (b) prosecuting agency; (c) probation department or any agency responsible for a presentence report; (d) a court; (e) the department of child safety or a child welfare agency; (f) the department of juvenile corrections; (g) the state department of corrections or any other correctional facility in this state; and (h) the clerk of the court or any department responsible for maintaining court records. <p>If the petition to seal is denied, the person may file a new petition three years after the date of the denial. Includes a list of crimes that are not eligible to be sealed.</p>
Is expungement of records available?	<p>Pursuant to § 36-2862, beginning July 12, 2021, an individual who was arrested for, charged with, adjudicated or convicted by a trial or plea of, or sentenced for, any of the listed offenses based on or arising out of conduct occurring before November 30, 2020, may petition the court to have the record of that arrest, charge, adjudication, conviction, or sentence expunged:</p> <ol style="list-style-type: none"> (1) Possessing, consuming, or transporting 2.5 ounces or less of marijuana of which not more than 12.5 grams was in the form of marijuana concentrate; (2) Possessing, transporting, cultivating, or processing not more than six marijuana plants at the individual's primary residence for person use; or

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Is expungement of records available?, cont'd	<p>(3) Possessing, using, or transporting paraphernalia relating to the cultivation, manufacture, processing, or consumption of marijuana.</p> <p>Requires the court to notify the prosecuting agency of the petition and gives the agency 30 days to respond. Provides that the court can hold a hearing if either the prosecuting agency or petitioner request or if the court determines that there are genuine disputes of fact.</p> <p>Provides that the court shall grant a petition unless the prosecuting agency establishes by clear and convincing evidence that the petitioner is not eligible for expungement.</p> <p>If expungement is granted, the signed order or minute entry shall vacate the judgment of adjudication or conviction; state that it expunges any record of the petitioner's arrest, charge, conviction, adjudication, and sentence; state that the petitioner's civil rights are restored unless the petitioner is otherwise not eligible for such restoration; require the clerk of the court to notify the department of public safety, the prosecuting agency, and arresting law enforcement agency of the expungement order; and require the court clerk to seal all records relating to the expunged arrest, charge, adjudication, conviction, or sentence and allow the records to be accessed only by the individual whose record was expunged or the individual's attorney. If the court denies a petition, the petitioner may file a direct appeal.</p> <p>An arrest, charge, adjudication, conviction, or sentence expunged pursuant to this section may not be used in a subsequent prosecution by a prosecuting agency or court for any purpose. An individual whose record of arrest, charge, adjudication, conviction, or sentence is expunged pursuant to this section may state that the individual has never been arrested for, charged with, adjudicated or convicted of, or sentenced for the crime that is the subject of the expungement.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	Yes. § 13-905 provides that any person convicted of a criminal offense can, on fulfillment of the conditions of probation or sentence and discharge by the court, apply to

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Does the state offer a certificate of relief or similar document?, cont'd	<p>the court to have the judgment of guilt set aside. If a court grants an application to set aside the judgment of guilt in a case, the court's order must include a certificate of second chance if the person was convicted of a misdemeanor; a class 4, 5, or 6 felony and at least two years have elapsed since the person fulfilled the conditions of probation or sentence; or a class 2 or 3 felony and at least five years have elapsed since the person fulfilled the conditions of probation or sentence. A person is not eligible for a certificate of second chance if the person has previously received a certificate on the set aside of a felony conviction. A certificate of second chance:</p> <ol style="list-style-type: none"> (1) Unless specifically excluded by this section, releases the person from all barriers and disabilities in obtaining an occupational license that resulted from the conviction if the person is otherwise qualified; (2) Provides the person's employer with all of the protections provided pursuant to § 12-558.03; (3) Provides another person or entity that provides housing to the person with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to law; and (4) Is not a recommendation or sponsorship for or a promotion of the person who possesses the certificate when applying for an occupational license, employment, or housing. <p>If the court does not issue a certificate of second chance when the person's conviction is set aside, the person, unless otherwise precluded by this section, may apply to the court for a certificate after meeting the requirements.</p> <p>This section does not apply to a person who was convicted of a dangerous offense, an offense for which the person is required or ordered by the court to register, an offense for which there has been a finding of sexual motivation, or a felony offense in which the victim is a minor under 15 years of age.</p>
Are drug convictions eligible for relief?	Yes. See discussion of § 36-2862 above.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>ARKANSAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ARK. CONST. Art. VI, § 18 (West 2024) (executive clemency) • ARK. CODE ANN. §§ 5-4-901 to 5-4-913 (West 2024) (collectively “Sentencing Alternative—Pre-Adjudication Probation”) • ARK. CODE ANN. § 6-82-107 (West 2024) (criminal history not a disqualifier) • ARK. CODE ANN. §§ 16-90-1401 to 16-90-1419 (West 2024) (collectively “Comprehensive Criminal Record Sealing Act of 2013”) • ARK. CODE ANN. §§ 16-93-301 to 16-93-303 (West 2024) (included within “Probation and Suspended Imposition of Sentence”) • ARK. CODE ANN. § 16-93-314 (West 2024) (probation generally—discharge) • ARK. CODE ANN. § 16-98-303 (West 2024) (drug court programs authorized) • ARK. CODE ANN. § 16-101-106 (West 2024) (completion of program—dismissal of case—sealing of record) • ARK. CODE ANN. § 17-3-102 (West 2024) (licensing restrictions based on criminal records)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • July 27, 2011 (§§ 6-82-107 and 16-93-302) • August 16, 2013 (§§ 5-4-902, 5-4-904, 5-4-905) • January 1, 2014 (§§ 16-90-1401 to 16-9-1403, 16-90-1409 to 16-90-1411, 16-90-1414, 16-90-1415, 16-90-1418, and 16-93-301) • July 22, 2015 (§ 5-4-906) • July 1, 2019 (§§ 5-4-901, 5-4-903, and 16-98-303) • July 24, 2019 (§§ 16-90-1416, 16-90-1417, 16-90-1419, and 16-93-303) • July 28, 2021 (§§ 16-90-1405, 16-90-1407, 16-90-1408, 16-90-1412, and 16-101-106) • August 1, 2023 (§§ 16-90-1406, 16-90-1413, 16-93-314, and 17-3-102) • January 1, 2024 (§§ 16-90-1404 and 16-93-204)
Pardon provisions	<p>Art. VI, § 18 vest the power to grant reprieves, commutations of sentence, and pardons in the governor, after conviction, in all criminal and penal cases, except in those of treason and impeachment, under such rules and regulations as shall be prescribed by law. In cases of treason, the governor shall have the power, by and with the advice and consent of the senate, to grant reprieves and pardons. Requires that the governor communicate to the General Assembly at every regular session each case of pardon, with</p>

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Pardon provisions, cont'd	<p>the reasons for granting such pardon, stating the name and crime of the person, the sentence, its date, and the date of pardon.</p> <p>§ 16-93-204 – provides that all applications for pardon shall be investigated by the board, and the board shall submit to the governor its recommendation, a report of the investigation, and all other information the board may have regarding the applicant. Prior to considering an application for a pardon, the board shall solicit the written or oral recommendation of the committing court, the prosecuting attorney, and the county sheriff of the county from which the person was committed.</p> <p>Prior to considering an application for pardon of a person who was convicted of capital murder, or a Class Y, A, or B felony, the board shall notify the victim or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney. The board shall solicit the written or oral recommendation of the victim or their next of kin.</p> <p>The recommendations are not binding upon the board in advising the governor and shall be maintained in the inmate's file.</p>
Is sealing of records available?	<p>Yes. §§ 5-4-901 to 5-4-913 sets forth provisions related to pre-adjudication probation which permits individuals charged with a felony who meet the requirements of § 5-4-904 to participate in a pre-adjudication probation program. Pursuant to § 5-4-903, programs may incorporate services from various state agencies and educational institutions which may provide:</p> <ol style="list-style-type: none"> (1) Persons to serve as pre-adjudication probation officers, drug counselors, or other support staff; (2) Drug testing and other substance use disorder facilities; (3) Intensive short-term and long-term residential treatment for participants who have demonstrated a need for substance use disorder treatment or other mental health-related treatment; (4) Educational materials, classrooms, and staff; and (5) Other personnel, support staff, or facilities that the circuit court administering the program finds necessary or helpful.

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Is sealing of records available?, cont'd	<p>Under § 5-4-906, a pre-adjudication probation program judge, on his or her own motion or upon request from the participant in the program, shall order sealing and dismissal of a case if:</p> <ol style="list-style-type: none"> (1) The participant has successfully completed a pre-adjudication program, as determined by the program judge; (2) The judge has received a recommendation from the prosecuting attorney for sealing and dismissal of the case; and (3) The judge, after considering the past criminal history of the program participant, determines that sealing and dismissal of the case is appropriate. <p>Unless otherwise ordered by the program court, sealing under this section shall be as described in the Comprehensive Criminal Record Sealing Act of 2013.</p> <p>§§ 16-90-1401 to 16-90-1419 comprise the Comprehensive Criminal Record Sealing Act of 2013 and set forth the provisions for sealing criminal history records.</p> <p>§ 16-90-1403 (scope) – provides that a court may hear a proceeding under this subchapter only if a uniform petition is initially filed by the petitioner. A court may only use a uniform order if the court decides to seal a criminal record.</p> <p>§ 16-90-1404 (definitions) – definition of “completion of a person’s sentence” means that the person, after being found guilty:</p> <ol style="list-style-type: none"> (1) Paid his or her fine, court costs, or other monetary obligation in full, unless the obligation has been excused by the sentencing court; (2) Served any time in county or regional jail, a Division of Community Correction facility, or a Division of Correction facility in full; and (3) If applicable: (a) has been discharged from probation, parole, or post-release supervision; (b) completed any suspended sentence; (c) paid any court-ordered restitution; (d) completed any court-ordered community service; (e) paid any driver’s license

<u>ARKANSAS</u>	
Is sealing of records available?, cont'd	<p>suspension fees, if a reinstatement fee was assessed; (f) completed all other driver's license reinstatement requirements, if necessary; and (g) completed any vocational or technical education or training program that was required as a condition of the person's parole, post-release supervision, or probation.</p> <p>“Conviction” includes the following, after the final act of judgment:</p> <ol style="list-style-type: none"> (1) A plea of guilty or nolo contendere, a finding of guilt by a judge or jury after a trial, a finding of guilt after entry of a plea of nolo contendere, unless entered pursuant to court-ordered probation described in paragraph (4) (<i>sic.</i>) below; (2) A sentence of supervised probation on a felony charge; (3) A suspended imposition of sentence with a fine; (4) A sentence under § 16-93-1201, et seq.; (5) A suspended sentence that is revocable and can subject the person to incarceration or a fine, or both; or (6) A finding of guilt of a person whose case proceeding under § 16-93-301, et seq., and who violated the terms and conditions of such statute. <p>“Conviction” does not include:</p> <ol style="list-style-type: none"> (1) An order of nolle prosequi; (2) A suspended sentence with no fine; (3) An acquittal for any reason; (4) An order that the defendant enter a diversionary program that requires him or her to accomplish certain court-ordered objectives but that does not result in a finding of guilt if the program is successfully completed; (5) A court-ordered probationary period under the former § 5-64-413 or § 16-93-301, et seq.; (6) The entry of a plea of guilty or nolo contendere without the court's making a finding of guilt or entering a judgment of guilt with the consent of the defendant or the resultant dismissal and discharge of the defendant as prescribed by § 16-93-301, et seq.; (7) The entry of a directed verdict by a court at trial; or

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Is sealing of records available?, cont'd	<p>(8) The dismissal of a charge either with or without prejudice.</p> <p>“Seal” means to expunge, remove, sequester, and treat as confidential the record or records in question, but does not include the physical destruction of a record of conviction unless this subchapter requires the physical destruction of the record.</p> <p>§ 16-90-1405 (eligibility to file a uniform petition to seal a misdemeanor offense or violation) – provides that a person is eligible to file a uniform petition to seal his or her record of a misdemeanor or violation immediately after:</p> <ol style="list-style-type: none"> (1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution; (2) Full payment of court costs; (3) Full payment of driver’s license suspension reinstatement fees, if applicable; and (4) The completion of all other driver’s license reinstatement requirements, if applicable. <p>A person may file unlimited petitions to seal records of a misdemeanor or violation, but conviction of certain crimes require a waiting period before the person is eligible to file such a petition. For example, a new uniform petition to seal a record related to a conviction for indecent exposure may not be filed until five years has elapsed since the completion of the person’s sentence.</p> <p>§ 16-90-1406 (felony convictions eligible for sealing) – unless otherwise prohibited by law and regardless of when the felony occurred, a person may petition a court to seal a record of conviction immediately after the completion of the person’s sentence for a nonviolent Class C or D felony; an unclassified felony, unless otherwise provided; an offense under the Uniform Controlled Substances Act that is a Class A or B felony; solicitation to commit, attempt to commit, or conspiracy to commit one of the crimes listed above; or a felony not involving violence committed when the person was less than 18 years of age.</p>

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Is sealing of records available?, cont'd	<p>Unless otherwise prohibited by law, a person may petition a court to seal a record of conviction under this section after five years have elapsed since the completion of the person's sentence for a violent Class C or D felony.</p> <p>§ 16-90-1408 (felony convictions ineligible for sealing) – sets forth the felonies records which are not eligible for sealing under this subchapter.</p> <p>§ 16-90-1409 (sealing records of arrests) – a person may petition to seal a record of a prior arrest if charges have not been filed by the prosecuting attorney within one year of the date of arrest.</p> <p>§ 16-90-1410 (sealing records of nolle prosequi, dismissed cases, or cases where the disposition is an acquittal) – a person may petition to seal the records of a case in which there was, for any reason:</p> <ol style="list-style-type: none"> (1) Entry of an order nolle prosequi upon motion of the prosecuting attorney after one year has passed since the date of the entry of such order; (2) Entry of an order of dismissal; (3) An acquittal, unless that acquittal was for reason of mental disease or defect; or (4) A decision by the prosecuting attorney not to file charges. <p>§ 16-90-1411 (sealing of records for a pardoned person—pardons for youthful felony offenders) – provides that the governor shall notify the court upon issuing a pardon, and the court shall issue an order sealing the record of a conviction of the person pardoned. This section does not apply to a pardon issued for any offense in which the victim is a person under 18 years of age, a sex offense, or an offense resulting in death or serious physical injury.</p> <p>Further provides that a person shall have his or her record of a conviction sealed by the court if the person committed a felony while under 16 years of age, was convicted and given a suspended sentence, received a pardon for the conviction, and has not been convicted of another criminal offense.</p>

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Is sealing of records available?, cont'd	<p>§ 16-90-1412 (sealing certain convictions for victims of human trafficking) – permits a person convicted of prostitution to file a uniform petition to seal the conviction if such conviction was obtained as a result of the person’s having been a victim of human trafficking.</p> <p>§ 16-90-1413 (procedure for sealing of records) – sets forth the procedure for filing a petition to seal records. Provides that a person who is eligible to have his or her record sealed may file a uniform petition. If a person has previously filed a petition that was denied, the person may not file another petition regarding that record until one year has passed since the previous denial.</p> <p>Provides that the prosecuting attorney may file a notice of opposition with the court within 30 days after receipt of the uniform petition or after the petition is filed, whichever is later. If notice of opposition is not filed, the court may grant the petition. If notice of opposition is filed and the conviction was for a misdemeanor, the court shall set the matter for a hearing unless the prosecuting attorney consents to allow the court to decide the case on the pleadings. In cases of a felony conviction, the court must conduct a hearing if a notice of opposition is filed.</p> <p>Sets forth the requirements for all agencies with records related to the conviction being sealed to remove and sequester those records upon the entry of a uniform order granting a petition to seal.</p> <p>§ 16-90-1414 (uniform petition and uniform order to seal records) – requires the Arkansas Crime Information Center to adopt and provide a uniform petition and uniform order to seal records. Provides that an order to seal records shall not be effective unless the uniform order is entered.</p> <p>Sets forth the information required to be in the uniform order which includes, but is not limited to, the specific records to be sealed, the system identification number, and the FBI number, if known.</p> <p>§ 16-90-1415 (burden of proof—standard of review) – provides that, for petitions filed under § 14-90-1405 (related to misdemeanor and violation convictions), unless the court</p>

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Is sealing of records available?, cont'd	<p>is presented with and finds that there is clear and convincing evidence that a misdemeanor or violation conviction should not be sealed, the court shall seal such record after the filing of a uniform petition.</p> <p>For petitions filed under § 16-90-1406 (related to felony convictions), the petition may be granted if the court finds by clear and convincing evidence that doing so would further the interests of justice, after consideration of certain listed factors, including, but not limited to, input from the victim of the offense, if applicable, and any information provided by the state that would cause a reasonable person to consider the person a further threat to society.</p> <p>Provides that a uniform petition filed under § 16-90-1407 (related to felony controlled substance possession convictions) may be granted if the court finds that doing so is in the best interest of the petitioner and the state. Petitions filed under §§ 16-90-1409 or -1410 (see above) shall be granted unless the state shows by a preponderance of the evidence that doing so would place the public at risk or not further the interests of justice. Finally, a uniform petition filed under § 16-90-1411 (related to pardons) shall be granted if the court finds that the requirements of such section are met.</p> <p>Permits either party to appeal the grant or denial of a uniform petition.</p> <p>§ 16-90-1416 (release of sealed records) – prohibits the custodian of a sealed record from disclosing the existence of such record or releasing such record unless requested by:</p> <ol style="list-style-type: none"> (1) The person whose record was sealed or such person's attorney when authorized by the person in writing; (2) A criminal justice agency when the request is accompanied by a statement that the request is being made in conjunction with an application for employment or a criminal background check under certain licensing acts; (3) A court upon a showing of a subsequent adjudication of guilt of the person whose record has been sealed or another good reason shown to be in the interests of justice;

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Is sealing of records available?, cont'd	<p>(4) A prosecuting attorney and the request is accompanied by a statement that the request is being made for a criminal justice purpose;</p> <p>(5) A state agency or board engaged in the licensing of healthcare professionals;</p> <p>(6) The Arkansas Crime Information Center; or</p> <p>(7) The Arkansas Commission on Law Enforcement Standards and Training.</p> <p>§ 16-90-1417 (effect of sealing) – a person whose record has been sealed shall have all privileges and rights restored, and the record that has been sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law. The right to carry a firearm is not affected if that right was removed as the result of a felony conviction.</p> <p>Provides that, upon the entry of a uniform order, the person's underlying conduct shall be deemed as a matter of law to never have occurred, and the person may state that the underlying conduct did not occur and that a record does not exist.</p> <p>The record of a prior conviction that has been sealed may still be used for the following purposes:</p> <p>(1) A criminal proceeding for any purpose not otherwise prohibited by law;</p> <p>(2) Determination of offender status under the former § 5-64-413;</p> <p>(3) Habitual offender status;</p> <p>(4) Impeachment upon cross examination;</p> <p>(5) Healthcare professional licensure by a state agency or board;</p> <p>(6) Any disclosure mandated by the Arkansas Rules of Criminal Procedure; or</p> <p>(7) Determination of certification, eligibility for certification, or of the ability to act as a law enforcement officer, by the Arkansas Commission on Law Enforcement Standards and Training.</p> <p>§ 16-90-1419 (filing fee) – prohibits courts from collecting a fee for the filling of a uniform petition under this subchapter.</p>

ARKANSAS**Is sealing of records available?, cont'd**

§ 16-93-302 (probation—first time offenders—penalties) – provides that a person may not avail himself or herself of the provisions of this section and §§ 16-93-301 and 16-93-303 on more than one occasion. Further provides that any person charged with keeping the confidential records of first offenders who divulges any information contained in the records to any person or agency other than a law enforcement or judicial officer is guilty of a violation and subject to a fine of not more than \$500 upon conviction. Each violation is a separate offense.

§ 16-93-303 (probation—first time offenders—procedure) – when an accused who has not previously been convicted of a felony enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the court, without making a finding or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one year. Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without adjudication of guilt, and the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, if consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013. Sets forth the offenses for which an individual is not eligible to have the records sealed, including offense requiring a person to register as a sex offender, indecent exposure, and a serious felony involving violence.

§ 16-93-314 – provides that a court may discharge a defendant from probation at any time. If a judgment of conviction was not entered by the court at the time of suspension or probation and the defendant fully complies with the conditions of suspension or probation for the period of suspension or probation, the court shall discharge the defendant and dismiss any proceedings against him or her. A person against whom proceedings are discharged or dismissed may seek to have the criminal record sealed, consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013. This subsection does not apply if the person was convicted of a sexual offense, unless the offense was a misdemeanor

<u>ARKANSAS</u>	
Is sealing of records available?, cont'd	<p>violation of sexual indecency with a child, and the victim was under 18 years of age.</p> <p>§ 16-101-106 – provides that a veterans treatment specialty court judge, on his or her own motion or upon request from a program participant, may order dismissal of a veterans treatment specialty court program participant's case if:</p> <ol style="list-style-type: none"> (1) The participant has successfully completed the program, as determined by the judge; (2) The judge has received a recommendation from the prosecuting attorney for dismissal of the program participant's case and the sealing of the record; and (3) The judge, after considering the participant's past criminal history, determines that dismissal of the case and sealing of the record are appropriate. <p>Lists the offenses which are not eligible for sealing under this section, including burglary, breaking or entering, and driving or boating while intoxicated. Sealing under this section shall be as described in the Comprehensive Criminal Record Sealing Act of 2013.</p>
Is expungement of records available?	<p>Pursuant to § 16-90-1404 (see above), the definition of "seal" means to "expunge, remove, sequester, and treat as confidential" the record or records in question, but does not include the physical destruction of a record of conviction unless this subchapter requires the physical destruction of the record, but Arkansas does not include specific provisions for the expungement of records.</p>
Are any records eligible to be automatically sealed or expunged?	<p>No.</p>
Does the state offer a certificate of relief or similar document?	<p>No, though individuals may receive a waiver of disqualification or revocation of a license based on a conviction under § 17-3-102. The law sets forth the bases upon which a waiver may be granted, including, but not limited to, the age at which the offense was committed, the circumstances surrounding the offense, the length of time since the offense was committed, subsequent work history, employment and character references, relevance of the offense to the occupational license, and other evidence demonstrating that licensure does not pose a threat to the health or safety of the public.</p>

<u>ARKANSAS</u>	
Are drug convictions eligible for relief?	<p>Yes. § 16-90-1407 (special procedures for sealing a felony controlled substance possession conviction) – a person may petition the court to seal a record of a felony conviction for possession of a controlled substance or a counterfeit substance upon the completion of the person’s sentence if, prior to sentencing:</p> <ol style="list-style-type: none"> (1) An intake officer appointed by the court, where applicable, determines that the person has a drug addiction and recommends the person as a candidate for residential drug treatment; (2) The court places the person on probation and includes as part of the terms and conditions of the probation that: (a) the person successfully complete a drug treatment program approved by the court; and (b) the person remain drug-free until successful completion of probation; and (3) The person successfully completes the terms and conditions of the probation. <p>Additionally, pursuant to § 16-98-303, a drug court program judge, on his or her own motion or upon request from an offender, may order dismissal of a case and the sealing of the record if:</p> <ol style="list-style-type: none"> (1) The offender has successfully completed a drug court program, as determined by the program judge; (2) The offender has received aftercare programming; (3) The program judge has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and (4) The drug court program judge, after consideration of the offender’s past criminal history, determines dismissal and sealing of the record are appropriate. <p>If the offender pleaded guilty or nolo contendere to an offense in another court, the drug court program judge may order sealing and dismissal of that offense with the written concurrence of the other court. Sets forth offenses that are and are not eligible for sealing under this provision.</p> <p>Unless otherwise ordered by the program judge, sealing under this subsection shall be as described in the Comprehensive Criminal Record Sealing Act of 2013.</p>

<u>ARKANSAS</u>	
Miscellaneous provisions	§ 6-82-107 provides that a criminal conviction shall not be used as a basis to disqualify a person from eligibility for a scholarship, grant, loan forgiveness program, or other benefit subsidized by state funds under this chapter unless there is a specific statutory reason for denial that relates to the basis of assistance.
Recently proposed legislation	None.

<u>CALIFORNIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • CAL. CONST. Art. V, § 8 (West 2024) (governor; reprieves, pardons, and commutations; review of parole decisions; report to legislature) • CAL. BUS. & PROF. CODE § 480 (West 2024) (acts disqualifying applicant; procedures for requesting or acting on applicant criminal history information; retention of documentation) • CAL. HEALTH & SAFETY CODE § 11361.5 (West 2024) (destruction of arrest and conviction records; procedure; exceptions) • CAL. HEALTH & SAFETY CODE § 11361.8 (West 2024) (recall or dismissal of sentence) • CAL. LABOR CODE § 26 (West 2024) (effects of certificate of rehabilitation, termination of probation, and dismissal of information or accusation) • CAL. PENAL CODE §§ 851.8 to 851.93 (West 2024) (included within “Arrest, by Whom, and How Made”) • CAL. PENAL CODE §§ 1000 to 1000.65 (West 2024) (collectively “Special Proceedings in Narcotics and Drug Abuse Cases”) • CAL. PENAL CODE §§ 1203.4 to 1203.425 (West 2024) (included within “The Judgment”) • CAL. PENAL CODE § 4800 (West 2024) (constitutional authority) • CAL. PENAL CODE § 4802 to 4813 (West 2024) (included within “Powers and Duties of Governor”) • CAL. PENAL CODE §§ 4852.01 to 4852.22 (West 2024) (collectively “Procedure for Restoration of Rights and Application for Pardon”) • CAL. PENAL CODE § 4853 (West 2024) (restoration of rights, privileges, and franchises; exceptions)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1941 (§ 4804) • May 13, 1943 (§§ 4852.09 and 4952.19) • 1976 (§ 26) • September 29, 1980 (§ 851.85) • 1987 (§ 4853) • 1996 (§ 4852.13) • January 1, 2010 (§ 851.86) • January 1, 2012 (§§ 4802, 4803, 4806, 4813, and 4852.17) • January 1, 2013 (§ 4807) • January 1, 2014 (§ 4852.22) • January 1, 2016 (§§ 4852.1, 4852.11, 4852.12, 4852.14, and 4852.21) • June 27, 2016 (§ 851.8)

<u>CALIFORNIA</u>	
Effective date(s) of most recent substantive amendment(s), cont'd	<ul style="list-style-type: none"> • January 1, 2018 (§§ 851.87, 851.90, 851.92, 1000.4, and 1000.5) • January 1, 2019 (§§ 851.91, 4802.5, 4812, 4852.06, 4852.16, 4852.18, and 11361.5) • July 1, 2021 (§ 4852.03) • January 1, 2022 (§ 11361.8) • January 1, 2023 (§§ 480 and 4852.01) • October 1, 2024 (§ 851.93)
Pardon provisions	<p>Art. V, § 8 provides that, subject to application provided by statute, the governor, on conditions the governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. Requires the governor to report to the legislature each pardon granted, stating the pertinent facts and the reasons for granting it. Prohibits the governor from granting a pardon to a person twice convicted of a felony except on recommendation of the supreme court, four judges concurring. PENAL CODE § 4800 vests pardon authority in the governor.</p> <p>PENAL CODE § 4802 (application of second offender) – provides that, in the case of a person twice convicted of a felony, the application for pardon shall be made directly to the governor, who shall transmit all papers and documents relief upon in support of and in opposition to the application to the Board of Parole Hearings. Under PENAL CODE § 4813 (applications of second offenders; recommendation; transmittal of papers), in the case of applications of persons twice convicted of a felony, the board, after investigation, shall transmit its written recommendation upon such application to the governor, together with all papers filed in connection with the application.</p> <p>PENAL CODE § 4802.5 (applications for pardon and commutation available on governor's office internet website; forwarded to Board of Parole Hearings for investigation and recommendation; effect of certificate of rehabilitation) – the governor shall make the application for pardon available on the governor's office website and all applications for a direct pardon received by the governor shall be promptly forwarded to the Board of Parole Hearings for an investigation and recommendation to the governor. Applications supported by a certificate of rehabilitation may be granted by the governor without investigation and recommendation by the board in accordance with § 4852.16.</p>

CALIFORNIA**Pardon provisions, cont'd**

PENAL CODE § 4803 (statement of facts; recommendation of trial judge or district attorney) – when an application is made to the governor for pardon, or when an application has been referred to the Board of Parole Hearings, the governor or board may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish the governor or board with a summarized statement of the facts proved at trial, and of any other facts having reference to the propriety of granting or refusing said application, together with his or her recommendation for or against the granting of the same and his or her reason for such recommendation.

PENAL CODE § 4804 requires that, at least 10 days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney and proof, by affidavit, of the service must be presented to the governor. Pursuant to PENAL CODE § 4806 (notice of application dispensed with; circumstances), this section does not apply when there is imminent danger of the death of the person convicted or imprisoned or when the term of imprisonment of the applicant is within 10 days of its expiration.

PENAL CODE § 4807 (report to legislature; availability to the public) – at the beginning of every regular session of the legislature, the governor shall file a written report with the legislature that shall include each application that was granted for pardon by the governor, or his or her predecessor in office, during the immediately preceding regular session of the legislature, stating the name of the person convicted, the crime for which the person was convicted, the sentence and its date, the date of the pardon, and the reason for granting same. Notwithstanding any other law, the written report shall be available to the public.

PENAL CODE § 4812 (applications; investigation, report, and recommendations; assistants; examination of witnesses; administration of oaths; expedited review of application; notification to applicant; immigration status) – upon request of the governor, the Board of Parole Hearings shall investigate and report on all applications for pardon and shall make such recommendations to the governor. To that end,

CALIFORNIA**Pardon provisions, cont'd**

the board shall examine and consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection therewith, and shall have power to employ assistants and take testimony and to examine witnesses under oath and to do any and all things necessary to make a full and complete investigation of all applications referred to it. Additionally, the governor may request investigation into candidates for pardon at any time. If a petitioner indicates an urgent need for the pardon including, but not limited to, a pending deportation order or proceeding, the board shall consider expedited review of the application. The board shall provide electronic or written notification to the application upon receipt of the application and when a commendation is issued. Applicants are eligible for pardon regardless of immigration status.

PENAL CODE §§ 4851.01 to 4852.22 set forth the procedure for the restoration of rights and application for pardon which begins with obtaining a certificate of rehabilitation (see below for more information). § 4851.01 (petition for certificate of rehabilitation and pardon; application of chapter; gubernatorial pardon) provides that any person convicted of a felony, except as set forth below, may file a petition for a certificate of rehabilitation and pardon. A person convicted of a misdemeanor violation of any sex offense or a felony violation of any sex offense who is granted probation, the accusatory pleading of which has been dismissed, may also file a petition if the petitioner has not been incarcerated since the dismissal of the accusatory pleading, is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years' residence in this state prior to filing the petition. Provides this this chapter does not apply to persons convicted of certain offenses, including those convicted under certain listed statutes. However, the governor has the right to pardon those individuals if there are extraordinary circumstances.

PENAL CODE § 4852.13 (certificate of rehabilitation; filing; petition to rescind) – provides that upon granting a petition for a certificate of rehabilitation, the court shall issue an order declaring that the petitioner has been rehabilitated and

CALIFORNIA**Pardon provisions, cont'd**

recommending that the governor grant a full pardon to the petitioner.

PENAL CODE § 4852.14 (certificate of rehabilitation; certified copies; distribution) – requires the clerk of the court to immediately transmit certified copies of a certificate of rehabilitation to the governor, the Board of Parole Hearings, and the Department of Justice, and, in the case of persons twice convicted of a felony, to the supreme court.

PENAL CODE § 4852.16 (pardon; certificate as application; issuance; recommendation; review by Board of Parole Hearings) – provides that the certified copy of a certificate of rehabilitation transmitted to the governor shall constitute an application for pardon upon receipt of which the governor may, without any further investigation, issue a pardon to the person named therein, except that the governor shall not grant a pardon to any person twice convicted of a felony except upon the written recommendation of a majority of the judges of the supreme court.

Further provides that, subject to criteria established by the governor, a certificate of rehabilitation issued by a court shall be reviewed by the Board of Parole Hearings within one year of receipt, which shall issue a recommendation as to whether the governor should pardon the individual. Any criteria established by the governor shall be made publicly available.

PENAL CODE § 4852.17 (report of certificate of rehabilitation or pardon; rights restored by pardon; exceptions) – whenever a person is granted a pardon from the governor, the fact shall immediately be reported to the Department of Justice by the court, governor, officer, or governmental agency by whose official action the pardon is granted. The department shall immediately record the facts so reported on the former criminal record of the person and transmit those facts to the Federal Bureau of Investigation. Thereafter, when the criminal record is reported by the department, it shall also report the fact of the pardon.

Whenever a person is granted a full and unconditional pardon based upon a certificate of rehabilitation, the pardon

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Pardon provisions, cont'd	<p>shall entitle the person to exercise thereafter all civil and political rights of citizenship.</p> <p>PENAL CODE § 4852.19 (cumulative remedy) – provides that this chapter shall be construed as providing an additional, but not an exclusive, procedure for the restoration of rights and application for pardon.</p> <p>PENAL CODE § 4853 (restoration of rights, privileges, and franchises; exceptions) – provides that in all cases in which a full pardon has been granted by the governor or will hereafter be granted to a person convicted of an offense to which the pardon applies, it shall operate to restore to the convicted person all the rights, privileges, and franchises of which he or she has been deprived in consequence of that conviction or by reason of any matter involved therein. Provides that nothing in this section abridges or impairs the power or authority conferred by law on any board or tribunal to revoke or suspend any right, privilege, or franchise for any act or omission not involved in the conviction; provided, further, that nothing in this section affects the provisions of the Medical Practice Act or the power conferred on the Board of Medical Examiners or any board that issues a certificate which permits any person to apply his or her art or profession on the person of another.</p>
Is sealing of records available?	<p>Yes; numerous provisions in California law provide avenues for sealing relief.</p> <p>PENAL CODE § 851.8 (sealing and destruction of arrest records; determination of factual innocence) sets forth the requirements and procedures for sealing in the following situations:</p> <ol style="list-style-type: none"> (1) Arrest records where no accusatory pleading has been filed. The petition to seal shall be filed with the law enforcement agency having jurisdiction over the offense. (2) Where a person has been arrested, an accusatory pleading has been filed, but no conviction has occurred. The court may, with the concurrence of the prosecuting attorney, grant sealing at the time of the dismissal of the accusatory pleading. (3) Where a person has been acquitted of a charge and it appears to the judge presiding at the trial that the

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Is sealing of records available?, cont'd	<p>defendant was factually innocent, the judge may grant sealing.</p> <p>If sealing is granted, all entities with copies of the records subject to the order of sealing shall be destroyed. Destruction of records shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest, and the record shall be prepared again so that it appears the arrest never occurred. However, where the only entries on the record pertain to the arrest and the record can be destroyed without necessarily affecting the destruction of other records, then the document constituting the record shall be physically destroyed.</p> <p>Records shall not be destroyed if there is a pending civil action against the law enforcement officers or jurisdiction which made the arrest or instituted the prosecution until such action has been resolved.</p> <p>PENAL CODE § 851.85 (motion to seal records on acquittal if person appears to judge to be factually innocent; rights of defendant under order) – when a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties in the case.</p> <p>PENAL CODE § 851.86 (person appearing to be factually innocent; conviction set aside; order to seal records; rights of defendant) – when a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case.</p> <p>PENAL CODE § 851.87 (completion of prefiling diversion program; petition to seal records of arresting agency and related court files and records; order; use of record; disclosure of arrest; application of sealing order to records or</p>

CALIFORNIA**Is sealing of records available?, cont'd**

documents maintained by the Department of Justice) – in any case where a person is arrested and successfully completes a pre-filing diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the court to issue an order to seal the records pertaining to an arrest and the court may order those records sealed as described in PENAL CODE § 851.92. If an order sealing records is entered, the court shall give a copy of the order to the person and inform him or her that he or she may thereafter state that he or she was not arrested for the charge. The person may, except as otherwise provided by law, indicate in response to any question concerning the person's prior criminal record that the person was not arrested and a record pertaining to the arrest shall not, without the person's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

The arrest shall be disclosed by the Department of Justice in response to any peace officer application request and the person shall disclose such arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer. Further, an order to seal records has no effect on a criminal justice agency's ability to access and use such records as described in PENAL CODE § 851.92.

PENAL CODE § 851.90 (drug diversion programs; deferred entry of judgment programs; successful completion of program; sealing of records and files; disclosure of arrest to Department of Justice) – provides that when a person is diverted pursuant to a drug diversion program or is admitted to a deferred entry of judgment program and the person successfully completes the program, the judge may order those records pertaining to the arrest to be sealed as described in PENAL CODE § 851.92, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

Except as otherwise provided by law, the defendant may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense. However, the defendant shall disclose the arrest upon which the case was

CALIFORNIA**Is sealing of records available?, cont'd**

based to the Department of Justice in response to any peace officer request, and the defendant is not relieved of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer. Further, an order to seal records pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information.

PENAL CODE § 851.91 (sealing of arrest records where arrest does not result in conviction; petition requirements and forms; basis for granting petition; hearing; effect of successful petition) – provides that a person who has suffered an arrest that did not result in a conviction may petition the court to have his or her arrest and related records sealed. An arrest did not result in a conviction if any of the following are true:

- (1) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney has not filed an accusatory pleading based on the arrest;
- (2) The prosecuting attorney filed an accusatory pleading but, with respect to all charges, one or more of the following has occurred: (a) no conviction occurred, the charge has been dismissed, and the charge may not be refiled; (b) no conviction occurred and the arrestee has been acquitted of the charges; or (c) a conviction occurred, but has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be refiled.

Sets forth the circumstances under which a person is not eligible for relief pursuant to this section. Also sets forth the requirements for filing the petition and provides that a court may deny a petition for failure to meet any of the specified requirements.

Provides that the Judicial Council shall furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this section which shall include all of the required information, be available in various languages, and include a statement that the petition form is available in

CALIFORNIA**Is sealing of records available?, cont'd**

additional languages and where the form can be found in those languages. Requires a facility at which an individual is detained to provide the forms upon request of the arrestee, and requires all facilities in which an arrestee is detained to post a sign containing information regarding the availability of sealing for arrest and related records.

Provides that a petition to seal an arrest record pursuant to this section may be granted as a matter of right or in the interests of justice. A petitioner who is eligible for relief under paragraphs (1) or (2) above is entitled to have his or her arrest sealed as a matter of right unless the arrest was for domestic violence, child abuse, or elder abuse and the petitioner's record demonstrates a pattern of domestic violence, child abuse, or elder abuse arrests, convictions, or both, in which case the petitioner may have his or her arrest sealed only upon a showing that the sealing would serve the interests of justice. For purposes of this section, "pattern" means two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests.

Provides that, at a hearing on a petition, the petitioner has the initial burden of proof to show that he or she is entitled to have records sealed, and then the burden shifts to the respondent prosecuting attorney.

Sealing pursuant to this section does not relieve the petitioner of the burden to disclose the arrest, if otherwise required by law, in response to any direct question contained in any questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission, nor does the sealing affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

PENAL CODE § 851.92 (sealing of arrest records; required court and police actions following issuance of sealing order; permissible uses of sealed arrest records) – this section applies when an arrest record is sealed pursuant to PENAL CODE §§ 851.87, 851.90, 851.91, 1000.4, and 1001.9. This

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Is sealing of records available?, cont'd	<p>section sets forth the duties of the court following the issuance of an order to seal an arrest record. It also sets forth the requirements for updating the arrest record, including providing a note on the individual's criminal history information that the arrest has been sealed and prohibiting the arrest record from being released outside the criminal justice sector. Prohibits arrest records, police investigative reports, and court records sealed under this section from being disclosed to any person or entity except the person whose record was sealed or a criminal justice agency. Provides that nothing prohibits disclosure of information between criminal history providers.</p> <p>Unless specifically authorized by law, a person or entity, other than a criminal justice agency or the person whose record was sealed, who disseminates information relating to a sealed arrest record is subject to a civil penalty of not less than \$500 and not more than \$2,500 per violation.</p>
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. HEALTH & SAFETY CODE § 11361.9 (criminal history information review by department; recall or dismissal of sentence; sealing or redesignation; notice; challenge by prosecutor; update to state summary criminal history information records; legislative intent) - this statute required the Department of Justice and certain prosecutors to dismiss and seal certain drug-related records within a certain time period. Tasks under this statute included the issuance of an order dismissing and sealing each case identified pursuant to the terms of the law by no later than March 1, 2023 without the necessity of the filing of a petition by the individual who is the subject of the record.</p> <p>PENAL CODE § 851.93 (identification of persons eligible for arrest record relief; granting of relief; notice to court; conditions for relief; publication of statistics on OpenJustice web portal) (<i>eff. Oct. 1, 2024</i>) provides that the Department of Justice shall review the records in the statewide criminal justice databases on a monthly basis and, based on information in the state summary criminal history repository, identify persons with records of arrest that meet the criteria in this section and are eligible for arrest record relief.</p>

<u>CALIFORNIA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>Provides that a person is eligible for relief if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:</p> <ol style="list-style-type: none"> (1) The arrest was for a misdemeanor and the charge was dismissed; (2) The arrest was for a misdemeanor, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest; (3) The arrest was for a felony not described in paragraph (4), there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest; (4) If the offense was punishable by imprisonment in the state prison for eight years or more, there is no indication that criminal proceedings have been initiated, at least six years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest; or (5) The person successfully completed any of the following relating to that arrest: (a) a prefiling diversion program administered by a prosecuting attorney in lieu of an accusatory pleading; (b) a drug diversion program administered by a superior court or a deferred entry of judgment program; (c) a pretrial diversion program; or (d) one of the listed specific diversion programs. <p>Provides that the department shall grant relief to a person identified pursuant to this section without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. Except as otherwise provided by law, an arrest for which relief is granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>As with other laws related to sealing arrest records, relief granted pursuant to this section does not relieve the person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer and has no effect on the ability of a criminal justice agency to access and use such records. This section does not limit petitions, motions, or orders for arrest record relief.</p> <p>Requires the department to annually publish on the OpenJustice website statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. Individuals may obtain a certificate of rehabilitation if they meet the requirements of PENAL CODE §§ 4852.01 to 4852.22.</p> <p>PENAL CODE § 4852.03 (period of rehabilitation; determination of period) sets forth the relevant periods of rehabilitation for specified criminal offenses, with each period beginning on the discharge of the petitioner from custody due to the completion of the term to which the petitioner was sentenced or upon release on parole, post-release community supervision, mandatory supervision, or probation, whichever is sooner. The period of rehabilitation constitutes five years' residence in California plus the required additional time for specific offenses.</p> <p>PENAL CODE § 4852.05 (conduct) requires that petitioners "live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land."</p> <p>PENAL CODE § 4852.06 (petition for ascertainment and declaration of rehabilitation and for certificate; time for filing) – provides that after the expiration of the minimum period, a person who has completed the requirements of § 4852.05 may file a petition for ascertainment and declaration of the fact of his or her rehabilitation and for a certificate of rehabilitation.</p>

CALIFORNIA**Does the state offer a certificate of relief or similar document?, cont'd**

PENAL CODE § 4852.09 (filing and court fees dispensed with) – no filing fee nor court fees of any kind shall be required of a petitioner in proceedings under this chapter.

PENAL CODE § 4852.1 (testimony; documentary evidence; production of records and reports) – provides that the court may require testimony and the production of all records and reports, without expense of any kind to the petitioner, relating to the petitioner and the crime of which he or she was convicted. Sets forth the records that shall be made available to the court.

PENAL CODE § 4852.11 (report of law violations by peace officers; denial of petition; fixing new rehabilitation period; fulfillment of requirements) – requires peace officers, upon request, to report to the court all violations committed by a petitioner and a court may deny a petition and determine a new period of rehabilitation which shall not exceed the original period for the same crime.

PENAL CODE § 4852.12 (investigation and report by district attorney) permits the court to request an investigation from the district attorney of the residence of the petitioner, the petitioner's criminal record, any representations made to the court by the petitioner, the petitioner's conduct during the period of rehabilitation, and any other information the court deems necessary to make its determination.

PENAL CODE § 4852.13 (certificate of rehabilitation; filing; petition to rescind) – provides that, except as otherwise provided by law, if the court finds after a hearing that the petition should be granted, the court may make an order declaring that the petitioner has been rehabilitated and recommending that the governor grant a full pardon. This order shall be filed with the clerk of the court and shall be known as a certificate of rehabilitation.

PENAL CODE § 4852.14 (certificate of rehabilitation; certified copies; distribution) – requires the clerk of the court to immediately transmit certified copies of a certificate of rehabilitation to the governor, the Board of Parole Hearings, and the Department of Justice, and, in the case of persons twice convicted of a felony, to the supreme court.

<u>CALIFORNIA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>PENAL CODE § 4852.17 (report of certificate of rehabilitation or pardon; rights restored by pardon; exceptions) – whenever a person is issued a certificate of rehabilitation, the fact shall immediately be reported to the Department of Justice by the court, governor, officer, or governmental agency by whose official action the certificate is issued. The department shall immediately record the facts so reported on the former criminal record of the person and transmit those facts to the Federal Bureau of Investigation. Thereafter, when the criminal record is reported by the department, it shall also report the fact that the person has received a certificate of rehabilitation, a pardon, or both.</p> <p>PENAL CODE § 4852.18 (sample forms) requires the Board of Parole Hearings to furnish the clerk of the superior court of each county a set of sample forms for a petition for a certificate of rehabilitation and pardon, a notice of filing of petition, and a certificate of rehabilitation. Provides that the clerk shall have a sufficient number of forms printed to meet the needs of the people of the county, shall post the forms to the clerk’s website, and shall make the forms available at no charge to individuals requesting them.</p> <p>PENAL CODE § 4852.21 (advice as to procedure to obtain certificate of rehabilitation and pardon) – requires that the official in charge of a state prison or other penal institution or agency, including a county jail, inform a person to whom this chapter applies in writing prior to discharge or release on parole or post-release community supervision of the right to petition for, and the procedure for filing the petition for and obtaining, a certificate of rehabilitation and pardon pursuant to this chapter.</p> <p>Additionally, prior to dismissal of the accusatory pleading pursuant to PENAL CODE § 1203.4, the defendant shall be informed in writing by the clerk of the court of the defendant’s right, if any, to petition for, and the procedure for filing a petition for and obtaining, a certificate of rehabilitation and pardon.</p> <p>PENAL CODE § 4852.22 (application for certificate of rehabilitation; discretion of court) – except in a case requiring registration pursuant to Penal Code § 290, a trial court hearing an application for a certificate of rehabilitation</p>

<u>CALIFORNIA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>before the applicable period of rehabilitation has elapsed may grant the application if the court, in its discretion, believes relief serves the interests of justice.</p> <p>BUS. & PROF. CODE § 480 provides that, notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation.</p> <p>LABOR CODE § 26 provides that, notwithstanding any other provision of this code, no person who has not previously obtained a license regulated by this code shall be denied a license solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation.</p>
Are drug convictions eligible for relief?	<p>Yes. HEALTH & SAFETY CODE § 11361.5 provides that records of any court of this state, any public or private agency that provides services under referral under Penal Code § 1000.2, or of any state agency pertaining to the arrest or conviction of any person for a violation of HEALTH & SAFETY CODE § 11357 (related to possession of cannabis) and subsection (b) of § 11360 (related to unlawful transportation, importation, sale, or gift of cannabis), shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, with certain exceptions for offenses on school grounds. A court or agency having custody of the records shall provide for the timely destruction of the records and such records shall be purged from the statewide criminal databases.</p> <p>For certain cannabis offenses, a person must apply to the Department of Justice for destruction of the records if two or more years have elapsed since the date of conviction or since the date of the arrest if not followed by conviction. Upon receipt of a sufficient application, the department shall destroy records of the department and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and probation department, if applicable.</p>

CALIFORNIA**Are drug convictions eligible for relief?, cont'd**

Destruction of records shall be accomplished by permanent obliteration of all entries or notations upon the records and the record shall be prepared again so that it appears that the arrest or conviction never occurred. If the records meet certain requirements, the document constituting the record shall be physically destroyed.

HEALTH & SAFETY CODE § 11361.8 provides that individuals who has completed a sentence for a conviction that would not have been guilty of an offense under the Adult Use of Marijuana Act may file an application before the trial court to have the conviction dismissed and sealed.

Additionally, PENAL CODE §§ 1000 to 1000.65 relate to special proceedings in narcotics and drug abuse cases, including sealing of the records related to an arrest for certain drug offenses as listed in PENAL CODE § 1000.

PENAL CODE § 1000.4 (successful completion of program; record; disclosure of arrest) – provides that upon successful completion of a pretrial diversion program related to an arrest for a drug offense listed in PENAL CODE § 1000, the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest as described in PENAL CODE § 851.92. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense, except that the arrest may be disclosed by the Department of Justice in response to any peace officer application request and the person is not relieved of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer. A record under this section shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate, except as otherwise provided by law. Further, the defendant shall be advised that, regardless of successful completion of a pretrial diversion program, an order to seal those records has no effect on a criminal justice agency's ability to access and use such records.

<u>CALIFORNIA</u>	
Are drug convictions eligible for relief?, cont'd	Similarly, pursuant to PENAL CODE § 1000.5 (preguilty plea drug court program; operation of program; effect of defendant's performance), a person who performs satisfactorily during the period of a preguilty plea program shall have the criminal charge or charges dismissed and the provisions of PENAL CODE § 1000.4 shall apply.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>COLORADO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • COLO. CONST. Art. IV, § 7 (West 2024) (governor may grant reprieves and pardons) • COLO. REV. STAT. ANN. § 13-3-117 (West 2024) (state court administrator—automatic conviction sealing) • COLO. REV. STAT. ANN. § 16-11-209 (West 2024) (duties of probation officers) • COLO. REV. STAT. ANN. §§ 16-17-102 and 16-17-103 (West 2024) (included within “Commutation of Sentence”) • COLO. REV. STAT. ANN. § 17-2-102 (West 2024) (division of adult parole—general powers, duties, and functions—definition) • COLO. REV. STAT. ANN. § 18-1.3-101 (West 2024) (pretrial diversion—appropriation—repeal) • COLO. REV. STAT. ANN. § 18-1.3-107 (West 2024) (conviction—collateral relief—applicability—definitions) • COLO. REV. STAT. ANN. § 21-1-107 (West 2024) (state public defender—gifts, grants, and donations for record sealing – sealing defense fund—created) • COLO. REV. STAT. ANN. §§ 24-72-701 to 24-72-710 (West 2024) (collectively “Criminal Justice Record Sealing”) • COLO. REV. STAT. ANN. § 39-28.8-501 (West 2024) (marijuana tax cash fund—creation—distribution—legislative declaration—repeal)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • May 24, 2013 (§ 16-17-103) • August 2, 2019 (§ 24-72-702) • September 14, 2020 (§ 16-17-102) • September 7, 2021 (§§ 18-1.3-107, 21-1-107, 24-72-710) • August 10, 2022 (§§ 13-3-117, 24-72-704, 24-72-705, 24-72-707 to 24-72-709) • July 1, 2023 (§§ 16-11-209, 17-2-102, 24-72-706) • August 7, 2023 (§ 24-72-703) • May 24, 2024 (§ 18-1.3-101)
Pardon provisions	<p>Art. IV, § 7 vests the governor with the power to grant reprieves, commutations, and pardons after conviction, for all offenses except treasons, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons. The governor must, in every case where the governor exercises such power, send to the general assembly at its first session thereafter a transcript of the petition, all proceedings, and the reasons for the action.</p>

<u>COLORADO</u>	
Pardon provisions, cont'd	<p>§ 16-17-102 (application—character certificate) – after a conviction, all applications for pardon for crimes committed must be accompanied by a certificate of the respective superintendent of the correctional facility, showing the conduct of an applicant during the applicant’s confinement in the correctional facility, together with such evidence of former good character as the applicant is able to produce. Before the governor approves such application, it must be first submitted to the present district attorney of the district in which the applicant was convicted and to the judge who sentenced and the attorney who prosecuted at the trial of the applicant, if available, for such comment as they may deem proper concerning the merits of the application, so as to provide the governor with information upon which to base the governor’s action. The governor has sole discretion in evaluating said comments and in soliciting other comments the governor deems appropriate.</p> <p>Permits the governor to grant pardons to a class of defendants who were convicted of the possession of up to two ounces of marijuana. The requirements of notice and comment mentioned above do not apply to this provision, but the governor may make any inquiry as deemed appropriate to seek any relevant information necessary from any person or agency to reach an informed decision.</p> <p>§ 16-17-103 (effect of pardon and commutation of sentence—definitions) – provides that a pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon unless the pardon limits the scope of the pardon regarding collateral consequences.</p> <p>If the governor grants a pardon, the governor shall provide a copy of the pardon to the Colorado bureau of investigation, which shall note in the individual’s record that a pardon was issued.</p>
Is sealing of records available?	<p>Yes. § 18-1.3-101 – it is the intent of the legislature to facilitate and encourage the diversion of defendants and defendants with behavioral health disorders from the criminal justice system when diversion may prevent such defendants from committing additional criminal acts, restore victims of crime, facilitate the defendant’s ability to pay restitution, and reduce the number of cases in the criminal</p>

COLORADO**Is sealing of records available?, cont'd**

justice system. This section sets forth the guidelines for eligibility and the offenses that make a defendant ineligible for participation in the diversion program.

Upon the defendant's satisfactory completion of and discharge from supervision, the court shall dismiss with prejudice all charges against the defendant, the effect of which is to restore the defendant to the status he or she occupied before the arrest, citation, or summons. A successfully completed diversion agreement shall not be considered a conviction for any purpose. A person with an order of dismissal entered pursuant to this article may not be subject to charge, prosecution, or liability under Colorado law of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, citation, or summons in response to any inquiry made for any purpose. At any point after a diversion agreement is completed, the court shall seal all arrest and other criminal records pertaining to the offense using the procedure described in §§ 24-72-704 and 24-72-705. Upon completion of diversion in a case managed by a district attorney diversion program prior to charges being filed, the district attorney shall seal the diversion record without a court order. The district attorney shall notify the Colorado bureau of investigation and the law enforcement agency that had contact with the individual that diversion is complete and the records are sealed.

§§ 24-72-701 to 24-72-710 set forth the provisions related to sealing or expungement of various records in Colorado.

§ 24-72-703 (sealing of records—general provisions—order applicability—discovery and advisements) – provides that an order sealing arrest or other criminal records does not deny access to the records by any court, law enforcement agency, criminal justice agency, prosecuting attorney, party, or governmental agency required by statute or rules or regulations to conduct a criminal history check on an individual. An order sealing conviction records does not vacate a conviction. A sealed record may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case; for collecting fines, court costs, late fees, or other fees; or for any other lawful

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purpose within the scope of the agency's duties. A party or agency required by law to conduct a criminal history check is authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law. Criminal justice information and records in the possession of a criminal justice agency may be shared with any other criminal justice agency when an inquiry concerning the arrest and information or records is made. If a defendant is convicted of a new offense, the court shall order the conviction records to be unsealed.

An individual whose record has been sealed or expunged may access information contained in the sealed record without a court order. Upon the entry of an order to seal the criminal records, the defendant may properly reply, upon an inquiry into the matter, that public criminal records do not exist with respect to the petitioner or defendant. Upon an inquiry into a sealed record, a criminal justice agency shall reply that a public criminal record does not exist.

Except as otherwise provided by law, employers, state and local government agencies, officials, landlords, employees, and any other entity shall not require an applicant to disclose any information contained in sealed criminal justice records in any application or interview or in any other way. An applicant does not need to include a reference to or information concerning the sealed records in answer to any question concerning records that have been sealed and may state that the applicant has not been criminally convicted. An application may not be denied solely because of the applicant's refusal to disclose records that have been sealed.

Sets forth the circumstances under which sealed court records are open to inspection for research purposes without a court order.

Provides that a person may only file a petition with the court for sealing of each case once every 12-month period, unless otherwise provided by the court. Nothing in this part 7 authorizes the physical destruction of any conviction records. Sets forth the circumstances under which another person may request that records be unsealed.

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Requires a court, when a defendant is sentenced following a conviction for an offense described in §§ 24-72-706 to 24-72-708, to provide such defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section. If a defendant is sentenced to probation or released on parole following a period of incarceration, the probation department or parole officer shall provide such written advisement.

A defendant shall not be required to waive his or her right to file a motion to seal as a condition of a plea agreement in any case.

Notwithstanding any provision in this part 7 to the contrary, in any case where a defendant is convicted of more than one offense arising from a single case, records may only be sealed if the record of every conviction resulting from that case may be sealed. If a case is dismissed or an offense is not charged due to a plea agreement in a separate case, the records are eligible for sealing at such time as the case in which the conviction is entered is eligible for sealing.

Prohibits the court and state court administrator's offense from taking into consideration any unpaid fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the motion to seal when the court is determining whether to grant the motion. Sets forth the offense for which sealing is not available.

§ 24-72-704 (sealing of arrest records when no charges filed—automatic sealing) – permits any person in interest to petition the district court of the district in which any arrest and criminal records information pertaining to the person in interest is located for the sealing of all records, except basic identifying information, if the records are a record of official actions involving a criminal offense for which the person in interest:

- (1) Completed a diversion agreement and no criminal charges were ever filed;
- (2) Was not charged and the statute of limitations for the offense for which the person was arrested that has the longest statute of limitations has run; or

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Is sealing of records available?, cont'd	<p>(3) Was not charged and the statute of limitations has not run but the person is no longer being investigated by law enforcement for commission of the offense.</p> <p>If the court determines that the petition is not sufficient on its face or determines, after taking judicial notice of matters outside the petition, that the petitioner is not entitled to relief, the court shall enter an order denying the petition which specifies the reasons for the denial. If the court determines that the petition is sufficient on its face and no other grounds exist to deny the petition, the court shall set a date for a hearing at least 35 days after the determination and notice as required by law. If no objection to the petition is received by the court seven days prior to the hearing, the court shall vacate the hearing and order the records to be sealed. If an objection is received, the court shall hold a hearing. The person who is the subject of the records and the prosecuting attorney may inspect the records included in an order sealing criminal records without a court order and only for the purposes permitted by law.</p> <p>§ 24-72-706 (sealing of criminal conviction and criminal justice records—processing fee) – a defendant may file a motion in the criminal case for the sealing of the conviction records, except basic identification information, if the motion is filed within the required time frames and proper notice is given to the district attorney. Sets forth the required time frames before a motion to seal records can be filed which range from one to five years.</p> <p>Sets forth the requirements for filing the motion and the offenses ineligible for sealing under this section. Provides that conviction records may not be sealed if the defendant still owes restitution, unless the court that entered the order for restitution vacated the order. Permits the victim to file an objection to sealing records and also request a hearing on the motion.</p> <p>Notwithstanding any other provision of this part 7, a motion filed for sealing the conviction records for an offense that was unlawful at the time of conviction but is no longer unlawful pursuant to § 18-18-434 may be filed at any time. the court shall order the records sealed unless the district attorney objects pursuant to this section. A defendant who</p>

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files a motion pursuant to this subsection must not be charged fees or costs. For all other motions to seal, the defendant shall pay a processing fee of \$65 to cover the actual costs related to sealing the records. The court shall waive the processing fee upon a determination that the defendant is indigent, or the defendant's records should have been automatically sealed.

§ 24-72-707 (sealing of criminal conviction records information for offenses committed by victims of human trafficking) – at any time after conviction, a defendant may file a motion to seal the person's records of conviction for prostitution, or any corresponding municipal code or ordinance, which was committed as a direct result of being a victim of human trafficking. The individual shall not have to pay a processing fee. The court shall order the records sealed after the petition is filed and the defendant establishes by a preponderance of the evidence that, at the time the defendant committed the offense, the defendant had been trafficked by another person for the purpose of performing the offense.

§ 24-72-708 (sealing of criminal conviction records information for municipal offenses for convictions) – (I) a defendant may file a motion in the criminal case in which any conviction records pertaining to the defendant for a municipal violation are located for the sealing of the conviction records within the time frames set forth in this section if (a) the defendant has not been charged with or convicted of a felony, misdemeanor, or misdemeanor traffic offense since the date of the final disposition of all criminal proceedings against the defendant or the date of the defendant's release from supervision, whichever is later; and (b) the conviction records sought to be sealed are not for a misdemeanor traffic offense committed either by a holder of a commercial learner's permit or a commercial driver's license, or by the operator of a commercial motor vehicle.

(II) Notwithstanding (a) above, a defendant may file a motion in the criminal case in which any conviction records pertaining to the defendant for a municipal violation or petty offense are located for the sealing of the conviction records within the time frames set forth in this section if:

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- (1) The defendant was convicted of a single offense that was not a felony and did not involve domestic violence, unlawful sexual behavior, or child abuse;
- (2) The defendant has not been convicted of a felony, misdemeanor, or misdemeanor traffic offense since the date of the final disposition of all criminal proceedings against the defendant for the subsequent criminal case or since the date of the defendant's release from supervision for the subsequent case, whichever is later; and
- (3) The conviction sought to be sealed is not a municipal assault or battery offense in which the underlying factual basis involves domestic violence, or any other municipal violation in which the underlying factual basis involves domestic violence.

Motions filed pursuant to (I) may be filed three years after the date of the final disposition. Motions filed pursuant to (II) may be filed 10 years after the date of the final disposition or 10 years after the date of the defendant's release from supervision for the subsequent criminal case, whichever is later.

The court shall not factor in or take into consideration any unpaid fines, court costs, late fees, or other fees ordered by the court in the case when the court is making its determination on whether to grant the motion. Conviction records may not be sealed if the defendant still owes restitution unless the court that entered the order for restitution vacated the order.

§ 24-72-709 (sealing of criminal conviction records information for multiple conviction records) – provides that a defendant with multiple conviction records may petition to seal such records. If the records are in different jurisdictions, the defendant shall file a petition in each jurisdiction that includes a copy of the petitions filed in other jurisdictions. Sets forth the time periods that must pass before an individual may file a petition to seal such records which range from two years to 10 years. It also sets forth the maximum number of offenses an individual may have based on the classification of the highest offense for which the individual was convicted. Requires the defendant to pay a processing fee to the court and provide notice to the district

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Is sealing of records available?, cont'd	<p>attorney. Permits the district attorney and victim to object to the petition. Conviction records may not be sealed if the individual still owes restitution, unless the court that entered the order for restitution has vacated the order. Sets forth the offenses ineligible for sealing under this section.</p> <p>§ 24-72-710 (sealing of criminal conviction records information for offenses that receive a full and unconditional pardon) – at any time after receiving a full and unconditional pardon, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant’s conviction for any offenses that received a full and unconditional pardon. A defendant is not required to pay a processing fee but must provide notice to the district attorney. Permits the district attorney and victim to object. Provides that the court may decide the petition with or without the benefit of a hearing. The court shall order the records sealed unless the court finds by clear and convincing evidence that the public interest in retaining public access to the conviction records outweighs the harm to the privacy of the defendant, the dangers of unwarranted, adverse consequences to the defendant, and the intent of the full and unconditional pardon.</p> <p>§§ 16-11-209 and 17-2-102 – prior to releasing an individual from probation (§ 16-11-209) or parole (§ 17-2-102), these sections require an individual’s probation officer or community parole officer to provide notice to the individual of the following:</p> <ol style="list-style-type: none"> (1) That a person convicted of certain crimes has the right to seek to have his or her criminal record sealed; (2) That there are collateral consequences associated with a criminal conviction that a sealing order can alleviate; (3) The list of crimes that are eligible for sealing and the associated time period that a person must wait prior to sealing; (4) That the state public defender has compiled a list of laws that impose collateral consequences related to a criminal conviction and that the list is available on the state public defender’s website; and (5) That the person should seek legal counsel if he or she has any questions regarding record sealing.

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Is expungement of records available?	<p>Yes. § 24-72-702 (expungement of arrest records in case of mistaken identity—definitions) – provides that, notwithstanding any other provision of law, a court shall expunge the arrest and criminal records information of a person who was arrested as a result of mistaken identity and who did not have charges filed against him or her. Provides that, no later than 90 days after an investigation by a law enforcement agency finds that a person was arrested as a result of mistaken identity and no charges were filed, the agency that made the arrest shall petition the district court for an expungement order, at no cost to the person arrested. No later than 90 days after receiving the petition, the court shall order the expungement.</p> <p>Upon the entry of an order to expunge the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry into the matter, that no such records exist with respect to the person. Further, employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in expunged records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been expunged, include a reference to or information concerning the expunged information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant’s refusal to disclose arrest and criminal records information that has been expunged.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 13-3-117 requires the state court administrator to compile a list of drug convictions that are eligible for sealing pursuant to §§ 24-72-703 and 24-72-706 and, if the drug conviction is for a petty offense or misdemeanor, that seven years have passed since the disposition of the case or, if for a felony, at least 10 years have passed.</p> <p>The state court administrator shall also compile a list of eligible convictions, excluding crimes pursuant to § 24-4.1-302(1), that are eligible for sealing pursuant to §§ 24-72-703 and 24-72-706 and, if the judgment is for a civil infraction, that four years have passed since the final disposition; if the conviction is for a petty offense or misdemeanor, that at least seven years have passed; and if the conviction is for an eligible felony, that at least 10 years have passed.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>Requires the state court administrator to use the state conviction database and the conviction databases of entities that do not report convictions to the state database to compile the list. The administrator shall sort the list by judicial district of conviction. The initial list shall be compiled by February 1, 2024, and the court shall seal all conviction records eligible for sealing based on the initial list by July 1, 2024.</p> <p>Beginning July 1, 2024, the administrator shall compile a list of eligible offenses on a quarterly basis. Sets forth provisions related to permitting objections if the conviction meets one of the pertinent bases for not sealing the records.</p> <p>Provides that, on or before February 1, 2024, and on or before January 1 each year thereafter, the state court administrator shall report to the judiciary committees of the senate and house, by judicial district and, to the extent possible, with data desegregated by race and sex and by offense level, the number of conviction records in the prior year that:</p> <ol style="list-style-type: none"> (1) Were considered for automatic record sealing; (2) The state court administrator sent to the chief judges for each judicial district; and (3) The district attorneys objected to due to intervening convictions, ineligibility of the offense, pending charges, plea agreements waiving the right to record sealing, and objections pursuant to this section. <p>§ 24-72-704 (sealing of arrest records when no charges filed—automatic sealing) – for arrests on or after January 1, 2022, the Colorado bureau of investigation shall automatically seal an arrest record that is in its custody and control of a person when no criminal charges have been filed within one year of the date of the person’s arrest. The bureau is not required to conduct any independent investigation of whether criminal charges have been filed and is not required to seal any records not in its custody and control. Such records must be sealed within 60 days after the year has passed since the person’s arrest date. If the bureau receives notice of filed charges after sealing the record, it shall immediately unseal the record.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>For arrests without a conviction after January 1, 2019, but before January 1, 2022, the bureau of investigation shall automatically seal an arrest record that is in its custody and control of a person when no criminal charges have been filed within three years after the date of arrest for a felony offense for which the statute of limitations is three years or within 18 months after the date of arrest for a misdemeanor offense, a misdemeanor traffic offense, a civil infraction, a petty offense, or a municipal ordinance violation for which the statute of limitations is 18 months or less, or if there is no indication of the classification of the crime in the arrest data.</p> <p>Sets forth the time period within which records for arrest for the periods 1997 to 2018 must be sealed. Also provides that arrest records for felonies with a statute of limitations greater than three years are not eligible for automatic sealing.</p> <p>Requires the bureau, beginning November 1, 2023, and annually thereafter, to report the number of arrest records sealed to the senate and house judiciary committees by judicial district and, to the extent possible, with data desegregated by race, sex, and offense level.</p> <p>Further, § 24-72-705 (sealing criminal justice records other than convictions—simplified process—applicability) provides that a court, on its own motion, shall order a defendant's criminal justice records sealed when:</p> <ol style="list-style-type: none"> (1) A case against a defendant is completely dismissed; (2) The defendant is acquitted of all counts in the case; (3) The defendant completes a diversion agreement when a criminal case has been filed; or (4) The defendant completes a deferred judgment and sentence and all counts are dismissed. <p>The court shall not require a written motion or any other written pleadings for sealing pursuant to this section but shall enter an order sealing records pursuant to this subsection at the time of disposition and shall serve the sealing order no later than 28 days after the date of disposition.</p> <p>If the court did not order the record sealed at the time of the dismissal or acquittal, the bureau of investigation shall</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>automatically seal the record upon receipt of disposition in the case, unless the deferred judgment is ineligible for sealing pursuant to § 24-72-703. If automatic sealing of the records does not occur, the defendant may make a motion to seal in the record at any time subsequent to the dismissal or acquittal through the filing of a written motion without being charged fees or costs.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. Colorado offers an order of collateral relief. § 18-1.3-107 provides that, at the time of conviction or at any time thereafter, upon the request of the defendant or upon the court's own motion, a court may enter an order of collateral relief in a criminal case for the purpose of preserving or enhancing the defendant's employment or employment prospects and to improve the defendant's likelihood of success in the community.</p> <p>It further provides that an application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent criminal history record check. Permits the state court administrator to produce an application form that may be submitted by an applicant. The filing fees shall be waived if a court finds the applicant is indigent.</p> <p>An order of collateral relief may relieve an applicant of any collateral consequences of the conviction, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the applicant in successfully reintegrating into the community. However, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or for employment with the judicial branch, department of corrections, division of youth services, or any other law enforcement agency in Colorado.</p> <p>Prohibits a court from issuing an order of collateral relief if the defendant:</p> <p style="padding-left: 40px;">(1) Has been convicted of a felony that included an element that requires a victim to suffer a serious</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;</p> <p>(2) Has been convicted of a crime of violence; or</p> <p>(3) Is required to register as a sex offender.</p> <p>A court may issue an order of collateral relief if the court finds that the order is consistent with the applicant's rehabilitation and granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest. The court, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may issue a subsequent judgment at any time to enlarge, limit, or circumscribe the relief previously granted. An order may be revoked upon evidence of a subsequent criminal conviction or proof that the defendant is no longer entitled to relief. If the court issues an order of collateral relief, it shall send a copy through the integrated criminal justice information system to the Colorado bureau of investigation which shall note the order in the applicant's record.</p>
Are drug convictions eligible for relief?	Yes; see discussion of sealing above.
Miscellaneous provisions	<p>§ 21-1-107 – permits the state public defender to apply for grants and accept gifts or donations from private or public sources for the purpose of representing indigent clients in matters pursuant to part 7 of article 72 of title 24, but may not accept such funds if the gift, grant, or donation is conditioned on its use for sealing the records of a specific identified individual or individuals. All funds shall be transmitted to the state treasurer, who shall credit the money to the sealing defense fund, created in this section.</p> <p>§ 38-28.8-501 – creates the marijuana tax cash fund and provides that the monies from that fund can be used, among other things, for expenses relating to the reduction of collateral consequences experienced by people previously sentenced for drug offenses.</p>
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • CONN. GEN. STAT. ANN. § 31-51i (West 2024) (employer inquiries about erased criminal record prohibited; discrimination on basis of erased criminal record, provisional pardon, or certificate of rehabilitation prohibited; availability of information on employment application form; duties of consumer reporting agency issuing consumer report for employment purposes containing criminal matters of public record; complaints) • CONN. GEN. STAT. ANN. § 54-56e (West 2024) (accelerated pretrial rehabilitation) • CONN. GEN. STAT. ANN. § 54-56g (West 2024) (pretrial alcohol education program) • CONN. GEN. STAT. ANN. § 54-56i (West 2024) (pretrial drug education and community service program) • CONN. GEN. STAT. ANN. § 54-108f (West 2024) (issuance of certificate of rehabilitation by Court Support Services Division; modification or revocation) • CONN. GEN. STAT. ANN. § 54-130a (West 2024) (jurisdiction of board to grant commutations of punishment, releases, pardons, and certificates of rehabilitation) • CONN. GEN. STAT. ANN. §§ 54-130e and 54-130f (West 2024) (included within “Probation, Parole, and Pardon”) • CONN. GEN. STAT. ANN. §§ 54-142a to 54-142f (West 2024) (collectively “Erasure”) • CONN. GEN. STAT. ANN. §§ 54-142t to 54-142w (West 2024) (included within “Security and Privacy of Criminal Records”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • July 1, 2015 (§ 54-130f) • October 1, 2021 (§§ 54-56g, 54-56i, and 54-142f) • May 10, 2022 (§§ 54-108f and 54-130e) • July 1, 2022 (§ 54-142v) • October 1, 2022 (§ 54-56e) • January 1, 2023 (§§ 31-51i, 54-142c, 54-142d, 54-142u) • June 27, 2023 (§ 54-142w) • July 1, 2023 (§§ 54-142a, 54-142e) • October 1, 2023 (§ 54-130a) • June 4, 2024 (§ 54-142t)
Pardon provisions	<p>§ 54-130a – vests the Board of Pardons and Paroles with authority to grant pardons, condition, provisional, or absolute, or certificates of rehabilitation for any offense against the state at any time after the imposition and before or after the service of any sentence. Provides that the board may accept an application for a pardon three years after an</p>

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applicant's conviction of a misdemeanor or violation and five years after conviction of a felony, except that the board, upon a finding of extraordinary circumstances, may accept an application for a pardon prior to such dates.

Provides that prior to holding a session to consider whether to grant any pardon, the board shall, upon written request, provide the state's attorney with a copy of the convicted person's application, any materials and documentation filed in support thereof, except for any information contained therein that is confidential, privileged, and non-disclosable pursuant to state or federal law, any information obtained by the board about the convicted person pursuant to § 54-130c, and shall permit such state's attorney to appear at such session for the purpose of making a statement for the record concerning whether the applicant should be granted pardon.

Whenever the board grants an absolute pardon to any person, the board shall cause notification of such pardon to be made in writing to the clerk of the court in which such person was convicted, or the Office of the Chief Court Administrator. Whenever the board grants a provisional pardon or a certificate of rehabilitation to any person, the board shall notify the clerk of the court of such in writing. The granting of a provisional pardon or certificate of rehabilitation does not entitle such person to erasure of the record of the conviction or relieve such person from disclosing the existence of such conviction as may be required.

The board shall not deny any application for a pardon unless the board provides a statement in writing to the applicant of the factors considered when determining whether the applicant qualified for the pardon and an explanation as to which factors were not satisfied.

§ 54-130e (provisional pardons; certificates of rehabilitation) – provides that the Board of Pardons and Paroles may issue a provisional pardon to relieve an eligible offender of barriers or forfeitures by reason of such person's conviction of the crime or crimes specified in such provisional pardon. The provisional pardon may be limited to one or more enumerated barriers or forfeitures or may relieve all such barriers or forfeitures. No provisional pardon shall apply or

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Pardon provisions, cont'd	<p>be construed to apply to the right of such person to retain or be eligible for public office.</p> <p>The board may issue a provisional pardon to an eligible offender upon verified application of such offender, and may issue such provisional pardon at any time after the sentencing of an eligible offender including, but not limited to, any time prior to the offender's date of release from custody of the Commissioner of Correction, probation, or parole. Such provisional pardon may be issued by a pardon panel of the board or a parole release panel of the board.</p> <p>The board shall not issue a provisional pardon unless the board is satisfied that:</p> <ol style="list-style-type: none"> (1) The person to whom the pardon is to be issued is an eligible offender; (2) The relief to be granted may promote the public policy of rehabilitation of ex-offenders through employment; and (3) The relief to be granted is consistent with the public interest in public safety, the safety of any victim of the offense, and the protection of property. <p>The board may limit the applicability of the pardon to specified types of employment or licensure for which the eligible offender is otherwise qualified.</p> <p>If a pardon is issued by the board before an eligible offender has completed service of the term of incarceration, probation, parole, or special parole, or any combination thereof, the pardon shall be deemed to be temporary until the completion of sentence. The temporary pardon shall become permanent after the offender completes his or her sentence.</p> <p>The board may at any time issue a new provisional pardon to enlarge the relief previously granted. If a pardon is revoked, the barriers and forfeitures thereby relieved shall be reinstated as of the date the person to whom the pardon was granted receives written notice of the revocation. Such person shall surrender the pardon to the issuing board or division upon receipt of the notice.</p>

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Pardon provisions, cont'd	<p>The board may revoke a permanent provisional pardon if the board is notified or becomes aware that the person to whom it was issued was convicted of a crime after the issuance of the pardon.</p> <p>Annually, the board shall submit to the Office of Policy and Management and the Connecticut Sentencing Commission data on the number of applications received, the number denied, the number granted, and the number revoked.</p> <p>§ 54-130f (pardon eligibility notice) – requires the board to develop a pardon eligibility notice containing written explanatory text of the pardons process set forth in this chapter. The board, in conjunction with the Judicial Department and the Department of Correction, shall ensure that such notice is provided to a person at the time such person is sentenced; is released by the Department of Correction, including any pretrial release; has completed or been discharge from a period of parole; and has completed a period of probation or conditional discharge. The board shall update the notice as deemed necessary by the board.</p> <p>§ 31-51i prohibits an employer or employer’s agent, representative, or designee from denying employment to a prospective employee solely on the basis that the prospective employee had a prior conviction for which the individual had a prior conviction for which that individual has received a provisional pardon. Further, an individual may not be discharged, caused to be discharged, or in any manner discriminated against on the basis that the employee had, prior to being employed by such employer, a prior conviction for which the employee has received a provisional pardon.</p>
Is sealing of records available?	<p>Yes. § 54-56e creates a pretrial program for accelerated rehabilitation of persons accused of a crime or crimes or a motor vehicle violation or violations for which a sentence no a term of imprisonment may be imposed, which crimes or violations are not of a serious nature. Upon application by any such person for participation in the program, the court shall, but only as to the public, order the court file sealed. Upon successful completion of the program, the defendant may apply for dismissal of the charges or the court, upon receipt of a report that the defendant successfully completed the program, may on its own motion make a finding of such</p>

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Is sealing of records available?, cont'd	<p>satisfactory completion and dismiss such charges. Upon dismissal, all records of the charges shall be erased pursuant to § 54-142a (<i>see below</i>).</p> <p>§ 54-56g sets forth the procedure and provisions related to participation in a pretrial alcohol education program for persons charged with certain alcohol-related offenses. Upon application of an eligible individual for participation in such program, the court shall, but only as to the public, order the court file sealed. If the court is informed that the defendant is ineligible to participate or if the program provider certifies to the court that the individual did not successfully complete the program or is no longer amenable to treatment and such person does not request, or the court denies, program reinstatement, the court shall order the file to be unsealed, enter a plea of not guilty for such defendant, and immediately place the case on the trial list. If the individual successfully completes the program, he or she may apply for dismissal of the charges and the court shall dismiss such charges.</p> <p>§ 54-56i sets forth the procedure and provisions related to the participation in a pretrial drug education and community service program by an eligible person. Provides that, upon application by a person eligible to participate in such program, the court shall, but only as to the public, order the person's court file sealed. If such person successfully completes the assigned program, the individual may apply for dismissal of the charges and the court shall dismiss the charges. A record of participation in the program shall be retained by the Court Support Services Division for a period of 10 years from the date the court grants the application. If the court is informed that an individual is ineligible for the program or if the program provider certifies to the court that such person did not successfully complete the assigned program and such person did not request, or the court denied, reinstatement in the program, the court shall order the court file to be unsealed, enter a plea of not guilty for such person, and immediately place the case on the trial list.</p>
Is expungement of records available?	<p>Yes. § 54-142a (erasure of criminal records) – provides that, whenever prior to October 1, 1974, any person who has been convicted of an offense in any court in this state has received an absolute pardon for such offense, such person or any of his or her heirs may, at any time subsequent to such pardon,</p>

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Is expungement of records available?, cont'd	<p>file a petition for an order of erasure, and the court shall direct all records pertaining to such offense be erased.</p> <p>Except as otherwise provided by law, whenever any person has been convicted in any court of this state of an offense as set forth below, records pertaining to such conviction shall be erased as follows:</p> <ol style="list-style-type: none"> (1) For any classified or unclassified misdemeanor offense or a motor vehicle violation for which a maximum term of imprisonment of not more than one year could have been imposed, such records shall be erased seven years from the date on which the court entered the convicted person's most recent judgment of conviction upon the filing of a petition on a form prescribed by the Office of the Chief Court Administrator if such offense occurred prior to January 1, 2000; and (2) For any class D or E felony, unclassified felony offense for which a maximum term of imprisonment of not more than five years could have been imposed or a motor vehicle violation for which a maximum term of more than one year and not more than five years could have been imposed, or any violation of § 14-227a, such records shall be erased 10 years from the date on which the court entered the convicted person's most recent judgment of conviction upon the filing of a petition on a form prescribed by the Office of the Chief Court Administrator if such offense occurred prior to January 1, 2000. <p>Sets forth the offenses that are not eligible for erasure under this statute.</p> <p>No fee shall be charged in any court with respect to any petition under this section.</p> <p>§ 54-142d (erasure of record of decriminalized offense; exceptions) – whenever any person has been convicted of an offense in any court in this state and such offense has been decriminalized subsequent to the date of the conviction, such person may file a petition with the appropriate court for an order of erasure, and the court shall immediately direct all police and court records and records of the state's or</p>

CONNECTICUT**Is expungement of records available?, cont'd**

prosecuting attorney pertaining to such offense to be erased. This provision does not apply to records containing more than one count, unless and until all counts in the information are entitled to erasure, except that electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section.

§ 54-142e (Judicial Department of criminal justice agency to make available information to identify erased records; duty of consumer reporting agency or background screening providing to update and delete erased criminal records). This section sets forth the requirements for consumer reporting agencies, background screening providers, and similar data-based services or companies that purchase records of or files mass requests for information pertaining to criminal matters of public record with regard to records that have been erased pursuant to this chapter. Requires that sufficient information be provided to such agencies to permit them to identify and permanently delete records that have been erased pursuant to § 54-142a. Provides that if such an agency discloses an erased record in violation of this section after 30 calendar days from the date such agency, provider, service, or company receive notice that the records were erased, the Attorney General may send notice ordering such agency to remove the erased record from any such disclosure not later than five business days following receipt of the order. Any violation of any provision of this section shall be deemed an unfair or deceptive trade practice.

§ 31-51i prohibits any employer or employer's agent, representative, or designee from requiring that an employee or prospective employee disclose the existence of erased criminal history record information. It also prohibits an employer or employer's agent, representative, or designee from denying employment to a prospective employee solely on the basis that the prospective employee had a prior conviction for which the individual has erased criminal history record information. Further, an individual may not be discharged, caused to be discharged, or in any manner discriminated against on the basis that the employee has erased criminal history record information.

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Are any records eligible to be automatically sealed or expunged?

Yes. § 54-142a (erasure of criminal records) – provides that, whenever in any criminal case, on or after October 1, 1969, the accused, by final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state’s attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Erasure of a record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect is not required under this section.

For criminal cases prior to October 1, 1969 wherein the defendant was found not guilty or the charge was dismissed, the records shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased. Nothing in this subsection prohibits the arrested person or any of his or her heirs from filing a petition for erasure with the appropriate court. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect.

Whenever any charge in a criminal case has been nolle and at least 13 months have elapsed since such nolle, all records pertaining to such charge shall be erased, except that in the cases of nolle entered prior to April 1, 1972, such records shall be deemed erased by operation of law and the custodian shall not disclose to anyone the existence of such records or any information pertaining to any charge so erased, provided nothing in this section prohibits the arrested person or any of his or her heirs from filing a petition to have such records erased, in which case such records shall be erased.

Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney and a period of 13 months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be nolle upon motion of the arrested person and such erasure may

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>thereafter be effected or a petition filed therefor, as the case may be.</p> <p>Whenever a person receives an absolute pardon on or after October 1, 1974, such records shall be erased. See above for pardons received before October 1, 1974.</p> <p>Except as otherwise provided by law, whenever any person has been convicted in any court of this state of an offense as set forth below, records pertaining to such conviction shall be erased as follows:</p> <p>(1) For any classified or unclassified misdemeanor offense or a motor vehicle violation for which a maximum term of imprisonment of not more than one year could have been imposed, such records shall be erased seven years from the date on which the court entered the convicted person's most recent judgment of conviction by operation of law if such offense occurred on or after January 1, 2000; and For any class D or E felony, unclassified felony offense for which a maximum term of imprisonment of not more than five years could have been imposed or a motor vehicle violation for which a maximum term of more than one year and not more than five years could have been imposed, or any violation of § 14-227a, such records shall be erased 10 years from the date on which the court entered the convicted person's most recent judgment of conviction by operation of law if such offense occurred on or after January 1, 2000.</p> <p>Sets forth the offenses that are not eligible for erasure under this subsection. Additionally, provides that this subsection shall not apply to any conviction for any offense until the defendant has completed serving any period of incarceration, parole, or transitional supervision associated with any such offense and any other offense for which the defendant has been convicted on or after January 1, 2000 in this state; has completed serving any period of probation; and is not the subject of any pending state criminal charge in this state.</p> <p>Nothing in this subsection limits any other procedure for erasure of criminal history information or prohibits a person</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>from participating in any such procedure, even if such person's criminal history record has been erased pursuant to this section. Nothing in this subsection shall terminate a defendant's obligation to register as a person convicted of an offense committed with a deadly weapon, a felony for a sexual purpose, or a criminal offense against a victim who is a minor. No erasure under this subsection shall be construed to terminate a defendant's obligation to abide by a standing criminal protective order or terminate a defendant's obligation to pay any unremitted fine imposed as part of the court's sentence.</p> <p>Notwithstanding any provision of this section and the provisions of § 54-142c, any record required to substantiate any defendant's conviction shall be available to law enforcement, the court, and the state's attorney for the purpose of verifying such defendant's obligation to register pursuant to law and prosecuting any such defendant for violating such laws, and verifying such defendant's obligation to abide by any standing criminal protective order and prosecuting any such defendant for a violation of law.</p> <p>The clerk of the court or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, information pertaining to any charge erased under any provision of this section and such clerk shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. The clerk shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or, upon the request of the accused, cause the actual physical destruction of such records, except that such clerk shall not cause the actual physical destruction until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.</p> <p>The court or a judge of such court, upon a properly brought motion, shall order disclosure of such records to a defendant in an action for false arrest arising out of the proceedings so</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

erased; to the prosecuting attorney and defense counsel in connection with any perjury charges which the prosecutor alleges may have arisen from the testimony elicited during the trial; or counsel for the petitioner and the respondent in connection with any habeas corpus or other collateral civil action in which evidence pertaining to a nolle or dismissed criminal charge may become relevant.

The provisions of this section shall not apply to any criminal history record information referencing more than one count of the criminal case or, in the case of a police record, referencing more than one defendant (a) while the criminal case is pending; or (b) when the criminal case is disposed of unless and until all counts on such criminal case and, in the case of a police record, on the relevant criminal cases for all referenced defendants are entitled to erasure in accordance with the provisions of this section. When a criminal case is disposed of, qualified electronic records or portions of such records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased pursuant to the provisions of this section. Nothing in this section shall require the erasure of any information contained in the registry of protective orders, published memoranda of decision of the Superior Court, or any records of the Appellate Court or Supreme Court related to matters considered by such courts.

§ 54-142c (disclosure of erased records) – prohibits the clerk of the court or any person charged with retention and control of erased records from disclosing to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.

Notwithstanding any provision of this chapter, not later than two years from the date on which the records of any case are erased, the clerk of the court or any person charged with retention and control of erased records may disclose to the victim of a crime or the victim's legal representative the fact that the case was dismissed. The defendant's identifying information shall not be released unless the victim or victim's legal representative submits a written application stating that a civil action has been commenced or there is an intent to bring a civil action. Any person who obtains

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>criminal history record information by falsely representing to be the victim of a crime or the victim's legal representative shall be guilty of a class D felony.</p> <p>§ 54-142t (automated process for erasure of criminal records; liability re actions taken in reliance upon criminal history record information; claims against the state; request for review of criminal history records for erasure) – requires the Department of Emergency Services and Public Protection, in consultation with the Judicial Branch and the Criminal Justice Information System Governing Board, shall develop and implement automated processes for erasure pursuant to § 54-142a. any agency holding records subject to such automated processes for erasure shall assist the department in carrying out such automated processes for erasure and shall provide all necessary information to the department.</p> <p>Not later than January 1, 2024, the department shall post information on a website operated by the department regarding records that are subject to erasure under the provisions of this section, including a list of any section of the general statutes for which a violation of such section may be subject to erasure. The commissioner shall annually review and update such list as necessary.</p> <p>Nothing in this section shall require the destruction of paper records. Further, nothing in the listed statutes shall be construed to make the state, any state agency, any municipality, or any person liable for any action taken on the basis of criminal history record information required to be erased or deemed erased by operation of law if:</p> <ol style="list-style-type: none"> (1) Such action is taken in good faith reliance on such criminal history record information; (2) Such criminal history record information has not yet been marked as erased by the automated system or, in the case of a municipality or other person, such erasure marking has not been communicated to such municipality or other person; and (3) Such action is taken before January 1, 2024. <p>After January 1, 2024, nothing in such statutes shall be construed to make such agencies or persons liable for any action taken on the basis of criminal history record</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>information required to be erased or deemed to be erased by operation of law if, within the immediate 30-day period after such records should have been marked as erased, such action is taken in good faith reliance on such information and the information has not yet been marked as erased by the automated system or the erasure marking has not been communicated to a municipality or other person.</p> <p>§ 31-51i prohibits any employer or employer's agent, representative, or designee from requiring that an employee or prospective employee disclose the existence of erased criminal history record information. It also prohibits an employer or employer's agent, representative, or designee from denying employment to a prospective employee solely on the basis that the prospective employee had a prior conviction for which the individual has erased criminal history record information. Further, an individual may not be discharged, caused to be discharged, or in any manner discriminated against on the basis that the employee has erased criminal history record information.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 54-108f provides that the Court Support Services Division of the Judicial Branch may issue a certificate of rehabilitation to an eligible offender who is under the supervision of the division while on probation or other supervised release at the time of such person's application for such certificate, or may issue a new certificate of rehabilitation to enlarge relief previously granted under such certificate or revoke any such certificate in accordance with the provisions of § 54-130e that are applicable to certificates of rehabilitation. If the division issues, enlarges, or revokes a certificate under this section, the division shall immediately file written notice of such action with the Board of Pardons and Paroles.</p> <p>Annually, the division shall submit to the Office of Policy and Management and the Connecticut Sentencing Commission, in such form as the office may prescribe, data regarding the administration of certificates of rehabilitation, which shall include data on the number of certificates issued and the number revoked by the division.</p> <p>§ 54-130e (provisional pardons; certificates of rehabilitation) sets forth the provisions related to both provisional pardons and issuance of certificates of rehabilitation, defined as a</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>form of relief from barriers or forfeitures to employment or the issuance of licenses that is granted to an eligible offender by the Board of Pardons and Paroles pursuant to this section or the Court Support Services Division of the Judicial Branch pursuant to § 54-108f. An “eligible offender” means a person who has been convicted of a crime or crimes in this state or another jurisdiction and who is a resident of this state and is under the jurisdiction of the board or, with respect to a certificate of rehabilitation under § 54-108f, is under the supervision of the Court Support Services Division at the time of such person’s application.</p> <p>Provides that the Board of Pardons and Paroles may issue a certificate of rehabilitation to relieve an eligible offender of barriers or forfeitures by reason of such person’s conviction of the crime or crimes specified in such certificate. The certificate may be limited to one or more enumerated barriers or forfeitures or may relieve all such barriers or forfeitures. No certificate shall apply or be construed to apply to the right of such person to retain or be eligible for public office.</p> <p>The board may issue a certificate to an eligible offender upon verified application of such offender, and may issue such certificate at any time after the sentencing of an eligible offender including, but not limited to, any time prior to the offender’s date of release from custody of the Commissioner of Correction, probation, or parole. Such certificate may be issued by a pardon panel of the board or a parole release panel of the board.</p> <p>The board shall not issue a certificate unless the board is satisfied that:</p> <ol style="list-style-type: none"> (1) The person to whom the pardon is to be issued is an eligible offender; (2) The relief to be granted may promote the public policy of rehabilitation of ex-offenders through employment; and (3) The relief to be granted is consistent with the public interest in public safety, the safety of any victim of the offense, and the protection of property.

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Does the state offer a certificate of relief or similar document?, cont'd	<p>The board may limit the applicability of the certificate to specified types of employment or licensure for which the eligible offender is otherwise qualified.</p> <p>If a certificate is issued by the board before an eligible offender has completed service of the term of incarceration, probation, parole, or special parole, or any combination thereof, the certificate shall be deemed to be temporary until the completion of sentence. The temporary certificate shall become permanent after the offender completes his or her sentence.</p> <p>The board may at any time issue a new certificate to enlarge the relief previously granted. If a certificate is revoked, the barriers and forfeitures thereby relieved shall be reinstated as of the date the person to whom the certificate was granted receives written notice of the revocation. Such person shall surrender the certificate to the issuing board or division upon receipt of the notice. The board may revoke a permanent certificate if the board is notified or becomes aware that the person to whom it was issued was convicted of a crime after the issuance of the certificate.</p> <p>Annually, the board shall submit to the Office of Policy and Management and the Connecticut Sentencing Commission data on the number of applications received, the number denied, the number granted, and the number revoked.</p> <p>§ 31-51i prohibits an employer or employer's agent, representative, or designee from denying employment to a prospective employee solely on the basis that the prospective employee had a prior conviction for which the individual has received a certificate of rehabilitation. Further, an individual may not be discharged, caused to be discharged, or in any manner discriminated against on the basis that the employee had, prior to being employed by such employer, a prior conviction for which the employee has received a certificate of rehabilitation.</p>
Are drug convictions eligible for relief?	<p>Yes. See discussion of § 54-56i above.</p> <p>§ 54-142u (automatic erasure of record of person for certain cannabis possession convictions) – provides that, whenever on or after January 1, 2000, but prior to October 1, 2015, any person has been convicted in any court of this state of</p>

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possession under subsection (c) of § 21a-279, all police and court records and records of the state's or prosecuting attorney pertaining to such a conviction in any court of this state shall be, pursuant to the provisions of § 54-142a, erased, if such records are electronic records, or deemed erased by operation of law if such records are not electronic. The provisions of this section do not apply to any records with respect to any record referencing more than one count unless and until all counts are entitled to erasure, except that electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section. Further provides that nothing in this section shall limit any other procedure for erasure of criminal history record information or prohibit a person from participating in any such procedure, even if such person's electronic criminal history record information has been erased pursuant to this section. A person whose records have been erased pursuant to this section may represent to any entity other than a criminal justice agency that they have not been arrested or convicted for the purposes of any such conviction for which such records have been erased.

§ 54-142v (erasure of record of person for certain cannabis convictions for possession, possession or use of paraphernalia or manufacture, or for distribution, sale, prescription, administration, or growing of cannabis) – any person who has been convicted in any court in this state:

- (1) On October 1, 2015, or thereafter, and prior to July 1, 2021, or prior to January 1, 2000, of a violation of § 21a-279 for possession of a cannabis-type substance and the amount possessed was less than or equal to four ounces of such substance;
- (2) Prior to July 1, 2021, of a violation of § 21a-267(a) for use or possession with intent to use of drug paraphernalia to store, contain or conceal, or to ingest, inhale, or otherwise introduce into the human body cannabis; or
- (3) Prior to July 1, 2021 of a violation of § 21a-277(b) for manufacturing, distributing, selling, prescribing, compounding, transporting with intent to sell or

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Are drug convictions eligible for relief?, cont'd	<p>dispense, possessing with the intent to sell or dispense, offering, giving, or administer to another person a cannabis-type substance and the amount involved was less than or equal to four ounces or six plants grown inside such person's own primary residence for personal use</p> <p>may file a petition for erasure. If the court finds that the petition is in order, the court shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such offense to be erased pursuant to the provisions of § 54-142a. No fee may be charged in any court with respect to any petition under this subsection.</p> <p>The provisions of this section shall not apply to any records while the criminal case is pending or in instances where the case contains more than one count until the records pertaining to all counts are entitled to erasure, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section.</p> <p>§ 54-142w (police or court record of a state's attorney or prosecuting attorney not marked as erased under automated system) – provides that, if the automated processes required to be developed under § 54-142t have not marked a police or court record or the record of any state's attorney or prosecuting attorney as erased, or no petition has been filed seeking to have such record erased, as of July 1, 2023, the provisions of § 54-142a shall determine whether such record is eligible or ineligible for erasure and the eligibility of defendants who must file a petition for the erasure of records.</p>
Miscellaneous provisions	<p>§ 54-142f (Council on the Collateral Consequences of a Criminal Record; established; membership; chairpersons; administrative staff; report) – establishes the Council on the Collateral Consequences of a Criminal Record in the legislative department whose duty shall be to study discrimination faced by people in Connecticut living with a criminal record and develop recommendations for legislation to reduce or eliminate discrimination based on a person's criminal history.</p>

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Recently proposed legislation	None.
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<u>DELAWARE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • DEL. CONST. Art. VII, § 1 (West 2024) (power of governor; recommendation of Board of Pardons; entry in register and submission to general assembly) • DEL. CODE ANN. tit. 11, §§ 4361 to 4364 (West 2024) (collectively “Clemency”) • DEL. CODE ANN. tit. 11, §§ 4371 to 4377 (West 2024) (collectively “Expungement of Criminal Records”) • DEL. CODE ANN. tit. 16, § 4764 (West 2024) (possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • July 10, 1995 (§ 4361) • July 15, 2003 (§ 4364) • June 25, 2015 (§ 4363) • December 27, 2019 (§§ 4376, 4377) • November 8, 2021 (§§ 4373A, 4375) • August 30, 2022 (§§ 4372, 4373, 4374) • November 2, 2022 (§ 4362) • April 23, 2023 (§ 4764)
Pardon provisions	<p>§ 1 – the governor shall have power to remit fines and forfeitures and to grant reprieves, commutations of sentence, and pardons, except in cases of impeachment; but no pardon shall be granted except upon the recommendation in writing of a majority of the Board of Pardons after full hearing; and such recommendation, with the reasons therefor at length, shall be filed and recorded in the office of the secretary of state, who shall forthwith notify the governor thereof. The governor shall fully set forth in writing the grounds of all pardons to be entered in the register of his or her official acts and laid before the general assembly at its next session.</p> <p>§ 4361 (Board of Pardons; attendance of victims and witnesses) – upon the application of any convicted felon for a pardon, the board shall notify the superior court and Attorney General of such application. Notice shall be sent by the Attorney General to each person who was a victim or witness of the offense for which the individual was convicted, that the individual has applied for a pardon. Each such victim or witness shall be permitted to testify at the pardons hearing or submit a written statement at any time prior to the hearing. Upon request of the board, the department, to the extent authorized by the commissioner, shall make investigations and recommendations and report thereon with respect to any application before the board.</p>

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Pardon provisions, cont'd	<p>§ 4362 (mental health examinations) – this section requires individuals convicted of certain specified crimes to undergo a mental health examination within the 12-month period immediately preceding consideration of such person’s case by the board.</p> <p>§ 4363 (request for advice from Board of Parole) – if the board receives an application for recommendation of pardon from a person who is in the legal custody of the Department of Correction, the board shall request a report from the Board of Parole that summarizes the complete record of such person and include an opinion as to the state of rehabilitation of such person.</p> <p>§ 4364 (effect of pardon; restoration of civil rights) – except as otherwise provided, the grant of an unconditional pardon shall have the effect of fully restoring all civil rights to the person pardoned. However, this section does not limit or affect the governor’s authority to place lawful conditions upon the granting of a pardon.</p>
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 4372 (applicability; definitions; effect of expungement) – provides that this subchapter applies to all criminal cases brought and convictions entered in a court in Delaware.</p> <p>For purposes of this subchapter, a case is terminated in favor of the accused only if one or more of the following occurs:</p> <ol style="list-style-type: none"> (1) The accused is acquitted of all charges related to the case; (2) A nolle prosequi is entered on all charges related to the case; (3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation; (4) All charges related to the case are otherwise dismissed; (5) The accused is acquitted of one or more charges related to the case, and the other charges are dismissed by the entry of a nolle prosequi or otherwise;

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Is expungement of records available?, cont'd	<p>(6) The accused is arrested for the commission of one or more crimes and no charges related to the matter for which the person was arrested are filed in any court within one year of the arrest; or</p> <p>(7) Where a case is seven or more years old and contains a charge or charges without a disposition or the disposition is listed as unknown, unobtainable, or pending. This paragraph does not apply if there is an active warrant in the case, if there is documented case activity within the last 12 months, or if there are charges in the case that were not terminated in favor of the accused.</p> <p>Defines “expungement” to mean that all law enforcement agency records and court records relating to a case in which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized under this subchapter.</p> <p>Except as otherwise provided by § 4376(a) of this title, a person is not required to disclose, nor should the person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an offense for which records have been expunged.</p> <p>If the court issues an order expunging records, all the criminal records relating to a case specified in the order must, within 60 days of the order, be removed from the court’s files and placed in the control of the Supervisor of the State Bureau of Identification or otherwise segregated and kept in a manner that ensures that they are not open to public inspection or disclosure. The court may retain nonpublic record of expungement orders. The court shall send a copy of its order of expungement to the bureau and shall consult with the bureau to develop a standard form of order for expungements. Except as otherwise provided by § 4376, the supervisor shall retain control over all expunged records and shall ensure that the records or information contained in the records are not released for any reason.</p> <p>In response to a request from a non-law enforcement officer for information or records on the person who received an</p>

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Is expungement of records available?, cont'd	<p>expungement, all law enforcement officers, agencies, and courts shall reply, with respect to the proceedings which are the subject of the order, that there is no record.</p> <p>A person is not eligible for an expungement while the person has pending criminal charges. Sets forth the violations that do not qualify as “pending criminal charges.” Sets forth the offenses that are not eligible for expungement. States that a person is not eligible for an expungement of a felony conviction if the person is convicted of the felony after the date an expungement of a prior felony conviction was granted. A person is not eligible for expungement if that person is currently serving a term of incarceration, parole, or probation.</p> <p>Provides that a prior or subsequent conviction does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter if the conviction is for underage possession or consumption of alcohol, possession of a personal use quantity of marijuana, or possession of drug paraphernalia. A prior or subsequent conviction of a title 21 offense does not operate as a bar to eligibility.</p> <p>The grant of an expungement does not nullify any provision of an active protection from abuse order, nor does it automatically remove an individual from the child protection or adult abuse registries.</p> <p>For conviction to be eligible for an expungement, all fines, fees, and restitution associated with the conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than willful noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive the fines or fees or convert outstanding financial obligations to a civil judgment.</p> <p>§ 4373 (mandatory expungement; application through SBI) – on an appropriate request to the State Bureau of Identification under this section, the bureau shall expunge all charges relating to a case, even if a person has prior or subsequent convictions that are ineligible for expungement, if all other charges in the case are eligible for expungement and one or more of the following apply:</p>

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Is expungement of records available?, cont'd	<p>(1) The person was arrested or charged with the commission of one or more crimes and the case is terminated in favor of the accused;</p> <p>(2) The person was convicted of one or more violations relating to the same case and three years have passed since the date of conviction;</p> <p>(3) The person was convicted of possession of marijuana under title 16, § 4764 or possession of drug paraphernalia under 16, § 4771, or both in the same case; or</p> <p>(4) The person was convicted of underage possession or consumption of alcohol.</p> <p>On an appropriate request to the bureau, the bureau shall expunge all charges relating to a case if the person has no prior or subsequent convictions that bar eligibility for expungement, all charges in the case are eligible for expungement, and one of the following applies:</p> <p>(1) The person was convicted of one or more misdemeanors, or a combination of one or more misdemeanors and one or more violations, relating to the same case, five years have passed since the date of conviction;</p> <p>(2) The person was convicted of drug possession and five years have passed since the date of conviction;</p> <p>(3) The person was convicted of any of the listed felonies and 10 years have passed since the date of conviction or the date of release from incarceration, whichever is later.</p> <p>For purposes of determining eligibility, any charge that is seven or more years old and for which there is no disposition indicated or the disposition is listed as unknown, unobtainable, or pending shall be considered dismissed and shall not negatively affect eligibility. This subsection does not apply if there is an active warrant in the case or if there is documented case activity within the last 12 months.</p> <p>Sets forth the offenses that are ineligible for expungement.</p>

DELAWARE**Is expungement of records available?, cont'd**

§ 4374 (discretionary expungement; application to court) – an expungement may be granted after petitioning the appropriate court if the applicant meets one of the following:

- (1) Was convicted of one or more misdemeanors other than those listed in § 4373(b) relating to the same case and at least three years have passed since the date of conviction or the date of release from incarceration, which is later, and the person has no prior or subsequent convictions;
- (2) Was convicted of one or more misdemeanors listed in § 4373(b) relating to the same case and at least seven years have passed since the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions;
- (3) Subject to the list of specific offenses ineligible for expungement included in this section, was convicted of a felony and at least seven years have passed since the date of conviction or date of release from incarceration, whichever is later, and the person has no prior or subsequent convictions; or
- (4) Was convicted of one or more violations or misdemeanors other than those listed in § 4373(b) in more than one case and at least five years have passed since the date of the most recent conviction or the date of release from incarceration, whichever is later, and the person has no other prior or subsequent convictions that would not be eligible for mandatory expungement standing alone. The entire case in which each conviction appears must be eligible for expungement.

Where an expungement petition is granted, the expungement order applies to any record, including arrest records, relating to any charge in that case held by any court or law enforcement agency in this state.

Provides that, unless the court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the court finds that the continued existence and possible dissemination of information relating to the arrest or conviction of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the

DELAWARE**Is expungement of records available?, cont'd**

petitioner, it shall enter an order requiring expungement. Otherwise it shall deny the petition. The burden is on the petitioner to allege specific facts in support of the petitioner's allegation of manifest injustice, which shall be proved by a preponderance of the evidence. A petition filed by the Attorney General or his or her designee must be granted by the court.

Permits the Attorney General or his or her designee responsible for prosecuting a criminal action may petition the court to expunge the instant arrest record of a defendant if, at the time of a state motion to dismiss or entry of a nolle prosequi in the case, the prosecutor has determined that continued existence and possible dissemination of information relating to the arrest of the defendant may cause circumstances which constitute a manifest injustice to the defendant.

For purposes of determining eligibility, any charge that is seven or more years old and for which there is no disposition indicated or the disposition is listed as unknown, unobtainable, or pending shall be considered dismissed and shall not negatively affect expungement eligibility in any case. This subsection does not apply if there is an active warrant in the case or documented case activity within the last 12 months.

§ 4375 (discretionary expungement following a pardon) – provides that a person who was convicted of a crime that is not specifically excluded by this section and who is granted an unconditional pardon may request a discretionary expungement under the procedure set forth in § 4374.

§ 4376 (disclosure of expunged records) – except for disclosure to law enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law enforcement agency, it is unlawful for any person having or acquiring access to an expunged court or law enforcement agency record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged. A violation of this subsection is a class B misdemeanor.

DELAWARE**Is expungement of records available?, cont'd**

Provides that, in addition to such other lawful purposes as may be prescribed by law or otherwise, criminal justice agencies shall have access to records of expunged probations before judgment and participation in any one of the listed diversion programs for the purpose of determining whether a person is eligible for a probation before judgment. For criminal justice agencies involved in the licensing of individuals to carry a concealed deadly weapon, they shall have access to records of expunged cases for the purpose of determining whether an individual meets the requirements to be granted a license to carry a concealed deadly weapon.

When disclosure to law enforcement officers is authorized by this section, such disclosure applies for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect or pursuant to an investigation of an employment application as an employee of a law enforcement agency.

Nothing in this subchapter requires the destruction of photographs or fingerprints taken in connection with any felony arrest, or DNA taken under tit. 29, § 4713, and which are utilized solely by law enforcement officers in the lawful performance of their duties. Further, nothing contained in this subchapter requires the destruction of court records or records of the Department of Justice; however, all such records must be so handled to ensure that they are not open to public inspection or disclosure.

An offense for which records have been expunged under this subchapter does not have to be disclosed by the person for any reason.

Notwithstanding any other provision of this section, if a person is convicted of an offense after an expungement is granted, the supervisor of the Bureau of Identification shall, upon request, provide expunged records to:

- (1) A court, the Attorney General, and the defendant, for use or consideration during the defendant's sentencing; and
- (2) The governor or the Board of Pardons, for use or consideration if the defendant applies for a pardon for the subsequent offense.

<u>DELAWARE</u>	
Is expungement of records available?, cont'd	§ 4377 (notification to federal government) – provides that, upon granting an order of expungement, the Bureau of Identification shall provide notice of the order to federal law enforcement.
Are any records eligible to be automatically sealed or expunged?	Yes. § 4373A (mandatory expungement; automatic) provides that a case that is eligible for mandatory expungement under § 4373 is eligible for automatic expungement under this section. Beginning August 1, 2024, and on a monthly basis thereafter, the bureau shall identify cases that are eligible for mandatory expungement and proceed under § 4372(e)(2) to expunge the eligible records. Nothing in this section precludes a person from filing a petition to expunge records if automatic expungement has not occurred. A person does not have a cause of action for damages as a result of the failure to identify an individual's case as eligible for automatic expungement.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 4764 provides that, any person who was convicted of a single offense of knowingly or intentionally possessing, using, or consuming a personal use quantity of a controlled substance while under the age of 21 years, as it was in effect on or before July 31, 2019, may, upon reaching the age of 21, apply for expungement of the record of conviction and an indicia of arrest to the court in which the person was convicted. An order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section which remains outstanding.</p> <p>Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in subchapter VII of Chapter 43 of Title 11. Nothing in this section prohibits a court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon under §§ 4361 through 4364 of Title 11 does not prohibit expungement under this section.</p>
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>DISTRICT OF COLUMBIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • D.C. CODE ANN. §§ 16-801 to 16-807 (West 2024) (collectively “Criminal Record Sealing”) • D.C. CODE ANN. § 22-1844 (West 2024) (motion to vacate conviction or expunge criminal records for victims of trafficking) • D.C. CODE ANN. § 24-481.03 (West 2024) (establishment and duties) • D.C. CODE ANN. § 24-481.05 (West 2024) (eligibility for a clemency recommendation) • D.C. CODE ANN. § 48-904.01 (West 2024) (prohibited acts A; penalties)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • May 14, 2007 (§ 16-802) • June 15, 2013 (§ 16-804) • December 13, 2013 (§ 16-803.01) • February 26, 2015 (§ 48-904.01) • March 10, 2015 (§§ 16-803, 16-803.02, 16-805, 16-806) • April 5, 2019 (§ 22-1844) • April 27, 2021 (§ 16-801) • April 21, 2023 (§§ 24-481.03, 24-481.05)
Pardon provisions	<p>§ 24-481.03 – establishes a Clemency Board within the Executive Office of the Mayor whose duties include reviewing applications of individuals convicted of violating District laws or regulations and determine which applicants to recommend to the President for clemency. Requires the board to:</p> <ol style="list-style-type: none"> (1) Develop criteria and an application for clemency recommendations and publicize the application procedure; (2) Review each application and determine, within six months after a complete application is received, whether to recommend the application to the President; (3) Consider both cases of actual innocence and of those who are remorseful and can show they have been rehabilitated; (4) Give special consideration to applicants who are terminally ill or elderly, or who no longer present a danger to the community; (5) Develop criteria for the consideration of an applicant’s background, which may include procedures by which the board obtains information from outside organizations with which the applicant has interacted;

DISTRICT OF COLUMBIA**Pardon provisions, cont'd**

- (6) Whenever feasible, conduct in-person, telephone, or video conference hearings with applicants;
- (7) Allow applicants to have access to an attorney or non-attorney representative at any hearing before the board;
- (8) When the board decides to recommend an application to the President, send the application, along with a narrative describing why the application was recommended, to the Office of the Pardon Attorney and to the President; and provide notification to the Chairman of the Council and the chairperson of the Council committee with jurisdiction over judiciary matters; and
- (9) Track and publish the number of applications granted, the number denied, and the number recommended to the President in an annual report.

§ 24-481.05 – provides that all individuals convicted of violating District laws or regulations are eligible to apply for a clemency recommendation from the board. Prohibits any application for a clemency recommendation from being filed if other forms of judicial or administrative relief are available based on existing law and already-discovered evidence.

For applicants seeking a pardon, the applicant is required to:

- (1) Wait five years after the date of the release of the applicant from confinement or, in case no prison sentence was imposed, wait five years after the date of the conviction of the applicant before applying;
- (2) Not have been convicted of any other criminal offense that is relevant to the conviction for which the applicant seeks clemency;
- (3) Not be subject to any pending criminal charge that is relevant to the conviction for which the applicant seeks clemency;
- (4) Not be a party to a past or pending civil case relevant to the conviction;
- (5) Except for cases of actual innocence, demonstrate that the applicant has been rehabilitated; and
- (6) Describe how the receipt of a pardon would help the applicant achieve the applicant's goals and contribute to the community.

DISTRICT OF COLUMBIA**Is sealing of records available?**

Yes. §§ 16-801 to 16-807 set forth the provisions for sealing criminal records. Currently, these sections are set to expire on October 1, 2024, contingent on funding. As of the date of this summary, the amended provisions have not yet received funding. This information will be updated after October 1, 2024, with additional information, if necessary.

§ 16-801 (definitions) – includes definitions for, among other terms, “ineligible felony” and “ineligible misdemeanor,” which set forth the offenses that are not eligible to be sealed.

Also includes a definition of “disqualifying arrest or conviction,” which means (a) a conviction in any jurisdiction after the arrest or conviction for which a motion to seal has been filed; (b) a pending criminal case in any jurisdiction; and (c) a conviction in DC for an ineligible felony or ineligible misdemeanor or a conviction in any jurisdiction for an offense that involved conduct that would constitute an ineligible felony or misdemeanor if committed in DC or prosecuted under the DC Official Code, or conduct that is substantially similar to that of an ineligible felony or misdemeanor.

Finally, it defines “public” to mean any person, agency, organization, or entity other than any court; any federal, state, or local prosecutor; any law enforcement agency; any licensing agency with respect to an offense that may disqualify a person from obtaining that license; any licensed school, day care center, before or after school facility, or other educational or child protection agency or facility; and any government employer or nominating or tenure commission with respect to employment of a judicial or quasi-judicial officer or employment at a senior-level, executive-grade government position.

§ 16-802 (sealing of criminal records on grounds of actual innocence) – a person arrested for or charged with the commission of a criminal offense whose prosecution has been terminated without conviction may file a motion with the clerk of the court at any time to seal all of the records of the arrest and related court proceedings on grounds of actual innocence. The burden is on the movant to establish that the offense for which the person was arrested or charged did not occur or the movant did not commit the offense.

DISTRICT OF COLUMBIA**Is sealing of records available?, cont'd**

If the motion is filed within four years after the prosecution has been terminated, the movant must satisfy the burden by a preponderance of the evidence. If the motion is filed more than four years later, the movant must satisfy the burden by clear and convincing evidence.

Provides that, in determining such motions, the court may, but is not required to, employ a rebuttable presumption that the movant is not entitled to relief if the court finds that the government has been substantially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred. An acquittal does not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

A person whose conviction has been vacated pursuant to § 22-4135(g)(2), and whose subsequent prosecution is terminated without conviction, may file a motion with the clerk or any other provision of law.

A person who is found to be actually innocent pursuant to this section or § 22-4135(g)(3) shall be entitled to the following relief with respect to such count(s):

- (1) The court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.
- (2) In a case involving co-defendants in which the court orders the movant's records sealed, the court may order that only those records, or portions thereof, relating solely to the movant be sealed and that the movant's name be redacted to the extent practicable from records that are not sealed.
- (3) The court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

DISTRICT OF COLUMBIA**Is sealing of records available?, cont'd**

- (4) The court shall: (a) order the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to seal any records that identify the movant as having been arrested, prosecuted, or convicted; (b) order that the computerized records be eliminated except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if order to do so by the court; and (c) expressly allow the prosecutor and law enforcement agencies to maintain a publicly available record so long as it is not retrievable by the identification of the movant;
- (5) The court shall: (a) order the clerk to collect all court records pertaining to the movant's arrest, record, or conviction and cause to be purged any computerized record; (b) expressly allow the clerk to maintain a record so long as the record is not retrievable by identification of the movant; and (c) order the clerk to file under seal all court records retrieved pursuant to this section within seven days after receipt of such records; and
- (6) The clerk shall place all sealed records in a special file, appropriately and securely indexed in order to protect its confidentiality. Unless otherwise ordered by the court, the clerk shall reply in response to any inquiry concerning the existence of records that have been sealed that no records are available.

The effect of relief pursuant to this section shall be to restore the movant, in contemplation of the law, to the status he or she occupied before being arrested or charged. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.

§ 16-803 (sealing of public criminal records in other cases) – provides that a person arrested for or charged with the commission of an eligible misdemeanor whose prosecution terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if a waiting period of at least two years has

DISTRICT OF COLUMBIA**Is sealing of records available?, cont'd**

elapsed since the termination of the case and, except as otherwise permitted, the movant does not have a disqualifying arrest or conviction.

If at least five years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement. The same applies for disqualifying felony convictions if at least 10 years have elapsed.

A person arrested for or charged with the commission of any other offense whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and court proceedings if a waiting period of at least four years has elapsed since the termination of the case or, if the case was terminated before charging by the prosecution, a waiting period of at least three years has elapsed since the termination of the case and, except as otherwise permitted as set forth above, the movant does not have a disqualifying arrest or conviction.

A person who has been convicted of an eligible misdemeanor or felony may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction if a waiting period of at least eight years has elapsed since the completion of the movant's sentence and the movant does not have a disqualifying arrest or conviction.

Also permits a person to whom an arrest has been attributed, who attests under oath that he or she was incorrectly identified or named, to file a motion to seal records if the law enforcement agency did not take fingerprints at the time of the arrest and no other form of reliable identification was presented by the person who was arrested.

Provides that the Superior Court shall grant a motion to seal records if it is in the interests of justice to do so. In making

DISTRICT OF COLUMBIA**Is sealing of records available?, cont'd**

this determination, the court shall weight the interests of the movant, the community's interest in retaining access to the records, including the interests of current or prospective employers, and the community's interest in furthering the movant's rehabilitation and enhancing the movant's employability.

Depending on the circumstances of the motion, the burden will be on the prosecutor or the movant to either prove that it is not in the interests of justice to grant relief or that it is.

See discussion of § 16-802 above for the actions that must be taken if the court grants a motion to seal.

§ 16-803-01 (sealing of arrest records of fugitives from justice) – a person arrested upon a warrant as a fugitive from justice under § 23-701 or without a warrant may file a motion to seal the record at any time after the person has appeared before the proper official in the jurisdiction from which he or she was a fugitive. The court shall grant the motion if the person meets the listed requirements. See discussion of § 16-802 above for the actions that must be taken if the court grants a motion to seal.

§ 16-803.02 (sealing of public records for decriminalized or legalized offenses) – provides that a person arrested for, charged with, or convicted of a criminal offense that was decriminalized or legalized after the date of the arrest, charge, or conviction may file a motion to seal the record at any time. The court shall grant a motion to seal if the arrest was not made in connection with or did not result in any other D.C. or federal charges or convictions against the person. The burden is on the prosecutor to establish by a preponderance of the evidence that the record is not eligible for sealing because the conduct was not decriminalized or legalized.

In cases that do not meet the above requirements, the court may grant a motion to seal if it is in the interest of justice to do so. The burden shall be on the movant to establish by a preponderance of the evidence that it is in the interest of justice to grant relief.

<u>DISTRICT OF COLUMBIA</u>	
Is sealing of records available?, cont'd	<p>See discussion of § 16-802 above for actions that must be taken if the court grants a motion to seal.</p> <p>§ 16-804 (motion to seal) – a motion to seal filed with the court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person’s claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.</p> <p>If the movant files a motion to seal an arrest that is not in the court database or an arrest and related court proceedings that are not in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly. If the court grants such a motion, it shall order that the motion and responsive pleadings be sealed to the same extent and in the same manner as the records pertaining to the arrest and related court proceedings. If the motion is denied, the records can be retained in a non-public file.</p> <p>§ 16-805 (review by court) – provides that, if it plainly appears from the face of the motion and any accompanying documentation that the movant is not eligible for or entitled to relief, the court may dismiss or deny the motion.</p> <p>If the motion is not dismissed or denied, the prosecutor shall file a response to the motion. Upon the filing of such response, the court shall determine whether a hearing is required. If required, it shall be scheduled within 30 days of the response. If no hearing is required, the court shall rule on the motion within 30 days of the response. An order dismissed, granting, or denying a motion for sealing is a final order for purposes of appeal.</p> <p>§ 16-806 (availability of sealed records) – records sealed on grounds of actual innocence pursuant to § 16-802 shall be opened only on order of the court upon a showing of compelling need, except that the movant and the movant’s authorized representative shall be entitled to a copy of the sealed records. A request for sealed records may be made ex parte.</p> <p>Records retained in a nonpublic file pursuant to §§ 16-803, 16-803.01, or 16-803.02 shall be available:</p>

<u>DISTRICT OF COLUMBIA</u>	
Is sealing of records available?, cont'd	<p>(1) To any court, prosecutor, or law enforcement agency for any lawful purpose including the investigation or prosecution of any offense, the determination of whether a person is eligible to have an arrest or conviction sealed or expunged, the determination of conditions of release for a subsequent arrest, the determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes, determining an appropriate sentence if the person is subsequently convicted of another crime, and employment decisions;</p> <p>(2) For use in civil litigation relating to the arrest or conviction;</p> <p>(3) Upon order of the court for good cause shown;</p> <p>(4) Except for records sealed under §§ 16-803.01 and 16-803.02, to any person or entity identified in § 16-801(11)(D), (E), or (F), but only to the extent that such records would have been available to such persons or entities before relief under § 16-803 was granted. Such records may be used for any lawful purpose, including the determination of whether a person is eligible to be licensed in a particular trade or profession and employment decisions; and</p> <p>(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief was granted.</p> <p>Any person, upon making inquiry of the court concerning the existence of records of arrest, court proceedings, or convictions involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available with respect to any issue about that person's knowledge of the individual's record.</p> <p>Except to the extent permitted by this section, all sealed records shall remain sealed.</p>
Is expungement of records available?	<p>Yes, for victims of human trafficking. Pursuant to § 22-1844, a person convicted of an eligible offense may apply by motion to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking. Additionally,</p>

<u>DISTRICT OF COLUMBIA</u>	
Is expungement of records available?, cont'd	<p>a person who was arrested but not prosecuted, or whose prosecution was terminated without conviction, for an eligible or ineligible offense, may apply for expungement of all related records. A movant may file a motion under this section regardless of whether any other person, such as the person who made the movant a victim of trafficking, has been arrested, prosecuted, or convicted for an offense.</p> <p>A person may file a motion under this section only after all criminal proceedings against the person related to the offenses that are the subject of the motion have completed and the person completes any sentence of incarceration, commitment, probation, parole, or supervised release related to the offenses that are the subject of the motion. At the request of the movant or prosecutor, the court may place any record or part of a proceeding related to a motion filed under this section under seal with the motion is pending.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 48-904.01 provides that if any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state, relating to narcotic or abusive drugs or depressant or stimulant substances and has not previously been discharged and had the proceedings dismissed pursuant to this section, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him or her on probation. The court may dismiss the proceedings against such person and discharge the person from probation, if the individual does not violate any of the conditions of the probation. Discharge and dismissal shall be without an adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.</p>

<u>DISTRICT OF COLUMBIA</u>	
Are drug convictions eligible for relief?, cont'd	Upon the dismissal and discharge of proceedings, the individual may apply to the court for an order to expunge all information from official records, other than the nonpublic records retained pursuant to this subsection. If the court determines after a hearing that such person was dismissed and the proceedings against him or her discharged, it shall enter such an order. The effect of such order shall be to restore such person, in the contemplation of law, to the status he or she occupied before the arrest or indictment or information.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>FLORIDA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • FLA. CONST. Art. IV, § 8 (clemency) • FLA. R. CRIM. PROC. 3.692 (2024) (petition to seal or expunge) • FLA. R. CRIM. PROC. 3.693 (2024) (petition to seal or expunge; human trafficking) • FLA. R. CRIM. PROC. 3.394 (2024) (petition to seal or expunge; lawful self-defense expunction) • FLA. STAT. ANN. §§ 940.01 to 940.061 (West 2024) (collectively “Executive Clemency”) • FLA. STAT. ANN. §§ 943.0578 to 943.0595 (West 2024) (included within “Department of Law Enforcement”) • FLA. STAT. ANN. § 943.0595 (West 2024) (automatic sealing of criminal history records; confidentiality of related court records)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1988 (§ 940.04) • April 1, 2003 (§ 940.01) • July 1, 2014 (§§ 940.03, 940.05) • July 1, 2019 (§ 940.061) • October 1, 2019 (§§ 943.0578, 943.0581) • December 19, 2019 (r. 3.692 and 3.694) • June 22, 2021 (§ 943.0584) • October 28, 2021 (r. 3.693) • July 1, 2023 (§§ 943.0585, 943.059, 943.0595)
Pardon provisions	<p>Art. IV, § 8; § 940.01 (clemency; suspension or remission of fines and forfeitures, reprieves, pardons, restoration of civil rights, and commutations) – provides that, except in cases of treason and in cases when impeachment results in conviction, the governor may, by executive order filed with the Secretary of State, and, with the approval of two members of the Cabinet, grant full or conditional pardons and restore civil rights. In cases of treason, the governor may grant reprieves until adjournment of the regular session convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise, the sentence shall be executed.</p> <p>§ 940.03 (application for executive clemency) – requires that a person who intends to apply for a pardon or restoration of civil rights shall request an application form from the Florida Commission on Offender Review in compliance with such rules regarding application for executive clemency as are adopted by the governor with the approval of two members of the Cabinet. Such application may require the submission of a certified copy of the applicant’s indictment or</p>

<u>FLORIDA</u>	
Pardon provisions, cont'd	<p>information, the judgment of guilt, and the sentence, if sentence has been imposed.</p> <p>§ 940.04 (copy of information or indictment to be furnished without charge) – prohibits the clerk of the court from charging a fee for any certified copies of documents required to be submitted with an application for executive clemency.</p> <p>§ 940.05 (restoration of civil rights) – provides that a person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her before conviction if the person has received a full pardon from the Board of Executive Clemency, served the maximum term of the sentence imposed upon him or her, or been granted his or her final release by the Florida Commission on Offender Review.</p> <p>§ 940.061 (informing persons about executive clemency, restoration of civil rights, and restoration of voting rights) – the Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights and the restoration of voting rights resulting from the removal of the disqualification to vote. Each month, the department shall send to the Florida Commission on Offender Review by electronic means a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision who may be eligible for restoration of civil rights.</p> <p>The Florida Commission on Offender Review has adopted 19 rules on executive clemency which can be found here: clemency_rules.pdf (state.fl.us). These rules discuss the types of clemency available, including full pardon, pardon without firearm authority, pardon for misdemeanor, and restoration of civil rights.</p> <ul style="list-style-type: none"> ➤ Rule 5 sets forth the eligibility requirements for pardons and restoration of civil rights. ➤ Rule 6 provides the requirements for applications and supporting documentation. ➤ Rule 9 provides for automatic restoration of civil rights under Florida law without a hearing for felons

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Pardon provisions, cont'd	<p>who have completed all terms of sentence pursuant to Amendment 4 as defined in § 98.0751(2)(a).</p> <ul style="list-style-type: none"> ➤ Rule 10 sets forth the same requirements for individuals who have not yet completed all terms of sentence. ➤ Rules 11 and 12 set forth the requirements for hearings before the clemency board. ➤ Rule 14 provides provisions related to reapplying for clemency. ➤ Rule 16 provides for confidentiality of records and documents. ➤ Rule 18 sets out the requirements for collection of statistics and evaluation of clemency action.
Is sealing of records available?	<p>Yes. Rule 3.692 provides that all relief sought by reason of §§ 943.0585 or 943.059 shall be by written petition, filed with the clerk, and accompanied by a valid certificate of eligibility issued by the Florida Department of Law Enforcement and a sworn statement by the petitioner attesting that he or she satisfies the eligibility requirement in §§ 943.0585(1) or 943.059(1), is eligible for expunction to the best of the petitioner's knowledge, and does not have any other petition to seal or expunge a criminal history record pending before any court.</p> <p>If the petition is granted, the court shall enter its written order so stating and further setting forth the records and agencies or departments to which it is directed. Any request for expunging or sealing of a criminal history record may be denied at the sole discretion of the court. The court may not order a criminal justice agency to expunge or seal a criminal history record until the petitioner has applied for and received a certificate of eligibility.</p> <p>If a petition is granted, the clerk shall, with regard to official records of the court, remove all entries and records subject to the order from the official records of the court, and seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index. In multi-defendant cases, the clerk shall make a certified copy of the contents of the court file that shall be sealed and all references to the petitioner shall be expunged from the original court file.</p>

FLORIDA**Is sealing of records available?, cont'd**

§ 943.059 (court-ordered sealing of criminal history records) – provides that a person is eligible to petition a court to seal a criminal history record when:

- (1) The criminal history record is not ineligible for court-ordered sealing under § 943.0584;
- (2) The person has never, before the date of the application for a certificate of eligibility is filed, been adjudicated guilty in this state of a criminal offense, or been adjudicated delinquent in this state for committing any felony or any of the listed misdemeanor offenses, unless the record of such adjudication of delinquency has been expunged pursuant to § 943.0515;
- (3) The person has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- (4) The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition pertains; and
- (5) The person has never secured a prior sealing or expunction of a criminal history record.

Before petitioning the court to seal a criminal history record, a person seeking to seal a record must apply to the department for a certificate of eligibility for sealing. The department shall issue a certificate if the person satisfies the eligibility criteria set forth above. A certificate is valid for 12 months after issued.

Sets forth the requirements of a petition to seal a record. Provides that a court may order a criminal justice agency to seal a criminal history record, but may not do so until the person seeking to seal a record has applied for and received a certificate of eligibility. The court may order the sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity only, except the court may order the sealing of a record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. This section does not prevent the court from ordering the sealing of only a portion of a record.

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Is sealing of records available?, cont'd	<p>A criminal history record which is ordered sealed by a court pursuant to this section is confidential and exempt from disclosure and is available only to the following persons:</p> <ol style="list-style-type: none"> (1) The subject of the record; (2) The subject's attorney; (3) Criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law; (4) Judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities; or (5) To those entities set forth below for their respective licensing, access authorization, and employment purposes. <p>The subject of the criminal history record sealed under this section or under other provisions of law may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record (a) is a candidate for employment with a criminal justice agency; (b) is a defendant in a criminal prosecution; (c) concurrently or subsequently petitions for relief; (d) is seeking to be employed, licensed, or contracted with the listed entities; (e) is attempting to purchase a firearm from a licensed importer, manufacturer, or dealer and is subject to a criminal history record check under state or federal law; or (f) is seeking to be appointed as a guardian.</p> <p>Subject to the exceptions listed in this section, a person who has been granted a sealing under this section may not be held under any provision of law in this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed record.</p> <p>Information related to the existence of a sealed criminal history record is confidential and exempt, except that the department shall disclose the sealed record to the entities listed above. An employee of such entity may not disclose information relating to the existence of such record except to the person to whom the record relates or to persons having</p>

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Is sealing of records available?, cont'd	direct responsibility for employment, access authorization, or licensure decisions. A person who violates this paragraph commits a misdemeanor of the first degree.
Is expungement of records available?	<p>Yes. See discussion of Rule 3.692 above. Additionally, Rule 3.693 permits a person who is a victim of human trafficking to file a petition for the expunction of a criminal history record pursuant to § 943.0583. The petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking. The petition to expunge is complete only when accompanied by the petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and official documentation of the petitioner's status as a victim of human trafficking, if any exists. The petition need not be accompanied by a certificate of eligibility from the Department of Law Enforcement. For required actions by the clerk after the granting of a petition, see discussion of Rule 3.692 above.</p> <p>Rule 3.694 provides that all relief sought by reason of § 943.0578 shall be by written petition and filed with the clerk. The petition must be accompanied by a valid certificate of eligibility for expunction issued by the department and the petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief. If the petition is granted, the court shall enter an order so stating and setting forth the records and agencies or departments to which it is directed. A petition may be denied at the sole discretion of the court. The court may not order a criminal justice agency to expunge or seal a criminal history record until the petitioner has applied for and received a certificate of eligibility.</p> <p>For required actions by the clerk after the granting of a petition, see discussion of Rule 3.692 above.</p> <p>§ 943.0578 (lawful self-defense expunction) – provides that, notwithstanding other provisions of law, the department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from an appropriate state attorney or statewide prosecutor</p>

FLORIDA**Is expungement of records available?, cont'd**

which states whether an information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense. Sets forth the requirements for petitions to expunge pursuant to this section.

§ 943.0581 (administrative expunction for arrests made contrary to law or by mistake) – provides that the department may adopt a rule for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake. A law enforcement agency, adult, or the parent or legal guardian of a minor may apply to the department for administrative expunction. Sets forth the requirements for applications.

§ 943.0584 (criminal history records ineligible for court-ordered expunction or court-ordered sealing) – sets forth the criminal history records that are ineligible for a certificate of eligibility for expunction pursuant to § 943.0585 or a certificate of eligibility for sealing or a court-ordered sealing pursuant to § 943.059 if the record is for a conviction of a listed offense.

§ 943.0585 (court-ordered expunction of criminal history records) – provides that a person is eligible to petition a court to expunge a criminal history record if:

- (1) An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record;
- (2) An indictment, information, or other charging document was filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction or a judgment of acquittal was rendered by a judge, or a verdict of not guilty was rendered by a judge or jury;
- (3) The person is not seeking to expunge a record that is ineligible under § 943.0584;
- (4) The person has never, as of the date the application for expunction is filed, been adjudicated guilty in this state of a criminal offense or been adjudicated delinquent in this state for committing any felony or

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Is expungement of records available?, cont'd	<p>any of the listed misdemeanors, unless the record of such adjudication of delinquency has been expunged;</p> <p>(5) The person has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;</p> <p>(6) The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains;</p> <p>(7) The person has never secured a prior sealing or expunction of a criminal history record under this section, § 943.059, or a list of former statutes applicable to sealing and expunction of records, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (8) and the record is otherwise eligible for expunction; or</p> <p>(8) The person has previously obtained a court-ordered sealing for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed before trial, without regard to whether the outcome of the trial was other than an adjudication of guilt. The requirement that the record be sealed for a minimum of 10 years does not apply if a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition pertains were dismissed before trial or a judgment of acquittal was rendered by a judge or a verdict of not guilty was rendered by a judge or jury.</p> <p>Requires an individual seeking to expunge a criminal history record to apply to the department for a certificate of eligibility for expunction before filing a petition to expunge such records with a court. Requires the department to adopt rules to establish procedures for applying for and issuing a certificate of eligibility. Further provides that the department shall issue a certificate to a person if he or she satisfies the eligibility criteria set out above and is not ineligible under § 943.0584. A certificate is valid for 12 months after the date issued.</p>

FLORIDA**Is expungement of records available?, cont'd**

Sets forth the requirements for a petition to expunge. Provides that a court may order a criminal justice agency to expunge the criminal history record of a person who complies with the requirements of this section but may not order such expunction until the person has applied for and received a certificate of eligibility.

Provides that a court may order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity only, except that the court may order the expunction of a record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. This section does not prevent the court from ordering the expunction of only a portion of a record. Any request for expunction may be denied at the sole discretion of the court.

The department or other criminal justice agency is not required to act on an order to expunge records when such order does not comply with the requirements of this section.

Any record expunged pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any record in the custody of the department must be retained in all cases. A record retained by the department is confidential and exempt from disclosure and not available to any person or entity except upon order of a court of competent jurisdiction.

The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record (a) is a candidate for employment with the criminal justice agency; (b) is a defendant in a criminal prosecution; (c) concurrently or subsequently petitions for relief under this section, § 943.0583, or § 943.059; or (d) is seeking employment, licensure, or contract with certain listed state agencies.

Subject to the exceptions listed above, a person who has been granted expunction under this section may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason

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Is expungement of records available?, cont'd	<p>of such person's failure to recite or acknowledge an expunged criminal history record.</p> <p>Information relating to the existence of an expunged criminal history record is confidential except that the department shall disclose the existence of such record to the entities set forth in paragraphs (1) and (d) above for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful to disclose information relating to the existence of an expunged record of a person seeking employment, access authorization, or licensure, except to the person to whom the record relates or to persons having direct responsibility for such decisions. A person who violates this paragraph commits a misdemeanor of the first degree.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 943.0595 provides that, notwithstanding any law dealing generally with the preservation and destruction of public records, the department shall adopt rules addressing the automatic sealing of any criminal history record described in this section.</p> <p>Requires the department to automatically seal a criminal history record that does not result from an indictment, information, or other charging document for a forcible felony or for an offense enumerated in § 943.0435(1)(h)1.a.(I), if:</p> <ol style="list-style-type: none"> (1) An indictment, information, or other charging document was not filed or issued in the case giving rise to the record; (2) An indictment, information, or other charging document was filed in the case giving rise to the record, but was dismissed or nolle prosequi by the state attorney or prosecutor or was dismissed by a court as to all counts. However, a person is ineligible for automatic sealing under this section if the dismissal was pursuant to §§ 916.145 or 985.19; (3) A not guilty verdict was rendered by a judge or jury as to all counts. However a person is ineligible if the defendant was found not guilty by reason of insanity; or (4) A judgment of acquittal was rendered by a judge as to all counts.

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>There is no limit to the number of times a person may obtain an automatic sealing for a criminal history record described above.</p> <p>Upon the disposition of a criminal case resulting in a record eligible for automatic sealing, the clerk of the court shall transmit a certified copy of the disposition of the record to the department, which shall seal the record upon receipt of the certified copy. The department shall notify the clerk of the court upon the sealing of the record and the clerk must automatically keep the related court record in the case confidential and exempt from § 119.071(1) and the state constitution.</p> <p>Provides that automatic sealing of a criminal history record and making the related court record confidential and exempt does not require sealing by other criminal justice agencies, or that such record by surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies. Except as provided in this section, automatic sealing has the same effect, and the department and clerk of the court may disclose the record in the same manner, as a record sealed under § 943.059.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>GEORGIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • GA. CONST. Art. IV, § 2, ¶ II (West 2024) (powers and authority) • GA. CODE ANN. § 3-3-23.1 (West 2024) (unlawful sale of alcoholic beverages to, and unlawful purchase and possession of alcoholic beverages by, any person under 21 years of age) • GA. CODE ANN. § 15-1-20 (West 2024) (restrictions on dissemination of criminal history in certain cases) • GA. CODE ANN. § 16-13-2 (West 2024) (conditional discharge for possession as first offense) • GA. CODE ANN. §§ 35-3-34 and 35-3-35 (West 2024) (included within “Georgia Crime Information Center”) • GA. CODE ANN. § 35-3-37 (West 2024) (criminal history record information) • GA. CODE ANN. § 42-2-5.2 (West 2024) (direction of education programs; reentry to society; Program and Treatment Completion Certificate) • GA. CODE ANN. § 42-3-2 (West 2024) (creation of board; membership; rules and regulations) • GA. CODE ANN. § 42-8-62.1 (West 2024) (limitation of public access to information) • GA. CODE ANN. § 42-8-65 (West 2024) (pleading and proof of finding of guilt on subsequent prosecutions; release of records) • GA. CODE ANN. § 42-9-39 (West 2024) (limitations on authority to grant pardons and paroles in certain cases) • GA. CODE ANN. § 42-9-42 (West 2024) (vote required to extend clemency; written opinions; prerequisites to probation, pardon, or parole; terms and conditions; status of parolees; peonage forbidden) • GA. CODE ANN. § 42-9-54 (West 2024) (relief from disabilities; conditional pardons forbidden) • GA. CODE ANN. § 42-9-56 (West 2024) (no power of governor to grant pardons and paroles) • GA. CODE ANN. § 51-1-54 (West 2024) (presumption of due care upon issuance of program and treatment completion certificate or granting of pardon) • GA. COMP. R. & REGS. 475-3-.10 (2024) (other clemency; amended)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1943 (§§ 42-9-54, 42-9-56) • July 1, 2006 (§ 42-9-39) • July 1, 2014 (§ 42-2-5.2) • July 1, 2016 (§§ 15-1-20, 42-8-65) • July 1, 2017 (§§ 42-3-2, 42-9-42, 51-1-54)

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Effective date(s) of most recent substantive amendment(s), cont'd	<ul style="list-style-type: none"> • July 1, 2018 (§ 42-8-62.1) • January 1, 2021 (§§ 3-3-23.1, 16-13-2, 35-3-34, 35-3-35) • July 1, 2021 (475-3-.10) • April 24, 2024 (§ 35-3-37)
Pardon provisions	<p>Art. IV, § 2, ¶ II – vests the power to grant pardons with the State Board of Pardons and Paroles. Provides that when a sentence of death is commuted to life imprisonment, the board shall not have the authority to grant a pardon to the convicted person until such person has served at least 25 years in the penitentiary. Notwithstanding any provisions of this Paragraph, the general assembly, by law, may prohibit the board from granting and may prescribe the terms and conditions for the board's granting a pardon to any person incarcerated for a second or subsequent time for any offense for which such person could have been sentenced to life imprisonment and any person who has received consecutive life sentences as the result of offenses occurring during the same series of acts. Notwithstanding any other provision of this Paragraph, the board shall have the authority to pardon any person convicted of a crime who is subsequently determined to be innocent.</p> <p>§ 42-9-39 – provides that, except as otherwise provided by law, when a person is convicted of murder and sentenced to life imprisonment and such person has previously been incarcerated under a life sentence, such person shall serve at least 30 years before being granted a pardon. Notwithstanding this provision, the board shall have the authority to pardon any person convicted of a crime who is subsequently determined to be innocent of said crime.</p> <p>§ 42-9-42 – provides that no person shall be granted pardon except by a majority vote of the board. A grant of pardon shall be rendered only by a written decision which shall be signed by at least the number of board members required for the relief granted and which shall become a part of such individual's permanent record.</p> <p>§ 42-9-54 – prohibits conditional pardons from being issued and provides that all pardons shall relieve those pardoned from civil and political disabilities imposed because of their convictions.</p>

GEORGIA**Pardon provisions, cont'd**

Pursuant to § 42-9-56, the governor has no authority or power whatsoever over the granting of pardons or paroles.

§ 51-1-54 – provides that the granting of a pardon from the State Board of Pardons and Paroles shall create a presumption of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise engaging in activity with the individual to whom the pardon was granted. Such presumption may be rebutted by relevant evidence which extends beyond the pardon and which was known or should have been known by the person against whom negligence is asserted.

475-3-.10 – provides that a pardon is a declaration of record that a person is relieved from the legal consequences of a particular conviction; it restores civil and political rights and removes all legal disabilities resulting from the conviction. Further provides that a pardon can be granted in two instances:

- (1) To a person who proves he or she is innocent of the crime for which the individual was convicted. The application may be submitted in written form at any time after conviction.
- (2) To a person who has completed his or her full sentence obligation, including serving any probated sentence and paying any fine, and also been free of supervision – custodial or non-custodial – and/or criminal involvement for at least five consecutive years thereafter as well as five consecutive years immediately prior to applying for a pardon, unless the applicant was convicted of a sex offense and is still required to register on the sex offender registry, in which instance the individual must be free of supervision for at least 10 consecutive years thereafter as well as 10 consecutive years immediately prior to applying. The applicable waiting period may be waived if the waiting period is shown to be detrimental to the applicant's livelihood by delaying his or her qualifying for employment in his or her chosen profession.

<u>GEORGIA</u>	
Pardon provisions, cont'd	<p>There is a separate provision for restoration of firearm rights in an initial or subsequent pardon where the initial pardon was granted without firearm rights.</p> <p>This rule also includes a process for individuals convicted of a felony involving moral turpitude who has lost his or her civil and political rights to have such rights restored by applying for a Restoration of Civil and Political Rights. Permits individuals who were convicted under another state's law or under federal law to apply, as well. Such application may only be granted to individuals who have completed their full sentence obligation, including serving any probated sentence and paying any fine, and also been free of supervision – custodial or non-custodial – and/or criminal involvement for at least two consecutive years thereafter as well as two consecutive years immediately prior to applying for restoration of such rights. The waiting period may be waived if it is shown to be detrimental to the applicant's livelihood by delaying his or her qualifying for employment in his or her chosen profession.</p>
Is sealing of records available?	<p>Yes. § 35-3-37 includes a definition of "restrict," which means that criminal history record information of an individual relating to a particular offense shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the Georgia Crime Information Center and shall not be disclosed or otherwise made available to any private persons or businesses or to governmental agencies or licensing and regulating agencies pursuant to § 35-3-35.</p> <p>If an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the appropriate court restrict access to criminal history information for the felony charge within four years of the arrest. If a hearing is requested, the hearing shall be held within 90 days of filing the petition. The court shall hear evidence and grant an order restricting criminal history record information if the court determines that the misdemeanor conviction was not a lesser included offense and that the harm otherwise resulting to the individual</p>

GEORGIA**Is sealing of records available?, cont'd**

clearly outweighs the public interest in the criminal history record information being publicly available.

If an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the appropriate court to restrict access to criminal history record information for such offense. The court shall hear evidence and shall determine whether granting an order is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecutor has not retried the case, and the public's interest in the criminal history record information being publicly available.

If an individual's charged offense has remained on the dead docket for more than 12 months, such individual may petition for an order restricting access to criminal history record information. The court shall hear evidence and shall determine whether an order is appropriate, giving due consideration to the reason the offense was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

If an individual was convicted of a misdemeanor or series of misdemeanors arising from a single incident, provided that such offense was not one of the listed offenses for which record restriction is not appropriate under this subsection, and such individual has completed the terms of his or her sentence and has not been convicted of any crime in any jurisdiction for at least four years prior to filing a petition under this subsection, excluding any conviction for a nonserious traffic offense, and provided, further, that there are no pending charged offenses, such individual may petition the appropriate court to restrict access to the criminal history record information. An individual shall be limited to filing a petition under this paragraph to a lifetime maximum of requesting record restriction on two convictions for a

GEORGIA**Is sealing of records available?, cont'd**

misdemeanor or series of misdemeanors arising from a single incident.

If an individual was arrested on a fugitive from justice warrant, such individual may petition the appropriate court to restrict access to criminal history record information for such warrant.

A defendant convicted of an offense and sentenced, or a defendant who was sentenced pursuant to §§ 42-8-60 or 16-13-2, which such individual was a victim of an offense of trafficking may petition the court to restrict such conviction and the sentence.

If an individual was convicted of an offense for which that individual has been granted a pardon from the State Board of Pardons and Paroles, provided that the offense was not a serious violent felony or a sexual offense, and provided, further, that the individual has no pending charged offenses, the individual may petition the court to restrict access to criminal history record information.

Sets forth the requirements for law enforcement agencies related to restricting access to records for which a petition under this section has been granted.

For criminal history record information maintained by the clerk of the court, an individual whose record has been restricted pursuant to this section may petition the court for an order to seal all criminal history record information maintained by the clerk for such individual's charged offense. The court shall order that such information be restricted and unavailable to the public if the court finds by a preponderance of the evidence that the information has been restricted pursuant to this section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

Except as otherwise provided by this section, as to arrests occurring before July 1, 2013, an individual may, in writing, request that a law enforcement agency restrict information of an arrest. Sets forth the procedures required for this provision.

GEORGIA**Is sealing of records available?, cont'd**

Provides that the center is authorized to provide an individual's criminal history record information to the employers and entities set forth in this section, including for criminal justice purposes and for purposes of disqualifying an individual for employment or appointment to office, and such restriction or sealing shall not supersede any disclosure or consideration of criminal history record information required by federal law.

§ 3-3-23.1 – provides that an individual who has not previously been convicted of any offense under this section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of § 3-3-23(a)(2) or (3), the court may defer further proceedings and place such person on probation. Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may only occur once with respect to any person. At the time of sentencing, a defendant may seek to limit public access to his or her sentencing information and the court may, in its discretion, order that the defendant's records be restricted in accordance with § 35-3-37; the criminal file, docket books, criminal minutes, final record, all other records of the court, and the defendant's criminal history record information in the custody of the court clerk, including within any index, be sealed and unavailable to the public; and the defendant's criminal history record information of arrest, including any fingerprints or photographs taken in conjunction with such arrest, be restricted by law enforcement agencies, jails, or detention centers.

§ 42-8-62.1 – provides that, at the time of sentencing, or during the term of a sentence that was imposed before July 1, 2016, the defendant may seek to limit public access to his or her first offender sentencing information, and the court may, in its discretion, order any of the following:

GEORGIA**Is sealing of records available?, cont'd**

- (1) Restrict dissemination of the defendant's first offender records;
- (2) The criminal file, docket books, criminal minutes, final record, all other records of the court, and the defendant's criminal history record information in the custody of the clerk of the court, including within any index, be sealed and unavailable to the public; and
- (3) Law enforcement agencies, jails, or detention centers to restrict the defendant's criminal history record information of arrest, including any fingerprints or photographs taken in conjunction with such arrest.

An individual who has been exonerated of guilt and discharged pursuant to this article, including those individuals exonerated of guilt and discharged prior to July 1, 2016, may petition the court that granted such discharge for an order to seal and make unavailable to the public the records of the court, and the defendant's criminal history record information in the custody of the court clerk, including within any index. Within 90 days of the filing of such a petition, the court shall order such records sealed if the court finds by a preponderance of the evidence that an exoneration of guilt and discharge has been granted pursuant to this article and the harm otherwise resulting to the privacy of the individual outweighs the public interest in the criminal history record information being publicly available.

When a court orders sealing of court records under this section, the court may also order that records maintained by law enforcement agencies, jails, and detention centers be restricted.

Information sealed or restricted pursuant to this section shall always be available for inspection, copying, and use to criminal justice agencies for criminal justice purposes, pursuant to a court order, and to the individual who is the subject of the records upon court order.

§ 42-8-65 – if otherwise allowable by law, in a subsequent prosecution of a defendant whose records were restricted pursuant to the First Offender Act, when a defendant has not been exonerated of guilt and discharged, the prior finding of guilt may be pleaded and proven as if an adjudication of guilt

<u>GEORGIA</u>	
Is sealing of records available?, cont'd	<p>had been entered and relief had not been granted pursuant to this article.</p> <p>Provides that the records of the Crime Information Center showing treatment as a first offender shall be modified only when a court enters an adjudication of guilt for the offense for which the offender has been sentenced as a first offender; an order modifying the sentence originally imposed; or an order correcting an exoneration of guilt and discharge entered pursuant to § 42-8-60(g).</p> <p>Further provides that any individual who is sentenced pursuant to § 42-8-60(a) or (k) shall not be deemed to have been convicted during such sentence, and records thereof shall only be disseminated by the center to criminal justice agencies, as authorized by § 35-3-37(c), and as authorized by subparagraph (a)(1)(B) of §§ 35-3-34 and 35-3-35. If a court adjudicates the defendant guilty while such defendant is serving a first offender sentence, such records may be disseminated by the center as provided in §§ 35-3-34 and 35-3-35.</p> <p>§ 35-3-34 (dissemination of records and information to private persons and businesses) and § 35-3-35 (dissemination of information to public agencies, political subdivisions, authorities, and instrumentalities) – prohibit the center from providing records of arrests, charges, or dispositions when access has been restricted pursuant to §§ 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1.</p>
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 35-3-37 – provides that access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:</p> <p>(1) Prior to indictment, accusation, or other charging instrument:</p> <p>(a) The offense was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:</p> <p>(i) The offense against such individual is closed by the arresting law enforcement agency. It</p>

<u>GEORGIA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(ii) shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division within 30 days of such decision. A copy of the notice shall be sent to the accused and the accused's attorney, if any; or</p> <p>(iii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting agency or transferred to another law enforcement or prosecutorial agency of this state, any other state, or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual: (A) two years if the offense is a misdemeanor or a misdemeanor of a high and aggravated nature; (B) four years if the offense is a felony, other than a serious violent felony or a felony sexual offense involving a victim under 16 years of age; or (C) seven years if the offense is a serious violent felony or a felony sexual offense involving a victim under 16 years of age.</p> <p>(iv) If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with law. If the center does not receive notice of a charging instrument within 30 days of the applicable time periods set forth in this division, such record shall be restricted by the center for noncriminal justice purposes.</p> <p>(b) The offense was referred to the prosecuting attorney but was later dismissed;</p> <p>(c) The grand jury returned two no bills; or</p> <p>(d) The grand jury returned one no bill and the applicable time period set forth above has expired; and</p> <p>(2) After indictment or accusation:</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(a) Except as otherwise provided in this section, all charged offenses were dismissed, nolle prossed, or reduced to a violation of a local ordinance;</p> <p>(b) The individual was sentenced in accordance with the provisions of § 16-13-2(a) or (c), and either the court ordered restriction upon sentencing as permitted in § 16-13-2 or the individual successfully completed the terms and conditions of his or her probation;</p> <p>(c) The individual pleaded guilty to or was found guilty of a violation of § 3-3-23(2) or (3) and was sentenced in accordance with the provisions of § 3-3-23.1(c) and either the court ordered restriction upon sentencing as permitted in § 3-3-23.1 or the individual successfully completed the terms and conditions of his or her probation;</p> <p>(d) The individual successfully completed a drug court treatment program, mental health treatment program, or veterans treatment program, the individual's offense has been dismissed or nolle prossed, and he or she has not been arrested during such program, excluding any arrest for a nonserious traffic offense; or</p> <p>(e) The individual was acquitted of all of the charged offenses by a judge or jury unless, within 10 days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history information being publicly available because either the prosecuting attorney was barred from introducing material evidence against the individual on legal grounds or the individual has been formally charged with the same or similar offense within the previous five years.</p> <p>Provides that, after the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:</p> <p>(1) The prosecuting attorney affirmatively indicates that the offense was dismissed, nolle prossed, or reduced to a violation of a local ordinance because of a plea</p>

<u>GEORGIA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>agreement, the prosecutor was barred from introducing material evidence, the conduct which resulted in the arrest was part of a pattern of criminal activity which was prosecuted in another court of the state or foreign nation, or the individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;</p> <p>(2) The charged offenses were tried and some, but not all, of the offenses resulted in acquittal; or</p> <p>(3) The individual was acquitted of all charged offenses but it was later determined that the acquittal was the result of jury tampering or judicial misconduct.</p> <p>§ 15-1-20 – provides that, when a case is assigned to an accountability court and the defendant is required to complete a drug court, mental health court, veterans court, or family treatment court division program, as applicable, prior to the entry of the judgment, in contemplation that the defendant's case will be dismissed or nolle prossed, the court may, in its discretion, restrict the dissemination of the defendant's criminal history record information. The court may revoke such order at any time. Criminal history record information shall always be available for inspection, copying, and use to criminal justice agencies for criminal investigative purposes or purposes of criminal justice agency employment, to judicial officials, to the Judicial Qualifications Commission, by a prosecuting attorney or public defendant who submits a sworn affidavit to the clerk that attests that such information is relevant to a criminal proceeding, pursuant to a court order, and by an individual who is the subject of the record upon court order.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. Pursuant to §§ 42-2-5.2 and 42-3-2, the Board of Corrections and the Board of Community Supervision shall create a Program and Treatment Completion Certificate that may be issued to offenders under the rules and regulations of each board. Such certificate shall symbolize an offender's achievements toward successful reentry into society. The rules and regulations relating to the issuance of such certificate shall take into account an offender's disciplinary record, probation's violations of probation, and any other factor the boards deem relevant to an individual's qualification for such certificate. Each board's rules and regulations shall specify eligibility considerations and requirements for completion of such certificate. An offender</p>

<u>GEORGIA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>who was convicted of a serious violent felony shall not be eligible for such certificate.</p> <p>§ 51-1-54 – provides that the granting of a certificate from the Board of Corrections or Board of Community Supervision shall create a presumption of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise engaging in activity with the individual to whom the certificate was granted. Such presumption may be rebutted by relevant evidence which extends beyond the certificate and which was known or should have been known by the person against whom negligence is asserted.</p>
Are drug convictions eligible for relief?	<p>Yes. § 16-13-2 – provides that, whenever any person who has not previously been convicted of any offense under this chapter or any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of such drug, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the person on probation. Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may only occur once with respect to any person.</p> <p>At the time of sentencing, the defendant may seek to limit public access to his or her sentencing information, and the court may, in its discretion, order that the defendant's records be restricted in accordance with § 35-3-37; the criminal file, docket books, criminal minutes, final record, all other records of the court, and the defendant's criminal history record information in the custody of the court clerk, including within any index, be sealed and unavailable to the public; and the defendant's criminal history record information of arrest, including any fingerprints or photographs taken in conjunction with such arrest, be restricted by law enforcement agencies, jails, or detention centers. When considering the defendant's request under this</p>

<u>GEORGIA</u>	
Are drug convictions eligible for relief?, cont'd	paragraph, the court shall weigh the public's interest in the defendant's criminal history record information being publicly available and the harm to the defendant's privacy and issue written findings of fact thereupon.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>HAWAII</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • HAW. CONST. Art. V, § 5 (West 2024) • HAW. REV. STAT. ANN. § 353-72 (West 2024) (pardons; reference to paroling authority) • HAW. REV. STAT. ANN. §§ 706-622.5 to 706-622.9 (West 2024) (included within “Probation”) • HAW. REV. STAT. ANN. §§ 712-1255 and 712-1256 (West 2024) (included within “Offenses Related to Drugs and Intoxicating Compounds”) • HAW. REV. STAT. ANN. § 831-3.1 and 831-3.2 (West 2024) (included within “Uniform Act on Status of Convicted Persons”) • HAW. REV. STAT. ANN. § 831-5 (West 2024) (certificate of discharge) • HAW. REV. STAT. ANN. §§ 853-1 to 853-4 (West 2024) (collectively “Criminal Procedure: Deferred Acceptance of Guilty Plea, Nolo Contendere Plea”) • H.B. 1595, 32nd Leg., Reg. Sess. (Haw. 2024)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1978 (Art. V, § 5) • 1984 (§ 712-1256) • 1987 (§ 712-1255) • 2006 (§ 706-622.8) • July 9, 2012 (§ 853-1) • June 4, 2018 (§§ 831-3.1, 831-3.2) • January 11, 2020 (§ 706-622.5) • June 17, 2022 (§ 853-4) • January 1, 2024 (§ 353-72) • June 21, 2024 (H.B. 1595) • July 2, 2024 (§ 706-622.9)
Pardon provisions	<p>Art. V, § 5 – vests the governor the power to grant reprieves, commutations, and pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same. Permits the legislature, by general law, to authorize the governor to grant pardons before conviction, to grant pardons for impeachment, and to restore civil rights denied by reason of conviction of offenses by tribunals other than those of Hawaii.</p> <p>§ 353-72 – provides that the director of corrections and rehabilitation and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon.</p>

<u>HAWAII</u>	
Is sealing of records available?	Yes. See discussion of § 831-3.2 below.
Is expungement of records available?	<p>Yes. See discussion of drug convictions below.</p> <p>§ 706-622.9 (sentencing for first-time property offenders; expungement) – notwithstanding any law to the contrary, a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under applicable statutes shall be eligible to be sentenced to probation if:</p> <ol style="list-style-type: none"> (1) The court has determined that the person is nonviolent; (2) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse; (3) The court has determined that the offense for which the person is being sentenced is related to the person's substance abuse dependency or addiction; (4) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person's history, including whether treatment has previously been afforded to the person, and an appraisal of the person's current circumstances and attitude; and (5) Except for those persons directed to treatment under the supervision of the drug court, the person presents a proposal to receive treatment in accordance with the treatment plan prepared by a certified counselor through a treatment program that includes an identified source of payment for the program. <p>An eligible person may be sentenced to probation to undergo and complete a treatment program if the court determines that the person can benefit from treatment and the person should not be incarcerated to protect the public.</p> <p>Upon written application from a person sentenced under this part or a probation officer, the court shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for expungement under</p>

HAWAII**Is expungement of records available?, cont'd**

this subsection only if the person has not been previously convicted of a felony offense in this or another jurisdiction.

A person sentenced before June 22, 2006, for any class C felony property offense and who would have qualified for sentencing pursuant to this section had that person been sentenced after the enactment of this section, and who otherwise meets all the requirements of this section for expungement, may apply to a court for expungement of the record of conviction for the property offense.

The court, upon written application from the person, shall issue an order to expunge the record of conviction if:

- (1) The person has complied with the terms of the sentence imposed by the court;
- (2) The court finds that the person would in fact have qualified for expungement pursuant to this section;
- (3) The person has not been convicted of a felony offense in this or any other jurisdiction before or after the conviction for which the person is applying for expungement; and
- (4) The court makes the finding that the person is currently nonviolent.

If the court cannot make the finding that the person fulfilled the criteria required at the time of sentencing, the court may still issue an order expunging the record provided that the court finds the person has successfully completed a substance abuse treatment program.

A person granted an expungement under this subsection shall not be eligible for another expungement under this section.

§ 853-1 (deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records) – upon proper motion as provided by this chapter, when a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor and it appears to the court that the defendant is not likely again to engage in a criminal course of conduct and the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court,

HAWAII**Is expungement of records available?, cont'd**

without accepting the plea of nolo contendere or entering a judgment of guilt, and with the consent of the defendant and considering the recommendations, if any, of the prosecutor, may defer further proceedings.

Upon the defendant's completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge. Discharge and dismissal shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction. Upon discharge and dismissal, the defendant may apply for expungement not less than one year following discharge, pursuant to § 831-3.2.

§ 853-4 (chapter not applicable; when) – sets forth the offenses which make an individual ineligible for discharge and dismissal under this chapter.

§ 831-3.1 – prohibits the state and any of its branches, political subdivisions, and agencies from considering as justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of any crime that has been expunged. Sets forth a list of employment positions to which this prohibition applies.

§ 831-3.2 (expungement orders) – provides that the attorney general or his or her duly authorized representative, upon written application from a person arrested for, or charged with but not convicted of a crime, or found eligible for redress under chapter 661B, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not be issued:

- (1) In the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture;
- (2) For a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture;
- (3) In the case of an arrest of any person for any offense where conviction has not been obtained because the

HAWAII**Is expungement of records available?, cont'd**

- person has rendered prosecution impossible by absenting oneself from the jurisdiction;
- (4) In the case of a person who was involuntarily hospitalized pursuant to § 706-607, or who was acquitted or had charges dismissed pursuant to chapter 704 due to a physical or mental disease, disorder, or defect; and
- (5) For a period of one year upon discharge of the defendant and dismissal of the charge against the defendant in the case of a deferred acceptance of guilty plea or nolo contendere plea, in accordance with chapter 853.

Any person entitled to an expungement order under this section may, by written application, also request return of all fingerprints or photographs taken in connection with the person's arrest.

Upon the issuance of the expungement certificate, the applicant shall be treated as not having been arrested in all respects not otherwise provided for in this section. Further, all arrest records pertaining to the arrest that are in the custody or control of any law enforcement agency of the state or any county government, and that are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file.

Records filed under this subsection shall not be divulged except upon inquiry by (a) a court of law or an agency thereof which is preparing a presentence investigation for the court; (b) an agency of the federal or state government which is considering the subject person for a position immediately and directly affecting the national or state security; or a law enforcement agency acting within the scope of their duties. Response to any other inquiry shall not be different from responses made about persons who have no arrest records.

The attorney general or his or her duly authorized representative shall issue to the person for whom an expungement order has been entered a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the

<u>HAWAII</u>	
Is expungement of records available?, cont'd	<p>person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.</p> <p><i>(eff. until July 1, 2025)</i> Any person for whom an expungement order has been entered may request in writing that the court seal or otherwise remove all judiciary files and other information pertaining to the applicable arrest or case from the judiciary's publicly accessible electronic databases. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.</p> <p><i>(eff. July 1, 2025)</i> The court shall seal or otherwise remove from the judiciary's publicly accessible electronic databases all judiciary files and other information pertaining to the applicable arrest or case of any person for whom an expungement order listing the court case number has been entered and transmitted to the court. The court shall make good faith diligent efforts to seal or otherwise remove the applicable files and information within a reasonable time.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. Under a pilot project established pursuant to H.B. 1595, the department of the attorney general is required to establish and administer a pilot project beginning on the effective date of the act and ending on October 1, 2025, for a state-initiated project to expunge certain arrest records relating to the offense of possessing marijuana under § 712-1249. For purposes of the pilot project, the department shall use existing funding and resources of the Hawaii criminal justice data center.</p> <p>Provides that, notwithstanding § 831-3.2, or any other law to the contrary, the department shall issue, without a written application by the holder of an arrest record and on the department's own initiative, an expungement order annulling, cancelling, and rescinding the arrest record where:</p> <ol style="list-style-type: none"> (1) The arrest occurred before January 11, 2020; (2) The arrest resulted in a single charge of violating § 712-1249 for possessing marijuana; (3) The arrest occurred in a county having a population greater than 200,000 and less than 500,000 persons;

<u>HAWAII</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(4) The criminal case terminated with a final disposition other than a conviction; and</p> <p>(5) An expungement order is not otherwise prohibited by law.</p> <p>The holder of the arrest record shall not be charged any fee for the issuance of an expungement order. Upon the issuance of the expungement order, a person whose arrest record has been expunged shall be treated as not having been arrested in all respects not otherwise provided for in § 831-3.2. All records pertaining to the arrest that are in the custody or control of any law enforcement agency of the state or any county government, and that are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the arrest records in a confidential file.</p> <p>An arrest record expunged pursuant to this section shall not be divulged except upon inquiry by:</p> <ol style="list-style-type: none"> (1) A court of law or an agency thereof that is preparing a presentence investigation for the court; (2) An agency of the federal or state government that is considering the subject person for a position immediately and directly affecting the national or state security; or (3) A law enforcement agency acting within the scope of its duties. <p>Response to any other inquiry shall not be different from responses made about persons who have no arrest records.</p> <p>Any person who is eligible for expungement pursuant to this section may request a copy of the person's criminal history to verify whether the record has been updated, upon payment of a reasonable fee to be set by the department of the attorney general. Further, such person may request in writing and obtain from the department, for a reasonable fee, an expungement certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. The statement shall not make the person subject to</p>

<u>HAWAII</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>any action for perjury, civil suit, discharge from employment, or any other adverse action.</p> <p>Requires the criminal justice data center to submit a report to the legislature regarding the progress of the pilot project no later than 20 days prior to the convening of the regular sessions of 2025 and 2026. Sets forth the elements required to be submitted.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 706-622.5 (sentencing for drug offenders; expungement) – notwithstanding any law to the contrary, a person convicted for the first or second time for any offense under § 329-43.5, except offenses under subsections (a) and (b) of that section which constitute violations, involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, but not including any offense under such chapter involving the distribution or manufacture of any such drugs or substances, and not including any methamphetamine offenses, is eligible to be sentenced to probation under this section if:</p> <ol style="list-style-type: none"> (1) The court has determined that the person is nonviolent; (2) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse; and (3) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive treatment in accordance with a treatment plan prepared by a certified counselor through a treatment program that includes an identified source of payment for the program. <p>An eligible person may be sentenced to probation to undergo and complete a treatment program if the court determines that the person can benefit from such treatment and the person should not be incarcerated to protect the public.</p>

HAWAII**Are drug convictions eligible for relief?, cont'd**

Upon written application from a person sentenced under this part or a probation officer, the court shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section who has not previously been sentenced under this section shall be eligible for one time only for expungement under this subsection.

Upon motion from a person convicted for the possession of marijuana arising from a set of facts and circumstances that resulted in no other criminal charge, the court shall grant an expungement order pertaining to the conviction for the offense; provided that the amount of marijuana for which the person was convicted was three grams or less.

§ 706-622.8 (first-time drug offender prior to 2004; probation; expungement) – a person sentenced prior to July 1, 2004, for a first-time drug offense and who otherwise meets all the requirements of § 706-622.5, may apply to the court for expungement of the record of conviction for the drug offense. The court shall issue an order to expunge such record; provided the person has successfully completed a substance abuse treatment program and has complied with the other terms and conditions set by the court. A person granted an expungement of conviction under this section or § 706-622.5 shall not be eligible for another expungement or conviction under this section or § 706-622.5.

§ 712-1255 (conditional discharge) – whenever any person who has not previously been convicted of any offense under this chapter or chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting such substance, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation upon terms and conditions. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications

<u>HAWAII</u>	
Are drug convictions eligible for relief?, cont'd	<p>or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.</p> <p>§ 712-1256 (expunging of court records) – upon the discharge and dismissal of a person pursuant to § 712-1255, the person, if not over 20 years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to the person’s arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person was not over 20 at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status the person occupied before such arrest, indictment, or information. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of the person’s failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of the person for any purpose.</p>
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>IDAHO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IDAHO CONST. Art. IV, § 7 (West 2024) (the pardoning power) • IDAHO CODE ANN. §§ 20-1015 to 20-1018 (West 2024) (included within “Idaho Commission of Pardons and Parole”) • IDAHO CODE ANN. § 67-3004 (West 2024) (fingerprinting and identification—shielding of records from disclosure) • IDAHO ADMIN. CODE r. 50.01.01.550 (2024) (pardon) • IDAHO CT. ADMIN. R. 32 (2024) (records of the judicial department—examination and copying—exemption from and limitations on disclosure)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • November 4, 1986 (Art. IV, § 7) • July 1, 2021 (§§ 20-1015, 20-1017, 20-1018) • March 23, 2022 (r. 50.01.01.550) • July 1, 2023 (§ 20-1016) • January 1, 2024 (§ 67-3004, R. 32)
Pardon provisions	<p>Art. IV, § 7 – creates the board of pardons which is vested with the power, only as provided by statute, to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. Provides that no pardon shall be granted except by the decision of a majority of the board, after a full hearing in open session. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.</p> <p>Provides that the governor has the power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons, and such board shall at such session continue or determine such respite or reprieve or they may commute or pardon the offense. In cases of conviction for treason, the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve.</p>

IDAHO**Pardon provisions, cont'd**

§ 20-1015 (respites and reprieves) – provides that the governor has the power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or imprisonment on impeachment, but such respites or reprieves shall not extend beyond the next session of the commission, and such commission shall at such session continue or determine such respite or reprieve or may commute or pardon the offense.

In cases of conviction for treason, the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve.

§ 20-1016 (commutations and pardons) – provides that the commission shall have full and final authority to grant commutations and pardons after conviction and judgment in all cases of offenses against the state except treason or impeachment and as otherwise provided in this section.

Further provides that the commission has the authority to grant pardons after conviction and judgment for offenses, or conspiracies to commit any offense, for which the maximum punishment allowed by law at the time of sentencing is death or life imprisonment only after first presenting a recommendation to the governor. If the governor approves the recommendation within 30 days of presentment, the commission's pardon shall issue. If the governor rejects the recommendation or takes no action before the passage of 30 days, no pardon shall issue from the commission, and the recommendation shall be of no force or effect. Sets forth the offenses to which this provision does not apply.

§ 20-1017 (required publications and limitation on applications for commutations and pardons) – the commission may in its discretion consider but one application for pardon from any one person in any 12-month period.

§ 20-1018 (notice of granted pardon, commutation, or remission of fines and forfeitures) – provides that when a pardon is granted, the executive director shall:

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Pardon provisions, cont'd	<p>(1) Retain an original pardon at the commission; (2) File a copy of the original pardon in the office of the secretary of state; (3) Provide an original pardon to the petitioner; (4) File notice with the state courts that a pardon has been granted in the case; and (5) Provide such additional notice that a pardon has been granted as the commission may adopt by rule.</p> <p>50.01.01.550 – a pardon may be considered for a person convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant’s criminal history. An application for a pardon may not be considered until the requisite time period, ranging from 5-15 years, has elapsed since the applicant’s discharge from custody. An applicant must have paid all restitution and fines as ordered by the sentencing court.</p>
Is sealing of records available?	<p>Yes. § 67-3004 – provides that, in addition to other remedies available to an individual (see discussion of this section related to expungement below), any person arrested for, prosecuted for, or convicted of a misdemeanor that is not an assaultive or violent misdemeanor listed in this subsection or arrested for, prosecuted for, or convicted of felony possession of a controlled substance may petition the court to have the person’s record be shielded from disclosure in accordance with rules adopted by the Idaho supreme court and within the capabilities of its record-keeping system.</p> <p>To be eligible to have records shielded from disclosure under this subsection, a petitioner must file a petition no earlier than five years after completing the person’s sentence, including all ordered probation, parole, fines, and restitution; provide that during such five year period and until the time of a hearing on the petition, the petitioner has not had any subsequent felony or misdemeanor convictions and is not on probation or parole for a subsequent conviction, has no misdemeanor or felony cases pending against him or her, and has no restraining orders in effect at the time of filing the petition to shield the records.</p> <p>If the court finds, after a hearing, that the petitioner is eligible to have his or her records shielded and further finds that the petitioner has been held accountable and that shielding the petitioner’s record from disclosure would not</p>

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Is sealing of records available?, cont'd	<p>compromise public safety or the safety of any victims, the court shall order all records in the petitioner's case in the custody of the court to be shielded from disclosure and unavailable for public viewing. Upon such a shielding, the court shall notify the state police and, upon receipt of the notification, the state police shall make any law enforcement investigatory reports and fingerprint records unavailable for public viewing. Provides that there shall be a special index of the shielding proceedings and records shall be kept by the court ordering the shielding, which shall not be available to the public absent a court order. Except as otherwise provided by law, and other than in a judicial proceeding or as part of the licensing process for peace officers, upon the entry of the order, the proceedings in the petitioner's case shall be deemed never to have occurred, and the petitioner may lawfully reply accordingly to any inquiry in the matter.</p> <p>Requires the court ordering records to be shielded to notify the supreme court of the shielding, and the supreme court shall maintain a record of all records shielded, searchable by the name of the person whose records are shielded. It is the policy of the state of Idaho that records shielded from disclosure shall not be available to the public but may be accessed at any time by the subject of the petition, by law enforcement personnel, and by court officers to the extent permitted by court rules.</p> <p>Provides that a person whose records are shielded shall, upon a subsequent felony conviction and upon request by the prosecutor, have such shielding revoked by the court as part of the sentencing and may, upon a subsequent misdemeanor conviction and upon request by the prosecutor, have the shielding revoked.</p> <p>To the extent permitted by court rules, a POST-certified peace officer or prosecuting attorney shall have complete access to and use of all records shielded from disclosure pursuant to this subsection for purposes including, but not limited to, communicating with crime victims, all in-court purposes and hearings, investigations, and enhancements.</p> <p>Provides that a person may have only one petition granted during such person's lifetime to have one of the crimes eligible under this subsection, or more than one eligible</p>

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Is sealing of records available?, cont'd	<p>crime under this subsection if committed in a single incident or transaction, shielded from disclosure.</p> <p>R. 32 – provides that physical and electronic records may be disclosed or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis.</p> <p>Any person, or the court on its own motion, may move to disclose, redact, seal, or unseal a part or all of the records in any judicial proceeding. The court shall hold a hearing on the motion and may order that the record immediately redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons. In ruling on whether specific records should be disclosed, redacted, or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court redacts or seals records to protect privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Provides that, before a court may enter an order redacting or sealing records, it must make one or more of the six listed determinations in writing.</p> <p>Provides that when a record is sealed under this rule, it shall not be subject to examination, inspection, or copying by the public. When an order sealing or redacting records is issued, the court shall also inform the clerk of the district court which specific files, documents, and case management system records are to be sealed or redacted. If the court maintains physical files, sealed files shall be marked “sealed” on the outside of the file. If electronic files, the clerk shall designate the security group of the sealed or redacted records as sealed thereby limiting access in accordance with the court’s order. A redacted copy, so marked, shall be substituted for the originals in the court file.</p> <p>Further provides that, upon entry of an order shielding records pursuant to § 67-3004(11), all court records of the case in which such order is entered shall be shielded from public disclosure. Provided, such records may still be accessed by:</p> <p style="padding-left: 40px;">(1) The defendant;</p>

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Is sealing of records available?, cont'd	<p>(2) Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting within the scope of their duties; or</p> <p>(3) Law enforcement personnel and prosecuting attorneys acting in the exercise of their official duties and powers.</p> <p>If the shielding of records is later revoked, all records subject to the revocation shall again be open to public disclosure.</p>
Is expungement of records available?	<p>Yes. § 67-3004 – provides that any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons, or who has had all charges dismissed, may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department and may have the official court file thereof sealed. This provision does not apply to any dismissal granted pursuant to § 19-2604(1) related to the discharge and dismissal of certain listed offenses.</p> <p>Note that the Idaho Supreme Court has found that the provision permitting the official court file to be sealed is unconstitutional under Idaho law as a statute could not “confer authority on district court to seal records...as it impinged on the Supreme Court's prerogative to make its own rules governing court procedures...” and the provision was an impermissible violation of the separation of powers doctrine (<i>State v. Oldenburg</i>, 173 Idaho 55 (Nov. 17, 2023)). The court added that, although sealing of his court records under this statute was unconstitutional, the defendant could still make a similar request to seal his court records under IDAHO CT. ADMIN. R. 32(i) (see discussion of this rule in the section on sealing above).</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related drug convictions.

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Miscellaneous provisions	None.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ILL. CONST. Art. V, § 12 (West 2024) (governor—pardons) • 20 ILL. COMP. STAT. ANN. 2630/5.2 (West 2024) (expungement, sealing, and immediate sealing) • 20 ILL. COMP. STAT. ANN. 2630/12 to 2630/14 (West 2024) (included within “Criminal Identification Act”) • 730 ILL. COMP. STAT. ANN. 5/3-3-2 (West 2024) (powers and duties) • 730 ILL. COMP. STAT. ANN. 5/3-3-13 (West 2024) (procedure for executive clemency) • 730 ILL. COMP. STAT. ANN. 5/5-5-5 (West 2024) (loss and restoration of rights) • 730 ILL. COMP. STAT. ANN. 5/5-5.5-5 to 5/5-5.5-50 (West 2024) (collectively “Discretionary Relief from Forfeitures and Disabilities Automatically Imposed by Law”) • 730 ILL. COMP. STAT. ANN. 166/35 (West 2024) (violation; termination; dismissal from program) • 775 ILL. COMP. STAT. ANN. 5/2-103 (West 2024) (arrest record)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • January 1, 2004 (5/5-5.5-10, 5/5-5.5-45, 5/5-5.5-50) • January 1, 2010 (5/5-5.5-35) • January 1, 2016 (5/5-5.5-30) • January 1, 2018 (2630/12) • January 1, 2020 (5/5-5.5-25) • August 20, 2021 (2630/13, 2630/14, 5/2-103, 5/3-3-2, 5/5-5.5-40) • June 2, 2022 (166/35) • November 17, 2023 (5/5-5-5) • January 1, 2024 (5/3-3-13, 5/5-5.5-15) • July 1, 2024 (2630/5.2, 5/5-5.5-5)
Pardon provisions	<p>Art. V, § 12 – vests the governor with the power to grant pardons, after conviction, for all offenses on such terms as the governor thinks proper. Provides that the manner of applying for a pardon may be regulated by law.</p> <p>5/3-3-13 – requires that petitions seeking pardon be addressed to the governor and filed with the Prisoner Review Board. Applications shall include a brief history of the case, the reasons for seeking clemency, and other relevant information the board may require. If a petition is denied by the governor, the board may not accept a new petition from the same person until one full year has passed from the date of denial. This requirement may be waived if the petitioner offers in writing new information that was unavailable at the</p>

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Pardon provisions, cont'd	<p>time of filing the prior petition and which the chairman determines to be significant. The one year requirement may also be waived if the petitioner can show a change in circumstances of a compelling humanitarian nature has arisen since the denial of the prior petition.</p> <p>Provides that the board shall confidentially advise the governor by a written report of its recommendations, which shall be determined by majority vote. The governor shall decide each application and communicate his or her decision to the board which shall notify the petitioner. Nothing in this section shall be construed to limit the power of the governor under the constitution to grant a pardon.</p> <p>2630/5.2 – provides that the Department of State Police shall review all criminal history record information and identify all records that meet the following criteria:</p> <ol style="list-style-type: none"> (1) One or more convictions for a minor cannabis offense; (2) The conviction did not include a penalty enhancement; and (3) The conviction is not associated with a conviction for a violent crime. <p>The department shall notify the Prisoner Review Board of all such records meeting the above criteria. The board shall make a confidential and privileged recommendation to the governor as to whether to grant a pardon authorizing expungement for each of the records identified by the department. If an individual has been granted a pardon authorizing expungement, the board shall file a petition for expungement, which may include more than one individual. No objection to the petition may be filed. Within 90 days of the filing of such petition, the court shall enter an order expunging the records.</p>
Is sealing of records available?	<p>Yes. 2630/5.2 – defines “seal” to mean to physically and electronically maintain the records, unless the records would otherwise be destroyed due to age, but to make the records unavailable without a court order, subject to the exceptions included in this act. The petitioner’s name shall also be obliterated from the official index required to be kept by the circuit court clerk, but any index issued by the circuit court</p>

ILLINOIS**Is sealing of records available?, cont'd**

clerk before the entry of the order to seal shall not be affected.

Permits the victim of a sexual offense to petition to have a court order sealing the records of court proceedings, but the records of the arresting authority and Illinois State Police shall not be sealed.

Except as otherwise provided by this section, the court shall not order the sealing or expungement of the records of arrests or charges not initiated by arrest that result in an order of supervision for or conviction of certain listed offenses.

Notwithstanding any other provision of this act to the contrary, and cumulative with any rights to expungement of criminal records, this subsection authorizes the sealing of criminal records of adults and of minors prosecuted as adults. Provides that the following records can be sealed:

- (1) All arrests resulting in release without charging;
- (2) Arrests or charges not initiated by arrest resulting in acquittal, dismissal, or conviction when the conviction was reversed or vacated, except as excluded by this section;
- (3) Arrests or charges not initiated by arrest resulting in orders of supervision, including orders of supervision for municipal ordinance violations, successfully completed by the petitioner, unless excluded by this section;
- (4) Arrests or charges not initiated by arrest resulting in convictions, including convictions on municipal ordinance violations, unless otherwise excluded by this section;
- (5) Arrests or charges not initiated by arrest resulting in orders of first offender probation; and
- (6) Arrests or charges not initiated by arrest resulting in felony convictions unless otherwise excluded by this section.

Sets forth the time periods that must elapse before records are eligible to be sealed. Further, a person may not have subsequent felony conviction records sealed if he or she is convicted of any felony offense after the date of the sealing of prior felony convictions as provided in this subsection.

ILLINOIS**Is sealing of records available?, cont'd**

The court may, upon such subsequent conviction, order the unsealing of prior felony conviction records previously ordered sealed. Upon entry of a disposition for an eligible record under this subsection, the petitioner shall be informed by the court of the right to have records sealed and the procedures for sealing such records.

Sets forth the required procedures for petitioning for sealing or expungement of records under this section. If arrests occurred or charges were brought in multiple jurisdictions, a petition must be filed in each jurisdiction. The petitioner shall pay the applicable fee, except no fee shall be required if the petitioner has obtained a court order waiving fees or it is otherwise waived.

Unless there is an objection from the State's Attorney or prosecutor within the required time period, the court shall enter an order granting or denying the petition. The court shall not deny a petition for sealing under this section because the petitioner has not satisfied an outstanding legal financial obligation established, imposed, or originated by a court, law enforcement agency, or a municipal, state, county, or other unit of local government including, but not limited to, any cost, assessment, fine, or fee. An outstanding legal financial obligation does not include any court ordered restitution to a victim unless the restitution has been converted to a civil judgment. Nothing in this paragraph waives, rescinds, or abrogates a legal financial obligation or otherwise eliminates or affects the right of the holder of any financial obligation to pursue collection under applicable federal, state, or local law.

If there is an objection, the court shall schedule a hearing. After entering an order to expunge or seal records, the court must provide copies to the Illinois State Police, the petitioner, the State's Attorney or prosecutor, the arresting agency, the chief legal officer of the unit of local government effecting the arrest, and to such other criminal justice agencies as may be ordered by the court.

Upon entry of an order to seal records, every agency holding such records shall seal the records. In response to an inquiry for such records, from anyone not authorized by law to access such records, the agency receiving the request shall

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Is sealing of records available?, cont'd	<p>reply as it does in response to inquiries when no records ever existed.</p> <p>Upon motion, the court may order that a sealed judgment or other court record necessary to demonstrate the amount of any legal financial obligation due and owing be made available for the limited purpose of collecting such obligation.</p> <p>Provides that when a person who has been convicted of an offense is granted a certificate of eligibility for sealing by the Prisoner Review Board which specifically authorizes sealing, he or she may have a court order entered sealing the record of arrest and order that the records of the circuit court clerk and Illinois State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the petitioner obliterated from the official index. All records sealed by the state police may be disseminated only as required by this act or to the arresting authority, a law enforcement agency, the State's Attorney, and the court upon a later arrest for the same or similar offense or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the state police pertaining to that individual.</p> <p>This section also permits an individual to file a petition for immediate sealing of eligible records, that is, those arrests or charges not initiated by arrest resulting in acquittal or dismissal with prejudice that occur on or after January 1, 2018. Such records may be sealed immediately after entry of the final disposition of a case, notwithstanding the disposition of other charges in the same case. Upon entry of a disposition for an eligible record, the court shall inform the defendant of the right to have such records immediately sealed. The presiding trial judge shall enter an order granting or denying the petition during the hearing in which it is filed. Petitions for immediate sealing shall be ruled on in the same hearing in which the final disposition of the case is entered.</p> <p>2630/12 (entry of order; effective of expungement or sealing records) – provides that, except with respect to law enforcement agencies, the Department of Corrections, State's Attorneys, or other prosecutors, and as provided in</p>

ILLINOIS**Is sealing of records available?, cont'd**

2630/13 (see below), an expunged or sealed record may not be considered by any private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration. Applications for employment must contain specific language that the applicant is not obligated to disclose sealed or expunged records of conviction or arrest.

A person whose records have been sealed or expunged is not entitled to remission of any fines, costs, or other money paid as a consequence of the sealing or expungement. Persons engaged in civil litigation involving criminal records that have been sealed may petition to the court to open the records for the limited purpose of using them in the course of litigation.

2630/13 (retention and release of sealed records) – provides that the Illinois State Police shall retain records sealed or impounded under certain provisions and shall release them only as authorized by this act. Felony records sealed or impounded shall be used and disseminated by the state police only as otherwise specifically required or authorized by a federal or state law, rule, or regulation that requires inquiry into and release of criminal records. However, all requests for records that have been expunged, sealed, and impounded and the use of those records are subject to the provisions of § 2-103 of the Illinois Human Rights Act. Upon conviction for any offense, the Department of Corrections shall have access to all sealed records pertaining to that individual.

Notwithstanding the foregoing, all sealed or impounded records are subject to inspection and use by the court and inspection and use by law enforcement agencies and State's Attorneys or other prosecutors in carrying out the duties of their offices. Sealed or impounded records are exempt from disclosure under the Freedom of Information Act.

The state police shall commence the sealing of records of felony arrests and convictions pursuant to the provisions of 2630/5.2(c) no later than one year from the date that funds are made available for purposes of establishing the technologies necessary.

ILLINOIS**Is sealing of records available?, cont'd**

5/3-3-2 – related to the powers and duties of the Prisoner Review Board. Provides that, upon a petition by a person who has been convicted of a Class 3 or 4 felony and who meets the requirements of this paragraph, the board shall hear by at least three members and, with the unanimous vote of a panel of three members, issue a certificate of eligibility for sealing recommending that the court order the sealing of all official records of the arresting authority, the criminal court clerk, and the Illinois State Police concerning the arrest and conviction for the felony. A person may not apply for a certificate of eligibility for sealing:

- (1) Until five years have elapsed since the expiration of his or her sentence;
- (2) Until five years have elapsed since any arrests or detentions by a law enforcement officer for an alleged violation of law, other than a petty offense, traffic offense, conservation offense, or local ordinance offense;
- (3) If convicted of a violation of certain drug-related offenses unless the petitioner has completed a drug abuse program for the offense on which sealing is sought and provides proof that he or she has completed the program successfully; or
- (4) If convicted of certain other listed offenses.

Provides that if a person has applied to the board for a certificate of eligibility for sealing and the board denies the certificate, the person must wait at least four years before filing again or filing for pardon from the governor unless the chairman of the Prisoner Review Board grants a waiver. The decision to issue or refrain from issuing a certificate of eligibility for sealing shall be at the board's sole discretion and shall not give rise to any cause of action against either the board or its members. The board may only authorize the sealing of Class 3 and 4 felony convictions from one information or indictment under this paragraph. A petitioner may only receive one certificate of eligibility for sealing under this provision for life.

5/2-103 – provides that it is a civil rights violation for any employer, employment agency, or labor organization to inquire into or to use an arrest record as a basis to refuse to hire, segregate, or act with respect to recruitment, hiring,

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Is sealing of records available?, cont'd	<p>promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. This section does not prohibit a state agency, unit of local government or school district, or private organization from requesting or utilizing sealed felony conviction information. The listed entities are not prohibited from obtaining or using other information that indicates that a person actually engaged in the conduct for which he or she was arrested.</p>
Is expungement of records available?	<p>Yes. 2630/5.2 – defines “expunge” to mean to physically destroy the records or return them to the petitioner and to obliterate the petitioner’s name from any official index or public record, or both. Nothing in this act shall require the physical destruction of the circuit court file, but such records relating to arrests or charges, or both, ordered expunged shall be impounded as required by this section.</p> <p>Except as otherwise provided by this section, the court shall not order the sealing or expungement of the records of arrests or charges not initiated by arrest that result in an order of supervision for or conviction of certain listed offenses.</p> <p>A person may petition to expunge the records of his or her arrests and charges not initiated by arrest when each arrest or charge sought to be expunged resulted in:</p> <ol style="list-style-type: none"> (1) Acquittal, dismissal, or the petitioner’s release without charging, unless excluded by this section; (2) A conviction which was vacated or reversed, unless excluded by this section; (3) An order of supervision and such supervision was successfully completed by the petitioner, unless excluded by this section; or (4) An order of qualified probation and such probation was successfully completed by the petitioner. <p>Sets forth the time periods before a person can file a petition to expunge. The procedures set forth above in the section on sealing also apply to expunging records.</p> <p>Whenever a person who has been convicted of an offense is granted a pardon by the governor which specifically authorizes expungement, he or she may, upon verified petition have a court order entered expunging the records.</p>

ILLINOIS**Is expungement of records available?, cont'd**

When a person who has been convicted of an offense is granted a certificate of eligibility for expungement by the Prisoner Review Board which specifically authorizes expungement, he or she may, upon verified petition have a court order entered expunging the records.

See also, discussion of 2630/12 in the sealing section above.

5/3-3-2 – sets forth the powers and duties of the Prisoner Review Board which includes, but is not limited to, issuing a certificate of eligibility for expungement to an individual who meets the requirements of this section, which includes that the person served, or is currently enlisted, in the U.S. Armed Forces or National Guard at the time of filing the petition. If a person has applied to the board for a certificate of eligibility for expungement and the board denies the certificate, the person must wait at least four years before filing again or filing for a pardon with authorization for expungement from the governor unless granted a waiver.

2630/14 (expungement backlog accountability law) – requires the Illinois State Police to annually report, on or before August 1 of each year, to the governor, the Attorney General, the Office of the State Appellate Defendant, and both houses of the general assembly, the following information for the previous fiscal year:

- (1) The number of petitions to expunge received by the state police and the number to which the state police objected;
- (2) The number of petitions to seal received by the state police and the number to which the state police objected;
- (3) The number of orders to expunge and the number of orders to seal received by the state police;
- (4) The number of orders to expunge and the number of orders to seal to which the state police successfully filed motion to vacate, modify, or reconsider;
- (5) The number of orders to expunge records and the number of orders to seal records entered by the state police;
- (6) The amount of fees received by the state police and deposited into the State Police Services Fund; and

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Is expungement of records available?, cont'd	(7) The number of orders to expunge or to seal records received by the state police that have not been entered as of June 30 of the previous fiscal year.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. 2630/5.2 – provides that the law enforcement agency issuing a citation shall automatically expunge, on or before January 1 and July 1 of each year, the law enforcement records of a person found to have committed a civil law violation of the Cannabis Control Act or subsection (c) of Section 3.5 of the Drug Paraphernalia Control Act in the law enforcement agency's possession or control and which contains the final satisfactory disposition which pertain to the person issued a citation for the offense. Further, the clerk of the court shall expunge, either upon order of a court or in the absence of a court order on or before January 1 and July 1 of each year, the court records of a person found to have committed a civil law violation of such acts in the clerk's possession or control and which contains the final satisfactory disposition which pertain to the person issued a citation for those offenses.</p> <p>If a conviction has been set aside on direct review or on collateral attack and the court determines by clear and convincing evidence that the petitioner was factually innocent of the charge, the court that finds the petitioner factually innocent shall enter an expungement order for the conviction for which the petitioner has been determined to be innocent.</p> <p>If the petitioner has been granted a certificate of innocence, the court that grants the certificate shall also enter an order expunging the conviction for which the petitioner has been determined to be innocent.</p> <p>Requires the Illinois State Police and all law enforcement agencies within the state to automatically expunge all criminal history records of an arrest, charge not initiated by arrest, order of supervision, or order of qualified probation for a minor cannabis offense committed prior to June 25, 2019 if one year or more has elapsed since the date of the arrest or law enforcement interaction documented in the records and no criminal charges were filed relating to such arrest or interaction or charges were filed and subsequently dismissed or vacated or the arrestee was acquitted. Sets forth the timelines within which the agency must expunge such</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	records. Provides that, in response to an inquiry for expunged records, the agency receiving such inquiry shall reply as it does in response to inquiries when no records ever existed; however, it shall provide a certificate of disposition or confirmation that the record was expunged to the individual whose record was expunged if such a record exists.
Does the state offer a certificate of relief or similar document?	<p>Yes. 5/5-5.5-5 (definition) – defines “eligible offender” to mean a person who has been convicted of a crime in Illinois or of an offense in any other jurisdiction that does not include any offense or attempted offense that would subject a person to registration under the sex offender registration act, arsonist registry act, or the murderer and violent offender against youth registration act. Provides that an “eligible offender” does not include a person who has been convicted of arson; aggravated arson; kidnapping; aggravated kidnapping; aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof; or aggravated domestic battery.</p> <p>5/5-5.5-10 (certificate of relief from disabilities) – provides that a certificate of relief from disabilities does not in any way prevent any judicial proceeding, administrative, licensing, or other body, board, or authority from relying upon the conviction specified in the certificate as the basis for the exercise of its discretionary power to suspend, revoke, or refuse to issue or renew any license, permit, or other authority or privilege. Further, a certificate of relief shall not limit or prevent the introduction of evidence of a prior conviction for purposes of impeachment of a witness in a judicial or other proceeding where otherwise authorized by the applicable rules of evidence.</p> <p>5/5-5.5-15 (certificates of relief from disabilities issued by courts) – permits any circuit court of the state to issue a certificate or relief from disabilities to an eligible offender for a conviction that occurred in the court if the court imposed the sentence. The certificate may be issued at the time sentence is pronounced, in which case it may grant relief from disabilities, or at any time thereafter, in which case it shall apply only to disabilities.</p>

ILLINOIS**Does the state offer a certificate of relief or similar document?, cont'd**

Prohibits a court from issuing a certificate unless it is satisfied, based on clear and convincing evidence, that (a) the person is an eligible offender; (b) the relief granted by the certificate is consistent with the rehabilitation of the person; and (c) the relief is consistent with the public interest.

If a certificate is not issued at the time sentence is pronounced it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether a certificate should be issued, request the probation or court services department to conduct an investigation of the applicant.

Any court that has issued a certificate may at any time issue a new certificate to enlarge the relief previously granted provided that the provisions of (a) – (c) above apply to the issuance of any such new certificate.

Provides that an employer is not civilly or criminally liable for an act or omission by an employee who has been issued a certificate, except for a willful or wanton act by the employer in hiring the employee who was issued a certificate.

5/5-5.5-25 (certificate of good conduct) – provides that a certificate of good conduct may be granted as provided in this section to relieve an eligible offender of any employment, occupational licensing, or housing bar. The certificate may be limited to one or more disabilities or bars or may relieve the individual of all disabilities and bars. Notwithstanding any other provision of law, a certificate of good conduct does not relieve an offender of any employment-related disability imposed by law by reason of his or her conviction of a crime that would prevent his or her employment by the Department of Corrections, Department of Juvenile Justice, or any other law enforcement agency in the state.

Provides that a certificate of good conduct may be granted to an eligible offender who has demonstrated by clear and convincing evidence that he or she has been a law-abiding citizen and is fully rehabilitated. A certificate of good conduct may not, however, in any way prevent any judicial proceeding, administrative, licensing, or other body, board,

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Does the state offer a certificate of relief or similar document?, cont'd	<p>or authority from considering the conviction specified in the certificate.</p> <p>A certificate of good conduct shall not limit or prevent the introduction of evidence of a prior conviction for purposes of impeachment of a witness in a judicial or other proceeding where otherwise authorized by the applicable rules of evidence. Further, a certificate of good conduct does not limit any employer, landlord, judicial proceeding, administrative, licensing, or other body, board, or authority from accessing criminal background information; nor does it hide, alter, or expunge the record.</p> <p>Provides that an employer is not civilly or criminally liable for an act or omission by an employee who has been issued a certificate of good conduct, except for a willful or wanton act by the employer in hiring the employee who has been issued a certificate of good conduct. The existence of a certificate of good conduct does not preclude a landlord or an administrative, licensing, or other body, board, or authority from retaining full discretion to grant or deny the application for housing or licensure.</p> <p>5/5-5.5-30 (issuance of certificate of good conduct) – provides that, after a rehabilitation review has been held, in a manner designated by the chief judge, the court shall have the power to issue a certificate of good conduct to any eligible offender, and shall make a specific finding of rehabilitation with the force and effect of a final judgment on the merits, when the court is satisfied that:</p> <ol style="list-style-type: none"> (1) The applicant has conducted himself or herself in a manner warranting the issuance for a minimum period of accordance with the provision of this section; (2) The relief is consistent with the rehabilitation of the applicant; and (3) The relief is consistent with the public interest. <p>Permits the court to have the power to issue a certificate of good conduct to any person previously convicted of a crime in any other jurisdiction when the court is satisfied that the applicant has demonstrated that there exist specific facts and circumstances and specific sections of state law that have an</p>

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Does the state offer a certificate of relief or similar document?, cont'd

adverse impact on the applicant and warrant the application for relief to be made in Illinois and the provisions of (1) – (3) above have been met.

Sets forth the required time periods, which range from 1-2 years depending on the class of crime, and provides that the minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed by him or her, or from the date of his or her release from custody by parole, mandatory supervised release or commutation or termination of his or her sentence. The court shall have the power and duty to investigate all persons when the application is made and to grant or deny the same within a reasonable time after the making of the application.

A court may at any time issue a new certificate enlarging the relief previously granted. Any certificate of good conduct issued at the time the individual is under the conditions of parole or mandatory supervised release shall be a temporary certificate until the time the individual is discharged from parole or mandatory supervised release. While temporary, the certificate may be revoked for violation of the conditions of parole or mandatory supervised release. A temporary certificate shall become permanent upon the expiration or termination of the term of parole or mandatory supervised release. The court shall, upon notice to a certificate holder, have the power to revoke a certificate of good conduct upon a subsequent conviction.

5/5-5.5-35 (effect of revocation; use of revoked certificate) – provides that, if a certificate of relief from disabilities is deemed to be temporary and the certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of the revocation. Any such person shall, upon receipt of the notice, surrender the certificate to the issuing court. A person who knowingly uses or attempts to use a revoked certificate of relief from disabilities in order to obtain or exercise any right or privilege that he or she would not be entitled to obtain or to exercise without a valid certificate is guilty of a Class A misdemeanor.

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Does the state offer a certificate of relief or similar document?, cont'd	<p>5/5-5.5-40 (forms and filing) – all applications, certificates, and orders of revocation necessary for the purposes of this article shall be upon forms prescribed by the Chief Justice of the Supreme Court or his or her designee. The forms relating to certificates of relief from disabilities and certificates of good conduct shall be distributed by the director of the Division of Probation Services. Any court or board issuing or revoking any certificate under this article shall immediately file a copy of the certificate or order of revocation with the director of the Illinois State Police.</p> <p>5/5-5.5-45 (certificate not deemed to be a pardon) – nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued under this article shall be deemed or construed to be a pardon.</p> <p>5/5-5.5-50 (report) – requires the Department of Professional Regulation to report to the general assembly by November 30 of each year, for each occupational licensure category, the number of licensure applicants with felony convictions, the number with certificates of relief from disabilities, the number of licenses awarded to applicants with felony convictions, the number awarded to applicants with certificates of relief from disabilities, the number denied licenses, and the number with certificates denied licenses.</p> <p>5/5-5-5 – provides that no application for any license specified in this section granted under the authority of this state shall be denied by reason of an eligible offender who has obtained a certificate of relief from disabilities having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of “good moral character” when the finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses unless there is a direct relationship between one or more of the previous criminal offenses and the specific license sought or the issuance of the license would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Provides that a certificate of relief from disabilities shall only be issued for a license or certification under the listed acts.</p>
Are drug convictions eligible for relief?	Yes. See section on automatic expungement above. Also, 2630/5.2 provides that any individual and any State’s

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Are drug convictions eligible for relief?, cont'd	<p>Attorney may file a motion to vacate and expunge a conviction for a misdemeanor or a Class 4 felony violation of section 4 or 5 of the Cannabis Control Act. When considering such a motion to vacate and expunge, a court shall consider the reasons to retain the records, the petitioner's age, the petitioner's age at the time of offense, the time since the conviction, and the specific adverse consequences if denied. An individual may file such a petition after the completion of any non-financial sentence or non-financial condition imposed by the conviction. Permits agencies providing civil legal aid to file motions to vacate and expunge on behalf of individuals and provides that such motions may include more than one individual.</p> <p>Further, if a person is arrested for a minor cannabis offense and the person's case is still pending but a sentence has not been imposed, the person may petition the court in which the charges are pending for an order to summarily dismiss those charges and expunge all official records. If the court determines that the person was arrested before June 25, 2019, for an offense that has been made available for expungement, the case is pending at the time, and the person has not been sentenced of the minor cannabis violation under this subsection, the court shall consider the elements set forth above. If granted, the records shall be expunged.</p> <p>166/35 – provides that a participation in a drug court program who successfully completes the terms and conditions of the program may have the original charges dismissed or the court may successfully terminate the participant's sentence or otherwise discharge the participant from any further proceedings against the participant in the original prosecution. Upon such successful completion, any State's Attorney, participant, or defense attorney may move to vacate any convictions that are eligible for sealing. A participant may immediately file a petition to expunge vacated convictions and the associated underlying records. If the State's Attorney moves to vacate a conviction, such attorney may not object to expungement of that conviction or the underlying record. The drug court program may maintain or collaborate with a network of legal aid organizations that specialize in conviction relief to support participants navigating the expungement and sealing process.</p>
Miscellaneous provisions	None.

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Recently proposed legislation	Yes. See Pending State Legislation .
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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IND. CONST. Art. V, § 17 (West 2024) (pardons and reprieves; exception) • IND. CODE ANN. §§ 11-9-2-1 to 11-9-2-4 (West 2024) (collectively “Commutations, Pardons, Reprieves, and Remissions”) • IND. CODE ANN. §§ 24-4-18-1 to 24-4-18-8 (West 2024) (collectively “Criminal History Providers”) • IND. CODE ANN. §§ 35-38-9-0.5 to 35-38-9-12 (West 2024) (collectively “Sealing and Expunging Conviction Records”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1979 (§§ 11-9-2-1, 11-9-2-3) • November 6, 1984 (Art. V, § 17) • 1987 (§ 11-9-2-4) • 1994 (§ 11-9-2-2) • March 26, 2014 (§ 35-38-9-11) • July 1, 2014 (§ 24-4-18-6) • July 1, 2015 (§ 35-38-9-8.5) • July 1, 2019 (§§ 35-38-9-0.6, 35-38-9-9) • March 18, 2020 (§ 35-38-9-2) • July 1, 2021 (§§ 35-38-9-3 to 35-38-9-5, 35-38-9-8, 35-38-9-12) • July 1, 2022 (§§ 35-38-9-7, 35-38-9-10) • July 1, 2023 (§ 35-38-9-6) • July 1, 2024 (§ 35-38-9-1)
Pardon provisions	<p>Art. V, § 17 – vests the governor with the power to grant pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, the governor may suspend execution of the sentence until the case has been reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall report to the general assembly, at its next meeting, each pardon granted; provided, however, the general assembly may by law constitute a council composed of officers of state, without whose advice and consent the governor may not grant pardons in any case, except those left to his or her sole power by law.</p> <p>§ 11-9-2-1 (application) – provides that an application to the governor for pardon shall be filed with the parole board. The board may require the applicant to furnish information that it</p>

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Pardon provisions, cont'd	<p>considers necessary to conduct a proper inquiry and hearing regarding the application.</p> <p>§ 11-9-2-2 (recommendation of parole board to governor; notice to victim or next of kin victim) – provides that the parole board shall submit its recommendation regarding an application for pardon to the governor. Prior to submitting such recommendation, the board shall notify the sentencing court, the victim or victim's next of kin, and the prosecuting attorney. It shall also conduct an investigation and a hearing.</p> <p>§ 11-9-2-3 (constitutional power of governor) – this chapter does not limit the constitutional power of the governor to grant pardons.</p> <p>§ 11-9-2-4 (conditional pardon; removal of disabilities applicable to holding handgun permit or license) – provides that the governor may issue a pardon that conditions the removal of all disabilities applicable to holding a handgun permit or other license upon a determination by the superintendent of the state police that circumstances have changed to such an extent since the pardoned conviction was entered that the applicant for the permit or license is likely to handle handguns in compliance with the law.</p>
Is sealing of records available?	Yes. Sealing of records is part of the expungement process. See that section for more information.
Is expungement of records available?	<p>Yes. § 35-38-9-0.6 (application of chapter to expungement orders) – provides that this chapter does not require any change or alteration in:</p> <ol style="list-style-type: none"> (1) An internal record made by a law enforcement agency or public defender agency that is not intended for release to the public; (2) A nonpublic record that relates to a diversion or deferral program; or (3) A disciplinary record or proceeding as long as it relates to a licensing, certification, or public entity. <p>Provides that a person whose petition for expungement was granted before July 1, 2019, may file a petition for a supplemental order of expungement to obtain the benefit of changes in SEA 235-2019, if applicable.</p>

INDIANA**Is expungement of records available?, cont'd**

§ 35-38-9-1 (application to persons whose arrest did not result in conviction or juvenile adjudication or whose conviction was expunged or vacated; sealing of records) – provides that this section applies only to a person who has been arrested or charged with an offense if:

- (1) The arrest or criminal charge did not result in a conviction even if the arrest or criminal charge resulted in an adjudication for an infraction or resulted in a conviction and the conviction was expunged pursuant to this chapter, or was later vacated; and
- (2) The person is not currently participating in a pretrial division program, unless the prosecuting attorney authorizes the person to petition for an expungement under this section.

Provides that this subsection applies to a person arrested after June 30, 2022. If a person is arrested, one year has elapsed since the date of the arrest, and no charges are pending against the person, the person may petition a judge for expungement, setting forth these facts. Upon receipt of the petition, the judge shall immediately order the expungement of all records related to the arrest. Expungement under this subsection does not shorten the statute of limitations, and a prosecuting attorney may still file a charge under this subsection.

Not earlier than one year after the date of arrest or criminal charge, if the person was not convicted, or the opinion vacating the conviction becomes final, the person may petition the court for expungement of the records related to the arrest or criminal charge. However, a person may petition the court for expungement at an earlier time if the prosecuting attorney agrees.

Sets forth the requirements for petitions to expunge. Provides that a person who files a petition under this section is not required to pay a filing fee.

Upon receipt of a petition for expungement, the court may summarily deny the petition if it does not meet the requirements of this section or if the statements in the petition indicate that the petitioner is not entitled to relief.

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Is expungement of records available?, cont'd	<p>The court shall grant the petition unless the conditions set forth in (1) and (2) have not been met or criminal charges are pending against the person.</p> <p>Whenever a petition is granted, or if an expungement order is issued without a petition, no information concerning the arrest, criminal charges, or vacated conviction may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. The clerk of the supreme court shall seal or redact any records in the clerk's possession that related to the arrest, criminal charges, or vacated conviction. The records of the sentencing court, a court that conducted a collateral action, a juvenile court, a court of appeals, and the supreme court concerning the person shall be redacted or permanently sealed from public access. Finally, with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, or who is identified in a collateral action, the court shall redact the opinion or memorandum decision so that it does not include the petitioner's name and provide a redacted copy to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement. The supreme court and court of appeals are not required to redact, destroy, or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.</p> <p>Records expunged or sealed under this section must be removed or sealed in accordance with this section but may not be deleted or destroyed. Records expunged or sealed remain available to the court and criminal justice agencies as needed to carry out their official duties.</p> <p>§ 35-38-9-2 (persons convicted of a misdemeanor; expungement of conviction records; conditions) – provides that, except as otherwise provided by law, this section applies only to a person convicted of a misdemeanor or certain felonies reduced to a misdemeanor. This section does not apply to a person (a) convicted of two or more felonies that involved the unlawful use of a deadly weapon and were</p>

INDIANA**Is expungement of records available?, cont'd**

not committed as part of the same episode of criminal conduct; or (b) a sex or violent offender.

Not earlier than five years after the date of conviction, unless the prosecuting attorney consents in writing to an earlier period, the person convicted may petition the court to expunge all conviction records, including records contained in a court's files, the files of the department of correction, the files of the bureau of motor vehicles, and the files of any other person who provided treatment or services to the petitioning person under a court order, that relate to the person's conviction, including records of a collateral action.

If the court finds by a preponderance of the evidence that:

- (1) The period required by this section has elapsed;
- (2) No charges are pending against the person;
- (3) The person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) The person has not been convicted of a crime within the previous five years,

the court shall order the conviction records expunged.

§ 35-38-9-3 (persons convicted of a Class D felony; expungement of conviction records; conditions) – except as otherwise provided by law, this section applies only to a person convicted of a Class D felony or Level 6 felony. This section does not apply to a list of specific offenses. It also does not apply to a person convicted of two or more felony offenses that involved the unlawful use of a deadly weapon and were not committed as part of the same episode of criminal conduct.

Not earlier than eight years after the date of conviction, unless the prosecutor consents in writing to an earlier period, the person may file a petition to expunge all conviction records contained in a court's files, the files of the department of correction, the files of the bureau of motor vehicles, and the files of any other person who provided treatment or services to the petitioner under a court order, that relate to the persons conviction, including records of a collateral action.

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Is expungement of records available?, cont'd	<p>If the court finds by a preponderance of the evidence that:</p> <ol style="list-style-type: none"> (1) The period required by this section has elapsed; (2) No charges are pending against the person; (3) The person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and (4) The person has not been convicted of a felony or misdemeanor within the previous eight years, <p>the court shall order the conviction records expunged.</p> <p>§ 35-38-9-4 (persons convicted of a felony; expungement of conviction records; conditions) – the provisions of this section are nearly identical to those of § 35-38-9-3, except that the required waiting period before filing a petition to expunge is not earlier than eight years from the date of conviction or three years from the completion of the person’s sentence. If the person meets the requirements set forth in paragraphs (1) – (4) above (see discussion of § 35-38-9-3), the court may order the conviction records marked as expunged. A person whose records have been ordered marked as expunged under this section is considered to have had the person’s records expunged for all purposes other than the disposition of the records.</p> <p>§ 35-38-9-5 (elected officials convicted of a felony while serving term and persons convicted of a felony resulting in serious bodily injury; expungement of conviction records; conditions) – provides that, except as otherwise provided by law, this section applies to a person convicted of a felony, including a person convicted of a felony that resulted in serious bodily harm to another person. Sets forth a list of specific offenses to which this section does not apply. Further provides that a person convicted of two or more felony offenses that involved the unlawful use of a deadly weapon and were not committed as part of the same episode of criminal conduct.</p> <p>Provides that not earlier than the later of 10 years from the date of conviction or five years from the completion of the person’s sentence, unless the prosecutor consents in writing to an earlier period, the person may petition a court to</p>

INDIANA**Is expungement of records available?, cont'd**

expunge all conviction records, including records contained in a court's files, the files of the department of correction, the files of the bureau of motor vehicles, and the files of any other person who provided treatment or services to the petitioning person under a court order, that relate to the person's conviction, including records of a collateral action.

If the court finds by a preponderance of the evidence that the person meets the requirements of paragraphs (1) – (4) above (see discussion of § 35-38-9-3) and the prosecutor has consented in writing to the expungement of the person's criminal records, the court may order the conviction records marked as expunged. A person whose records have been ordered marked as expunged is considered to have had the person's records expunged for all purposes other than the disposition of the records.

§ 35-38-9-6 (duties of court concerning expungement of records under §§ 35-38-9-2 and 35-38-9-3) – provides that, if the court orders conviction records expunged under §§ 35-38-9-2 or 35-38-9-3, the court shall order each holder of records who incarcerated, prosecuted, provided treatment for, or provided other services for the person under an order of the court to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.

The court shall also order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records, including information related to an arrest or offense in which no conviction was entered and that was committed as part of the same episode of criminal conduct as the case ordered expunged, and any other references to any matters related to the case ordered expunged, including in a collateral action. This subdivision does not require the state police department to seal any record the state police department does not have legal authority to seal. Records sealed under this subdivision may only be disclosed to:

- (1) A prosecuting attorney if authorized by a court order and needed to carry out the official duties of the prosecuting attorney;

INDIANA**Is expungement of records available?, cont'd**

- (2) A defense attorney if authorized by a court order and needed to carry out his or her professional duties;
- (3) A probation department if authorized by a court order and necessary to prepare a presentence report;
- (4) The Federal Bureau of Investigation and Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
- (5) The supreme court, members of the state board of law examiners, executive director of the state board of law examiners, and employees of the state board of law examiners for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar;
- (6) A person required to access expunged records to comply with federal mortgage laws;
- (7) To various entities related to motor vehicles if disclosure is required to comply with federal law relating to reporting a conviction for a violation of a traffic control law; and
- (8) A school, for employment purposes, if the person is likely to have contact with a student enrolled in the school, regardless of the age of the student.

The court shall also notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction. Permits a probation department to provide an unredacted version of a presentence report to any person authorized by law to receive such report.

Except as provided by law, if a petition to expunge records is granted, the records of the sentencing court, a court that conducted a collateral action, a juvenile court, a court of appeals, and the supreme court concerning the person shall be permanently sealed. However, a petition for expungement does not affect an existing or pending driver's license suspension.

If the petition is granted with respect to a person who is named as an appellant or appellee in an opinion or memorandum decision by the supreme court or the court of appeals, or who is identified in a collateral action, the court shall redact the opinion or memorandum decision to remove the petitioner's name and provide a redacted copy of the

INDIANA**Is expungement of records available?, cont'd**

opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement. The courts are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

Permits a prosecutor to submit a written application for a court order granting access to records that have been permanently sealed pursuant to this section if the records are relevant to a new prosecution of the person. If the prosecutor shows that the records are relevant, the court shall order that the records be unsealed and allow the prosecutor to have access to such records. As soon as the reasons for unsealing the records cease to exist, the court shall order the records permanently resealed. However, if the records are admitted as evidence against the person in a new prosecution that results in a conviction, or are used to enhance a sentence imposed on the person in a new prosecution, the court is not required to reseat the records.

§ 35-38-9-7 (persons who have filed a petition under §§ 35-38-9-4 or 35-38-9-5; public records; marked as expunged) – provides that this section applies only to a person who has filed a petition for expungement under §§ 35-38-9-4 or 35-38-9-5 and whose records have been marked as expunged. All records under this section that have been marked as expunged remain public records; however, the court shall order that the records be clearly and visibly marked or identified as being expunged.

§ 35-38-9-8 (petition to expunge conviction records under §§ 35-38-9-2 through 35-38-9-5; filing of petition; contents) – this section sets forth the requirements for filing a verified petition to expunge eligible records, including the information that must be included in said petition.

§ 35-38-9-8.5 (persons seeking to expunge offenses punishable by an indeterminate sentence under a law other than IC 35-50) – sets forth the sections under which a person shall apply for expungement if that person is seeking to expunge an Indiana offense punishable by an indeterminate sentence under a law other than IC 35-50.

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§ 35-38-9-9 (actions taken on petition) – provides that a court may grant a petition for expungement without a hearing if the prosecutor does not object or has waived objection. Further, the court may summarily deny a petition if the petition does not meet the requirements of this chapter or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief. The grant or denial of a petition is an appealable final order.

Provides that a petitioner may seek to expunge more than one conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered. For purposes of this subsection, all petitioner for expungement filed in separate counties for offenses committed in those counties count as one petition if they are filed in one 365-day period.

Sets forth the circumstances under which a person may file an amended petition to expunge or file a subsequent petition if an initial petition is denied.

§ 35-38-9-10 (unlawful activities based on knowledge of expunged or sealed records) – this section does not apply to a person to whom sealed records may be disclosed under this chapter. With respect to a person seeking employment with a law enforcement agency or a probation or community corrections department, including volunteer employment, certain provisions of this section do not apply to the agency or department.

Provides that it is unlawful discrimination for any person to suspend, expel, refuse to employ, refuse to admit, refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession, or otherwise discriminate against any person because of a conviction or arrest record expunged or sealed under this chapter.

Except as otherwise provided in this chapter, the civil rights of a person whose conviction has been expunged shall be fully restored. In any application for employment, a license,

<u>INDIANA</u>	
Is expungement of records available?, cont'd	<p>or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests. A person whose record is expunged shall be treated as if the person had never been convicted of the offense.</p> <p>Provides that, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction may be considered by the court in determining the sentence imposed for the new offense; is a prior unrelated conviction for purposes of a habitual offender enhancement and enhancing the new offense based on a prior conviction; and may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.</p> <p>Further provides that, in any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.</p> <p>An expungement case, and all documents filed in the case, becomes confidential when the court issues an expungement order.</p> <p>§ 35-38-9-11 (waiver of right to expungement) – a person may not waive the right to expungement under this chapter as part of a plea agreement. Any purported waiver of such right in a plea agreement is invalid and unenforceable as against public policy.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 35-38-9-1 (application to persons whose arrest did not result in conviction or juvenile adjudication or whose conviction was expunged or vacated; sealing of records) – Provides that this subsection applies to a person charged with an offense after June 30, 2022. If a court dismisses all criminal charges filed and pending against a person or in a criminal trial, a defendant is acquitted of all charges or the defendant's conviction is later vacated, the court shall immediately order all records related to the criminal charges expunged. An expungement order based on non-prosecution goes into effect immediately. An order issued in other circumstances may not go into effect earlier than 60 days</p>

<u>INDIANA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	from the date of the dismissal, acquittal, or no true finding. However, upon motion by the prosecuting attorney, if the court finds that specific facts exist in the particular case which justify a delay, the court may delay implementation of an expungement order for up to one year from the date of the dismissal, acquittal, or no true finding.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug convictions.
Miscellaneous provisions	<p>§ 24-4-18-6 (criminal history report; prohibitions; exceptions) – provides that a criminal history provider may not knowingly provide a criminal history report that provides criminal history information relating to:</p> <ol style="list-style-type: none"> (1) A record that has been expunged by marking the record as expunged or removing the record from public access; or (2) A record that is restricted by a court or the rules of a court and is marked as restricted from public disclosure or removed from public access. <p>A criminal history provider may provide such information if the person requesting the criminal history report is required by state or federal law to obtain the information or the state or a political subdivision and the information will be used solely in connection with the issuance of a public bond.</p> <p>§ 35-38-9-12 (penalties for criminal history report containing an expunged conviction) – a criminal history provider that provides a criminal history report containing an expunged conviction is subject to the penalties described in § 24-4-18-8.</p>
Recently proposed legislation	None.

<u>IOWA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • IOWA CONST. Art. IV, § 16 (West 2024) (pardons—reprieves—commutations) • IOWA CODE ANN. §§ 901C.1 to 901C.3 (West 2024) (collectively “Expungement of Criminal Records”) • IOWA CODE ANN. § 906.19 (West 2024) (certificates of employability) • IOWA CODE ANN. § 907.9 (West 2024) (discharge from probation—procedure—expungement of deferred judgments) • IOWA CODE ANN. §§ 914.1 to 914.7 (West 2024) (collectively “Reprieves, Pardons, Commutations, Remissions, and Restoration of Rights”) • IOWA CODE ANN. § 915.19 (West 2024) (notification by the governor) • IOWA ADMIN. CODE r. 205-9.1 to 9.4 (2024) (collectively “Certificates of Employability”) • IOWA CT. R. r. 2.80 to 2.86-Form 5 (2024) (collectively “Expungement”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1993 (§§ 914.4, 914.5) • 1995 (§§ 914.2, 914.3) • January 1, 1995 (§ 914.6) • January 1, 1999 (§ 915.19) • July 1, 2006 (§ 914.1) • July 1, 2008 (§ 906.19) • June 10, 2009 (r. 205-9.2) • July 1, 2016 (§ 901C.2) • December 19, 2016 (r. 205-9.4) • July 1, 2021 (§ 914.7, r. 2.80 to 2.8) • July 1, 2022 (§ 901C.3) • May 10, 2023 (r. 205-9.1, r. 205-9.3) • July 1, 2024 (§ 907.9)
Pardon provisions	<p>Art. IV, § 16 – vests the governor with the power to grant pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall report to the general assembly, at its next meeting, each pardon granted, and the reasons therefor.</p>

<u>IOWA</u>	
Pardon provisions, cont'd	<ul style="list-style-type: none"> ➤ § 914.1 (power of governor) – the power of the governor under the Iowa constitution to grant a pardon shall not be impaired. ➤ § 914.2 (right of application) – provides that, except as otherwise provided by law, a person convicted of a criminal offense has the right to make application to the board of parole for recommendation or to the governor for a pardon at any time following the conviction. ➤ § 914.3 (recommendations by board of parole) – except as otherwise provided by law, the board of parole shall periodically review applications and recommend to the governor the pardon for persons who have by their conduct given satisfactory evidence that they will become or continue to be law abiding citizens. The board shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation. All recommendations and advice of the board shall be entered in the proper records of the board. ➤ § 914.4 (response to recommendation) – provides that the governor shall respond to all recommendations and state whether or not the recommendation will be granted and specifically set out the reasons for such action. If the recommendation is not granted, it can be refiled with the governor at any time. ➤ § 914.5 (evidence—testimony—recommendation) – the governor may review a copy of the minutes of evidence taken at the trial and may take testimony. ➤ § 914.6 (procedures—filing) – provides that pardons shall be issued in duplicate. Sets forth the process if a person receiving a pardon is in custody or not in custody. ➤ § 914.7 (rights not restorable) – sets forth the offenses that make a person ineligible to have the right to receive, transport, or possess firearms restored. ➤ § 915.19 (notification by governor) – requires the governor to give notice to the victim of a violent crime prior to granting a pardon to the offender convicted of such crime.

<u>IOWA</u>	
Is sealing of records available?	Only for juvenile records.
Is expungement of records available?	<p>Yes. § 901C.2 (not guilty verdicts and criminal charge dismissals—expungement) – except as otherwise provided by law, upon application of a defendant or a prosecutor in a criminal case, or upon the court’s own motion, the court shall enter an order expunging the record of such criminal case if the court finds that the defendant has established that all of the following have occurred, as applicable:</p> <ol style="list-style-type: none"> (1) The criminal case contains one or more criminal charges in which an acquittal was entered for all criminal charges, or in which all criminal charges were otherwise dismissed; (2) All court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the court have been paid; (3) A minimum of 180 days have passed since entry of the judgment of acquittal or of the order dismissing the case relating to all criminal charges, unless the court finds good cause to waive this requirement for reasons including, but not limited to, the fact that the defendant was the victim of identity theft or mistaken identity; (4) The case was not dismissed due to the defendant being found not guilty by reason of insanity; (5) The defendant was not found incompetent to stand trial in the case. <p>The record in a criminal case expunged under this section is a confidential record exempt from public access but shall be made available by the clerk, upon request and without court order, to the defendant or to an agency or person granted access to the deferred judgment docket under § 907.4(2).</p> <p>This section does not apply to dismissals related to a deferred judgment under § 907.9. This section does apply to all public offenses, as defined in § 692.1. The court shall advise the defendant of the provisions of this section upon either the acquittal or the dismissal of all criminal charges in a case. Provides that the supreme court may prescribe rules governing the procedures applicable to the expungement of the record of a criminal case under this section. This section</p>

<u>IOWA</u>	
Is expungement of records available?, cont'd	<p>applies to all relevant criminal cases that occurred prior to, on, or after January 1, 2016.</p> <p>§ 901C.3 (misdemeanor—expungement) – provides that, upon application of a defendant convicted of a misdemeanor offense in the county where the conviction occurred, the court shall enter an order expunging the record of such a criminal case, as a matter of law, if the defendant has proven all of the following:</p> <ol style="list-style-type: none"> (1) More than eight years have passed since the date of the conviction; (2) The defendant has no pending criminal charges; (3) The defendant has not previously been granted two deferred judgments; and (4) The defendant has paid all court costs, fees, fines, restitution, and any other financial obligations ordered by the court or assessed by the clerk of the court. <p>Sets forth a list of the misdemeanors that may not be expunged. Provides that a person shall be granted an expungement of a record under this section one time in the person's lifetime. However, the one application may request the expungement of records relating to more than one misdemeanor offense if the offenses arose from the same transaction or occurrence, and the application contains the misdemeanor offenses to be expunged. The expunged record is a confidential record exempt from public access but shall be made available by the clerk of the court upon court order. Notwithstanding any other law, after receipt of notice from the clerk of the court that a record has been expunged, the record of conviction shall be removed from the criminal history data files maintained by the department of public safety, if such a record was maintained in the criminal history data files. Provides that the supreme court may prescribe rules governing the procedures applicable to the expungement of a criminal case under this section. This section applies to a misdemeanor conviction that occurred prior to, on, or after July 1, 2019.</p> <p>Iowa Court Rules 2.80 to 2.86 set forth the rules related to expungement of records.</p>

<u>IOWA</u>	
Is expungement of records available?, cont'd	<ul style="list-style-type: none"> ➤ Rule 2.80 (expungement of dismissed cases or acquittals) – permits the defendant or prosecutor to apply for expungement in cases where an acquittal was entered for all criminal charges or where all charges have otherwise been dismissed. Provides that the court can also expunge an eligible case on its own motion. ➤ Rule 2.81 (expungement of eligible misdemeanor convictions) – permits a defendant to file an application to the appropriate court to expunge district court criminal records related to an eligible misdemeanor. ➤ Rule 2.82 (expungement of public intoxication, possession of alcohol under the legal age, and certain prostitution cases) – permits a defendant to file an application to the appropriate court to expunge criminal records for misdemeanors related to public intoxication, underage possession of alcohol, and certain prostitution cases. ➤ Rule 2.83 (expungement proceedings) – sets forth the processes for expungement proceedings. ➤ Rule 2.84 (when expungement is granted) – when expungement of a dismissal or acquittal is granted, the court shall order that the record in that criminal case shall become a confidential record exempt from public access. The record shall be made available, upon request and without a court order, to the defendant or to an agency or person granted access to the deferred judgment docket under § 907.4(2). The record shall not otherwise be accessible except by court order. ➤ Rule 2.85 (confidential record of expunged misdemeanors) – provides that the Iowa Judicial Branch shall maintain a confidential record of expunged misdemeanors which shall be confidential and exempt from public access.
Are any records eligible to be automatically sealed or expunged?	Yes. § 907.9 – upon discharge from probation in a case of deferred judgment pursuant to § 907.3, the court's criminal record with reference to the deferred judgment, any counts dismissed by the court which were contained in the indictment, information, or complaint that resulted in the deferred judgment, and any other related charges that were not contained in the indictment, information, or complaint but were dismissed, shall be expunged. The court's record

<u>IOWA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>shall not be expunged until the person has paid the restitution, civil penalties, court costs, fees, or other financial obligations ordered by the court or assessed by the clerk of the court in the case that includes the deferred judgment. The expunged record is a confidential record exempt from public access but shall be made available, upon request and without a court order, to an agency or person granted access to the deferred judgment docket under § 907.4(2). The court's record shall not be expunged in any other circumstances unless authorized by law.</p> <p>Provides that a dismissed count or related charge shall be expunged in the following manner:</p> <ol style="list-style-type: none"> (1) A count which was contained in the indictment, information, or complaint that resulted in the deferred judgment shall be expunged when the deferred judgment is expunged. (2) A related charge that was not contained in the indictment, information, or complaint that resulted in the deferred judgment shall only be expunged upon a court order that identifies the related charge to be expunged. <p>A count or related charge that was dismissed shall not be expunged in any case in which a count or charge resulted in a conviction, not including a finding of contempt, that was not expunged. The requirement that financial obligations be paid as a condition for expungement apply to any deferred judgment that has not been expunged prior to July 1, 2012.</p> <p>For purposes of this subsection, a charge or count is related to another charge or count if the charge or count arose from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. Pursuant to § 906.19, a person on parole or a person who is no longer on parole but is currently unemployed or underemployed may be issued a certificate of employability. The board of parole shall develop a certificate of employability program to maximize the opportunities for rehabilitation and employability of such person and provide protection of the community while considering the needs of potential employers. Issuance of a certificate shall be based</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>upon the successful completion of designated programs and other relevant factors determined by the board.</p> <p>r. 205-9.1 (definitions) – includes a definition of “eligible offender,” which means a person who has been convicted of one or more eligible crimes and has been sentenced to the custody of the director of the Iowa department of corrections. Persons required to register under Iowa Code chapter 692A are ineligible for the certificate of employability program.</p> <p>r. 205-9.2 (certificates of employability) – provides that the provisions of this rule apply to any application by an eligible offender to any public agency or private employer for employment, except where a mandatory forfeiture, disability, or bar to employment is imposed by law and has not been removed by an executive pardon. A licensing agency cannot deny a license based on a felony conviction or lack of good moral character when presented with a certificate unless the agency makes a determination that there is a direct relationship between the offense and the license sought or that the issuance of the license involves unreasonable risk to property or the safety and welfare of specific individuals or the general public. A certificate of employability shall not prevent any judicial, administrative, licensing, or other body, board, or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue, or review to renew any license, permit, or other authority or privilege.</p> <p>r. 205-9.3 (issuance of a certificate of employability) – requires the department of corrections to issue a certificate of employability at the time of release to an eligible offender who:</p> <ol style="list-style-type: none"> (1) Receives a parole, work release, or early discharge from the board; and (2) Successfully completes one of the following: a department of corrections registered apprenticeship program or a National Career Readiness Certificate and the life skills program.

<u>IOWA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	r. 205-9.4 (certificate not to be deemed a pardon) – provides that nothing contained in this chapter shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.
Are drug convictions eligible for relief?	There are no specific provisions related to drug convictions.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>KANSAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • KAN. CONST. Art. I, § 7 (West 2024) (pardons) • KAN. STAT. ANN. § 12-4516 (West 2024) (expungement of certain convictions, arrest records, and diversion agreements) • KAN. STAT. ANN. § 21-6614 (West 2024) (expungement of certain convictions, arrest records, and diversion agreements; procedure; restoration of person’s right to keep and bear arms) • KAN. STAT. ANN. § 22-2410 (West 2024) (expungement of arrest records; docket fee; disclosure limited upon filing of petition) • KAN. STAT. ANN. §§ 22-3701 to 22-3703 (West 2024) (included within “Release Procedures”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1970 (§§ 22-3702, 22-3703) • 1972 (Art. I, § 7) • July 1, 2015 (§ 22-3701) • July 1, 2018 (§ 12-4516) • July 1, 2019 (§ 22-2410) • July 1, 2023 (§ 21-6614)
Pardon provisions	<p>Art. I, § 7 – vests the pardoning power in the governor, under regulations and restrictions prescribed by law.</p> <p>§ 22-3701 (pardons and commutations; duties of prisoner review board; notification to victims) – provides that the governor may pardon any person convicted of a crime in any court of this state upon such terms and conditions as prescribed in the order granting the pardon.</p> <p>Requires the prisoner review board to adopt rules and regulations governing the procedure for initiating, processing, and reviewing applications for pardon filed by and on behalf of persons convicted of crime. All applications for pardon shall be referred to the board, which shall examine each case and submit a report, together with such information as the board may have concerning the applicant, to the governor within 120 days after referral to the board. The governor shall not grant or deny an application until the governor receives the report of the board or until 120 days after the referral to the board, whichever time is shorter.</p> <p>§ 22-3702 (form of pardon) – requires that a pardon be in writing, signed by the governor, attested by the great seal of the state, and shall be authority for the release and discharge of the person named therein.</p>

<u>KANSAS</u>	
Pardon provisions, cont'd	§ 22-3703 (report of pardons to legislature) – requires the governor, at each regular session of the legislature, to communicate to both houses of the legislature a list of all persons pardoned by him during the preceding year, with a statement of the offense of which each was convicted, the time of imprisonment or amount of fine, and the condition, if any, upon which such pardon was granted.
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 21-6614 – except as otherwise provided by law, any person convicted in this state of one of the listed categories of crimes may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release, or a suspended sentence.</p> <p>Except as otherwise provided by law, any person who has fulfilled the terms of a diversion agreement may petition the appropriate court for expungement of such agreement and related arrest records if three or more years have elapsed since the terms of the agreement were fulfilled. Additionally, any person who has completed the requirements of a specialty court program may petition for expungement of the conviction and related arrest records.</p> <p>If the person was convicted of certain listed offenses, the time period is increased before the individual is eligible to petition for expungement. Also sets forth a list of crimes which are ineligible for expungement, including crimes for which an individual is required to register under the Kansas offender registration act while the person is so required to register.</p> <p>Sets forth the processes for filing a petition, including payment of a docket fee. Provides that the court shall order the petitioner's arrest record, conviction, or diversion expunged if the court finds that:</p> <p style="padding-left: 40px;">(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted</p>

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Is expungement of records available?, cont'd	<p>against the petitioner or no proceeding involving a felony is presently pending or being instituted against the petitioner;</p> <ol style="list-style-type: none"> (2) The circumstances and behavior of the petitioner warrant the expungement; (3) The expungement is consistent with the public welfare; and (4) With respect to petitions seeking expungement of a felony conviction, possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public. <p>When the court has granted a petition for expungement, the clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation that shall notify the federal bureau of investigation, the secretary of corrections, and any other criminal justice agency that may have a record of the arrest, conviction, or diversion.</p> <p>After the order is entered, the petitioner shall be treated as not having been arrested, convicted, or diverted of the crime, except that:</p> <ol style="list-style-type: none"> (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed; (2) The petitioner shall disclose that the arrest, conviction, or diversion occurred if asked about previous arrests, convictions, or diversions in certain applications for employment and licenses; (3) The court may specify other circumstances under which the conviction is to be disclosed; (4) The conviction may be disclosed in a subsequent prosecution for an offense that requires as an element of such offense a prior conviction of the type expunged; and (5) Upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

KANSAS**Is expungement of records available?, cont'd**

Individuals shall be notified of the ability to expunge records in the following circumstances: when the person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, post-release supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence, is released on conditional release, or enters into a diversion agreement.

Subject to the disclosures required by this section, in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction, or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted, or diverted of such crime.

The custodians of records of arrest, conviction, diversion, and incarceration that have been expunged shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) Certain entities for employment-related or licensure purposes;
- (3) A court, upon a showing of a subsequent conviction of the person;
- (4) A person entitled to such information pursuant to the terms of the expungement order;
- (5) A prosecutor when the request is being made in conjunction with the prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (6) The Kansas sentencing commission; and
- (7) The Kansas bureau of investigation for the purpose of completing a person's criminal history record information within the central repository.

§ 12-4516 – this statute sets forth almost identical provisions as § 21-6614 applicable to the expungement of conviction records related to a violation of a city ordinance.

§ 22-2410 – permits any person who has been arrested to petition the court for expungement of such record.

If a person has been arrested as a result of mistaken identity or as a result of another person using the identifying

KANSAS**Is expungement of records available?, cont'd**

information of the named person, and the charge against the named person is dismissed or not prosecuted, the prosecutor or other judicial officer who ordered the dismissal or declined to prosecute shall provide notice to the court of such action and petition the court for the expungement of such arrest record, and the court shall order the arrest record and subsequent court proceedings, if any, expunged and purged from all applicable state and federal systems.

Upon the filing of a petition to expunge under this section, the official court file shall be separated from the other records of the court and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order.

Requires the payment of a docket fee upon the filing of a petition. However, no surcharge or fee shall be imposed to any person filing a petition who was arrested as a result of being a victim of identity theft or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings, or the charges have been dismissed.

Sets forth the requirements for filing petitions. At the hearing on a petition, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding that:

- (1) The arrest occurred because of mistaken identity;
- (2) A court has found that there was no probable cause for the arrest;
- (3) The petitioner was found not guilty in court proceedings; or
- (4) The expungement would be in the best interests of justice and charges have been dismissed or no charges have been or are likely to be filed.

Depending on the grounds for granting a petition to expunge records, the court shall determine whether, in the interests of

<u>KANSAS</u>	
Is expungement of records available?, cont'd	<p>public welfare, the records should be available for any of the listed purposes, mostly related to employment applications.</p> <p>Provides that expunged records and related information shall be available to the Kansas bureau of investigation for the purposes of completing a person's criminal history record information with the central repository or providing information or documentation to the federal bureau of investigation in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.</p> <p>Subject to any disclosures required by this section, in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested. When a person's arrest records have been expunged, the custodian of the records of arrest, incarceration due to arrest, or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest except as directed by the order of expungement or when request by the person whose record was expunged.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses; however, drug convictions should be included in the offenses eligible for expungement set forth above.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>KENTUCKY</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • KY. CONST. § 77 (West 2024) (power of governor to remit fines and forfeitures, grant reprieves and pardons; no power to remit fees) • KY. REV. STAT. ANN. § 196.281 (West 2024) (documentation provided to prisoners upon release; issuance of certificate of employability; eligibility, contents, and revocation) • KY. REV. STAT. ANN. §§ 218A.275 and 218A.276 (West 2024) (included within “Controlled Substances”) • KY. REV. STAT. ANN. § 218A.14151 (West 2024) (deferred prosecution program for first and second offenders of § 218A.1415) • KY. REV. STAT. ANN. §§ 431.073 to 431.0795 (West 2024) (included within “General Provisions Concerning Crimes and Punishments”) • KY. REV. STAT. ANN. § 439.450 (West 2024) (board to make investigation and report to governor)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • September 28, 1891 (§ 77) • May 18, 1956 (§ 439.450) • July 12, 2012 (§§ 218A.275, 218A.14151) • July 15, 2016 (§ 431.078) • June 27, 2019 (§ 431.079) • July 15, 2020 (§ 431.076) • June 29, 2021 (§ 196.281) • June 29, 2023 (§§ 431.073, 431.074)
Pardon provisions	<p>§ 77 – vests the governor with the power to grant pardons, except in cases of impeachment, and shall file with each application a statement of the reasons for the decision, which application and statement shall always be open for public inspection. In cases of treason, the governor shall have the power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested.</p> <p>§ 439.450 – requires the board of probation and parole to conduct an investigation and submit a report to the governor upon request with respect to any case of pardon.</p>
Is sealing of records available?	Yes. See discussion of §§ 218A.275 and 431.076 below.
Is expungement of records available?	Yes. § 431.073 (certain felony convictions may be vacated and the records expunged; application; hearing; vacating conviction without a hearing; order to vacate and expunge; application form; fees; retroactivity) – provides that any person who has been convicted of a list of Class D felonies,

KENTUCKY**Is expungement of records available?, cont'd**

convicted of a series of Class D felony violations of one or more of the listed statutes arising from a single incident, granted a full pardon, or convicted of a Class D felony, or an offense prior to January 1, 1975, which was punishable by not more than five years' incarceration, which was not a violation of certain statutes and did not result in serious bodily injury or death; or of multiple felony offenses eligible under this paragraph, may file an application to have the judgment vacated. The application shall be filed as a motion in the original criminal case. The person shall be informed of the right to file such a motion at the time of adjudication.

Provides that a verified application shall be filed no sooner than five years after the completion of the person's sentence or the successful completion of the person's probation or parole, whichever occurs later.

If the Commonwealth files an objection to the petition, the court shall schedule a hearing. At the hearing, the applicant must prove by clear and convincing evidence that:

- (1) Vacating the judgment and expunging the record is consistent with the welfare and safety of the public;
- (2) The action is supported by the petitioner's behavior since the conviction or convictions, as evidenced that he or she has been active in rehabilitative activities in prison and is living a law-abiding life since release;
- (3) The vacation and expungement is warranted by the interests of justice; and
- (4) Any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement is met.

If the court determines that circumstances warrant vacation and expungement and that the harm otherwise resulting to the applicant clearly outweighs the public interest in the criminal history record information being publicly available, then the original conviction or convictions shall be vacated and the records expunged. The order of expungement shall not preclude a prosecutor's office from retaining a non-public record for law enforcement purposes only.

The court may order the judgment vacated and order all records expunged if the court finds that the person had not

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been convicted of a felony or misdemeanor in the five years prior to filing the application, no proceeding is pending or being instituted against the person, and the person has been rehabilitated and poses no significant threat of recidivism.

Upon entry of an order vacating and expunging a conviction, the original conviction shall be vacated and the record expunged. The records shall be deleted or removed from computer systems so that the matter shall not appear on official state-performed background checks. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. If the person is not prohibited from voting for any other reason, the person's ability to vote shall be restored and the person may register to vote.

Upon the issuance of an order vacating and expunging a conviction, the applicant shall be charged an expungement fee of \$250, which may be payable by an installment plan. Records shall not be deleted or removed until the fee has been paid in full.

Provides that this section is retroactive.

§ 431.074 (index of expungement orders; restricted access) – requires the Administrative Office of the Courts to retain an index of expungement orders entered pursuant to §§ 431.073 and 431.078 which shall only be accessible to persons preparing a certification of eligibility for expungement pursuant to § 431.079 (see below) or the Kentucky Law Enforcement Council for the purpose of verifying qualifications. If the index indicates that the person applying for expungement has had a prior felony expunged under § 431.073, the person preparing the report may, notwithstanding the provisions of § 431.073, access the expunged record and include information from the expunged record in the certification.

§ 431.076 (expungement of criminal records for those acquitted of crimes, for whom charges have been dismissed but not in exchange for a guilty plea to another charge, or against whom charges have not resulted in an indictment or

KENTUCKY**Is expungement of records available?, cont'd**

an information; effects of an order of expungement; expungement by court or upon petition of person charged; exception) – if the records of a person who is eligible under the provisions of this section are not automatically expunged pursuant to this section (see discussion of the automatic expungement provisions of § 431.076 below), the person may petition the court in which the disposition of the charges was made to expunge all charges. If the court finds that the petition is properly brought, the court shall grant the petition and order the expunging of the records. An appellate court which issued an opinion in a case under this subsection shall order that the appellate case file be sealed and direct that the version of the appellate opinion published on the court's website be modified to avoid use of the petitioner's name in the case title and body of the opinion.

Additionally, a person against whom felony charges originally filed in the district court have not resulted in an indictment by the grand jury or in an information filed by the Commonwealth's attorney may petition the court in which the charges were filed to dismiss and expunge all charges for which an indictment or information has not issued. A petition brought under this provision shall be served on the listed parties who shall be given the opportunity to respond to the petition. If a response is not filed, 90 days after the filing of the petition, the court shall dismiss the charges without prejudice and order the records expunged. If a response is filed, 90 days after the date the response is filed, if an indictment has not issued, the court shall dismiss without prejudice the charges for which an indictment has not issued and order the records expunged. An appellate court which issued an opinion in the case may, upon motion of the petitioner in the case, order the appellate case file to be sealed and also direct that the version of the appellate opinion published on the court's website be modified to avoid use of the petitioner's name in the case title and body of the opinion.

An expungement petition brought under these provisions shall be filed no sooner than 60 days following the order of acquittal or dismissal with prejudice by the court; six months following the date of the court decision to hold the matter to the grand jury; or for charges dismissed without prejudice, (a) for felony charges, three years following the date of the

KENTUCKY**Is expungement of records available?, cont'd**

order of dismissal without prejudice; or (b) for misdemeanor charges, one year following the date of the order of dismissal without prejudice.

An order of expungement pursuant to this section shall expunge all criminal records, including law enforcement records, but shall not expunge records in the custody of the Department for Community Based Services.

After expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall delete or remove the records from their computer systems so that any official state-performed background check will indicate that the records do not exist. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

Provides that inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in such petition.

§ 431.078 (expungement of misdemeanor, violation, and traffic infraction records of convictions and dismissed or amended charges) – provides that any person who has been convicted of: (a) a misdemeanor, a violation, or a traffic infraction not otherwise classified as a misdemeanor or violation, or a series of misdemeanors, violations, or traffic infractions arising from a single incident; or (b) a series of misdemeanors, violations, or traffic infractions not arising from a single incident, may petition the court for expungement of his or her record within that judicial district, including a record of any charges for misdemeanors, violations, or traffic infractions that were dismissed or amended in the criminal action. The person shall be informed of the right at the time of adjudication. Except as otherwise provided by law, the petition shall be filed no sooner than five years after the completion of the person's sentence or the successful completion of the person's probation, whichever occurs later.

KENTUCKY**Is expungement of records available?, cont'd**

For a petition brought under (a) above, the court shall order the records expunged if, at the hearing, the court finds that the offense was not a sex offense or an offense committed against a child; the person had not been convicted of a felony or a misdemeanor in the preceding five years; no proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and the offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.

For a petition brought under (b) above, the court may order the records expunged if the court finds the elements set forth above.

Upon the entry of an order to expunge records, the proceedings in the case shall be deemed never to have occurred. The court and other agencies shall cause the records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks. The persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter. Finally, the person whose records have been expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

Inspection of the expunged records may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in such petition.

Provides that this section shall be deemed to be retroactive, and any person who was convicted prior to July 14, 1992 is permitted to petition for expungement of a record that meets the requirements.

§ 431.079 (petition or application seeking expungement to include certificate of eligibility for expungement from Department of Kentucky State Police and Administrative Office of the Courts; administrative regulations; construction) – requires that every petition or application filed seeking expungement of a conviction shall include a certificate of eligibility for expungement. Provides that the

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Is expungement of records available?, cont'd	Department of Kentucky State Police and the Administrative Office of the Courts shall certify that the agencies have conducted a criminal background check on the petitioner and whether or not the petitioner is eligible to have the requested record expunged. Nothing in this section shall be construed to prohibit the expungement of a case ordered by a court. For purposes of this section and §§ 431.073, 431.076, and 431.078, “expungement” means the removal or deletion of records by the court and other agencies which prevents the matter from appearing on official state-performed background checks.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 431.076 (expungement of criminal records for those acquitted of crimes, for whom charges have been dismissed but not in exchange for a guilty plea to another charge, or against whom charges have not resulted in an indictment or an information; effects of an order of expungement; expungement by court or upon petition of person charged; exception) – on or after July 15, 2020, if a court enters an order of acquittal of criminal charges against a person, or enters an order dismissing with prejudice all criminal charges in a case against a person and not in exchange for a guilty plea to another charge, the court shall order the record expunged upon the expiration of 30 days, unless the person objects to the expungement. If the records are not expunged pursuant to this subsection, the person may petition the court to expunge all charges (see discussion of expungement above).</p> <p>The provisions in § 431.076 related to the treatment of, and access to, expunged records set forth in the section on expungement above also apply here.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 196.281 – provides that the department of corrections shall issue a certificate of employability to a prisoner upon release if all of the following apply:</p> <p style="padding-left: 40px;">(1) The prisoner achieved one or both of the following:</p> <p style="padding-left: 80px;">(a) while incarcerated, successfully earned an educational credit, a program completion credit, or a work-for-time credit; or (b) prior to incarceration, earned a high school equivalency diploma, a high school diploma, a college degree, certification from a vocational or technical education program that the program was completed, or a diploma or degree from</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>a correspondence postsecondary education program approved by the department;</p> <p>(2) The prisoner received no major disciplinary violations during the year immediately preceding his or her release; and</p> <p>(3) The prisoner received a score or level of competence as determined by the department on a job skills assessment test administered by the department or jail.</p> <p>A certificate of employability issued pursuant to this section shall:</p> <p>(1) Be issued to the prisoner upon release from a correctional facility;</p> <p>(2) Be on a form provided by the department;</p> <p>(3) Be valid unless revoked by the department; and</p> <p>(4) Not create relief from a requirement to register as a sex offender; a driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation; a restriction on employment as a prosecutor or law enforcement officer; or the denial, ineligibility, or automatic suspension of a healthcare professional's license due to a substance use disorder.</p> <p>The department shall revoke the certificate of any individual who is convicted of a felony after receiving the certificate and shall send notice of the revocation to the individual. The revocation of a certificate does not affect the right of an employer to rely on the validity of the certificate unless such employer knew before the individual was employed that the certificate was fraudulent.</p> <p>An individual shall not intentionally state or otherwise represent that he or she has a valid certificate of employability knowing that the statement or representation is false. An individual who violates this subsection shall be guilty of a Class B misdemeanor.</p> <p>Upon request, the department shall confirm whether a certificate has been issued to a named individual and whether such certificate is valid at the time of inquiry and at the time of the department's response to that inquiry. The department</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>is not civilly liable for damages based upon its decision to issue or deny issuance of a certificate to any prisoner or for revoking or failing to revoke a certificate.</p> <p>In a judicial or administrative proceeding alleging negligence or other fault, a certificate issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault.</p> <p>Requires the department to notify incoming prisoners of the possibility to earn a certificate of employability. It shall submit an annual report no later than September 1 of each year to the governor and general assembly which shall include the number of certificates of employability issued in the preceding 12 months, the rate of recidivism among released prisoners previously issued certificates, and any other information the department deems appropriate to include.</p>
Are drug convictions eligible for relief?	<p>Yes. § 218A.275 (assessment and treatment program for first offenders of possession of controlled substance; rescission of treatment order; voiding of conviction; sealing of records) – provides that in the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and voice the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue the person a certificate to that effect. A conviction voided under this section shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under this subsection and dismissal may occur only once with respect to any person.</p> <p>If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. The court shall order the sealing on a form provided by the Administrative Office of the Courts.</p>

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Are drug convictions eligible for relief?, cont'd	<p>After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. Inspection of the sealed records may thereafter be permitted by the court pursuant to § 27A.099 or upon a motion by the person who is the subject of the records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under this section. A person who has previously had a charge of possession of controlled substances dismissed after completion of a deferred prosecution under § 218A.14151 shall not be eligible for voiding of conviction under this section.</p> <p>§ 218A.276 (assessment and treatment program for possessors of marijuana, synthetic drugs, or salvia; recission of treatment order; voiding of conviction; sealing of records) – this statute is virtually identical to § 218A.275 with respect to convictions for possession of marijuana, synthetic drugs, or salvia.</p> <p>§ 218A.14151 – provides that a defendant charged with his or her second offense under § 218A.1415 (related to possession of a controlled substance in the first degree) may enter a deferred prosecution program. Upon successful completion, the charges against the defendant shall be dismissed and all records relating to the case including, but not limited to, arrest records and record relating to the charges, shall be sealed. The offense shall be deemed never to have occurred, except for the purposes of determining the defendant's eligibility for deferred prosecution under this section or voiding of the conviction under § 218A.275, and the defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program unless required to do so by state or federal law.</p>
Miscellaneous provisions	None.

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Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • LA. CONST. Art. IV, § 5 (2024) (governor; powers and duties) • LA. CODE CRIM. PROC. ANN. art. 893 (2024) (suspension and deferral of sentence and probation in felony cases) • LA. CODE CRIM. PROC. ANN. art. 971 to 998 (2024) (collectively “Expungement of Records”) • LA. STAT. ANN. § 15:572 (2024) (powers of governor to grant reprieves and pardons; automatic pardon for first offender; payment of court costs required) • LA. STAT. ANN. § 15:572.4 (2024) (Board of Pardons; rules, regulations, and procedures; notice; restrictions on applications; time periods for additional review) • LA. STAT. ANN. § 15:572.6 (2024) (finality of clemency determinations) • LA. STAT. ANN. § 15:572.9 (2024) (Avery C. Alexander Act; application process) • LA. STAT. ANN. § 15:586 (2024) (authority to purge records of the central repository) • LA. STAT. ANN. § 23:291.1 (2024) (certificate of employability)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1979 (§ 15:572.6) • July 1, 1981 (§ 15:586) • December 27, 1999 (Art. IV, § 5) • June 2, 2006 (§ 15:527.9) • August 1, 2014 (Art. 974, 982, 985, 985.1) • August 1, 2015 (Art. 984) • August 1, 2016 (§ 23:291.1) • August 1, 2018 (Art. 973) • August 1, 2020 (Art. 975, 976, 978) • August 1, 2023 (Art. 972.1, 977) • April 29, 2024 (Art. 893) • August 1, 2024 (§§ 15:572, 15:572.4)
Pardon provisions	<p>Art. IV, § 5 – vests the governor with the power to grant pardons of those convicted of offenses against the state upon favorable recommendation of the Board of Pardons. Provides that a first offender convicted of a non-violent crime, or an offender convicted one of a list of other crimes who has never previously been convicted of a felony, shall be pardoned automatically upon completion of his or her sentence, without a recommendation of the Board of Pardons and without action by the governor.</p> <p>§ 15:572 – provides that the governor may, upon recommendation of the Board of Pardons, grant a pardon to</p>

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those convicted of offenses against the state. The governor may not grant any pardon to any person unless that person has paid all of the court costs which were imposed in connection with the conviction of the crime for which the pardon is to be issued. Requires the governor to approve or reject a favorable recommendation for pardon prior to the governor leaving office or upon expiration of the governor's term.

§ 15:572.4 – sets forth the procedures for the Board of Pardons to conduct hearings on requests for pardons. Also provides that any applicant who has been sentenced to life imprisonment shall not be eligible to apply to the board for a pardon for a period of 15 years after being sentenced by the court, except that periods of time prior to the imposition of the sentence in which the defendant was in actual custody for the offense for which he was sentenced to life imprisonment shall be included in computing the 15-year period. If the applicant was sentenced to life imprisonment for an offense that is either a crime of violence or a sex offense shall not be eligible to apply for a period of 25 years after being sentenced, but shall also include any time in actual custody prior to being sentenced.

If an application is denied, the applicant shall be notified in writing of the reason for the denial and thereafter may file a new application to the board no earlier than five years from the date of action by the board. Any subsequent applications shall not be filed earlier than five years after the immediately preceding action taken by the board. The provisions of this subsection, including the time limits for individuals sentenced to a life sentence, shall not apply when the board determines that new and material evidence that, notwithstanding the exercise of reasonable diligence by the applicant, was not discovered before or during his trial, is available, and if it had been introduced at the trial, it would probably have changed the verdict or judgment of guilty.

Provides that when no action is taken by the governor for pardon issued by the board, the person seeking pardon shall be required to reapply to the board and the recommendation shall expire upon the governor leaving office or upon the expiration of the governor's term.

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Pardon provisions, cont'd	<p>§ 15:572.6 – provides that no person shall have a right of appeal from a decision of the Board of Pardons or the governor regarding clemency.</p> <p>§ 15:572.9 – provides that a person who has been convicted of violating a state law or municipal ordinance the purpose of which was to maintain or enforce racial separation or discrimination of individuals, upon application to the Board of Pardons, shall be granted a pardon for the conviction. If the person convicted is deceased, the application may be filed by his or her relatives or any interested individual.</p>
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 15:586 – provides that, except as provided by Title XXXIV of the Code of Criminal Procedure, no records of the Bureau of Criminal Identification and Information may be permanently destroyed until five years after the person identified is known or reasonably believed to be dead. Upon the official issuance of appropriate rules and regulations, the bureau may retire or remove from active dissemination to eligible agencies records of any individuals beyond the age of 60 who has had no reported criminal arrest for a period of 15 years from the last reported official release from the criminal justice system.</p> <p>Art. 893 – provides that, when a defendant who has been committed to the custody of the Department of Public Safety and Corrections to serve a sentence in the intensive incarceration program successfully completes such program and all other conditions of probation or parole, and is otherwise eligible, the court may set aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended or deferred under the provisions of this Article. A dismissal under this subparagraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.</p> <p>Title XXXIV, articles 971 to 998 of the Code of Criminal Procedure sets forth the provisions related to expungement of records.</p>

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Is expungement of records available?, cont'd	<ul style="list-style-type: none"> ➤ Art. 972.1 (expungement of records; local courts) – sets forth the courts that have authority to expunge records. ➤ Art. 974 (dissemination of expunged records by third parties; court order) – prohibits a private third-party entity that compiles and disseminates criminal history information for compensation from disseminating any information in its possession regarding an arrest, conviction, or other disposition after it has received notice of issuance of a court order to expunge such records. Such company may be liable for actual damages, court costs, and attorney fees for violating this provision. ➤ Art. 975 (individuals incarcerated; ineligible to file motion to expunge records) – prohibits a person who is in the physical custody of the Department of Public Safety and Corrections serving a sentence at hard labor from filing motion to expunge a record of an arrest which did not result in a conviction or to expunge a record of an arrest and conviction of a misdemeanor or felony offense. ➤ Art. 976 (motion to expunge record of arrest that did not result in a conviction) – permits a person to file a motion to expunge a record of arrest for a felony or misdemeanor offense that did not result in a conviction if: (1) the person was not prosecuted for the offense and the statute of limitations has run; (2) the district attorney declined to prosecute, including that the person successfully completed a pretrial diversion program; (3) prosecution was instituted and proceedings have been finally disposed of by dismissal, sustaining a motion to quash, or acquittal; or (4) the person was determined to be factually innocent. ➤ Art. 977 (motion to expunge a record of arrest and conviction of a misdemeanor offense) – permits a person to file a motion to expunge a record of arrest and conviction of a misdemeanor offense if either the conviction was set aside and the prosecution was dismissed or more than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole, and the person has not been convicted of any felony offense during the five-year period and has no felony charges

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Is expungement of records available?, cont'd	<p>pending. Sets forth the convictions ineligible for expungement under this article.</p> <ul style="list-style-type: none"> ➤ Art. 978 (motion to expunge record of arrest and conviction of a felony offense) – permits a person to file a motion to expunge the record of arrest and conviction of a felony offense if: (1) the conviction was set aside and the prosecution dismissed; (2) more than 10 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction and the person has not been convicted of any other criminal offense during the 10-year period and has no criminal charge pending; or (3) the person is entitled to a first offender pardon for the offense. Sets forth the convictions ineligible for expungement. ➤ Art. 982 (service of order and judgment of expungement) – sets forth the individuals and entities to whom the clerk of the court shall serve an order and judgment of expungement. ➤ Art. 984 (additional requirements for the expungement of records involving the operation of a vehicle while intoxicated; additional fee) – sets forth the additional requirements for a person convicted of operating a vehicle while intoxicated to obtain expungement. ➤ Art. 985 (expungement by redaction of records with references to multiple individuals) – provides that if a record includes the name of more than one individual and one or more of the individuals is entitled to expungement, such individual(s) may petition the court to have records expunged by redaction. If the petition is granted, the name of the individual and all other identifying information regarding the individual shall be redacted from all records regarding the arrest and conviction. The redacted records shall be available for public access. ➤ Art. 985.1 (interim motion to expunge a felony arrest from criminal history in certain cases resulting in a misdemeanor conviction) – provides that a person may file an interim motion to expunge a felony arrest from his or her criminal history when that original arrest results in a conviction for a misdemeanor. In such cases, only the original felony arrest may be expunged.

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Is expungement of records available?, cont'd	<p>➤ Art. 986 to 998 – forms to be used for expungement.</p> <p>Art. 973 (effect of expunged record of arrest or conviction) – an expunged record of arrest or conviction shall be confidential and no longer considered to be a public record and shall not be made available to any person or other entity, except for the following:</p> <ol style="list-style-type: none"> (1) To a member of law enforcement or criminal justice agency or prosecutor who shall request that information in writing, certifying that the request is for the purpose of investigating, prosecuting, or enforcing criminal law, for the purpose of any other statutorily defined law enforcement or administrative duties, or for the purposes of the requirements of sex offender registration and notification pursuant to the provisions of § 15:540, et seq.; (2) On order of a court of competent jurisdiction and after a contradictory hearing for good cause shown; (3) To the person whose record has been expunged or his or her counsel; or (4) To a member of law enforcement or a criminal justice agency, prosecutor, or judge, who requests that information in writing, certifying that the request is for the purpose of defending a law enforcement, criminal justice agency, or prosecutor in a civil suit for damages resulting from wrongful arrest or other civil litigation and the expunged record is necessary to provide a proper defense. <p>Provides that, except to those persons and other entities listed in paragraphs (1) – (4) above, no person whose record of arrest or conviction has been expunged shall be required to disclose to any person that he or she was arrested or convicted of the subject offense, or that the record of the arrest or conviction has been expunged.</p> <p>It also provides that information contained in an expunged record may be released to a list of state employment boards and departments upon written request and on a confidential basis.</p> <p>Nothing in this article shall be construed to limit or impair use of the records for purposes of the Habitual Offender</p>

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Is expungement of records available?, cont'd	<p>Law, setting bail, sentencing, or as otherwise authorized by law. It also does not limit or impair the subsequent use of any expunged record of any arrests or convictions by a “news-gathering organization.”</p> <p>Finally, nothing in this article shall be construed to relieve a person who is required to register and provide notice as a child predator or sex offender of any obligations and responsibilities provided in § 15:541, et seq.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Art. 985.2 (automated expungement of qualifying records, eff. upon appropriation of monies by the legislature) – upon becoming effective, this article requires the Louisiana Bureau of Criminal Identification and Information to identify within its criminal repository database all records with a case management information system (CMIS) number and final dispositions for individuals eligible for an expungement pursuant to the provisions of the Code of Criminal Procedure Articles 976 to 978.</p> <p>Beginning January 1, 2025, a defendant may submit a request through the bureau for expungement through the automated process. Within 30 days of receipt of the request, the bureau shall expunge any eligible records identified in the database and shall send the records with a CMIS number and final dispositions to the Louisiana Supreme Court case management information system.</p> <p>Within 30 days of receipt of records from the bureau, the case management information system shall send notice by mail or electronically of all records identified to be expunged by automation to the clerks of the district courts who shall verify and identify such records and mark those records as expunged by automation. If a record is unable to be verified and identified, the bureau shall be notified that the record was not expunged by automation. The clerks shall notify the appropriate district attorney, sheriff, and arresting agency that the records were expunged, and those individuals or entities shall acknowledge the records as expunged by automation pursuant to Article 973. However, nothing in this article shall be construed to require the arresting agency, booking agency, or the district attorney to manually segregate or sequester upon acknowledging or identifying the records.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	Nothing in this article shall prevent an otherwise eligible individual from obtaining an expungement pursuant to any provision in this Title.
Does the state offer a certificate of relief or similar document?	<p>Yes. § 23:291.1 – requires any judge presiding over a reentry division of court created pursuant to § 13:5401 shall issue a temporary certificate of employability to an offender under the intensive supervision of the reentry division of court and shall issue a permanent certificate to an offender who has successfully completed his or her sentence under § 13:5401 (related to successful completion of the reentry court's offender rehabilitation and workforce development program).</p> <p>Provides that a temporary certificate shall be deemed null and void if the offender fails to successfully complete his or her sentence and is revoked from probation. It shall also be deemed null and void if the offender is convicted of any felony offense subsequent to the issuance of the certificate.</p> <p>Provides that any employer, general contractor, premises owner, or other third party shall not be subject to a cause of action for negligent hiring of or failing to adequately supervise an offender certified to be employed due to damages or injury caused by that employee or independent contractor solely because that employee or contractor was previously convicted of a criminal offense. Nothing in this subsection shall affect the vicarious liability of the employer.</p>
Are drug convictions eligible for relief?	<p>Yes. Art. 893 – provides that, when a case is accepted into a drug court division probation program and the court finds, at the conclusion of the probationary period, that the defendant has successfully completed all conditions of probation, the court may set aside the conviction and dismiss the prosecution. Dismissal under this paragraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.</p> <p>Art. 977 (motion to expunge a record of arrest and conviction of a misdemeanor offense) – provides that, notwithstanding any law to the contrary, a person may file a motion to expunge his or her record of arrest and conviction of a misdemeanor conviction for a first offense possession of marijuana, tetrahydrocannabinol, or chemical derivatives thereof after 90 days from the date of conviction.</p>

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Are drug convictions eligible for relief?, cont'd	<p>Art. 978 (motion to expunge record of arrest and conviction of a felony offense) – provides that a person may file a motion to expunge his or her record of arrest and conviction of a felony offense if any of the following apply:</p> <ol style="list-style-type: none"> (1) The conviction was set aside and the prosecution was dismissed; (2) More than 10 years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, the person has not been convicted of any other criminal offense during the 10-year period, and has no criminal charges pending; or (3) The person is entitled to a first offender pardon for the offense. <p>Provides that no expungement shall be granted nor shall a person be permitted to file a motion to expunge the record of arrest and conviction of a felony offense if the person was convicted of the commission or attempted commission of a violation of the Uniform Controlled Dangerous Substances Law, except for any of the following, which may be expunged pursuant to the provisions of this Title:</p> <ol style="list-style-type: none"> (1) Possession of a controlled dangerous substance; (2) Possession with intent to distribute; (3) Conviction for a violation which is punishable by a term of imprisonment of not more than five years; (4) Conviction for a violation which may be expunged pursuant to Art. 893(E); or (5) Conviction for a violation for which the person is entitled to a first offender pardon.
Miscellaneous provisions	None.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • ME. CONST. Art. V, Pt. 1, § 11 (West 2024) (power to pardon and remit penalties, etc.; conditions) • ME. REV. STAT. ANN. tit. 15, §§ 2161 to 2167 (West 2024) (collectively “Pardons and Commutation of Sentences”) • ME. REV. STAT. ANN. tit. 15, §§ 2261 to 2269 (West 2024) (collectively “Post-judgment Motion to Seal Criminal History Record”) • ME. REV. STAT. ANN. tit. 16, § 703 (West 2024) (definitions) • ME. REV. STAT. ANN. tit. 16, § 705 (West 2024) (dissemination of confidential criminal history record information) • ME. REV. STAT. ANN. tit. 16, § 707 (West 2024) (unlawful dissemination of confidential criminal history record information) • ME. REV. STAT. ANN. tit. 34-A, § 5210 (West 2024) (duties)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • January 4, 1977 (§§ 2163 to 2165) • January 15, 1984 (§ 5210) • July 15, 2017 (§ 2167) • July 4, 2018 (§ 703) • June 21, 2021 (§ 707) • August 8, 2022 (§§ 2265, 2266, 2269) • October 25, 2023 (§§ 2263, 2264) • March 25, 2024 (§ 705) • August 9, 2024 (§§ 2261, 2262)
Pardon provisions	<p>Art. V, Pt. 1, § 11 – vests the governor with the power to grant pardons, except in cases of impeachment, upon such conditions and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant pardons shall include offenses of juvenile delinquency.</p> <p>§ 2163 (conditional pardons by governors) – provides that, in any case in which the governor is authorized by the constitution to grant a pardon, he may, upon petition of the person convicted, grant it upon such conditions and with such restrictions and under such limitations as he or she deems proper, and he may issue his warrant to all proper officers to carry such pardon into effect, which warrant shall be obeyed and executed instead of the sentence originally awarded.</p>

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Pardon provisions, cont'd	<p>§ 2164 (violations of conditions; rearrest) – when a person has been pardoned on conditions to be observed and performed by him, and the warden of the state prison or keeper of the jail where the convict was confined has reason to believe that such person has violated the same, such officer shall forthwith cause him or her to be arrested and detained until the case can be examined by the governor, and the officer making the arrest shall forthwith give them notice thereof, in writing.</p> <p>§ 2165 (remand to prison on finding of violation) – provides that, upon receipt of the notice provided for in § 2164, the governor shall examine the case of such convict and, if it appears by his own admission or by evidence that he has violated the conditions of his pardon, the governor shall order him to be remanded and confined for the unexpired term of the sentence. In computing the period of this confinement, the period between the pardon and subsequent arrest shall not be reckoned as part of the term of his sentence. If it appears that the person has not broken the conditions of the pardon, he shall be discharged.</p> <p>§ 2167 (references to pardoned crime deleted from Federal Bureau of Investigation's identification record) – provides that, in any case in which the governor grants a convicted person a full and free pardon, after the expiration of 10 years from the date the person is finally discharged from any sentence imposed as a result of the conviction, the person may make written application to the State Bureau of Identification to have all references to the pardoned crime deleted from the FBI's identification record.</p> <p>§ 5210 – provides that the Parole Board shall, when requested by the governor, advise him concerning applications for pardon. The board shall hold hearings, cause an investigation to be made, and collect records. The board shall make recommendations regarding action by the governor on the application. All information obtained under this subsection, and any report furnished to the governor, is confidential.</p>
Is sealing of records available?	<p>Yes. § 2261 (definitions) – includes definition of “eligible criminal conviction” which includes Class E crimes (that is, crimes that do not exceed a maximum penalty of one year of imprisonment) and a conviction for a crime when the crime</p>

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Is sealing of records available?, cont'd	<p>was committed prior to January 30, 2017 for certain drug-related crimes.</p> <p>§ 2262 (statutory prerequisites for sealing criminal history record information) – provides that criminal history record information relating to a specific criminal conviction may be sealed only if:</p> <ol style="list-style-type: none"> (1) The criminal conviction is an eligible criminal conviction; (2) At least four years have passed since the person has fully satisfied each of the sentencing alternatives for the eligible conviction; (3) The person has not been convicted of another crime in this state and has not had a criminal charge dismissed as a result of a deferred disposition since the time at which the person fully satisfied each of the sentencing alternatives for the person's most recent eligible criminal conviction up until the time of the order; (4) The person has not been convicted of a crime in another jurisdiction since the time at which the person fully satisfied each of the sentencing alternatives for the person's most recent eligible conviction upon until the time of the order; and (5) The person does not have any presently pending criminal charges in this state or in another jurisdiction. <p>§ 2263 (motion; persons who may file) – a person may file a written motion seeking a court order sealing the person's criminal history record information relating to a specific criminal conviction in the underlying criminal proceeding based on a court determination that the person satisfies the statutory prerequisites specified in this chapter.</p> <p>§ 2264 (motion and hearing; process) – provides that a motion to seal must be filed in the underlying criminal proceeding. The court shall hold a hearing on the motion. At the conclusion of the hearing, if the court determines that the movant has established each of the statutory prerequisites by a preponderance of the evidence, the court shall grant the motion and issue a written order sealing the criminal history record information.</p>

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Is sealing of records available?, cont'd	<p>Notwithstanding a court order sealing criminal history record information, if at any time subsequent to the court's order the person is convicted of a new crime in any jurisdiction, the criminal history record information must be unsealed.</p> <p>§ 2265 (special restrictions on dissemination and use of criminal history record information) – notwithstanding title 16, § 704, sealed criminal history record information is confidential, must be treated as confidential criminal history record information for purposes of dissemination to the public, and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except as provided by law. In addition to the dissemination authorized by title 16, § 705, a criminal justice agency may disseminate sealed criminal history record information to:</p> <ol style="list-style-type: none"> (1) The person who is the subject of the conviction or that person's designee; (2) A criminal justice agency for the purpose of administration of criminal justice, including use of the information by an attorney for the state or another jurisdiction as part of a prosecution of the person for a new crime and use as permitted by the Maine Rules of Evidence and to comply with discovery requirements of the Maine Rules of Civil Procedure and Rules of Unified Criminal Procedure; (3) The secretary of state to ensure compliance with state and federal motor vehicle laws; (4) The victim or victims of the crime related to the conviction or the victim's guardian; (5) Certain financial services regulatory agencies; (6) Certain professional licensing agencies; (7) Financial institutions; and (8) An entity that is required by federal or state law to conduct a fingerprint-based criminal history record check. <p>§ 2266 (limited disclosure of eligible criminal conviction) – a person whose eligible criminal conviction is the subject of a sealing order may respond to inquiries from persons other than those entities authorized to obtain the sealed information by not disclosing the existence of the eligible criminal conviction without being subject to any sanctions</p>

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Is sealing of records available?, cont'd	<p>under the laws of this state. Other than when responding to criminal justice agencies or when under oath while being prosecuted for a subsequent crime, a person whose criminal conviction is sealed does not violate title 17-A, §§ 451 to 453 by not disclosing the sealed conviction.</p> <p>§ 2269 (violation) – a person who intentionally disseminates sealed criminal history record information relating to a criminal conviction knowing it to be in violation of law is guilty of unlawful dissemination of sealed records, a Class E crime.</p>
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. See drug convictions are eligible for sealing. See discussion of sealing above.
Miscellaneous provisions	<p>§ 703 – defines “confidential criminal history record information,” which means criminal history record information of the following types:</p> <ol style="list-style-type: none"> (1) Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending; (2) Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor; (3) Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings; (4) Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge; (5) Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the

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Miscellaneous provisions, cont'd	<p>(6) court to be mentally incompetent to stand trial or be sentenced;</p> <p>(7) Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;</p> <p>(8) Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;</p> <p>(9) Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;</p> <p>(10) Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice, has terminated based on lack of subject matter jurisdiction, or has been terminated because the court lacked jurisdiction over the defendant; and</p> <p>(11) Information disclosing that a person has petitioned for and been granted a full and free pardon.</p> <p>§ 705 – sets forth the individuals and entities to whom a Maine criminal justice agency may disseminate confidential criminal history record information, including:</p> <ol style="list-style-type: none"> (1) Other criminal justice agencies for the purpose of administration of criminal justice and criminal justice agency employment; (2) Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision, or court order; (3) Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers; (4) Any person for the express purpose of research, evaluation, or statistical purposes; (5) Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested, or detained or had formal criminal charges initiated on a specific date;

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Miscellaneous provisions, cont'd	<p>(6) The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information within 30 days of the date of occurrence of that disposition or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and</p> <p>(7) A public entity for purposes of international travel, such as issuing visas and granting of citizenship.</p> <p>Provides that a Maine criminal justice agency may not confirm the existence or non-existence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.</p> <p>§ 707 – a person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates such information knowing it to be a violation of any of the provisions of this chapter. Violation is a Class E crime.</p>
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MD. CONST. Art. II, § 20 (West 2024) (repeives and pardons; remittance of fines and forfeitures) • MD. CODE ANN. CORR. SERVS. § 7-104 (West 2024) (issuance of certificate of rehabilitation) • MD. CODE ANN. CORR. SERVS. § 7-206 (West 2024) (duties) • MD. CODE ANN. CORR. SERVS. § 7-601 to 7-603 (West 2024) (collectively “Commutation of Sentence; Pardon”) • MD. CODE ANN. CRIM. PROC. §§ 10-101 to 10-112 (West 2024) (collectively “Expungement of Police and Court Records”) • MD. CODE ANN. CRIM. PROC. §§ 10-301 to 10-306 (West 2024) (collectively “Shielding”) • MD. CODE REGS. 12.13.02.01 to 12.13.02.07 (2024) (collectively “Certificate of Rehabilitation”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 1, 1999 (§§ 7-602, 7-603) • October 1, 2001 (§§ 10-108, 10-109) • October 1, 2002 (§ 10-104) • October 1, 2007 (§§ 10-102 to 10-103.1) • October 1, 2013 (§ 7-601) • October 1, 2015 (§§ 10-302 to 10-304, 10-306) • March 14, 2016 (§ 10-305) • June 4, 2018 (12.13.02.01 to 12.13.02.07) • October 1, 2019 (§ 10-301) • December 14, 2022 (§ 7-104) • January 1, 2023 (§§ 10-101, 10-107, 10-112) • October 1, 2023 (§§ 7-206, 10-105.1, 10-105.2, 10-105.4, 10-110) • October 1, 2024 (§ 10-105)
Pardon provisions	<p>Art. II, § 20 – vests the governor with the power to grant pardons, except in cases of impeachment and in cases in which he is prohibited by other articles of this constitution. Provides that, in every case in which he exercises this power, the governor shall report to either branch of the legislature, whenever required, the petitions, recommendations, and reasons which influenced his decision.</p> <p>§ 7-206 – provides that the Maryland Parole Commission shall, among other things, review and make recommendations to the governor, if requested by the governor, concerning a pardon.</p> <p>§ 7-601 (power of governor) – provides that, on giving the notice required by the Maryland constitution, the governor</p>

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Pardon provisions, cont'd	<p>may pardon an individual convicted of a crime subject to any conditions the governor requires. Further provides that a pardon shall be evidenced by a written executive order signed by the governor under the great seal. An order granting a pardon or conditional pardon shall clearly indicate on its face whether it is a partial or full pardon. There is a presumption that the grantee of a pardon was lawfully and properly convicted of a crime against the state unless the order granting the pardon states that the grantee has been shown conclusively to have been convicted in error.</p> <p>§ 7-602 (violation of conditional pardon) – unless the order granting a pardon provides otherwise, the governor is the sole judge of whether a condition of a conditional pardon has been violated. A determination that a condition has been violated by the grantee is final and not subject to review by any court.</p> <p>§ 7-603 (effect of violation of conditional pardon) – provides that, unless the governor orders otherwise, if a conditional pardon is revoked for a breach of any of its conditions, the individual released on the conditional pardon shall serve the unserved portion of the sentence originally imposed and may not be granted credit for serving any portion of the original sentence during the time that the individual was released under the conditional pardon.</p>
Is sealing of records available?	<p>Yes. §§ 10-301 to 10-306 set forth the processes for shielding (Maryland’s term for “sealing”) records.</p> <ul style="list-style-type: none"> ➤ § 10-301 (definitions) – defines “shield,” which means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. Also defines “shieldable conviction,” which sets out the offenses that are eligible to be shielded. ➤ § 10-304 (reference to shielded records prohibited on Maryland Judiciary Case Search) – prohibits the Maryland Judiciary Case Search from referring in any way to the existence of specific records shielded in accordance with this subtitle. ➤ § 10-305 (application of Crim. Proc. § 10-105) – a conviction that has been shielded under this subtitle may not be considered a conviction for purposes of § 10-105(e)(4)(i) of this title.

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Is sealing of records available?, cont'd	<p>§ 10-302 (access to shielded records) – provides that a shielded record shall remain fully accessible by:</p> <ol style="list-style-type: none"> (1) Criminal justice units for legitimate criminal justice purposes; (2) Prospective or current employers or government licensing agencies that are subject to a statutory or regulatory requirement or authorization to inquire into the criminal background of an applicant or employee for purposes of carrying out that requirement or authorization; (3) A person that is authorized or required to inquire into an individual's criminal background under certain provisions of the Family Law Article; (4) The person who is the subject of the shielded record and that person's attorney; (5) Health occupations boards; (6) The Natalie M. LaPrade Medical Cannabis Commission; (7) A person that uses volunteers who care for or supervise children; (8) A person that attests under penalty of perjury that the person employs or seeks to employ an individual to care for or supervise a minor or vulnerable adult; and (9) A person who is accessing a record on behalf of and with written authorization from a person or governmental entity described in paragraphs (1) – (8) above. <p>§ 10-303 (petition to shield records) – a person may petition the court to shield the person's court and police records relating to one or more shieldable convictions no earlier than three years after the person satisfies the sentence or sentences imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision.</p> <p>Provides that if a person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for shielding unless the new conviction becomes eligible for shielding. A person is not eligible for shielding if the person is a defendant in a pending criminal proceeding. If a person is not eligible for shielding</p>

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Is sealing of records available?, cont'd	<p>of one conviction in a unit, the person is not eligible for shielding of any other conviction in the unit.</p> <p>Provides that if the state's attorney files a timely objection to the petition, the court shall hold a hearing. If the court finds that the person is entitled to shielding, it shall order all records shielded. The court may grant a petition under this subsection for good cause. A person may be granted only one shielding petition over the lifetime of the person.</p> <p>§ 10-306 (disclosure of shielded records) – provides that a person authorized to access a shielded record may not disclose any information from a shielded record to a person who is not authorized to access such records.</p> <p>Provides that, except as otherwise provided by law, an employer, educational institution, or a unit, official, or employee of the state or political subdivision of the state may not require a person to disclose shielded information about criminal charges that have been shielded or discharge, refuse to hire, expel, refuse to admit, or deny an application for a permit, registration, or government service solely because the person refused to disclose information about shielded criminal charges.</p>
Is expungement of records available?	<p>Yes. §§ 10-101 to 10-112 set forth the processes for expunging police and court records.</p> <ul style="list-style-type: none"> ➤ § 10-101 (definitions) – includes definition of “expungement,” which means, with respect to a court or police record, removal from public inspection by obliteration, by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access, or, if access can be obtained only by reference to another court or police record, by the expungement of it or the part of it that provides access. ➤ § 10-102 (documents subject to expungement) – provides that police and court records, including police and court records in existence before July 1, 1975, are subject to expungement under this subtitle. ➤ 10-103 (expungement of police record when no charge is filed) – applies to records related to arrests, detentions, or confinements occurring before October 1, 2007, and specifies that a person who is arrested,

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Is expungement of records available?, cont'd	<p>detained, or confined by a law enforcement unit for the suspected commission of a crime and is released without being charged may request the expungement of the police record within eight years after the date of the incident. See section on automatic expungement below for information on expungement of police records for arrests or confinements occurring on or after October 1, 2007.</p> <ul style="list-style-type: none"> ➤ § 10-105.4 (court fees or costs) – provides that unpaid court fees or costs are not a bar to expungement under this subtitle. A court shall waive any court fees and costs associated with the charge being expunged upon entry of an order of expungement. ➤ § 10-107 (charges arising from the same incident, transaction, or set of facts) – provides that if two or more charges arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit. ➤ § 10-108 (opening, review, or disclosure of expunged records) – provides that a person may not open or review an expunged record or disclose to another person any information from that record without a court order. A court may pass an ex parte order allowing access to an expunged record on a verified petition filed by a state’s attorney alleging that the expunged record is needed by a law enforcement unit for a pending criminal investigation and the investigation will be jeopardized or life or property will be endangered without immediate access to the record. A person who violates this section is guilty of a misdemeanor. <p>§ 10-105 (expungement of record after charge is filed) – provides that a person who has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, or who has been charged with a civil offense or infraction, except a juvenile offense, may file a petition listing the relevant facts for expungement of such records if:</p>

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- (1) The person is acquitted;
- (2) The charge is otherwise dismissed;
- (3) A probation before judgment is entered, unless the person is charged with a violation of a listed statute;
- (4) A nolle prosequi or nolle prosequi with the requirement of drug or alcohol treatment is entered;
- (5) The court indefinitely postpones trial of a criminal charge by marking the criminal charge “stet” or state with the requirement of drug or alcohol abuse treatment on the docket;
- (6) The case is compromised under § 3-207 of the Criminal Law Article;
- (7) The charge was transferred to the juvenile court;
- (8) The person is convicted of only one criminal act, and that act is not a crime of violence, and is granted a full and unconditional pardon by the governor;
- (9) The person was convicted of a crime or found not criminally responsible under any state or local law that prohibits a list of specific offenses including loitering, vagrancy, and drinking in public;
- (10) The person was found not criminally responsible under any state or local law that prohibits misdemeanor trespass, disturbing the peace, or telephone misuse;
- (11) Except as otherwise provided by law, the person was convicted of a crime and the act on which the conviction was based is no longer a crime;
- (12) The person was convicted of possession of cannabis;
or
- (13) The person was convicted of a crime and the conviction was vacated.

Sets forth a list of offenses for which expungement may not be obtained.

Sets forth the waiting periods before a petition to expunge may be filed, ranging from 3-15 years, or the completion of required treatment or satisfactory completion of the sentence for convictions of certain offenses. However, a court may grant a petition for expungement at any time on a showing of good cause.

MARYLAND**Is expungement of records available?, cont'd**

Unless the state's attorney files an objection to the petition within 30 days of the petition being served, the court shall pass an order requiring expungement of all police and court records. If the state's attorney does file an objection, the court shall hold a hearing and determine if the person is or is not entitled to expungement.

Provides that the person is not entitled to expungement if:

- (1) Except as provided below, the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within three years after the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime;
- (2) The petition is based on the entry of probation before judgment and the person within 15 years after the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime; or
- (3) The person is a defendant in a pending criminal proceeding.

Except as otherwise provided by law, and unless an order is stayed pending an appeal, within 60 days after entry of the order, every custodian of the police and court records subject to the order of expungement shall advise the court and person seeking expungement in writing of compliance with the order.

§ 10-109 (disclosure of expunged information prohibited) – provides that disclosure of expunged information about criminal charges in an application, interview, or other means may not be required by an employer or educational institution of a person who applies for employment or admission or by a unit, official, or employee of the state or a political subdivision of the state of a person who applies for a license, permit, registration, or governmental service.

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Further provides that a person need not refer to or give information concerning an expunged charge when answering a question concerning a criminal charge that did not result in a conviction or a conviction that was pardoned. Refusal by a person to disclose information about criminal charges that have been expunged may not be the sole reason for an employer to discharge or refuse to hire the person or deny a person's application.

Provides that a person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding one year or both for each violation.

§ 10-110 (expungement of certain misdemeanors from records) – provides that a person may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the state or a political subdivision of the state if the person is convicted of a misdemeanor that is a violation of one of the listed statutes, a felony that is a violation of one of the listed statutes, or an attempt, a conspiracy, or a solicitation of any offense listed in this subsection.

Sets forth the time periods before a person is eligible to file a petition, which range from 5-15 years. Provides that if a person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement. A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding. If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

If the state's attorney or a victim files a timely objection to the petition, the court shall hold a hearing. The court shall order expungement after a hearing if the court finds and states on the record that the conviction is eligible for expungement, the person is eligible for expungement, that the person is not a risk to public safety, and that an expungement would be in the interest of justice.

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Are any records eligible to be automatically sealed or expunged?

Yes. § 10-103.1 (expungement upon release without charges) – for arrests or confinements occurring on or after October 1, 2007, a person who is arrested or confined by a law enforcement unit and then is released without being charged with the commission of a crime is entitled to expungement of all police records, including photographs and fingerprints, relating to the matter. Requires the law enforcement, within 60 days after release of a person entitled to expungement of a police record, to search diligently for and expunge each police record about the arrest or confinement of the person and send a notice of expungement containing all relevant facts about the expungement and underlying arrest or confinement to the central repository, each booking facility or law enforcement unit that the law enforcement unit believes may have a police record about the arrest or confinement, and the person entitled to expungement.

Provides that a police record expunged under this section may not be expunged by obliteration until three years after the date of expungement. During that 3-year period, the records shall be removed to a separate secure area to which persons who do not have a legitimate reason for access are denied access. For purposes of this subsection, a legitimate reason for accessing the records including using such records for purposes of proceedings relating to the arrest.

Further provides that, if a law enforcement unit, a booking facility, or the central repository fails to expunge a police record, the person entitled to expungement may seek redress by means of any appropriate legal remedy and recover court costs.

A person entitled to expungement under this section may not be required to pay any fee or costs in connection with the expungement.

§ 10-104 (expungement ordered by district court) – provides that, unless the state objects and shows cause why a record should not be expunged, if the state enters a nolle prosequi as to all charges in a criminal case within the jurisdiction of the court with which a defendant has not been served, the court may order expungement of each court record, police record, or other record that the state or a political subdivision of the

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>state keeps as to the charges. The court may not assess any costs against a defendant for a proceeding under this section.</p> <p>See also, discussion of §§ 10-105.1 and 10-112 below.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 7-104 – provides that the department of correctional services shall issue a certificate of rehabilitation to an individual who:</p> <ol style="list-style-type: none"> (1) Was convicted of a misdemeanor or felony that is not a crime of violence or a sexual offense for which registration is required; (2) Was supervised by the Division of Parole and Probation under conditions of parole, probation, or mandatory release supervision; (3) Has completed all special and general conditions of supervision, including paying all required restitution, fines, fees, and other payment obligations; and (4) Is no longer under the jurisdiction of the division. <p>Provides that it is the policy of the state to encourage the employment of nonviolent ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the state.</p> <p>A licensing board may not deny an occupational license or certificate to an applicant who has been issued a certificate of rehabilitation solely on the basis that the applicant has previously been convicted of a crime that is the subject of the certificate of rehabilitation unless the licensing board determines that there is a direct relationship between the applicant's previous conviction and the license or certificate sought or the issuance of the license or certificate would involve an unreasonable risk to property or the safety or welfare of specific individuals or the general public.</p> <p>Provides that an individual may only receive one certificate of rehabilitation per lifetime. The department is required to adopt regulations establishing an application and review process for a certificate of rehabilitation that allows the state's attorney and the victim to object to the issuance of a certificate.</p>

<u>MARYLAND</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>Rules 12.13.02.01 to 12.13.02.07 set forth the procedures related to requesting and granting a certificate of rehabilitation.</p> <p>12.13.02.04 (certificate of rehabilitation) – provides that an individual may be eligible for a certificate of rehabilitation if the individual:</p> <ol style="list-style-type: none"> (1) Was convicted of a crime, misdemeanor, or qualifying felony which was not a crime of violence or a sexual offense that requires the individual to register; (2) Was supervised by the division; (3) Has completed all standard and special conditions under which the individual was released on probation, parole, or mandatory release supervision; (4) Fully satisfied payment obligations, including restitution, fines, fees, and other payment obligations; (5) Is no longer under the supervision of the division; (6) Has not previously been issued a certificate of rehabilitation; and (7) Requests a certificate. <p>Provides that a certificate of rehabilitation shall be issued only for an offense adjudicated in a Maryland state court, may be issued only once in an individual's lifetime, and may not be construed as a pardon, an expungement, or a form of exoneration.</p> <p>12.13.02.05 (requesting a certificate of rehabilitation) – provides that an individual who wishes to apply for a certificate of rehabilitation shall submit a written request to the director. A request shall be made by the individual or the individual's legal designee. A request shall be submitted to the division in written form as a letter or electronically using the department's public website and may be submitted after the individual has completed a term of supervision by the division.</p> <p>Further provides that a request for a certificate shall include written authorization signed by the individual of record for division staff to conduct a check on the individual for the limited purpose of determining if an unreported criminal</p>

<u>MARYLAND</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>event occurred prior to the closure of the division's interest in the case and other information required by the director.</p> <p>12.13.02.16 (processing a request for a certificate of rehabilitation) – provides that, upon receipt of a request for a certificate, the director, or a designee, shall assign the request for investigation to a division field office. If at any time during the investigation, the agent determines that information exists to deny the request, the investigator shall terminate the investigation, document the findings and reason for denying the request, and forward the documentation to the director for approval.</p> <p>If an investigation is not terminated or is returned by the director for further investigation, the agent shall complete the investigation within the 45-day period. If an investigation finds that the applicant meets the eligibility criteria, within five workdays of the date of that determination, the agent shall send written notice to the state's attorney or prosecutor and the victim(s), if any. On completion of the investigation, the agent shall forward the request, report of investigation, and related documentation to the direct or designee.</p> <p>12.13.02.07 (approving or denying a request for a certificate of rehabilitation) – provides that approving or denying a request for a certificate rests with the director or a designee. Based on the information provided by the investigator, the direct shall, if the decision is to approve the issuance of a certificate, direct division staff to prepare a certificate for the individual of record and mail the completed certificate to the individual making the request. If the decision is to deny the request, direct staff to prepare a denial of certificate form that includes a denial statement and the reason(s) for the denial and shall mail the denial form to the individual.</p>
Are drug convictions eligible for relief?	<p>Yes. § 10-105.1 (expungement of record involving use or possession of less than 10 grams of marijuana) – beginning October 1, 2021, any police record, court record, or other record maintained by the state or a political subdivision of the state relating to the charging of a civil offense under § 5-601(c)(2)(ii) (involving the use or possession of the personal use amount of cannabis by a person under the age of 21 years) or a crime other than a violation of the Transportation Article for which the defendant is not required to appear shall be expunged three years after a disposition of the</p>

<u>MARYLAND</u>	
Are drug convictions eligible for relief?, cont'd	<p>charge if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment. The court shall send notice of the disposition of each charge in the case and the date on which expungement is required to the central repository; each booking facility, law enforcement unit, and other unit of the state and political subdivision of the state that the court believes may have a record subject to expungement under this section; and the person entitled to expungement.</p> <p>§ 10-105.2 (notifying defendant of defendant's right to expungement) – provides that, after disposition of all charges in a case involving a civil offense under § 5-601(c)(2)(ii) (involving the use or possession of the personal use amount of cannabis by a person under the age of 21 years) or a crime other than a violation of the Transportation Article for which the defendant is not required to appear, the court shall notify the defendant of the defendant's right to expungement under § 10-105 of this subtitle if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment.</p> <p>§ 10-112 (expungement of cases for possession of cannabis) – provides that on or before July 1, 2024, the Department of Public Safety and Correctional Services shall expunge all cases in which possession of cannabis is the only charge in the case and the charge was issued before July 1, 2023.</p>
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>MASSACHUSETTS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MASS. CONST. Pt. 2, Ch. II, § 1, Art. VIII (West 2024) (pardons) • MASS. GEN. LAWS ANN. ch. 6, § 172 (West 2024) (maintenance of criminal offender record information in electronic format; accessibility via world wide web; eligibility for access to database; use and dissemination of criminal record information) • MASS. GEN. LAWS ANN. ch. 127, §§ 152 to 155 (West 2024) (included within “Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons”) • MASS. GEN. LAWS ANN. ch. 151B, § 4 (West 2024) (unlawful practices) • MASS. GEN. LAWS ANN. ch. 276, §§ 100A to 100U (West 2024) (included within “Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment, and Bail. Probation Officers and Board of Probation”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1954 (§ 155) • 1961 (§ 154) • November 5, 2010 (§ 152) • May 4, 2012 (§ 100D) • September 30, 2018 (§ 172) • October 13, 2018 (§§ 100A, 100C, 100E, 100J to 100U) • December 31, 2020 (§§ 100G to 100I) • November 9, 2022 (§ 100K ¼) • May 30, 2023 (§ 4)
Pardon provisions	<p>Art. VIII – vests the governor with the power of pardoning offences, except those persons convicted of impeachment, by and with the advice of council, provided that if the offence is a felony, the general court shall have power to prescribe the terms and conditions upon which a pardon may be granted; but no charter of pardon, granted by the governor, with the advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence(s) intended to be pardoned.</p> <p>127, § 152 (pardons by governor; petition; advisory board; hearing; revocation of pardon; annual list) – provides that, in a case in which the governor is authorized by the constitution to grant a pardon, he or she may, with the advice and consent of the council, and upon the written petition of the petitioner, grant it, subject to such conditions, restrictions, and limitations as he considers proper, and he may issue his</p>

MASSACHUSETTS**Pardon provisions, cont'd**

warrant to all proper officers to carry such pardon into effect. Such warrant shall be obeyed and executed instead of the sentence originally awarded.

Provides that every pardon petition shall be filed with the parole board before being presented to the governor. Upon receipt, the board shall process each petition in accordance with the applicable provisions of § 154.

Upon approval of a petition for pardon, the governor shall direct all proper officers to seal all records related to the offense for which the person received the pardon. Such sealed records shall not disqualify a person in any examination, appoint, or application for employment or other benefit, public or private, including, but not limited to, licenses, credit, or housing, nor shall such records be admissible in evidence or used in any way in any court proceeding or hearing before any board, commission, or other agency except in imposing sentence in subsequent criminal proceedings or in any court proceeding or hearing in which an individual is accused of violating one of a list of laws.

Provides that, on any application or in an interview for employment or in any other circumstances, where a person is asked whether he or she has been convicted of an offense, a person who has received a pardon for such offense may answer in the negative. The attorney general and the person so pardoned may enforce the provisions of this paragraph by an action commenced in court.

Further provides that the governor, with the advice and consent of the council, may at any time revoke any pardon if the governor, with such advice and consent, determines that there is a misstatement of a material fact knowingly made at the time of the filing of the written petition of the petitioner, or that such pardon was procured by fraud, concealment, or misrepresentation, or that any provision of this section has not been complied with, and upon such revocation the governor may issue his warrant to all proper officers to take the person so pardoned into custody and return him to the institution where he was imprisoned at the time of the granting of the pardon.

<u>MASSACHUSETTS</u>	
Pardon provisions, cont'd	<p>Requires the governor to, at the end of each calendar year, transmit to the general court a list of pardons granted during such calendar year, together with action of the advisory board of pardons concerning each such pardon, and together with a list of any revocations of pardons made under this section.</p> <p>127, § 154 (parole board as advisory board of pardons; powers and duties) – provides that the parole board shall be the advisory board of pardons and shall send a copy to the appropriate list of officials. Within six weeks of receipt of a copy of the petition, such officials may make written recommendations concerning such petition to the advisory board, but failure of any or all of these officials to make such recommendations shall not arrest the pardoning procedure in the case.</p> <p>Within 10 weeks of the original receipt of any petition, the advisory board shall transmit the original petition and its conclusions and recommendations to the governor.</p> <p>127, § 155 (violation of pardon; arrest; notice) – if a prisoner who has been pardoned upon conditions violates such conditions, the parole board shall have him arrested and detained until the case can be examined by the governor and council.</p>
Is sealing of records available?	<p>Yes. 276, § 100A (requests to seal files; conditions; application of section; effect of sealing of records) – any person having a record of criminal court appearances and dispositions may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal the file. The commissioner shall comply with the request provided that:</p> <ol style="list-style-type: none"> (1) The person's court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor record to be sealed occurred not less than three years before the request; (2) The person's court appearance and court disposition records, including any period of incarceration or custody for any felony record to be sealed occurred not less than seven years before the request;

MASSACHUSETTS**Is sealing of records available?, cont'd**

- (3) The person had not been found guilty of any criminal offense within the commonwealth within the time periods mentioned above;
- (4) The form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, US possession, or in a federal court, and has not been imprisoned in any state or county within the applicable time periods; and
- (5) The person's record does not include convictions of offenses other than those to which this section applies.

For purposes of the provisions of this section:

- (1) Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor;
- (2) Any recorded offense which is no longer a crime shall be eligible for sealing immediately, except in cases where the elements of the offense continue to be a crime under a different designation;
- (3) In determining the period for eligibility, any subsequently recorded offenses for which the dispositions are "not guilty," "dismissed for want of prosecution," "dismissed at request of complainant," "nol prossed," or "no bill," shall not be held to interrupt the running of the required period for eligibility;
- (4) If it cannot be ascertained that a recorded offense was a felony when committed, it shall be treated as a misdemeanor;
- (5) Any violation of ch. 209A, § 7 or ch. 258E, § 9 shall be treated as a felony;
- (6) Sex offenses shall not be eligible for sealing for 15 years following their disposition, including termination of supervision, probation, or any period of incarceration, or for so long as the offender is under a duty to register in the commonwealth or any other state where the offender resides, provided that any offender who has at any time been classified as a level 2 or 3 sex offender shall not be eligible for sealing of sex offenses.

MASSACHUSETTS**Is sealing of records available?, cont'd**

Sealed records shall not operate to disqualify a person in any examination, appointment, or application for public service in the service of the commonwealth or of an political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing sentence in subsequent criminal proceedings, and except that in an proceedings under certain listed statutes, a party having reasonable cause to believe that information in a sealed criminal record of another party may be relevant to an issue of custody or visitation of a child, abuse, or the safety of any person may upon motion seek to introduce the sealed record into evidence.

Requires that applications used to screen applicants for employment, housing, or an occupational or professional license which seeks information concerning prior arrests or convictions shall include a statement that a person with a sealed record may answer “no record” with respect to an inquiry relative to prior arrests, criminal court appearances, or convictions.

Further, the commissioner, in response to inquiries by authorized persons other than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record report that no record exists.

276, § 100D (availability of sealed criminal record information) – notwithstanding any other provision of law, criminal justice agencies shall have immediate access to, and be permitted to use as necessary for the performance of their criminal justice duties, any sealed criminal offender record information and any sealed information concerning criminal offenses.

6, § 172 – provides that the department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the internet. Provides, among other things, that criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Additionally, licensing authorities may obtain all criminal offender information, including sealed records, for the purpose of

<u>MASSACHUSETTS</u>	
Is sealing of records available?, cont'd	<p>firearms licensing. Further, the criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.</p> <p>It also provides that, notwithstanding any provision to the contrary, convictions for murder, voluntary or involuntary manslaughter, and sex offenses that are punishable by a term of incarceration in state prison shall remain in the database permanently and shall be available to all requestors unless sealed under ch. 276, § 100A.</p> <p>151B, § 4 – it shall be an unlawful practice for an employer or his or her agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit, or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding, among other things, a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.</p>
Is expungement of records available?	<p>Yes. 276, § 100E (definitions applicable to Secs. 100E through 100U) – includes definition for “expunge,” which means 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. If the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased.</p> <p>276, § 100G (petition for expungement of record of conviction) – a petitioner who has not more than two records of conviction may, on a form furnished by the commissioner and signed under the penalties of perjury, petition to expunge the record(s). Multiple offenses arising out of the same incident shall be considered a single offense for the purposes of this section. Upon receipt of a petition, the commissioner shall certify whether the petitioner is eligible for an</p>

MASSACHUSETTS**Is expungement of records available?, cont'd**

expungement under §§ 100I and 100J. If the petitioner is not eligible, the commissioner shall deny the request in writing within 60 days of the request. If the petitioner is eligible, the commissioner shall notify the district attorney of the petition within 60 days and that the petitioner is eligible for expungement. The district attorney shall notify the commissioner in writing of any objections to the petition within 60 days.

If an objection is filed, the court shall hold a hearing on the petition. The court shall have the discretion to grant or deny the petition based on what is in the best interests of justice and shall enter written findings as to the basis of its order. The court shall deny any petition that does not meet the requirements of §§ 100I and 100J. If no objection is filed, the court may approve the petition without a hearing. The court shall forward an order of expungement pursuant to this section to the clerk of the court where the criminal record was created, to the commissioner, and to the commissioner of criminal justice information services.

276, § 100H (petition for expungement of record without adjudication as delinquent or youthful offender or conviction) – a petitioner who has not more than two records that do not include an adjudication as a delinquent, an adjudication as a youthful offender, or a conviction may, on a form furnished by the commissioner and signed under the penalties of perjury, petition that the commissioner expunge the record(s). Multiple offenses arising out of the same incident shall be considered a single offense for the purposes of this section. Upon receipt of a petition, the commissioner shall certify whether the petitioner is eligible for expungement under §§ 100I and 100J. If the petitioner is ineligible, the commissioner shall deny the request in writing within 30 days. If the petitioner is eligible, the commissioner shall notify the district attorney in writing within 30 days. The district attorney shall notify the commissioner within 30 days of any objections to the request for expungement.

If an objection is filed, the court shall hold a hearing on the petition. The court shall have the discretion to grant or deny the petition based on what is in the best interests of justice and shall enter written findings as to the basis of its order. The court shall deny any petition that does not meet the

MASSACHUSETTS**Is expungement of records available?, cont'd**

requirements of §§ 100I and 100J. If no objection is filed, the court may approve the petition without a hearing. The court shall forward an order of expungement pursuant to this section to the clerk of the court where the criminal record was created, to the commissioner, and to the commissioner of criminal justice information services.

276, § 100I (certification of eligibility for expungement) – provides that the commissioner shall certify that a record or records that are the subject of the petition filed pursuant to §§ 100F, 100G, or 100H are eligible for expungement provided that:

- (1) Any offense resulting in the record that is the subject of the petition is not a criminal offense included in § 100J;
- (2) All offenses that are the subject of the petition occurred before the petitioner's 21st birthday;
- (3) All offenses that are the subject of the petition, including any period of incarceration, custody or probation, occurred not less than seven years before the date on which the petition was filed if the record that is the subject of the petition include a felony, and not less than three years before the date on which the petition was filed if the record only includes a misdemeanor or misdemeanors;
- (4) Other than motor vehicle offenses in which the penalty does not exceed a fine of \$50 and the record that is the subject of the petition, the petitioner does not have any other criminal court appearances, juvenile court appearances, or dispositions on file with the commissioner;
- (5) Other than motor vehicle offenses in which the penalty does not exceed a fine of \$50, the petitioner does not have any criminal court appearances, juvenile court appearances, or dispositions on file in any other state, United States territory, or in a federal court; and
- (6) The petition includes a certification by the petitioner that, to the petitioner's knowledge, the petitioner is not currently the subject of an active criminal investigation by any criminal justice agency.

MASSACHUSETTS**Is expungement of records available?, cont'd**

- 276, § 100J (offenses excluded from eligibility of record for expungement) – sets forth the offenses that are not eligible to be expunged under §§ 100F, 100G, or 100H.
- 276, § 100L (duty of clerk of court and commissioner of criminal justice information to expunge court records and police logs upon order issued pursuant to Secs. 100F, 100G, 100H, or 100K) – upon receipt of an order of expungement, the clerk of the court where the record was created and the commissioner of criminal justice information services shall expunge the record within the care, custody, or control of the office, clerk’s office, or department, and order all criminal justice agencies to expunge all publicly available police logs within their care, custody, or control. Any criminal justice agencies receiving such an order shall expunge all publicly available police logs within their care, custody, or control, and shall, upon inquiry from any party, including without limitation, criminal justice agencies, a county agency, a municipal agency, or a state agency, inform said party that no record exists.
- 276, § 100M (failure to acknowledge expunged record as basis for perjury or false statement) – no person whose record was expunged shall be held under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of the person’s failure to recite or acknowledge such record, or portion thereof, in response to any inquiry made of him or her for any purpose.
- 276, § 100N (employment applications and trade or professional licensures; effect of expunged records) – a record expunged pursuant to law shall not operate to disqualify a person in any examination, appointment, or application for employment with any county, municipal, or state agency, nor shall such expunged records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions or in determining suitability for the practice of any trade or profession requiring licensure. A person whose record was expunged may answer “no record” in response to any inquiry relative to prior arrests, criminal or juvenile court appearances, adjudications, or convictions.

MASSACHUSETTS**Is expungement of records available?, cont'd**

- Requires that applications for employment include the statement required by § 100A.
- 276, § 100O (petitions for expungement and related records excluded as public records) – petitions for expungement, records related to such petitions, records related to judicial proceedings related to petitions for expungement, and orders of expungement are not public records.
- 276, § 100P (exclusion of general public from proceedings relating to petition for expungement) – requires the court to exclude the general public from any judicial proceeding where the court will be hearing a petition for an expungement, admitting only such persons as may have a direct interest in the case.
- 276, § 100Q (sealed or expunged records not to be available for inspection) – prohibits any person from making records sealed or expunged pursuant to law available for inspection in any form by any person.
- 276, § 100R (waiver of right to expunge as condition of plea deal) – it shall be a violation of public policy for a district attorney to make a plea deal contingent on waiving a right to expunge.
- 276, § 100S (negligence claims; employers and landlords presumed to have no notice of seal, expunged, or otherwise protected records) – in a claim for negligence, an employer or landlord shall be presumed to have no notice or ability to know of a record that: (a) has been sealed or expunged; (b) the employer is prohibited from inquiring about; or (c) concerns crimes that the department of criminal justice information services cannot lawfully disclose to an employer or landlord.
- 276, § 100T (notice of sealed and expunged records to Federal Bureau of Investigation and United States Department of Justice) – upon sealing or expunge a record, the commissioner of the department shall notify the FBI and the Department of Justice of said sealing or expungement and shall request that such agencies seal or expunge their records.
- 276, § 100U (administration and enforcement of Secs. 100E to 100T) – provides that the court, the office, and the department may promulgate

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Is expungement of records available?, cont'd	regulations for the administration and enforcement of §§ 100E to 100T, inclusive.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. 276, § 100C (sealing of records or files in certain criminal cases; effect upon employment reports; enforcement) – provides that, in any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the commissioner of probation shall seal said court appearance and disposition recorded in his files and the clerk and probation officers of the courts in which the proceedings occurred or were initiated shall likewise seal the records in their files. The provisions of this paragraph shall not apply if the defendant makes a written request not to seal the records.</p> <p>Further, in any criminal case wherein a nolle prosequi has been entered, or a dismissal has been entered by the court, and it appears to the court that substantial justice would best be served, the court shall direct the clerk to seal the records in his files.</p> <p>Such sealed records shall not operate to disqualify a person in any examination, appointment, or application for public employment. Applications for employment, housing, or an occupational or professional license which seeks information concerning prior arrests or convictions of the applicant shall include the statement required by § 100A. Additionally, the commissioner or the clerk of the courts shall report that no record exists.</p> <p>276, § 100K (expungement of record resulting from false identification, an offense no longer a crime at time of expungement, error or fraud) – provides that, notwithstanding §§ 100I and 100J, a court may order the expungement of a record created as a result of criminal court appearance, juvenile court appearance, or dispositions if the court determines, based on clear and convincing evidence, that the record was created as a result of:</p> <ol style="list-style-type: none"> (1) False identification of the petitioner or the unauthorized use or theft of the petitioner's identity; (2) An offense at the time of the creation of the record which at the time of expungement is no longer a crime, except in cases where the elements of the

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>original criminal offense continue to be a crime under a different designation;</p> <p>(3) Demonstrable errors by law enforcement, civilian or expert witnesses, or court employees; or</p> <p>(4) Demonstrable fraud perpetrated upon the court.</p> <p>The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice. Prior to entering an order of expungement pursuant to this section, the court shall hold a hearing if requested by the petitioner or district attorney. Upon an order of expungement, the court shall enter written findings of fact. The court shall forward an order of expungement to the clerk of the court where the record was created, to the commissioner, and to the commissioner of criminal justice information services.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. 276, § 100K ¼ (expungement of record resulting from certain possession or cultivation of marijuana offenses) – notwithstanding the requirements of §§ 100I and 100J, a court shall, within 30 days of a petition being filed, order the expungement of a record created as a result of a criminal court appearance, juvenile court appearance, or disposition for possession or cultivation of an amount of marijuana that has since been decriminalized, possession of marijuana with intent to distribute based on an amount of marijuana that has been decriminalized, or distribution of marijuana based on an amount of marijuana that has been decriminalized.</p> <p>Prior to entering an order granting a petition for expungement, the court shall hold a hearing if requested by the petitioner or district attorney. Upon granting or denying the petition, the court shall enter written findings of fact. Upon an order for expungement pursuant to this section or §§ 100F, 100G, or 100H, the court clerk's office shall provide the petitioner with a certified copy of the order, the docket sheets, and the criminal complaint related to the expunged charge. The court shall send a copy of the expungement order to the clerk of the court where the record was created, to the commissioner of probation, and to the commissioner of criminal justice information services.</p>
Miscellaneous provisions	None.

<u>MASSACHUSETTS</u>	
Recently proposed legislation	None.

<u>MICHIGAN</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MICH. CONST. Art. V, § 14 (West 2022) (reprieves, commutations, and pardons) • MICH. COMP. LAWS ANN. § 28.243 (West 2024) (collecting and forwarding biometric data of persons arrested; expunction or destruction of arrest record, biometric data, and fingerprints; duties of clerk upon final disposition of charge; report; duties of department) • MICH. COMP. LAWS ANN. § 600.2956a (West 2024) (tort actions; admissibility of certificate of employability issued to paroled individual; liability of employer) • MICH. COMP. LAWS ANN. § 764.26a (West 2024) (dismissal of charges before trial; expunction or destruction of arrest record, biometric data, and fingerprints) • MICH. COMP. LAWS ANN. §§ 780.621 to 780.624 (West 2024) (collectively “Setting Aside Convictions”) • MICH. COMP. LAWS ANN. § 791.234d (West 2024) (issuance of documents upon release of prisoner; certificate of employability; validity; revocation; powers and duties of department; false statement or representation; penalties) • MICH. COMP. LAWS ANN. §§ 791.243 to 791.244a (West 2024) (included within “Bureau of Pardons and Paroles; Parole Board”) • MICH. ADMIN. CODE r. 791.7760 (2024) (pardons, reprieves, and commutations)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1996 (r. 791.7760) • January 1, 2015 (§ 600.2956a) • June 29, 2017 (§§ 791.244, 791.244a) • June 12, 2018 (§§ 28.243, 764.26a) • March 28, 2019 (§ 791.234d) • April 11, 2021 (§ 780.623) • November 2022 (Art. V, § 14)
Pardon provisions	<p>Art. V, § 14 – vests the governor with the power to grant pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as the governor may direct, subject to procedures and regulations prescribed by law. Requires the governor to inform the legislature annually of each pardon granted, stating reasons therefor.</p> <p>§ 791.243 (applications; filing, information) – all applications for pardons shall be filed with the parole board upon forms provided by the board and shall contain such</p>

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information, records, and documents as the parole board may require by rule.

§ 791.244 (reprieves, commutations, and pardons; review and hearing process) – provides that, subject to the authority of the governor to grant pardons, one member of the parole board shall interview a prisoner serving a sentence for murder in the first degree or a sentence of imprisonment for life without parole at the conclusion of 10 calendar years and thereafter as determined appropriate by the parole board, until such time as the prisoner is granted a reprieve, commutation, or pardon by the governor, or is deceased.

Upon its own initiative or upon receipt of an application for a pardon, the parole board shall do all of the following, as applicable:

- (1) Not more than 60 days after receipt of the application, conduct a review to determine if the application has merit;
- (2) Deliver either the written documentation of the initiation or the original application with the parole board's determining regarding merit, to the governor and retain a copy of each in its file, pending an investigation and hearing;
- (3) Within 10 days after initiation, or after determining that the application has merit, forward written notice of the filing to appropriate officials, together with copies of the application, supporting affidavits, and a brief summary of the case. Not more than 30 days after receipt of notice, the officials may file a written objection;
- (4) If an application is based on physical or mental incapacity, have an evaluation of the prisoner conducted;
- (5) Within 270 days after receipt of an application, make a full investigation and determination on whether or not to proceed to a public hearing and conduct such hearing not later than 90 days after making the decision;
- (6) Transmit its formal recommendation to the governor.

§ 791.244a (expedited review and hearing process for reprieve, commutation, or pardon based on medical

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Pardon provisions, cont'd	<p>condition of prisoner) – sets forth the process for expediting the review and hearing process for a pardon upon a request from the governor based on a prisoner’s medical condition.</p> <p>r. 791.7760 – provides that a person who is convicted of a crime may apply for a pardon by filing a notarized copy of the appropriate application with the parole board. Sets forth the information required to be included in the application. Provides that the parole board is not required to act upon an application that is substantially identical to one which has been denied within two years of the date of the present application.</p>
Is sealing of records available?	<p>Yes. §§ 780.621 to 780.624 set forth the processes for setting aside certain convictions for individuals who meet the eligibility requirements.</p> <p>§ 780.623 (records; maintenance and retention; availability and disclosure; penalties) – provides that upon entry of an order setting aside a conviction under §§ 780.621 or 780.621e, the court shall send a copy of the arresting agency and the department of state police. The department of state police shall retain a non-public record of the order, or other notification that a conviction was automatically set aside under § 780.621g, and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies. Except as otherwise provided by law, this non-public record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of the state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:</p> <ol style="list-style-type: none"> (1) Consideration in a licensing function conducted by an agency of the judicial branch of state government; (2) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside under this act; (3) The court’s consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than one year;

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Is sealing of records available?, cont'd	<p>(4) Consideration by the government if a person whose conviction has been set aside applies for a pardon for another offense;</p> <p>(5) Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been set aside applies for employment with such agencies;</p> <p>(6) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act has violated that act or for use in a prosecution for violating that act;</p> <p>(7) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing, as applicable.</p> <p>Provides that a copy of the record must be provided to the person whose conviction is set aside under this act upon payment of a fee. The record is exempt from disclosure under the freedom of information act.</p> <p>Except as provided above, other than the person whose conviction was set aside or a victim, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning such conviction is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both.</p>
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 28.243 – provides that if an individual is arrested for any crime and the charge or charges are dismissed before trial, both of the following apply:</p> <p>(1) The arrest record, all biometric data, and fingerprints shall be expunged or destroyed, or both, as appropriate; and</p> <p>(2) Any entry concerning the charge shall be removed from the LEIN.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>Provides that the department of state police shall comply with the requirements listed above upon receipt of an appropriate order issued by a court.</p> <p>§ 764.26a – provides that if an individual is arrested for any crime and the charge or charges are dismissed before trial, both of the following apply:</p> <ol style="list-style-type: none"> (1) The arrest record shall be removed from the internet criminal history access tool; and (2) If the prosecutor in the case agrees at any time after the case is dismissed, or if the prosecutor or judge do not object within 60 days from the date an order of dismissal was entered for cases in which the order of dismissal is entered after the effective date of the amendatory act that added this section, all of the following apply: (a) the arrest record, all biometric data, and fingerprints shall be expunged or destroyed, or both, as appropriate; (b) any entry concerning the charge shall be removed from LEIN; and (c) unless a DNA sample or profile, or both, is allowed or required to be retained by the department of state police, the DNA sample or profile, or both, obtained from the individual shall be expunged or destroyed. <p>Requires the department of state police to comply with these requirements upon receipt of an appropriate court order.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 791.234d – when a prisoner is released, in addition to the documents set forth in the statute, the department shall issue a certificate of employability to a prisoner if all of the following apply:</p> <ol style="list-style-type: none"> (1) The prisoner, while incarcerated, successfully completed or earned one or more of the following: (a) a career and technical education course; (b) at least 36 credit hours at an accredited postsecondary educational institution; or (c) an associate or bachelor's degree from an accredited postsecondary educational institution if at least 50 percent of the credit hours for that degree were completed while the prisoner was incarcerated; (2) The prisoner received no major misconducts during the two years immediately preceding his or her release;

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Does the state offer a certificate of relief or similar document?, cont'd	<p>(3) The prisoner received no more than three minor misconducts during the two years immediately preceding his or her release;</p> <p>(4) The prisoner received a silver level or better on his or her national work readiness certificate, or a similar score, as determined by the department, on an alternative job skills assessment test administered by the department.</p> <p>A certificate of employability must only be issued within 30 days before the prisoner is released from a correctional facility and is valid unless revoked by the department.</p> <p>The department shall revoke the certificate if the prisoner commits any criminal offense during the 30-day period before release and may revoke the certificate if the prisoner has any institutional misconduct during that period. The department shall revoke the certificate of any individual who commits a felony after receiving the certificate and who is then placed under the jurisdiction of the department for committing that felony. The revocation of a certificate does not affect the right of an employer to rely on the validity of the certificate unless the employer knew before the individual was employed that the certificate was fraudulent.</p> <p>The department shall provide an individual with an opportunity to file a grievance related to the revocation of a certificate. An individual shall not intentionally state or otherwise represent that he or she has a valid certificate knowing that the statement or representation is false. An individual who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.</p> <p>The department shall verify the validity of a certificate upon request. The department is not civilly liable for damages based upon its decision to issue or deny issuance of a certificate of employability to any prisoner or for revoking or failing to revoke a certificate issued to any prisoner.</p> <p>§ 600.2956a – provides that in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a certificate of employability issued to an individual may be introduced as</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued, if the person knew of the certificate at the time of the action.</p> <p>If a claim against an employer requires proof that the employer was negligent in hiring an individual by disregarding a prior criminal conviction, a certificate issued to an individual conclusively establishes that the employer did not act negligently in hiring the individual, if the employer knew of the certificate at the time of hire.</p> <p>If an individual who has been issued a certificate is hired and subsequently demonstrates that he or she is a danger to individuals or property or is convicted of or pleads guilty to a felony, an employer who retains the individual as an employee is not liable in a civil action that requires proof that the employer was negligent in retaining the individual as an employee unless a preponderance of the evidence establishes that the person having hiring and firing responsibility for the employer had actual knowledge that the individual was dangerous or had been convicted of or pleaded guilty to a subsequent felony, and the person was willful in retaining the individual as an employee.</p> <p>This section does not relieve an employer from a duty or requirement established in another law concerning a background check or verification that an individual is qualified for a position, and does not relieve the employer of liability arising from failure to comply with any such law. Further, this section does not create any affirmative duty or otherwise alter an employer's obligation to or regarding an employee with a certificate.</p>
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MINN. CONST. Art. V, § 7 (West 2024) (board of pardons) • MINN. STAT. ANN. § 152.18 (West 2024) (discharge and dismissal) • MINN. STAT. ANN. § 181.981 (West 2024) (employment of individual with criminal history; limitation on admissibility of evidence) • MINN. STAT. ANN. § 299C.11 (West 2024) (identification data furnished to bureau) • MINN. STAT. ANN. § 332.70 (West 2024) (business screening services; data practices) • MINN. STAT. ANN. § 364.04 (West 2024) (availability of records) • MINN. STAT. ANN. §§ 609A.01 to 609A.06 (West 2024) (collectively “Expungement”) • MINN. STAT. ANN. §§ 638.01 to 638.23 (West 2024) (collectively “Board of Pardons”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1857 (Art. V, § 7) • 1974 (§ 364.04) • August 1, 2014 (§§ 332.70, 609A.04) • January 1, 2015 (§ 609A.025) • August 1, 2016 (§ 152.18) • May 20, 2023 (§ 638.01) • July 1, 2023 (§ 609A.05) • August 1, 2023 (§§ 609A.017, 609A.03, 609A.035, 609A.055, 638.011) • July 1, 2024 (§§ 299C.11, 609A.02, 609A.06, 638.09 to 638.23) • January 1, 2025 (§ 609A.01)
Pardon provisions	<p>Art. V, § 7 – provides that the governor, the attorney general, and the chief justice of the supreme court shall constitute a board of pardons whose duties shall be defined and regulated by law. Vests the governor, in conjunction with the board of pardons, with the power to grant pardons after conviction for an offense against the state except in cases of impeachment.</p> <ul style="list-style-type: none"> ➤ § 638.01 (board of pardons) – provides that the board consists of the governor, the chief justice of the supreme court, and the attorney general, and that the governor, in conjunction with the board, may grant clemency according to this chapter. ➤ § 638.011 (definitions) – provides that, unless otherwise provided, “clemency” includes a pardon, commutation, and reprieve after conviction for a

MINNESOTA**Pardon provisions, cont'd**

- crime against the state except in cases of impeachment.
- § 638.09 (clemency review commission) – establishes the clemency review commission whose duties include reviewing applications for clemency, making recommendations to the board to grant or deny an application or hold a hearing on an application, and providing victim support.
 - § 638.10 (clemency application) – sets forth the elements a clemency application must include. Provides that the commission shall review an application for completeness and return an incomplete application to the applicant to supplement with the missing information.
 - § 638.11 (third-party notifications) – sets forth the individuals to whom the commission must provide notification of a clemency application.
 - § 638.13 (access to records; issuing subpoena) – provides that, upon receiving an application, the board or commission can request and obtain any relevant information and have access to all relevant sealed or otherwise inaccessible court records, presentence investigation reports, police reports, criminal history reports, prison records, and any other relevant information.
 - § 638.15 (commission recommendation) – sets forth the factors the commission must consider when recommending whether to grant clemency.
 - § 638.19 (reapplying for clemency) – if an application has been denied, an applicant may not file a subsequent application for five years after the date of the most recent denial. An individual may request permission to reapply before the five-year period expires based only on new and substantial information that was not and could not have been previously considered by the board or commission.
 - § 638.20 (commission record keeping) – requires the commission to keep a record of every application received, its recommendation on each application, and the final disposition of each application. Sets forth the records not open to public inspection.

§ 638.12 (types of clemency; eligibility and waiver) – provides that the board may pardon a criminal conviction

MINNESOTA**Pardon provisions, cont'd**

imposed under the laws of this state. A pardon, after being granted and filed with the district court, will also seal all records wherever held related to the arrest, indictment or information, trial, verdict, and pardon. A granted pardon sets aside the conviction and purges the conviction from an individual's criminal record. The individual is not required to disclose the conviction at any time or place other than in a judicial proceeding or during the licensing process for peace officers.

Except as otherwise provided, an individual convicted of a crime in a court in this state may apply for a pardon of the conviction on or after five years from the sentence's expiration or discharge date. An individual may request the board to waive the waiting period if there is a showing of unusual circumstances and special need.

An individual convicted before August 1, 2023, under the theory of liability for crimes of another may apply for a pardon upon the sentence's expiration or discharge date if the individual meets the listed requirements.

§ 638.18 (filing copy of clemency; court action) – after clemency has been granted, the commission must file a copy of the pardon with the district court. For a pardon, the court must:

- (1) Order the conviction set aside;
- (2) Include a copy of the pardon in the court file;
- (3) Order all records wherever held relating to the arrest, indictment or information, trial, verdict, and pardon sealed and prohibit the disclosure of the existence of the records or the opening of the records except under court order or as otherwise provided by law; and
- (4) Send a copy of the order and the pardon to the Bureau of Criminal Apprehension and all other government entities that hold affected records.

Consistent with § 609A.03(8), the court administrator shall send a copy of the expungement order to each government entity whose records are affected by the order, including the Department of Corrections, the Department of Public Safety, and law enforcement agencies.

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Pardon provisions, cont'd	<p>§ 638.22 (legislative report) – provides that, beginning February 15, 2025, and every February 15 thereafter, the commission must submit a written report to the chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over public safety, corrections, and judiciary that contains at least the following information:</p> <ol style="list-style-type: none"> (1) The number of applications received during the preceding calendar year; (2) The number of favorable and adverse recommendations made by the commission for each type of clemency; (3) The number of applications granted and denied by the board for each type of clemency; (4) The crimes for which the applications were granted by the board, the year of each conviction, and the individual's age at the time of the crime; and (5) Summary data voluntarily reported by applicants, including demographic information on race, ethnicity, gender, disability status, and age, of applicants recommended or not recommended for clemency by the commission.
Is sealing of records available?	<p>Yes. § 299C.11 - provides that no petition under chapter 609A is required if the person has not been convicted of any felony or gross misdemeanor, either within or without the state, within the period of 10 years immediately preceding the determination of all pending criminal actions or proceedings in favor of the arrested person, and either all charges were dismissed prior to a determination of probable cause or the prosecuting authority declined to file any charges and a grand jury did not return an indictment. Where these conditions are met, the bureau or agency shall, upon demand, destroy the arrested person's fingerprints and thumbprints, photographs, distinctive physical mark identification data, information on known aliases and street names, and other identification data, and all copies and duplicates of them.</p> <p>Also provides that, upon the determination of all pending criminal actions or proceedings in favor of the arrested person, and the granting of the petition of the person under chapter 609A, the bureau shall seal all identification data, and all copies and duplicates of them, if the arrested person</p>

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Is sealing of records available?, cont'd	<p>has not been convicted of any felony or gross misdemeanor, either within or without the state, within the period of 10 years immediately preceding such determination.</p> <p>§ 181.981 – provides that information regarding a criminal history record of an employee or former employee may not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee if, before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case, any record of the case was sealed as the result of an automatic expungement, or the employee or former employee received a pardon.</p>
Is expungement of records available?	<p>Yes. §§ 609A.01 to 609.06 set forth the processes and provisions related to expungement of criminal records. Some provisions refer to the process to make the records non-public as “sealing.”</p> <p>§ 609A.01 (expungement of criminal records) – this chapter provides the grounds and procedures for expungement of criminal records. The remedy available is limited to a court order or grant of expungement under § 609A.015 sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.</p> <p>§ 609A.02 (grounds for order) – upon the dismissal and discharge of proceedings against a person under § 152.18 (see discussion of drug convictions below) for possession of a controlled substance, the person may petition under § 609A.03 for the sealing of all records. A petition for the sealing of a conviction record may also be filed by a person who has been committed to the custody of the commissioner of corrections upon conviction of a crime following certification to district court under § 260B.125 (juvenile prosecuted as an adult), if the person is finally discharged by the commissioner or has been placed on probation by the court and has been discharged from probation after satisfactory fulfillment of it.</p> <p>A petition may also be filed under § 609A.03 to seal all records relating to an arrest, indictment or information, trial,</p>

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Is expungement of records available?, cont'd	<p>or verdict if the records are not subject to § 299C.11(1)(b), and if:</p> <ol style="list-style-type: none"> (1) All pending actions or proceedings were resolved in favor of the petitioner. For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner. An action or proceeding is resolved in favor of the petitioner if the petitioner received an order determining that the petitioner is eligible for compensation based on exoneration; (2) The petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of the diversion program or stay of adjudication; (3) The petitioner was convicted of a petty misdemeanor or misdemeanor or the sentence imposed was within the limits provided by law for a misdemeanor and the petitioner has not been convicted of a new crime for at least two years since discharge of the sentence for the crime; (4) The petitioner was convicted of a gross misdemeanor or the sentence imposed was within the limits provided by law for a gross misdemeanor and the petitioner has not been convicted of a new crime for at least three years since discharge of the sentence for the crime; (5) The petitioner was convicted of a gross misdemeanor that is deemed to be for a misdemeanor pursuant to § 609.13(2)(2) and has not been convicted of a new crime for at least three years since discharge of the sentence for the crime; (6) The petitioner was convicted of a felony violation of § 152.025 and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime; (7) The petitioner was convicted of a felony that is deemed to be for a gross misdemeanor or misdemeanor pursuant to § 609.13(1)(2) and has not been convicted of a new crime for at least 4-5 years, depending on the crime for which the person was convicted; or

MINNESOTA**Is expungement of records available?, cont'd**

(8) The petitioner was convicted of a felony violation of an offense listed in this section and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime.

Sets forth the offenses to which this section is applicable. Prohibits records of a conviction for an offense for which registration is required as a predatory offender may not be expunged.

§ 609A.03 (petition to expunge criminal records) – an individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition under this section and pay a filing fee, which may be waived in cases of indigency and shall be waived in certain other cases.

Sets forth the information required to be included in the petition and service requirements for the petition. Permits victims to submit a written statement to the court that includes a description of the harm suffered by the victim and a recommendation as to whether expungement should be granted or denied. The court is required to consider the victim's statement when making a decision.

Except as otherwise provided by law, expungement of a criminal record under this section is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and public authorities to issue, enforce, and monitor an expungement order.

Except as otherwise provided by law, if the petitioner is petition for the sealing of a criminal record under § 609A.02(3)(a)(1) or (2) (paragraphs (1) and (2) in the description set forth above), the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

MINNESOTA**Is expungement of records available?, cont'd**

Sets forth the factors the court shall consider in making a determination as to whether to grant or deny a petition to expunge records. Notwithstanding any other law to the contrary, if the court issues an expungement order it may require that the criminal record be sealed, the existence of the record not be revealed, and the record not be opened except as required under this section. Records must not be destroyed or returned to the subject of the record.

Prohibits information relating to a criminal history record of an employee, former employee, or tenant that has been expunged before the occurrence of the act giving rise to the civil action may not be introduced as evidence in a civil action against a private employer or landlord or its employees or agents that is based on the conduct of the employee, former employee, or tenant.

An order expunging the record of a conviction for a crime of violence must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. A person whose right to possess firearms is later restored is not subject to the restriction in this subdivision.

If the court orders the sealing of the record of proceedings under § 152.18 (related to deferred prosecution for first time drug offenders), the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.

Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau of Criminal Apprehension shall not be sealed, returned to the subject of the record, or destroyed.

Limitations of order effective before January 1, 2015 – Notwithstanding the issuance of an expungement order, an expunged record:

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Is expungement of records available?, cont'd	<p>(1) May be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;</p> <p>(2) Of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and</p> <p>(3) Of a conviction may be opened for purposes of a background study unless the court order for expungement is directed specifically to the commissioner of human services.</p> <p>Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this provision.</p> <p>Limitations of order effective January 1, 2015, and later – notwithstanding the issuance of an expungement order:</p> <p>(1) Except as provided in (2) below, an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services;</p> <p>(2) When a criminal justice agency seeks access to a record that was sealed after an acquittal or court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte order after stating a good-faith basis to believe that opening the record may lead to relevant information;</p> <p>(3) An expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order;</p> <p>(4) An expunged record of a conviction may be opened for purposes of a background study unless the commissioner had been properly served with notice of the petition for expungement and the court order is directed specifically to the commissioner of human services following proper service of a petition, or following proceedings under §§ 609A.017,</p>

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Is expungement of records available?, cont'd	<p>609A.025, or 609A.035, upon service of an order to the commissioner;</p> <p>(5) An expunged record of conviction may be opened for purposes of a background check required under § 122A.18(8) unless the court order is directed specifically to the Professional Educator Licensing and Standards Board;</p> <p>(6) Upon request by the victim of the underlying offense with a court order if the court determines that the record is substantially related to a matter for which the victim is before the court;</p> <p>(7) A prosecutor may request, and the court shall provide, certified records of conviction for a record expunged pursuant to §§ 609A.015, 609A.017, 609A.02, 609A.025, and 609A.035, and the certified records may be disclosed and introduced in criminal court proceedings as provided by the rules of court and applicable law; and</p> <p>(8) The subject of an expunged record may request, and the court shall provide, certified or uncertified records for a record expunged pursuant to such statutes.</p> <p>A criminal justice agency that receives an expunged record under paragraphs (1) or (2) must maintain and store the record in a manner that restricts the use of the record to the investigation, prosecution, or sentencing for which it was obtained.</p> <p>§ 609A.04 (remedy) – an individual whose record is expunged under this chapter or other law may bring an action against a government entity that knowingly opens or exchanges the expunged record in a manner not authorized by law.</p> <p>§ 609A.05 (no duty to discover; employers and landlords) – a landlord or employer does not have a duty to discover or use a record that has been expunged under this chapter or other law for purposes of making a housing or employment decision.</p> <p>§ 364.04 – provides that the following criminal records shall not be used, distributed, or disseminated by the state, its agents, or political subdivisions in connection with any</p>

<u>MINNESOTA</u>	
Is expungement of records available?, cont'd	<p>application for public employment nor in connection with an application for a license:</p> <p>(1) Records of arrest not followed by a valid conviction; (2) Convictions which have been annulled or expunged; or (3) Misdemeanor convictions for which no jail sentence can be imposed.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. See discussion of pardons above.</p> <p>§ 299C.11 – the bureau or agency shall destroy all identification data and all copies and duplicates of them without demand of any person or the granting of a petition under chapter 609A if the person was arrested or identified as the result of mistaken identity before presenting information to the prosecuting authority for a charging decision or the prosecuting authority declines to file any charges or a grand jury does not return an indictment based on a determination that the person was identified or arrested as the result of mistaken identity.</p> <p>§ 609A.017 (mistaken identity; automatic expungement) – if, before a conviction, a prosecutor determines that a defendant was issued a citation, charged, indicted, or otherwise prosecuted as the result of mistaken identity, the prosecutor must dismiss or move to dismiss the action or proceeding and must state in writing or on the record that mistaken identity is the reason for the dismissal.</p> <p>The court shall issue an order of expungement without the filing of a petition when an action or proceeding is dismissed pursuant to this section. The order shall cite this section as the basis for the order.</p> <p>Provides that an order issued under this section is not subject to the limitations in § 609A.03(7a) or (9). The effect of the court order to seal the record of the proceedings shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be guilty of perjury or of otherwise giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.</p>

<u>MINNESOTA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>Permits a criminal justice agency to seek access to a record sealed under this section for purposes of determining whether the subject of the order was identified in any other action or proceeding as the result of mistaken identity or for a criminal investigation, prosecution, or sentencing involving any other person. The requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information.</p> <p>§ 609A.025 (no petition required in certain cases with prosecutor agreement and notification) – provides that, if the prosecutor agrees to the sealing of a criminal record, the court shall seal the record for a person described in § 609A.02(3) (related to convictions not eligible for sealing under § 299C.11(1)(b), see above) without the filing of a petition unless it determines that the interests of the public and public safety in keeping the record public outweigh the disadvantages to the subject of the record in not sealing it. Before agreeing to the sealing of a record under this section, the prosecutor shall make a good faith effort to notify any identifiable victims of the offense of the intended agreement and the opportunity to object to the agreement. The agreement of the prosecutor may occur before or after the criminal charges are dismissed.</p> <p>§ 609A.035 (pardon extraordinary; no petition required) – notwithstanding § 609A.02, if the Board of Pardons grants a pardon, it shall file a copy of the pardon with the court in which the conviction occurred. The court shall issue an expungement order sealing all records wherever held relating to the arrest, indictment or information, trial, verdict, and pardon for the pardoned offense without the filing of a petition and send an expungement order to each government entity whose records are affected.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. § 152.18 – provides that a court may defer prosecution for any person found guilty, after trial or upon a plea of guilty, of a violation of certain listed statutes related to possession of a controlled substance who has not previously participated in or completed a diversion program, has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under

MINNESOTA**Are drug convictions eligible for relief?, cont'd**

this section, and has not been convicted of a felony violation unless 10 years have elapsed since discharge from sentence.

Further provides that, in granting relief under this section, the court shall, without entering a judgment of guilty and with consent of the individual, defer further proceedings and place the person on probation upon such reasonable conditions as it may require.

Upon successful completion of the probation, the court shall dismiss the proceedings against the person and discharge the individual from probation. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon receipt of notice that the proceedings were dismissed, the bureau shall notify the arresting or citing law enforcement agency and direct that agency to seal its records related to the charge. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section.

Additionally, any person found guilty of a violation of § 152.09 with respect to a small amount of marijuana which violation occurred prior to April 11, 1976, and who meets the other requirements of this subdivision may petition the court to expunge from all official records, other than the nonpublic record retained by the Department of Public Safety, all recordation relating to the person's arrest, indictment or information, trial, and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the records expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such conviction unless possession of marijuana is material to a proceeding.

MINNESOTA**Are drug convictions eligible for relief?, cont'd**

§ 609A.055 (automatic expungement of certain cannabis offenses) – a person is eligible for expungement for records related to certain listed cannabis offenses if the person otherwise meets the listed requirements. Requires the Bureau of Criminal Apprehension to identify bureau records that qualify for expungement pursuant to this section and notify the judicial branch of the name and date of birth of each person who is eligible and the court file number of the eligible case.

Provides that the bureau shall grant expungement relief to each qualifying person whose records the bureau possesses and seal the bureau's records without requiring an application, petition, or motion. Non-public criminal records maintained by the bureau and subject to a grant of expungement relief must display a notation stating, "expungement relief granted pursuant to section 609A.055."

Requires the bureau to issue a report to the legislative committees and divisions with jurisdiction over public safety policy and finance upon completion of the work required under this section. The report shall contain summary data and must include the total number of expungements granted by the bureau.

§ 609A.06 (expungement and resentencing of felony cannabis offenses) – creates the Cannabis Expungement Board, which shall have the following powers and duties:

- (1) To obtain and review the records incident to the arrest, indictment, information, trial, appeal, or dismissal and discharge, which relate to a charge for sale or possession of a controlled substance;
- (2) To determine whether a person committed an act involving the sale or possession of cannabis flower or cannabinoid products that would either be a lesser offense or no longer a crime after August 1, 2023;
- (3) To determine whether a person's conviction should be vacated, charges should be dismissed, and records should be expunged, or whether the person should be resentenced to a lesser offense;
- (4) To identify certain violations that were not automatically expunged pursuant to § 609A.055; and

MINNESOTA**Are drug convictions eligible for relief?, cont'd**

(5) To notify the judicial branch of individuals eligible for an expungement or resentencing.

Provides that a person is eligible for an expungement or resentencing to a lesser offense if he or she was convicted of, or adjudication was stayed for, a violation of any of the listed offenses involving the sale or possession of marijuana and meets the other listed requirements.

Requires the Bureau of Criminal Apprehension to identify convictions and sentences where adjudication was stayed that qualify for review under this section. The bureau shall notify the board of the name and date of birth of a person whose record is eligible for review and the court file number of the eligible conviction or stay of adjudication.

Sets forth the factors the board must consider when making a decisions as to whether to expunge a record or resentence an individual.

Provides that, until the board completes its work, the board shall issue a report by January 15 of each year to the legislative committees and divisions with jurisdiction over public safety policy and finance on the board's work. The report shall contain summary data and must include the total number of cases:

- (1) Reviewed in the previous year;
- (2) In which the board determined that an expungement is in the public interest;
- (3) In which the board determined that resentencing to a lesser offense is appropriate, the original sentence in those cases, and the lesser offense recommended by the board;
- (4) In which the board determined that no change to the original sentence was appropriate; and
- (5) Remaining to be reviewed.

Upon receiving notice that an offense qualifies for expungement, the court shall issue an order sealing all records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for an eligible offense.

The court shall not order the Department of Health; the Department of Children, Youth, and Families; or the

<u>MINNESOTA</u>	
Are drug convictions eligible for relief?, cont'd	Department of Human Services to seal records under this section. If the board determined that the person's conviction should be vacated and charges dismissed, the order shall vacate and dismiss the charges.
Miscellaneous provisions	<p>§ 332.70 – provides that a business screening service, defined as a person regularly engaged in the business of collecting, assembling, evaluating, or disseminating criminal records on individuals for a fee but does not include a government entity or news media, must only disseminate a criminal record that reflects the complete and accurate record provided by the source of the data. A complete and accurate record is one that has been updated within 30 days of its receipt or been verified with the source of the data within the previous 90 days as being up-to-date.</p> <p>Provides that a business screening service shall, without charge, investigate a record disputed by the subject of the record as being complete or accurate. If the service determines the record does not accurately reflect the content of the official record, the service shall correct the record. If the disputed record is found to be sealed, expunged, or the subject of a pardon, the service shall promptly delete the record. A business screening service that complies with this subdivision is not in violation of this section.</p> <p>Requires a business screening service that knows that a criminal record has been sealed, expunged, or is the subject of a pardon to promptly delete the record.</p> <p>A business screening service that violates this section is liable to the individual who is the subject of the record for a penalty of \$1,000 or actual damages caused by the violation, whichever is greater, plus costs and disbursements and reasonable attorney fees.</p>
Recently proposed legislation	None.

<u>MISSISSIPPI</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MISS. CONST. Art. V, § 124 (West 2024) (reprieves and pardons) • MISS. CODE ANN. § 9-23-23 (West 2024) (completion of program; expunction of record) • MISS. CODE ANN. § 47-7-5 (West 2024) (State Parole Board generally) • MISS. CODE ANN. § 47-7-31 (West 2024) (report to governor regarding pardon or reprieve; attorney’s access) • MISS. CODE ANN. § 97-37-5 (West 2024) (possession by felon) • MISS. CODE ANN. § 99-15-26 (West 2024) (release after successful completion of conditions) • MISS. CODE ANN. § 99-15-57 (West 2024) (relief under previous law; expunging of record) • MISS. CODE ANN. § 99-15-59 (West 2024) (expunging of misdemeanor charges) • MISS. CODE ANN. § 99-15-123 (West 2024) (disposition of charges; expungement of record) • MISS. CODE ANN. §§ 99-19-71 (West 2024) (included within “In General”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • March 28, 1986 (§ 47-7-31) • July 1, 1998 (§ 99-15-59) • July 1, 2008 (§ 99-15-123) • July 1, 2019 (§§ 9-23-23, 99-15-26, 99-15-57, 99-19-71) • July 1, 2021 (§ 97-37-5) • July 1, 2024 (§ 47-7-5)
Pardon provisions	<p>Art. V, § 124 – vests the governor with the power to grant pardons in all criminal and penal cases, excepting those of treason and impeachment. In cases of treason, the governor shall have power to grant reprieves, and by and with consent of the senate, but may respite the sentence until the end of the next session of the legislature; but no pardon shall be granted before conviction; and in cases of felony, after conviction, no pardon shall be granted until the applicant therefor shall have published for 30 days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, his petition for pardon, setting forth therein the reasons why such pardon should be granted.</p> <p>§ 47-7-5 – provides that the State Parole Board shall have exclusive responsibility for investigating clemency recommendations upon request of the governor.</p>

<u>MISSISSIPPI</u>	
Pardon provisions, cont'd	§ 47-7-31 – requires the department of corrections, upon request of the governor, to investigate and report to the governor with respect to any case of pardon.
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 99-15-26 – provides that, in all criminal cases, felony and misdemeanor, other than certain listed crimes, the court shall be empowered, upon the entry of a plea of guilty by a criminal defendant made on or after July 1, 2014, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to this section. Upon successful completion of the court-imposed conditions permitted by this section, the court shall direct that the cause be dismissed and the case closed. Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case dismissed or the charges dropped, there was no disposition of such case, or the person was found not guilty at trial.</p> <p>§ 99-15-57 – provides that any person who pled guilty within six months prior to March 31, 1983, and who would otherwise have been eligible for the relief allowed in § 99-15-26, may apply to the court for an order to expunge all records relating to the arrest, indictment, trial, finding of guilty, and sentence. If the court determines, after hearing, that such person has met the requirements, it may enter an order expunging the records. The effect of such order shall be to restore such person, in contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or trial in response to any inquiry made of him for any purpose. Upon petition therefore, the court shall expunge the record of any case in which an arrest was made, the person arrested was released, and the case was dismissed or the charges were dropped, there was no disposition of such case, or the person was found not guilty at trial.</p> <p>§ 99-15-59 – any person who is arrested, issued a citation, or held for any misdemeanor and not formally charged or prosecuted for an offense within 12 months of arrest, or upon</p>

MISSISSIPPI**Is expungement of records available?, cont'd**

dismissal of the charge, may apply to the court with jurisdiction over the matter for the charges to be expunged.

§ 99-15-123 – provides that if an offender successfully completes a pretrial intervention program, the court shall make a non-criminal disposition of the charge or charges pending against the offender. Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released, and the case was dismissed or charges dropped or there was no disposition of such case.

§ 99-19-71 (expungement of conviction; eligible offenses; notice; procedure; order; effect; expungement of arrest record) – provides that any person who has been convicted of a misdemeanor that is not a traffic violation, and who is a first offender, may petition the appropriate court for an order to expunge any such conviction from all public records.

Further provides that, except as otherwise provided in this section, a person who has been convicted of a felony and who has paid all criminal fines and costs of court imposed in the sentence of conviction may petition the appropriate court for an order to expunge one conviction from all public records five years after the successful completion of all terms and conditions of the sentence for the conviction upon a hearing as determined in the discretion of the court. Sets forth the felonies ineligible for expunction.

Upon entering an order of expunction, a non-public record thereof shall be retained by the Mississippi Criminal Information Center solely for the purpose of determining whether, in subsequent proceedings, the person is a first offender. The order of expunction shall not preclude a district attorney's office from retaining a non-public record thereof for law enforcement purposes only. The existence of an order shall not preclude an employer from asking a prospective employee if the person has had an order of expunction entered on his or her behalf.

The effect of the order shall be to restore the person, in the contemplation of the law, to the status he or she occupied before any arrest or indictment for which convicted. No person as to whom an expunction order has been entered

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Is expungement of records available?, cont'd	<p>shall be held thereafter under any provision of law to be guilty of perjury or to have otherwise given a false statement by reason of his failure to recite or acknowledge such arrest, indictment, or conviction in response to any inquiry made of him for any purpose other than the purpose of determining, in any subsequent proceedings under this section, whether the person is a first offender.</p> <p>A person as to whom an order has been entered, upon request, shall be required to advise the court, in camera, of the previous conviction and expunction in any legal proceeding wherein the person has been called as a prospective juror. The court shall thereafter and before the selection of the jury advise the attorneys representing the parties of the previous conviction and expunction.</p> <p>Provides that, upon petition therefor, a court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case, or the person was found not guilty at trial. No public official is eligible for expunction under this section for any conviction related to his official duties.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	<p>Yes. § 97-37-5 – provides that it is unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or other listed items unless such person has received a pardon, a relief from disability pursuant to U.S.C. tit. 18, § 925(c), or a certificate of rehabilitation pursuant to this section.</p> <p>A person convicted of a felony may apply for a certificate of rehabilitation and the court may grant such certificate in its discretion upon a showing to the satisfaction of the court that the applicant has been rehabilitated and has led a useful, productive, and law-abiding life since the completion of his or her sentence and upon the finding of the court that the individual will not be likely to act in a manner dangerous to public safety.</p>
Are drug convictions eligible for relief?	Yes. § 9-23-23 – provides that if a participant completes all requirements imposed upon him or her by a drug court,

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Are drug convictions eligible for relief?, cont'd	including the payment of fines and fees assessed and not waived by the court, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the intervention court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>MISSOURI</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MO. CONST. Art. IV, § 7 (West 2020) (reprieves, commutations, and pardons—limitations on power) • MO. ANN. STAT. § 217.800 (West 2024) (pardons by governor—conditions and restrictions—notice to central repository) • MO. ANN. STAT. §§ 610.105 to 610.126 (West 2024) (included within “Arrest Records”) • MO. ANN. STAT. §§ 610.140 to 610.145 (West 2024) (included within “Expungement of Certain Criminal Records”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1981 (§§ 610.106 to 610.115) • 1993 (§ 610.124) • 1995 (§§ 217.800, 610.126) • October 12, 2005 (§ 610.123) • September 1, 2006 (§ 610.105) • January 1, 2017 (§ 610.125) • August 28, 2017 (§ 610.145) • August 28, 2021 (§§ 610.120, 610.122) • August 28, 2024 (§ 610.140)
Pardon provisions	<p>Art. IV, § 7 – vests the governor with the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole.</p> <p>§ 217.800 – provides that, in all cases in which the governor is authorized by the constitution to grant pardons, he may grant the same, with such conditions and under such restrictions as he may think proper. All applications for pardon shall be referred to the board for investigation, and the board shall investigate each such case and submit to the governor a report of its investigation, with all other information the board may have relating to the applicant together with any recommendations the board deems proper to make. The department of corrections shall notify the central repository of any action of the governor granting a pardon.</p>
Is sealing of records available?	Yes. § 610.105 (effect of nolle pros—dismissal—sentence suspended on record—not guilty due to mental disease or defect, effect—official records available to victim in certain cases) – if an arrested person is charged but the case is subsequently nolle prossed, dismissed, or the accused is

MISSOURI**Is sealing of records available?, cont'd**

found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as otherwise provided in this section and in § 610.120, and except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed. If the accused is found not guilty due to mental disease or defect, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child care agencies, facilities as defined in § 198.006, and in-home services provider agencies, in the manner established by § 610.120.

If a person arrested is charged with an offense found in chapter 566, §§ 568.045, 568.060, 568.065, 573.200, 573.205, or 568.175, and an imposition of sentence is suspended in the court in which the action is prosecuted, the official records pertaining to the case shall be made available to the victim for the purpose of using the records in his or her own judicial proceeding, or if the victim is a minor to the victim's parents or guardian, upon request.

§ 610.106 (suspended sentence prior to September 28, 1981, procedure to close records) – any person as to whom imposition of sentence was suspended prior to September 28, 1981, may make a motion to the court in which the action was prosecuted after his discharge from the court's jurisdiction for closure of official records pertaining to the case. If the prosecuting authority opposes the motion, an informal hearing shall be held in which technical rules of evidence shall not apply. Having regard to the nature and circumstances of the offense and the history and character of the defendant and upon a finding that the ends of justice are so served, the court may order official records pertaining to the case to be closed, except as provided in § 610.120.

§ 610.110 (failure to recite closed record excused—exceptions) – no person as to whom such records have been closed shall thereafter, under any provision of law, be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose, except as provided in § 491.050.

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Is sealing of records available?, cont'd	<p>§ 610.115 (penalty) – a person who knowingly violates any provision of §§ 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.</p> <p>§ 610.120 (records to be confidential—accessible to whom, purposes) – provides that, except as otherwise provided under §610.124, records required to be closed shall not be destroyed. Such records shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and chapter 43. Closed records shall be available to:</p> <ol style="list-style-type: none"> (1) Criminal justice agencies for the administration of criminal justice, criminal justice employment, screening persons with access to criminal justice facilities, procedures, and sensitive information; (2) Law enforcement agencies for issuance or renewal of a license, permit, certification, or registration of authority from such agency including, but not limited to, watchmen, security personnel, and private investigators; (3) Those agencies authorized by chapter 43 and applicable state law when submitting fingerprints to the central repository; (4) The sentencing advisory commission for the purpose of studying sentencing practices; (5) Qualified entities for the purpose of screening providers defined in chapter 43; (6) The department of revenue for driver license administration; (7) The department of public safety for the purposes of determining eligibility for crime victims' compensation; (8) Department of health and senior services for the purpose of licensing and regulating facilities and regulating in-home services provider agencies; and (9) Federal agencies for purposes of criminal justice administration, criminal justice employment, child, elderly, or disabled care, and for such investigative purposes as authorized by law or presidential executive order.

<u>MISSOURI</u>	
Is sealing of records available?, cont'd	<p>A criminal justice agency receiving a request for criminal history information under its control may request positive identification, to include fingerprints of the subject of the record search, prior to releasing closed record information. Dissemination of closed and open records from the Missouri criminal records repository shall be in accordance with § 43.509. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entities shall be blacked out and recopied in a confidential book.</p>
Is expungement of records available?	<p>Yes. § 610.122 (arrest record expunged, requirements) – provides that, notwithstanding any other provision of law to the contrary, any record of arrested may be expunged if:</p> <ol style="list-style-type: none"> (1) The court determines that the arrest was based on false information and (a) there is no probable cause, at the time of the action to expunge, to believe the individual committed the offense; (b) no charges will be pursued as a result of the arrest; and (c) the subject of the arrest did not receive a suspended imposition of sentence for the offense for which the arrest was made or for any offense related to the arrest; or (2) The court determines the person was arrested for, or was subsequently charged with, a misdemeanor offense of chapter 303 or any moving violation as the term moving violation is defined under § 302.010, except for any intoxication-related traffic offense and (a) each such offense or violation related to the arrest was subsequently nolle prossed or dismissed, or the accused was found not guilty of each offense or violation; and (b) the person is not a commercial driver's license holder and was not operating a commercial motor vehicle at the time of arrest. <p>A record of arrest shall only be eligible for expungement under this section if no civil action is pending relating to the arrest or the records sought to be expunged.</p>

MISSOURI**Is expungement of records available?, cont'd**

§ 610-123 (procedure to expunge, supreme court to promulgate rules—similar to small claims) – provides that any person who wishes to have a record of arrest expunged pursuant to § 610.122 may file a verified petition for expungement in the civil division of the circuit court. Sets forth the information required to be included in the petition. Provides that the petition shall name as defendants all law enforcement agencies, courts, prosecuting attorneys, central state depositories of criminal records, or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action.

If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. A copy of the order shall be provided to each agency identified in the petition.

Requires the supreme court shall promulgate rules establishing procedures for the handling of cases.

§ 610.124 (destruction of arrest records—removal from all electronic files—FBI requested to expunge—protest to expungement, procedure) – all records ordered to be expunged pursuant to § 610.123 shall be destroyed, except as provided in this section. If destruction of the record is not feasible because of the permanent nature of the record books, such record entries shall be blacked out. Entries of an expunged record shall be removed from all electronic files maintained with the state. The central repository shall request the FBI expunge the records from its files.

§ 610.125 (failure to comply with expungement order, penalty—knowingly using expunged record for gain, penalty) – provides that a person subject to an order of expungement who knowingly fails to expunge or obliterate, or releases arrest information which has been ordered expunged pursuant to § 610.123 is guilty of a class B misdemeanor. Further provides that a person subject to an expungement order who, knowing the records have been ordered expunged, uses the arrest information for financial gain is guilty of a class E felony.

MISSOURI**Is expungement of records available?, cont'd**

§ 610.126 (expungement does not deem arrest invalid—department of revenue may retain records necessary for administrative actions on driver's license—power to close or expunge record, limitation) – provides that an expungement of an arrest record shall not reflect on the validity of the arrest and shall not be construed to indicate a lack of probable cause for the arrest. Except as provided by §§ 610.122 to 610.126, the courts of this state shall have no legal or equitable authority to close or expunge any arrest record. The petitioner shall not bring any action subsequent to the expungement against any person or agency relating to the arrest described in the expunged records.

§ 610.140 (expungement of certain criminal records, petition, contents, procedure—effect of expungement on employer inquiry—lifetime limits) – provides that, notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was charged or found guilty of any crimes for an order to expunge records of such arrest, plea, trial, or conviction.

Subject to the limitations of this section, a person may apply to have one or more crimes expunged if each such crime occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri court, so long as such person lists all the crimes he or she is seeking to have expunged in the petition and so long as all such crimes are not excluded under this section. If the crimes sought to be expunged were committed as part of the same course of criminal conduct, the person may include all such related crimes in the petition, regardless of the limits of this section, and those related crimes shall only count as the highest level crime for the purpose of determining current and future eligibility for expungement.

Sets forth the crimes that are ineligible for expungement. Provides that the petition shall name as defendants all law enforcement agencies, courts, prosecuting or circuit attorneys, central state repositories of criminal records, or others who the petitioner has reason to believe may possess the records subject to expungement for each of the crimes listed in the petition. The court's order of expungement shall not affect any person or entity not named as a defendant in

<u>MISSOURI</u>	
Is expungement of records available?, cont'd	<p>the action. Sets forth the information required to be included in the petition.</p> <p>Sets forth the factors the court may consider for each of the crimes listed in the petition for expungement, including:</p> <ol style="list-style-type: none"> (1) At the time the petition is filed, it has been at least three years if the offense is a felony, or at least one year if the offense is a misdemeanor, municipal violation, or infraction, from the date the petitioner completed any authorized disposition imposed under § 557.011 for each crime listed in the petition; (2) At the time the petition is filed, the person has not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations during the time period specified for the underlying crime; (3) The person has satisfied all obligations relating to any such disposition, including the payment of any fines or restitution; (4) The person does not have any charges pending; (5) The petitioner's habits and conduct demonstrate that the petitioner is not a threat to the public safety of the state; and (6) The expungement is consistent with the public welfare and the interests of justice warrant the expungement. <p>Provides that a petition to expunge records related to an arrest for an eligible crime may be made in accordance with the provisions of this section to a court of competent jurisdiction no earlier than 18 months from the date of arrest; provided that, during such time, the petitioner has not been charged and the petitioner has not been found guilty of any misdemeanor or felony offense.</p> <p>If the court determines that the petitioner meets all of the requirements as set forth above, it shall enter an order of expungement. In all cases under this section, the court shall issue an order of expungement or dismissal within six months of the filing of the petition. A copy of the order shall be provided to the petitioner and each entity possessing records subject to the order. Upon receipt of the order, each entity shall close any record in its possession relating to any</p>

MISSOURI**Is expungement of records available?, cont'd**

crime listed in the petition, in the manner established by § 610.120. The records and files maintained in any administrative or court proceeding for any crime ordered expunged under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The central repository shall request the FBI to expunge the records from its files.

The order shall not limit any of the petitioner's rights that were restricted as a collateral consequence of such person's criminal record, and such rights shall be restored upon issuance of the order of expungement. Except as otherwise provided under this section, the effect of such order shall be to fully restore the civil rights of such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her and no such inquiry shall be made for information relating to an expungement, except that the petitioner shall disclose the expunged crime to any court when asked or upon being charged with any subsequent crime. The expunge crime may be considered a prior offense in determining a sentence to be imposed for any subsequent offense that the person is found guilty of committing.

Provides that a person shall disclose any expunged crime when the disclosure of such information is necessary to complete any application for a license, certificate, or permit, or any of the listed employers. A person who has been granted an expungement may answer "no" to an employer's inquiry into whether the person has ever been arrested, charged, or convicted of a crime if, after the granting of the expungement, the person has no public record of a crime. However, the person shall answer such an inquiry affirmatively and disclose his or her criminal convictions, including any offense expunged under this section or similar law, if the employer is required to exclude applicants with

MISSOURI**Is expungement of records available?, cont'd**

certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

Any person whose petition is denied may not refile another petition until a year has passed since the date of filing for the previous petition. A person may be granted more than one expungement under this section provided that during his or her lifetime, the total number of crimes for which orders of expungement are granted to the person shall not exceed the following limits:

- (1) Not more than three misdemeanor offenses or ordinance violations that have an authorized term of imprisonment; and
- (2) Not more than two felony offenses.

A person may be granted expunge for any number of infractions. Nothing in this section shall be construed to limit or impair in any way the subsequent use of any record expunged of any arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting attorney, or circuit attorney, including its use as a prior crime.

Requires the court to make a form available for pro se petitioners.

§ 610-145 (stolen or mistaken identity, expungement of records, procedure) – provides that if a person is named in a charge for an infraction or offense, whether a misdemeanor or a felony, as a result of another person using the identifying information of the named person or as a result of mistaken identity and the charges were dismissed or such person was found not guilty, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the office of state courts administrator and supplied by the clerk of the court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expungement.

<u>MISSOURI</u>	
Is expungement of records available?, cont'd	<p>If any person is named in a charge for an infraction or offense, whether a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order expungement of all official records containing any entries relating to the person's apprehension, charge, or trial.</p> <p>Provides that no person as to whom such an order has been entered shall thereafter be held liable under any provision of law to be guilty of perjury or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.</p>
Are any records eligible to be automatically sealed or expunged?	Yes. See discussion of § 610.145 above.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>MONTANA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • MONT. CONST. Art. VI, § 12 (West 2024) (pardons) • MONT. CODE ANN. §§ 16-12-113 to 16-12-116 (West 2024) (included within “General Provisions”) • MONT. CODE ANN. § 44-5-202 (West 2024) (photographs and fingerprints) • MONT. CODE ANN. § 46-18-204 (West 2024) (dismissal after deferred imposition) • MONT. CODE ANN. §§ 46-18-1102 to 46-18-1111 (West 2024) (collectively “Expungement of Records”) • MONT. CODE ANN. §§ 46-23-301 to 46-23-316 (West 2024) (collectively “Executive Clemency”) • MONT. ADMIN. R. 20.25.901 and 20.25.901A (2024) (included within “Executive Clemency”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 1, 2009 (§ 46-23-316) • August 10, 2012 (R. 20.25.901A) • July 1, 2017 (§ 46-18-204) • October 1, 2015 (§§ 46-23-301, 46-23-307) • October 1, 2019 (§§ 44-5-202, 46-18-1103 to 46-18-1111) • January 1, 2022 (§ 16-12-113) • July 9, 2022 (R. 20.25.901)
Pardon provisions	<p>Art. VI, § 12 – vests the governor with the power to grant pardons subject to procedures provided by law.</p> <p>§ 46-23-301 (cases of executive clemency—application for clemency—definitions) – defines “clemency” to mean kindness, mercy, or leniency that may be exercised by the governor toward a convicted person and includes pardon, which means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.</p> <p>Provides that a person need not exhaust all judicial or administrative remedies before filing an application for clemency. The board shall consider cases of executive clemency only upon application, and all such applications must be made to the board. Provides that a hearing panel may recommend that clemency be granted or denied and shall transmit the application and either a recommendation that clemency be granted or denied to the governor. The governor is not bound by such recommendations, but the governor shall review the record of the hearing and the hearing panel’s recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency, and no appeal may be taken from such decision.</p>

<u>MONTANA</u>	
Pardon provisions, cont'd	<p>§ 46-23-307 (recommendation of hearing panel) – within 30 days after the hearing of a case, the hearing panel shall make a recommendation in writing and a copy of the recommendation, together with all papers used in each case, must be immediately transmitted to the governor.</p> <p>§ 46-23-316 (governor’s report to legislature) – the governor shall report to the legislature each case of pardon granted since the previous report, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date, the date of pardon, with the reason for granting the same, and the objection, if any, of any of the members of the board made to the action.</p> <p>R. 20.25.901 (applications for clemency) – sets forth the requirements for clemency applications. Provides that an individual whose application has been denied may not reapply for executive clemency unless the individual submits evidence of substantial change in circumstances since the last application.</p> <p>R. 20.25.901A (executive clemency criteria) – provides that a hearing panel may recommend a pardon for an individual who:</p> <ol style="list-style-type: none"> (1) Can satisfactorily prove innocence of a crime for which the individual has served time; (2) Has demonstrated an extended period of exemplary performance; (3) Submits newly discovered evidence showing complete justification or nonguilt on the part of the individual; or (4) Can satisfactorily prove extraordinary mitigating or extenuating circumstances exist.
Is sealing of records available?	Yes, see discussion of § 46-18-204 below.
Is expungement of records available?	Yes. § 46-18-1103 (definitions) – includes definition of “expunge,” which means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record’s physical or electronic form.

MONTANA**Is expungement of records available?, cont'd**

§ 46-18-1104 (eligibility for misdemeanor expungement) – provides that a person convicted of one or more misdemeanor offenses, whether in one court or multiple courts and whether in one case or multiple cases, and who has not had the person's records expunged under this part previously, may petition a district court for an order requiring the expungement of all records of arrest, investigation, and detention, if any, and any court proceedings that may have been held related to the misdemeanor offense or offenses. Provides that a person may petition for expungement no more than one time during the person's life.

§ 46-18-1107 (when expungement presumed) – provides that expungement is presumed if the person requesting expungement is not currently being detained for the commission of an offense, is not charged with the commission of an offense, and does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for a conviction for which expungement is being requested, and:

- (1) The person has not been convicted of any offense in this state, another state, or federal court for a period of five years since the person completed the sentencing terms for the offense or offenses for which expungement is being requested, including payment of any financial obligations or successful completion of court-ordered treatment; or
- (2) The person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is being held back in any way from enlisting or holding a certain position due to prior conviction.

§ 46-18-1108 (when expungement not presumed) – expungement may not be presumed if the person seeking expungement has one or more convictions for one of the listed offenses. Sets forth the factors that must be considered by the court in making a determination as to whether expungement should be granted.

<u>MONTANA</u>	
Is expungement of records available?, cont'd	<p>§ 46-18-1109 (procedure) – provides that the court must make its determination on a preponderance of the evidence. A presumption in favor of expungement may be overcome upon a determination that the interests of public safety demand dismissal.</p> <p>§ 46-18-1110 (expungement orders) – provides that, when multiple misdemeanors are requested to be expunged, the court may order expungement of all, some, or none of the offenses. If an order is granted, the order must direct, for each offense being expunged, each entity with custody of records to permanently seal all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case in the possession of the recipient of the order within existing resources.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 44-5-202 – provides that, if an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, the court having jurisdiction in the criminal action shall report the disposition to the state repository within 14 business days. Photographs and fingerprints taken of the individual must be returned by the state repository to the originating agency, which shall expunge all copies. A criminal justice agency may not maintain any copies of the individual's fingerprints or photographs related to that charge or invalidated conviction.</p> <p>§ 46-18-204 – provides that whenever the court has deferred imposition of sentence and after termination of the time period during which imposition of sentence has been deferred or upon termination of the time remaining on a deferred sentence under § 46-18-208:</p> <ol style="list-style-type: none"> (1) For a felony conviction, the court shall strike the plea of guilty or nolo contendere or the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed; or (2) For a misdemeanor conviction, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty and order that the charge(s) be dismissed.

<u>MONTANA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information and public access to the information may be obtained only by district court order upon good cause shown.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 16-12-113 (decriminalized acts—petition for expungement or resentencing—retroactive application) – provides that a person serving a sentence for an act that has been decriminalized under this chapter (related to cannabis offenses) or which is punishable by a lesser sentence than the person was awarded may petition for an expungement of the conviction. Upon receiving such a petition, the court shall presume the petitioner satisfies the criteria set forth above unless the county attorney provides the court with a reasonable basis on which the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria, the court shall grant the petition unless it determines that granting the petition would pose an unreasonable risk of danger to public safety.</p> <p>Further provides that a person who has completed a sentence for an act that is permitted under this chapter or is punishable by a lesser sentence under this chapter than the person was awarded may petition the sentencing court to expunge the conviction or redesignate the conviction as a misdemeanor or civil infraction. Upon receiving a petition under this subsection, the court shall presume the petitioner satisfies the criteria in this subsection unless the county attorney provides the court with a reasonable basis on which the petitioner does not satisfy the criteria. Once the applicant satisfies the criteria, the court shall redesignate the conviction or expunge the conviction as legally invalid. Unless requested by the petitioner, no hearing is necessary to grant or deny an application filed under this subsection.</p> <p>Provides that nothing in this section constitutes a waiver of any right or remedy otherwise available to the petitioner or applicant. Petitioning for expungement pursuant to this section does not make a person ineligible to petition for misdemeanor expungement pursuant to title 46, chapter 18, part 11.</p>
Miscellaneous provisions	None.

<u>MONTANA</u>	
Recently proposed legislation	None.

<u>NEBRASKA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • NEB. CONST. Art. IV, § 13 (West 2024) (board of parole; members; powers; reprieves; proceedings; power to pardon; limitations) • NEB. REV. STAT. ANN. § 29-3523 (West 2024) (criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement) • NEB. REV. STAT. ANN. §§ 29-3527 and 39-3528 (West 2024) (included within “Criminal History Record Information”) • NEB. REV. STAT. ANN. § 83-194 (West 2024) (Board of Parole; advise Board of Pardons upon request) • NEB. REV. STAT. ANN. §§ 83-1,126 to 83-1,134 (West 2024) (included within “Correctional Services, Parole, and Pardons”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1967 (§ 13) • 1969 (§§ 83-194, 83-1,132) • 1978 (§ 29-3528) • 1994 (§§ 83-1,126, 83-1,130) • 2004 (§ 83-1,129) • September 1, 2019 (§ 29-3523) • September 2, 2023 (§ 83-1,127)
Pardon provisions	<p>Art. IV, § 13 – provides that the governor, attorney general, and secretary of state, sitting as a board, shall have the power to grant pardons in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment. The Board of Parole may advise the governor, attorney general, and secretary of state on the merits of any application for pardon but such advice shall not be binding. The governor shall have the power to suspend the execution of the sentence imposed for treason until the case can be reported to the legislature at the next session, when the legislature shall either grant a pardon or commute the sentence or direct the execution or grant a further reprieve.</p> <p>§ 83-194 – provides that the Board of Parole shall, when requested by the Board of Pardons, advise it concerning applications requesting the exercise of pardon authority and make such investigation and collect such records as may bear on such applications.</p> <p>§ 83-1,126 (Board of Pardons; created; members; secretary) – creates the Board of Pardons which consists of the governor, attorney general, and secretary of state.</p>

NEBRASKA**Pardon provisions, cont'd**

§ 83-1,127 (Board of Pardons; duties) – provides that the board shall exercise the pardon authority for all criminal offenses except treason and cases of impeachment, adopt and promulgate rules and regulations for its own administration and operation, consult with the Board of Parole concerning applications for pardon, and exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the provisions of the Nebraska Treatment and Corrections Act.

§ 83-1,129 (Board of Pardons; pardon authority; application; consideration) – any person desiring the board to exercise its pardon authority shall request an application from its secretary. The application shall be returned to the secretary and shall state the specific relief requested and such other information as is prescribed by the board.

§ 83-1,130 (Board of Pardons; pardon authority; application; limitation; relief granted or denied) – after consideration of the application and after such further investigations as it may deem appropriate, the board shall either grant or deny the relief requested or grant such other relief as may be justified. The board may decline to accept further applications after the initial application for pardon from an offender for any prescribed amount of time, but in no case shall such time exceed two years. The board shall notify the offender in writing of any restriction for subsequent applications after the hearing on the initial application.

Provides that all actions by the board shall be by majority vote and shall be filed in the office of the secretary of state or the office designated by the secretary of state.

§ 83-1,132 (committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix) – provides that whenever an application for exercise of the pardon authority is filed with the secretary by the board by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon such application. If the board denies the relief requested it may set the time and date of execution and refuse to accept further applications from such offender.

NEBRASKA**Is sealing of records available?**

Yes. § 29-3523 – provides that after the expiration of the periods described below or after the granting of a motion as set forth in this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided below or when the subject of the record:

- (1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;
- (2) Is currently an announced candidate for or holder of public office;
- (3) Has made a notarized request for the release of such record to a specific person; or
- (4) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of information showing the dates of arrests, reasons for arrests, and the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

That part of criminal history record information described in this section may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

Except as provided above, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case shall be removed from the public record as follows:

- (A) When no charges are filed as a result of the determination of the prosecutor, the information shall not be part of the public record after one year from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation;

NEBRASKA**Is sealing of records available?, cont'd**

- (B) When charges are not filed as a result of a completed diversion, the information shall not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and
- (C) When charges are filed, but the case is dismissed by the court on the motion of the prosecutor, as a result of a hearing not the subject of a pending appeal, after acquittal, after a deferred judgment, or after completion of a program prescribed by a drug court or any other problem solving court approved by the Supreme Court, the criminal history record information shall not be part of the public record immediately upon notification of a criminal justice agency after acquittal or after the entry of an order dismissing the case.

Provides that upon the granting of a motion to set aside a conviction or an adjudication pursuant to § 29-3005, a person who is a victim of sex trafficking may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside such conviction or adjudication, the sentencing court shall grant the motion.

Any person who has received a pardon may file a motion for an order to seal the criminal history record information and any cases related to such charges or conviction. Upon a finding that the person received a pardon, the court shall grant the motion and issue an order.

Any person who is subject to a record which resulted in a case being dismissed prior to January 1, 2017, as described in subdivision (C) above, may file a motion with the court to enter an order sealing such records. Upon a finding that the case was dismissed for any reason described in subdivision (C), the court shall grant the motion and enter an order as provided below.

Upon acquittal or entry of an order dismissing a case described in subdivision (C) above, or after granting a motion as described in this section, the court shall order that all records, including any information or other data

<u>NEBRASKA</u>	
Is sealing of records available?, cont'd	<p>concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are not part of the public record and shall not be disseminated to persons other than criminal justice agencies. The court shall also send notice of the order to the specific listed entities and shall order all such entities to seal all records pertaining to the case.</p> <p>Provides that, in any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred.</p> <p>§ 29-3527 (violations; penalty) – provides that any person who knowingly disseminates non-disclosable criminal history record information in violation of § 29-3523 shall be guilty of a Class IV misdemeanor.</p> <p>§ 29-3528 (violations; person aggrieved; remedies) – provides that whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or political subdivision or its agencies fails to comply with the requirements of § 39-3523, any person aggrieved may bring an action, including, but not limited to, an action for mandamus, to compel compliance, and such action may be brought in the court of any district in which the records involved are located. The commission may request the attorney general to bring such action.</p>
Is expungement of records available?	<p>Yes. § 29-3523 – provides that any person arrested due to the error of a law enforcement agency may file a petition for an order to expunge the criminal history record information related to such error. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. See discussion of § 29-3523 above.</p>

<u>NEBRASKA</u>	
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>NEVADA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • NEV. CONST. Art. V, §§ 13 and 14 (West 2023) (included within “Executive Department”) • NEV. REV. STAT. ANN. § 34.970 (West 2023) (order by court requiring response to petition; contents of order; time for response; reply; consideration of petition by court; hearing on petition; stipulation of factual innocence of petitioner; issuance of order of factual innocence; explanation by court; appeal) • NEV. REV. STAT. ANN. § 174.034 (West 2023) (sealing of records after discharge) • NEV. REV. STAT. ANN. § 176.211 (West 2023) (eligibility; duration; terms and conditions; violation of term or condition; discharge and dismissal; sealing of records) • NEV. REV. STAT. ANN. § 176A.245 (West 2023) (sealing of records after discharge; sealing of records after conditional dismissal of charges or setting aside of judgment of conviction for certain offenses) • NEV. REV. STAT. ANN. § 176A.265 (West 2023) (sealing of records after discharge, dismissal, conditional dismissal, or setting aside of judgment of conviction) • NEV. REV. STAT. ANN. § 176A.295 (West 2023) (sealing of records after discharge, dismissal, conditional dismissal, or setting aside of judgment of conviction) • NEV. REV. STAT. ANN. §§ 179.2405 to 179.301 (West 2023) (collectively “Sealing Records of Criminal Proceedings”) • NEV. REV. STAT. ANN. §§ 210.005 to 213.100 (West 2023) (collectively “Pardons, Remissions of Fines and Commutations of Punishments; State Board of Pardons Commissioners”) • NEV. REV. STAT. ANN. § 453.336 (West 2023) (unlawful possession not for purpose of sale: prohibition; penalties; exception) • NEV. REV. STAT. ANN. § 453.3365 (West 2023) (sealing of record of person convicted of possession of controlled substance not for purpose of sale; conditions) • NEV. ADMIN. CODE §§ 213.005 to 213.205 (2024) (collectively “Pardons, Remissions of Fines, Commutations of Punishments”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1864 (§ 13) • May 19, 2009 (§ 453.3365) • October 1, 2009 (§§ 213.020, 213.035) • August 13, 2010 (NAC §§ 213.040 to 213.205) • October 1, 2011 (§ 213.090)

<u>NEVADA</u>	
Effective date(s) of most recent substantive amendment(s), cont'd	<ul style="list-style-type: none"> • October 1, 2017 (§ 174.034) • January 1, 2018 (§ 179.301) • October 1, 2019 (§ 179.2595) • July 1, 2020 (§§ 179.275, 179.285, 179.295) • November 24, 2020 (§ 14) • June 4, 2021 (§§ 176A.245, 176A.295, 179.259) • October 1, 2021 (§§ 179.2445, 179.255, 179.265, 179.271, 179.273) • May 31, 2023 (§ 176.211) • July 1, 2023 (§§ 34.970, 176A.265, 179.245) • January 1, 2024 (§ 453.336)
Pardon provisions	<p>Art. V, § 13 (pardons, reprieves, and commutations of sentence; remission of fines and forfeitures) – vests the governor with the power to grant reprieves for a period not exceeding 60 days dating from the time of conviction for all offenses except in cases of impeachment. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. If the legislature should fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the governor by his order may direct. The governor shall communicate to the legislature, at the beginning of every session, every case of pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, and the date of pardon.</p> <p>Art. V, § 14 (state Board of Pardons Commissioners; remission of fines and forfeitures; commutations and pardons; suspension of sentence; probation) – the governor, justices of the supreme court, and attorney general shall constitute the State Board of Pardons Commissioners. The board may, upon such conditions and with such limitations and restrictions as they may think proper, grant pardons, after convictions, in all cases except treason and impeachments, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Provides that a majority of the members of the board is sufficient for any action taken by the board.</p>

NEVADA**Pardon provisions, cont'd**

NEV. REV. STAT. ANN. §§ 213.005 to 213.100 and NEV. ADMIN. CODE (NAC) §§ 213.005 to 213.205 set forth the procedures for requesting and granting a pardon.

§ 213.020 (notice of application for remission, commutation, pardon, or restoration of civil rights: contents; service) – provides that any person intending to apply to have a pardon granted or his or her civil rights restored, or any person acting on his or her behalf, must submit an application to the board, in accordance with the procedures established by the secretary. Sets forth the information required to be included in the application.

§ 213.035 (restoration of civil rights expedited by board under certain conditions) – provides that the board may adopt a policy to provide an expedited process to take action, without holding a meeting, to restore the civil rights, in whole or in part, of a person who submits an application to the board if certain conditions are met, including, without limitation, that there is no objection from the court in which the judgment was rendered or from the district attorney of the county wherein the person was convicted, and the board has not received a written request for notice concerning a meeting to consider an application for clemency from a victim of a crime committed by the person.

§ 213.090 (pardon: restoration of civil rights; relieved of disabilities; limitations) – a person who is granted a full, unconditional pardon by the board is restored to all civil rights, including, without limitation, the right to bear arms, and is relieved of all disabilities incurred upon conviction. A pardon granted by the board shall be deemed to be a full, unconditional pardon unless the official document issued pursuant to this section explicitly limits the restoration of the civil rights of the person or does not relieve the person of all disabilities incurred upon conviction.

Upon being granted a pardon by the board, a person so pardoned must be given an official document which provides that the person has been granted a pardon. If the person has not been granted a full, unconditional pardon, the official document must explicitly state all limitations on the restoration of civil rights and all disabilities incurred which are not relieved.

NEVADA**Pardon provisions, cont'd**

NAC § 213.040 (availability and submission; time limit) – provides that a person seeking clemency, or any person acting on their behalf, must submit an application to the board which may be obtained from the secretary. An application for pardon must be submitted to the secretary not less than 90 days before a semiannual meeting of the board. The governor may prescribe a shorter period for a special hearing of the board.

NAC § 213.050 (contents; applicability) – sets forth the information required to be submitted in the application. Provides that a person may not apply for clemency if the offense for which clemency is sought was a violation of the laws of another state, the United States, a district, commonwealth, territory, or insular possession of the United States or a foreign country.

NAC § 213.065 (pardons: waiting period for eligibility to submit application; waiver) – sets forth the waiting periods before a person may submit an application for a pardon for certain convictions. The time periods range from 5-12 years. Provides that, with the consent of a member of the board, the secretary may waive the waiting period.

NAC § 213.073 (pardons: investigation of applicant; rejection of application; list of rejected applications; written recommendation) – upon receiving an application for a pardon from a person who meets the minimum qualifications, the secretary shall request an investigation. If the investigation reveals serious negative information which indicates that the board may be unlikely to grant a pardon to the applicant, the secretary may reject the application for consideration and shall create a list of all applicants investigated who are denied a hearing and the reason for the denial and make the list available for the board's consideration.

NAC § 213.077 (restoration of civil rights without board meeting) – if a person has applied for a pardon for the sole purpose of restoring his or her civil rights, the board may grant the pardon and restore, in whole or in part, the civil rights of the applicant without a meeting if the following conditions are satisfied:

<u>NEVADA</u>	
Pardon provisions, cont'd	<p>(1) The offense for which the pardon is sought did not result in physical injury to a victim, did not involve the use or threatened use of force or violence, and was not a sexual offense;</p> <p>(2) The applicant has never been convicted of an offense that resulted in physical injury to a victim, an offense involving the use or threatened use of force or violence, or a sexual offense;</p> <p>(3) There is no objection from the court in which the judgment was rendered or the district attorney of the county in which the judgment was rendered; and</p> <p>(4) The board has not received a written request for notice concerning a meeting to consider an application for clemency from a victim of a crime committed by the applicant or, during the course of an investigation of the applicant, a victim of a crime committed by the applicant has not objected to the granting of a pardon to the applicant.</p> <p>NAC § 213.125 (requirements for reapplication) – provides that any person whose application for clemency has been denied by the board may not reapply for clemency unless the person shows a substantial change of circumstance that merits consideration by the board or the board provided instructions to the person at a previous hearing and the person has demonstrated that he or she has complied fully with the instructions.</p>
Is sealing of records available?	<p>Yes. § 34.970 – if, upon a petition by an individual to establish his or her factual innocence, the parties stipulate that the evidence establishes the factual innocence of the petitioner, the prosecuting agency makes a motion to dismiss the original charges against the petitioner or, after a hearing, the court determines that the petitioner has proven his or her factual innocence by clear and convincing evidence, the court shall vacate the petitioner's conviction and issue an order of factual innocence and exoneration and order the sealing of all documents, papers, and exhibits in the person's record, minute book entries, and entries on dockets and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.</p> <p>§ 179.2445 (rebuttable presumption that records should be sealed; exception) – except as otherwise provided, upon the filing of a petition for the sealing of records pursuant to §§</p>

NEVADA**Is sealing of records available?, cont'd**

179.245, 179.247, 179.255, 179.259, or 179.2595, there is a rebuttable presumption that the records should be sealed if the applicant satisfies all statutory requirements for the sealing of the records. This presumption does not apply to a defendant who is given a dishonorable discharge from probation pursuant to § 176A.850 and applies to the court for the sealing of records relating to the conviction.

§ 179.245 (sealing records after conviction: persons eligible; petition; notice; hearing; order; waiver of fees for certain victims of sex trafficking) – except as otherwise provided by law, a person may petition the appropriate court for the sealing of all records relating to a conviction of one of the specific listed crimes. Sets forth the time periods before which a petition can be filed for each category of crime. Sets forth the information required to be included in the petition. Sets forth the crimes ineligible for sealing.

If the prosecuting agency that prosecuted the petitioner for the crime stipulates to the sealing of the records, the court shall apply the presumption set forth in § 179.2445 and seal the records. If the agency does not stipulate to sealing the records or does not file a written objection within 30 days after receiving notification of the petition, and the court makes the findings set forth below, the court may order the sealing of the records without a hearing. If the court does not order the sealing of the records or the prosecuting agency files a written objection, a hearing must be conducted. At the hearing, unless an objecting party presents evidence sufficient to rebut the presumption, the court shall apply the presumption and seal the records.

If the court finds that, during the applicable waiting period, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official, or other custodian of records in Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the FBI and all other agencies of criminal justice which maintain such records and are reasonably

NEVADA**Is sealing of records available?, cont'd**

known by either the petitioner or the court to have possession of such records.

If the court grants a petition to seal records, upon the request of the person whose records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed. Provides that no fee may be charged related to a petition for the sealing of records if, at the time the crime for which the records to be sealed was committed, the petitioner was being sex trafficked.

§ 179.255 (sealing of records after dismissal, decline of prosecution, or acquittal: petition; notice; hearing; exceptions; order; inspection of records) – if a person has been arrested for alleged criminal conduct and the charges are dismissed, the prosecutor declined prosecution of the charges, or such person is acquitted of the charges, the person may petition:

- (1) The court in which the charges were dismissed, at any time after the date the charges were dismissed;
- (2) The court having jurisdiction in which the charges were declined for prosecution: (a) any time after the applicable statute of limitations has run; (b) any time eight years after the arrest; or (c) pursuant to a stipulation between the parties; or
- (3) The court in which the acquittal was entered, at any time after the date of the acquittal

for the sealing of all records relating to the arrest and the proceedings leading to the dismissal, declination, or acquittal.

If the conviction of a person is set aside, the person may petition the court that set aside the conviction at any time after the conviction has been set aside for the sealing of all records relating to the setting aside of the conviction.

Sets forth the requirements for filing a petition. Provides that if the prosecuting agency that prosecuted or declined to prosecute the petitioner for the crime stipulates to the sealing of the records, the court shall apply the presumption set forth in § 179.2445 and seal the records. If the agency does not stipulate to the sealing of the records or does not file a

NEVADA**Is sealing of records available?, cont'd**

written objection within 30 days after receiving notification and the court makes the requisite findings as set forth in this section, the court may order the sealing of the records without a hearing. If the court does not order the sealing of the records or the agency files a written objection, a hearing must be conducted. At the hearing, unless the objecting party presents evidence sufficient to rebut the presumption, the court shall apply the presumption and seal the records.

If the court finds:

- (1) That there has been an acquittal and there is no evidence that further action will be brought against the person, the court shall order all records sealed;
- (2) That prosecution was declined or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order all records sealed; or
- (3) That the conviction of the petitioner was set aside, the court may order all records sealed.

If the prosecutor previously declined prosecution of charges, and the records of the arrest have been sealed, the prosecutor may subsequently file the charges at any time before the running of the statute of limitations for those charges. If such charges are filed with the court, the court shall order the inspection of the records without the prosecutor having to petition the court pursuant to § 179.295.

§ 179.2595 (sealing more than one record; procedure) – provides that, notwithstanding procedures established in other statutes, if a person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court for the sealing of the records, the person may, in lieu of filing a petition in each court, file a petition in district court for the sealing of all such records. The district court may order the sealing of any other records in the justice or municipal courts.

§ 179.265 (rehearing after denial of petition: time for; appeal) – a person whose petition is denied under §§ 179.245 or 179.255 may petition for a rehearing not sooner than two years after the denial. A person whose petition is denied may file an appeal.

NEVADA**Is sealing of records available?, cont'd**

§ 179.271 (sealing of records after decriminalization of offense: written request; notice; hearing; no fee; exception) – except as otherwise provided in this section, if an offense is decriminalized, any person convicted of the offense before the date on which it was decriminalized may submit a written request to the appropriate court for the sealing of records related to the conviction. If the prosecutor objects to the granting of the request, a written object must be filed with the court. If no written objection is filed, the court shall grant the request. If a written objection is filed, the court must hold a hearing on the request. At the hearing, the court shall grant the request unless the prosecutor establishes, by clear and convincing evidence, that there is good cause not to grant the request. A denial is subject to appeal. No fee may be charged by any court or agency of criminal justice for the submission of a request pursuant to this section.

§ 179.273 (sealing of records after unconditional pardon: automatic sealing; petition; no fee) – if a person receives a pardon, the person may submit a written petition, accompanied by proof of the pardon, to the appropriate court for the sealing of all records of criminal history in its possession and in the possession of any agency of criminal justice relating to the charges for which the person received the pardon. A petition submitted to a court pursuant to this section is not subject to review by the prosecutor or an agency of criminal justice. The court shall grant a petition unless the charges listed in the petition are different from the charges listed in the petition. No fee may be charged for the submission of a petition pursuant to this section.

§ 179.275 (order sealing records: distribution to central repository and persons named in order; compliance) – where the court orders the sealing of a record, a copy of the order must be sent to the central repository and each agency of criminal justice and each public or private company, agency, official, or other custodian of records named in the order, and that person shall seal the records in his or her custody which relate to the matters contained in the order, shall advise the court of compliance and shall then seal the order.

§ 179.285 (order sealing records: effect; proceedings deemed never to have occurred; restoration of civil rights) – provides

NEVADA**Is sealing of records available?, cont'd**

that, except as otherwise provided by law, if the court orders a record sealed, all proceedings recounted in the record are deemed to never have occurred, and the person to whom the order pertains may properly answer accordingly to any inquiry, including, without limitation, an inquiry relating to an application for employment, concerning the arrest, conviction, dismissal, or acquittal, and the events and proceedings relating to the arrest, conviction, dismissal, or acquittal. The person is immediately restored to the civil rights lost as a result of the conviction.

§ 179.295 (reopening of sealed records) – the person who is the subject of records sealed pursuant to law may petition the court that ordered the records sealed to permit inspection of the records by a person named in the petition, and the court may order such inspection. Except as otherwise provided by law, the court may not order the inspection of the records under any other circumstances.

If a person has been arrested, the charged have been dismissed, and the records of arrest have been sealed, the court may order the inspection of the records by a prosecuting attorney upon a showing that, as a result of newly discovered evidence, the person has been arrested for the same or a similar offense and that there is sufficient evidence reasonably to conclude that the person will stand trial for the offense.

The court may, upon application of a prosecuting attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

This section does not prohibit a court from considering a proceeding for which records have been sealed in determining whether to grant a petition to seal records for conviction of another offense.

§ 179.301 (inspection of sealed records by certain persons and agencies) – sets forth the entities that may inspect records that have been sealed including, but not limited to, prosecuting attorneys, officers and employees of the central

<u>NEVADA</u>	
Is sealing of records available?, cont'd	repository and law enforcement agencies, and the State Board of Pardons Commissioners.
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	<p>§ 174.034 – provides that if a defendant is discharged after successfully completing a pre-prosecution diversion program and the indictment, information, complaint, or citation is dismissed, the appropriate court must order sealed all documents, papers, and exhibits in the person’s record, minute book entries, and entries on dockets and other documents relating to the case in the custody of such other agencies and officers as are named in the order of the court. The court shall order those records sealed without a hearing unless the district attorney petitions the court, for good cause shown, not to seal the records and requests a hearing thereon. If the court orders the record sealed, the defendant must send a copy of the order to each agency or officer named in the order, and each such agency or officer shall notify the court in writing of its compliance with the order.</p> <p>§ 176.211 – provides that, except as otherwise provided in this subsection, upon a plea of guilty, guilty but mentally ill, or nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer judgment on the case and set forth specific terms and conditions for the defendant. The terms and conditions may include that the individual complete a specialty court program (see discussion of §§ 176A.245, 176A.265, and 176A.295 below). Upon completion of the terms and conditions of the deferred judgment, and upon a finding by the court that the terms and conditions have been met, the court shall discharge the defendant and dismiss the proceedings. The court shall order sealed all documents, papers, and exhibits in the defendant’s record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court’s order if the defendant fulfills the terms and conditions imposed by the court and the division. The court shall order those records sealed without a hearing unless the division or the prosecutor petitions the court, for good cause shown, not to seal the records and requests a hearing thereon. If the court orders sealed the record of a defendant discharged pursuant to this section, the court shall send a copy of the order to each</p>

<u>NEVADA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>agency or officer named in the order and each such agency or officer shall notify the court in writing of its compliance with the order.</p> <p>§ 176A.245 – provides that, except as otherwise provided in this section, after a defendant is discharged from probation or a case is dismissed pursuant to § 176A.240 (related to deferring criminal proceedings against an individual with a substance use disorder or co-occurring disorders), the court shall order sealed all documents, papers, and exhibits in the defendant’s record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court’s order if the defendant fulfills the terms and conditions imposed by the court and the division. The court shall order those records sealed without a hearing unless the division petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.</p> <p>If the defendant is charged with a violation of §§ 200.485, 484C.110, or 484C.210, and the charges are conditionally dismissed or the judgment of conviction is set aside, not sooner than seven years after the charges are dismissed or conviction is set aside, and upon the filing of a petition by the defendant, the appropriate court shall order that all documents, papers, and exhibits in the defendant’s record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court’s order be sealed. The appropriate court shall order those records sealed without a hearing unless the division petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.</p> <p>If the court orders sealed the record of a defendant who is discharged from probation, whose case is dismissed, whose charges were conditionally dismissed, or whose judgment of conviction was set aside pursuant to § 176A.240, the court shall send a copy of the order to each agency or officer named in the order. Each agency or officer shall notify the court in writing of its compliance with the order.</p> <p>§ 176A.265 – this statute is virtually identical to § 176A.245 with the only substantive difference being that the discharge</p>

<u>NEVADA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>and set aside at issue in this law is related to the completion of treatment for mental illness in a mental health court rather than substance use disorder.</p> <p>§ 176A.295 – same but for treatment of veterans and members of the military.</p> <p>§ 179.259 (sealing records after completion of program for reentry: persons eligible; procedure; order; inspection of sealed records by certain entities) – except as otherwise provide by law, four years after an eligible person completes a program for reentry, the court may order sealed all records relating to the case. The court may order those records sealed without a hearing unless the Division of Parole and Probation of the Department of Public Safety petitions the court, for good cause shown, not to seal the records and requests a hearing thereon. If the court orders the records sealed, it shall send a copy of the order to each agency or officer named in the order, and each such agency or officer shall notify the court in writing of its compliance.</p> <p>Sets forth the entities entitled to inspect and copy a record sealed pursuant to this section including professional licensing boards.</p> <p>Provides that a person may not petition to seal records relating to a conviction for a crime against child or a sexual offense. Defines “eligible person,” which means a person who has successfully completed a program for reentry and has been convicted of a single offense which was punishable as a felony and did not involve the use or threatened use of force or violence against the victim.</p> <p>§ 179.273 (sealing of records after unconditional pardon: automatic sealing; petition; no fee) – if a court and the central repository for Nevada Records of Criminal History receive a certified copy of an unconditional pardon, the court and central repository shall seal all records of criminal history subject to the pardon.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. § 453.336 – provides that, unless a greater penalty is provided pursuant to § 212.160, a person who is convicted of

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Are drug convictions eligible for relief?, cont'd	<p>the possession of 1 ounce or less of marijuana is guilty of a misdemeanor and shall be punished by performing not more than 24 hours of community service, attending the live meeting described in § 484C.530(2)(a) and complying with any other requirements set forth in that section, or being required to undergo an evaluation, or any combination thereof. If a person fulfills the terms and conditions imposed for a violation of this subsection, the court shall, without a hearing, order sealed all records relating to the case in the custody of such other agencies and officers as are named in the court's order. The court shall cause a copy of the order to be sent to each agency or officer named in the order, and each such agency or officer shall notify the court in writing of its compliance with the order.</p> <p>§ 453.3365 – three years after a person is convicted and sentenced for possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which those substances are an immediate precursor, the court may order sealed all records related to the case in the custody of such other agencies and officers as are named in the court's order if the person fulfills the terms and conditions imposed by the court and the parole and probation officer and the court, after a hearing, is satisfied that the person is rehabilitated.</p> <p>Except as set forth below, after an accused is discharged from probation pursuant to § 453.3363, the court shall order all records related to the case sealed if the person fulfills the terms and conditions imposed by the court and the division. The court shall order those records sealed without a hearing unless the division petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.</p> <p>A professional licensing board is entitled, for the purpose of determining suitability for a license or liability to discipline for misconduct, to inspect and to copy from a record sealed pursuant to this section.</p>
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>NEW HAMPSHIRE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.H. CONST. Pt. 2, Art. 52 (2024) (pardoning power) • N.H. REV. STAT. ANN. §§ 4:21 to 4:28 (2024) (collectively “Pardons; Commutations; and Reprieves”) • N.H. REV. STAT. ANN. § 262:19 (2024) (procedure) • N.H. REV. STAT. ANN. § 318-B:28-a (2024) (annulments of criminal records) • N.H. REV. STAT. ANN. § 490-G:2 (2024) (implementation of drug courts) • N.H. REV. STAT. ANN. § 490-H:2 (2024) (implementation of mental health courts) • N.H. REV. STAT. ANN. § 490-I:1 (2024) (implementation of veterans tracks) • N.H. REV. STAT. ANN. § 651:2 (2024) (sentences and limitations) • N.H. REV. STAT. ANN. §§ 651:5 and 651:5-b (2024) (included within “General Provisions”) • N.H. REV. STAT. ANN. § 651-C:5 (2024) (expungement of DNA database records upon reversal or dismissal of conviction)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1931 (§§ 4:25, 4:26) • January 1, 1989 (§ 318-B:28-a) • January 1, 2004 (§ 651-C:5) • January 1, 2013 (§ 490-G:2) • January 1, 2018 (§§ 490-H:2, 490-I:1) • January 1, 2020 (§ 651:5-b) • September 14, 2020 (§ 651:5)
Pardon provisions	<p>Art. 52 – vests the power to pardon offenses, except such as persons may be convicted of before the senate, by impeachment of the house, in the governor, by and with the advice of council. However, no charger of pardon, granted by the governor, with advice of council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offense(s) intended to be pardoned.</p> <p>§§ 4:21 to 4:28 set forth the procedures for petitioning for and granting or denying a pardon.</p> <p>§ 4:21 (petitions for pardon or commutation of sentence) – on all petitions to the governor for pardon, written notice shall be given to the state’s counsel and to others as the governor may direct. The prosecuting officer may be required to furnish a concise statement of the case as proved</p>

<u>NEW HAMPSHIRE</u>	
Pardon provisions, cont'd	<p>at the trial and any other facts bearing on the propriety of granting the petition.</p> <p>§ 4:25 (conditional pardons) – provides that the governor, with the advice of the council, may, upon petition of a prisoner, grant him a pardon subject to such conditions as the governor considers proper, but a prisoner so pardoned shall, during the unexpired term of his sentence, violate no law, and he shall be in the custody of the state parole officer. The governor may issue his warrant to all proper officers to carry such pardon into effect and such warrant shall be obeyed and executed instead of the sentence originally imposed.</p> <p>§ 4:26 (breach of condition) – if a prisoner violates any of the conditions of his pardon, the warden, superintendent, or keeper of the institution in which the prisoner was confined shall forthwith cause him to be arrested and shall give written notice to the governor and council of such arrest.</p>
Is sealing of records available?	<p>Yes. § 651:2 – provides that a person may be sentenced to a period of conditional discharge if such person is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant's conduct should be according to conditions determined by the court. Sets forth the conditions that may be included. A person sentenced to conditional discharge under this subsection may apply for annulment of the criminal record under § 651:5 (see below).</p> <p>§ 651:5 (annulment of criminal records) – except as provided in this section, the record of arrest, conviction, and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if, in the opinion of the court, the annulment will assist the petitioner's rehabilitation and will be consistent with the public welfare. The court may grant or deny an annulment without a hearing unless a hearing is requested by the petitioner.</p> <p>For an offense disposed of before January 1, 2019, except non-conviction records as set forth below, any person whose arrest has resulted in a finding of not guilty or whose case was dismissed or not prosecuted may petition for annulment of the arrest record or court record, or both, at any time in</p>

NEW HAMPSHIRE**Is sealing of records available?, cont'd**

accordance with the provisions of this section. Any person who was convicted of a criminal offense whose conviction was subsequently vacated by a court may petition for annulment of the arrest record or court record, or both, in accordance with the provisions of this section.

For an offense disposed of on or after January 1, 2019, any person whose arrest has resulted in a finding of not guilty on all charges that resulted from the arrest, or whose case was dismissed or not prosecuted, shall have the arrest and court record annulled 30 days following the finding of dismissal if an appeal is not taken or a finding of not guilty or upon final determination of the appeal affirming the finding of dismissal if an appeal is taken. For an offense disposed of on or after January 1, 2019, any person who was convicted of a criminal offense whose conviction was subsequently vacated by a court shall have the arrest and court record annulled.

Except as otherwise provided by law, any person convicted of an offense may petition for annulment of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated, for the time periods set forth in this section. The time periods range from 1-10 years.

If a petition is denied, no further petition shall be brought more frequently than every three years thereafter. No petition shall be brought and no annulment granted in the case of any violent crime, felony obstruction of justice crimes, or of any offense for which the petitioner was sentenced to an extended term of imprisonment.

If a person has been convicted of more than one offense, no petition for annulment shall be brought or granted if annulment of any part of the record is barred by this section or until the time requirements for all offenses of record have been met. A conviction for an offense committed under the laws of another state which would not be considered an offense under New Hampshire law, shall not count as a conviction for the purpose of obtaining an annulment under this section.

NEW HAMPSHIRE**Is sealing of records available?, cont'd**

If, prior to disposition by the court of a petition for annulment, the petitioner is charged with an offense conviction which would bar annulment or would extend the time requirements, the petition shall not be acted upon until the charge is disposed of.

Any petition which does not meet the requirements of this section shall be dismissed without a hearing.

Upon entry of an order of annulment:

- (1) Any person whose record is annulled shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced except that, upon conviction of any crime committed after the order has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed and may be counted toward habitual offender status;
- (2) The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the arrest, conviction, and sentence, and shall notify the state police criminal records unit, the prosecuting agency, and the arresting agency;
- (3) The court records shall be sealed and available only to the person whose record was annulled, his or her attorney, a court for sentencing pursuant to (1), law enforcement personnel for legitimate law enforcement purposes, or as otherwise provided in this section;
- (4) Upon payment of the required fee, the state police criminal records unit shall remove the annulled record and inform all appropriate state and federal agencies of the annulment, unless the petitioner demonstrates that he or she is indigent or has been found not guilty, or the case has been dismissed or not prosecuted;
- (5) The arresting agency and the prosecuting agency shall clearly identify in their respective files and in their respective electronic records that the arrest or conviction and sentence have been annulled; and
- (6) In any application for employment, license, or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may

NEW HAMPSHIRE**Is sealing of records available?, cont'd**

be questioned about a previous criminal record only in terms such as, “have you ever been arrested for or convicted of a crime that has not been annulled?”.

Nothing in this section shall affect any right of the person whose record was annulled to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense or of law enforcement officers for legitimate investigative purposes or in defense of any civil suit arising out of the facts of the arrest, or to the police standards and training council solely for the purpose of assisting the council in determining the fitness of an individual as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.

A petition for annulment of any record of arrest, conviction, and sentence authorized by this section may be brought in the supreme court with respect to any such record in the supreme court, provided that no record in the supreme court relating to an opinion published in the New Hampshire Reports may be annulled.

A journalist or reporter shall not be subject to civil or criminal penalties for publishing or broadcasting that a person had a criminal record that has been annulled, including the content of that record, or that a person has a criminal record, including the content of that record, without reporting that the record has been annulled, if the journalist or reporter does not have knowledge of the annulment.

No person or entity, whether public or private, shall be subject to civil or criminal penalties for not removing from public access or making corrections to a report or statement that a person has a criminal record, including the content of such record, if thereafter the criminal record was annulled. This provision shall apply to any report or statement, regardless of its format.

§ 262:19 – provides that no conviction for an offense specified under § 259.39 (related to conviction as an habitual offender) shall be annulled until at least seven years after the conviction date. No court shall vacate, expunge, delete, cancel, or otherwise remove such conviction for at least

<u>NEW HAMPSHIRE</u>	
Is sealing of records available?, cont'd	<p>seven years subsequent to the conviction date unless it is determined that the conviction was illegal or otherwise improper and invalid.</p> <p>§ 318-B:28-a – prohibits any court from ordering an annulment pursuant to § 651:5 or any other provision of law of any record of conviction for a felony under § 318-B until seven years after the date of conviction.</p> <p>§ 490-H:2 – provides that any superior or circuit court may establish one or more mental health courts under which the courts monitor offenders with mental illnesses for compliance with individual services to change behavior which would otherwise result in criminal conduct. Upon successful completion of a program recommended by the mental health court, an offender's case may be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health court. This may include, but is not limited to, withholding or dismissing criminal charges. A person sentenced by a mental health court may, at least one year after successful completion of all programs and conditions imposed by the mental health court, petition for annulment of the charges, arrest, conviction, and sentence that relate to such person's entry into the mental health court.</p>
Is expungement of records available?	<p>Yes. § 651-C:5 – provides that a person whose DNA record has been included in the database may request expungement on the grounds that the criminal conviction on which the authority for holding such person's DNA record was based has been reversed or the case dismissed, provided that the requester has no other convictions which would require inclusion of his or her record in the database. The department shall purge all records and identifiable information pertaining to the person and destroy all samples from the person upon receipt of a written request for expungement and a certified copy of the court order reversing and dismissing the conviction.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.

NEW HAMPSHIRE**Are drug convictions eligible for relief?**

Yes. § 490-G:2 – provides that each superior or circuit court may establish one or more drug courts under which drug offenders may be processed to appropriately address an identified substance abuse problem. Upon successful completion of a program recommended by the drug court, a drug offender’s case may be disposed of by the judge in the manner prescribed by the agreement and by applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration. A person sentenced by a drug court may, at least one year after successful completion of all programs and conditions imposed by the drug court, petition for annulment of the charges, arrest, conviction, and sentence that relate to such person’s entry into the drug court.

§ 490-I:1 – this statute is virtually the same as § 490-G:2 but applicable to veterans tracks created within an existing drug court, through which the court monitors veterans and active duty members of the military with mental illnesses, substance abuse issues, or both, for compliance with individual services to change behavior which would otherwise result in criminal conduct.

§ 651:5-b (annulment of arrests and convictions for marijuana possession) – provides that any person who was arrested or convicted for knowingly or purposely obtaining, purchasing, transporting, or possessing, actually or constructively, or having under his or her control, 3/4 of an ounce of marijuana or less where the offense occurred before September 16, 2017, may, at any time, petition the appropriate court to annul the arrest record, court record, or both. The petitioner shall furnish a copy of the petition to the office of the prosecutor who may object within 10 days of receiving a copy of the petition and request a hearing. If the prosecutor does not object within 10 days, the court shall grant the petition for annulment. If the prosecutor timely objects, the court shall hold a hearing at which the prosecutor shall be required to prove beyond a reasonable doubt that the petitioner had more than 3/4 of an ounce of marijuana. At the close of the hearing, if the prosecutor has not proven such beyond a reasonable doubt, the court shall grant the petition. If the petition is granted, and an order of annulment is

<u>NEW HAMPSHIRE</u>	
Are drug convictions eligible for relief?, cont'd	entered, the provisions of § 651:5, X-XI (related to annulment of criminal records) shall apply to the petitioner.
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>NEW JERSEY</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.J. CONST. Art. V, § 2, Para. 1 (West 2020) • N.J. STAT. ANN. §§ 2A:167-3.1 to 2A:167-12 (West 2024) (collectively “Executive Clemency”) • N.J. STAT. ANN. §§ 2A:168A-1 to 2A:168A-15 (West 2024) (collectively “Rehabilitated Convicted Offenders”) • N.J. STAT. ANN. § 2B:1-14 (West 2024) (maintaining and providing information on the expungement process and legal services programs; “clean slate” expungements) • N.J. STAT. ANN. § 2C:35-14 (West 2024) (rehabilitation program for person with a substance use disorder subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; special probation; mandatory commitment to residential treatment facilities; sentencing considerations; expungement) • N.J. STAT. ANN. §§ 2C:52-1 to 2C:52-32.1 (West 2024) (collectively “Expungement of Records”) • N.J. STAT. ANN. § 30:1B:6.2 (West 2024) (commission duties relative to pre-release of inmates) • N.J. STAT. ANN. § 30:8-16.14 (West 2024) (certain information to be provided to inmate upon release from correctional facility) • N.J. ADMIN. CODE §§ 10A:71-8.1 to 10A:71-8.7 (2024) (collectively “Certificate of Good Conduct”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • November 15, 1974 (§ 2A:168A-3) • September 1, 1979 (§§ 2C:52-9, 2C:52-11 to 2C:52-13, 2C:52-16, 2C:52-17, 2C:52-19, 2C:52-22, 2C:52-23, 2C:52-26, 2C:52-30) • May 6, 1985 (§ 10A:71-8.1) • January 25, 1993 (§ 2A:167-3.1) • August 1, 2008 (§§ 2A:168A-9, 2A:168A-11 to 2A:168A-15) • August 1, 2009 (§ 2A:168A-7) • March 1, 2016 (§ 2C:52-32.1) • April 18, 2016 (§§ 2C:52-20, 2C:52-21, 2C:52-27) • December 5, 2016 (§§ 10A:71-8.2 to 10A:71-8.7) • July 21, 2017 (§ 2A:168A-8) • December 18, 2019 (§§ 2C:52-5.4, 2C:52-29) • June 15, 2020 (§§ 2C:52-1, 2C:52-8, 2C:52-10.1, 2C:52-15) • February 22, 2021 (§§ 2B:1-14, 2C:52-5.2) • December 21, 2021 (§§ 30:1B-6.2, 30:8-16.14) • January 18, 2022 (§ 2C:52-14) • November 20, 2023 (§ 2C:35-14)

<u>NEW JERSEY</u>	
Effective date(s) of most recent substantive amendment(s), cont'd	<ul style="list-style-type: none"> • January 12, 2024 (§§ 2C:52-2 to 2C:52-5.1, 2C:52-5.3, 2C:52-7) • July 1, 2024 (§ 2C:52-6)
Pardon provisions	<p>Art. V, § 2, Para. 1 – vests the governor with the power to grant pardons and reprieves in all cases other than impeachment and treason. A commission or other body may be established by law to aid and advise the governor in the exercise of executive clemency.</p> <p>§ 2A:167-3.1 (annual report by governor of each pardon, reprieve, or commutation of sentence granted) – on or before March 1 of each year, the governor shall report to the legislature each pardon granted, stating the name of the convicted person, the crime for which the person was convicted, the sentence imposed, its date, the date of the pardon, reprieve, or commutation, and the reasons for granting same.</p>
Is sealing of records available?	Yes. See discussion of § 2C:52:5-2 below.
Is expungement of records available?	<p>Yes. §§ 2C:52-1 to 2C:52-32.1 set forth the procedures and requirements for expungement of eligible records.</p> <p>§ 2C:52-1 (definition of expungement) – except as otherwise provided, “expungement” means the extraction, sealing, impounding, or isolation of all records on file with any court, detention or correctional facility, law enforcement, or criminal justice agency concerning a person’s detection, apprehension, arrest, detention, trial, or disposition of an offense within the criminal justice system. Expunged records include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, “rap sheets,” and judicial docket records.</p> <p>§ 2C:52-2 (indictable offenses) – except as otherwise provided by law, a person may present an expungement application pursuant to this section if the person meets the requirements related to the number and type(s) of crimes for which the person was convicted.</p> <p>If eligible, the person may present the expungement application after the expiration of a period of five years from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever</p>

NEW JERSEY**Is expungement of records available?, cont'd**

is later. The application shall be presented to the appropriate court and include a duly verified petition praying that the conviction(s) and all records and information pertaining thereto be expunged.

If, at the time of application, a court-ordered financial assessment subject to collection is not yet satisfied due to reasons other than willful non-compliance, but the time requirement is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that if expungement is granted, the court shall enter a civil judgment for the unpaid portion of the financial assessment.

Additionally, an application may be filed and presented, and the court may grant an expungement, although less than five years have expired when the court finds the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, the five-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with the payment plan or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or, at least four but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and the person has not otherwise been convicted of a crime since the time of the most recent conviction, and the court finds in its discretion that compelling circumstances exist to grant the expungement.

Sets forth the crimes that are not eligible for expungement. In addition, in the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes involve marijuana, where the total quantity involved less than 1 ounce; hashish, where the total quantity involved was less than 5 grams; or any controlled dangerous substance provided that the conviction is of the third or fourth degree, where the court finds that compelling circumstances exist to grant the expungement.

NEW JERSEY**Is expungement of records available?, cont'd**

§ 2C:52-3 (disorderly persons or petty disorderly persons offenses) – provides that any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this state who has not been convicted of any crime, whether in this state or another jurisdiction, may present an expungement application to a court pursuant to this section. A person who has also been convicted of one or more crimes is not eligible to apply for expungement pursuant to this section but may present an expungement application pursuant to § 2C:52-2.

The requirements of payment of court-ordered financial assessments and the five-year waiting period are identical to those set forth in § 2C:52-2 above, though a person may present an application for expungement if at least three but less than five years have expired and the court finds that compelling circumstances exist to grant the expungement.

§ 2C:52-4 (ordinances) – provides that in all cases wherein a person has been found guilty of violating a municipal ordinance and who has not been convicted of any prior or subsequent crime and who has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of two years from the date of conviction, payment of fine, satisfactory completion of probation, or release from incarceration, whichever is later, present a duly verified petition as provided in § 2C:52-7 praying that such conviction and all records and information pertaining thereto be expunged.

§ 2C:52-5.3 (“clean slate” expungement by petition; terms) – a person who is not otherwise eligible to present an expungement application under any other law may present an expungement application to the appropriate court if the person meets the eligibility requirements. The person may present an application regardless of whether the person would otherwise be ineligible due to having had a previous criminal conviction expunged or due to having been granted an expungement pursuant to this or any other provision of law.

With certain exceptions, the person may present the application after the expiration of a period of 10 years from the date of the person’s most recent conviction, payment of

NEW JERSEY**Is expungement of records available?, cont'd**

any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. Provides that no expungement applications may be filed pursuant to this section after the establishment of the automated “clean slate” process pursuant to § 2C:52-5.4 (see below).

- § 2C:52-7 (petition for expungement) – sets forth the information required to be included with a petition for expungement.
- § 2C:52-8 (statements to accompany petition) – sets forth the statements required to be attached to a petition for expungement.
- § 2C:52-9 (order fixing time for hearing) – hearings shall be scheduled not less than 35 or more than 60 days after the filing of a petition.
- § 2C:52-10.1 (system for petitioners to electronically file expungement applications; review and confirmation of information; copies of order) – requires the creation and maintenance of an electronic system for petitioners to electronically file expungement applications.
- § 2C:52-11 (order directing expungement where no objection prior to hearing) – if, prior to a hearing, there is no objection from any agency or entity required to be served with a petition and no reason appears to the contrary, the court may grant an order to expunge all records without a hearing.
- § 2C:52-12 (denial of relief although no objection entered) – even if no objection is filed, the court may still deny a petition for expungement.
- § 2C:52-13 (when hearing on petition for expungement shall not be held) – provides that no petition shall be heard by any court if the petitioner, at the time of filing or date of hearing, has a charge or charges pending. Such petition shall not be heard until all pending charges are adjudicated to finality.
- § 2C:52-16 (expunged record including names of persons other than petitioner) – any record or file subject to the order of expungement which names persons other than the petitioner need not be isolated from the general files if the other persons have not been granted an order of expungement, provided that the original shall remain in the agency’s general files

NEW JERSEY**Is expungement of records available?, cont'd**

- with the petitioner's name and other personal identifiers obliterated and deleted.
- § 2C:52-17 (use of expunged records by agencies on pending petition for expungement) – provides that expunged records may be used by the agencies that possess same to ascertain whether a person has had a prior conviction expunged or sealed when the agency possessing the record is noticed of a pending petition for expungement.
 - § 2C:52-19 (order of superior court permitting inspection of records or release of information; limitations) – provides that the superior court can grant a motion to inspect criminal history record information that has been expunged or release such information upon good cause shown and compelling need based on specific facts. Leave to inspect shall only be granted when the subject matter of the records is the object of litigation or judicial proceedings.
 - § 2C:52-20 (use of expunged records in conjunction with supervisory treatment or diversion programs) – expunged records may be used by the court in determining whether to grant or deny a person's application for acceptance into a supervisory treatment or diversion program for subsequent charges.
 - § 2C:52-21 (use of expunged records in conjunction with bail hearing, pretrial release determination, presentence report, or sentencing) – permits expunged or sealed records to be provided to any court, county prosecutor, probation division, pretrial services agency, or the Attorney General when requested for use in conjunction with a bail hearing, pretrial release determination, for the preparation of a presentence report, or for the purpose of sentencing.
 - § 2C:52-22 (use of expunged records by parole board) – expunged or sealed records shall be provided to the parole board when requested for the purpose of evaluating the granting of parole to the person who is the subject of said records.
 - § 2C:52-23 (use of expunged records by Department of Corrections) – expunged or sealed records shall be provided to the Department of Corrections for its use solely in the classification, evaluation, and

NEW JERSEY**Is expungement of records available?, cont'd**

assignment to correctional and penal institutions of persons placed in its custody.

- § 2C:52-26 (vacating of expungement order; time; basis) – if, within five years of entry of an expungement order, any party to whom notice is required to be given pursuant to § 2C:52-10 notifies the court that at the time of the petition or hearing there were charges pending against the person which were not revealed to the court or that there was some other statutory disqualification, the court shall vacate the order and reconsider the original motion.
- § 2C:52-29 (fee) – provides that no fee shall be charged for applying for an expungement.
- § 2C:52-30 (disclosure of expungement order) – except as otherwise provided by law, any person who reveals the existence of an arrest, conviction, or related legal proceeding with knowledge that the records and information have been expunged or sealed is a disorderly person subject to a maximum fine of \$200.

§ 2C:52-14 (grounds for denial of relief) – provides that a petition for expungement shall be denied when:

- (1) Any statutory prerequisite is not fulfilled or there is a statutory basis for denying relief;
- (2) The need for the availability of the records outweighs the petitioner's need for relief from any disabilities;
- (3) In connection with a petition under § 2C:52-6, the acquittal, discharge, or dismissal resulted from a plea agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged;
- (4) The arrest or conviction is, at the time of the hearing, the subject of civil litigation between the petitioner and any governmental entity or agency; or
- (5) Except as set forth in § 2C:52-5.3(a)(7), the person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement or sealing under prior law and the present petition. Sets forth the circumstances when this provision does not apply.

NEW JERSEY**Is expungement of records available?, cont'd**

§ 2C:52-15 (records to be removed; control; retention of certain records as confidential, restricted-access records) – except as otherwise provided, if an order of expungement is granted by the court, all records specified in said order shall be removed from the files of the law enforcement and criminal justice agencies which possess records. Except as otherwise provided, such records and the information contained therein shall not be released for any reason or utilized or referred to for any purpose. In response to requests for information or records, all officer, departments, and agencies shall reply, with respect to the arrest, conviction, or related proceedings that there is no information. The court shall provide proof of expungement to the individual who is the subject of the records or that individual's representative.

Records of the probation division of the Superior Court related to any court-ordered financial assessment that remains due at the time the court grants an expungement or sealing of records shall be transferred to the Department of Treasury for collection and disbursement of future payments and satisfaction of judgments.

§ 2C:52-27 (effect of expungement) – unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction, and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly, except:

- (1) The fact of an expungement, sealing, or similar relief shall be disclosed as provided in § 2C:52-8b;
- (2) The fact of an expungement of prior charges which were dismissed because of the person's acceptance into and successful completion of a supervisory treatment or other diversion program shall be disclosed to any court that is determining the propriety of accepting the person into a treatment or other program for subsequent criminal charges; and
- (3) Information divulged on expunged records shall be revealed by a petitioner seeking employment within the judicial branch or with a law enforcement or corrections agency and such information shall

NEW JERSEY**Is expungement of records available?, cont'd**

continue to provide a disability as otherwise provided by law.

§ 2B:1-14 – requires the Administrative Director of the Courts to maintain and provide information to any person upon request about the expungement process and legal services programs statewide and in each county which may be available to assist the person with an expedited expungement or a “clean slate” expungement.

§ 2C:35-14 – provides that the superior court may order the expungement of all records and information relating to all prior arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes upon successful discharge from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this law or another, if the person satisfactorily completed a substance use disorder treatment program as ordered by the court and was not convicted of any crime, or adjudged a disorderly person or petty disorderly person, during the term of special probation. Provides that the provisions of §§ 2C:52-7 through 2C:52-14 shall not apply to an expungement pursuant to this paragraph and no fee shall be charged to a person eligible for relief. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement.

Provides that a person is not eligible for expungement under this subsection if the records include a conviction for any offense barred from expungement pursuant to § 2C:52-2(b). It is the obligation of the prosecutor to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court when deciding to grant an expungement. If the person whose records are expunged is convicted of any crime following discharge from special probation, the full record of arrests and convictions may be restored to public access and no future expungement shall be granted to such person.

NEW JERSEY**Is expungement of records available?, cont'd**

A person who, prior to the effective date of P.L. 2015, c. 261, was successfully discharged from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this law or another, may seek an expungement of all records and information relating to all arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C that existed at the time of discharge from special probation by presenting an application to the appropriate court which contains a duly verified petition for each crime or offense sought to be expunged. The petition for expungement shall proceed pursuant to § 2C:52-1, et seq., except that the requirements related to the expiration of the time periods set forth in § 2C:52-2 shall not apply. A person who was convicted of any offense barred from expungement or who has been convicted of any crime or offense since the date of discharge from special probation shall not be eligible to apply for expungement under this paragraph. In addition, no application for expungement shall be considered until any pending charges are disposed. The court shall consider the person's petition and may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings of the person that existed at the time of discharge from special probation as appropriate. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement. No fee shall be charged to a person eligible for relief under this paragraph.

A person convicted for any offense set forth in § 2C:24-4(a)(2) involving endangering the welfare of a child which is barred from expungement may be eligible to seek expungement under this paragraph. The person shall have been successfully discharged from a term of special probation for a period of at least 10 years prior to seeking an expungement. The person shall present an application to the appropriate court which contains a duly verified petition for each crime or offense sought to be expunged. A person shall not be eligible for expungement if that person was convicted of any other offense barred from expungement or any crime or offense since the date of discharge from special probation. In addition, no application for expungement shall be

<u>NEW JERSEY</u>	
Is expungement of records available?, cont'd	<p>considered until any pending charges are disposed. The court shall consider the person's verified petition and may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings of the person that existed at the time of discharge from special probation as appropriate. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability or it finds that the person is otherwise ineligible for expungement. No fee shall be charged to a person eligible for relief.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 2C:52-5.4 (automated "clean slate" process; task force) – requires the state to develop and implement an automated process based, to the greatest extent practicable, on the recommendations of the task force established in this section, by which all convictions, and all records and information pertaining thereto, shall be rendered inaccessible to the public through sealing, expungement, or some equivalent process, for any person who has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses, unless the person has a conviction for a crime which is not subject to expungement pursuant to § 2C:52-2(b) or (c), upon the expiration of 10 years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later.</p> <p>The automated process shall be designed to restore a person's criminal history records if the person is subsequently convicted of a crime which is ineligible for expungement. Permits a prosecutor to submit the restored criminal history record information to the court for consideration at sentencing for the subsequent conviction.</p> <p>Upon establishment of the automated process, any petitions pending under § 2C:52-5.3 shall be rendered moot and shall be withdrawn or dismissed.</p> <p>Establishes a task force for the purpose of examining, evaluating, and making recommendations regarding the development and implementation of the automated process,</p>

NEW JERSEY

Are any records eligible to be automatically sealed or expunged?, cont'd

by which all of a person's criminal history records shall be rendered inaccessible to the public. Provides that the task force shall issue a final report of its findings and recommendations to the governor and the legislature no later than 180 days after the task force organizes and shall expire 30 days after the issuance of its report.

§ 2C:52-6 (arrest or charge not resulting in conviction) – when a person has been arrested or held to answer for a crime or offense or municipal violation and proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the court shall, at the time of the dismissal, acquittal, or discharge, order the expungement of all records and information relating to the arrest. An expungement shall not be ordered where the dismissal, acquittal, or discharge resulted from the plea bargain involving the conviction of other charges. This bar does not apply once the conviction itself is expunged. If the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged, that person is barred from the relief provided in this section.

An expungement related to a dismissal, acquittal, or discharge shall not bar any future expungement.

Where a dismissal of an offense is based on an eligible servicemember's successful participation in a Veterans Diversion Program, the county prosecutor may move the court for the expungement of all related records. Where the dismissal of an offense is based on an eligible person's successful participation in a Mental Health Division Program, the person may move the court for expungement of the records.

Any person who has had charges dismissed pursuant to a program of supervisory treatment, conditional discharge, or conditional dismissal shall be barred from the relief provided in this section until six months after the entry of the order of dismissal.

§ 2C:52-32.1 (identify theft victims; judicial determination of factual innocence; court order to delete, seal, label, or correct certain personal information in government records

<u>NEW JERSEY</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>involving identity theft victim) – provides that, in cases where the court determines that a person is factually innocent of a crime based on identity theft, the court shall order that the individual's name and associated personal identifying information contained in the records, files, and indexes of relevant courts, law enforcement agencies, correctional institutions, and administrative agencies which are accessible to the public be deleted, sealed, labeled to show that such data is impersonated and does not reflect the defendant's identity, or corrected by inserting in the records the name of the perpetrator, if known or ascertainable, in lieu of the victim's name.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 2A:168A-3 (evidence of rehabilitation) – the presentation to a licensing authority of evidence of a pardon or of the expungement of a criminal conviction or of a certificate of the federal or state parole board, or of the chief probation officer of a US District Court or a county who has supervised the applicant's probation, that the applicant has achieved a degree of rehabilitation indicating that his engaging in the proposed employment would not be incompatible with the welfare of society shall preclude a licensing authority from disqualifying or discriminating against the applicant.</p> <p>§ 2A:168A-7 (certificates; relief from disabilities, forfeitures, or bars; definitions) – notwithstanding any law to the contrary, a certificate may be issued in accordance with the provisions of this act that suspends certain disabilities, forfeitures, or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. A certificate issued pursuant to this act shall have the effect of relieving disabilities, forfeitures, or bars, except those established or required by federal law, to public employment; qualification for a license or certification to engage in the practice of a profession, occupation, or business, with certain exceptions; or admission to an examination to qualify for that license or certification, with certain exceptions.</p> <p>Provides that a certificate issued pursuant to this act may be limited to one or more enumerated disabilities, forfeitures, or bars, or may relieve the subject of all disabilities, forfeitures, or bars that may be affected by the act.</p>

NEW JERSEY**Does the state offer a certificate of relief or similar document?, cont'd**

Defines “qualified offender” which refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Convictions of crimes more than 10 years prior to an application for a certificate under this act shall not be considered in determining whether a person has one criminal conviction. In the case of a person seeking relief at the time of sentencing, qualified offender means a person who will have one conviction upon sentencing and issuance of the judgment of conviction.

§ 2A:168A-8 (certificate; issuance and application; eligibility) – provides that a certificate may be issued as follows:

- (1) A court, in its discretion, may issue a certificate at the time of sentencing if the applicant (a) is a qualified offender who is being sentenced to a non-incarcerative sentence for a second, third, or fourth degree crime; (b) has established that a specific licensing or employment disqualification, forfeiture, or bar, will apply to the applicant and may endanger the applicant’s ability to maintain existing public employment or employment for which the applicant has made application, or to engage in a business enterprise for which a license or certification is required; (c) has no pending criminal charges, and there is no information presented that such a charge is imminent; and (d) has established that the relief is consistent with the public interest. A certificate issued under this subsection shall apply only to the specific disability, forfeiture, or bar that is affected, which must be specifically described in the certificate document.
- (2) A supervising authority may issue a certificate in regard to a qualified offender who is, or had previously been, under supervision by the authority if the authority determines that (a) the applicant is convicted of a second, third, or fourth degree offense and is eligible for relief under this section; (b) the applicant has not been convicted of a crime since the conviction for which the offender is under supervision, has no pending criminal charge, and there is no information presented that such a charge is

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Does the state offer a certificate of relief or similar document?, cont'd

imminent; (c) issuing the certificate will not pose a substantial risk to public safety; and (d) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest. A certificate issued pursuant to this subsection may suspend disabilities, forfeitures, and bars generally within the limits of this act, or only certain disabilities, forfeitures, and bars specifically named in the certificate.

- (3) A supervising authority may issue a certificate in regard to a qualified offender when three years have passed since the applicant has completed the incarcerative or supervisory portion of the applicant's sentence, whichever is later, and the authority finds that (a) the applicant is eligible for such relief; (b) issuing the certificate does not pose a substantial risk to public safety; (c) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest; and (d) the offender has remained without criminal involvement since the person's conviction, including that the offender has not subsequently been convicted of a crime, has no pending charges for any crime, and there is no information presented that such a charge is imminent. The certificate issued pursuant to this subsection may suspend disabilities, forfeitures, and bars generally within the limits of this act, or only certain disabilities, forfeitures, and bars specifically named in the certificate.

Sets forth the crimes that make an individual ineligible for relief under paragraphs (2) or (3).

§ 2A:168A-9 (certificate as presumptive evidence of rehabilitation) – a certificate issued pursuant to this act shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment or in conjunction with any licensing or certification process to which this act applies. A certificate shall not prevent any judicial, administrative, licensing, or other body, board, authority, or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or renew

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any license, permit, or other authority or privilege or to determine eligibility or suitability for employment.

§ 2A:168A-11 (revocation and reinstatement of certificate; disorderly persons offense) – a certificate shall no longer be valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime. Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked may be reinstated by the issuing entity.

A certificate may be revoked at any time upon application of the prosecutor or on the supervising authority's own initiative when information is received that circumstances have materially changed such that the relief would not be authorized under this act or is no longer in the public interest. The authority revoking such certificate shall notify the subject of the certificate of the revocation.

In addition to any other offense that may apply, a person who knowingly uses or attempts to use a revoked certificate, or a certificate that is no longer valid, in order to obtain a benefit or avoid a disqualification shall be guilty of a disorderly persons offense.

§ 2A:168A-12 (certificates; application to private employers) – this act does not apply to private employers, who may, in their sole and complete discretion, consider a certificate in making employment decisions.

§ 2A:168A-15 (pardons by governor) – provides that nothing in this act shall be deemed to alter, limit, or affect the manner of applying for pardons to the governor, and a certificate issued under this act shall not be deemed or construed to be a pardon.

Administrative rules §§ 10A:71-8.1 through 10A:71-8.7 set forth the procedures for issuance of a certificate of good conduct.

- § 10A:71-8.1 (definition) – provides that a certificate of good conduct is a document issued by the parole board to assist the rehabilitation of convicted

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Does the state offer a certificate of relief or similar document?, cont'd	<p>offenders by removing impediments and restrictions upon their ability to obtain proposed employment. A certificate does not imply pardon and should not be construed as forgiving, absolving, or mitigating the offense(s). Issuance of a certificate precludes a licensing authority from disqualifying or discriminating against the applicant because of any conviction unless § 2C:51-2 is applicable.</p> <ul style="list-style-type: none"> ➤ § 10A:71-8.2 (eligibility) – an application for a certificate shall not be entered unless the applicant previously was supervised by the board or is presently supervised by the board and at least one year has expired since commencement of supervision; the applicant has not been convicted of a new crime within five years from the date of application, has no pending charges or outstanding warrants, and is not presently incarcerated. A person cannot reapply for a certificate after a denial until at least two years have passed unless the board determines that significant information exists which provides a basis for a waiver of this limitation. ➤ § 10A:71-8.3 (procedure) – upon receipt of an application, the board shall initiate a confidential investigation. The applicant shall be required to furnish all documentary evidence required by the board, except as otherwise provided. ➤ § 10A:71-8.4 (criteria) – the board shall evaluate the application on the basis of the applicant having achieved a degree of rehabilitation indicating that his or her engaging in the proposed employment would not be incompatible with the welfare of society. ➤ § 10A:71-8.5 (notification) – the board shall provide written notice of its decision within 30 days of the date of the decision and shall maintain the original copy of a granted certificate. A copy shall be provided to the applicant that includes a statement that the document is a copy and a licensing authority should confirm its validity with the board. If the board revokes a certificate, it shall provide written notice to the individual, the secretary of state, and the licensing authority within 15 days of the date of the decision. ➤ § 10A:71-8.6 (revocation of certificate of good conduct) – the board may revoke a certificate for

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Does the state offer a certificate of relief or similar document?, cont'd	<p>good cause and shall provide notice to the individual prior to rendering a decision to revoke the certificate, who shall be permitted to provide a written statement for consideration by the board. If the board revokes the certificate, it shall be surrendered by the individual to the board.</p>
Are drug convictions eligible for relief?	<p>Yes. See discussion of § 2C:52-2 above.</p> <p>§ 2C:52-5 (expungement of records of young drug offenders) – any person convicted of an offense for the possession or use of a controlled dangerous substance who was 21 years or younger at the time of the offense may apply for the expungement of said conviction after a period of not less than one year following conviction, termination of probation or parole, or discharge from custody, whichever is later. The relief of expungement under this section shall only be granted if the person has not, prior to the time of hearing, violated any of the conditions of probation or parole, has not been convicted of any previous or subsequent criminal act or any previous or subsequent drug offense, or who has not had a prior or subsequent criminal matter dismissed because of acceptance into a supervisory treatment or other diversion program.</p> <p>§ 2C:52-5.1 (petition for expungement; persons eligible to apply; exceptions) – notwithstanding any law to the contrary, the following persons may file a petition for expungement provided they have satisfied, except as otherwise set forth in this subsection, payment of any court-ordered financial assessment, satisfactorily completed probation or parole, been released from incarceration, or been discharged from legal custody or supervision at the time of application:</p> <p>(1) Any person who, prior to the development of a system for sealing records from the public, was charged with, convicted of, or adjudicated delinquent for any number of offenses for unlawful distribution of or possession or having under control with intent to distribute, marijuana or hashish or a violation for distributing or possession or having under control with intent to distribute on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building; or</p>

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- (2) Any person who, prior to the development of a system for sealing records from the public, was charged with, convicted of, or adjudicated delinquent for any number of offenses for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish; or
- (3) Any person who, prior to the development of a system for sealing records from the public, was charged with, convicted of, or adjudicated delinquent for any number of offenses for a violation involving marijuana or hashish as described in paragraphs (1) and (2) of this paragraph and using or possessing with intent to use drug paraphernalia with that marijuana or hashish.

A person who is charged with, convicted of, or adjudicated delinquent for any number of offenses for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish may file a petition for expungement after the expiration of three years from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, release from incarceration, or discharge from legal custody or supervision, whichever is later.

Provides that, upon review of the petition, the court shall immediately grant an expungement for each arrest, conviction, or adjudication of delinquency. Any public employee or public agency that provides information or records shall be immune from criminal and civil liability as a result of an act of commission or omission by that person or entity arising out of and in the court of participation in, or assistance with, in good faith, an expungement.

§ 2C:52-5.2 (system for sealing records pertaining to offenses or delinquent acts involving marijuana or hashish; establishment; terms) – provides that, no later than three months after the effective date of this section, the Administrative Office of the Courts shall develop and maintain a system for sealing records from the public, upon order of a court, pertaining to offenses or delinquent acts involving marijuana or hashish. Once the system is developed, unless otherwise provided by law, a court shall order the non-disclosure to the public of the records of the

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Are drug convictions eligible for relief?, cont'd	<p>court and probation services, and records of law enforcement agencies with respect to any arrest, conviction, or adjudication of delinquency, and any proceedings related thereto, upon disposition of any case occurring on or after the development of the system for sealing records that solely include the one or more the listed convictions or adjudications of delinquency (see paragraphs (1) – (3) in discussion of § 2C:52-5.1 above).</p> <p>Upon the entry of a sealing order issued pursuant to this section, the proceedings in the case shall be sealed and all index references shall be marked “not available” or “no record.” Law enforcement agencies shall reply to requests for information or records of a person subject to a sealing order that there is no information or records. The person may also reply to any inquiry that there is no information or record, except that information subject to a sealing order shall be revealed by that person if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the information shall continue to provide a disability to the extent provided by law.</p> <p>Records subject to a sealing order may be maintained for purposes of prior offender status, identification, and law enforcement purposes, provided that the records shall not be considered whenever the pretrial services program conducts a risk assessment on an eligible defendant for the purpose of making recommendations to the court concerning an appropriate pretrial release decision or used for sentencing purposes in any other case.</p>
Miscellaneous provisions	<p>§ 30:1B-6.2 – provides that the commissioner of corrections shall provide to each inmate at least 10 days prior to release with certain information, including a copy of the inmate’s criminal history record and written information on the inmate’s right to have such records expunged.</p> <p>§ 30:8-16.14 – provides that the chief executive officer, warden, or keeper of each county correctional facility shall, at least 30 days prior to release from a facility, provide to each inmate incarcerated for 90 days or longer with certain information, including a copy of the inmate’s criminal history record and written information on the inmate’s right to have such records expunged.</p>

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Recently proposed legislation	Yes. See Pending State Legislature .

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.M. CONST. Art. V, § 6 (West 2020) (repeives and pardons) • N.M. STAT. ANN. §§ 29-3A-1 to 29-3A-9 (West 2024) (collectively “Criminal Record Expungement”) • N.M. Stat. Ann. § 31-20-8 (West 2042) (effect of termination of period of suspension without revocation of order) • N.M. STAT. ANN. § 31-21-12 (West 2024) (conditional release) • N.M. STAT. ANN. § 31-21-17 (West 2024) (executive clemency; investigation and reports) • N.M. STAT. ANN. §§ 31-29-1 to 31-29-16 (West 2024) (collectively “Uniform Collateral Consequences of Conviction”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1955 (§ 31-21-17) • 1977 (§§ 31-20-8, 31-21-12) • January 1, 2020 (§§ 29-3A-2, 29-3A-3, 29-3A-5, 29-3A-7) • June 29, 2021 (§§ 29-3A-4, 29-3A-9) • January 1, 2022 (§§ 31-29-4, 31-29-10 to 31-29-13) • June 16, 2023 (§ 29-3A-8)
Pardon provisions	<p>Art. V, § 6 – subject to such regulations as may be prescribed by law, the governor shall have the power to grant pardons, after conviction for all offenses except treason and in cases of impeachment.</p> <p>§ 31-20-8 – whenever a period of suspension expires without revocation of the order suspending the sentence, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime. He shall be entitled to a certificate from the court so reciting such facts and, upon presenting the same to the governor, the defendant may, in the governor’s discretion, be granted a pardon or a certificate restoring such person to full rights of citizenship.</p> <p>§ 31-21-12 – any prisoner released by authority of the governor under any conditional release or other disposition made under the pardoning power, other than full pardon, shall, upon release, be deemed as released on parole until the expiration of the basic term or terms of imprisonment for which he was sentenced and until the expiration of any period of parole included as part of sentence. Except for a full pardon, the governor may not conditionally release or</p>

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Pardon provisions, cont'd	<p>otherwise pardon a prisoner during the period for which such person is serving any enhanced term of sentence.</p> <p>§ 31-21-17 – on request of the governor, the board shall investigate and report to him with respect to any case of pardon.</p>
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. §§ 29-3A-1 to 29-3A-9 set forth the procedures related to expunging criminal history records.</p> <p>§ 29-3A-2 (definitions) – defines “expungement” to mean the removal from access to the general public of a notation of arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections, or internet website.</p> <p>§ 29-3A-3 (expungement of records upon identity theft) – provides that a person who is wrongfully identified in arrest records or public records as a result of identity theft may petition the court for an order to expunge such records. After a hearing on the petition and upon a showing that the person is the victim of identity theft, the court shall issue an order within 30 days of the hearing requiring that all records be expunged. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts, which order shall prohibit such entities from releasing copies of said records to any person except upon order of the court. After notice to and a hearing for all interested parties, the court shall insert the correct name and other identifying information of the offender, if known or ascertainable, into the records in lieu of the name of the person wrongly identified.</p> <p>§ 29-3A-4 (expungement of records upon release without conviction) – provides that one year from the date of the final disposition in a case, a person released without conviction for violation of a municipal ordinance, misdemeanor, felony, penalty assessments, or violations and deferred sentences under the motor vehicle code may petition the district court for an order to expunge the records related to that case. A single petition may include a request to expunge multiple arrest and public records. A petition</p>

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shall be filed under seal or under pseudonym. Petitions brought pursuant to the criminal record expungement act and all records of proceedings thereunder shall be expunged upon the conclusion of the proceedings.

After a hearing on the petition, the court shall issue an order within 30 days of the hearing requiring that all arrest and public records related to the case be expunged if it finds that no other charge or proceeding is pending against the petitioner and if the petitioner was released without a conviction, including an acquittal or finding of not guilty; a nolle prosequi, no bill, or other dismissal; a referral to a pre-prosecution diversion program; an order of conditional discharge; or the proceedings were otherwise discharged. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts, which order shall prohibit all entities from releasing copies of the records to any person, except upon order of the court.

§ 29-3A-5 (expungement of records upon conviction) – provides that a person convicted of a violation of a municipal ordinance, misdemeanor, or felony, following the completion of the person's sentence and the payment of any fines or fees owed to the state, may petition for an order to expunge arrest and public records related to that conviction.

After a hearing on a petition, the court shall issue an order within 30 days of the hearing requiring that all arrest and public records related to the conviction be expunged if the court finds that:

- (1) No other charge or proceeding is pending against the petitioner;
- (2) Justice will be served by an order to expunge;
- (3) The petitioner has fulfilled any victim restitution ordered by the court in connection with the conviction; and
- (4) No other criminal conviction of the petitioner has occurred for a period ranging from 2-10 years depending on the seriousness of the conviction.

Provides that the court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts, which order shall prohibit all entities from releasing

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Is expungement of records available?, cont'd	<p>copies of the records to any person, except upon order of the court. Sets forth the offenses that are not eligible for expungement.</p> <p>§ 29-3A-7 (effect of an order to expunge) – upon entry of an order to expunge, the proceedings shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person; provided that arrest or conviction records shall be disclosed by the person and officials in connection with any application for or query regarding qualification for employment or association with any financial institution.</p>
Are any records eligible to be automatically sealed or expunged?	Yes. See discussion of § 29-3A-8 below.
Does the state offer a certificate of relief or similar document?	<p>Yes. § 31-29-10 (order of limited relief) – provides that an individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, housing, education, public benefits, or occupational licensing. Requires the petition to be presented to the sentencing court before sentencing.</p> <p>Provides that the court may issue an order of limited relief relieving one or more of the collateral sanctions only if, after reviewing the petition, the individual's criminal history, any filing by a victim or prosecutor, and any other relevant evidence, the court finds the individual has established by a preponderance of the evidence that:</p> <ol style="list-style-type: none"> (1) Granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing; (2) The individual has substantial need for the relief requested in order to live a law-abiding life; and (3) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual. <p>An order of limited relief may be issued as part of sentencing. The order shall specify the collateral sanction from which relief is granted and any restriction imposed.</p>

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Does the state offer a certificate of relief or similar document?, cont'd	<p>§ 31-29-11 (collateral sanctions not subject to order of limited relief) – provides that an order of limited relief shall not be issued to relieve certain collateral sanctions including requirements imposed by the sex offender registration act, motor vehicle license sanctions, ineligibility for certification as a law enforcement officer or employment as a correctional officer, or prohibitions imposed making it unlawful for felons to receive, transport, or possess a firearm or destructive device while in New Mexico.</p> <p>§ 31-29-12 (issuance of order of limited relief) – the court may issue an order of limited relief subject to restriction, condition, or additional requirement. The court shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue an order of limited relief.</p> <p>§ 31-29-13 (reliance on order as evidence of due care) – in a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued if the person knew of the order at the time of the alleged negligence.</p>
Are drug convictions eligible for relief?	<p>Yes. § 29-3A-8 (expungement of arrest and conviction records; procedure) – if a person was charged with an offense involving cannabis that is no longer a crime on June 29, 2021, or that would have resulted in a lesser offense if the cannabis regulation act had been in effect at the time of the offense, whether or not the person is convicted, all public records that relate to the person's arrest or conviction shall be automatically expunged two years after the date of the person's conviction or the date of the person's arrest if there was no conviction. Automatic expungement under this section applies to public records involving only cannabis and cannabis paraphernalia charges and requires destruction of the records.</p> <p>The administrative office of the courts shall implement a procedure allowing persons charged with offenses eligible for automatic expungement under this section to verify whether automatic expungement has occurred and request</p>

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Are drug convictions eligible for relief?, cont'd	<p>expedited automatic expungement if eligible charges have not yet been expunged.</p> <p>If an arrest or conviction involved cannabis and non-cannabis charges, a person may request expungement of eligible cannabis charges through the procedure implemented above.</p> <p>§ 29-3A-9 (dismissal of sentences; incarcerated persons) – a person who has completed the person’s sentence for a conviction, whether by trial or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense if the cannabis regulation act had been in effect at the time of the offense, is entitled to have the conviction dismissed and expunged because the prior conviction is now legally invalid or redesignated as a penalty assessment citation.</p> <p>A person who is currently incarcerated or who was incarcerated in the past for a cannabis offense that is no longer a crime may petition to modify the person’s sentence or have the conviction vacated. If the petition is granted, the court shall issue an order within 30 days requiring that the portions of the public records related to the offense, as well as all records of proceedings related to the petition for expungement, be expunged.</p>
Miscellaneous provisions	<p>§§ 31-29-1 to 31-29-16 set forth requirements for various entities and individuals regarding notice and imposition of collateral consequences, collateral sanctions, and disqualifications.</p> <p>§ 31-29-4 (identification, collection, and publication of laws regarding collateral consequences) – requires the identification agency to identify or cause to be identified any provision in the New Mexico constitution and statutes that impose a collateral sanction or authorizes the imposition of a disqualification and any provision of law that may afford relief from a collateral consequence. The agency shall also update the list within three months after the laws enacted during each legislative session.</p>
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.Y. CONST. Art. IV, § 4 (McKinney 2024) (power of governor to grant reprieves, commutations, and pardons) • N.Y. CIV. RIGHTS LAW § 50-g (McKinney 2024) (disclosure of convictions sealed pursuant to § 160.57) • N.Y. CORRECT. LAW § 205 (McKinney 2024) (merit termination of sentence and discharge from presumptive release, parole, conditional release, and release to post-release supervision) • N.Y. CORRECT. LAW §§ 700 to 706 (McKinney 2024) (collectively “Discretionary Relief from Forfeitures and Disabilities Automatically Imposed”) • N.Y. CRIM. PROC. LAW §§ 160.50 to 160.60 (McKinney 2024) (included within “Fingerprinting and Photographing of Defendant after Arrest—Criminal Identification Records and Statistics”) • N.Y. CRIM. PROC. LAW § 170.56 (McKinney 2024) (adjournment in contemplation of dismissal in cases involving marihuana) • N.Y. EXEC. LAW § 259-c (McKinney 2024) (state board of parole; functions, powers, and duties) • N.Y. EXEC. LAW § 845-d (McKinney 2024) (criminal record searches: reports for civil purposes) • N.Y. COMP. CODES R. & REGS. tit. 22, § 200.9 (2024) (certificate of relief from disabilities; notification of eligibility) • N.Y. CT. RULES § 200.9 (McKinney 2024) (certificate of relief from disabilities; notification of eligibility)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 1, 1966 (§§ 704, 706) • 1972 (§ 700) • September 1, 1987 (22, § 200.9) • January 1, 2002 (§ 4) • October 16, 2007 (§ 703-a) • June 6, 2009 (§ 160.58) • March 31, 2011 (§§ 703, 703-b) • August 17, 2011 (§ 702) • October 7, 2017 (§ 160.59) • April 12, 2019 (§ 701) • February 2, 2021 (§ 160.55) • March 31, 2021 (§§ 160.50, 170.56) • August 2, 2021 (§ 259-c) • January 20, 2022 (§ 205) • November 16, 2024 (§§ 50-g, 160.57, 845-d)
Pardon provisions	Art. IV, § 4 – vests the governor with the power to grant pardons after conviction, for all offenses except treason and

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Pardon provisions, cont'd	<p>cases of impeachment, upon such conditions and with such restrictions and limitations, as he or she may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall annually communicate to the legislature each case of pardon granted, stating the name of the convict, the crime of which he or she was convicted, the sentence and its date, and the date of the pardon.</p> <p>EXEC. LAW § 259-c – provides that, among other things, the state board of parole shall have the power and duty, when requested by the governor, of reporting to the governor the facts, circumstances, criminal records, and social, physical, mental, and psychiatric conditions and histories of incarcerated individuals under consideration by the governor for pardon.</p>
Is sealing of records available?	<p>Yes. CRIM. PROC. LAW § 160.59 (sealing of certain convictions) – sets forth the offenses eligible for sealing under this section. Provides that the chief administrator of the courts shall prescribe a form application which may be used by a defendant to apply for sealing pursuant to this section. The form shall include all of the required elements.</p> <p>Provides that a person who has been convicted of up to two eligible offenses but not more than one felony offense may apply to the appropriate court to have such conviction(s) sealed. Sets forth the information and documents required to be included with the application.</p> <p>Provides that the court shall summarily deny an application when:</p> <ol style="list-style-type: none"> (1) The defendant is required to register as a sex offender; (2) The defendant has previously obtained sealing of the maximum number of convictions; (3) The time period has not yet been satisfied; (4) The defendant has an undisposed arrest or charge pending;

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- (5) The defendant was convicted of any crime after the date of the entry of judgment of the last conviction for which sealing is sought;
- (6) The defendant has failed to provide the court with the required sworn statement of the reasons why the court should grant the relief requested; or
- (7) The defendant has been convicted of two or more felonies or more than two crimes.

Provided that the application is not subject to summary denial as set forth above, the defendant may obtain sealing of no more than two eligible offenses but not more than one felony offense. Any eligible offense may be sealed only after at least 10 years have passed since the imposition of the sentence on the defendant's latest conviction or, if the defendant was sentenced to a period of incarceration, the defendant's latest release from incarceration.

If the application is opposed by the district attorney, the court shall hold a hearing. Sets forth the factors the court shall consider in considering an application. If the court order sealing, all official records and papers relating to the arrests, prosecutions, and convictions shall be sealed and not made available to any person or public or private agency except as provided for below; provided, however, that the division shall retain any fingerprints, palmprints, and photographs, or digital images of the same.

Records sealed pursuant to this section shall be made available to:

- (1) The defendant or the defendant's designated agent;
- (2) Qualified agencies and federal and state law enforcement agencies when acting within the scope of their law enforcement duties;
- (3) Any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license;
- (4) Any prospective employer of a police officer or peace officer in relation to an application for employment as a police officer or peace officer; or
- (5) The criminal justice information services division of the FBI for the purposes of responding to queries to

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Is sealing of records available?, cont'd	<p>the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms.</p> <p>Provides that a conviction which is sealed pursuant to this section is included within the definition of a conviction for the purposes of any criminal proceeding in which the fact of a prior conviction would enhance a penalty or is an element of the offense charged.</p> <p>No defendant shall be required or permitted to waive eligibility for sealing pursuant to this section as part of a plea of guilty, sentence, or any agreement related to a conviction for an eligible offense and any such waiver shall be deemed void and wholly unenforceable.</p> <p>EXEC. LAW § 845-d – provides that when the division conducts a search of its criminal history records for civil purposes and returns a report thereon, it shall only report any criminal convictions and any criminal arrests and accompanying criminal actions which are pending. Nothing in this section authorizes the division to provide criminal history information that is not otherwise authorized by law or that is sealed pursuant to CRIM. PROC. LAW §§ 160.50, 160.55, 160.58, or 160.59. Further, nothing in this section authorizes the division to provide criminal history information that is sealed pursuant to CRIM. PROC. LAW § 160.57 to an entity other than those authorized by such section to receive such information.</p>
Is expungement of records available?	Yes. See discussion of CRIM. PROC. LAW § 160.50 below.
Are any records eligible to be automatically sealed or expunged?	Yes. CRIM. PROC. LAW § 160.50 (order upon termination of criminal action in favor of the accused) – provides that, upon termination of a criminal action or proceeding against a person in favor of such person, unless the district attorney or the court move otherwise, the record of such action or proceeding shall be sealed and the clerk of the court shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused and, unless the court has directed otherwise, that the record of such action or proceeding shall be sealed. Upon receipt of notification of such termination and sealing:

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(1) All photographs, palmprints, and fingerprints taken or made of such person in regard to the action or proceeding terminated and all duplicates and copies thereof shall either be destroyed or returned to such person or his or her attorney.</p> <p>(2) Any police department or law enforcement agency that transmitted or otherwise forwarded such photographs, palmprints, or fingerprints to any agency of the United States or of any other state or jurisdiction shall formally request in writing that all such copies be destroyed or returned to the entity that transmitted or forwarded them and either destroyed or returned.</p> <p>(3) All official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency.</p> <p>Such records shall be made available to the person accused or to such person's designated agent, and shall be made available to:</p> <p>(1) A prosecutor in any proceeding in which the accused has moved for an order pursuant to CRIM. PROC. LAW §§ 170.56 or 210.46 (related to cases involving marihuana);</p> <p>(2) A law enforcement agency upon ex parte motion in any court provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it;</p> <p>(3) Any state or local officer or agency with responsibility for the issuance of licenses to possess guns;</p> <p>(4) The department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or parole release, and the arrest which is the subject of the</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>inquiry is one which occurred while the accused was under such supervision;</p> <p>(5) Any prospective employer of a police officer or peace officer in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto; or</p> <p>(6) The probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision.</p> <p>Provides that, where fingerprints were received by the division of criminal justice services and filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed.</p> <p>A report of the termination of the action or proceeding in favor of the accused shall be sufficient notice of sealing to the commissioner of the division of criminal justice services unless the report also indicates that the court directed that the record not be sealed in the interests of justice.</p> <p>For purposes of this section, a criminal action or proceeding against a person shall be considered terminated in favor of such person where:</p> <p>(1) An order dismissing the entire accusatory instrument against such person pursuant to article 470 was entered;</p> <p>(2) An order to dismiss the entire accusatory instrument against such person pursuant to law was entered or deemed entered, or an order terminating the prosecution against such person was entered pursuant to § 180.85, and the state has not appealed from such order or the determination of an appeal or appeals by the state from such order has been against the state;</p> <p>(3) A verdict of complete acquittal was made;</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(4) A trial order of dismissal of the entire accusatory instruction was entered and there has either been no appeal or the appeal was decided against the state;</p> <p>(5) An order setting aside the verdict was entered and there has either been no appeal or the determination of an appeal or appeals was decided against the state and no new trial has been ordered;</p> <p>(6) An order vacating a judgment was entered and there has either been no appeal or the appeal was decided against the state and no new trial has been ordered;</p> <p>(7) An order of discharge was entered on a ground which invalidates the conviction and either the state has not appealed or the appeal was decided against the state;</p> <p>(8) Where all charges against the person are dismissed pursuant to § 190.75. In such event, the clerk of the court which empaneled the grand jury shall serve a certification of such disposition on the division of criminal justice services and the appropriate police department or law enforcement agency;</p> <p>(9) Prior to the filing of an accusatory instrument against the person, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition on the division of criminal justice services and the appropriate police department or law enforcement agency;</p> <p>(10) Following the arrest of such person, the arresting police agency elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition on the division of criminal justice services;</p> <p>(11) The conviction was for a violation of certain controlled substance offenses and the sole substance involved was marihuana and the conviction was only for a misdemeanor and/or violation, or the conviction is for certain other listed offenses; or</p> <p>(12) An order dismissing an action pursuant to § 215.40 was entered.</p> <p>Provides that no person shall be required or permitted to waive eligibility for sealing or expungement as part of a guilty plea, sentence, or any agreement related to a conviction for a violation of certain listed offenses, and any such waiver shall be deemed void and wholly unenforceable.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

A person in whose favor a criminal action or proceeding was terminated prior to the effective date of this section may file a motion with the appropriate court for an order granting the relief set forth in this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. If the case is terminated before court involvement, the person may apply to the appropriate prosecutor or police agency for relief.

A conviction for a marijuana-related offense shall be vacated and dismissed, and all records of such conviction(s) and related to such conviction(s) shall be expunged, and the matter shall be considered terminated in favor of the accused.

CRIM. PROC. LAW § 160.55 (order upon termination of criminal action by conviction for noncriminal offense; entry of waiver; administrative findings) – this section is very similar to § 160.50 but applies to the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than the violation of operating a motor vehicle while ability impaired. The clerk of the court shall immediately notify the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated by such conviction. Upon receipt of notice, all photographs, palmprints, and fingerprints shall either be destroyed or returned to the individual. All official records and papers relating to the arrest or prosecution shall be sealed and not made available to any person or public or private agency. Such records shall be made available to the person accused or to such person's designated agent, and shall be made available to the same individuals and entities listed in § 160.50 as well as to a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department, for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree against a member of the same family or household as the defendant.

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Are any records eligible to be automatically sealed or expunged?, cont'd

A report of the termination of the action or proceeding by conviction shall be sufficient notice of sealing to the commissioner of the division unless the report also indicates that the court directed that the record not be sealed in the interests of justice.

A person who was convicted prior to the effective date of this section may apply to the court for an order granting the relief set forth in this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

CRIM. PROC. LAW § 160.57 (automatic sealing of convictions) – provides that convictions for certain traffic offenses or crimes as set forth in this section shall be sealed as provided in this section.

Convictions for violations of VEH. & TRAF. LAW § 1192(1) shall be sealed after three years. Criminal convictions shall be sealed upon satisfaction of the following conditions:

- (1) For a misdemeanor conviction, at least three years have passed from either the defendant's release from incarceration or the imposition of sentence if there was no sentence of incarceration;
- (2) For a felony conviction, at least eight years have passed from the date the defendant was last released from incarceration or from the imposition of sentence if there was no sentence of incarceration;
- (3) The defendant does not have a subsequent criminal charge pending in this state;
- (4) The defendant is not currently under the supervision of any probation or parole department for the eligible conviction;
- (5) The conviction is not for an offense that is ineligible for sealing under this section;
- (6) The defendant is a natural person;
- (7) The defendant does not have a subsequent felony charge pending in another jurisdiction that is not a felony charge related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York; and
- (8) The defendant does not have a subsequent felony conviction in another jurisdiction in the preceding

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>eight years that is not a felony conviction related to reproductive or gender affirming care or the possession of cannabis which would not constitute a felony in New York.</p> <p>Requires that the office of court administration check for eligibility no less than quarterly if the applicable period of time has passed but the conviction remains ineligible for sealing pursuant to paragraphs (3), (4), (7), or (8) above. Upon subsequent checks or receipt of a form in accordance with JUD. LAW § 212(2)(dd), the conviction shall be sealed if all other conditions are satisfied.</p> <p>Provides that records of convictions sealed pursuant to this section shall not be accessed by or made available to any person or public or private agency, except for:</p> <ol style="list-style-type: none"> (1) The defendant or his or her counsel; (2) Any court, defense counsel, or prosecutor for purposes of a pending criminal proceeding; (3) Qualified agencies, federal and state law enforcement agencies, and interstate and international authorities when acting within the scope of their duties; (4) The court, prosecutor, and defense counsel if the defendant becomes a witness in a criminal proceeding; (5) The court and parties if the defendant becomes a witness in a civil proceeding; (6) When an individual is a defendant in a criminal proceeding and the sealed records of conviction of a third party are integral to their defense; (7) Individuals or entities that are required by local law, a state or federal law or regulation to request and receive a fingerprint-based check of criminal history information; (8) Any prospective employer of a police officer or peace officer in relation to an application for employment as a police or peace officer; and (9) Any federal, state, or local officer or agency with responsibility for the issuance of licenses to possess firearms. <p>The above list is not exhaustive. Please see the statute for the complete list of entities and individuals to whom sealed</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>records under this section can be provided and the uses to which such records can be put.</p> <p>If records eligible to be sealed under this section have not been sealed, the defendant or his or her attorney can submit a valid form in accordance with JUD. LAW § 212(2)(dd) and such conviction shall be sealed within 30 days of receipt of the form.</p> <p>No defendant shall be required or permitted to waive eligibility for sealing pursuant to this section as part of a plea of guilty, sentence, or any agreement related to a conviction for a violation of the laws of this state. Such waiver is void and unenforceable.</p> <p>CIV. RIGHTS LAW § 50-g – provides that any person whose conviction was sealed pursuant to Crim. Proc. Law § 160.57 may bring a cause of action for damages against a party who, without the consent of such person, discloses such sealed conviction where:</p> <ol style="list-style-type: none"> (1) The respondent owed the person a duty of care pursuant to such section; (2) The respondent knowingly and willfully breached such duty; (3) The disclosure caused injury to such person; and (4) Respondent's breach of that duty was a substantial factor in the events that caused the injury. <p>Provides that a person owes a duty of care to a person under this section when the party is under an obligation to seal information, records, documents, or papers related to such conviction, or when the party obtains access to such records for a specified purpose as set forth in such section.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. CORRECT. LAW §§ 700 to 706 set forth the provisions related to issuance of certificates of relief from disabilities and certificates of good conduct.</p> <p>CORRECT. LAW § 700 (definitions and rules of construction) – sets forth the definitions used in this article, including “eligible offender,” which means a person who has been convicted of a crime or offense but not more than one felony.</p>

NEW YORK**Does the state offer a certificate of relief or similar document?, cont'd**

CORRECT. LAW § 701 (certificate of relief from disabilities) – provides that a certificate may be granted to relieve an eligible offender from any forfeiture or disability, or to remove any bar to employment, automatically imposed by law by reason of the conviction of a crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities, or bars, or may relieve the eligible offender of all such forfeitures, disabilities, and bars. However, no such certificate shall apply, or be construed to apply, to the right of such person to retain or be eligible for public office.

Notwithstanding any other law to the contrary, except PUB. HEALTH LAW § 2806(5) (related to revocation of a hospital operating certificate) or VEH. & TRAF. LAW § 1193(2)(b) (related to revocation of a license for driving while impaired), a conviction of a crime or offense specified in a certificate shall not cause automatic forfeiture of any license, (other than a license issued pursuant to PENAL LAW § 400.00 (related to firearms) to a person convicted of a class A-I felony or a violent felony offense), permit, employment, or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender or covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate.

Provides that a certificate shall not in any way prevent any judicial, administrative, licensing, or other body, board, or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit, or other authority or privilege.

CORRECT. LAW § 702 (certificates of relief from disabilities issued by courts) – permits any court of this state, in its discretion, to issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either imposed a revocable sentence or imposed a sentence other than one executed by commitment

NEW YORK**Does the state offer a certificate of relief or similar document?, cont'd**

to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued at the time sentence is pronounced, in which case it may grant relief from forfeitures and disabilities, or at any time thereafter, in which case it shall apply only to disabilities.

Where such court imposes an eligible sentence as set forth above, the court, upon application, shall initially determine the fitness of an eligible offender for such certificate prior to or at the time sentence is pronounced. A certificate shall not be issued by the court unless it is satisfied that the person is an eligible offender, the relief is consistent with the rehabilitation of the eligible offender, and the relief is consistent with the public interest.

When a certificate is not issued at the time sentence is pronounced, it shall only be issued thereafter upon verified application to the court. The court may request an investigation of the applicant.

Provides that, where the court has imposed a revocable sentence and the certificate is issued prior to the expiration or termination of the time which the court may revoke such sentence, the certificate shall be deemed temporary until such time as the court's authority to revoke the sentence has expired or is terminated. While temporary, the certificate may be revoked by the court for violation of the conditions of the sentence and shall be revoked if the sentence is revoked and the person is committed to an institution under the jurisdiction of the state department of corrections and community supervision. If the certificate is not revoked, it shall become permanent upon expiration or termination of the court's authority to revoke the sentence.

Further provides that any court that has issued a certificate may at any time issue a new certificate to enlarge the relief previously granted.

CORRECT. LAW § 703 (certificates of relief from disabilities issued by the department of corrections and community supervision) – provides that the department of corrections and community supervision shall have the power to issue a certificate of relief from disabilities to any eligible offender:

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Does the state offer a certificate of relief or similar document?, cont'd

- (1) Who has been committed to an institution under the jurisdiction of the department. Such certificate may be issued at the time the person is released from the institution or at any time thereafter; and
- (2) Who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

The department may issue a new certificate at any time enlarging the relief previously granted. The department shall not issue a certificate unless it is satisfied that the person is an eligible offender, the relief is consistent with the rehabilitation of the eligible offender, and the relief is consistent with the public interest. The department may conduct an investigation of the applicant.

Any certificate issued by the department who is under the department's supervision at the time of issuance shall be deemed temporary until such time as the eligible offender is discharged from the department's supervision. A temporary certificate may be revoked for violation of the conditions of community supervision. If the certificate is not so revoked, it shall become permanent upon expiration or termination of the department's jurisdiction over the individual.

Provides that when a certificate is sought pursuant to paragraph (2) above on a judgment of conviction rendered by a federal court in this state and the department is in receipt of a written recommendation in favor of the issuance of such certificate, the department shall issue the requested certificate unless it finds that the requirements of this section have not been satisfied or that the interests of justice would not be advanced by the issuance of the certificate.

CORRECT. LAW § 703-a (certificate of good conduct) – provides that a certificate of good conduct may be granted to relieve an individual of any disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or offense specified therein. Such certificate may be limited to one or more enumerated disabilities or bars or all of disabilities and bars.

NEW YORK**Does the state offer a certificate of relief or similar document?, cont'd**

Notwithstanding any other provision of law, a conviction of a crime or offense specified in a certificate of good conduct shall not be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate. However, a conviction for a class A-I felony or a violent felony offense shall impose a disability to apply for or receive a license or permit issued pursuant to PENAL LAW § 400.00 (related to firearms).

Provides that a certificate shall not prevent any judicial administrative, licensing or other body, board, or authority from considering the conviction specified therein in accordance with the provisions of CORRECT. § 23-a.

CORRECT. LAW § 703-b (issuance of certificate of good conduct) – provides that the department of corrections and community supervision shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in New York when the department is satisfied that the applicant has conducted himself or herself in a manner warranting such issuance for a minimum period in accordance with the provisions of this section, the relief to be granted is consistent with the rehabilitation of the applicant, and the relief is consistent with the public interest.

Additionally, the department shall have the power to issue a certificate to any person previously convicted of a crime in any other jurisdiction where the department is satisfied that the applicant has demonstrated that there exist specific facts and circumstances, and specific sections of New York law that have an adverse impact on the applicant and warrant the application for relief to be made in New York, and the applicant meets the other requirements of this section.

Sets forth the minimum periods of good conduct, which range from 1-5 years, depending on the seriousness of the crime of which the person was convicted.

Provides that the department can at any time issue a new certificate enlarging the relief previously granted. If a certificate is issued to an individual who is under the

NEW YORK**Does the state offer a certificate of relief or similar document?, cont'd**

department's supervision at the time of issuance shall be deemed temporary and may be revoked for violation of the conditions of community supervision. If the certificate is not revoked, it shall become permanent upon the expiration or termination of the department's jurisdiction over the individual.

CORRECT. LAW § 704 (effect of revocation; use of revoked certificate) – if a certificate of relief from disabilities is deemed to be temporary and such certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives notice of the revocation. Any such person shall, upon receipt of the notice, surrender the certificate to the issuing court or board. A person who knowingly uses or attempts to use a revoked certificate in order to obtain any right or privilege that he or she would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.

CORRECT. LAW § 706 (certificate not to be deemed to be a pardon) – provides that nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

CORRECT. LAW § 205 – provides that any person who is granted merit termination of his or her sentence pursuant to this section shall be provided a certificate of relief from disabilities or a certificate of good conduct, as applicable.

COMP. CODES R. & REGS. tit. 22, § 200.9 and CT. RULES § 200.9 – provides that, in all criminal cases, whenever a pre-sentence probation report is submitted to the court, such report shall contain information bearing upon the eligibility of the defendant to obtain a certificate of relief from disabilities and shall further contain a recommendation as to the appropriateness of granting such discretionary relief at the time sentence is pronounced.

If a defendant has been sentenced to probation and has not received a certificate, and if such defendant is apparently eligible for consideration of such relief, the probation officer supervising such defendant shall, prior to the termination of

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Does the state offer a certificate of relief or similar document?, cont'd	<p>the probation period, inform the defendant of his or her right to make application to the court for a certificate of relief from disabilities and provide the defendant with the required forms in order to enable him or her to make application to the court.</p> <p>Further provides that, in all criminal cases, when a defendant who is eligible to receive a certificate is sentenced, the court, in pronouncing the sentence, unless it grants a certificate at that time, shall advise the defendant of his or her eligibility to make application at a later time for such relief.</p>
Are drug convictions eligible for relief?	<p>Yes. CRIM. PROC. LAW § 160.58 (conditional sealing of certain controlled substance, marihuana, or specified offense convictions) – provides that a defendant convicted of certain controlled substance-related offenses who successfully completes a judicial diversion program or one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision, and has completed the sentence imposed for the offense(s) is eligible to have such offense(s) sealed pursuant to this section.</p> <p>The court that sentenced the defendant may, on its own motion or on the motion of the defendant, order that all official records and papers relating to the arrest, prosecution, and conviction be conditionally sealed. In such case, the court may also conditionally seal the arrest, prosecution, and conviction records for no more than three of the defendant's prior eligible misdemeanors, which shall be limited to certain offenses defined in Penal Law articles 220 or 221. The court may only seal the records of the defendant's arrests, prosecutions, and convictions when:</p> <ol style="list-style-type: none"> (1) The sentencing court has received a fingerprint based criminal history record of the defendant, including any sealed or suppressed information and information from other jurisdictions; (2) The defendant or court has identified the misdemeanor convictions for which relief may be granted; (3) The court has received documentation that the sentences imposed have been completed or, if no

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- such documentation is reasonably available, a sworn affidavit that they have been completed; and
- (4) The court has notified the district attorney(s) and the court(s) of record for such offenses that the court is considering sealing the records. Both the district attorney and court shall be given reasonable opportunity in which to comment and submit materials to aid the court in making such a determination.

Upon request, the court may conduct a hearing. Sets forth the factors the court shall consider in making a determination. When a court orders sealing pursuant to this section, all official records and papers relating to the arrests, prosecutions, and convictions shall be sealed and not made available to any person or public or private agency; provided, however, the division shall retain any fingerprints, palmprints, and photographs, or digital images of the same.

Records sealed pursuant to this subdivision shall be made available to:

- (1) The defendant or the defendant's designated agent;
- (2) Qualified agencies and federal and state law enforcement agencies when acting within the scope of their law enforcement duties;
- (3) Any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license; or
- (4) Any prospective employer of a police officer or peace officer in relation to an application for employment as a police officer or peace officer.

The court shall not seal the defendant's record while any charged offense is pending. If, subsequent to the sealing of records pursuant to this section, the person is arrested for or formally charged with any misdemeanor or felony offense, such records shall be unsealed immediately and shall remain unsealed; provided, however, that if such new arrest results in a termination in favor of the accused or by conviction for a non criminal offense, such unsealed records shall be conditionally sealed pursuant to this section.

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Are drug convictions eligible for relief?, cont'd	CRIM. PROC. LAW § 170.56 – provides that where the sole count or counts against an individual is a violation of certain controlled substance or alcohol-related offenses, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal or, upon a finding that adjournment would not be necessary or appropriate and setting forth the reasons for such findings, may dismiss the accusatory instrument. Upon or after dismissal of such charges against a defendant not previously convicted of a crime, the court shall order that all official records and papers relating to the defendant's arrest and prosecution be sealed and, except as provided in § 160.50, not made available to any person or public or private agency. Such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument. Upon granting of such an order, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of the law, to the status he occupied before his arrest and prosecution.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>NORTH CAROLINA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.C. CONST. Art. III, § 5 (West 2024) (duties of governor) • N.C. GEN. STAT. ANN. §§ 15A-145 to 15A-160 (West 2024) (collectively “Expunction of Records”) • N.C. GEN. STAT. ANN. §§ 15A-173.1 to 15A-173.6 (West 2024) (collectively “Certificate of Relief”) • N.C. GEN. STAT. ANN. § 90-96 (West 2024) (conditional discharge for first offense) • N.C. GEN. STAT. ANN. § 147-16 (West 2024) (records kept; certain original applications preserved; notice of commutations) • N.C. GEN. STAT. ANN. §§ 147-21 to 147-25 (West 2024) (included within “The Governor”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • January 1, 1997 (Art. III, § 5) • October 1, 2010 (§ 15A-152) • June 24, 2011 (§ 147-16) • December 1, 2011 (§ 15A-173.3) • July 12, 2017 (§ 90-96) • December 1, 2017 (§ 15A-148) • December 1, 2018 (§§ 15A-173.4, 15A-173.5) • October 1, 2019 (§ 15A-173.2) • January 1, 2023 (§§ 15A-147, 15A-149, 15A-150) • December 1, 2023 (§§ 15A-145.2, 15A-145.5, 15A-153, 15A-160) • July 8, 2024 (§§ 15A-146, 15A-151, 15A-151.5)
Pardon provisions	<p>Art. III, § 5 – vests the governor with the power to grant pardons, after conviction, for all offenses, except in cases of impeachment, upon such conditions as the governor may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons.</p> <p>§ 147-16 – provides that the governor shall keep a register of all applications for pardon with a list of the official signatures and recommendations in favor of such application.</p> <p>§ 147-21 (form and contents of applications for pardon) – every application for pardon must be made to the governor in writing, signed by the party convicted, or by some person in his behalf. Every such application shall contain the grounds and reasons upon which the executive pardon is asked and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon.</p>

<u>NORTH CAROLINA</u>	
Pardon provisions, cont'd	<p>§ 147-23 (conditional pardons may be granted) – in any case in which the governor is authorized by the constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper.</p> <p>§ 147-24 (governor's duties when conditions of pardon violated) – if a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The governor shall examine the case of such prisoner and, if it appears by his own admission or by such evidence as the governor may require, that he has violated the conditions of his pardon, the governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. If it appears to the governor that he has not broke the conditions of his conditional pardon, he shall be released and his conditional pardon shall remain in force.</p>
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 15A-145.5 (expunction of certain misdemeanors and felonies; no age limitation) – sets forth the offenses that are not included in the terms “nonviolent misdemeanor” or “nonviolent felony” as used in this section and eligible for expungement under this section.</p> <p>Sets forth the time periods before a person is eligible to file a petition for expungement which range from 5-20 years, depending on the seriousness of the offense. Provides that a person previously granted an expunction under this section is not eligible for relief under this section for any offense committed after the date of the previous order for expunction.</p> <p>Sets forth the requirements for petitions filed under this section, including an affidavit by the petitioner that the individual is of good moral character. Petitioner cannot have</p>

NORTH CAROLINA**Is expungement of records available?, cont'd**

any outstanding restitution orders or civil judgments representing amounts ordered for restitution outstanding.

The victim, if any, has the right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing. The court, after hearing a petition for expunction of one or more nonviolent misdemeanors, shall order that the petitioner be restored, in contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in § 15A-151.5, if the court finds all of the following:

- (1) Either the petitioner has not been granted an expunction for one or more nonviolent misdemeanors or any previous expunction granted to the petitioner was granted pursuant to a petition filed prior to December 1, 2021;
- (2) The petitioner is of good moral character;
- (3) The petitioner has no outstanding warrants or pending criminal cases, is not under indictment, and no finding of probable cause exists against the defendant for a felony in any federal or state court in the United States;
- (4) The petitioner is not free on bond or personal recognizance pending trial, appeal, or sentencing in any federal or state court for a crime which would prohibit the person from having his or her petition granted;
- (5) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable waiting period;
- (6) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution against the petitioner;
- (7) The petitioner has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in this section;
- (8) The petitioner was convicted of an offense or offenses eligible for expunction under this section; and

NORTH CAROLINA**Is expungement of records available?, cont'd**

(9) The petitioner has completed the applicable waiting period set forth in this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

The court, after hearing a petition for expunction of one or up to three nonviolent felonies, may order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in § 15A-151.5, if the court finds all of the following:

- (1) Either the petitioner has not been previously granted an expunction under this section for one or more nonviolent felonies or any previous expunction granted to the petitioner for a felony was granted pursuant to a petition filed prior to December 1, 2021;
- (2) The petitioner is of good moral character;
- (3) The petitioner has no outstanding warrants or pending criminal cases, is not under indictment, and no finding of probable cause exists against the defendant for a felony in any federal or state court;
- (4) The petitioner is not free on bond or personal recognizance pending trial, appeal, or sentencing in any federal or state court for a crime which would prohibit the person from having his or her petition for expunction under this section granted;
- (5) If the petition is for the expunction of one felony, that the petitioner has no misdemeanor convictions, other than a traffic violation not listed in the petition, in the five years preceding the petition, and no other felony convictions during the applicable waiting period set forth in this section;
- (6) If the petition is for the expunction of two or three felonies, or if the petitioner has filed petitions in more than one county, the petitioner has no misdemeanor convictions other than a traffic violation not listed in the petition in the five years preceding the petition, and no other felony convictions during the applicable waiting period;
- (7) If the petition is for two or three felonies, if the petitioner has filed petitions in more than one county,

NORTH CAROLINA**Is expungement of records available?, cont'd**

or if the petition is filed pursuant to subsection (c5) of this section, the felony offenses were committed in the same 24-month period;

- (8) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution against the petitioner;
- (9) The petitioner has no convictions for a misdemeanor that is listed as an exception to the term “nonviolent misdemeanor” as provided in this section or any other felony offense;
- (10) The petitioner was convicted of an eligible offense;
- (11) The petitioner has completed the applicable waiting period.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

A person granted an expunction under this section of one or more nonviolent misdemeanors or one nonviolent felony pursuant to a petition filed prior to December 1, 2021 may petition for the expunction of additional nonviolent misdemeanors or two additional nonviolent felonies if the offenses were committed prior to the date of the previous expunction and, with regard to felony convictions, within the same 24-month period as the previously expunged felony.

No person as to whom an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person’s failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense. However, persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E shall disclose any and all convictions to the certifying commission regardless of whether or not the convictions were expunged pursuant to this section. Further, persons requesting a disclosure statement be prepared by the North Carolina Sheriffs’ Education and Training Standards Commission shall disclose any and all felony convictions to such commission regardless of whether or not the felony convictions were expunged pursuant to this section.

NORTH CAROLINA**Is expungement of records available?, cont'd**

Persons required by state law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

The court shall also order that the conviction(s) be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. Any other applicable state or local government agency shall expunge from its records entries made as a result of the conviction(s) ordered expunged upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the state DNA database.

§ 15A-146 (expunction of records when charges are dismissed or there are findings of not guilty) – if any person is charged with a crime, either a misdemeanor or felony, or was charged with an infraction under § 18B-302(i) prior to December 1, 1999, and the charge is dismissed, that person or the district attorney may petition the court for an order to expunge from all records any entries relating to that person's apprehension or trial. Upon a finding that the sole charge was dismissed, the court shall order the expunction.

If a person is charged with multiple offenses, and any of the charges are dismissed, that person or the district attorney may petition to have each of the dismissed charges expunged. If the court finds that all of the charges were dismissed, the court shall order the expunction. If the court finds that any charge resulted in a conviction on the day of the dismissal or had not yet reached final disposition, the court may order the expunction of any charge that was dismissed.

If any person is charged with one or more crimes, either a misdemeanor or a felony, or an infraction prior to December

NORTH CAROLINA**Is expungement of records available?, cont'd**

1, 1999, and a finding of not guilty or not responsible is entered for any or all of the charges, that person or the district attorney may petition the court for an order to expunge from all official records any entries relating to apprehension or trial of that crime. Upon determining that a finding of not guilty or not responsible was entered and all related criminal charges have reached final disposition, the court shall order the expunction of any charges disposed by a finding of not guilty or not responsible.

No person as to whom an order has been entered by a court or by operation of law under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension or trial.

Notwithstanding the provisions of this section, an arresting agency may maintain investigative records related to a charge that has been expunged pursuant to this section.

Except as otherwise provided, a court may grant a petition without a hearing. The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other state or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries.

Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the state DNA database. If such application is granted, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the state DNA database, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the database.

NORTH CAROLINA**Is expungement of records available?, cont'd**

§ 15A-147 (expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity) – provides that if any person is named in a charge for an infraction or a crime, either a misdemeanor or felony, as a result of another person using the identifying information of the named person or mistaken identity and a finding of not guilty is entered, or the conviction is set aside, the named person may petition the court where the charge was last pending for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court shall hold a hearing on the petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

No person as to whom such an order has been entered shall be held thereafter under any provision of law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

The court shall order that the said entries be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, or any other state or local government agencies identified by the petitioner, or the person eligible for automatic expungement, as bearing record of the same to expunge their records of the entries.

§ 15A-148 (expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted) – upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done, or upon receipt of a pardon of innocence with respect to any such offense, the court shall issue an order of expungement of the DNA record and samples in accordance with this section. The order shall direct the crime laboratory to send a letter documenting expungement. The order shall not apply to other offenses committed by the individual that qualify for inclusion in the DNA database.

NORTH CAROLINA**Is expungement of records available?, cont'd**

§ 15A-149 (expunction of records when pardon of innocence is granted) – if any person is convicted of a crime and receives a pardon of innocence, the person may petition for an order to expunge from all official records any entries relating to the person’s apprehension, charge, or trial. Upon verification by the court clerk that the warrant and return granting a pardon have been filed, the court shall issue an order of expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person’s failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

§ 15A-150 (notification requirements) – provides that the clerk of the superior court in each county shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the petitions granted under this article, any orders of expunction, and the names of persons granted an expunction under this article and persons granted a dismissal upon completion of a conditional discharge.

Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into, the clerk of each superior court in each county shall send a certified copy of an order granting expunction to the sheriff, chief of police, or other arresting agency; the Division of Motor Vehicles, if applicable; any state or local agency identified by the petition as bearing record of the offense that has been expunged; the Department of Adult Correction; and the State Bureau of Investigation, which shall forward the order to the Federal Bureau of Investigation.

Requires a state agency that receives a certified copy of an order to notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.

NORTH CAROLINA**Is expungement of records available?, cont'd**

§ 15A-151 (confidential agency files; exceptions to expunction) – provides that the Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this article and the names of those people for whom it received a notice under § 15A-150 (see above). The information contained in the file may be disclosed only upon request as follows:

- (1) A judge of the General Court of Justice for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction;
- (2) A person requesting confirmation of the person's own discharge or expunction;
- (3) The General Court of Justice in response to a subpoena or other court order issued pursuant to a civil action;
- (4) State or local law enforcement, for employment purposes only;
- (5) The North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only;
- (6) The North Carolina Sheriff's Education and Training Standards Commission, for certification purposes or for purposes of preparing a disclosure statement;
- (7) To the district attorney in accordance with § 15A-151.5; and
- (8) For disclosure of records of previous dismissal pursuant to conditional discharge, upon joint request of the district attorney and the defendant in a pending proceeding for the purpose of determining eligibility for a conditional discharge.

Provides that court records expunged under this article are confidential and shall be retained by the clerks of superior court as confidential files. Expunged records under this subsection shall be retained in accordance with the retention schedule for the underlying case type, as prescribed by the Director of the Administrative Office of the Courts in conjunction with the State Archives. The Administrative Office of the Courts shall maintain any expunged records retained in electronic form by the clerks under this subsection.

NORTH CAROLINA**Is expungement of records available?, cont'd**

The Administrative Office of the Courts shall make all confidential records maintained under this section electronically available to the clerks of superior court and to personnel of the clerks' offices designated by the respective clerk. A clerk shall not disclose to any person or for any reason the existence or content of any expunged record from a county other than the clerk's own county. A clerk shall disclose the existence or content of an expunged record on upon request of a person, or the attorney representing the person on the expunction matter, requesting disclosure or copies of the person's record; to the office of the district attorney; or to the Office of the Appellate Defender upon appointment of that office as counsel for the person who was the subject of the expunged record.

All agencies required under § 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing verifying the expunction and subsequent notification by private entities. The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction.

§ 15A-151.5 (prosecutor access to expunged files) – provides that, notwithstanding any other provision of this article, the Administrative Office of the Courts shall make confidential files maintained under § 15A-151 electronically available to all prosecutors of this state.

For any expungement granted on or after July 1, 2018, the record of a criminal conviction expunged under this article may be considered a prior conviction and used for any of the following purposes:

- (1) To calculate prior record level and prior conviction level if the named person is convicted of a subsequent criminal offense;
- (2) To serve as a basis for indictment for a habitual offense;
- (3) When a conviction of a prior offense raises the offense level of a subsequent offense;

<u>NORTH CAROLINA</u>	
Is expungement of records available?, cont'd	<p>(4) To determine eligibility for relief under § 90-96(a); and</p> <p>(5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the Rules of Evidence.</p> <p>§ 15A-153 (effect of expunction; prohibited practices by employers, education institutions, agencies of state and local governments) – the purpose of this section is to clear the public record of any entry of any arrest, criminal charge, or criminal conviction that has been expunged so that the person who is entitled to and obtains the expunction may omit reference to the charges or convictions to potential employers and others and a records check for prior arrests and convictions will not disclose the expunged entries. No person as to whom an order of expunction has been entered shall be held thereafter under any provision of any laws to be guilty or perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in response to any inquiry made of him or her for any purpose other than as provided in this section.</p> <p>§ 15A-160 (reporting requirement) – the State Bureau of Investigation, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall report jointly to the chairs of the joint legislative oversight committee on justice and public safety oversight by September 1 of each year regarding expunctions. The report shall include all of the following information:</p> <ol style="list-style-type: none"> (1) The number and types of expunctions granted during the fiscal year in which the report is made; (2) The number and type of expunctions granted each fiscal year for the five fiscal years preceding the date of the report; and (3) A full accounting of how the agencies have spent the receipts generated by the expunction fees received during the fiscal year in which the report is made and for the five preceding fiscal years.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 15A-146 (expunction of records when charges are dismissed or there are findings of not guilty) – provides that if any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction, the charges in</p>

<u>NORTH CAROLINA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>the case are expunged by operation of law not less than 180 days and not more than 210 days after the date of final disposition, if all of the following apply:</p> <ol style="list-style-type: none"> (1) All charges in the case are disposed on or after December 1, 2021; and (2) All charges in the case are dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible. <p>Notwithstanding the provisions of this subsection, no case with a felony charge that was dismissed pursuant to a plea agreement will be expunged pursuant to this subsection. The Administrative Office of the Courts shall develop and have in place procedures to automate the expunction of records pursuant to this subsection.</p> <p>§ 15A-147 (expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity) - if any person is named in a charge for an infraction or a crime as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who order the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. §§ 15A-173.1 to 15A-173.6 set forth the provisions related to certificates of relief.</p> <p>§ 15A-173.2 (certificate of relief) – provides that an individual who is convicted of no more than (a) three Class H or I felonies and (b) any misdemeanors may petition the court for a certificate of relief relieving collateral consequences as permitted by this article. Except as otherwise provided in § 15A-173.3, the court may issue a certificate if, after reviewing the petition, the individual's comprehensive criminal history, any information provided by the victim under § 15A-173.6 or the district attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence all of the following:</p>

<u>NORTH CAROLINA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>(1) Twelve months have passed since the individual completed his or her sentence;</p> <p>(2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitation programs, or the individual otherwise has a lawful source of support;</p> <p>(3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements;</p> <p>(4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial;</p> <p>(5) A criminal charge is not pending against the individual; and</p> <p>(6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.</p> <p>The certificate shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted under § 15A-173.4. Unless modified or revoked, a certificate relieves all collateral sanctions, except those listed in § 15A-173.3, those sanctions imposed by the North Carolina constitution or federal law, and any others specifically excluded in the certificate. A certificate does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding shall consider a certificate favorably in determining whether a conviction should result in disqualification.</p> <p>Provides that a certificate does not result in the expunction of any criminal history record information, nor does it constitute a pardon. A certificate is automatically revoked pursuant to § 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation. The denial of a certificate shall state the reasons for the denial, and the petitioner may file a subsequent petition 12 months from the denial and shall demonstrate that the petitioner has remedied the defects in the previous petition and has complied with any conditions for</p>

<u>NORTH CAROLINA</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>reapplication set by the court pursuant to § 15A-173.4(a) in order to have the petition granted.</p> <p>Any person who is granted a certificate shall notify any employer, landlord, or other party who has relied on the certificate of any conviction, modification, or revocation subsequent to the certificate within 10 days of the conviction, modification, or revocation.</p> <p>§ 15A-173.3 (collateral sanctions not subject to order of limited relief or certificate of relief) – sets forth the collateral sanctions that a certificate of relief cannot relieve.</p> <p>§ 15A-173.4 (issuance, modification, and revocation of certificate of relief by the court) – the court may issue a certificate of relief subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking a certificate, the court may impose conditions for reapplication.</p> <p>Provides that a court shall revoke a certificate if it finds by a preponderance of the evidence that the individual has a subsequent conviction for an offense in another jurisdiction that is deemed a felony or misdemeanor other than a traffic violation in this state. The court may modify or revoke a certificate if it finds by a preponderance of the evidence that the petitioner made a material misrepresentation in the petition for a certificate. A motion for modification or revocation may be initiated by the court on its own motion, or upon motion of the district attorney or the individual for whom the certificate was issued. The issuance, modification, and revocation of certificates shall be a public record.</p> <p>§ 15A-173.5 (reliance on order or certificate of relief as evidence of due care) – in a judicial or administrative proceeding alleging negligence, a certificate of relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued, if the person relied on the certificate at the time of the alleged negligence.</p>

NORTH CAROLINA**Are drug convictions eligible for relief?**

Yes. § 15A-145.2 (expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses) – provides that when a person is discharged and the proceedings against the person dismissed pursuant to § 90-96(a) or (a1) (relating to conviction of certain drug offenses), and the person was not over the age of 21 at the time of the offense, the person may apply to the court of the county where charged for an order to expunge from all official records, other than the confidential files retained under § 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section.

Sets forth the requirements for the petition, including an affidavit from the petitioner stating that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this or any other state.

If the court determines after a hearing that the petitioner was discharged and the proceedings against him or her dismissed and that the person was no over 21 years of age at the time of the offense, it shall enter such an order. The effect of the order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent offense.

The court shall also order that all records of the proceedings be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other state and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding.

NORTH CAROLINA**Are drug convictions eligible for relief?, cont'd**

Additionally, when any person is charged with a misdemeanor by possessing a controlled substance or a felony under § 90-95(a)(3) (related to possessing a controlled substance), upon dismissal by the state of the charges against such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to this or her arrest, indictment or information, or trial. If the court determines that, after a hearing, such person was not over 21 years of age at the time of the offense, it shall enter such order. The clerk shall notify state and local agencies of the court's order as provided in § 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, indictment or information, or trial in response to any inquiry made of him or her for any purpose.

When any person who has not previously been convicted of (a) any felony offense under any state or federal laws; (b) any offense under Chapter 90 of the General Statutes; or (c) an offense under any statute of the United States or any state relating to controlled substances or to that paraphernalia, pleads guilty to or has been found guilty of a misdemeanor by possessing a controlled substance or drug paraphernalia, or pleads guilty to or has been found guilty of a felony under § 90-95(a)(3) (related to possessing a controlled substance), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, except as provided by § 15A-151.5. Cancellation and expunction under this subsection may only occur once with respect to any person.

<u>NORTH CAROLINA</u>	
Are drug convictions eligible for relief?, cont'd	<p>§ 90-96 – provides that failure to successfully complete an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny an application for expunction of the defendant's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to § 15A-145.2.</p> <p>Upon discharge of the person and dismissal of the proceedings, such person, if he or she was not over 21 years at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to § 15A-145.2.</p>
Miscellaneous provisions	<p>§ 15A-152 (civil liability for dissemination of certain criminal history information) – a private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question. A private entity subject to the provisions of this section that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees.</p>
Recently proposed legislation	None.

<u>NORTH DAKOTA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • N.D. CONST. Art. V, § 7 (West 2023) • N.D. CENT. CODE ANN. §§ 12-55.1-01 to 12-55.1-11 (West 2023) (collectively “Pardon Advisory Board”) • N.D. CENT. CODE ANN. §§ 12-60-16.6 and 12-60-16.7 (West 2023) (included within “Bureau of Criminal Investigation”) • N.D. CENT. CODE ANN. §§ 12-60.1-01 to 12-60.1-04 (West 2023) (collectively “Sealing Criminal Records”) • N.D. CENT. CODE ANN. § 19-03.1-23 (West 2023) (prohibited acts—penalties) • N.D. R. Crim. Proc. 32.1 (West 2023) (deferred imposition of sentence)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1987 (§ 12-60-16.7) • 1997 (Art. V, § 7, §§ 12-55.1-01, 12-55.1-04, 12-55.1-06, 12-55.1-08) • August 1, 2009 (§ 12-55.1-05) • August 1, 2015 (§ 12-60-16.6) • August 1, 2019 (§ 12-60.1-03) • August 1, 2021 (§§ 12-60.1-01, 12-60.1-02, 12-60.1-04, r. 32.1) • August 1, 2023 (§ 19-03.1-23)
Pardon provisions	<p>Art. V, § 7 – vests the power to grant pardons in the governor. Provides that the governor can delegate that power in a manner provided by law.</p> <p>§ 12-55.1-01 (definitions) – definitions include “conditional pardon,” which means a pardon subject to terms and conditions established by the governor upon the recommendation of the pardon advisory board.</p> <p>Also includes a definition for “pardon,” which means the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person’s conviction or plea or finding of guilty for an offense unless specifically stated in the certificate of pardon.</p> <p>§ 12-55.1-04 (governor may remit fines and grant commutations, pardons, and reprieves) – provides that the governor has the power to grant pardons after judgment of conviction. If the governor grants a conditional pardon, the pardon must state the terms and conditions of the pardon. The recommendations of the pardon advisory board and the</p>

NORTH DAKOTA**Pardon provisions, cont'd**

determination of the governor are not reviewable by any court.

§ 12-55.1-05 (pardon clerk—duties) – provides that the director of the department of corrections and rehabilitation or the director's designee shall serve as the pardon clerk, who shall:

- (1) Maintain a register of all applications filed for pardon, conditional pardon, and shall maintain a complete and accurate record of all proceedings in connection with applications, including all correspondence, documents, evidence, and appearances made in connection with the application.
- (2) Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.
- (3) Maintain a record of every pardon or conditional pardon granted or refused, along with the reasons for each action.

§ 12-55.1-06 (application for commutation, reprieve, pardon, conditional pardon, or remission of fine) – provides that an application for pardon or conditional pardon must be made with the pardon clerk on a form prescribed by the clerk and in accordance with any rules adopted under this chapter.

§ 12-55.1-08 (governor may reconsider action) – if the governor has granted an application for conditional pardon and the applicant is still in custody in any correctional facility, the governor may reconsider the decision any time before the applicant is released. If an applicant is released from custody pursuant to a conditional pardon and the applicant has violated any of the terms or conditions of the conditional pardon, the governor may revoke the conditional pardon in the same manner provided for violation of any of the terms or conditions of parole. In all other cases, the governor may reconsider a decision on an application if the reconsideration is made within 30 days from the date of the

<u>NORTH DAKOTA</u>	
Pardon provisions, cont'd	initial decision. A decision made on reconsideration may not be reviewed by any court.
Is sealing of records available?	<p>Yes. § 12-60.1-01 (definitions) – includes definition for “seal,” which means to prohibit the disclosure of the existence or contents of court or prosecution records unless authorized by court order.</p> <p>§ 12-60.1-02 (grounds to file petition to seal criminal record) – provides that an individual may file a petition to seal a criminal record if:</p> <ol style="list-style-type: none"> (1) The individual pled guilty to or was found guilty of a misdemeanor offense and the individual has not been convicted of a new crime for at least three years before filing the petition; or (2) The individual pled guilty to or was found guilty of a felony offense and the individual has not been convicted of a new crime for at least five years before filing the petition. <p>This chapter does not apply to a felony offense involving violence or intimidation during the period in which the offender is ineligible to possess a firearm or an offense for which an offender has been ordered to register under § 12.1-32-15.</p> <p>§ 12-60.1-03 (petition to seal criminal record) – sets forth the information required to be included in a petition to seal records. Requires the petitioner to file a proposed order when filing the petition.</p> <p>§ 12-60.1-04 (hearing on petition) – provides that the court may grant a petition to seal a criminal record if the court determines by clear and convincing evidence:</p> <ol style="list-style-type: none"> (1) The petitioner has shown good cause for granting the petition; (2) The benefit to the petitioner outweighs the presumption of openness of the criminal record; (3) The petitioner has completed all terms of imprisonment and probation for the offense; (4) The petitioner has paid all restitution ordered by the court for commission of the offense;

NORTH DAKOTA**Is sealing of records available?, cont'd**

- (5) The petitioner has demonstrated reformation warranting relief; and
- (6) The petition complies with the requirements of this chapter.

Sets forth the factors the court must consider when determining whether to grant a petition. This section does not prohibit a prosecutor from stipulating to seal a criminal record without a hearing or more expeditiously than provided in this section.

Except as provided in this section and if good cause is shown, the court denying a petition may prohibit a petitioner from filing a subsequent petition to seal a criminal record for up to three years following the denial. The order denying the petition must provide the reasons establishing good cause for prohibiting the petition.

If the court grants a petition to seal a criminal record, the court shall state in the court order that the petitioner is sufficiently rehabilitated but is subject to the provisions of § 12.1-33-02.1, and shall release the information when an entity has a statutory obligation to conduct a criminal history background check.

§ 12-60-16.6 (criminal history record information—dissemination to parties not described in § 12-60-16.5) – provides that only the bureau may disseminate a criminal history record to parties not described in § 12-60-16.5, but criminal history record information that has been purged or sealed may not be disseminated.

§ 12-60-16.7 (criminal history record information—prohibited dissemination) – if dissemination is prohibited under § 12-60-16.6, or there is no information, the bureau shall provide the following answer to the requester: “No information is available because either no information exists or dissemination is prohibited.”

R. 32.1 – provides that an order deferring imposition of sentence must require that, 61 days after expiration or termination of probation, the defendant’s guilty plea be withdrawn or the guilty verdict be set aside, the case be dismissed, and the file be sealed.

<u>NORTH DAKOTA</u>	
Is expungement of records available?	No.
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 19-03.1-23 – provides that if a person pleads guilty or is found guilty of a first offense regarding possession of one ounce or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if, within two years, the person is not subsequently convicted of another violation of this chapter. Once sealed, the court record may not be opened even by order of the court.</p> <p>Further provides that if a person is convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes such program, the court shall dismiss the case and seal the file in accordance with § 12.1-32-07.2.</p>
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>OHIO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OHIO CONST. Art. III, § 11 (West 2024) (governor has power of executive clemency; limitations) • OHIO REV. CODE ANN. § 2951.041 (West 2024) (intervention in lieu of conviction) • OHIO REV. CODE ANN. § 2953.25 (West 2024) (individual subject to collateral sanction; petition for certificate of qualification for employment) • OHIO REV. CODE ANN. §§ 2953.31 to 2953.36 (West 2024) (collectively “Sealing of Records”) • OHIO REV. CODE ANN. § 2953.39 (West 2024) (sealing or expungement of low-level controlled substance offenses) • OHIO REV. CODE ANN. §§ 2953.57 to 2953.61 (West 2024) (collectively “Sealing of Records—Further Provisions”) • OHIO REV. CODE ANN. §§ 2961.21 to 2961.24 (West 2024) (included within “Disfranchised convicts; habitual criminals”) • OHIO REV. CODE ANN. §§ 2967.01 to 2967.15 (West 2024) (included within “Pardon; Parole; Probation”) • OHIO ADMIN. CODE 5120-14-01 (2024) (certificate of achievement and employability) • OHIO ADMIN. CODE 5120:1-1-15 (2024) (pardon, reprieve, and commutation of sentence)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • March 18, 1965 (§ 2967.07) • January 1, 1996 (Art. III, § 11) • January 1, 2004 (§ 2967.02) • April 7, 2009 (§ 2967.15) • September 30, 2011 (§ 2961.21) • September 28, 2012 (§ 2961.22) • March 22, 2019 (§ 2967.03) • April 4, 2023 (§§ 2951.041, 2953.33, 2953.57, 2953.58, 2953.61, 2967.04) • October 3, 2023 (§§ 2953.25, 2953.32, 2953.33, 2953.34, 2953.39)
Pardon provisions	<p>Art. III, § 11 – vests the governor with the power, after conviction, to grant pardons for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the governor may think proper; subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by law. Upon conviction for treason, the governor may suspend the execution of the sentence and report the case to the general assembly at its next meeting when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. The governor shall communicate to the general</p>

OHIO**Pardon provisions, cont'd**

assembly, at every regular session, each case of pardon granted, state the name and crime of the convict, the sentence, its date, and the date of the pardon with the governor's reasons therefor.

§ 2967.02 (administrative provisions) – provides that the governor may grant a pardon after conviction, may grant an absolute and entire pardon or a partial pardon, and may grant a pardon upon the conditions precedent or subsequent.

§ 2967.03 (pardon, commutation, or reprieve) – provides that the adult parole authority may exercise its functions and duties in relation to the pardon of a convict upon direction of the governor or upon its own initiative. The authority may recommend to the governor the pardon of any convict or prisoner if, in its judgment, there is reasonable ground to believe that granting a pardon would further the interests of justice and be consistent with the welfare and security of society. However, the authority shall not recommend a pardon until it has complied with the applicable notice requirements of §§ 2930.16 and 2967.12 and until it has considered any victim statement.

§ 2967.04 (pardons and commutations; conditions; effect) – provides that a pardon may be granted upon such conditions as the governor may impose, which conditions shall be stated in the warrant. The pardon shall not take effect until the conditions so imposed are accepted by the individual and such acceptance is endorsed on the warrant, signed by the individual, and attested by one witness.

Provides that an unconditional pardon relieves the person of all disabilities arising out of the conviction(s) from which it is granted. An unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired.

In the case of an unconditional pardon, the governor may include as a condition of the pardon that records related to the conviction be sealed. The governor may issue a writ for the records related to the conviction to be sealed.

§ 2967.07 (application for executive pardon, commutation, or reprieve) – all applications for pardon shall be made in

<u>OHIO</u>	
Pardon provisions, cont'd	<p>writing to the adult parole authority. Upon the filing of such application, or when directed by the governor, a thorough investigation into the propriety of granting a pardon shall be made by the authority, which shall report in writing to the governor a brief statement of the facts in the case, together with a recommendation for or against the granting of a pardon.</p> <p>§ 2967.15 (violation of pardon, parole, or other supervised release) – provides that if an adult parole authority has reasonable cause to believe that a person is violating the condition of a conditional pardon, the field officer may arrest the person without a warrant or order a peace officer to arrest the person without a warrant.</p> <p>Except as otherwise provided in this section, prior to the revocation of a person's pardon, the authority shall grant a hearing. If a person who has been pardoned is found to be a violator of the conditions of the person's conditional pardon, the authority shall forthwith transmit to the governor its recommendation concerning that violation, and the violator shall be retained in custody until the governor issues an order concerning that violation.</p> <p>5120:1-1-15 – contains virtually identical provisions as § 2967.07, with the addition that if the parole board receives an application for pardon for a person for whom executive clemency was denied within two years from the date the denial was issued by the governor, the parole board shall review the application to determine whether it contains any significant new information that was not and could not have been presented in the earlier application. If the application contains no such new information, the parole board shall return the application to the applicant. The parole board shall inform the applicant of the date on which the applicant may reapply for reconsideration.</p>
Is sealing of records available?	<p>Yes. § 2951.041 – in relevant part, this section provides that if the court grants an offender's request for intervention in lieu of conviction and the court finds that the offender has successfully completed the intervention plan for the offender, including the requirement that the offender abstain from the use of illegal drugs and alcohol for a period of at least one year, but not more than five years, from the date on which the court granted the order of intervention, the</p>

OHIO**Is sealing of records available?, cont'd**

requirement that the offender participate in treatment and recovery support services, and all other terms and conditions ordered by the court, the court shall dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence under this section shall be without adjudication of guilty and is not a conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the sealing or expungement of records related to the offense in question, as a dismissal of the charges in the manner provided in §§ 2953.31, 2953.33, 2953.37, and 2953.521.

§§ 2953.31 to 2953.36 set forth the provisions related to sealing of criminal history records.

§ 2953.32 (exclusions from §§ 2953.32 to 2953.34; sealing of record of eligible offenders; expungement) – sets forth the criminal offenses to which §§ 2953.32 to 2953.34 do not apply.

Provides that, except as otherwise provided by law, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in federal court, for the sealing or expungement of the record of the case that pertains to the conviction. Sets forth the time periods that must elapse before an application can be filed which range from six months to 10 years.

At a hearing held on a petition, the court shall do each of the following:

- (1) Determine whether the applicant is pursuing sealing or expunging a conviction and whether the application was made at the time specified in this section that is applicable with respect to the application and the subject offense;
- (2) Determine whether criminal proceedings are pending against the applicant;
- (3) Determine whether the applicant has been rehabilitated to the satisfaction of the court;
- (4) If the prosecutor or victim has filed an objection, consider the reasons against granting the application specified by the prosecutor or victim in the objection;

OHIO**Is sealing of records available?, cont'd**

- (5) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed or expunged against the legitimate needs, if any, of the government to maintain those records;
- (6) Consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable; and
- (7) If the applicant was an eligible offender under § 2953.36(A)(3) as it existed prior to the effective date of this amendment, determine whether the offender has been rehabilitated to a satisfactory degree.

If the court determines that the individual meets all of the requirements, the court, except as otherwise provided by law, shall order all official records of the case sealed or expunged and, except as otherwise provided by law, all index references to the case that pertain to the conviction. The proceedings in the case that pertain to the conviction shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be sealed or expunged, except that upon conviction of a subsequent offense, a sealed record of prior conviction may be considered by the court in determining the sentence or other appropriate disposition.

Provides that an applicant can request the sealing or expungement of the records of more than one case in a single application under this section.

Notwithstanding any other provision of law to the contrary, when the bureau of criminal identification and investigation receives notice from a court that the record of a conviction has been expunged under this section, the bureau shall maintain a record of the expunged conviction record for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement. The bureau shall not be compelled by the court to destroy, delete, or erase those records so that the records are permanently irretrievable.

Provides that when any other entity other than the bureau receives notice from a court that the record of a conviction has been expunged, the entity shall destroy, delete, and erase the record as appropriate for the record's physical or

OHIO**Is sealing of records available?, cont'd**

electronic form or characteristic so that the record is permanently irretrievable.

§ 2953.33 (application to have records sealed; grounds; order) – any person who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to seal or, except as provided in this section, expunge the person’s official records in the case. Except as provided in § 2953.61, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

Any person against whom a no bill is entered by a grand jury may apply to the court for an order to seal or, except as provided in this section, expunge the person’s official records in the case. Except as provided in § 2953.61, the application may be filed at any time after the expiration of two years after the date on which the grand jury reports a no bill.

Any person who is granted an absolute and entire pardon, a partial pardon, or a conditional pardon may apply to the court for an order to seal the person’s official records in the case in which the person was convicted. The application may be filed at any time after the pardon is granted or at any time after all of the conditions of a conditional pardon are met.

At the hearing on the application, the court shall do all of the following:

- (1) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and the required time period has passed;
- (2) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

OHIO**Is sealing of records available?, cont'd**

- (3) Determine whether criminal proceedings are pending against the person;
- (4) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;
- (5) If the person was granted a conditional pardon, determine whether all of those conditions have been met; and
- (6) Weigh the interests of the person in having the official records pertaining to the case sealed or expunged, as applicable, against the legitimate needs, if any, of the government to maintain those records.

If the court finds that all of the requirements have been met, the court shall issue an order directing that the records be expunged or sealed, as applicable.

Provides that a person who is the defendant named in a dismissed complaint, indictment, or information or against whom a no bill is entered by a grand jury is not eligible to have records of the case expunged if the case involves any of the listed offenses.

§ 2953.34 (inspection of sealed records; maintenance of sealed records) – sets forth the entities and individuals who may inspect sealed records included in a sealing order including, but not limited to, law enforcement officials, prosecutors, the individual who is the subject of the records or their attorney, the bureau of criminal identification and investigation, and the attorney general for the reasons set forth in the section.

Provides that, in any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved notwithstanding the fact that any such prior conviction was the subject of an order of sealing or expungement previously issued. Permits the person or governmental agency, office, or department that maintains sealed records pertaining to convictions may maintain a manual or computerized index to the sealed records. The index shall only contain the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word “sealed,” and the name of the person, agency, office, or department that has custody of the

OHIO**Is sealing of records available?, cont'd**

sealed records, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in this section.

Any agency, office, auditor, prosecutor, board, or other entity that maintains records of an individual who has been permanently excluded may maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal or expunge the record.

An order to seal or expunge official records applies to every public office or agency that has a record of the case regardless of whether it receives notice of the hearing on the application or a copy of the order to seal the records. Such agency may maintain a record of the case for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order. Such office or agency may also maintain an index of sealed official records access to which may not be afforded to any person other than the person who has custody of the sealed official records, except that the official records of a case that have been sealed may be made available to the following persons for the following purposes:

- (1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;
- (2) To a law enforcement officer who was involved in the case for use in the officer's defense of a civil action arising out of the officer's involvement in that case; and
- (3) To a prosecuting attorney to determine a defendant's eligibility to enter a pretrial diversion program.

An order issued to expunge the record of a person's conviction or, except as otherwise provided in this section, an order issued under that section to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control.

<u>OHIO</u>	
Is sealing of records available?, cont'd	<p>§ 2953.61 (effect of multiple offenses with different dispositions) – except as otherwise provided, a person charged with two or more offenses as a result of or in connection with the same act may not apply to the court for the sealing or expungement of the person’s record in relation to any of the charges, and a prosecutor may not apply to the court pursuant to § 2953.39 for the sealing or expungement of the record of a person in relation to any of the charges if the person was charged with two or more offenses as a result of or in connection with the same act, when at least one of the charges has a final disposition that is different than the others until such time as the person or prosecutor would be able to apply to the court and have all of the records pertaining to all charges sealed or expunged.</p> <p>When a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under one of the listed sections or a municipal ordinance that is substantially similar to such sections, and if the records pertaining to all the other charges would be eligible for sealing or expungement in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed or expunged. In such a case, the court shall not order that only a portion of the records be sealed or expunged.</p>
Is expungement of records available?	Yes. See discussion of record sealing above.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 2953.57 (effect of vacation and setting aside of conviction because of DNA testing) – provides that a court that enters a judgment that vacates and sets aside the conviction of a person because of DNA testing shall issue an order directing that all official records pertaining to the case involving the case be sealed and that the proceedings in the case shall be deemed not to have occurred.</p> <p>§ 2953.58 (notices of order to seal due to vacation and setting aside of conviction because of DNA testing; offices and agencies affected; examination of sealed record) – provides that the court shall send notice of an order to seal official records to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record, that is the subject of the order.</p>

OHIO**Does the state offer a certificate of relief or similar document?**

Yes. § 2953.25 – provides that an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense may file a petition with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

An individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described above may file for a certificate by either:

- (1) In the case of a person who resides in this state, filing a petition with the court of common pleas of the county in which the person resides; or
- (2) In the case of an individual who resides outside of this state, filing a petition with a court of any county in which any conviction or plea of guilty from which the individual seeks relief was entered.

Sets forth the time periods after which a person may petition for a certificate which range from six months to one year.

Sets forth the factors the court shall consider when determining whether to grant the petition. The court shall grant the petition if the court finds that the individual has established all of the following by a preponderance of the evidence:

- (1) Granting the petition will materially assist the individual in obtaining employment or occupational licensing;
- (2) The individual has a substantial need for the relief requested in order to live a law-abiding life; and
- (3) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

Provides that the submission of an incomplete petition shall not be grounds for the designee or court to deny the petition. Further, subject to the provisions of this section, there is a rebuttable presumption in favor of granting a petition if the court finds that:

<u>OHIO</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>(1) The application was filed after the expiration of the waiting period;</p> <p>(2) If the offense was a felony, at least three years have passed since the date of release of the individual from any period of incarceration and all periods of supervision imposed after release or, if the individual was not incarcerated for the offense, at least three years have elapsed since the date of the individual's final release from all other sanctions imposed for the offense; and</p> <p>(3) If the offense was a misdemeanor, at least one year has elapsed since the individual was released from incarceration and all periods of supervision imposed after release from incarceration or, if the individual was not incarcerated for the offense, at least one year has elapsed since the date of the final release of the individual from all sanctions imposed including any period of supervision.</p> <p>A petition that meets all of the requirements listed above shall only be denied if the court finds, by clear and convincing evidence, that the applicant has not been rehabilitated.</p> <p>Sets forth the collateral sanctions that are not relieved by a certificate of qualification for employment. Provides that if a petition is denied, the court may place conditions on the individual regarding the filing of any subsequent petition for a certificate.</p> <p>Provides that a certificate lifts the automatic bar of a collateral sanction and a decisionmaker shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity. The certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the license, employment opportunity, or certification in question.</p> <p>Further provides that, in a judicial or administrative proceeding alleging negligence or other fault, a certificate issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining,</p>

OHIO**Does the state offer a certificate of relief or similar document?, cont'd**

licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, a certificate issued to an individual under this section shall provide immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence.

A certificate shall be revoked if the individual to whom it was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate.

Requires the department of rehabilitation and correction to maintain a database that identifies granted certificates and revoked certificates and tracks the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most applicable, and the types of employers that have accepted the certificates. The department shall annually create a report that summarizes the information maintained in the database and shall make the report available to the public on its website.

§ 2961.21 (definitions with respect to certificates of achievement and employability) – includes a definition for “discretionary civil impact,” which means any section of the revised code or an administrative rule that creates a penalty, disability, or disadvantage, however denominated, to which all of the following apply:

- (1) It is triggered in whole or in part by a person’s conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence;
- (2) It is imposed on a person, licensing agency, or employer; and
- (3) It permits, but does not require, that the person with the conviction record have a license denied or revoked, permits an agency to deny or revoke a license or certification to the person with the conviction record or business, or permits a business

<u>OHIO</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>to refuse to employ the person with the conviction record.</p> <p>Also defines “mandatory civil impact,” which means any section of the revised code or an administrative rule that creates a penalty, disability, or disadvantage, however denominated, to which all of the following apply:</p> <ol style="list-style-type: none"> (1) It is triggered automatically solely by a person’s conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence; (2) It is imposed on a person, licensing agency, or employer; and (3) It precludes the person with the criminal record from maintaining or obtaining licensure or employment, precludes the agency from issuing a license or certification to the person with the criminal record or business, or precludes a business from being certified or from employing the person with the criminal record. <p>Neither “discretionary civil impact” nor “mandatory civil impact” include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.</p> <p>It also includes a definition for “eligible prisoner,” which means a prisoner who is serving a prison term in a state correctional institution and satisfies all criteria specified in § 2961.22 or a prisoner who has been released from a state correctional institution, who is under supervision on parole or under a post-release control sanction, and who satisfies all of the criteria in § 2961.22.</p> <p>§ 2961.22 (eligibility for certificate of achievement and employability) – provides that any prisoner serving a prison term in a state correctional facility who satisfies all of the following is eligible to apply to the department of rehabilitation and correction at the time specified in this section for a certificate of achievement and employability:</p> <ol style="list-style-type: none"> (1) The prisoner has satisfactorily completed one or more approved in-prison vocational programs;

OHIO**Does the state offer a certificate of relief or similar document?, cont'd**

- (2) The prisoner has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs while incarcerated, while under supervision, or during both periods of time;
- (3) The prisoner has completed community service hours; and
- (4) The prisoner shows other evidence of achievement and rehabilitation while under the jurisdiction of the department.

The individual may apply no earlier than one year prior to the date scheduled for the release of the prisoner from department custody no later than the date of release of the prisoner.

Any prisoner who has been released from a state correctional facility, who is under supervision on parole or under a post-release control sanction, and who satisfies the criteria set forth above is eligible to apply to the adult parole authority at any time while the prisoner is under supervision for a certificate.

The prisoner may apply for a certificate that grants the prisoner relief from one or more mandatory civil impacts that would affect a potential job within a field in which the prisoner trained as part of the prisoner's in-prison vocational program. The prisoner shall specify the mandatory civil impacts from which the prisoner is requesting relief under the certificate. If the mandatory civil impact of any licensing agency would be affected by the issuance of the certificate to the prisoner, the department or authority shall notify the licensing agency.

Upon application by the prisoner, the department or authority, whichever is applicable, shall consider the application and all objections to the issuance of the certificate, if any. If the department or authority determines that the individual meets all requirements and that any objections are not sufficient to deny the issuance of the certificate, the department or authority shall issue the certificate that grants relief from the mandatory civil impacts specified in the application.

<u>OHIO</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>5120-14-01 – provides that an offender who is incarcerated in a state correctional institution or is under the supervision of the adult parole authority on parole or post-release control may apply to the department of rehabilitation and correction for a certificate of achievement and employability if the offender satisfies all of the following:</p> <ol style="list-style-type: none"> (1) While incarcerated, the offender completed one or more of the following vocational programs: career technical, apprenticeship, or advanced job training; (2) The offender has completed one or more of the listed cognitive or behavioral improvement programs while incarcerated, while under supervision, or both; (3) The offender has completed at least 120 hours of community service; (4) The offender has demonstrated achievement and rehabilitation while under the department's jurisdiction, as evidenced by the offender accomplishing one or more of the listed education programs or courses. <p>Provides that the department shall revoke any certificate issued to an offender if the offender is committed to the department's custody for the commission of a felony or the department otherwise learns that, after receiving the certificate, the offender was convicted of any offense other than a minor misdemeanor or traffic offense. The department shall not revoke a certificate on the basis of any violation of a condition of a conditional pardon, parole, transitional control, or post-release control unless the violation is also a criminal offense.</p>
Are drug convictions eligible for relief?	<p>Yes. § 2953.39 – provides that the prosecutor in a case where a person is or was convicted of a low-level controlled substance offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction. The application may be filed at any time after the expiration of the corresponding time period as set forth in § 2953.32(B)(1). An application may request an order to seal or expunge the record of conviction for more than one low-level controlled substance offense but the court shall consider the request for each offense separately as if a separate application had been made for each offense.</p>

<u>OHIO</u>	
Are drug convictions eligible for relief?, cont'd	<p>Sets forth the information required to be included in the application. Upon receipt of notice of the date and time of the hearing, the prosecutor shall provide notice to the offender and the offender's right to object to the granting of the application. At the hearing on the application, the court shall determine whether the offense is a low-level controlled substance offense, that the required time period has elapsed, and shall:</p> <ol style="list-style-type: none"> (1) Determine whether criminal proceedings are pending against the subject offender; (2) Determine whether the subject offender has been rehabilitated to the satisfaction of the court; (3) If the subject offender or victim objected, consider the reasons against granting the application specified in the objection(s); (4) Weigh the interest of the subject offender in having the records sealed or expunged against the legitimate needs, if any, of the government to maintain those records; and (5) Consider the oral or written statement of the victim, victim's representative, and victim's attorney, if applicable. <p>If the court determines that the records meet the requirements, the court shall issue orders as directed by § 2953.32(D)(2). The proceedings in the case shall be considered not to have occurred and the convicted shall be sealed or expunged. A record that is expunged pursuant to this section shall be destroyed, deleted, and erased, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.</p>
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>OKLAHOMA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OKLA. CONST. Art. VI, § 10 (West 2024) (repleives, commutations, paroles, and pardons) • OKLA. STAT. ANN. tit. 22, §§ 18 to 19c (West 2024) (included within “General Provisions”) • OKLA. STAT. ANN. tit. 22, §§ 305.1 to 305.7 (West 2024) (collectively “Deferred Prosecution”) • OKLA. STAT. ANN. tit. 22, § 991c (West 2024) (deferred sentence) • OKLA. STAT. ANN. tit. 57, §§ 332 to 365a (West 2024) (collectively “Pardons and Paroles”) • OKLA. STAT. ANN. tit. 63, § 2-410 (West 2024) (conditional release for first offense—expungement—persons not covered by section) • OKLA. ADMIN. CODE §§ 515:20-1-1 to 515:20-17-2 (2024) (collectively “Pardon Procedures”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 1, 1979 (§ 305.4) • November 1, 1995 (§ 332.19) • July 1, 1999 (§ 332) • July 1, 2004 (§§ 19a, 19b) • November 6, 2012 (Art. VI, § 10) • November 1, 2014 (§ 2-410) • September 14, 2018 (r. 515:20-3-2, 515:20-15-1) • April 20, 2021 (§ 991c) • September 11, 2021 (r. 515:20-15-3, 515:20-17-2) • November 1, 2022 (§ 332.2) • September 11, 2024 (r. 515:20-3-1, 515:20-5-2, 515:20-7-1) • November 1, 2024 (§§ 18, 19)
Pardon provisions	<p>Art. VI, § 10 – creates the Pardon and Parole Board whose duties include making an impartial investigation and study of applicants for pardons and, by a majority vote, make its recommendations to the governor of all persons deemed worthy of clemency. Vests the governor with the power to grant, after conviction and favorable recommendation by the board, pardons for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as the governor may deem proper, subject to such regulations as may be prescribed by law.</p> <p>Requires the governor to communicate to the legislature, at each regular session, each case of pardon granted, stating the name of the person, the crime of which the person was convicted, the date and place of conviction, and the date of pardon.</p>

OKLAHOMA**Pardon provisions, cont'd**

Tit. 57, §§ 332 to 365a and Rules §§ 515:20-1-1 to 515:20-17-2 set forth the procedures for obtaining a pardon.

57, § 332 (pardons and paroles—power of governor) – provides that the governor shall have the power to grant, after conviction, pardons for all offenses except cases of impeachment, upon such conditions, restrictions, and limitations as may be deemed proper by the governor, subject to the regulations prescribed by law and the provisions of the Oklahoma constitution.

57, § 332.2 (meetings of Pardon and Parole Board—consideration of commutation—notice of docks and recommendations) – provides that any consideration for pardon shall be made only after application is made to the board.

57, § 332.19 (action by governor on application for pardon) – provides that, within 30 days after approval of an application for pardon, the board shall forward all relevant documentation to the governor, who shall have 90 days to grant or deny the application. If an application is not approved by the board, or if no action is taken by the governor after receipt of an approval from the board, the application shall be deemed denied.

R. 515:20-3-1 (general eligibility) – provides that a person must meet the following criteria for all convictions for which a pardon is being requested:

- (1) Must have been convicted of a violation of Oklahoma law, either a misdemeanor or felony, or a crime of moral turpitude involving alcohol or an illegal drug offense in an Oklahoma municipal court. Traffic misdemeanors are not eligible for a pardon;
- (2) Must satisfy one of the following: (a) discharged all sentences, including supervision, at least five years prior to submitting the application; (b) successfully completed five years of parole or probation immediately prior to submitting the application, provided that if the applicant was under supervision during any part of the five years immediately prior to submitting the application, the application shall

OKLAHOMA**Pardon provisions, cont'd**

- include a favorable reference from the applicant's supervising officer; or (c) be certified by the governor for pardon consideration by the board pursuant to tit. 57, § 332.2(A);
- (3) Must have paid all fines, fees, restitution, court costs, etc., in full;
 - (4) Must not have any new or pending charges, unresolved detainers, warrants, tax liens, or child support arrearages;
 - (5) Must not currently be in jail or prison; and
 - (6) Must not have been considered for a pardon within the previous three years.

R. 515:20-3-2 (application ineligibility) – if an ineligible application is submitted, the administrative staff of the board will notify the applicant in writing. Applications for pardon will be deemed ineligible at any point in the pardon process if the applicant is arrested, charged with a new criminal offense, or incarcerated prior to board review. The applicant may re-apply once all eligibility criteria have been met.

R. 515:20-5-2 (incomplete applications) – if an application is incomplete, a notification letter will be sent to the contact included on the application. The applicant will have 90 days to provide the missing information. Applications that are withdrawn by the applicant will be moved to inactive status. Withdrawn applications and those that remain incomplete following the 90-day deadline will be automatically moved to inactive status and the disposition of the application will follow the board's published records disposition schedule.

R. 515:20-7-1 (pre-pardon investigation) – provides that all information in the pardon application must be verified to ensure that all eligibility criteria are satisfied and all required information is complete. The pardon application review process can last six months to one year prior to placement on a docket.

R. 515:20-15-1 (board recommendation) – after the pardon application is reviewed, the board will vote to either recommend or deny a pardon. There are no limitations on the factors that the board may consider in making its recommendation to the governor. If a favorable vote is received, the board's recommendation, the pardon

<u>OKLAHOMA</u>	
Pardon provisions, cont'd	<p>application and any protests and support letters, and a draft pardon certificate will be forwarded to the governor within 30 days.</p> <p>R. 515:20-15-3 (governor review and action) – after the board has recommended a pardon, the governor has 90 days to determine whether to grant or deny the pardon. If the governor grants the pardon request, the pardon certificate will be signed as approved. If the pardon is denied, the governor will indicate denied on the certificate. The governor will file granted and denied pardon certificates with the Oklahoma Secretary of State.</p> <p>R. 515:20-17-2 (reapplication after denial) – if an applicant is denied a pardon by either the board or the governor, the applicant may reapply three years from the date of the denial.</p>
Is sealing of records available?	<p>Yes, see below. Oklahoma uses the terms “seal” and “expunge” interchangeably.</p> <p>22, § 305.4 (completion of program—records) – if an individual completes a deferred prosecution program, the state shall not file charges against the accused. The records shall be sealed and not released or viewed except on a limited basis by law enforcement or prosecution personnel for the purposes of determining if the accused has been diverted. The district attorney shall take all necessary measures to ensure that all of the records of the person remain confidential.</p>
Is expungement of records available?	<p>Yes. 22, § 18 (expungement of records—persons authorized) – provides that persons authorized to file a motion for expungement must be within one of the following categories:</p> <ol style="list-style-type: none"> (1) The person has been acquitted; (2) The conviction was reversed with instructions to dismiss by an appellate court or an appellate court reversed the conviction and the prosecuting agency subsequently dismissed the charge; (3) The factual innocence of the person was established by the use of DNA evidence subsequent to conviction, including a person who has been released from prison at the time innocence was established; (4) The person has received a full pardon by the governor for the crime for which the person was sentenced;

OKLAHOMA**Is expungement of records available?, cont'd**

- (5) The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested, are filed and the statute of limitations has expired or the prosecuting agency has declined to file charges;
- (6) The person was under 18 years of age at the time the offense was committed and the person has received a full pardon for the offense;
- (7) The person was charged with one or more misdemeanor or felony crimes, all charges have been dismissed, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person and the statute of limitations for refiling the charge(s) has expired or the prosecuting agency confirms that the charge(s) will not be refiling; provided, however, this category shall not apply to charges that have been dismissed following the completion of a deferred judgment or delayed sentence;
- (8) The person was charged with a misdemeanor, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person and at least one year has passed since the charge was dismissed;
- (9) The person was charged with a nonviolent felony not listed in tit. 57, § 571, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person, and at least five years have passed since the charge was dismissed;
- (10) The person was convicted of a misdemeanor offense, the person was sentenced to a fine of less than \$501 without a term of imprisonment or a suspended sentence, the fine has been paid or satisfied by time served in lieu of the fine, the person has not been convicted of a felony and no felony or misdemeanor charges are pending against the person;
- (11) The person was convicted of a misdemeanor offense, the person was sentenced to a term of imprisonment, a suspended sentence or a fine in an

OKLAHOMA**Is expungement of records available?, cont'd**

amount greater than \$500, the person has not been convicted of a felony, no felony or misdemeanor charges are pending against the person, and at least five years have passed since the end of the last misdemeanor sentence;

(12) The person was convicted of a nonviolent felony offense not listed in tit. 57, § 571, the person has not been convicted of any other felony, the person has not been convicted of a separate misdemeanor in the last seven years, no felony or misdemeanor charges are pending against the person, and at least five years have passed since the completion of the sentence for the felony conviction;

(13) The person was convicted of not more than two felony offenses, none of which is a felony offense listed in tit. 21, § 13.1 or any offense that would require the person to register pursuant to the sex offenders registration act, no felony or misdemeanor charges are pending against the person, and at least 10 years have passed since the completion of the sentence for the felony conviction;

(14) The person was charged with not more than two felony offenses and the charges were dismissed following the successful completion of a deferred judgment or delayed sentence, none of which were felony offenses listed in tit. 21, § 13.1 or would require the person to register pursuant to the provisions of the sex offenders registration act, no felony or misdemeanor charges are pending against the person, and at least 10 years have passed since the charges were dismissed;

(15) The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization; or

(16) The person was convicted of a nonviolent felony offense not listed in tit. 57, § 571 which was subsequently reclassified as a misdemeanor, the person is not currently serving a sentence for a crime in this state or another state, at least 30 days have passed since the completion or commutation of the sentence for the crime that was reclassified, any restitution ordered by the court has been satisfied in

OKLAHOMA**Is expungement of records available?, cont'd**

full, and any treatment program ordered by the court has been successfully completed, including any person who failed a treatment program which resulted in an accelerated or revoked sentence that has since been successfully completed or the person can show successful completion of a treatment program at a later date.

Provides that “expungement” shall mean the sealing of criminal records, as well as any public civil record, involving actions brought by and against the state of Oklahoma arising from the same arrest, transaction, or occurrence. Provides that a fully sealed expunged record shall not be available to the public or to law enforcement. Such records may be retained in the state criminal history repository but shall only be accessible to designated employees of the Bureau of Investigation for research and statistical purposes. A partially sealed expunged record shall not be available to the public but shall be available to law enforcement agencies for law enforcement purposes.

22, § 19 (sealing and unsealing of records—procedure) – any person qualified under § 18 of this title may petition the appropriate court for the sealing of all or any part of the record, except basic identification information. If a petitioner requests expungement for multiple offenses in one county, each of which would qualify for expungement if processed sequentially, the expungements may be considered under a single petition.

Provides that, upon a finding that the harm to privacy of the person or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing nor maintaining the records by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records. Any order entered under this subsection shall specify those agencies to which such order shall apply.

Upon entry of an order to seal records, or any part thereof, or upon an automatic expungement (see below), the subject actions shall be deemed never to have occurred, and the

OKLAHOMA**Is expungement of records available?, cont'd**

person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person. Inspection of the records may thereafter be permitted by the court only upon petition by the person in interest, the attorney general, or the prosecuting agency, and only to those persons and for such purposes named in such petition.

Provides that nothing in this section shall be construed to authorize the physical destruction of any criminal justice records. Sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document. District court index reference of sealed material shall be destroyed, removed, or obliterated. Any record ordered to be sealed pursuant to this section, if not unsealed within 10 years of the expungement order, may be obliterated or destroyed at the end of the 10-year period. Any offense that has been expunged shall not be treated as a prior offense in determining whether another offense qualifies for an expungement under § 18 of this title.

Subsequent to the sealing of records, the prosecuting agency, arresting agency, Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing such records. If, upon hearing, the court determines that there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

Provides that nothing in this section shall prohibit the introduction of evidence regarding actions sealed at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony.

22, § 19a (arrest or charge as result of identity theft—expungement on motion of court, district attorney, or defendant) – notwithstanding any provision of §§ 18 or 19, when a charge is dismissed because the court finds that the defendant has been arrested or charged as a result of the defendant's name or other identification having been appropriated or used without the defendant's consent or authorization by another person, the court dismissing the

OKLAHOMA**Is expungement of records available?, cont'd**

charge may, upon motion of the district attorney or the defendant or upon the court's own motion, enter an order for expungement of law enforcement and court records relating to the charge. The order shall contain a statement that the dismissal and expungement are ordered pursuant to this section.

22, § 991c – upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilty and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a seven-year period, except as authorized under this section.

Upon completion of the conditions of the deferred judgment, and upon a finding by the court that the conditions have been met and all fines, fees, and monetary assessments have been paid as ordered, the defendant shall be discharged without a judgment of guilt, and the court shall order the verdict or plea of guilty or plea of nolo contendere expunged from the record, and the charge shall be dismissed with prejudice to any further action. The procedure to expunge the record of the defendant shall be as follows:

- (1) All references to the name of the defendant shall be deleted from the docket sheet;
- (2) The public index of the filing of the charge shall be expunged by deletion, mark-out, or obliteration;
- (3) Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;
- (4) No information concerning the confidential file shall be revealed or released, except upon written order of a judge or upon written request of the named defendant to the court clerk for the purpose of updating the criminal history record of the defendant with the Oklahoma State Bureau of Investigation; and
- (5) Defendants qualifying under § 18 may petition the court to have the filing of the indictment and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of § 18.

<u>OKLAHOMA</u>	
Is expungement of records available?, cont'd	Records expunged pursuant to this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes and shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of such records.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. 22, § 18 (expungement of records—persons authorized) – provides that, beginning three years after November 1, 2022, and subject to the availability of funds, individuals with clean slate eligible arrest records shall be eligible to have their arrest records sealed automatically. “Clean slate eligible arrest records” means a case where each charge within the record meets one of the following criteria:</p> <ol style="list-style-type: none"> (1) Records described in subsection A, paragraph 1-6, 14, or 15 (see above) of this section; (2) Records in (A)(7) of this section where the prosecuting agency has declined to file charges, and the record is a single-source record; or (3) Records described in subsection A, paragraph 8, 10, or 11 where the record is a single-source record. <p>Records expunged pursuant to subsection A, paragraphs 4 and 8-15 of this section shall be partially sealed so that such records are not available to the public but remain available to law enforcement agencies for law enforcement purposes. Records expunged pursuant to subsection A, paragraphs 8-13 shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of the records. Records expunged pursuant to paragraph 4, 6, 12, or 13 may also include the sealing of Pardon and Parole Board records related to an application for a pardon. Such records shall be sealed to the public but not to the board.</p> <p>22, § 19 (sealing and unsealing of records—procedure) – the process for the automatic expungement of a clean slate eligible arrest record is as follows:</p> <ol style="list-style-type: none"> (1) On a monthly basis, the Oklahoma State Bureau of Investigation shall identify arrest records which are

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>clean slate eligible by conducting a search of the criminal history repository records of the bureau;</p> <p>(2) The bureau shall, on a monthly basis, provide a list of clean slate eligible arrest records to the prosecuting agency and the arresting agency;</p> <p>(3) The prosecuting agency, arresting agency, and the bureau may, no later than 45 days from the day on which notice is transmitted, object to an automatic expungement and such objection shall be transmitted to all parties. An objection may be made for any of the following reasons: (a) after reviewing the record, the agency believes the arrest record does not meet the definition of a clean slate eligible arrest record; (b) the individual has not paid court-ordered restitution to the victim; or (c) the agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible arrest record is continuing to engage in criminal activity, whether charged or not charged, within or outside the state;</p> <p>(4) If an agency objects within 45 days of the day on which notice is transmitted, the record shall not be expunged. Once a year, the bureau shall electronically submit a report to the legislature with a list of all cases where a record was not expunged pursuant to this paragraph; and</p> <p>(5) After 45 days pass from the day on which the notice is sent, the bureau shall provide to the courts a list of all cases where responses from all parties were received and no parties objected. The court shall review this list and provide to all agencies that have criminal history records a signed expungement order for all cases approved. Upon receipt of a signed expungement order, each agency shall seal the relevant records.</p> <p>Nothing in this section precludes an individual from filing a petition for expungement that are eligible for automatic expungement if automatic expungement has not occurred pursuant to this section. It also does not preclude a person from requesting the unsealing of records.</p>
Does the state offer a certificate of relief or similar document?	No.

OKLAHOMA**Are drug convictions eligible for relief?**

Yes. 62, § 2-410 – provides that when a person who has not previously been convicted of an offense under this act or under any statute of the United States or any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty or nolo contendere to or is found guilty of a violation of the controlled substance act, the court may, unless otherwise prohibited by law, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the person on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against the person. Discharge and dismissal shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal may occur only once with respect to any person.

Provides that any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, or any other public or private purposes; provided, however, that a plea of guilty or nolo contendere or a finding of guilt under this section shall constitute a conviction of the offense for the purpose of the controlled substances act or any other criminal statute under which the existence of a prior conviction is relevant for a period of 10 years following the completion of any court imposed probationary term, provided that the person has not subsequently been convicted of a misdemeanor involving moral turpitude or a felony. Records expunged pursuant to this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes and shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of the records. The provisions of this section do not apply to any person who pleads guilty or nolo

<u>OKLAHOMA</u>	
Are drug convictions eligible for relief?, cont'd	contendere to or is found guilty of a violation of the trafficking in illegal drugs act or the drug money laundering and wire transmitter act.
Miscellaneous provisions	<p>22, § 19b (Oklahoma Identity Theft Passport program) – provides that a person who has been the victim of identity theft and has obtained (a) an order for expungement or sealing of records on grounds that the person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who appropriated or used the person’s name or other identification without consent or authorization; or (b) an order for expungement and sealing of records from a court that dismissed a charge against the person on such grounds. The Oklahoma State Bureau of Investigation shall issue the identity theft passport unless it finds reasonable cause not to issue the passport.</p> <p>Upon issuance of an identity theft passport, the bureau shall notify the Department of Public Safety. The passport shall be attached to any records maintained by the bureau or department, including criminal history records for purposes of criminal background checks and law enforcement telecommunications checks. The record of an identity theft passport shall be sealed except to law enforcement authorities.</p>
Recently proposed legislation	None.

<u>OREGON</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • OR. CONST. Art. V, § 14 (West 2024) (power to grant reprieves, commutations, and pardons; remission of fines and forfeitures) • OR. REV. STAT. ANN. §§ 137.223 and 137.225 (West 2024) (included within “Post-judgment Procedures”) • OR. REV. STAT. ANN. §§ 144.649 to 144.670 (West 2024) (collectively “Executive Clemency”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1995 (§ 144.660) • June 13, 2019 (§§ 144.650 to 144.655) • January 1, 2022 (§ 137.223) • September 1, 2024 (§ 137.225)
Pardon provisions	<p>Art. V, § 14 – vests the governor with the power to grant pardons, after conviction, for all offenses except treason, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislative assembly, at its next meeting, when the legislature shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall report the legislature at its next meeting each case of pardon granted, and the reasons for granting the same.</p> <p>§ 144.649 (granting reprieves, commutations, and pardons; remission of penalties and forfeitures) – provides that, upon such conditions and with such restrictions and limitations as the governor thinks proper, the governor may grant pardons, after conviction, for all crimes.</p> <p>§ 144.650 (notice of intention to apply for pardon, commutation, or remission; proof of service; duty of district attorney; review of pardon application by governor) – sets forth the individuals and entities to whom an application shall be served upon when application for pardon is made to the governor. Also sets forth the documents and other information required to be provided by such individuals and entities to the governor to assist in making a determination as to whether to grant or deny an application.</p> <p>Provides that, following receipt of an application for pardon, the governor shall not grant the application for at least 30 days. Upon the expiration of 180 days, if the governor has not granted the pardon, the application shall lapse. Any</p>

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Pardon provisions, cont'd	<p>further proceedings for pardon shall be pursuant only to further application and notice.</p> <p>§ 144.653 (pardon by governor; notice required; sealing of records; notice to victim) – provides that, when the governor grants a pardon, the governor or his or her designee shall notify the appropriate judge and district attorney within 10 days. Upon receipt of the notification, the judge shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation, or charge but excluding records of the pardon or documents filed with the secretary of state.</p> <p>§ 144.655 (request to seal records; confirmation of pardon; notice to victim) – provides that a person pardoned more than five years prior to June 13, 2019, may request, in writing, that the governor initiate the process of sealing records relating to the pardoned conviction. The request must include the date of the pardon, the crime of conviction, and the county in which the conviction occurred. Upon receipt of a request to seal records under this section, the governor or his or her designee shall confirm the information in the request and, upon confirmation, notify the appropriate presiding judge and district attorney. Upon receipt of notification, the judge shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation, or charge but excluding records of the pardon or documents filed with the secretary of state.</p> <p>§ 144.660 (communication to legislature by governor) – requires the governor to report to the legislature each pardon granted since the previous report required by this section. The report shall include, but not be limited to, the reason for granting the pardon, the name of the applicant, the crime of which the applicant was convicted, the sentence and its date, statements by the victim or any member of the victim's immediate family, a statement by the district attorney, photos of the victim, the autopsy report, if applicable, and the date of the pardon.</p>
Is sealing of records available?	Yes. See discussion of §§ 137.223 and 137.225 below.
Is expungement of records available?	No.

OREGON

Are any records eligible to be automatically sealed or expunged?

Yes. See discussion of §§ 144.653 and 144.655 above.

§ 137.223 (setting aside judgment of guilty except for insanity) – provides that a person who has been found guilty except for insanity of an offense for which, if convicted, the person could apply for entry of an order setting aside the conviction pursuant to § 137.225, may be motion apply to the court for entry of an order setting aside the judgment finding the person guilty except for insanity of the offense.

Sets forth the time periods after which a person can move for such an order, which range from 1-7 years.

If an objection to the motion is received, the court shall hold a hearing and may require the filing of such affidavits and the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the motion and enter an order as described in this section unless the court makes written findings, by clear and convincing evidence, that the circumstances and behavior of the person, from the date of the judgment the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety.

Provides that an order entered under this section shall state the original arrest charge and the charge for which the person was found guilty except for insanity. Upon entry of an order, the person, for purposes of the law, shall be deemed not to have been previously found guilty except for insanity, and the court shall issue an order sealing the records of the case, including the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

Upon the motion of any prosecutor or defendant involving records sealed under this section, supported by affidavit showing good cause, the court may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the judgment of guilty except for insanity.

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Are any records eligible to be automatically sealed or expunged?, cont'd

§ 137.225 (order setting aside conviction or record of arrest) – provides that at any time after the person becomes eligible as set forth in this section, any person convicted of an eligible offense who has fully complied with and performed the sentence of the court for the offense, and whose conviction is eligible under this section, may apply by motion to the court for an order setting aside the conviction.

Sets forth the time periods that must elapse for each class of crime before a person is eligible to apply for an order setting aside the conviction, which time periods range from 1-7 years. If no accusatory instrument is filed, the person may apply at any time after 60 days from the date the prosecuting attorney indicates that the state has elected not to proceed.

Additionally, a person may apply at any time after an acquittal or dismissal.

Provides that if an objection is received to a motion, the court shall hold a hearing and may require the filing of such affidavits and the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the motion and enter an order as described below unless the court makes written findings, by clear and convincing evidence, that the circumstances and behavior of the person, from the date of the conviction the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety. Upon granting the motion, the court shall enter an appropriate order. Upon entry of the order, for purposes of the law, the person shall be deemed not to have been previously convicted, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation, or charge.

The court shall grant a motion if no objection is received and shall enter an appropriate order. Upon the entry of the order, for purposes of the law, the person shall be deemed not to have been previously convicted, arrested, cited, or charged, and the court shall issue an order sealing all official records in the case, including the records of arrest, citation, or

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>charge, whether or not the arrest, citation, or charge resulted in a further criminal proceeding.</p> <p>Sets forth the convictions eligible and those that are ineligible for an order under this section. Also sets forth the time periods before which a person can file a motion under this section.</p> <p>Provides that upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest, citation, or charge record.</p> <p>Additionally, when an arrest, citation, or charge is set aside, a prosecuting attorney may, for the purpose of initiating a criminal proceeding within the statute of limitations, unseal the records sealed under this section by notifying the court with jurisdiction over the charge, record of arrest, or citation. The prosecutor shall notify the person who is the subject of the records of the unsealing.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • PA. CONST. Art. IV, § 9 (West 2023) (pardoning power; Board of Pardons) • 18 PA. STAT. AND CONS. STAT. ANN. §§ 9121 to 9125 (West 2024) (collectively “Dissemination of Criminal History Record Information”) • 35 PA. STAT. AND CONS. STAT. § 780-119 (West 2024) (expunging criminal records) • 37 PA. CODE §§ 81.201 to 81.304 (2024) (collectively “Board of Pardons”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • October 26, 1972 (§ 780-119) • April 19, 1997 (§§ 81.201 to 81.304) • November 4, 1997 (Art. IV, § 9) • June 28, 2019 (§ 9122.4) • February 12, 2024 (§§ 9121, 9122.1, 9122.5) • June 11, 2024 (§§ 9122, 9122.2, 9122.3)
Pardon provisions	<p>Art. IV, § 9 – provides that in all criminal cases except impeachment, the governor shall have power to grant pardons, but no pardon shall be granted except on the recommendation in writing of a majority of the Board of Pardons and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation of the board, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor, shall be delivered to the governor and a copy kept in the file of the lieutenant governor.</p> <p>§ 81.211 (clemency) – provides that the Board of Pardons hears and acts upon applications for pardons.</p> <p>§§ 81.221 to 81.228 set forth the provisions related to applications.</p> <ul style="list-style-type: none"> ➤ § 81.221 (forms) – applications shall be made on forms prescribed by the board. ➤ § 81.222 (filing) – requires the original application and 10 copies to be filed with the secretary of the board. ➤ § 81.223 (limitations on filing) – an application may not be filed before the expiration of 12 months from a final adverse decision on a prior application. If an application receives two consecutive adverse decisions, an applicant must wait 24 months from the last adverse decision.

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Pardon provisions, cont'd	<p>➤ § 81.224 (request for early filing) – a request for permission to file a subsequent application before the time provided in § 81.223 may be granted upon prior approval of at least three members of the board.</p> <p>§ 81.271 (request) – permits a request for reconsideration of any decision be made to the board. Requires the applicant to show a change in circumstances since the application was filed, or other compelling reasons, sufficient to justify reconsideration.</p> <p>§ 81.301 (recommendation) – an application for pardon shall be approved by the board at a public hearing by a majority vote of the members prior to delivery of the written recommendation to the governor for a decision. An application for a pardon of a death or life imprisonment sentence must be approved at a public hearing by a unanimous vote of the members, prior to delivery of the written recommendation to the governor for a decision.</p> <p>If it is the board's desire that the pardon be conditional, any recommended charter of pardon presented to the governor shall contain language stating that if it is later determined that the person has committed a probation or parole violation or convicted of a new criminal offense, the grant of clemency may be rendered null and void. The board will decide on a case-by-case basis whether to hold a public hearing regarding the suspected violation of the conditional pardon. After public hearing, a majority of the board may recommend to the governor that clemency be revoked.</p> <p>§ 81.303 (charter and warrant) – if the recommendation of the board is approved by the governor, the secretary will prepare the proper charter of pardon for the signature of the governor and for the attachment of the seal of the commonwealth and attestation of the secretary of the commonwealth.</p>
Is sealing of records available?	<p>Yes, referred to as "limited access." § 9122.1 (petition for limited access) – provides that, subject to the exceptions set forth in this section and notwithstanding any other provision in this chapter, upon petition of a person who has been free from conviction for a period of seven years for an offense punishable by one or more years in prison and who has completed payment of all court-ordered restitution and the</p>

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fee previously authorized to carry out the limited access and clean slate limited access provisions, the appropriate court may enter an order that criminal history record information maintained by a criminal justice agency pertaining to a qualifying misdemeanor or an ungraded offense which carries a maximum penalty of no more than five years be disseminated only to a criminal justice agency or as provided in § 9121.

Further provides that, upon petition of a person who has been free from conviction for a period of 10 years for an offense punishable by one or more years in prison and has completed payment of all court-ordered restitution and the fee previously authorized to carry out the limited access and clean slate limited access provisions, the appropriate court may enter an order that criminal history record information maintained by a criminal justice agency pertaining to a qualifying felony under this section be disseminated only to a criminal justice agency as provided in § 9121. Provides that, as used in this subsection, a qualifying felony is any of the listed offenses or an attempt, conspiracy, or solicitation to commit any of the listed offenses, excluding felonies of the first and second degrees. Sets forth the offenses ineligible for limited access under this section.

Provides that the court shall provide notice of the petition to the district attorney and, if no objection is timely filed, the court may grant the petition without further hearing if the requirements of this section have been met. Notice of an order for limited access shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received criminal history record information related to such conviction that access to such criminal history record has been limited by order of the court.

§ 9122.5 (effects of expunged records and records subject to limited access) – provides that, except if requested or required by a criminal justice agency, or if disclosure to non-criminal justice agencies is authorized or required by § 9121(b.1) and (b.2) (relating to general regulations), an individual may not be required or requested to disclose information about the individual's criminal history record that has been expunged or provided limited access under §

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Is sealing of records available?, cont'd	<p>9122.1 (relating to petition for limited access) or § 9122.2 (relating to clean slate limited access). An individual required or requested to provide information in violation of this section may respond as if the offense did not occur. This subsection shall not apply if federal law, including rules and regulations promulgated by a self-regulatory organization that has been created under federal law, requires the consideration of an applicant's criminal history for purposes of employment.</p> <p>Criminal history record information that has been expunged or provided limited access may not be used by any individual or non-criminal justice agency for employment, housing, or school matriculation purposes, except if required by federal law.</p> <p>Provides that an expunged record or a record subject to limited access under §§ 9122.1 or 9122.2 may not be considered a conviction that would prohibit the employment of a person under any law of this Commonwealth or under federal laws that prohibit employment based on state convictions to the extent permitted by federal law.</p> <p>A record subject to limited access under §§ 9122.1 or 9122.2 shall remaining part of a person's criminal history record information and shall be disclosed to a court for any relevant purpose in accordance with law, including sentencing.</p> <p>Notwithstanding any other provision of this chapter, the Pennsylvania Commission on Sentencing may maintain a list of the names and other criminal history record information of persons whose records are required by law, court rule, or court order to be expunged or subject to limited access under this chapter. The information shall be used solely for the purposes of conducting research and collecting and reporting statistical data under 42, § 2153, and may not be disclosed unless authorized or required by § 9121(b.1) and (b.2).</p>
Is expungement of records available?	<p>Yes. § 9121 (general regulations) – provides that criminal history record information shall be disseminated by the Pennsylvania State Police to an individual or noncriminal justice agency only upon request. Prior to disseminating such information, it shall extract the following information from the record:</p>

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Is expungement of records available?, cont'd	<p>(1) All notations of arrests, indictments, or other information relating to the initiation of criminal proceedings where three years have elapsed from the date of arrest, no disposition is indicated in the record, and nothing in the record indicates that proceedings seeking conviction remain pending.</p> <p>(2) All information related to a conviction and the arrest, indictment, or other information leading thereto, which is the subject of a court order for limited access as provided in § 9122.1 (relating to petition for limited access; see below).</p> <p>(3) All information relating to a conviction or non-conviction final disposition and the arrest, indictment, or other information leading to the arrest or indictment which is subject to a court order for limited access as provided for in § 9122.2 (relating to clean slate limited access; see above).</p> <p>A court or the Administrative Office of Pennsylvania Courts may not disseminate to an individual, a noncriminal justice agency, or an internet website any criminal history record information relating to a charge which is the subject of a court order for limited access as provided in §§ 9122.1 or 9122.2. Nothing in this paragraph shall permit a county clerk of courts or any other official to refuse access to criminal history record information related to convictions that have not been afforded limited access solely because one or more charges arising out of the same conduct or criminal episode have been afforded limited access, as provided in §§ 9122.1 or 9122.2 or nolle prossed, withdrawn, or dismissed.</p> <p>These provisions do not apply if the request is made by certain entities as listed in this section. Sets forth additional exceptions related to providing criminal history record information to certain agencies and/or employers listed in the section.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 9122 (expungement) – provides that criminal history record information shall be expunged when:</p> <p>(1) No disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement;

- (2) A court order requires that such nonconviction data be expunged;
- (3) A person has been granted an unconditional pardon for an offense in accordance with law;
- (4) A judicial determination has been made that a person is acquitted of an offense, if the person has been acquitted of all charges based on the same conduct or arising from the same criminal episode following a trial and a verdict of not guilty. This paragraph shall not apply to a partial acquittal. A judicial determination under this paragraph may only be made after the following: (a) the court provides notice in writing to the person and the Commonwealth that the person's criminal history record information will be automatically expunged pursuant to this section; (b) upon receipt of the notice, the Commonwealth shall have 60 days to object; (c) upon the filing of an objection, the court shall conduct a hearing, which may be waived by agreement of both parties and the court; and (d) following the hearing, or if no objection has been filed or the hearing waived, the court shall order that the person's criminal history record information be automatically expunged unless the court determines the expungement relates to the same conduct, arises from the same criminal episode, or otherwise relates to a partial acquittal. Expungement shall occur no later than 12 months from the date of acquittal.

Further provides that, on a quarterly basis, the Board of Pardons shall transmit a notice of the record of any conviction eligible for expungement pursuant to a pardon to the Administrative Office of Pennsylvania Courts. Upon receipt of such notice, the office shall transmit the record of any conviction eligible for expungement pursuant to a pardon to the appropriate court, which court shall order that the person's criminal history record information be expunged and forward notice to the central repository.

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Are any records eligible to be automatically sealed or expunged?, cont'd

Additionally, criminal history record information may be expunged when an individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for 10 years following final release from confinement or supervision, or when an individual who is the subject of the information has been dead for three years. Further, information may be expunged when an individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense.

Provides that a court shall not have the authority to order expungement of the defendant's arrest record where the defendant was placed on accelerated rehabilitative disposition for a violation of a list of certain sexual offenses when the victim was under 18 years of age.

Notwithstanding any other provision of law, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program or where the court has ordered expungement under this section. Such information shall be used solely for the purposes of determining subsequent eligibility for such programs, identifying persons in criminal investigations, or determining the grading of subsequent offenses. Such information shall be made available to any court or law enforcement agency upon request.

§ 9122.2 (clean slate limited access) – sets forth the records that are subject to limited access and conditions that must be met before the records are eligible. Provides that the Administrative Office of Pennsylvania Courts shall, on a monthly basis, transmit to the Pennsylvania State Police central repository the record of any conviction eligible for limited access under this section. If the central repository determines through a validation process that a record transmitted is not eligible for limited access relief or does not match data held in the repository, the state police shall notify

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>the office of this determination within 30 days of receiving the information.</p> <p>Upon the expiration of the 30-day period, the office shall remove from the list of eligible records any record for which the office received a notification of ineligibility or non-match with repository data. Each court of common pleas shall issue monthly an order for limited access for any record in its judicial district for which no notification of ineligibility was received by the office.</p> <p>A criminal history record that is the subject of an order for limited access shall be made available to a non-criminal justice agency only as provided for in § 9121.</p> <p>§ 9122.3 (exceptions) – sets forth the records that are ineligible for limited access to records under § 9122.2. Provides that nothing in this section shall preclude the filing of a petition for limited access under § 9122.1 if limited access is available under this section. An offense eligible for clean slate limited access under this section shall also be eligible for petition for limited access under § 9122.1.</p> <p>§ 9122.4 (order to vacate order for limited access) – provides that the prosecutor, with notice to the defendant and opportunity to be heard, may petition the court for an order to vacate an order for limited access granted under § 9122.2 if the court determines that the order was erroneously entered.</p> <p>Further provides that upon conviction of a misdemeanor or felony offense and motion of the prosecuting attorney, the court shall enter an order vacating any prior order for limited access pertaining to a record of the defendant, except under § 9122.2(a)(2).</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. § 780-119 – provides that any records of arrest or prosecution or both for a criminal offense under this act or the provisions previously governing controlled substances shall be promptly expunged from the official and unofficial arrest and other criminal records pertaining to that individual when the charges are withdrawn or dismissed or the person

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Are drug convictions eligible for relief?, cont'd	<p>is acquitted of the charges; provided, that such expungement shall be available as a matter of right to any person only once.</p> <p>Within five days after such withdrawal, dismissal, or acquittal, the court, in writing, shall order the appropriate keepers of criminal records (i) to expunge and destroy the official and unofficial arrest and other criminal records of that individual, to request in so far as they are able the return of such records as they have made available to federal and other state agencies, and to destroy such records on receipt thereof; and (ii) to file with the court within 30 days an affidavit that such records have been expunged and destroyed, together with the court's expunction order and to retain no copies thereof. Upon receipt of such affidavit, the court shall seal the same together with the original and all copies of its expunction order and shall not permit any person or agency to examine such sealed documents.</p> <p>Provides that the court shall file with the council a list of those persons whose records were expunged. The council shall maintain a confidential list, which may only be used for the purpose of determining eligibility of persons for the expunction provisions under this section and to be made available to any court upon request.</p> <p>Further provides that any expunged record of arrest or prosecution shall not hereafter be regarded as an arrest or prosecution for the purpose of any statute or regulation or license or questionnaire or any civil or criminal proceeding or any other public or private purpose. No person shall be permitted to learn of an expunged arrest or prosecution, or of the expunction, either directly or indirectly. Any person, except the person arrested or prosecuted, who divulges such information in violation of this subsection shall be guilty of a summary offense and shall, upon conviction thereof, be punished by imprisonment not exceeding 30 days or a fine not exceeding \$500 or both.</p>
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>RHODE ISLAND</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • R.I. CONST. Art. IX, § 13 (West 2024) (pardons) • 12 R.I. GEN. LAWS §§ 12-1-12 to 12-1-12.2 (West 2024) (included within “Identification and Apprehension of Criminals”) • 12 R.I. GEN. LAWS §§ 12-1.3-1 to 12-1.3-5 (West 2024) (collectively “Expungement of Criminal Records”) • 12 R.I. GEN. LAWS § 12-10-12 (West 2024) (filing of complaints) • 12 R.I. GEN. LAWS § 12-19-19 (West 2024) (sentencing on plea of guilty or nolo contendere—deferment of sentence) • 13 R.I. GEN. LAWS §§ 13-8.2-1 to 13-8.2-8 (West 2024) (collectively “Certificate of Recovery & Re-entry”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1993 (§ 12-1.3-4) • July 15, 2014 (§§ 13-8.2-1 to 13-8.2-8) • July 12, 2016 (§ 12-1-12.2) • September 28, 2017 (§ 12-19-19) • July 2, 2018 (§ 12-1.3-2) • July 3, 2021 (§§ 12-1-12, 12-1.3-3) • June 28, 2022 (§ 12-1.3-5) • June 20, 2023 (§ 12-1-12.1) • June 26, 2024 (§ 12-1.3-1)
Pardon provisions	Art. IX, § 13 – vests the governor with the power, by and with the advice and consent of the senate, to exercise the pardoning power, except in cases of impeachment, to the same extent as such power is now exercised by the general assembly.
Is sealing of records available?	<p>Yes. § 12-1-12.1 (sealing of records of persons acquitted or otherwise exonerated by operation of law or by motion) – provides that any person who is acquitted or otherwise exonerated of all counts in a criminal case, including, but not limited to, dismissals not subject to the automatic sealing provisions of this section (see section on automatic sealing below for more information), or filing of a no true bill or no information, may file a motion for the sealing of his or her court records in the case.</p> <p>Provides that a hearing shall be held and the court, after the hearing at which all relevant testimony and information shall be considered, finds that the person is entitled to the sealing of the records, it shall order the sealing of the court records of the person in that case. The clerk of the court shall, within 45 days of the order granting the motion, place under seal the court records in the case in which the acquittal, dismissal, no</p>

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Is sealing of records available?, cont'd	<p>true bill, no information, or other exoneration has been entered.</p> <p>Notwithstanding any other provision of this section, in all cases involving a filing subsequent to a plea of not guilty, guilty, or nolo contendere to a charge involving domestic violence, the court having jurisdiction over the case shall retain the records of the case for a period of three years from the date of filing. The records shall not be expunged or sealed for a period of three years from the date of the filing.</p>
Is expungement of records available?	<p>Yes. § 12-1.3-1 (definitions) – defines “expungement of records and records of conviction” to mean the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation.</p> <p>§ 12-1.3-2 (motion for expungement) – provides that any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place; provided, that all outstanding court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary obligations have been paid, unless such amounts are reduced or waived by order of the court.</p> <p>Notwithstanding the definition of “first offender,” any person who has been convicted of more than one but fewer than six misdemeanors and has not been convicted of a felony may file a motion for the expungement of any or all of those misdemeanors by filing a motion in the appropriate court. Sets forth the offenses ineligible for expungement under this subsection.</p> <p>Subject to the requirements of this section, a person may file a motion relating to a misdemeanor conviction after five years and multiple misdemeanors after 10 years from the date of the completion of his or her sentence and after 10 years for a felony. A person may file a motion relating to a deferred sentence upon its completion, after which the court will hold a hearing on the motion. A person may file a motion related to an offense that has been decriminalized subsequent to the date of their conviction, after which the</p>

RHODE ISLAND**Is expungement of records available?, cont'd**

court will hold a hearing on the motion in the court in which the original conviction took place.

§ 12-1.3-3 (motion for expungement—notice—hearing—criteria for granting) – provides that a court, after a hearing on a motion for expungement at which all relevant testimony and information shall be considered, may, in its discretion, order the expungement of the records of conviction of the person filing the motion if it finds:

- (1) That in the five years preceding the filing of the motion if the conviction was for a misdemeanor, or in the 10 years preceding if a felony, the petitioner has not been convicted of or arrested for any felony or misdemeanor; there are no criminal proceedings pending against the person; the person does not owe any outstanding court-imposed or court-related fees, fines, costs, assessments, or charges, unless such amounts are reduced or waived by order of the court; and he or she has exhibited good moral character;
- (2) That, if the person was subject to a deferred sentence, the court finds that he or she has complied with all of the terms and conditions;
- (3) That the petitioner's rehabilitation has been attained to the court's satisfaction and the expungement of records is consistent with the public interest.

If the court grants the motion, it shall order all records and records of conviction expunged and all index and other references to it removed from public inspection. A copy of the order shall be sent to any law enforcement agency or other agency known by either the petitioner, the department of the attorney general, or the court to have possession of the records.

§ 12-1.3-4 (effect of expungement of records—access to expunged records—wrongful disclosure) – provides that any person having his or her record expunged shall be released from all penalties and disabilities resulting from the crime of which he or she had been convicted, except, upon conviction of any subsequent crime, the expunged conviction may be considered as a prior conviction may be considered as a prior conviction in determining the sentence to be imposed.

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Is expungement of records available?, cont'd	<p>In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this chapter may state that he or she has never been convicted of the crime, with the exception of certain listed entities.</p> <p>Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged, any custodian of records relating to that crime shall not disclose the existence of the records upon inquiry from any source unless the inquiry is that of the individual whose record was expunged, a sentencing court following the conviction of the individual for the commission of a crime, or to certain listed entities. The custodian of records shall only release or allow access to records pursuant to this section by order of a court. Any agency and/or person who willfully refuses to carry out the expungement of the records or willfully releases or allows access to records of conviction, knowing them to have been expunged, shall be civilly liable.</p> <p>§ 12-19-19 – provides that when any person is arraigned before the superior court and pleads guilty or nolo contendere, he or she may be at any time sentenced by the court; provided, that if the court formally defers sentencing, then the person and the court shall enter into a written deferral agreement to be filed with the clerk of the court. If a person, after the completion of the deferment period, is determined to have complied with all the terms and conditions of the deferral agreement including, but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and restitution to victims of crime, then the person shall become immediately eligible for consideration for expungement pursuant to the provisions of §§ 12-1.3-2 and 12-1.3-3.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 12-1-12 (destruction or sealing of records of persons acquitted or otherwise exonerated) – provides that any fingerprint, photograph, physical measurements, or other record of identification taken of a person under arrest prior to the final conviction of the person for the offense then charged shall be destroyed by all offices or departments having the custody or possession within 60 days after an acquittal, dismissal, no true bill, no information, or the</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

person has otherwise been exonerated from the offense with which he or she is charged, and the clerk of the court where the exonerated person has taken place shall, consistent with § 12-1-12.1, place under seal all records of the person in the case including all records of the division of criminal identification.

Provides that the requirements of this section also apply to individuals detained by police but not arrested or charged with an offense, or to individuals against whom charges have been filed by the court, and the period of such filing has expired.

Further provides that, notwithstanding any other provision of this section, any person charged with a complaint for a crime involving domestic violence where the complaint was filed upon a plea of not guilty, guilty, or nolo contendere must wait a period of three years from the date of filing before the records associated with the charge can be expunged, sealed, or otherwise destroyed.

§ 12-1-12.1 (sealing of records of persons acquitted or otherwise exonerated by operation of law or by motion) – by operation of law, the court shall automatically seal the records of any criminal case that was dismissed pursuant to Rule of Criminal Procedure 48(a) related to filing a dismissal of an indictment, information, or complaint by the state's attorney. Records include all records of the division of criminal identification without the requirement of filing a motion under the following circumstances:

- (1) Cases dismissed pursuant to Rule 48(a) on or after January 1, 2023, shall be automatically sealed not less than 10 days and not more than 20 days after the dismissal; or
- (2) Cases dismissed prior to January 1, 2023, shall be sealed administratively by the court clerk at the request of the defendant and any sealing order of the district court as a result shall be sent electronically by the clerk of the court to the bureau of criminal identification within five days of the entry of the order and shall be carried out within 90 days of receipt of the order.

RHODE ISLAND

Are any records eligible to be automatically sealed or expunged?, cont'd

§ 12-1-12.2 (sealing of arrest records for wrongful arrest due to mistaken identity or any other reason—notification) – provides that any law enforcement agency, subsequent to the arrest of any person, that determines that such person was wrongfully or incorrectly arrested as a result of mistaken identity or any other reason, or wrongfully fingerprinted, photographed, or otherwise has generated any record of arrest for investigatory purposes and, as a result of such wrongful arrest, no charges have been filed in any court of this state, shall, within 60 days of such determination that the arrest was wrongful or without probable cause, seal all such arrest records and destroy all identifying information and indices of arrest including, but not limited to, photographs and fingerprints.

If the arresting agency has reported the arrest to other law enforcement agencies, such agency is required, within 60 days of making the determination that the arrest was wrongful or without probable cause, to notify all other agencies to which it has transmitted such identifying information and including, but not limited to, the state's bureau of criminal identification, the National Crime Information Identity Center, and/or any other state or federal agency that compiles, retains, or collects any arrest or identifying information of arrestees, that the arrest was wrongful and that any and all records transmitted or generated shall be sealed and/or destroyed as provided herein.

Provides that any such person arrested and not charged shall be entitled to have all records and indices of arrest sealed and/or destroyed as provided herein regardless of any prior record of arrest or conviction that may otherwise not be eligible for expungement or sealing.

Any person arrested, detained, or otherwise identified as a suspect, and who is thereafter exonerated consistent with the provisions contained herein, may deny, for any purpose, that the arrest ever occurred and under no circumstances shall such an arrestee be required to disclose the arrest for any purpose including, but not limited to, any application for employment, professional license, concealed weapons permit, or the purchase of a firearm or other weapon.

<u>RHODE ISLAND</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>§ 12-10-12 – provides that in the event a complaint was originally filed under this section subsequent to a defendant’s plea of guilty or nolo contendere to the charges, the court, if it finds there to have been a violation but does not impose a sanction, may sentence the defendant. In the event the court filed the complaint while the defendant maintained a plea of not guilty, if the court finds there to have been a violation but does not impose a sanction, it may proceed to the further disposition of the complaint according to law. If no action is taken on the complaint during the period of filing, the complaint shall be automatically expunged. No criminal record shall result.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 13-8.2-1 (certificate of recovery & re-entry established—findings of the general assembly and purposes) – establishes a certificate of recovery and re-entry for individuals that are convicted of a crime in which their legal status and ability to seek and maintain employment changes forever. Provides that individuals who have successfully completed their board-imposed sentences need to be able to reestablish themselves as law-abiding members of society and, at the same time, employers and other decision-makers need to have some reassurance of a person’s reliability. Provides that the intent and purpose of this chapter is to provide a process that would, in select and appropriate cases, allow the issuance of a certificate of recovery and re-entry. Said certificate, if granted by the parole board, would serve to relieve the petitioner, in appropriate cases, of some of the collateral consequences resulting from his or her criminal record. Said certificate shall serve as one determining factor as to whether the petitioner has been successful in his or her rehabilitation.</p> <p>§ 13-8.2-2 (definitions) – includes definitions for “eligible petitioner,” which means a person who has not been convicted of a crime or of an offense as defined in § 11-47-2(5) (crimes of violence) and who has not been convicted of more than one felony; and “certificate of recovery & re-entry,” which shall serve as one determining factor, consistent with concerns of public safety, of the person’s ability to obtain employment, professional licenses, housing, and other benefits and opportunities and, further, that said instrument shall serve as a determination that the person receiving it has successfully achieved his or her recovery and re-entry goals as provided in § 13-8.2-4.</p>

<u>RHODE ISLAND</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>§ 13-8.2-3 (rules of construction) – provides that, for purposes of this chapter, the following rules of construction, facts, and circumstances shall apply:</p> <ol style="list-style-type: none"> (1) Two or more convictions of felonies charged in separate counts of one indictment or information shall be deemed to be one conviction; (2) Two or more convictions of felonies charged in two or more separate indictments or information, where disposition of all indictments or information takes place on the same date, shall be deemed to be one conviction; and (3) A plea or verdict of guilty upon which a sentence of probation, conditional discharge, or supervision has been imposed shall be deemed to be a conviction. <p>§ 13-8.2-4 (procedure for issuance of certificate) – provides that the board shall have the following procedures for certificate of recovery and re-entry hearings:</p> <ol style="list-style-type: none"> (1) To hear petitions from individuals seeking an order granting a certificate; (2) To establish the minimum period of recovery and re-entry for individuals seeking a certificate as follows: <ol style="list-style-type: none"> (a) where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period shall be one year; (b) where the most serious crime is a non-violent felony conviction, the minimum period shall be three years; and (c) the minimum period shall be measured either from the date of the payment of any fine imposed upon him or her, or from the date of his or her release from the institutional facility, custody by parole or home confinement, whichever is later; (3) To classify criminal acts committed outside the state as acts committed within the state based on the non-violent nature of the criminal acts and the maximum sentence that could have been imposed based upon such conviction pursuant to the laws of such foreign jurisdiction; and (4) To use its discretion as to the holding of an open hearing or an individual conference on any matter

<u>RHODE ISLAND</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>relevant to the granting of the application and the taking of testimony under oath.</p> <p>§ 13-8.2-5 (powers and duties of the board) – provides that the board shall have the power to issue and establish criteria to determine eligibility for issuance of the certificate. It shall have the power, by an affirmative vote of a majority of the members of the board, to issue a certificate to any person previously convicted of a crime in any jurisdiction. It shall also have the power to create all applications and certificates necessary for the purposes of this chapter upon forms prescribed by the board, which forms shall be distributed by the chairman of the board.</p> <p>Provides that any information contained within a certificate shall be limited to the applicant's name, date of birth, certificate number, issue date, a statement that the board has determined that the individual has met the necessary standards of recovery and re-entry, and authentication phone number for the department of corrections.</p> <p>§ 13-8.2-6 (limitations and restrictions of certificate) – provides that nothing in this chapter shall be deemed destruction or sealing of criminal records, expungement of criminal records, or to alter or limit or affect the manner of applying for pardons to the governor.</p> <p>Further provides that the certificate shall not be deemed to prevent:</p> <ol style="list-style-type: none"> (1) Any judicial proceeding, administrative, licensing, or other body or authority from relying upon the conviction as the basis for the exercise of its discretionary power to suspend, revoke, or refuse to issue or renew any license, permit, or other authority or privilege; (2) Or limit the introduction of evidence of a prior conviction for purposes of impeachment of a witness in a judicial or other proceeding where otherwise authorized by the applicable rules of evidence; or (3) The enhancement from misdemeanor to felony when charging an individual with a criminal offense, subsequent to the conviction on which the certificate

<u>RHODE ISLAND</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>was issued, when a prior conviction mandates such enhancement of subsequent charges.</p> <p>§ 13-8.2-8 (immunity for third-party individuals—civil and criminal) – provides that an individual or entity that denies employment, professional licensing, housing, or other benefits or opportunities to a holder of a certificate of recovery and re-entry on the basis of a criminal records check shall not be liable for civil damages or subject to any claim, demand, cause of action, or proceeding of any nature as a result of such denial.</p>
Are drug convictions eligible for relief?	<p>Yes. § 12-1.3-5 (expungement of marijuana records) – any person with a prior civil violation, misdemeanor, or felony conviction for possession only of a marijuana offense that has been decriminalized subsequent to the date of conviction shall be entitled to have the conviction automatically expunged. Records shall be expunged pursuant to procedures and a timeline to be determined by the chief justice; however, all eligible records shall be expunged before July 1, 2024.</p> <p>Provides that eligible expungement of convictions and civil adjudications pursuant to this section shall be granted notwithstanding the existence of prior arrests, convictions, or civil adjudications from crimes of violence, pending criminal proceedings, and outstanding fees, fines, costs, assessments, or charges, which shall be waived.</p> <p>Nothing in this section shall be construed to restrict or modify a person's right to have their records expunged or diminish or abrogate any rights or remedies otherwise available to the individual.</p> <p>In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose conviction or civil adjudication has been expunged may state that he or she has never been convicted or found to be a civil violator, except the person shall disclose the fact to certain listed entities.</p>
Miscellaneous provisions	None.
Recently proposed legislation	Yes. See Pending State Legislation .

<u>SOUTH CAROLINA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • S.C. CONST. Art. IV, § 14 (West 2024) (powers of governor as to clemency) • S.C. CODE ANN. §§ 17-1-40 and 17-1-45 (West 2024) (included within “General Provisions”) • S.C. CODE ANN. § 17-25-322 (West 2024) (restitution to crime victim by person convicted of crime; hearing; determination of method, manner, and amount; entry of order) • S.C. CODE ANN. § 17-22-150 (West 2024) (disposition of charges against offenders accepted for intervention program) • S.C. CODE ANN. §§ 17-22-910 to 17-22-960 (West 2024) (collectively “Uniform Expungement of Criminal Records”) • S.C. CODE ANN. §§ 22-5-910 to 22-5-930 (West 2024) (collectively “Expungement of Criminal Records”) • S.C. CODE ANN. §§ 24-21-910 to 24-21-1000 (West 2024) (collectively “Pardons; Commutation of Death Sentences”) • S.C. CODE ANN. § 44-53-450 (West 2024) (conditional discharge; eligibility for expungement)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1952 (§ 24-21-920) • 1981 (§§ 24-21-940, 24-21-980, 24-21-1000) • 1992 (§ 17-22-150) • 1993 (§ 24-21-930) • 1995 (§§ 24-21-950, 24-21-990) • June 2, 2009 (§§ 17-1-45, 17-22-920, 17-22-930) • July 1, 2009 (§ 24-21-960) • June 2, 2010 (§ 44-53-450) • May 16, 2016 (§§ 17-1-40, 17-22-950) • December 27, 2018 (§§ 17-22-910, 17-22-940, 17-22-960, 22-5-930) • March 7, 2024 (§ 22-5-910)
Pardon provisions	<p>Art. IV, § 14 – vests the governor with the power only to grant reprieves and to commute a sentence of death to that of life imprisonment. The granting of all other clemency shall be regulated and provided for by law.</p> <p>§ 17-25-322 – provides that an offender may not be granted a pardon until the restitution and collection of fees required by the restitution order have been paid in full.</p>

SOUTH CAROLINA**Pardon provisions, cont'd**

§ 24-21-920 (clemency in other cases) – in all other cases that those of reprieve or commutation of death sentence, the right of granting clemency shall be vested in the board.

§ 24-21-930 (order of pardon) – provides that an order of pardon must be signed by at least two-thirds of the members of the board. Upon the issue of the order by the board, the director, or one lawfully acting for him, must issue a pardon order which provides for the restoration of the pardon applicant's civil rights.

§ 24-21-940 (definitions) – defines “pardon” to mean that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty, or whatever else the law has provided.

§ 24-21-950 (guidelines for determining eligibility for pardon) – sets forth the guidelines that must be utilized by the board when determining when an individual is eligible for pardon consideration.

§ 24-21-960 (pardon application fee; reapplication after denial) – each pardon application must be accompanied by a pardon application fee of \$100. Any individual who has an application for pardon considered but denied must wait one year from the date of denial before filing another pardon application and fee.

§ 24-21-980 (pardon obtained through fraud) – once delivered, a pardon cannot be revoked unless it was obtained through fraud. If a pardon is obtained through fraud, it is void.

§ 24-21-990 (civil rights restored upon pardon) – a pardon shall fully restore all civil rights lost as a result of a conviction, including the right to be licensed for any occupation requiring a license.

§ 24-21-1000 (certificate of pardon) – for those applicants to be granted a pardon, a certificate of pardon shall be issued by the board stating that the individual is absolved from all legal consequences of his crime and conviction, and that all his civil rights are restored.

SOUTH CAROLINA**Is sealing of records available?**

Yes. § 17-1-40 (expungement; retention of certain information by law enforcement or prosecution agencies) – provides that “under seal” means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing such agencies, unless disclosure is allowed by a court order.

Provides that if a person’s record is expunged pursuant to law because the person was charged with a criminal offense, or was issued a courtesy summons, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:

- (1) Law enforcement and prosecution agencies shall retain such records under seal for three years and 120 days. An agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure absent a court order.
- (2) Detention and correctional facilities shall retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years and 120 days from the date of the expungement order to manage the facilities’ statistical and professional information needs, and to defend the facilities and the facilities’ employees during litigation proceedings, except that when an action, complaint, or inquiry has been initiated, the records and other reports and files may be retained as needed to address such action, complaint, or inquiry. The information is not a public document and is exempt from disclosure absent a court order. At the end of the three years and 120 days from the date of

SOUTH CAROLINA**Is sealing of records available?, cont'd**

the expungement order, the records must be destroyed unless they are being retained to address an action, complaint, or inquiry.

A municipal, county, or state agency, or an employee of such agency, that intentionally violates this subsection is guilty of contempt of court.

Provides that nothing in this section requires the department of probation, parole, and pardon services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to § 44-53-450.

Similarly, this section provides that if a person's record is expunged pursuant to law because the person was charged with a criminal offense or was issued a courtesy summons and the charge was discharged, proceedings were dismissed, or the person was found not guilty of the charge, then law enforcement and prosecution agencies shall retain the unredacted incident and supplemental reports, and investigative files under seal for three years and 120 days. An agency may retain the information indefinitely for purposes of ongoing or future investigations, other law enforcement or prosecution purposes, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document, is exempt from disclosure absent court order, and is not subject to an order for destruction of arrest records.

Provides that if a request is made to inspect or obtain the incident reports pursuant to the South Carolina freedom of information act, the law enforcement agency shall redact the name and other identifying information from the reports provided to the person or entity making the request.

Also provides that if a person other than the person whose record was expunged is charged with the offense, a prosecution agency may provide the attorney representing that other person with unredacted incident and supplemental reports. The attorney shall not provide copies of the reports to a person or entity nor share the contents of the reports with a person or entity except during judicial proceedings or as allowed by court order.

<u>SOUTH CAROLINA</u>	
Is sealing of records available?, cont'd	<p>A person who intentionally violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than \$100 or imprisoned not more than 30 days, or both.</p> <p>Provides that, unless there is an act of gross negligence or intentional misconduct, nothing in this section gives rise to a claim for damages against the state, a state employee, a political subdivision of the state, an employee of a political subdivision of the state, a public officer, or other persons.</p>
Is expungement of records available?	<p>Yes. § 17-1-45 (expungement notice requirement) – requires the South Carolina Court Administration to include on all bond paperwork and courtesy summonses the following notice: “If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.”</p> <p>§ 17-22-150 – provides that, in the event an individual successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of the charge or charges pending against the individual. Upon such disposition, the individual may apply to the court for an order to destroy all official records relating to the arrest and no evidence of the records pertaining to the charge may be retained by any municipal, county, or state entity or any individual, except as permitted by law. The effect of the order is to restore the person, in the contemplation of the law, to the status he or she occupied before the arrest. No person as to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest in response to any inquiry made of him for any purpose.</p> <p>§ 17-22-910 (applications for expungement; administration) – provides that applications for expungement of all criminal records must be administered by the solicitor’s office in each circuit in the state as authorized pursuant to law [includes list of 12 statutes that authorize expungement for specific offenses]. Further provides that a person’s eligibility for expungement of an offense contained in this section, or authorized by any other provision of law, must be based on the offense that the person pled guilty to or was convicted of committing and not on an offense for which the person may</p>

SOUTH CAROLINA**Is expungement of records available?, cont'd**

have been charged. In addition, if an offense for which a person was convicted is subsequently repealed and the elements of the offense are consistent with an existing similar offense which is currently eligible for expungement, a person's eligibility for expungement of an offense must be based on the existing similar offense. Provides that the provisions of this section apply retroactively.

§ 17-22-920 (direction of expungement process inquiries to county solicitor's office) – requires the clerk of the court to direct all inquiries concerning the expungement process to the corresponding solicitor's office to make application for expungement.

§ 17-22-930 (obtaining and mandatory use of expungement form) – requires a person applying for expungement to obtain the appropriate form from the solicitor's office in the judicial circuit where the charge originated. Provides that the use of this form is mandatory and to the exclusion of all other expungement forms.

§ 17-22-940 (fees; establishment of expungement process; requirements and duties of solicitor and SLED) – provides that an applicant for expungement shall pay an administrative fee in the amount of \$250 per individual order, which is nonrefundable regardless of whether the offense is later determined to be statutorily ineligible for expungement or the solicitor or his designee does not consent to the expungement.

Provides that any person who applies for an expungement of general sessions charges pursuant to § 17-1-40 is exempt from payment of the administrative fee unless the charge was dismissed, discharged, or nolle prossed as part of the plea arrangement under which the defendant pled guilty and was sentenced to other charges. Further provides that a filing fee may not be charged by the clerk's office to an applicant seeking expungement of a criminal record pursuant to § 17-1-40 when the charge was discharged, dismissed, nolle prossed, or the applicant was acquitted.

The solicitor has the discretion to waive the \$250 fee only in those cases where it is determined that a person has been falsely accused of a crime as a result of identity theft.

SOUTH CAROLINA**Is expungement of records available?, cont'd**

Requires the solicitor's office to implement policies and procedures consistent with this section to ensure that the expungement process is properly conducted including, but not limited to:

- (1) Assisting the applicant in completing the expungement order form;
- (2) Collecting from the applicant and distributing to the appropriate agencies separate certified checks or money orders for charges prescribed by this article;
- (3) Collecting funds from individuals choosing to contribute to the fund to defray the costs of administrative fees for expungements;
- (4) Coordinating with the South Carolina Law Enforcement Division (SLED) to confirm that the charge is statutorily appropriate for expungement;
- (5) Obtaining and verifying the presence of all necessary signatures;
- (6) Filing the completed expungement order with the clerk of the court; and
- (7) Providing copies of the order to all governmental agencies that must receive the order including, but not limited to, the arresting law enforcement agency, detention facility or jail, solicitor's office, magistrates or municipal court where the arrest warrant originated, magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged, the department of juvenile justice, SLED, and the applicant or his or her retained counsel.

Provides that, when charges are sought to be expunged pursuant to §§ 17-22-150(a), 17-22-530(A), 22-5-910, 44-53-450(b), or 17-22-1010, the appropriate person shall attest by signature on the application to the eligibility of the charge for expungement before the solicitor or his designee and then the judge signs the application for expungement.

Except in cases where charges are sought to be expunged pursuant to §§ 17-1-40, 17-22-150(a), 17-22-530(A), or 44-53-450(b), SLED shall verify and document that the criminal charges in all cases are appropriate for expungement before the application for expungement is signed.

SOUTH CAROLINA**Is expungement of records available?, cont'd**

Provides that each expungement order may only contain one charge to be expunged, unless expungement is sought for multiple charges occurring out of a single incident.

Further provides that nothing in this article precludes an applicant from retaining counsel to apply to the solicitor's office on his behalf of precludes retained counsel from initiating an action in circuit court seeking a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. In either event, retained counsel is responsible for the required fees.

§ 17-22-960 (expungement; employer immunity) – provides that any employer who employs a worker who has had an expungement shall not, at any time, be subject to any administrative or legal claim or cause of action related to the expunged offense. Except for criminal justice agencies, employers shall not use expunged information adversely against an employee. No information related to an expungement shall be used or introduced as evidence in any administrative or legal proceeding involving negligent hiring, negligent retention, or similar claims.

§ 22-5-910 (expungement of criminal records) – provides that, following a conviction for a crime carrying a penalty of not more than 30 days imprisonment or a fine of \$1,000, or both, or a first offense for unlawful possession of a firearm or weapon carrying a penalty of not more than one year or a fine of \$1,000, or both, the defendant may, three years from the date of the conviction, apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant. This section does not apply to an offense involving the operation of a motor vehicle.

Following a conviction for domestic violence in the third degree, five years following the date of conviction, the defendant may apply for an order expunging the records of the arrest and conviction and any associated bench warrant.

If the defendant has no other convictions during the relevant time period, the circuit court may issue an order expunging the records. After the expungement, SLED is required to

<u>SOUTH CAROLINA</u>	
Is expungement of records available?, cont'd	<p>keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of this section more than once.</p> <p>Provides that no person may have their records expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have records expunged more than once. This section is retroactive.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 17-22-950 (summary court expungement orders; removal of internet-based public records; objections; forms) – provides that if criminal charges are brought in a summary court, the accused person is found not guilty or the charges are dismissed or nolle prossed and the accused person was fingerprinted for the charges, the summary court, at no cost to the accused person, shall immediately issue an order to expunge the criminal records, including any associated bench warrants, of the accused person unless the dismissal of the charges occurs at a preliminary hearing or the person has charges pending in summary court and a court of general sessions and the charges arise out of the same course of events. Upon issuance of the order, the summary court shall obtain and verify the presence of all necessary signatures and provide copies of the completed expungement order to all governmental agencies which must receive the order, including, but not limited to, the arresting law enforcement agency, the detention facility or jail, the solicitor's office, the clerk of the court in cases in which the charges were appealed to the circuit court or remanded to the summary court from general sessions court, the summary court where the warrants originated, and SLED.</p> <p>In cases where the person meets the above requirements but was not fingerprinted for the charges, the accused person may make application to the summary court, at no cost, for an order to expunge the records.</p> <p>Provides that an expungement pursuant to this section must occur no sooner than the appeal expiration date and no later than 30 days after the appeal expiration date.</p>

<u>SOUTH CAROLINA</u>	
Are any records eligible to be automatically sealed or expunged?	<p>Requires that criminal charges must be removed pursuant to this section from all internet-based public records no later than 30 days from the disposition date, regardless of whether the accused person applies for expungement. All other criminal records must be destroyed or retained pursuant to the provisions of § 17-1-40.</p> <p>Permits a prosecution or law enforcement agency to file an objection to a summary court expungement. The reason for objecting must be that the accused person has other charges pending or the charges are not eligible for expungement.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 22-5-930 (expungement; first offense drug convictions) – provides that following a first offense conviction for either simple possession of a controlled substance or unlawful possession of a prescription drug, including those charges for which the person would now be eligible for a conditional discharge, the defendant may, after three years from the date of the completion of the sentence, apply for an order expunging the records of the arrest and conviction and any associated bench warrant.</p> <p>Following a first offense conviction for possession with intent to distribute a controlled substance, the defendant after 20 years from the date of the completion of any sentence, including probation and parole, for a drug conviction or any felony conviction, may apply for an order expunging the records of the arrest and conviction and any associated bench warrant.</p> <p>If the defendant had no other convictions, including out-of-state convictions, during the relevant time periods, the court may issue an order expunging the records. No person may have records expunged if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have records expunged more than once. No person may have the records expunged if the person has had a conditional discharge within the five years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is simple</p>

<u>SOUTH CAROLINA</u>	
Are drug convictions eligible for relief?, cont'd	<p>possession of marijuana, or within the 10 years prior to the date of arrest for the charge sought to be expunged if it is for the simple possession of any other controlled substance or the unlawful possession of a prescription drug.</p> <p>Provides that a person may have the person's record expunged even though the conviction occurred before the effective date of this section; however, the expungement will not affect a subsequent enhanced conviction or sentence that occurred before the effective date of this section.</p> <p>After the expungement, SLED is required to keep a nonpublic record of the offense and the date of expungement to ensure that no person takes advantage of the rights of this section more than once.</p> <p>§ 44-53-450 – provides that whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty or is found guilty of possession of a controlled substance, the court may defer further proceedings and place the person on probation upon terms and conditions as it requires. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Upon such dismissal and discharge, the person may apply to the court for an order to expunge from all official records, other than nonpublic records, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order.</p> <p>The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, indictment or information, or trial in response to an inquiry made of him for any purpose.</p>
Miscellaneous provisions	None.

SOUTH CAROLINA

Recently proposed legislation | Yes. See [Pending State Legislation](#).

<u>SOUTH DAKOTA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • S.D. CONST. Art. IV, § 3 (2023) (powers and duties of the governor) • S.D. CODIFIED LAWS § 23-6-8.1 (2024) (destruction of records of certain persons, incidents, and offenses) • S.D. CODIFIED LAWS §§ 23A-3-26 to 23A-3-37 (2024) (included within “Arrest”) • S.D. CODIFIED LAWS § 23A-27-17 (2024) (sealing of records on discharge of probationer—effect of order—future statements by defendant as to conviction) • S.D. CODIFIED LAWS §§ 24-14-1 to 24-14-12 (2024) (collectively “Executive Clemency”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • Nov. 7, 1972 (Art. IV, § 3) • 1978 (§§ 23A-27-17, 24-14-7) • 2003 (§ 24-14-11) • 2004 (§§ 24-14-1, 24-14-2, 24-14-5) • 2005 (§ 24-14-8) • July 1, 2010 (§§ 23A-3-26, 23A-3-29, 23A-3-31, 23A-3-32) • 2015 (§ 23A-3-30) • July 1, 2018 (§§ 23A-3-35 to 23A-3-37) • July 1, 2021 (§ 23A-3-34) • March 15, 2022 (§ 23A-3-27)
Pardon provisions	<p>Art. IV, § 3 – vests the governor with the power to grant pardons, except as to convictions on impeachment.</p> <p>§§ 24-14-1 to 24-14-12 set forth the provisions related to pardons. § 24-14-1 (delegation of authority by governor) – provides that the governor may, by executive order, delegate to the Board of Pardons and Paroles the authority to hear applications for pardon and to make its recommendations to the governor.</p> <p>§ 24-14-2 (forms of clemency) – provides that the term “clemency” means a pardon, commutation, reprieve, or remission of a fine or forfeiture.</p> <p>§ 24-14-5 (submission to board of applications for clemency—governor not bound by board recommendations) – provides that the governor may submit an application for clemency to the board for its recommendation. The governor may, by executive order, delegate to the board the authority to consider applications for clemency and make recommendations to the governor. The governor is not bound to follow any recommendation returned by the board.</p>

SOUTH DAKOTA**Pardon provisions, cont'd**

§ 24-14-7 (recommendation for clemency to be in writing—record of findings and reasons) – whenever the board recommends clemency to the governor, the recommendation shall be in writing. The board shall keep a record of its findings and the reasons for its recommendation.

§ 24-14-8 (application for exceptional pardon—persons eligible) – provides that upon the expiration of five years following the release of an applicant from a Department of Corrections facility who was convicted of not more than one felony, which was not an offense punishable by life imprisonment, the applicant may apply to the board for an exceptional pardon. If an applicant was convicted of a crime that did not result in the applicant subsequently serving a prison sentence, the applicant may apply for an exceptional pardon if at least five years have passed from the date of the applicant's offense, if the applicant was not convicted of more than one felony, and if the offense was not punishable by life imprisonment.

§ 24-14-11 (effects of pardon—disabilities removed—records sealed—filing of document making pardon public—failure to acknowledge proceedings not perjury—prior conviction for habitual offender law) – provides that any person who has been granted a pardon under the provisions of this chapter shall be released from all disabilities consequent on the person's conviction. Upon the granting of a pardon under the provisions of this chapter, the governor shall order that all official records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt, application for pardon, and the proceedings of the board shall be sealed. The governor shall file a public document with the secretary of state certifying that the governor has pardoned the person in compliance with the provisions of this chapter. The document shall remain a public document for five years and after five years that document shall be sealed. The receipt of any pardon, which was granted without following the provisions of this chapter, may not be sealed. The pardon restores the person, in the contemplation of the law, to the status the person occupied before arrest, indictment, or information. No person as to whom such order has been entered may be held thereafter under any provision of law to be guilty of perjury or of

<u>SOUTH DAKOTA</u>	
Pardon provisions, cont'd	<p>giving a false statement by reason of such person's failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry made of such person for any purpose.</p> <p>Provides that, for the sole purpose of consideration of the sentence of a defendant for subsequent offenses or the determination of whether the defendant is a habitual offender under chapter 22-7 or whether the defendant has prior driving under the influence convictions, the pardoned offense shall be considered a prior conviction.</p> <p>The court shall forward a nonpublic record of disposition to the Division of Criminal Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in determining whether or not, in any subsequent proceeding, the person is a habitual offender or the determination of whether the defendant has prior driving under the influence convictions.</p>
Is sealing of records available?	Yes. § 23A-3-26 defines "expungement" to mean "sealing of all records." See below for more information.
Is expungement of records available?	<p>Yes. § 23A-3-26 (definition of expungement) – defines "expungement" to mean the sealing of all records on file within any court, detention or correctional facility, law enforcement agency, criminal justice agency, or Department of Public Safety concerning a person's detention, apprehension, arrest, detention, trial, or disposition of an offense within the criminal justice system but does not imply the physical destruction of records.</p> <p>§ 23A-3-27 (motion for expungement of arrest record) – provides that an arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order expunging the record of the arrest:</p> <ol style="list-style-type: none"> (1) After one year from the date of any arrest, if no accusatory instrument was filed; (2) After one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record; (3) At any time after an acquittal; or

SOUTH DAKOTA**Is expungement of records available?, cont'd**

(4) Within one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record upon a showing of compelling necessity.

§ 23A-3-29 (hearing on motion for expungement) – the court may fix a time and place for a hearing on the motion unless waived by the defendant, arrested person, prosecuting attorney, and victim. Provides that the court may require the filing of such affidavits and may require the taking of such evidence as it deems proper.

§ 23A-3-30 (order of expungement) – provides that the court may enter an order of expungement upon a showing by the defendant or the arrested person by clear and convincing evidence that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served by the entry of the order.

§ 23A-3-31 (report to Division of Criminal Investigation—retention and use of nonpublic records—sealing of records) – provides that any order of expungement shall be reported to the Division of Criminal Investigation. The court shall forward a nonpublic record of disposition to the division which shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing the defendant or arrested person for subsequent offenses. As part of any order of expungement, the court shall order that all official records, other than the nonpublic records to be retained by the division, be sealed along with all records relating to the defendant or arrested person's arrest, detention, indictment or information, trial, and disposition.

§ 23A-3-32 (effect of order of expungement) – provides that the effect of an order of expungement is to restore the defendant or arrested person, in the contemplation of the law, to the status the person occupied before the person's arrest or indictment or information. No person as to whom an order of expungement has been entered shall be held thereafter under any provision of law to be guilty of perjury or of giving a false statement by reason of the person's failure to recite or acknowledge the person's arrest, indictment or information, or trial in response to any inquiry made of the person for any purpose.

<u>SOUTH DAKOTA</u>	
Is expungement of records available?, cont'd	<p>§ 23A-3-33 (no time limitation for making application) – provides that a court may issue an order of expungement for arrests that occurred before and after July 1, 2010. There is no statute of limitations for making an application.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 23-6-8.1 – provides that the director of the Bureau of Criminal Statistics may authorize the destruction of information and records of:</p> <ol style="list-style-type: none"> (1) Persons who are dead; (2) Persons 75 years of age or older unless a violation has occurred within the last 10 years; (3) Incidents that are no longer considered crimes under the laws of South Dakota; and (4) Misdemeanor offenses whose final date of disposition occurred at least 10 years prior to authorized destruction date. <p>§ 23A-3-34 (defendant's public record—automatic removal of non-felony charges or convictions—case record available to authorized personnel—use as enhancement) – any charge or conviction resulting from a case where a petty offense, municipal ordinance violation, or a Class 2 misdemeanor was the highest charged offense shall be automatically removed from a defendant's public record after five years if all court-ordered conditions on the case have been satisfied and the defendant has not been convicted of any further offenses within those five years. However, the case record remains available to court personnel or as authorized by order of the court and may be used as an enhancement in the prosecution of subsequent offenses as provided by law.</p> <p>§ 23A-3-35 (eligibility of person placed in diversion program for expungement of record) – if an arrested person is placed in a diversion program, the person is eligible for expungement of the entire criminal record related to that arrest if the person has successfully completed all the terms of the diversion program and the person has not been charged with any new crimes, except for petty offenses or minor traffic citations, within one year and 30 days from the date of the successful completion of the program. Provides that nothing in this section requires a state's attorney to place any arrested person into a diversion program or to otherwise create or implement a diversion program.</p>

<u>SOUTH DAKOTA</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>§ 23A-3-36 (dismissal of charges and notice of completion of diversion) – provides that, if the requirements of § 23A-3-35 have been met, the state’s attorney shall file a dismissal of all the charges related to that arrest and a notice of completion of the diversion program by the arrested person.</p> <p>§ 23A-3-37 (expungement of record on filing of dismissal and notice) – upon the filing of the dismissal and notice of completion of the diversion program, the court shall grant the expungement without the filing of a motion or any further action by the court.</p> <p>§ 23A-27-17 – upon the discharge and dismissal of a person pursuant to § 23A-27-14 (related to completion of probation by an individual who meets the required conditions), a court shall order that all official records, other than the nonpublic records to be retained by the Division of Criminal Investigation, be sealed along with all records relating to the person’s arrest, indictment or information, trial, finding of guilt, and dismissal and discharge. The effect of such order is to restore such person, in the contemplation of the law, to the status he occupied before his arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment or information, or trial in response to any inquiry made of him for any purpose.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related drug convictions.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>TENNESSEE</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • TENN. CONST. Art. III, § 6 (West 2022) (repeives and pardons) • TENN. CODE ANN. §§ 40-27-101 to 40-27-110 (West 2024) (collectively “Executive Clemency”) • TENN. CODE ANN. § 40-28-104 (West 2024) (board; powers and duties; executive director) • TENN. CODE ANN. §§ 40-29-101 to 40-29-205 (West 2024) (collectively “Restoration of Citizenship”) • TENN. CODE ANN. §§ 40-32-101 to 40-32-105 (West 2024) (collectively “Destruction of Records upon Dismissal or Acquittal”) • TENN. CODE ANN. § 40-35-313 (West 2024) (probation; conditions; discharge and expungement) • TENN. COMP. R. & REGS. 1100-01-01-.16 (2024) (duties and procedures of board in executive clemency matters)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1932 (§§ 40-27-101, 40-27-105, 40-27-107, 40-27-108) • 1969 (§ 40-29-102) • 1982 (§§ 40-27-102, 40-27-109) • 1983 (§ 4029-101) • October 1, 2012 (§ 40-28-104) • August 5, 2013 (§ 40-29-105) • April 24, 2015 (§ 40-32-102) • July 1, 2017 (§ 40-29-107) • July 1, 2018 (§ 40-15-105) • March 22, 2020 (1100-01-01-.16) • June 22, 2020 (§ 40-35-313) • May 1, 2024 (§ 40-32-101)
Pardon provisions	<p>Art. III, § 6 – vests the governor with the power to grant reprieves and pardons, after conviction, except in cases of impeachment.</p> <p>§ 40-27-101 (governor; powers and duties) – provides that the governor has power to grant reprieves, commutations, and pardons in all criminal cases after conviction, except impeachment, subject to the regulations provided in this chapter.</p> <p>§ 40-27-102 (warrants; discretion) – provides that the governor may grant pardons upon such conditions and with such restrictions and limitations as the governor may deem proper, and may issue warrants to all proper officers to carry into effect a conditional pardon.</p>

TENNESSEE**Pardon provisions, cont'd**

§ 40-27-105 (capital punishment; commutation; application for pardon) – upon application for a pardon by a person sentenced to capital punishment, if the governor is of opinion that the facts and circumstances adduced are not sufficient to warrant a total pardon, the governor may commute the punishment of death to imprisonment for life in the penitentiary.

§ 40-27-107 (records) – provides that the governor shall cause to be entered, in a book kept for that purpose, any reasons for granting pardons or commuting punishment, and preserve on file all documents on which the governor acted, and submit the same to the general assembly when requested.

§ 40-27-108 (civil rights; restoration; manslaughter) – any person convicted of the offense of manslaughter and pardoned by the governor is thereby restored to all the rights of citizenship to which the person was entitled previous to conviction.

§ 40-28-104 – vests the board of paroles with the duty, upon the request of the governor, to consider and make nonbinding recommendations concerning all requests for exonerations, pardons, reprieves, or commutations. The board shall have discretion to make either favorable or unfavorable recommendations based upon its application of guidelines and criteria adopted by the governor.

1100-01-01-.16 – provides that the board shall, upon request of the governor, consider and make nonbinding recommendations concerning all requests for commutations or pardons. Sets forth the procedures that must be followed for such recommendations. Provides that an application for pardon must be accompanied by information and evidence sufficient to enable the board to determine whether the applicant is entitled to consideration for a pardon under the governor's guidelines. If no such information is included in the application or furnished to the board, the applicant will be advised that the application cannot be processed further until such information is received.

Provides that if the governor has granted a pardon to an applicant who did not previously receive a positive

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Pardon provisions, cont'd	recommendation from the board, the board shall conduct an administrative vote at the next scheduled board meeting solely for the purpose of allowing the applicant to seek expungement pursuant to § 40-32-101.
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 40-32-101 (expunction of criminal records) – provides that all public records of a person who has been charged with a misdemeanor or a felony shall, upon petition by that person to the appropriate court, be removed and destroyed without cost to the person, if:</p> <ol style="list-style-type: none"> (1) The charge has been dismissed; (2) A no true bill was returned by a grand jury; or (3) The person was arrested and released without being charged. <p>A person applying for the expunction of records because the charge or warrant was dismissed in any court as a result of the successful completion of a pretrial diversion program shall be charged the appropriate clerk's fee for destroying such records.</p> <p>If a person seeking expunction was arrested or charged due to a case of mistaken identity, the person may provide evidence of the relevant circumstances in the petition and request that the court order the expunction to be expedited. If the court finds that the person was arrested or charged due to mistaken identity, the court shall order the Tennessee bureau of investigation and any other entity that performs expunctions to expunge the records of the person in an expedited manner.</p> <p>Notwithstanding the provisions of this section, the records of a person who successfully completes a pretrial diversion program or a judicial diversion program shall not be expunged pursuant to this section if the offense for which the person was diverted was a sexual offense or a violent sexual offense.</p> <p>Unless the person is a victim of a human trafficking offense, the conviction is a result of victimization, and the person is applying for expunction relief under § 40-32-105, a person is not entitled to expunction of records if:</p>

TENNESSEE**Is expungement of records available?, cont'd**

- (1) The person is charged with an offense, is not convicted of the charged offense, but is convicted of an offense relating to the same criminal conduct or episode as the charged offense, including a lesser included offense; provided, however, any moving or non-moving traffic offense shall not be considered an offense as used in this section; or
- (2) The person is charged with multiple offenses or multiple counts in a single indictment and is convicted of one or more of the charged offenses or counts in the indictment or an offense relating to the same criminal conduct or episode as one of the offenses charged in the indictment, including a lesser included offense.

Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

All public records concerning an order of protection which was successfully defended and denied by the court shall, upon petition by that person to the court denying the order, be removed and destroyed without cost to the person.

Provides that for purposes of expunction only, "public records" does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit purposes. Whenever an order of expunction issues under this section directed to the department of children's services or human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law. "Public records" does not include appellate court

TENNESSEE**Is expungement of records available?, cont'd**

records or opinions, nor does it include signed orders of expunction that are maintained as confidential records and are not open for inspection by members of the public.

Provides that release of confidential records or information contained therein other than to law enforcement agencies for law enforcement purposes shall be a Class A misdemeanor. Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to the attorney upon request.

Within 30 days from the date of entry of an order of expunction, the court shall send or cause to be sent a copy of such order to the Tennessee bureau of investigation for entry into its expunged offender and pretrial diversion database. The order must contain identifying information and include the offense that was dismissed, the date and cause of the dismissal, and the date the order of expunction was entered.

All public records of a person who has been charged and convicted with a misdemeanor or felony while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or discrimination shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

- (1) The charges have been dismissed;
- (2) A no true bill was returned by a grand jury;
- (3) A verdict of not guilty was returned, whether by the judge or a jury;
- (4) The person was arrested and released without being charged; or
- (5) 37 years or more have elapsed since the date of conviction for the offense being expunged and the petitioner has not been convicted of any other offense, excluding minor traffic violations, during that period of time.

If the person charged or convicted is deceased, the petition may be filed by a person who is able to establish legal authority to act on behalf of the deceased person.

TENNESSEE**Is expungement of records available?, cont'd**

Notwithstanding any law to the contrary, upon request of the petitioner, records or documents subject to the destruction requirement of this subsection that are utilized exclusively for education purposes and are displayed in public museums, libraries, and buildings are exempt from the destruction requirement.

For purposes of this subsection, provides that an “eligible petitioner” is one who was convicted of one of the listed eligible offenses. Provides that an eligible petitioner may file a petition for expunction if:

- (1) The offense for which the person is seeking expunction is any offense that occurred prior to any conviction for a criminal offense that is ineligible for expunction, including convictions for federal offenses and offenses in other states that would be ineligible for expunction in this state; provided, that a moving or non-moving traffic offense shall not be considered an offense and the person has not previously been granted expunction under this subsection or as otherwise provided in this section;
- (2) At the time of filing of the petition, at least five years have elapsed since the completion of the sentence imposed for the offense the person is seeking to have expunged, if the offense is a misdemeanor or Class E felony or 10 years have elapsed if the offense is a Class C or D felony; and
- (3) The person has fulfilled all the requirements of the sentence imposed by the court in which the individual was convicted including: (a) payment of all fines, restitution, court costs, and other assessments; (b) completion of any term of imprisonment or probation; (c) meeting all conditions of supervised or unsupervised release; and (d) if so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one year.

Permits both the petitioner and the district attorney to file evidence with the court relating to the petition for expunction. The court shall enter an order granting or denying the petition no sooner than 61 days after service on

TENNESSEE**Is expungement of records available?, cont'd**

the district attorney. Prior to enter an order on the petition, the court shall review and consider all evidence submitted. In making a decision on the petition, the court shall weigh the interest of the petitioner against the best interests of justice and public safety; provided, that if the petitioner is an eligible petitioner pursuant to this section and meets the requirements, there is a rebuttable presumption that the petition should be granted. If the court denies the petition, the petitioner may not file another such petition until at least two years have passed since the denial.

Provides that the district attorneys general conference shall create a simple form to enable a lay person to petition for expunction under this subsection.

Creates the district attorneys expunction fund which shall be used to defray the expense incurred for the required record search and preparation of the petition and proposed order of expunction. Provides that any remaining moneys in the fund can be used by the district attorneys general for law enforcement purposes.

Also creates the public defenders expunction fund which shall be used to defray the expense incurred by conducting the educational activities required pursuant to this subsection. Subject to annual appropriation, any funds remaining in the fund may be used in furtherance of the services and programs provided by public defenders for each judicial district. Moneys in the fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this subsection entitles the petitioner to have all public records of the expunged conviction destroyed. Additionally, such an expunction has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial, and conviction. Once the order is granted, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued. A petitioner with respect to whom an order has been granted under this subsection shall not be guilty of

TENNESSEE**Is expungement of records available?, cont'd**

perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction in response to any inquiry made of the petitioner for any purpose. Expunction under this subsection means, in contemplation of the law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of the criminal offense that was expunged.

Requires the clerk of the court maintaining records expunged pursuant to this subsection shall keep such records confidential. Such records shall not be public and may only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney, and the circuit or criminal court judge.

Provides that a person is not an eligible petitioner for purposes of this subsection if the person was convicted of an offense involving the manufacture, delivery, sale, or possession of a controlled substance and, at the time of the offense, the person held a commercial driver license or any driver license and the offense was committed within a motor vehicle.

For purposes of this subsection, "eligible petitioner" means a person who was convicted of a nonviolent crime if the person petitioned the court in which the petitioner was convicted of the offense and the judge finds that the offense was a nonviolent crime, petitioned for and received a positive vote from the board of parole to receive a pardon, and received a pardon by the governor. The procedures set forth above apply to a petitioner under this subsection.

A person who is ineligible for expunction pursuant to subsection (a)(1)(E) (discussed above) shall, upon petition by that person to the appropriate court, be entitled to removal of public records from electronic databases relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. The public records shall be removed from the relevant electronic databases of the

TENNESSEE**Is expungement of records available?, cont'd**

national crime information center system and similar state databases, and the person shall be entered into the Tennessee bureau of investigation's expunged criminal offender and pretrial diversion database with regard to the offenses removed pursuant to this subsection.

§ 40-32-102 (officers and employees; authority) – provides that the chief administrative official of a municipal, county, or state agency and the clerk of each court where the records are recorded shall remove and destroy the records within 60 days from the date of the expunction order. The Tennessee bureau of investigation shall remove expunged records from the person's criminal history within 60 days of receipt of the order.

§ 40-35-313 – provides that the court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the qualified defendant. Upon successful completion, the court shall dismiss the person and discharge the proceedings. Upon such dismissal and discharge, the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the court and the public records defined in § 40-32-101(b), all recordation of the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section; provided, that no records of a person who is dismissed from probation and whose proceedings are discharged shall be expunged if the offense for which deferral and probation was granted was a sexual offense.

If the court determines, after a hearing, that the person was dismissed and the proceedings discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person as to whom the order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge the arrest, or indictment or information, or trial in response to any inquiry made of the person for any purpose, except when the person who has

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Is expungement of records available?, cont'd	<p>been availed of the privileges of expunction then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the nonpublic records are admissible for the following purposes:</p> <ol style="list-style-type: none"> (1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and (2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the nonpublic records retained by the court shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction. <p>Any court dismissing charges against a person and ordering the expunction of a person's public records following the discharge of proceedings pursuant to this section after October 1, 1998, shall send or cause to be sent a copy of the dismissal and expunction order to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial division database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal and expunction order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 40-27-109 (exoneration) – after consideration of the facts, circumstances, and any newly discovered evidence in a particular case, the governor may grant exoneration to any person whom the governor finds did not commit the crime for which the person was convicted. No person may apply for nor may the governor grant exoneration until the person has exhausted all possible state judicial remedies. Exoneration granted pursuant to this subsection shall as a matter of law be unconditional, shall without application having to be made therefor expunge all records of the person's arrest, indictment, and conviction, and shall automatically restore all rights of citizenship to the person.</p> <p>Provides that the governor has the authority to review and reconsider any pardon the governor has previously granted for the purpose of determining whether the recipient of the</p>

<u>TENNESSEE</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	<p>pardon qualifies for and merits the granting of exoneration in lieu of a pardon. If the governor so determines, the governor shall have the authority to convert any pardon previously granted into exoneration as defined by this section. Nothing in this section shall be construed as preventing the governor from granting exoneration to a person who applied for a pardon if the person qualifies under this subsection and if the governor determines the person merits exoneration.</p> <p>§ 40-32-101 (expunction of criminal records) – in addition to the provisions discussed above, provides that, upon a verdict of not guilty being returned, whether by a judge following a bench trial or by a jury, on all charges for which the defendant was accused, the judge shall inquire of the person whether he or she requests that all public records associated with the charges for which such person was acquitted be removed and destroyed without cost to the person and without the requirement that the person petition for destruction of such records. If the person requests that the records be removed and destroyed, the court shall so order. If the person does not request that the records be destroyed at the time the judge inquires, but subsequently requests that such records be destroyed, the person shall be required to file a petition.</p>
Does the state offer a certificate of relief or similar document?	<p>Yes. § 40-29-107 (certificate of employability) – provides that a person may petition the court for a certificate of employability either in conjunction with or independently of petitioning the court for restoration of the person's rights of citizenship. A petition for a certificate of employability shall be filed in the circuit court.</p> <p>Requires the administrative office of the courts to create a standard certificate of employability to be issued by the court and a standard petition for employability form to be used to petition the court for such a certificate. The petition form shall be placed on the website of the administrative office of the courts and shall include places for all of the information required to be included pursuant to this section, which includes, among other items, a summary of the person's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilt for each offense; verifiable references and endorsements; the name of one or more</p>

TENNESSEE**Does the state offer a certificate of relief or similar document?, cont'd**

immediate family members of the person, or other persons with whom the person has a close relationship, who support the person's reentry plan; and a summary of the reason the person believes the certificate should be granted.

Provides that the court may issue a certificate, at the court's discretion, if the court finds that the person has established all of the following by a preponderance of the evidence:

- (1) The petitioner has sustained the character of a person of honesty, respectability, and veracity, and is generally esteemed as such by the petitioner's neighbors;
- (2) Granting the petition will materially assist the person in obtaining employment or occupational licensing;
- (3) The person has a substantial need for the relief requested in order to live a law-abiding life; and
- (4) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

If the court grants the petition for a certificate, it shall be given to the petitioner for use in obtaining employment. If the court denies the petition, the court shall provide notice of denial to the petitioner. The court may place conditions on the petitioner regarding the filing of any subsequent petition for a certificate of employability. The court shall notify the petitioner of any conditions placed on the petitioner's filing of a subsequent petition. The petitioner may approve a denial to the court of appeals only if the petitioner alleges that the denial was an abuse of discretion on the part of the court.

Provides that a certificate shall be presumptively revoked if the person to whom it was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate.

Further provides that, if a person presents a valid certificate, no board, agency, commission, or other licensing entity that issues, restores, or renews licenses or certificates and regulates occupations and trades for which a license or certificate is required to do business in this state shall deny the issuance, restoration, or renewal of an occupational license or certificate based solely on the person's past record of criminal activity but instead shall consider on a case-by-

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Does the state offer a certificate of relief or similar document?, cont'd

case basis whether to grant or deny the issuance, restoration, or renewal of an occupational license or employment opportunity.

Any rule of a board, agency, commission, or other licensing entity in effect on April 28, 2014, with respect to the denial or refusal to issue, restore, or renew the license or certificate of a person who has a past record of criminal activity shall control if the applicant does not possess a certificate of employability. However, if a person does possess a certificate, it shall preempt any present rule that authorizes or requires the denial or refusal to issue, restore, or renew a license or certificate if the denial is based upon the person's past record of criminal activity.

Provides that in a judicial or administrative proceeding alleging negligence or other fault, a certificate of employability issued to a person may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, a certificate of employability issued to a person pursuant to this section shall provide immunity for the employer with respect to the claim if the employer knew of the certificate at the time of the alleged negligence.

An employer who hires a person with a certificate may be held liable in a civil action based on or relating to the retention of the person as an employee only if:

- (1) The person, after being hired, subsequently demonstrates danger or is convicted of a felony;
- (2) The person is retained by the employer as an employee after the demonstration of danger or the conviction;
- (3) The plaintiff proves by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of the felony; and

<u>TENNESSEE</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>(4) The employer, after having actual knowledge of the employee's demonstration of danger or conviction of a felony, was willful in retaining the person as an employee.</p> <p>Sets forth certain licensing, certification, and regulatory boards, commissions, and agencies to which this section does not apply.</p>
Are drug convictions eligible for relief?	There are no specific provisions related drug convictions.
Miscellaneous provisions	<p>§ 40-29-101 – provides that persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court. Those pardoned, if the pardon does restore full rights of citizenship, may petition for restoration immediately after the pardon; provided, that a court shall not have jurisdiction to alter, delete, or render void special conditions of a pardon pertaining to the right of suffrage. Those convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed for the crime.</p> <p>§ 40-29-102 (application) – provides that the proceeding to have civil rights restored shall be by petition to the circuit court sustained by satisfactory proof that ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability, and veracity, and is generally esteemed as such by the petitioner's neighbors.</p> <p>§ 40-29-105 (convictions prior to July 2, 1986; convictions after July 1, 1986 but before July 1, 1996; convictions on or after July 1, 1996) – sets forth the procedures for individuals convicted of infamous crimes during the relevant time periods.</p> <p>Provides that the provisions and procedures provided for in §§ 40-29-101 to 40-29-104 shall apply to all persons convicted of an infamous crime prior to July 2, 1986.</p> <p>For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures apply:</p>

TENNESSEE**Miscellaneous provisions,
cont'd**

- (1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon receiving a pardon, except where the pardon contains special conditions pertaining to the right to suffrage; service or expiration of the maximum sentence imposed for the infamous crime; or being granted final release from incarceration or supervision by the board of parole or county correction authority;
- (2) A person rendered infamous after July 1, 1986, by virtue of being convicted of first degree murder, aggravated rape, treason, or voter fraud shall never be eligible to register and vote in this state;
- (3) Any person eligible for restoration of citizenship may request, and the shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections, by the pardoning authority or an agent or officer of the supervising or incarcerating authority;
- (4) Any authority issuing a certificate of restoration shall forward a copy of the certificate to the coordinator of elections and such certificate shall be sufficient proof to the administrator of elections that the person fulfills the requirements provided in this subsection.

The following procedures shall apply to a person rendered infamous by virtue of being convicted of a felony on or after July 1, 1996:

- (1) Except as otherwise provided, a person rendered infamous or whose rights of citizenship have been deprived by the judgment of a state or federal court may seek restoration of full rights of citizenship by petitioning the circuit court;
- (2) A person receiving a pardon that restores full rights of citizenship may petition for restoration immediately upon receiving the pardon; however, the court shall not have the authority or jurisdiction to alter, delete, or render void special conditions pertaining to the right of suffrage that may be contained in the pardon;
- (3) A person convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed by the court for the

<u>TENNESSEE</u>	
Miscellaneous provisions, cont'd	<p>infamous crime; provided, that a person convicted of murder, rape, treason, or voter fraud shall never be eligible to register and vote in this state;</p> <p>(4) The petition shall set forth the basis for the petitioner's eligibility for restoration and shall state the reasons the petitioner believes full citizenship rights should be restored. The petition shall be accompanied by the certified records, statements, and other documents or information necessary to demonstrate to the court that the petitioner is both eligible for and merits having full rights restored. There is a presumption that a petition filed pursuant to this subsection shall be granted and that the full rights of the petitioner shall be restored. This presumption may only be overcome upon proof by a preponderance of the evidence that either the petitioner is not eligible for restoration or there is otherwise good cause to deny the petition;</p> <p>(5) If, on the face of the petition or after conducting a hearing, the court finds that the petitioner's full citizenship rights should be restored, it shall so order and send a copy of the order to the state coordinator of elections.</p>
Recently proposed legislation	None.

<u>TEXAS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • TEX. CONST. Art. IV, § 11 (West 2023) (Board of Pardons and Paroles; parole laws; reprieves, commutations, and pardons; remission of fines and forfeitures) • TEX. CODE CRIM. PROC. ANN. art. 48.01 to 48.06 (West 2023) (collectively “Pardon and Parole”) • TEX. CODE CRIM. PROC. ANN. art. 55.01 to 55.06 (West 2023) (collectively “Expunction of Criminal Records”) • TEX. GOV’T CODE ANN. §§ 411.071 to 411.0775 (West 2023) (collectively “Order of Nondisclosure of Criminal History Record Information”) • TEX. GOV’T CODE ANN. § 411.0851 (West 2023) (duty of private entity to update criminal history record information; civil liability) • 37 TEX. ADMIN. CODE §§ 143.1 to 143.24 (2024) (collectively “Executive Clemency”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1965 (Art. 48.02) • August 27, 1979 (Art. 55.04, 55.05) • May 16, 2001 (Art. 48.05) • June 18, 2005 (Art. 55.03) • June 19, 2009 (Art. 55.011) • December 5, 2011 (Art. IV, § 11) • November 9, 2014 (§ 143.6) • September 1, 2015 (§§ 411.075 to 411.076, 411.0775) • January 1, 2017 (Art. 48.01) • September 1, 2017 (§§ 411.0716, 411.074) • May 9, 2018 (§§ 143.1 to 143.5, 143.7 to 143.14, 143.21 to 143.24) • September 1, 2019 (§§ 411.072, 411.0725, 411.0765) • September 1, 2021 (Art. 42A.111) • January 1, 2022 (§§ 411.0745, 411.077) • September 1, 2023 (Art. 55.01, 55.02) • January 1, 2025 (§ 411.0851)
Pardon provisions	<p>Art. IV, § 11 – establishes the Board of Pardons and Paroles. Provides that in all criminal cases, except treason and impeachment, the governor shall have the power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation of the board, or a majority thereof, to grant reprieves and commutations of punishment and pardons. The governor shall have the power to revoke conditional pardons. With the advice and consent of the legislature, the governor may grant pardons in cases of treason.</p>

TEXAS**Pardon provisions, cont'd**

Art. 48.01 (governor may pardon) – provides that, in all criminal cases, except treason and impeachment, the governor shall have the power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons. The governor shall have the power to revoke conditional pardons. With the advice and consent of the legislature, the governor may grant pardons in cases of treason.

Provides that the board may recommend that the governor grant a pardon to a person who is placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, and subsequently receives a discharge and dismissal under § 42A.111; and on or after the 10th anniversary of the date of discharge and dismissal, submits a written request to the board for a recommendation under this subsection.

Art. 48.02 (shall file reasons) – requires the governor to file the reasons for the grant of a pardon in the office of the secretary of state.

37 TAC § 143.1 (authority to grant pardons) – provides that, except in cases of treason or impeachment, after conviction or successful completion of a term of deferred adjudication community supervision, the governor may grant a full pardon upon the recommendation and advice of a majority of the board.

37 TAC §§ 143.2 to 143.5, 143.8, and 143.13 set forth the eligibility for pardon recommendation for individuals including pardons for:

- § 143.2 (pardons for innocence) – innocence.
- § 143.3 (12 months on parole) – offenders who served 12 months on parole for an offense committed on or before August 28, 1977.
- § 143.4 (parolee discharging sentence) – offenders who successfully completed a period of parole for an offense committed on or before August 28, 1977, and who receive a final order of discharge.

<u>TEXAS</u>	
Pardon provisions, cont'd	<ul style="list-style-type: none"> ➤ § 143.5 (discharged offender) – individuals who have successfully completed a term of deferred adjudication or have discharged a felony sentence. ➤ § 143.8 (suspended sentence, felony conviction) – individuals who received a suspended sentence. ➤ § 143.13 (posthumous pardon) – a deceased person convicted of a felony offense on request of a person acting on his or her behalf. <p>37 TAC § 143.6 (offender in Texas Department of Criminal Justice-Correctional Institutions Division) – provides that a full pardon will not be considered for an offender while in TDCJ-CID, except in exceptional circumstances.</p> <p>37 TAC § 143.7 (prior out-of-state or federal convictions) – provides that, where there exists one or more convictions or successful completion of a punishment similar to a term of deferred adjudication for offenses of felony grade, in other state or in federal court, prior to the last Texas conviction, the board will consider recommending a pardon only if the applicant provides a clearance by full pardon from the jurisdiction(s) of the previous conviction(s) or furnishes proof in writing that the other jurisdiction(s) will not act until a full pardon is granted by the governor of Texas.</p> <p>37 TAC § 143.9 (sentence of probation, felony conviction) – provides that the board will consider recommending a full pardon for a sentence of probation only upon a showing of receipt of maximum relief available through the court of conviction and then only in an extreme or unusual circumstance which prevents the applicant from gaining a livelihood or in the event of loss of civil rights. The burden of showing such extreme or unusual circumstance rests upon the applicant.</p> <p>37 TAC § 143.10 (misdemeanor) – provides that the board will consider recommending a full pardon in misdemeanor cases only when exception, extreme, and unusual circumstances exist. The burden of showing such circumstances rests upon the applicant.</p> <p>37 TAC § 143.11 (request of the governor) – the board shall consider a recommendation for a full pardon upon the request of the governor.</p>

<u>TEXAS</u>	
Pardon provisions, cont'd	<p>37 TAC § 143.14 (consideration of request or application) – provides that the board will consider a written request or application for executive clemency. When an application is denied by the governor or not recommended by the board, a person may submit a subsequent written application for clemency on or after the second anniversary of the denial.</p> <p>37 TAC §§ 143.21 to 143.24 set forth the provisions related to conditional pardons.</p> <ul style="list-style-type: none"> ➤ § 143.21 (definition) – provides that a conditional pardon is a form of executive clemency which, upon application, may be recommended by the board to the governor, except in cases of treason or impeachment, and, if granted, serves to release a person from the conditions of his or her sentence and/or any disabilities imposed by law, subject to the conditions contained in the clemency proclamation. A person released pursuant to the terms of a conditional pardon is considered for the purposes of revocation there to be a releasee and all such revocation proceedings are governed by the sections for revocation of release. ➤ § 143.22 (consideration of application) – provides that the board will consider a written application for condition pardon, only to release an offender to another country or in cases where extreme, exceptional, and unusual circumstances exist, and only after minimum statutory parole eligibility has been attained. The burden of showing such circumstances rests upon the applicant. ➤ § 143.23 (revocation of conditional pardon) – a conditional pardon may be revoked if the terms and conditions of the clemency proclamation are breached. ➤ § 143.24 (request of the governor) – the board shall consider a recommendation for conditional pardon in any case upon the request of the governor.
Is sealing of records available?	<p>Yes, though it is referred to as “nondisclosure of criminal history record information.” §§ 411.071 to 411.0775 set forth the provisions related to obtaining an order of nondisclosure of criminal history record information.</p> <p>§ 411.0716 (applicability of subchapter) – except as otherwise provided, this subchapter applies to the issuance of</p>

TEXAS**Is sealing of records available?, cont'd**

an order of nondisclosure of criminal history record information for an offense committed before, on, or after September 1, 2017. § 411.072 applies only to a person described by subsection (a) of that section who receives a discharge and dismissal under Art. 42A.111 on or after September 1, 2017.

§ 411.072 (procedure for deferred adjudication community supervision; certain nonviolent misdemeanors) – provides that this section applies only to a person who was placed on deferred adjudication for an eligible misdemeanor and has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense that is punishable by fine only.

Notwithstanding any other provision of this subchapter, if a person described above receives a discharge and dismissal and satisfies the requirements of § 411.074, the court that placed the person on deferred adjudication shall issue an order of nondisclosure under this subchapter prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. The court shall determine whether the person satisfies the requirements of § 411.074, and if the court makes a finding that the requirements of that section are satisfied, the court shall issue the order of nondisclosure: (1) at the time the court discharges and dismisses the proceedings against the person, if the discharge and dismissal occurs on or after the 180th day after the date the court placed the person on deferred adjudication; or (2) as soon as practicable on or after the 180th day after the date the court placed the person on deferred adjudication if the discharge and dismissal occurred before that date. The person shall present to the court any evidence necessary to establish that the person is eligible to receive an order of nondisclosure under this section and must pay a fee of \$28 before the court issues the order.

A person who is not eligible for an order of nondisclosure under this section solely because an affirmative finding under Art. 42A.105(f) was filed in the papers of the case may file a petition for an order of nondisclosure under § 411.0725 if the person otherwise satisfies the requirements of that section.

TEXAS**Is sealing of records available?, cont'd**

§ 411.0725 (procedure for deferred adjudication community supervision; felonies and certain misdemeanors) – provides that this section applies only to a person placed on deferred adjudication who is not eligible to receive an order of nondisclosure under § 411.072 and was placed on deferred adjudication for an eligible offense. Notwithstanding any other provision of this subchapter or Subchapter F, if a person described above receives a discharge and dismissal under Art. 42A.111 and satisfies the requirements of § 411.074, the person may petition the court for an order of nondisclosure.

Except as provided by § 411.074, a person may petition the court for an order of nondisclosure regardless of whether the person has been previously convicted of or placed on deferred adjudication for another offense.

After notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication.

A person may petition the appropriate court for an order of nondisclosure only on or after (1) the discharge and dismissal, if the offense was a misdemeanor other than one listed in (2); (2) the second anniversary of the discharge and dismissal, if the offense was a misdemeanor under certain chapters of the Penal Code; or (3) the fifth anniversary of the discharge and dismissal, if the offense was a felony.

- § 411.0726 (procedure for deferred adjudication community supervision; certain driving while intoxicated and boating while intoxicated misdemeanors)
- § 411.0727 (procedure following successful completion of veterans treatment court program)
- § 411.0728 (procedure for certain victims of trafficking of persons or compelling prostitution)
- § 411.0729 (procedure for certain veterans placed on community supervision)

<u>TEXAS</u>	
Is sealing of records available?, cont'd	<ul style="list-style-type: none"> ➤ § 411.073 (procedure for community supervision following conviction; certain misdemeanors) ➤ § 411.0731 (procedure for community supervision following conviction; certain driving while intoxicated convictions) ➤ § 411.0735 (procedure for conviction; certain misdemeanors) ➤ § 411.0736 (procedure for conviction; certain driving while intoxicated convictions) <p>§ 411.074 (required conditions for receiving an order of nondisclosure) – provides that a person may be granted an order of nondisclosure and, when applicable, is entitled to petition the court to receive an order only if, during the period after the court pronounced the sentence or placed the person on community supervision, including deferred adjudication community supervision, for the offense for which the order is requested, and during any applicable waiting period for the person under this subchapter following completion of the person’s sentence or community supervision, including deferred adjudication, the person is not convicted of or placed on deferred adjudication for any offense other than a traffic offense that is punishable by fine only.</p> <p>A person may not be granted an order of nondisclosure and is not entitled to petition the court for such an order if:</p> <ol style="list-style-type: none"> (1) The person requests the order of nondisclosure for, or the person has been previously convicted of or placed on deferred adjudication for: (a) an offense requiring registration as a sex offender; (b) an offense under Penal Code § 20.04, regardless of whether the offense is a reportable conviction or adjudication; (c) an offense under certain listed sections of the Penal Code; or (d) any other offense involving family violence; or (2) The court makes an affirmative finding that the offense for which the order is requested involved family violence. <p>§ 411.0745 (petition and order) – a person who petitions the court for an order of nondisclosure under this subchapter,</p>

TEXAS**Is sealing of records available?, cont'd**

when a petition is required, may file the petition in person, electronically, or by mail.

The Office of Court Administration of the Texas Judicial System shall prescribe a form for the filing of a petition electronically or by mail. The office shall make the electronic application available on its website.

On receipt of a petition under this section, the court shall provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. The court shall hold a hearing before determining whether to issue an order of nondisclosure of criminal history record information, except that a hearing is not required if the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection and the court determines that the person is entitled to file the petition and the order is in the best interest of justice.

§ 411.075 (procedure after order) – not later than the 15th business day after the date an order of nondisclosure of criminal history record information is issued, the clerk of the court shall send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of the department.

Not later than 10 business days after receipt of the relevant information contained in an order, the department shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall also send all relevant criminal history record information contained in the order or a copy of the order to all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state; central federal depositories of criminal records that there is reason to believe they have criminal history information that is the subject of the order; and private entities that purchase

TEXAS**Is sealing of records available?, cont'd**

criminal history record information from the department or that otherwise are likely to have criminal history record information that is subject to the order.

Not later than 30 business days after receipt of relevant criminal history record information contained in an order or a copy of an order from the department, an individual or entity shall seal any criminal history record information maintained by the individual or entity that is the subject of the order.

§ 411.0755 (statement in application for employment, information, or licensing) – a person whose criminal history record information is the subject of an order of nondisclosure of criminal history record information issued under this subchapter is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of the order.

§ 411.076 (disclosure by court) – prohibits a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure of criminal history record information issued under this subchapter. The court may disclose information contained in the court records only to criminal justice agencies for criminal justice or regulatory licensing purposes, an agency or entity listed in § 411.0765, or the person who is the subject of the order.

The clerk issuing an order of nondisclosure shall seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk sends all relevant criminal history record information contained in the order or a copy of the order to the department under § 411.075(a).

§ 411.0765 (disclosure by criminal justice agency) – a criminal justice agency may disclose criminal history record information that the subject of an order of nondisclosure only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, to an agency or entity listed in this section, to the person who is the subject of the order, or for the purpose of complying with a requirement under

<u>TEXAS</u>	
Is sealing of records available?, cont'd	<p>federal law or if federal law requires the disclosure as a condition of receiving federal highway funds.</p> <p>Sets forth a list of 32 entities to which criminal history record information may be disclosed.</p> <p>§ 411.077 (department of public safety report) – the department shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:</p> <ol style="list-style-type: none"> (1) The number of petitions for nondisclosure of criminal history record information and orders of nondisclosure received by the department in each of the previous two years; (2) The actions taken by the department with respect to the petitions and orders received; (3) The costs incurred by the department in taking those actions; and (4) The number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued. <p>§ 411.0775 (admissibility and use of certain criminal history record information in subsequent criminal proceeding) – notwithstanding any other law, criminal history record information that is related to a conviction and is the subject of an order of nondisclosure under this subchapter may be admitted into evidence during the trial of any subsequent offense if the information is admissible under the Texas Rules of Evidence or another law or disclosed to a prosecuting attorney for a criminal justice purpose.</p> <p>Art. 42A.111 – provides that in cases where a defendant successfully completes a period of deferred adjudication community supervision, the judge shall dismiss the proceedings against the defendant and discharge the defendant. The judge shall provide the defendant with a copy of the order of dismissal and discharge and, if the judge determines that the defendant is or may become eligible for an order of nondisclosure of criminal history record information, shall, as applicable: (1) grant an order of nondisclosure to the defendant; (2) inform the defendant of</p>

<u>TEXAS</u>	
Is sealing of records available?, cont'd	<p>his or her eligibility to receive an order of nondisclosure without a petition and the earliest date on which the defendant is eligible to receive the order; or (3) inform the defendant of his or her eligibility to petition the court for an order of nondisclosure of criminal history record information and the earliest date the defendant is eligible to file the petition for the order.</p>
Is expungement of records available?	<p>Yes. Art. 55.01 (right to expunction) – a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:</p> <ol style="list-style-type: none"> (1) The person is tried for the offense for which the person was arrested and is (A) acquitted by the trial court, except as provided in subsection (c); (B) convicted and subsequently (i) pardoned for a reason other than that described by subparagraph (ii); or (ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or (C) convicted of an offense committed before September 1, 2021, under Penal Code § 46.02(a) (related to unlawful carrying of weapons), as that section existed before that date; or (2) The person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision for the offense, unless the offense is a Class C misdemeanor, provided that the individual meets the listed requirements. <p>Provides that, notwithstanding any other provision of this article, a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Art. 42A.751(b). Further, notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released following an arrest is not eligible under subsection (a)(2)(A)(i)(a), (b), or (c) or subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.</p>

TEXAS**Is expungement of records available?, cont'd**

Except as provided by law, a court may expunge all records and files relating to the arrest of a person under the procedure established under art. 55.02 if the offense is punishable by fine only and:

- (1) The person is tried for the offense for which the person was arrested, convicted of the offense, and acquitted by the court of criminal appeals or, if the period for granting a petition for discretionary review has expired, by a court of appeals; or
- (2) An office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested recommends the expunction to the court before the person is tried for the offense, regardless of whether an indictment or information has been presented against the person in relation to the offense.

A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

Provides that a person is entitled to obtain the expunction of any information that identifies the person contained in records and files relating to the person's arrest or the arrest of another person if:

- (1) The expunction is sought with respect to the arrest of the person asserting the entitlement and the person was arrested solely as a result of identifying information that was inaccurate due to a clerical error; or
- (2) The expunction is sought with respect to the arrest of a person other than the person asserting the entitlement and the information identifying the person was falsely given by the arrested person as the arrested person's identifying information without the consent of the person asserting the entitlement and the only reason why the identifying information of

TEXAS**Is expungement of records available?, cont'd**

the person asserting the entitlement is contained in the applicable arrest records and files is because of the deception of the arrested person.

Art. 55.011 (right of close relative to seek expunction on behalf of deceased person) – provides that the close relative of a deceased person (defined to include the grandparent, parent, spouse, or adult sibling or child of the deceased person) who, if not deceased would be entitled to expunction of records and files under Art. 55.01, may file on behalf of such deceased person an ex parte petition for expunction. If the court finds that the deceased person would be entitled to expunction of any record or file that is the subject of the petition, the court shall enter an order directing expunction.

Art. 55.02 (procedure for expunction) – at the request of an acquitted person or the attorney for the state with the consent of the acquitted person, the appropriate court shall enter an order of expunction for such person not later than the 30th day after the date of the acquittal. On acquittal, the trial court shall advise the person of the right to expunction.

A person who is entitled to expunction of records and files under Art. 55.01 may file a verified ex parte petition for expunction in the appropriate court. Sets forth the information required to be included in the petition, including a list of all physical or e-mail addresses for law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state; central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and private entities that compile and disseminate criminal history record information for compensation that the petitioner has reason to believe have information related to records or files subject to expunction.

If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction.

TEXAS**Is expungement of records available?, cont'd**

In an order of expunction issued under this article, the court shall require any state agency that sent information concerning the arrest to a central federal depository to request the depository return all records and files subject to the order of expunction. The person who is the subject of the expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

If the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, the court may provide in its expunction order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order or the state establishes that the records and files are necessary for use in another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or a civil case, including a civil suit or suit for possession of or access to a child.

Except as otherwise provided by this section, on receipt of an order of expunction, each official or agency or other governmental entity named in the order shall return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and delete from its public records all index references to the records and files that are subject to the expunction order.

TEXAS**Is expungement of records available?, cont'd**

Except as otherwise provided by this section, if an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention and the person is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files. The clerk shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

Except as otherwise provided by this section, the clerk shall destroy all the files or other records not earlier than the 60th day after the date of the order of expunction or later than the first anniversary of that date unless the records or files were released.

Art. 55.03 (effect of expunction) – provides that, when the order of expunction is final: (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited; (2) except as provided in subsection (3), the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Art. 55.04 (violation of expunction order) – a person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense. An offense under this article is a Class B misdemeanor.

Art. 55.05 (notice of right to expunction) – on release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation

<u>TEXAS</u>	
Is expungement of records available?, cont'd	of his rights under this chapter and a copy of the provisions of this chapter.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. Art. 55.02 (procedure for expunction) – provides that the trial court presiding over a case in which a person is convicted and subsequently granted relief or pardoned on the basis of actual innocence of the offense of which the person was convicted, the appropriate court shall enter an order of expunction for the person not later than the 30th day after the date the court receives notice of the pardon or other grant of relief.</p> <p>A trial court dismissing a case following a person's successful completion of a veterans treatment court program or a mental health court program may, with consent of the state's attorney, enter an order of expunction for the person so entitled not later than the 30th day after the date the court dismisses the case or receives the information regarding the dismissal. Notwithstanding any law to the contrary, a court that enters an order for expunction under these subsections may not charge any fee or assess any cost for the expunction.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related drug convictions.
Miscellaneous provisions	<p>Art. 48.05 (restoration of civil rights) – provides that an individual convicted of a listed offense may, except as otherwise provided by this article, submit an application for restoration of any civil rights forfeited under the laws of this state as a result of the conviction.</p> <p>Provides that an individual may not apply for restoration of civil rights unless:</p> <ol style="list-style-type: none"> (1) The individual has completed the sentence for the offense; (2) The conviction occurred three or more years before the date of application if the offense is a federal offense or two or more years before the date of application if the offense is an offense under the laws of another country; and (3) The individual has not been convicted at any other time of an offense under the laws of this state, another state, or the United States.

TEXAS**Miscellaneous provisions,
cont'd**

Sets forth the application requirements. Provides that the application must be submitted to either the sheriff of the county in which the applicant currently resides or resided at the time of conviction of the offense, if the individual resided in this state at that time; or the Board of Pardons and Paroles.

If the application is submitted to a sheriff, the sheriff shall review the application and recommend to the board whether the individual's civil rights should be restored. If the sheriff recommends restoration of rights, the board may either concur in the recommendation and forward the recommendation to the governor or independently review the application to determine whether to recommend restoration.

If the sheriff does not recommend restoration of rights, the individual may apply directly to the board.

On receipt of a recommendation from the board to restore the civil rights of an individual, the governor may either grant or deny the restoration of rights. If the governor grants the restoration of rights, the governor shall issue a certificate of restoration of civil rights. If an application is denied by the board or the governor, the individual may not file another application under this article before the first anniversary of the date of denial. A restoration of civil rights under this article is a form of pardon that restores all civil rights under the laws of this state that an individual forfeits as a result of the individual's conviction of an offense, except as specifically provided in the certificate of restoration.

§ 411.0851 – provides that a private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued or an order of nondisclosure of criminal history record information has been issued.

Unless the entity is regulated by the federal Fair Credit Reporting Act or the Gramm-Leach-Bliley Act, a private entity that purchases criminal history record information from the department or from another governmental agency or entity in this state may disseminate that information only

<u>TEXAS</u>	
Miscellaneous provisions, cont'd	<p>if, within the 90-day period preceding the date of dissemination, the entity originally obtains that information or receives that information as updated record information to its database and shall notify the department if the entity sells any compilation of the information to another similar entity.</p> <p>Provides that an entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.</p>
Recently proposed legislation	None.

<u>UTAH</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • UTAH CONST. Art. VII, § 12 (West 2024) (Board of Pardons and Paroles—appointment—powers and procedures—governor’s powers and duties—legislature’s powers) • UTAH CODE ANN. § 34-52-301 (West 2024) (permitted applicant response regarding expunged criminal or juvenile delinquency history) • UTAH CODE ANN. § 63M-7-221 (West 2024) (expungement working group) • UTAH CODE ANN. § 63M-7-405 (West 2024) (master offense list—collateral consequences guide) • UTAH CODE ANN. § 77-2a-3 (West 2024) (manner of entry of plea—powers of court—expungement) • UTAH CODE ANN. § 77-27-1 (West 2024) (definitions) • UTAH CODE ANN. §§ 77-27-5 and 77-27-5.1 (West 2024) (included within “Pardons and Parole”) • UTAH CODE ANN. §§ 77-40a-101 to 77-40a-405 (West 2024) (collectively “Expungement of Criminal Records”) • UTAH CODE ANN. § 78B-9-108 (West 2024) (effect of granting relief—notice) • UTAH R. CRIM. PROC. 42 (West 2024) (expungement) • UTAH ADMIN. CODE r. 671-315-1 (2024) (pardons)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • January 1993 (Art. VII, § 12) • July 1, 2021 (§ 77-27-1) • May 4, 2022 (§§ 77-40a-103, 77-40a-107, 77-40a-405) • June 9, 2022 (R671-315-1) • July 13, 2022 (Rule 42) • October 1, 2023 (§ 34-52-301) • May 1, 2024 (§§ 63M-7-405, 77-27-5, 77-27-5.1) • October 1, 2024 (§§ 77-2a-3, 77-40a-101, 77-40a-104, 77-40a-201 to 77-40a-404)
Pardon provisions	<p>Art. VII, § 12 – creates the Board of Pardons and Paroles. Provides that the board, by majority vote and upon other conditions as provided by statute, may grant pardons after convictions, in all cases except treason and impeachments, subject to regulations as provided by statute. A pardon may not be granted except after a full hearing before the board, in open session, and after previous notice of the time and place of the hearing has been given. The proceedings and decisions of the board, the reasons therefor in each case, and the dissent of any member who may disagree shall be recorded and filed as provided by statute with all papers used upon the hearing.</p>

UTAH**Pardon provisions, cont'd**

Provides that the governor may grant reprieves in all cases of convictions for offenses against the state except treason or conviction on impeachment. These reprieves may not extend beyond the next session of the board. At that session, the board shall continue or determine the respite or reprieve, commute the punishment, or pardon the offense as provided in this section.

In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the legislature at its next annual general session, when the legislature shall pardon or commute the sentence, or direct its execution. If the legislature takes no action on the case before adjournment of that session, the sentence shall be executed.

§ 77-27-1 – defines “pardon” to mean an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction; the release of an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction; and the reinstatement of any civil rights lost as a consequence of conviction or punishment for a criminal offense.

§ 77-27-5 (Board of Pardons and Parole authority) – provides that, subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions an offender’s conviction may be pardoned or commuted. A pardon may be granted only after a full hearing before the board. Provides that a decision to grant or deny a pardon is final and not subject for judicial review.

Provides that the governor may grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. Such respites or reprieves may not extend beyond the next session of the board. At the next session, the board shall continue or terminate the respite or reprieve or may commute the punishment or pardon the offense.

UTAH**Pardon provisions, cont'd**

In determining when, where, and under what conditions an offender serving a sentence may be pardoned, the board shall:

- (1) Consider whether the offender has made restitution or is prepared to pay restitution as a condition of any pardon;
- (2) Except as provided by this section, develop and use a list of criteria for making determinations under this subsection;
- (3) Consider information provided by the department regarding an offender's individual case action plan; and
- (4) Review an offender's status within 60 days after the day on which the board receives notice from the department that the offender has completed all of the offender's case action plan components that relate to activities that can be accomplished while the offender is imprisoned.

R671-315-1 – sets forth the rule regarding pardons. In addition to information set forth in statute, the rule provides that the board may consider an application for a pardon from any individual who has been convicted of an offense in Utah after the applicant has exhausted judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction. Absent extraordinary circumstances, the board will accept and consider a pardon application only after at least five years have passed since the sentence for the conviction and any enhancement period has terminated or expired. The board will not consider pardons for infractions.

Provides that posthumous pardon applications will not be accepted or considered. Further, an application will not be considered unless the applicant is willing to personally attend the pardon hearing.

Sets forth the information the applicant is required to provide to the board with the application. Requires the board, as allowed by law, to disclose to the applicant, before the hearing, any information obtained or received by the board regarding the pardon application which is not from the applicant.

<u>UTAH</u>	
Pardon provisions, cont'd	<p>Once complete, and if otherwise compliant with board rules, the pardon application and relevant information will be considered by the board, which shall vote to grant or deny a pardon hearing. If a hearing is granted, notice of the hearing shall be published and sent to any victim of record, the arresting or investigating agency, the sentencing court, and the respective prosecuting agency.</p> <p>The board may deny a pardon, grant a conditional pardon, or grant an unconditional pardon. The applicant will be notified of the results as soon as practicable. Pardon decisions must be made by a majority vote. Pardon decisions are final and not subject to judicial review.</p>
Is sealing of records available?	The definition of “expunge” means to seal records or restrict them from access by the public. See below for more information.
Is expungement of records available?	<p>Yes. § 34-52-301 – provides that an applicant seeking employment from a private employer may answer a question related to an expunged criminal or juvenile delinquency record as though the action underlying the expunged record never occurred.</p> <p>§ 77-40a-101 (definitions) – includes definitions, including:</p> <ul style="list-style-type: none"> ➤ “Certificate of eligibility,” which means a document issued by the bureau of criminal identification stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement; ➤ “Clean slate eligible case,” which means a case that is eligible for automatic expungement; ➤ “drug possession offense,” which means an offense for possession with the exception of certain listed offenses; ➤ “Expunge,” which means to remove a record from public inspection by sealing the record or restricting access to the record, but does not include the destruction of a record; and ➤ “Special certificate,” which means a document issued pursuant to § 77-40a-304(1)(c) by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

UTAH**Is expungement of records available?, cont'd**

§ 77-40a-103 (retroactive application) – provides that the provisions of this chapter apply retroactively to all arrests and convictions regardless of the date on which the arrests were made or convictions were entered.

§ 77-40a-104 (department rulemaking authority) – provides that the department may make rules to implement procedures for processing an automatic expungement, implement procedures for applying for certificates of eligibility, specify procedures for receiving a certificate of eligibility, create forms and determine information necessary to be provided to the bureau, and implement procedures for the confirmation of an expungement under § 77-40a-401(4).

§ 77-40a-107 (expungement data requirements—report) – provides that, no later than November 1, of each year, the administrative office of the courts shall submit a written report to the executive offices and criminal justice appropriations subcommittee and the judiciary interim committee regarding expungement data for the preceding fiscal year, including:

- (1) The number of petitions filed for expungement in the district, justice, and juvenile courts;
- (2) The number of petitions granted for expungement in the district, justice, and juvenile courts;
- (3) The number of orders issued for an automatic expungement by the district, justice, and juvenile courts;
- (4) The total number of individuals for whom at least one automatic expungement order was issued by the district, justice, or juvenile court; and
- (5) The total number of individuals for whom at least one petition-based expungement order was issued by the district, justice, or juvenile court.

No later than November 1 of each year, the bureau shall submit a written report to the executive offices and criminal justice appropriations subcommittee and the judiciary interim committee regarding expungement data for the preceding fiscal year, including:

<u>UTAH</u>	
Is expungement of records available?, cont'd	<p>(1) The number of applications for expungement received by the bureau;</p> <p>(2) The number of certificates of eligibility issued by the bureau; and</p> <p>(3) The number of orders for expungement received by the bureau.</p> <p>§ 77-40a-301 (application for certificate of eligibility for expungement—penalty for false or misleading information on application) – requires an individual seeking to expunge the individual’s criminal record in regard to an arrest, investigation, detention, or conviction to apply to the bureau for a certificate of eligibility for expungement of the criminal record and pay the application fee; pay the issuance fee for the certificate of eligibility or special certificate if the individual is eligible to receive such certificate; and file a petition for expungement.</p> <p>An individual who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution. Regardless of whether the individual is prosecuted, the bureau may deny a certificate of eligibility to anyone who knowingly provides false information on an application.</p> <p>§ 77-40a-302 (requirements for certificate of eligibility to expunge records of arrest, investigation, and detention) – except as otherwise provided by law, if a petitioner is arrested or charged with an offense, the petitioner is eligible to receive a certificate of eligibility from the bureau to expunge records of the arrest, investigation, and detention in the case for the offense if :</p> <p>(1) The following time periods have passed: (a) at least 30 days after the day on which the petitioner is arrested or charged for the offense; (b) at least three years after the day on which the petitioner was convicted of the traffic offense if there is a conviction in the case for a traffic offense that is a class C misdemeanor or an infraction; and (c) at least four years after the day on which the petitioner was convicted of the traffic offense if there is a conviction</p>

<u>UTAH</u>	
Is expungement of records available?, cont'd	<p>in the case for a traffic offense that is a class B misdemeanor; and</p> <p>(2) One of the following occurs: (a) an investigating law enforcement agency and the prosecuting attorney have screened the case and determined that no charges will be filed against the petitioner; (b) all charges in the case are dismissed with prejudice; (c) if a charge in the case is dismissed without prejudice or without condition, the prosecutor consents in writing to the issuance of a certificate of eligibility or at least 180 days have passed after the day on which the charge is dismissed; (d) the petitioner is acquitted at trial on all charges in the case; or (e) the statute of limitations expires on all of the charges in the case.</p> <p>A petitioner is not eligible for a certificate of eligibility if:</p> <ol style="list-style-type: none"> (1) There is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense; (2) There is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; (3) The petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense; or (4) There is a criminal protective order or a criminal stalking injunction in effect for the case. <p>§ 77-40a-303 (requirements for a certificate of eligibility to expunge records of a conviction) – provides that, except as otherwise provided by this section, a petitioner is eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:</p> <ol style="list-style-type: none"> (1) The petitioner has paid all fines, interest, and restitution ordered by the court related to the conviction for which expungement is sought; (2) The required time periods have passed since the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for the conviction that the petitioner seeks to expunge.

<u>UTAH</u>	
Is expungement of records available?, cont'd	<p>Provides that a petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:</p> <ol style="list-style-type: none"> (1) The conviction is for one of the listed ineligible offenses; (2) There is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense; (3) There is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; (4) The petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense; (5) The petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility; (6) There is a criminal protective order or a criminal stalking injunction in effect for the case; or (7) The bureau determines that the petitioner's criminal history makes the petition ineligible for a certificate. <p>Further provides that this subsection does not apply to a conviction for a qualifying sexual offense if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult.</p> <p>Subject to the provisions of this section, a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:</p> <ol style="list-style-type: none"> (1) Two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode; (2) Any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

UTAH**Is expungement of records available?, cont'd**

- (3) Any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or
- (4) Five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

Subject to the provisions of this section, a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode or any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under this section if any non-drug possession offense in that episode is a felony or class A misdemeanor or has the same or a longer waiting period than any drug possession offense in that episode.

Except as provided in this section, if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions certain numerical eligibility limits shall be increased by one and for other convictions, the numerical eligibility limits are not applicable if the highest level of convicted offense in the criminal episode is an infraction, a class B or C misdemeanor, or a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor.

When determining whether a petitioner is eligible for a certificate, the bureau may not consider a petitioner's pending case or prior conviction for an infraction, a traffic offense, a minor regulatory offense, or a clean slate eligible case that was automatically expunged.

<u>UTAH</u>	
Is expungement of records available?, cont'd	<p>If the petitioner received a pardon before May 14, 2013, the petitioner is entitled to an expungement order for all pardoned crimes.</p> <p>§ 77-40a-304 (certificate of eligibility process—issuance of certificate—fees) – when a petitioner applies for a certificate of eligibility, the petitioner shall pay an application fee at the time the petitioner submits an application for a certificate to the bureau and the bureau shall perform a check of governmental agencies, including national criminal databases, to determine whether the petitioner is eligible to receive a certificate of eligibility under this chapter.</p> <p>For purposes of determining eligibility, the bureau may review records of arrest, investigation, detention, and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred. If a disposition for an arrest on the criminal history file is unobtainable after reasonable research, the bureau may issue a special certificate giving determination of eligibility to the court, except the bureau may not issue the special certificate if:</p> <ol style="list-style-type: none"> (1) There is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense; (2) There is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless for a traffic offense; or (3) The petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense. <p>Once the eligibility process is complete, the bureau shall notify the petitioner. If the petitioner meets all of the criteria under §§ 77-40a-302 or 77-40a-303 and the bureau determines that the issuance of a certificate or special certificate is appropriate, it shall issue a certificate of eligibility or special certificate that is valid for a period of 180 days from the day on which the certificate is issued, provide the petitioner with an identification number for the certificate, and, except as otherwise provided, the petitioner shall pay an additional fee for the issuance of a certificate.</p>
Is expungement of records available?, cont'd	<p>certificate, and, except as otherwise provided, the petitioner shall pay an additional fee for the issuance of a certificate.</p>

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The bureau shall issue a certificate of eligibility or special certificate without requiring the payment of the issuance fee if the petitioner qualifies for a certificate of eligibility under § 77-40a-302 unless the charges were dismissed pursuant to a plea in abeyance agreement or a diversion agreement, or indicates on the application for a certificate that the petitioner reasonably believes, as of the date of the application, that the fee to file a petition for expungement is likely to be waived by a court because the petitioner is indigent.

The bureau shall include all information needed for the court to issue a valid expungement order on a certificate of eligibility. The bureau shall provide clear written instructions to the petitioner that explain the process for a petition for expungement and what is required of the petitioner to complete the process for a petition for expungement.

If a petitioner indicates on the application for a certificate of eligibility that a court is likely to waive the fee for a petition for expungement, the bureau shall inform the petitioner that he or she will be required to pay an issuance fee before an agency will expunge the offense if a court does not waive the fee for a petition for expungement and provide the petitioner with the form for waiving a court fee for a petition.

If the bureau issues a certificate of eligibility or a special certificate without requirement payment of the issuance fee, the bureau shall charge the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for expungement unless the court communicates to the bureau that the fee to file the petition was waived because the petitioner is indigent. If the petitioner qualifies for a waiver of the issuance fee and the expungement order grants the petition, the bureau shall process the expungement order as if the petitioner paid the fee. If a petitioner does not qualify for a waiver of the issuance fee and the expungement order grants the petition for expungement, the bureau may not process the expungement order or notify other agencies affected by the order until the petitioner pays the issuance fee. If the bureau issues a certificate of eligibility or special

UTAH**Is expungement of records available?, cont'd**

certificate without requiring payment of the issuance fee, the bureau may not charge a fee on the grounds that the validity of the certificate has expired.

§ 77-40a-305 (petition for expungement—prosecutorial responsibility—hearing) – provides that the petitioner shall file a petition for expungement in accordance with Rule 42 of the Utah Rules of Criminal Procedure. Requires the petitioner to include the identification number for the certificate of eligibility or special certificate in the petition unless the petition is to expunge records of a traffic offense case that meets the requirements, in which case the petitioner is not required to obtain a certificate of eligibility.

Additionally, a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition as defined in § 26B-4-201 and the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition.

The court shall provide notice of the filing of a petition under this section to the appropriate prosecuting authority. The prosecutor may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice is sent to the prosecuting attorney. The victim may also file a recommendation or objection within 60 days after the day on which the petition was filed. The petitioner may respond in writing to any objections filed.

If the court receives an objection from any party, the court shall set a date for a hearing. If no objection is received within 60 days, the expungement may be granted without a hearing.

§ 77-40a-306 (order of expungement) – the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that:

- (1) Except as otherwise provided by law, the certificate of eligibility is valid and contains the information

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Is expungement of records available?, cont'd	<p>needed for the court to issue an order for expungement and the statutory requirements have been met;</p> <ol style="list-style-type: none"> (1) If the petitioner obtained a special certificate from the bureau, the special certificate is valid and there is sufficient information in the petition for the court to determine that the statutory requirements for expungement have been met; (2) If the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor provided written consent and has not filed and does not intend to refile related charges; (3) If the petitioner seeks expungement without a certificate of eligibility for a record of conviction related to cannabis possession, the petitioner meets the requirements of § 77-40a-305; (4) If an objection is received, the petition is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and (5) The interests of the public would not be harmed by granting the expungement. <p>If a petition is denied, the petitioner may reapply for a certificate of eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.</p> <p>A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case. A court shall consider the number of times that good faith basis of intention to refile by the attorney is presented to the court in making the court's determination to grant the petition for expungement.</p> <p>If the court grants a petition, the court shall make the court's findings in a written order. A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued.</p> <p>If the court issues an order of expungement, the court shall expunge all records of the case, notify the bureau of the order, and provide the bureau with the order and all relevant</p>

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Is expungement of records available?, cont'd	<p>information available to the court that the bureau will need to identify an expunged record.</p> <p>The petitioner may request certified copies of an order of expungement within 28 days after the day on which the court issues an order of expungement, and the court shall provide certified copies of the order.</p> <p>§ 77-40a-401 (processing of expungement order—written confirmation of expungement—effect of an expungement) – in processing an expungement order, a court and the bureau shall give priority to:</p> <ol style="list-style-type: none"> (1) First, an expungement order granting a petition for expungement under §§ 77-40a-301 to 306; (2) Second, an expungement order upon a pardon by the board of pardons and parole; (3) Third, an expungement order upon a plea in abeyance; (4) Fourth, an expungement order where an individual submitted a form requesting automatic expungement; and (5) Fifth, an expungement order where the court identified the case as being eligible for automatic expungement. <p>Provides that an individual who receives an expungement order based upon a pardon shall pay a processing fee to the bureau before the bureau's record may be expunged.</p> <p>Requires an agency to develop and implement a process to identify an expunged record and keep, index, and maintain all expunged records of arrests and convictions. Agencies are not prevented from maintaining or destroying a record in accordance with a retention schedule when the record is an expunged record. Further, an agency is not required to redact an expunged record, or a record referencing an expunged record, that pertains to more than one individual until the agency is required to release the record.</p> <p>Upon request by the individual, the agency shall provide the individual with written confirmation that the agency has identified all records subject to expungement and, except as otherwise provided by law, the agency will restrict or deny</p>

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Is expungement of records available?, cont'd	<p>access to all of the expunged records. The bureau may charge a fee for providing such confirmation.</p> <p>Upon the entry of an expungement order, an individual who received an expungement may respond to any inquiry as though the arrest, investigation, detention, prosecution, or conviction did not occur unless otherwise provided by law or ordered by a court to respond differently.</p> <p>Provides that an expungement order may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the order.</p> <p>An expungement order may not:</p> <ol style="list-style-type: none"> (1) Terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body prior to issuance of the order; (2) Affect the enforcement of any order or findings issued by an administrative body pursuant to the body's lawful authority prior to issuance of the order; (3) Remove any evidence relating to the individual including records of arrest, which the administrative body has used or may use in these proceedings; or (4) Prevent an agency from maintaining, sharing, or distributing any record required by law. <p>§ 77-40a-402 (distribution for order for vacatur) – provides that an individual who receives an order for vacatur under § 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected agencies. The individual shall complete and attach an application for a certificate of eligibility for expungement to the order. The bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement. Unless otherwise provided by law or ordered by a court to respond differently, an individual who has received a vacatur of conviction may respond to any inquiry as though the conviction did not occur. The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.</p>

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An agency receiving an order for vacatur shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered. An agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for the individual for whom vacatur was ordered or Peace Officer Standards and Training. The bureau may not count vacated convictions against any future expungement eligibility.

§ 77-40a-403 (retention and release of expunged records—agencies) – provides that an agency with an expunged record, or any employee of an agency with an expunged record, may not knowingly or intentionally divulge any information contained in the expunged record to any person, or another agency, without a court order unless specifically authorized by law or, subject to this section, the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management. An agency with a records management system may not disclose any information in an expunged record to another agency or person, or allow another agency or person access to an expunged record, if that agency or person does not use the records management system for the purpose of record management.

Sets forth a list of entities and agencies that may receive information contained in expunged records upon specific request. Except as otherwise provided by this section or by court order, a person, an agency, or an entity authorized by this section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.

A prosecuting attorney may communicate with another prosecuting attorney, or another prosecutorial agency, regarding information in an expunged record that includes a conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance agreement, for stalking; a domestic violence offense; an offense that would require the

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individual to register as a sex offender, kidnap offender, or child abuse offender; or a weapons offense.

Except as otherwise provided, a prosecutor may not use an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction. If an individual is charged with a felony, or an offense eligible for enhancement based on a prior conviction, after obtaining an order of expungement, the prosecutor may petition the court to open the expunged records upon a showing of good cause.

For judicial sentencing, a court may order any records expunged to be opened and admitted into evidence. The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. At the end of the action or proceeding, the court shall order the records expunged again. Any person authorized by this subsection to view expunged records may not reveal or release any information obtained from the records to anyone outside the court.

§ 77-40a-404 (confirmation of expungement—access to expunged records by individuals) – provides that an individual who receives an expungement may request a written confirmation from an agency to confirm that the agency has expunged all records of the offense for which the individual received the expungement. Provides that the following individuals may view or obtain an expunged record:

- (1) The petitioner or an individual who receives an automatic expungement;
- (2) A law enforcement officer who was involved in the case for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and
- (3) A party to a civil action arising out of the expunged incident if the information is kept confidential and utilized only in the action.

§ 77-40a-405 (penalty for disclosure of expunged, vacated, or pardoned records) – an employee or agent of an agency

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Is expungement of records available?, cont'd	<p>that is prohibited from disseminating information from expunged, vacated, or pardoned records who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.</p> <p>Rule 42 – an expungement action is commenced upon the filing of a petition in the appropriate court. The petition must include the identification number from the bureau for the certificate of eligibility. A certificate of eligibility is not required if the petitioner is proceeding under § 77-40a-305(3) and (4).</p> <p>Permits the prosecutor and victim, if any, to file an objection or recommendation to the petition. The petitioner may respond in writing to any objections or statements filed in response to the petition. If the prosecutor files an objection, the court must schedule a hearing. If no objection is filed, the petitioner may file a request to submit for decision and the expungement may be granted without a hearing, though a request to submit is not required for the court to make a decision. If no objection is received within 60 days from the day on which the petition is filed with the court, the expungement may be granted without a hearing.</p> <p>If the court enters an expungement order, the court must provide the petitioner with certified copies of the order in the number requested by the petitioner. The order of expungement will have a copy of the certificate of eligibility attached. The court will provide notice to the bureau of the expungement order. The bureau will notify all criminal justice agencies affected by the expungement order.</p>
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 77-2a-3 – provides that a plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:</p> <ol style="list-style-type: none"> (1) Reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense; (2) Allow withdrawal of the defendant's plea and order dismissal of the case; or

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>(3) Issue an order of expungement for all records of the offense if the defendant successfully completes a problem solving court program that is certified by the judicial council and the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.</p> <p>Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement and only as provided in the agreement or as agreed to by all parties, the court may act as set forth in paragraphs (1) – (3) above.</p> <p>If the court issues an order of expungement, the court shall expunge all records of the case and notify the Bureau of Criminal Identification of the order of expungement. Upon receiving notice from the court of an expungement order, the bureau shall notify any agency affected by the order. For purposes of this subsection, the bureau may not notify the Board of Pardons and Parole of an expungement order if the individual has never been sentenced to prison in this state or under the jurisdiction of the board. The bureau shall forward a copy of the order to the Federal Bureau of Investigation. Permits the defendant to deliver copies of the expungement order to any agency affected by the order and such agencies shall expunge all records for the case.</p> <p>§ 77-27-5.1 (board authority to order expungement) – upon granting a pardon, the board of pardons and paroles shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records. When a pardon has been granted, employees of the board may not divulge any identifying information regarding the pardoned person to any person or agency, except for the pardoned person. The Bureau of Criminal Identification may not count pardoned convictions against any future expungement eligibility.</p> <p>An expungement order issued by the board has at least the same legal effect and authority as an order of expungement issued by a court. The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>§ 77-40a-201 (general provisions for automatic expungement and deletion) – provides that nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement or deletion under this section if an automatic expungement or deletion has not occurred pursuant to this section.</p> <p>Provides that an automatic expungement performed under this part does not preclude a person from requesting access to expunged records in accordance with §§ 77-40a-403 or 77-40a-404.</p> <p>Requires the Judicial Council and the Supreme Court shall make rules to govern the process for automatic expungement. Provides that the rules under this subsection may authorize a presiding judge to issue an expungement order for any case when the requirements for automatic expungement are met and a presiding judge of a justice court to issue an expungement order for any justice court case within the presiding judge’s judicial district when the requirements for automatic expungement are met.</p> <p>An individual does not have a cause of action for damages as a result of the failure to identify an individual’s case as eligible for automatic expungement or deletion under this part or automatically expunge or delete the records of a case that is eligible under this part.</p> <p>§ 77-40a-202 (automatic deletion for traffic offense by a court) – provides that a court shall delete all records for the following traffic offenses without a court order or notice to the prosecuting agency:</p> <ol style="list-style-type: none"> (1) A traffic offense case that resulted in an acquittal on all charges; (2) A traffic offense case that is dismissed with prejudice, except for a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by § 77-2a-3(2)(b); or (3) A traffic offense case for which the following time periods have elapsed from the day on which the case is adjudicated at least five years for a class C

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p style="text-align: center;">misdemeanor or an infraction or at least six years for a class B misdemeanor.</p> <p>For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated on or after May 1, 2020, the court shall delete all records for the traffic offense upon identification. For cases resulting in acquittal, dismissal, or that is adjudicated before May 1, 2020, the court shall delete all records for the traffic offense within one year of the day on which the case is identified as eligible for deletion.</p> <p>§ 78B-9-108 – provides that if a court grants a petitioner’s request for postconviction relief under § 78B-9-104(1)(h) (related to the commission of certain listed offenses while subject to force, fraud, or coercion), the court shall vacate the original conviction and sentence and order the petitioner’s records expunged in accordance with § 77-40a-402.</p> <p>Rule 42 – provides that records in the following cases may be expunged automatically:</p> <ol style="list-style-type: none"> (1) A case that resulted in an acquittal on all charges; (2) A case that is dismissed with prejudice, other than a case dismissed with prejudice as a result of successful completion of a plea in abeyance which shall be processed as a clean slate eligible case; and (3) A clean slate eligible case. <p>Provides that the administrative office of the courts (AOC) must, one a month, identify for each court the cases that are eligible for automatic expungement. Cases that are clean slate eligible must be identified separately from those otherwise eligible for automatic expungement.</p> <p>When a list of clean slate eligible cases is created, the AOC must notify each prosecuting agency that the list is available for review. The AOC is not required to send the prosecuting entity notice of cases to be expunged under paragraphs (1) and (2) above.</p> <p>If the prosecuting entity objects to the expungement of a clean slate eligible case, the agency must file an objection within 35 days of the date notice was sent. To be appropriate, the objection must be for at least one of the statutory bases</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>for objection. If an appropriate and valid objection is timely received, the AOC must remove the case from the list of clean slate eligible cases.</p> <p>After the period for objections has expired, the AOC will compile a list of the remaining clean slate eligible cases and the court will issue an expungement order for each eligible case. The AOC must provide copies of the orders to the bureau and notify the prosecuting entity.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. See above.
Miscellaneous provisions	<p>§ 63M-7-221 – creates a working group to:</p> <ol style="list-style-type: none"> (1) Study the challenges of implementing automatic expungement; (2) Determine the time and resources that an agency would need to implement automatic expungement; (3) Determine whether an investment in technology is needed or could be helpful in implementing automatic expungement; and (4) Consider possible statutory changes to improve implementation of automatic expungement. <p>Requires the commission to provide a written report on or before November 1, 2024, to the Judiciary Interim Committee describing the information gathered by the working group and any recommendations for statutory changes.</p> <p>§ 63M-7-405 – provides that the sentencing commission shall identify any provision of state law, including the Utah Constitution, and any administrative rule that imposes a collateral consequences; prepare and compile a guide that contains all the provisions identified in this section; and update the guide described in this section annually.</p> <p>Provides that the sentencing commission shall state in the guide that the guide has not been enacted into law; the guide does not have the force of law; the guide is for informational purposes only; an error or omission in the guide, or in any reference in the guide, has no effect on a plea, an</p>

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Miscellaneous provisions, cont'd	adjudication, a conviction, a sentence, or a disposition, and does not prevent a collateral consequence from being imposed; any laws or regulations for a county, a municipality, another state, or the United States, imposing a collateral consequence are not included in the guide; and the guide does not include any provision of state law or any administrative rule imposing a collateral consequence that is enacted on or after March 31 of each year. The guide shall be made available to the public on the sentencing commission's website and shall update the guide annually and identify and recommend legislation on collateral consequences to the law enforcement and criminal justice interim committee.
Recently proposed legislation	None.

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • VT. CONST. Ch. II, § 20 (West 2024) (governor; executive power) • VT. STAT. ANN. tit. 3, § 164 (West 2024) (adult court diversion program) • VT. STAT. ANN. tit. 13, § 7041 (West 2024) (deferred sentence) • VT. STAT. ANN. tit. 13, §§ 7601 to 7611 (West 2024) (collectively “Expungement and Sealing of Criminal History Records”) • VT. STAT. ANN. tit. 13, §§ 8001 to 8017 (West 2024) (collectively “Uniform Collateral Consequences of Conviction”) • VT. STAT. ANN. tit. 28, § 453 (West 2024) (advisory board for pardons)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1836 (§ 20) • 1971 (§ 453) • July 1, 2012 (§ 7604) • January 1, 2016 (§§ 8001 to 8004, 8010 to 8017) • July 1, 2017 (§§ 7605, 8005, 8006) • June 19, 2019 (§ 7041) • July 1, 2019 (§§ 7603, 7610) • October 7, 2020 (§§ 7601, 7609) • May 31, 2022 (§§ 7602, 7606, 7607, 7611) • July 1, 2023 (§ 164)
Pardon provisions	<p>§ 20 – vests the governor with the power to grant pardons in all cases except treason in which case the governor shall have the power to grant reprieves, but not to pardon, until after the end of the next session of the general assembly, and except in cases of impeachment, in which case the governor shall not grant reprieve or pardon, and there shall be no remission or mitigation of punishment but by act of legislation.</p> <p>28, § 453 – provides that, on request of the governor, the parole board shall act as an advisory board to assist or act for him or her in investigating or hearing matters pertaining to pardons, and may make recommendations to him or her regarding such matters.</p>
Is sealing of records available?	<p>Yes (see also, provisions included in the section on expungement). 13, § 7601 (definitions) – sets forth the definitions related to expungement and sealing of criminal history records, including definitions for:</p> <ul style="list-style-type: none"> ➤ “Predicate offense,” which means a criminal offense that can be used to enhance a sentence levied for a

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later conviction and includes driving under the influence, domestic assault, and stalking. Provides that “predicate offense” does not include misdemeanor possession of cannabis, a disorderly conduct offense, or possession of a controlled substance; and

- “Qualifying crime,” which lists the misdemeanors and other offenses not eligible for expungement or sealing under this chapter.

13, § 7603 (expungement and sealing of record, no conviction; procedure) – unless either party objects in the interests of justice, the court shall issue an order sealing the criminal history record related to the citation or arrest of a person:

- (1) Within 60 days after the final disposition of the case if (a) the court does not make a determination of probable cause at the time of arraignment; or (b) the charge is dismissed before trial without prejudice; or
- (2) At any time if the prosecutor and defendant stipulate that the court may grant the petition to seal the record.

If a party objects to sealing or expunging the record, the court shall schedule a hearing to determine if sealing or expunging the record serves the interests of justice. The defendant and prosecutor shall be the only parties in the matter.

13, § 7607 (effect of sealing) – upon entry of an order to seal, the order shall be legally effective immediately, and the person whose record is sealed shall be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, the Vermont Crime Information Center, the arresting agency, the Restitution Unit of the Vermont Center for Crime Victims Services, and any other entity that may have a record related to the order to seal. The information center shall provide notice of the sealing to the Federal Bureau of Investigation’s National Crime Information Center.

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Except as provided by this section, upon entry of a sealing order, the order shall be legally effective immediately, and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege, or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed. The response to an inquiry from any member of the public regarding a sealed record shall be that no criminal record exists.

Notwithstanding any other provision of law or a sealing order, an entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant. A criminal justice agency may use the criminal history record sealed in accordance with §§ 7602 or 7603 without limitation for criminal justice purposes. A sealed record of a prior violation of 23, § 1201 shall be admissible as a predicate offense for the purpose of imposing an enhanced penalty for subsequent violation of that section.

The court shall bar viewing of the sealed offense in any accessible database that it maintains. Until all charges on a docket have been sealed, the case file shall remain publicly accessible. When all charges on a docket have been sealed, the case file shall become exempt from public access.

The court shall keep a special index of cases that have been sealed together with the sealing order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the sealing. The index and related documents shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons. Except as otherwise provided by this section, inspection of the sealing order may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for

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Is sealing of records available?, cont'd	<p>public access to court records. The court administrator shall establish policies for implementing this subsection.</p> <p>Upon request, the Victim's Compensation Program shall be provided with a copy, redacted of all information identifying the offender, of the affidavit for the sole purpose of verifying the expenses in a victim's compensation application. The sealing of a criminal record shall not affect the authority of the Restitution Unit to enforce a restitution order in the same manner as a civil judgment pursuant to § 5362(c)(2).</p> <p>13, § 7611 (unauthorized disclosure) – a state or municipal employee or contractor or any agent of the court, including an attorney and an employee or contractor of the attorney, who knowingly accesses or discloses sealed criminal history record information without authorization shall be assessed a civil penalty of not more than \$1,000. Each unauthorized disclosure shall constitute a separate civil violation.</p>
Is expungement of records available?	<p>Yes (see also, provisions included in the section on sealing). 13, § 7602 (expungement and sealing of record, postconviction; procedure) – provides that a person may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction if:</p> <ol style="list-style-type: none"> (1) The person was convicted of a qualifying crime or crimes arising out of the same incident or occurrence; (2) The person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense; (3) Pursuant to the conditions set forth in this section, the person was convicted of a violation related to operating under the influence, excluding a violation of those sections resulting in serious bodily injury or death to any person other than the operator, or related to operating a school bus or commercial vehicle with a BAC over the listed limits; or (4) Pursuant to the conditions set forth in this section, the person was convicted of an offense related to burglary when the person was 25 years of age or younger, and the person did not carry a dangerous or deadly weapon during the commission of the offense. <p>The state's attorney or attorney general shall be listed as the respondent in the matter. The court shall grant the petition</p>

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without a hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue an order of expungement to the petitioner and provide notice of the order in accordance with this section.

The court shall grant the petition and order that the criminal history record be expunged if the following conditions are met:

- (1) At least five years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least five years previously;
- (2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime;
- (3) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court; and
- (4) The court finds that expungement of the record serves the interests of justice.

The court shall grant the petition and order that all or part of the criminal history record be sealed if the conditions of this subsection are met and the court finds that sealing the criminal history record better serves the interests of justice than expungement and the person committed the qualifying crime after reaching 19 years of age.

The court shall grant the petition and order that the criminal history record be expunged if the following conditions are met:

- (1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction;
- (2) The person has not been convicted of a felony arising out of a new incident or occurrence in the last seven years;

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Is expungement of records available?, cont'd	<p>(3) The person has not been convicted of a misdemeanor during the past five years;</p> <p>(4) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court; and</p> <p>(5) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interests of justice.</p> <p>The court shall grant the petition and order that all or part of the criminal history record be sealed if the conditions of this subsection are met and the court finds that sealing the record better serves the interests of justice than expungement and the person committed the qualifying crime after reaching 19 years of age.</p> <p>For petitions filed related to conviction of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense, unless the court finds that expungement would not be in the interests of justice, the court shall grant the petition and order that the record be expunged if the petitioner has completed any sentence or supervision for the offense and any restitution and surcharges have been paid in full, provided that payment of surcharges shall not be required if waived by the court.</p> <p>For petitions filed related to conviction for possession of a regulated drug in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:</p> <p>(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.</p> <p>(2) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.</p>

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Prior to granting an expungement or sealing under this section for petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall make a finding that the conduct underlying the conviction did not constitute a burglary into an occupied dwelling. The petitioner shall bear the burden of establishing this fact.

For petitions filed related to a conviction related to operating under the influence, only petitions to seal may be considered or granted by the court. This subsection does not apply to an individual licensed as a commercial driver. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order the record sealed if the following conditions are met:

- (1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously;
- (2) At the time of the filing of the petition, the person has only one conviction of a violation of 23, § 1201; and the person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of § 1201;
- (3) Any restitution ordered by the court has been paid in full;
- (4) The court finds that sealing of the criminal history record serves the interests of justice.

For petitions filed related to a conviction for burglary when the person was 25 years of age or younger, unless the court finds that expungement or sealing would not be in the interests of justice, the court shall grant the petition and order the record be expunged or sealed if the following conditions are met:

- (1) At least 15 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 15 years previously;

VERMONT**Is expungement of records available?, cont'd**

- (2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of § 1201(c)(3)(A);
- (3) Any restitution ordered has been paid in full; and
- (4) The court finds that expungement or sealing of the record serves the interests of justice.

13, § 7603 (expungement and sealing of record, no conviction; procedure) – unless either party objects in the interests of justice, the court shall issue an order to expunge a record related to the citation or arrest of a person:

- (1) Within 60 days after the final disposition of the case if the defendant is acquitted of the charges or the charge is dismissed with prejudice; or
- (2) At any time if the prosecutor and defendant stipulate that the court may grant the petition to expunge the record.

Unless either party objects in the interests of justice, the court shall issue an order to expunge a record sealed pursuant to this section eight years after the date on which the record was sealed.

A person may file a petition requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. the court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interests of justice, or if the parties stipulate to sealing or expungement of the record.

The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018, unless the state's attorney's office objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide the state's attorney's office with written notice of its intent to expunge the record.

13, § 7604 (new charge) – if a person is charged with a new offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until the disposition of the new charge.

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13, § 7605 (denial of petition) – if a petition for expungement is denied by the court, no further petition shall be brought for at least two years, unless a shorter duration is authorized by the court.

13, § 7606 (effect of expungement) – upon finding that the requirements for expungement have been met, the court shall issue an order that shall include provisions that its effect is to annul the record of the arrest, conviction, and sentence and that such person shall be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense. The court shall provide notice of the expungement to the response, the Vermont Criminal Information Center, the arresting agency, the Restitution Unit of the Vermont Center for Crime Victim Services, and any other entity that may have a record related to the order to expunge. The information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

Upon entry of an expungement order, the order shall immediately be legally effective, and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege, or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged. The response to an inquiry from any person regarding an expunged record shall be that no criminal record exists. Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

The court shall remove the expunged offense from any accessible database that it maintains. Until all charges on a docket are expunged, the case file shall remain publicly accessible. When all charges on a docket have been expunged, the case file shall be destroyed pursuant to policies established by the court administrator.

The court shall keep a special index of cases that have been expunged together with the expungement order. The index

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Is expungement of records available?, cont'd	shall only list the name of the person convicted of the offense, the date of birth, docket number, and criminal offense that was the subject of the expungement. The special index and related documents are confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons. Inspection of the expungement order may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and documents for research purposes pursuant to the rules for public access to court records. The Court Administrator shall establish policies for implementing this subsection.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. 3, § 164 – provides that the attorney general shall develop and administer an adult court diversion program in all counties. Provides that all information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the participant's prior consent, except that research and reports that do not establish the identity of individual participants are allowed. Information related to the present offense that is divulged during the adult diversion program shall not be used against the person in the person's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation and success, or reasons for failure, may become part of the prosecutor's records. Regardless of whether a record was expunged, the adult court diversion program shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff. These records shall not be available to anyone other than the participant and his or her attorney, state's attorneys, the attorney general, and directors of adult diversion programs.</p> <p>Provides that, within 30 days after the two-year anniversary of a successful completion of adult diversion, the court shall provide notice to all parties of record of the court's intention to order the expungement of all court files and records, law enforcement records other than entries in the adult court diversion program's centralized filing system, fingerprints, and photographs applicable to the proceeding. However, the court shall not order expungement if the participant does not satisfy each of the requirements of this section. The court</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>shall give the state's attorney an opportunity for a hearing to contest the expungement of the records. The court shall expunge the records if it finds:</p> <ol style="list-style-type: none"> (1) Two years have elapsed since the successful completion of the program by the participant; (2) The participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction; (3) Rehabilitation of the participant has been attained to the satisfaction of the court; and (4) The participant does not owe restitution related to the case. <p>Permits the court to expunge any records that were sealed pursuant to this subsection prior to July 1, 2018, unless the state's attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this section, the court shall provide written notice of its intent to expunge the record to the state's attorney's office that prosecuted the case.</p> <p>Requires the court to keep a special index of cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement. The index and related documents are confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons. Inspection may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and documents for research purposes.</p> <p>Except as otherwise provided in this section, upon the entry of an order expunging files and records under this section, the proceedings in the matter shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

in any matter. Copies of the order shall be sent to each agency or official named therein.

The process of automatically expunging records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to that date must apply to the court for expungement. Expungement shall occur if the requirements of this section are met.

13, § 7041 – permits a court to defer sentencing in a case and place the defendant on probation upon such terms and conditions as it may require if a written agreement concerning the deferral is entered into between the state's attorney and the respondent and filed with the clerk of the court. The court may also defer sentencing without a written agreement if the listed conditions are met.

Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as provided in this section, the record of the proceedings shall be expunged upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in the matter. The record shall not be expunged until restitution has been paid in full.

Provides that the Vermont Crime Information Center shall retain a special index of deferred sentences for sex offenses that require registration. The index shall only list the name and date of birth of the subject of the expunged files and records, the office for which the subject was convicted, and the docket number of the proceeding that was the subject of the expungement. The index shall be confidential and may be accessed only by the director of the information center and a designated clerical staffperson for the purpose of

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Are any records eligible to be automatically sealed or expunged?, cont'd

providing information to the department of corrections in the preparation of a presentence investigation.

13, § 7609 (expungement of criminal history records of an individual 18-21 years of age) – except as otherwise provided in this section, the record of the criminal proceedings for an individual who was 18-21 years of age at the time the individual committed a qualifying crime shall be expunged within 30 days after the date on which the individual successfully completed the terms and conditions of the sentence for the conviction of the qualifying crime, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. A copy of the order shall be sent to each agency, department, or official named in the order. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such individual. The record shall not be expunged until restitution and surcharges have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court.

A criminal record that includes both qualifying and non-qualifying offenses shall not be eligible for expungement pursuant to this section.

The Vermont Crime Information Center shall retain a special index of sentences for sex offenses that require registration. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding that was the subject of the expungement. The index shall be confidential and shall be accessed only by the director of the information center and an individual designated for the purpose of providing information to the department of corrections in the preparation of a presentence investigation.

An individual who was 18-21 years of age at the time the individual committed a qualifying crime may file a petition with the court requesting expungement related to the qualifying crime after 30 days have elapsed since the

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Are any records eligible to be automatically sealed or expunged?, cont'd	individual completed the terms and conditions for the sentence for the qualifying crime. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interests of justice.
Does the state offer a certificate of relief or similar document?	<p>Yes. 13, § 8010 (order of limited relief) – provides that an individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking the order shall provide the prosecutor’s office with notice of the petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in a criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.</p> <p>Except as provided by § 8012, the court may issue an order of limited relief relieving one or more of the mandatory sanctions described in this chapter if, after reviewing the petition, the individual’s criminal history record, any filing by a victim, and any other relevant evidence, it finds the individual has established the following by a preponderance of the evidence:</p> <ol style="list-style-type: none"> (1) That granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational housing; (2) The individual has substantial need for the relief requested in order to live a law abiding life; and (3) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual. <p>Provides that the order of limited relief shall specify the mandatory sanction from which relief is granted and any restriction imposed pursuant to § 8013(a) and (b). an order of limited relief relieves a mandatory sanction to the extent provided in the order. If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in § 8008 of this title.</p>

VERMONT**Does the state offer a certificate of relief or similar document?, cont'd**

13, § 8011 (certificate of restoration of rights) – an individual convicted of an offense may petition the court for a certificate of restoration of rights relieving mandatory sanctions not sooner than five years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from incarceration pursuant to a criminal sentence in any jurisdiction, whichever is later.

Except as provided in § 8012, the court may issue a certificate of restoring of rights if, after reviewing the petition, the individual's criminal history, any filing by a victim or prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

- (1) The individual is engaged in or seeking to engage in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;
- (2) The individual is not in violation of the terms of any criminal sentence or that any failure to comply is justified, excused, involuntary, or insubstantial;
- (3) No criminal charge is pending against the individual; and
- (4) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or to any individual.

A certificate must specify any restriction imposed and mandatory sanction from which relief has not been granted under § 8013. A certificate relieves all mandatory sanctions, except those listed in § 8012 and any others specifically excluded in the certificate. If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in § 8008 of this title.

13, § 8012 (discretionary disqualifications and mandatory sanctions not subject to order of limited relief or certificate of restoration of rights) – sets forth the mandatory sanctions

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Does the state offer a certificate of relief or similar document?, cont'd	<p>that cannot be relieved by the issuance of an order of limited relief or certificate of restoration of rights.</p> <p>13, § 8013 (issuance, modification, and revocation of order of limited relief and certificate of restoration of rights) – provides that when a petition is filed under §§ 8010 or 8011, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify the office that prosecuted the offense or the attorney general. The court may issue an order or certificate subject to restriction or condition.</p> <p>Provides that the court may restrict an order or certificate if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a related felony or an offense in another jurisdiction that is deemed a felony in this state. An order of restriction may be issued on motion of the court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor; after notice to the individual and any prosecutor that has appeared in the matter; and after a hearing if requested by the individual or prosecutor.</p> <p>Requires that criminal history records include issuance and modifications of orders and certificates. Provides that the court may adopt rules for application, determination, modification, and revocation of orders and certificates.</p> <p>If the court grants in part or denies a petition, the court may order that the person not file a subsequent petition for a period not to exceed five years.</p> <p>13, § 8014 (reliance on order or certificate as evidence of due care) – provides that in a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or certificate of restoration of rights may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order or certificate was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.</p>
Are drug convictions eligible for relief?	Yes, see above.

VERMONT**Miscellaneous provisions**

13, § 7610 (criminal history record sealing special fund) – there is established a Criminal History Record Sealing Special Fund. Fees collected for the filing of a petition to seal a criminal history record of a violation of 23, § 1201 shall be deposited into and credited to this fund. The fund shall be available to certain state entities to offset the administrative costs of sealing such records. Balances in the fund at the end of the fiscal year shall be carried forward and remain in the fund.

13, § 8003 (limitation on scope) – provides that this chapter does not provide a basis for invalidating a plea, conviction, or sentence; a cause of action for money damages; a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this chapter; or seeking relief from a collateral consequence imposed by another state or the United States or a subdivision, agency, or instrumentality thereof, unless the law of such jurisdiction provides for such relief. Further provides that this chapter shall not affect the duty an individual’s attorney owes to the individual, a claim or right of a victim of an offense, or a right or remedy under law other than this chapter available to an individual convicted of an offense.

13, § 8004 (identification, collection, and publication of laws regarding collateral consequences) – requires the attorney general to:

- (1) Identify or cause to be identified any provision in the state constitution, statutes, and administrative rules which imposes a mandatory sanction or authorizes the imposition of a discretionary disqualification and any provision of law that may afford relief from a collateral consequence;
- (2) Prepare or compile from available sources a collection of citations to, and the text or short descriptions of, the provisions identified in paragraph (1) of this section not later than January 1, 2016; and
- (3) Update the collection annually by January 1.

Requires the attorney general to include the certain listed statements in a prominent manner at the beginning of the collection required by this section. Also requires the attorney general to publish the collection. Additionally, the attorney

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Miscellaneous provisions, cont'd	<p>general shall publish as part of the collection the title and internet address, if available, of the most recent collection of collateral consequences imposed by federal law and any provision of federal law that may afford relief from a collateral consequence.</p> <p>Requires an agency that adopts a rule pursuant to title 3, §§ 836-844 that implicates collateral consequences to a conviction shall forward a copy of the rule to the attorney general.</p> <p>13, § 8005 (notice of collateral consequences and eligibility for expungement in pretrial proceeding) – when an individual receives formal notice that the individual is charged with an offense, the court shall provide either oral or written notice to the individual regarding the possible consequences of a guilty plea or conviction. Requires a court to confirm that the individual has received such notice before accepting a plea of guilty or nolo contendere from an individual.</p> <p>13, § 8006 (notice of collateral consequences and eligibility for expungement upon release) – requires that an individual in the custody of the commissioner of corrections be given written notice prior to the completion of a sentence regarding collateral consequences and where to find the collection of laws required by § 8004. Also requires that the notice include a statement that the conviction may be eligible for expungement or sealing. Sets forth the time periods when such notice must be given.</p>
Recently proposed legislation	Yes. See Pending State Legislation .

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • VA. CONST. Art. V, § 12 (West 2024) (executive clemency) • VA. CODE ANN. § 19.2-389.3 (West 2024) (marijuana possession; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty) • VA. CODE ANN. §§ 19.2-392.1 to 19.2-392.4 (West 2024) (collectively “Expungement of Criminal Records”) • VA. CODE ANN. §§ 19.2-392.5 to 19.2-392.17 (West 2024) (collectively “Sealing of Criminal History Record Information and Court Records”) • VA. CODE ANN. § 53.1-136 (West 2024) (powers and duties of board; notice of release of certain inmates) • VA. CODE ANN. § 53.1-229 (West 2024) (powers vested in governor) • VA. CODE ANN. § 53.1-231 (West 2024) (investigation of cases for executive clemency by parole board)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1977 (§ 19.2-392.4) • 1978 (§ 19.2-392.3) • 1982 (§ 53.1-231) • 1992 (§ 19.2-392.1) • July 1, 2020 (§ 19.2-392.2) • July 1, 2021 (§§ 19.2-389.3, 53.1-229) • July 1, 2023 (§ 19.2-392.3:1) • July 1, 2024 (§ 53.1-136) • July 1, 2025 (§§ 19.2-392.5 to 19.2-392.17)
Pardon provisions	<p>Art. V, § 12 – vests the governor with the power to grant pardons after conviction except when the prosecution has been carried on by the House of Delegates; and to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this constitution.</p> <p>Requires the governor to communicate to the general assembly, at each regular session, particulars of every case of pardon granted with the reasons for granting same.</p> <p>§ 53.1-136 – provides that the board of probation and parole shall, among other duties, make investigations and reports with respect to any commutation of sentence, pardon, reprieve or remission of fine, or penalty when requested by the governor.</p>

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Pardon provisions, cont'd	<p>§ 53.1-229 – vests the governor with the power to grant pardons or reprieves.</p> <p>§ 53.1-231 – provides that the Parole Board, at the request of the governor, shall investigate and report to the governor on cases in which executive clemency is sought. In any other case in which it believes action on the part of the governor is proper or in the best interest of the commonwealth, the board may investigate and report to the governor with its recommendations.</p>
Is sealing of records available?	<p>Yes. § 19.2-392.5 (sealing defined; effect of sealing; eff. July 1, 2025) – provides that “sealing” means to:</p> <ol style="list-style-type: none"> (1) Restrict dissemination of criminal history record information in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction; and (2) Prohibit dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by court order for one or more of the purposes set forth in § 19.2-392.13. <p>Provides that sealing may be required either by the issuance of a court order following the filing of a petition or automatically by operation of law under the processes set forth in this chapter.</p> <p>Provides that records relating to an arrest, charge, or conviction that have been sealed may be disseminated only for purposes set forth in § 19.2-392.13. The court, except as provided in § 19.2-392.14(B), and any law enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, charge, or conviction that has been sealed, unless such information is permitted to be disclosed pursuant to law. A clerk of any court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of sealed court records, including electronic records, absent gross negligence or willful misconduct. Provides that this subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any cause of action accruing prior to the effective date of this section.</p>

VIRGINIA**Is sealing of records available?, cont'd**

Except as otherwise provided in this section, upon entry of an order for sealing, the person who is the subject of the records may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, charge, or conviction occurred. Further, no person as to whom an order for sealing has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, charge, or conviction that has been sealed.

A person who is the subject of the order of sealing entered pursuant to §§ 19.2-392.7, -392.8, -392.11, or -392.12 may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered sealed if (a) required by state or federal law; (b) the person is applying for employment with, or to be a volunteer with, the state police or a police department or sheriff's office; or (c) the rules and regulations of this state allow the employer to access such sealed records. Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury.

An order to seal an arrest, charge, or conviction entered pursuant to §§ 19.2-392.7, -392.8, -392.11, or -392.12 shall not relieve the person who is the subject of such records from any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense ordered to be sealed. Any arrest, charge, or conviction sealed pursuant to such sections shall not be disclosed in any sentencing report, considered when ascertaining the punishment of a defendant, or considered in any hearing on the issue of bail, release, or detention of a defendant. Any arrest, charge, or conviction sealed pursuant to such sections shall not constitute a barrier crime pursuant to § 19.2-392.02 except as otherwise required by federal law.

Requires a person to disclose any felony conviction sealed pursuant to § 19.2-392.12 for purposes of determining that person's eligibility to be empaneled as a member of a jury. Failure to disclose such conviction, if such failure to disclose

VIRGINIA**Is sealing of records available?, cont'd**

was knowing or willful, shall be grounds for prosecution of perjury.

§ 19.2-392.12 (sealing of offenses resulting in a deferred and dismissed disposition or conviction by petition; *eff. July 1, 2025*) – except for a conviction or deferral and dismissal of a violation of certain listed statutes, a person who has been convicted of or had a charge deferred and dismissed for: (a) a misdemeanor offense; (b) a Class 5 or 6 felony; or (c) a violation of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny, may file a petition setting forth the relevant facts and requesting sealing of the criminal history record information and court records relating to the charge or conviction, provided that such person has never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, not been convicted of a Class 3 or 4 felony within the past 20 years, and not been convicted of any other felony within the past 10 years of his petition.

Sets forth the documents required to be included and information required to be included in the petition. Provides that a petition may request the sealing of the criminal history record information and court records for multiple charges or convictions provided that all such charges and convictions arose out of the same transaction or occurrence and all such charges are eligible for sealing. A petition may not request the sealing of the criminal history record information and court records for multiple charges or convictions that arose out of different transactions or occurrences. A petitioner may only have two petitions granted pursuant to this section within his lifetime. Any petition that is granted solely to seal a violation of § 18.2-265.3(A) as it relates to marijuana; solely to seal a violation of § 4.1-305; or to seal a violation of both § 18.2-265.3(A) as it relates to marijuana and § 4.1-305 arising out of the same transaction or occurrence shall not count against the petitioner's lifetime maximum.

Requires the commonwealth to be made a party to the proceeding, and permits a Commonwealth's attorney to file an objection or answer to the petition or give written notice to the court that there is no objection within 21 days after service is made.

VIRGINIA**Is sealing of records available?, cont'd**

Provides that the court shall enter an order requiring the sealing of criminal history records, including electronic records, only if the court finds that all criteria set forth below are met:

- (1) During a period after the date of dismissal of a deferred charge, conviction, or release from incarceration of the charge or conviction set forth in the petition, whichever is later, the person has not been convicted of violating any commonwealth law that requires a report to the Central Criminal Records Exchange or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions, for seven years for any misdemeanor offense or 10 years for any felony offense;
- (2) If the records relating to the offense indicate that the occurrence leading to the deferral or conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation;
- (3) The petitioner has not previously obtained the sealing of two other deferrals or convictions arising out of different sentencing events; and
- (4) The continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner.

If the Commonwealth's attorney gives written notice that he does not object to the petition and stipulates that the petitioner is eligible to have such offense sealed, and the continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may enter an order of sealing without conducting a hearing.

Permits any party aggrieved by the decision of the court to file an appeal.

Provides that, upon the entry of an order of sealing, the clerk of the court shall maintain a copy of such order under seal

VIRGINIA**Is sealing of records available?, cont'd**

and shall cause an electronic notification of such order to be forwarded to the Department of State Police. Upon receipt of such notification, the department shall seal the records in accordance with § 19.2-392.13. When sealing such charge or conviction, the department shall include a notation in the record that such offense was sealed. The department shall also electronically notify the Office of the Executive Secretary of the Supreme Court and any other agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated in accordance with § 19.2-392.13.

Sets forth the offenses ineligible for sealing under this section. Provides that nothing in this chapter shall prohibit a circuit court from entering an order to seal a charge or conviction under this section when such charge or conviction is eligible for sealing under some other section of this chapter.

§ 19.2-392.13 (disposition of records when an offense is sealed; permitted uses of sealed records; *eff. July 1, 2025*) – provides that upon electronic notification that a court order for sealing has been entered pursuant to this chapter, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed, except for purposes set forth in this section and pursuant to any rules, regulations, or procedures adopted pursuant to law. The department shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated for purposes set forth in this section and pursuant to rules, regulations, and procedures adopted pursuant to law. Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained shall be considered sealed, provided that such records are accessible only to the manager of the records or their designee.

Upon entry of a court order for sealing, the Executive Secretary of the Supreme Court and any circuit court clerk

VIRGINIA**Is sealing of records available?, cont'd**

who maintains a case management system that interfaces with the department shall ensure that the court record of such arrest, charge, or conviction is not available for public online viewing, and the clerk of the court shall not disseminate any record except as permitted by this section.

Sealed records shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated and used for the purposes set forth in this section. Includes a list of 25 permitted disclosures.

An individual may obtain access to a sealed record with a court order, which may only be issued as permitted pursuant to one of the 25 listed allowable disclosures.

Also sets forth the entities that can access the electronic records in an appellate court, circuit court, or district court case management system ordered to be sealed, which entities may only access the records for research purposes and may be disseminated without a court order.

Provides that if a pleading or case document in a court record that was sealed is included among other court records that have not been ordered to be sealed, the clerk shall not be required to prohibit dissemination of such record. Further, the supreme court, court of appeals, and any circuit court shall not be required to prohibit dissemination of any published or unpublished opinion relating to an arrest, charge, or conviction that was ordered to be sealed.

Provides that no arrest, charge, or conviction that has been sealed may be used to impeach the credibility of a testifying witness at any hearing or trial unless its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect, and the proponent gives an adverse party give reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

The provisions of this section do not prohibit the disclosure of sealed criminal history record information or any information from such records among law enforcement officers and attorneys when such disclosures are made by such officers or attorneys while engaged in the performance

VIRGINIA**Is sealing of records available?, cont'd**

of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.

§ 19.2-392.14 (disclosure of sealed records; penalty; *eff. July 1, 2025*) – it is unlawful for any person having or acquitting access to sealed criminal history record information or a court record, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed, to disclose such record or any information from such record to another person in violation of this chapter. A clerk of court shall not be in violation of this section if such clerk informs a person requesting access to a sealed court record that such record has been sealed and can only be accessed pursuant to a court order. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. Any person who maliciously and intentionally violates this section is guilty of a Class 6 felony.

§ 19.2-392.15 (prohibited practices by employers, educational institutions, agencies, etc., of state and local governments; penalty; *eff. July 1, 2025*) – except as provided below, an applicant for employment or admission to an educational institution, need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been sealed. These provisions do not apply if: (a) required by state or federal law; (b) the person is applying for employment with, or to be a volunteer with, the state police or a police department or sheriff's office; or (c) the rules and regulations of this state allow the employer to access such sealed records.

§ 19.2-392.16 (dissemination of criminal history records and traffic history records by business screening services; *eff. July 1, 2025*) – requires a business screening service that knows that a criminal history or traffic history record has been sealed to delete the record. A business screening service that violates this section is liable to the person who is the subject of the record for a penalty of \$1,000 or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees.

VIRGINIA**Is expungement of records available?**

Yes. § 19.2-392.1 (statement of policy; *eff. until June 30, 2025*) – provides that the general assembly finds that arrest records can be a hindrance to an innocent citizen’s ability to obtain employment, an education, and to obtain credit. It further finds that the police and court records of those of its citizens who have been absolutely pardoned for crimes for which they have been unjustly convicted can also be a hindrance. This chapter is intended to protect such persons from the unwarranted damage which may occur as a result of being arrested and convicted.

§ 19.2-392.2 (expungement of police and court records; *eff. until July 1, 2025*) – provides that if a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2 and is acquitted or a nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction, the individual may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. such person shall not be required to pay any fees for the filing of a petition under this subsection.

Sets forth the information required to be included in the petition, a copy of which shall be served on the attorney for the Commonwealth where the petition is filed. The attorney may file an object or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after service.

Requires the petitioner to obtain a complete set of the petitioner’s fingerprints from a law enforcement agency and shall provide that agency with a copy of the petition for expungement. The agency shall submit the set of fingerprints and a copy of the petition to the Central Criminal Records Exchange (CCRE). The CCRE shall forward under seal to the court a copy of the petitioner’s criminal history, a copy of the source documents that resulted in the CCRE entry that

VIRGINIA**Is expungement of records available?, cont'd**

the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of expungement or denying the petition, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the entry of the order, the petitioner requests the return of the card in person.

After receiving the information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition. If the petitioner has no prior criminal record, and the arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown, to expungement of the records relating to the charge, and the court shall enter an order of expungement. If the Commonwealth's attorney gives written notice to the court that he does not object and, when the charge to be expunged is a felony, stipulates in such written notice that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, the court may enter an order of expungement without conducting a hearing.

Notwithstanding any other provision of this section to the contrary, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment, or presentment, the court shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the records relating to the charge.

Notwithstanding any other provision of this section, upon receiving a copy of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter an order requiring the expungement of the police and court records relating to the charge and conviction.

<u>VIRGINIA</u>	
Is expungement of records available?, cont'd	<p>Further, upon receiving a copy of a writ vacating a conviction, the court shall enter an order requiring expungement of the records relating to the charge and conviction.</p> <p>Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police which shall direct the manner by which the appropriate expungement or removal of such records shall be effected.</p> <p>Provides that any order entered where the court or parties failed to strictly comply with the procedures set forth in this section or the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.</p> <p>§ 19.2-392.3 (disclosure of expunged records; <i>eff. until July 1, 2025</i>) – provides that it is unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without a court order. Further provides that, upon a verified petition filed by a Commonwealth's attorney alleging that the record is needed by a law enforcement agency for purposes of employment application or a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.</p> <p>§ 19.2-392.4 (prohibited practices by employers, educational institutions, agencies, etc., of state and local governments; <i>eff. until July 1, 2025</i>) – provides that an applicant for employment or admission to an educational institution need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.</p>
Are any records eligible to be automatically sealed or expunged?	Yes. See discussion of § 19.2-392.2 above.

VIRGINIA**Are any records eligible to be automatically sealed or expunged?, cont'd**

§ 19.2-392.6 (automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction; automatic sealing of former possession of marijuana offenses; *eff. July 1, 2025*) – provides that if a person is convicted of a violation of one of the listed offenses, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of this section.

Any conviction listed in this section shall be automatically sealed if seven years have passed since the date of the conviction and the person convicted of such offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions, during that time period.

No conviction listed in this section shall be automatically sealed if, on the date of the conviction, the person was convicted of another offense that is not eligible for automatic sealing under this section.

Provides that this section shall not be construed as prohibiting a person from seeking sealing in the circuit court pursuant to the provisions of § 19.2-392.12.

§ 19.2-392.7 (process for automatic sealing of offenses resulting in a conviction or deferred disposition; *eff. July 1, 2025*) – except as provided in this section, on at least a monthly basis, the Department of State Police shall determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic sealing set forth in § 19.2-392.6. No later than July 1, 2025, the department shall determine which offenses meet the criteria. After reviewing the offenses, the department shall provide an electronic list of all such offenses to the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the department.

Upon receipt of the list, on at least a monthly basis, the secretary shall provide an electronic list of all eligible offenses to the clerk of each circuit court in the jurisdiction

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>where the case was finalized, if such court participates in the case management system maintained by the secretary.</p> <p>Upon receipt of the electronic list, on at least a monthly basis, the clerk of each court shall prepare an order and the chief judge of that court shall enter such order directing that the offenses that meet the criteria for automatic sealing be automatically sealed under the process described in § 19.2-392.13. Such order shall contain the names of the persons charged with or convicted of such offenses. The clerk shall maintain a copy of all orders entered pursuant to this subsection under seal.</p> <p>Requires the clerk of each circuit court to provide an electronic notification of any order entered pursuant to this section to the Department of State Police on at least a monthly basis. Upon receipt of such notification, the department shall proceed as set forth in § 19.2-392.13.</p> <p>Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and any rules and regulations and procedures adopted pursuant to law. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.</p> <p>§ 19.2-392.8 (automatic sealing of offenses resulting in acquittal, nolle prosequi, or dismissal; <i>eff. July 1, 2025</i>) – provides that if a person is charged with the commission of a misdemeanor offense, excluding traffic infractions under Title 46.2, and the person is acquitted, a nolle prosequi is entered, or the charge is otherwise dismissed, excluding any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, the court disposing of the matter shall, at the time of the acquittal, nolle prosequi, or dismissal is entered, order that the charge be automatically sealed pursuant to § 19.2-392.13, unless the Commonwealth's attorney or any other person advises the court at the time that:</p>

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Are any records eligible to be automatically sealed or expunged?, cont'd

- (1) The charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt;
- (2) A nolle prosequi is entered or the charge is dismissed as part of a plea agreement;
- (3) Another charge arising out of the same facts and circumstances is pending against the person;
- (4) The commonwealth intends to reinstate the charge or any other charge arising out of the same facts and circumstances within three months;
- (5) Good cause exists, as established by a preponderance of the evidence, that such charge should not be automatically sealed; or
- (6) The person charged with the offense objects to such automatic sealing.

If a person is charged with the commission of a felony offense and is acquitted, or the charge is dismissed with prejudice, he may immediately upon the acquittal or dismissal orally request that the records relating to the charge be sealed. Upon such request and with the concurrence of the Commonwealth's attorney, the court shall order the automatic sealing of such records.

If the court enters an order of sealing pursuant to this section, the court shall advise the person that the offense has been ordered automatically sealed. Any denial by the court to enter a sealing order shall be without prejudice, and the person may seek expungement in the circuit court pursuant to the provisions of § 19.2-392.2. Entry of a sealing order shall not prohibit the person from seeking expungement pursuant to § 19.2-392.2.

Any order to seal issued pursuant to this section shall be sealed and may only be disseminated pursuant to § 19.2-392.13. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order.

§ 19.2-392.10 (process for automatic sealing of offenses resulting in acquittal, nolle prosequi, or dismissal; *eff. July 1, 2025*) – on at least a monthly basis, the Executive Secretary of the Supreme Court and any circuit court clerk who

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Are any records eligible to be automatically sealed or expunged?, cont'd

maintains a case management system that interfaces with the Department of State Police shall provide an electronic notification of all offenses in such case management system to the department that were ordered to be automatically sealed. Upon receipt of the electronic notification, the department shall proceed as set forth in § 19.2-392.13.

§ 19.2-392.11 (automatic sealing of misdemeanor offenses resulting in acquittal, nolle prosequi, or dismissal for persons with no convictions or deferred and dismissed offenses on their criminal history record; *eff. July 1, 2025*) – on at least an annual basis, the Department of State Police shall review the Central Criminal Records Exchange (CCRE) and identify all persons with finalized misdemeanor case dispositions that resulted in an acquittal, a nolle prosequi, or a dismissal, excluding any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record of such person contains no convictions for any criminal offense for a violation of any law of the commonwealth that requires a report to the CCRE in the last three years, excluding traffic infractions. For purposes of this subsection, any offense on the person's criminal history record that has previously been ordered sealed shall not be deemed a conviction.

Upon identification of the finalized case dispositions, the department shall provide an electronic list of such offenses to the Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the department.

Upon receipt of the electronic list from the department, on at least an annual basis, the secretary shall provide an electronic list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the secretary.

Upon receipt of such list, the clerks shall prepare an order and the chief judge of that court shall enter such order directing that the offenses be automatically sealed under the process described in § 19.2-392.13. Such order shall contain the names of the persons charged with such offenses. The clerk shall maintain a copy of all orders under seal. The clerk

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Are any records eligible to be automatically sealed or expunged?, cont'd	<p>of each circuit court shall provide an electronic notification of any order entered to the department on at least an annual basis. Upon receipt of such notification, the department shall proceed as set forth in § 19.2-392.13.</p> <p>Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13.</p> <p>This section shall not be construed as prohibiting a person from seeking expungement pursuant to § 19.2-392.2. Entry of a sealing order pursuant to this section shall not prohibit a person from seeking expungement per that section. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order. If an offense is automatically sealed pursuant to this section and such offense was not ordered to be automatically sealed at the time of the acquittal, nolle prosequi, or dismissal for one or more of the reasons set forth in § 19.2-392.8, the sealing of such offense shall be voidable upon motion and notice made within two years of the entry of the order.</p> <p>§ 19.2-392.17 (traffic infractions deemed sealed; <i>eff. July 1, 2025</i>) – any record of a traffic infraction that is not punishable as a criminal offense shall be deemed to be sealed after 11 years from the date of final disposition of the offense, unless such sealing is prohibited by federal or state law.</p>
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	<p>Yes. § 19.2-389.3 – three versions of this statute currently exist; therefore, readers are referred to the official Virginia code for more detailed information (<i>see</i>, https://law.lis.virginia.gov/vacode/title19.2/chapter23/section19.2-389.3/#v1/).</p> <p>In general, each version of this statute provides that records relating to the arrest, criminal charge, or conviction of a person for a misdemeanor violation of § 18.2-248.1 (related to marijuana), including any violation that was deferred and dismissed, that are maintained in the Central Criminal</p>

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Are drug convictions eligible for relief?, cont'd	<p>Records Exchange shall not be open for public inspection or otherwise disclosed. Each version sets forth the individuals and entities to which such records may be disseminated.</p> <p>Each version provides that an applicant need not, in answer to any written or oral question concerning any arrest, criminal charge, or conviction, include a reference to or information regarding any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to this section.</p> <p>The versions set forth in Acts 2021, Sp. S. 1, cc. 550 and 551, cl. 1 and cc.524 and 542 set forth exceptions to the provision permitting an applicant not to disclose an arrest, charge, or conviction not open for public inspection under this section. The exceptions apply to specific employment applications. These versions also prohibit inquiries into arrests, charges, and convictions by landlords and insurance companies. Also permit law enforcement officers and attorneys to disclose such information when such disclosures are made while engaged in the performance of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.</p>
Miscellaneous provisions	<p>§ 19.2-392.3:1 (motion for the disclosure of expunged police and court records in a civil case) – provides that in an action for damages against a locality or law enforcement officer arising out of or relating to charges where a petition for expungement of the records relating to such charges is pending or where the records have been expunged, any party to such action may file a motion in the appropriate court for the release of the expunged records for use in the civil litigation and, upon motion and for good cause shown, such records shall be ordered to be released and the penalties set forth in this chapter relating to disclosure of such expunged records shall not apply.</p>
Recently proposed legislation	<p>Yes. See Pending State Legislation.</p>

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Statute(s) and regulation(s)	<ul style="list-style-type: none"> • WASH. CONST. Art. III, § 9 (West 2023) (pardoning power) • WASH. CONST. Art. III, § 11 (West 2023) (remission of fines and forfeitures) • WASH. REV. CODE ANN. § 9.94A.030 (West 2024) (definitions) • WASH. REV. CODE ANN. § 9.94A.885 (West 2024) (clemency and pardons board—petitions for review—hearing) • WASH. REV. CODE ANN. §§ 9.97.010 and 9.97.020 (West 2024) (collectively “Certificates of Restoration of Opportunity”) • WASH. REV. CODE ANN. § 10.97.060 (West 2024) (deletion of certain information, conditions) • WASH. GEN. R. 15 (West 2024) (destruction, sealing, and redaction of court records)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1889 (§§ 9, 11) • 1977 (§ 10.97.060) • July 26, 2009 (§ 9.94A.885) • July 22, 2011 (§ 9.96.010) • July 25, 2021 (§ 9.97.020) • June 27, 2023 (Rule 15)
Pardon provisions	<p>Art. III, § 9 – the pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law.</p> <p>Art. III, § 11 – provides that the governor shall report to the legislature at its next meeting each case of pardon granted, and the reasons for granting the same.</p> <p>§ 9.94A.885 – provides that the clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and pardoning of offenses in extraordinary cases and shall make recommendations thereon to the governor. Prohibits the board from making a recommendation until a public hearing has been held on the petition.</p> <p>§ 9.96.010 (restoration of civil rights) – whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his or her civil rights restored, the governor shall have the power, in his or her discretion, to restore to</p>

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Pardon provisions, cont'd	such person his or her civil rights in the manner as is provided in this chapter.
Is sealing of records available?	<p>Yes. General Rule 15 sets forth the procedures for expungement (referred to as destruction), sealing, and redaction of court records. The rule applies to all court records, regardless of the physical form of the record, the method of recording the court record, or the method of storage of the court record.</p> <p>Includes definition for “destroy,” which means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy. Also defines “seal” to mean to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, erase, or redact shall be treated as a motion or order to seal. Finally, defines “redact” to mean to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.</p> <p>In a criminal case, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult.</p> <p>After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:</p> <ol style="list-style-type: none"> (1) The sealing or redaction is permitted by statute; (2) The sealing or redaction furthers an order entered under Superior Court Criminal Rule 12(f) (related to

WASHINGTON**Is sealing of records available?, cont'd**

- motions to strike) or a protective order entered under Superior Court Criminal Rule 26(c);
- (3) A conviction has been vacated;
 - (4) The sealing or redaction furthers an order entered pursuant to § 4.24.611 (related to product liability/hazardous substance claims);
 - (5) The redaction includes only restricted personal identifiers contained in the court record; or
 - (6) Another identified compelling circumstance exists that requires the sealing or redaction.

A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court.

When the court clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases, and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, in which case, the information in the public court indices shall be limited to the case number, case type with the notification "DV" if the case involved domestic violence, the adult's name, and the notation "vacated." The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

When the clerk receives a court order to seal specified court records, the clerk shall:

- (1) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;
- (2) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche, or other storage medium form other than paper, the

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Is sealing of records available?, cont'd	<p>clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and</p> <p>(3) File the order to seal and written findings supporting the order to seal, both of which shall be accessible to the public.</p> <p>When a record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth above.</p> <p>Provides that sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice pursuant to this rule except:</p> <p>(1) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecutor the court shall nullify the sealing order in the prior sealed case(s).</p> <p>(2) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecutor the court shall nullify the sealing order as to all prior criminal records of that individual.</p> <p>A court record, or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.</p>
Is expungement of records available?	<p>Yes. § 9.94A.030 – the definition of “criminal history” provides that a conviction may be removed from a defendant’s criminal history only if it is vacated pursuant to §§ 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a</p>

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governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense.

§ 10.97.060 – provides that criminal history record information which consists of non-conviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became non-conviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of non-conviction data shall be deleted upon the request of the person who is the subject of the record; provided, however, that the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

- (1) The disposition was a deferred prosecution or similar diversion of the alleged offender;
- (2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;
or
- (3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Provides that nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event.

General Rule 15 – provides that the court shall not order the destruction (expungement) of any court record unless

<u>WASHINGTON</u>	
Is expungement of records available?, cont'd	<p>expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record. In a criminal case, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult.</p> <p>When the clerk receives a court order to destroy the entire court file, the clerk shall remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and supporting written findings shall be filed and available for viewing by the public. The accounting records shall be sealed.</p> <p>When the clerk receives a court order to destroy specified court records, the clerk shall:</p> <ol style="list-style-type: none"> (1) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "order destroyed" for the docket entry; (2) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and (3) File the order to destroy and the written findings support the order to destroy. Both the order and the findings shall be publicly accessible. <p>Provides that this subsection does not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.</p>
Are any records eligible to be automatically sealed or expunged?	No.

<u>WASHINGTON</u>	
Does the state offer a certificate of relief or similar document?	<p>Yes. § 9.97.010 (definitions) – includes definitions for “qualified applicant,” which means any adult or juvenile who meets the following requirements:</p> <ol style="list-style-type: none"> (1) The required time periods for the severity of the offense have passed; (2) Is in compliance with or has completed all sentencing requirements imposed by a court including that the individual: (a) has paid all court-ordered legal financial obligations in full; (b) is fully compliant with a payment plan for court-ordered legal financial obligations; or (c) is out of compliance with a payment plan for court-ordered legal financial obligations but has established good cause with the court for any noncompliance with the payment plan; (3) Has never been convicted of one of the listed offenses ineligible for relief under this chapter; (4) Has not been arrested for nor convicted of a new crime and has no pending criminal charge, and there is no information presented to a qualified court that such a charge is imminent. <p>§ 9.97.020 (certificate of restoration of opportunity—qualified applicants—states, counties, municipal departments, boards, officers, or agencies authorized may not disqualify—exceptions—immunity, etc.) – provides that, except as otherwise provided in this section, no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant based solely on the applicant’s criminal history if the qualified applicant has obtained a certificate of restoration of opportunity and the applicant meets all other statutory and regulatory requirements. Exempts criminal justice agencies and the Washington state bar association from this section. Also provides that this section does not apply to the licensing, certification, or qualification of a list of professionals.</p> <p>Provides that a qualified court has jurisdiction to issue a certificate of restoration of opportunity to a qualified applicant. The court must determine, in its discretion,</p>

WASHINGTON**Does the state offer a certificate of relief or similar document?, cont'd**

whether the certificate applies to all past criminal history or applies only to the convictions or adjudications in the jurisdiction of the court. The certificate does not apply to any future criminal justice involvement that occurs after the certificate is issued. A court must determine whether to issue a certificate by determining whether the applicant is a qualified applicant as defined in § 9.97.010.

Provides that a certificate does not apply to the state abuse and neglect registry and no finding of abuse, neglect, or misappropriation of property may be removed from the registry based solely on a certificate.

Further provides that the Washington state patrol is not required to remove any records based solely on a certificate but include a certificate as part of its criminal history record report.

A certificate of restoration of opportunity has no effect on any other court records, including records in the judicial information system. The court records related to a certificate must be processed and recorded in the same manner as any other record. The court must administer the court records regarding the certificate in the same manner as it does regarding all other proceedings.

Provides that a certificate of restoration of opportunity may only be submitted to a court to demonstrate that the individual met the specific requirements of this section and not for any other procedure, including evidence of character, reputation, or conduct. A certificate is not an equivalent procedure under Rule of Evidence 609(c).

In all cases, an applicant must provide notice to the prosecutor in the county where he or she seeks a certificate of the pendency of such application. If the applicant has been sentenced by any other jurisdiction in the five years preceding the application for a certificate, the applicant must also notify the prosecuting attorney in those jurisdictions. The prosecutor shall provide the court with a report of the applicant's criminal history. Application for a certificate must be filed as a civil action.

<u>WASHINGTON</u>	
Does the state offer a certificate of relief or similar document?, cont'd	<p>A superior court in the county in which the applicant resides may decline to consider the application for certificate. If so, the court must dismiss the application without prejudice and the applicant may refile the application in another qualified court. The court must state the reason for the dismissal on the order. If the court determines that the applicant does not meet the required qualifications, then the court must dismiss the application without prejudice and state the reason(s) on the order. The superior court in the county of the applicant's conviction or adjudication may not decline to consider the application.</p> <p>Unless the court determines that a hearing on the application is necessary, the court must decide without a hearing whether to grant the certificate based on a review of the application and pleadings filed by the prosecutor.</p> <p>Requires the clerk of the court in which the certificate is granted shall transmit the certificate to the Washington state patrol identification section, which holds criminal history information for the person who is the subject of the conviction. The state patrol shall update its records to reflect the certificate.</p> <p>Also requires that the administrative office of the courts to develop and prepare instructions, forms, and an informational brochure designed to assist applicants applying for a certificate. The instructions must include, at a minimum, a sample of a standard application and a form order for a certificate.</p>
Are drug convictions eligible for relief?	There are no specific provisions for drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>WEST VIRGINIA</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • W. VA. CONST. Art. VII, § 11 (West 2024) (executive may remit fines and forfeitures) • W. VA. CODE ANN. § 5-1-16 (West 2024) (remission of fines and penalties; commutation of sentences; reprieves; paroles; pardons) • W. VA. CODE ANN. § 5-1-16a (West 2024) (expungement of criminal record upon full and conditional pardon) • W. VA. CODE ANN. §§ 61-11-25 to 61-11-26b (West 2024) (included within “General Provisions Concerning Crimes”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1923 (§ 5-1-16) • November 19, 2009 (§ 5-1-16a) • November 18, 2019 (§ 61-11-26b) • June 5, 2020 (§ 61-11-26) • January 22, 2024 (§ 61-11-26a) • June 7, 2024 (§ 61-11-25)
Pardon provisions	<p>Art. VII, § 11 – provides that the governor shall have the power, except where the prosecution has been carried on by the House of Delegates, to grant pardons after conviction, but he shall communicate to the legislature at each session the particulars of every case of pardon granted, with his reasons therefor.</p> <p>§ 5-1-16 – provides that the governor shall have the power, except where the prosecution was carried on by the House of Delegates, to grant pardons, after conviction, but he shall record in the journal of executive proceedings and communicate to the legislature, at its next session, the particulars of every case of pardon granted, with his reasons therefor. In any case wherein the governor has the power to grant a pardon, instead of granting the same unconditionally, he may, after sentence, grant it upon such conditions as he may deem proper, with the assent of the person sentenced; and, for the purpose of carrying into effect such conditional pardon, the governor may issue his warrant directed to any proper officer, who shall obey and execute it, instead of the sentence originally awarded.</p>
Is sealing of records available?	Yes. See discussion of § 61-11-26 below.
Is expungement of records available?	Yes. § 5-1-16a – provides that any person who has received a full and unconditional pardon from the governor may petition the appropriate court to have the record of such conviction expunged. The circuit court, upon verification of the act of pardon and after a hearing to determine that good

WEST VIRGINIA**Is expungement of records available?, cont'd**

cause exists, may enter an order directing that all public record of the petitioner's conviction be expunged. For purposes of this section, "public record" or "record" does not include the records of the governor, the legislature, or the secretary of state that pertain to a grant of pardon as such records are not subject to an order of expungement. A record expunged pursuant to the provisions of this section may not be considered in an application to any educational institution in this state or an application for any licensure required by any professional organization in this state.

Provides that no person shall be eligible for expungement until one year after having been pardoned. Additionally, no person shall be eligible for expungement pursuant to this section until five years after the discharge of his or her sentence upon the conviction for which he or she was pardoned. Sets forth the offenses that are ineligible for expungement under this section.

§ 61-11-25 (expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed; expungement of criminal records for those that have successfully completed all requirements of a deferred adjudication or pretrial diversion; exceptions) – provides that any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in the appropriate court to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge.

Any person whose charges have been dismissed following a full and successful completion of a pre-trial diversion program or whose charges have been dismissed following successful completion of a deferred adjudication may file a civil petition in the appropriate court for expungement of all charges originally brought, provided that the charges sought to be expunged arose from the same transaction or occurrence, and all records relating to the arrest, charges, or other matters arising out of the arrest or charges may be expunged.

WEST VIRGINIA**Is expungement of records available?, cont'd**

Sets forth offenses that are ineligible for expungement under this section. Additionally, any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section.

“Records,” as used in this section, includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of § 15-12-1, et seq., because the person was found not guilty by reason of mental illness, intellectual disability, or addiction are exempt from the provisions of this section.

Provides that the petition shall be filed not sooner than 60 days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.

The court may set a date for a hearing and shall notify the prosecutor and arresting agency of the petition and provide an opportunity for a response.

If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

Upon expungement, the proceedings in the matter shall be considered never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on

WEST VIRGINIA**Is expungement of records available?, cont'd**

the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

Inspection of sealed records may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by the prosecutor that inspection and possible use of the records in question is necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

§ 61-11-26 (expungement of certain criminal convictions; procedures; effect) – provides that, subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses, or a nonviolent felony offense or offenses arising from the same transaction or series of transactions, may petition the appropriate court for expungement of the conviction or convictions and the records associated with such conviction(s).

A person is not eligible for expungement of a misdemeanor offense until one year after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time. A person is not eligible for expungement of multiple misdemeanors until two years after the last conviction, completion of any sentence, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

A person is not eligible for expungement of a nonviolent felony pursuant to this section until five years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

Sets forth the offenses that are ineligible for expungement under this section.

Also sets forth the information required to be included in a petition for expungement, and includes a list of individuals and entities on whom a copy of the petition must be served.

WEST VIRGINIA**Is expungement of records available?, cont'd**

Upon receipt of the petition, the persons and entities on whom a petition has been served, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition. A copy of any notice of opposition shall be served upon the petitioner. The petitioner may file a reply no later than 30 days after service of any notice.

Provides that the burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:

- (1) That the conviction or convictions for which expungement is sought are the only conviction or convictions for that specified offense or offenses against the petitioner in this state and that the conviction or convictions are not ineligible for expungement;
- (2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in this section;
- (3) That the petitioner has no criminal charges pending against him or her;
- (4) That the expungement is consistent with the public welfare;
- (5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and
- (6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

Within 60 days of the filing of the petition, the court shall: (a) summarily grant the petition; (b) return the petition to the petitioner to supply incomplete information or correct obvious errors in order to permit consideration of the petition on its merits; (c) set the matter for a hearing; or (d) summarily deny the petition if the court determines the petition discloses on its face or, based upon supporting documentation and sworn statements filed in opposition to

WEST VIRGINIA**Is expungement of records available?, cont'd**

the petition, discloses that the petitioner, as a matter of law, is not entitled to expungement.

If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within 60 days of the entry of the order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

Subject to the exceptions in this section, upon expungement, the proceedings in the matter shall be considered, as a matter of law, never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating to the record on an application for employment, credit, or other type of application. Provided, any person applying for a position in which he or she would be engaging in the prevention, detection, investigation, prosecution, or incarceration of persons for violations of the law shall disclose any and all convictions to his or her prospective employer, regardless of whether such convictions have been expunged.

A person for whom an order of expungement has been entered may not be found guilty of perjury or otherwise giving a false statement for failure to recite or acknowledge the arrest, indictment, trial, or conviction, as long as the person is in compliance with the provisions of this section.

Inspection of sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecutor that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds there is a legitimate reason for access and the interests of justice will be served by granting a petition to

WEST VIRGINIA**Is expungement of records available?, cont'd**

inspect a sealed record, it may grant access under the terms and conditions determined by the court.

Notwithstanding any provision of this code to the contrary, a person may only obtain the relief of expungement afforded by the provisions of this section and § 61-11-26a of this code once.

Defines “expungement” to mean the removal from all public records, other than those specifically exempted therefrom, all evidence that a person has been charged or convicted of a crime. Defines “seal” to mean removing information from public inspection in accordance with this section. Defines “sealing” to mean, for a record kept in a courthouse or maintained by any law enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access; and, for electronic information about a proceeding maintained by a court website, removing the record from the public website.

§ 61-11-26a (expungement of certain criminal convictions with approved treatment or recovery and job program) – notwithstanding the provisions of § 61-11-26 to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of § 61-11-26 and who (a) has a medically documented history of substance abuse and of successful compliance with a substance abuse treatment or recovery and counseling program or (b) graduates from a West Virginia Department of Education-approved job readiness adult training course, or both, if applicable, may petition the appropriate court for expungement of the conviction or convictions and the records associated therewith as follows:

- (1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to § 61-11-26 and satisfies the requirements of this section, is eligible for expungement pursuant to § 61-11-26(a)(1) upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved job readiness adult

<u>WEST VIRGINIA</u>	
Is expungement of records available?, cont'd	<p>training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.</p> <p>(2) Any person who has been convicted of multiple misdemeanors that are eligible for expungement under § 61-11-26 and satisfies the requirements of this section is not eligible for expungement under § 61-11-26(a)(1) until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.</p> <p>(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to § 61-11-26 and satisfies the requirements of this section is not eligible for expungement pursuant to § 61-11-26(a)(2) until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.</p> <p>In addition to the required content of a petition for expungement as required by § 61-11-26(d), any person petitioning for expungement under this section shall also include the following, if applicable: (a) documentation of compliance with an approved treatment or recovery and counseling program; and (b) certificate of graduation from an approved job readiness adult training course.</p> <p>§ 61-11-26b (limitation on expungement for certain motor vehicle traffic control offenses) – sets forth the motor vehicle traffic offenses that are ineligible for expungement under §§ 61-11-26 or 61-11-26a.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.

<u>WEST VIRGINIA</u>	
Recently proposed legislation	None.

<u>WISCONSIN</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • WIS. CONST. Art. V, § 6 (West 2023) (pardoning power) • WIS STAT. ANN. §§ 304.08 to 304.11 (West 2024) (included within “Paroles and Pardons”) • WIS. STAT. ANN. § 973.015 (West 2024) (special disposition)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • July 1, 2009 (§ 304.09) • April 21, 2016 (§ 973.015)
Pardon provisions	<p>Art. V, § 6 – vests the governor with the power to grant pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of pardon, with his reasons for granting the same.</p> <p>§ 304.08 (applications for pardon; regulations) – all applications for pardon of any convict serving a sentence of one year or more, except for pardons to be granted within 10 days next before the time when the convict would otherwise be entitled to discharge pursuant to law, shall be made and conducted in the manner hereinafter prescribed, and according to such additional regulations as may from time to time be prescribed by the governor.</p> <p>§ 304.09 (notice of pardon application) – sets forth the requirements for a pardon application and on whom notice of the application must be served.</p> <p>§ 304.10 (pardon application papers; victim’s statement) – sets forth the documents that must accompany an application for pardon. Permits a victim or member of the victim’s family to provide the governor with written statements indicting his or her views with regard to the application. Such statements are no subject to public records laws.</p>

<u>WISCONSIN</u>	
Pardon provisions, cont'd	<p>§ 304.11 (conditional pardon; enforcement) – provides that in case a pardon is granted upon conditions, the governor may issue a warrant to carry the conditions into effect. If it appears to the governor during the term of the sentence that the convicted person violated or failed to comply with any such condition, the governor may issue a warrant to any sheriff commanding the sheriff to arrest the convicted person and bring such person before the governor. If, upon inquiry, it further appears to the governor that the convicted person has violated or failed to comply with any of those conditions, the governor may issue his or her warrant remanding the person to the institution from which discharged, and the person shall be confined and treated as though no pardon had been granted, except that the persons loses any applicable good time which he or she had earned. If the governor determines the person has not violated or failed to comply with the conditions, the person shall be discharged subject to the conditional pardon.</p>
Is sealing of records available?	No.
Is expungement of records available?	Yes. See discussion of § 973.015 below. § 973.015 also permits a victim of human trafficking to move for expungement of records related to a conviction for prostitution under § 944.30.
Are any records eligible to be automatically sealed or expunged?	<p>Yes. § 973.015 – provides that, subject to the provisions of this section, when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is six years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under § 343.23(2)(a). Sets forth the offense that are ineligible for expungement under this section.</p> <p>A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence, the detaining or</p>

<u>WISCONSIN</u>	
Are any records eligible to be automatically sealed or expunged?, cont'd	probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>WYOMING</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • WYO. CONST. Art. III, § 53 (West 2024) (creation of criminal penalties not subject to governor’s power to commute) • WYO. CONST. Art. IV, § 5 (West 2024) (pardoning power of governor) • WYO. STAT. ANN. §§ 7-13-803 to 7-13-806 (West 2024) (included within “Pardons and Reprieves”) • WYO. STAT. ANN. § 7-13-1401 (West 2024) (petition for expungement; records of arrest, dismissal of charges, disposition; eligibility; no filing fee) • WYO. STAT. ANN. §§ 7-13-1501 and 7-13-1502 (West 2024) (collectively “Expungement of Records of Convictions”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1987 (§§ 7-13-803, 7-13-805) • 1992 (§ 7-13-806) • November 16, 1994 (Art. III, § 53) • July 1, 2014 (§§ 7-13-804, 7-13-1502) • July 1, 2018 (§ 7-13-1501) • July 1, 2019 (§ 7-13-1401)
Pardon provisions	<p>Art. III, § 53 – provides that the legislature may by law create a penalty of life imprisonment without parole for specified crimes which sentence shall not be subject to commutation by the governor. The legislature may also limit commutation of a death sentence to a sentence of life imprisonment without parole, which sentence shall not be subject to further commutation. In no event shall the inherent power of the governor to grant pardons be limited or curtailed.</p> <p>Art. IV, § 5 – vests the governor with the power to grant pardons after conviction, for all offenses except treason and cases of impeachment, but the legislature may by law regulate the manner in which the pardons may be applied for. Upon conviction for treason, the governor shall have the power to suspend the execution of sentence until the case is reported to the legislature at its next regular session, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant further reprieve. The governor shall communicate to the legislature at each regular session each case of pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the pardon, with his reasons for granting the same.</p>

<u>WYOMING</u>	
Pardon provisions, cont'd	<p>§ 7-13-803 (manner of applying for pardon) – provides that application for the pardon of any person convicted of a felony shall be made in the manner and under the restrictions prescribed in §§ 7-13-803 through 7-13-806.</p> <p>§ 7-13-804 (contents of application for pardon; notice to district attorney) – provides that a person convicted of a felony may apply to the governor for a pardon. Sets forth the information required to be included in the application. Provides that the governor shall give notice of the application to the district attorney of the county in which the applicant was indicted or informed against at least three weeks before the application is considered by the governor.</p> <p>§ 7-13-805 (statement of district attorney following notice of pardon application) – within 10 days after receiving the notice required by § 7-13-804(b), the district attorney for the county in which the applicant was indicted or informed against shall forward to the governor a statement setting forth the time of the trial and conviction, the date and term of the sentence, the crime of which the person was convicted, and any circumstances in aggravation or extenuation which appeared in the trial and sentencing of the person.</p> <p>§ 7-13-806 (certification that applicant for pardon in danger of death) – when a physician certifies to the governor that the applicant for pardon is in imminent danger of death and the department of corrections recommends to the governor that the person be pardoned, the requirements of §§ 7-13-803 to 7-13-805 do not apply.</p>
Is sealing of records available?	Court records are sealed pursuant to §§ 7-13-1401, 7-13-1501, and 7-13-1502 when records are expunged, but there is no specific procedure for sealing criminal history records.
Is expungement of records available?	<p>Yes. § 7-13-1401 – provides that a person, or the state with regard to a petition for the expungement of records pertaining to a juvenile, may petition the appropriate court for an order expunging records of arrest, charges, or dispositions which may have been made in the case, subject to the limitations set forth in this section.</p> <p>At least 180 days have passed since the arrest, or from the date the charge or charges were dismissed for which expungement is sought, there are no formal charges pending against the person when the petition is filed, there were no</p>

WYOMING**Is expungement of records available?, cont'd**

dispositions pursuant to § 7-13-301 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge; there were no dispositions pursuant to § 35-7-1037 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge; there were no dispositions pursuant to former § 7-13-203 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge, the petitioner sufficiently demonstrates that his petition satisfies all the requirements of this section, and at least one of the following applies:

- (1) There were no convictions pursuant to any charge or charges, including a conviction pursuant to a different or lesser charge as the result of the incident leading to the arrest;
- (2) No criminal charges of any nature were filed in any court as the result of the incident leading to the arrest; or
- (3) All criminal proceedings against the person were dismissed by the prosecutor or the court, and such proceedings were the result of the incident which led to the arrest.

No order granting expungement shall be issued prior to the expiration of 20 days after service was made. If no objection is filed, the court may summarily enter an order if the court finds that the petitioner is otherwise eligible for relief under this section. If the court finds that the petitioner is eligible for relief under this section, it shall issue an order granting the expungement of the applicable record. The court shall also place the court file under seal, available only for inspection by order of that court. The court shall transmit a certified copy of the order to the division of criminal investigation.

Permits the state to appeal any order of expungement issued by any court under this section.

Provides that a person who receives an order of expungement under this section may respond to any inquiry as though the arrest, or charge or charges, did not occur, unless otherwise required by law.

WYOMING**Is expungement of records available?, cont'd**

Defines “expungement” to mean only the classification of the record maintained in the files of the state central repository at the division of criminal investigation in a manner reasonably tailored to ensure that the record will not be available for dissemination purposes other than to a criminal justice agency of any state or a federal criminal justice agency, to be used solely for criminal justice purposes. Expungement does not include investigatory files of any local, state, or federal criminal justice agency, where those files are being used solely for criminal justice purposes.

§ 7-13-1501 (petition for expungement of records of conviction of certain misdemeanors; filing fee; notice; objections; hearing; definitions; exceptions) – provides that a person who has pled guilty or nolo contendere to or been convicted of a misdemeanor may petition the convicting court for an expungement of the records of conviction, subject to the following limitations:

- (1) At least five years have passed for nonstatus offenses and at least one year has passed for status offenses as defined by § 7-1-107(b)(iii) since the expiration of the terms of sentence imposed by the court, including any periods of probation or the completion of any program ordered by the court;
- (2) The misdemeanor(s) for which the person is seeking expungement did not involve the use of a firearm; and
- (3) A healthcare provider who has plead guilty or nolo contendere to or has been convicted of an offense punishable under § 6-2-313 (related to sexual battery) which was committed against a patient under the care of the provider shall not be eligible for expungement of the records of conviction.

Provides that the court may request a written report by the division of criminal investigation concerning the criminal history of the petitioner. Further provides that the prosecutor shall review the petition and file an objection or recommendation, if any, to the petition within 30 days after service of the notice on the prosecutor. If the prosecutor or victim submits an objection, or if the petitioner objects to the

WYOMING**Is expungement of records available?, cont'd**

criminal history report of the division of criminal investigation, the court shall set the petition for a hearing.

If no objection is filed, the court may summarily enter an order if it finds that the petitioner is otherwise eligible for relief under this section. No order granting expungement shall be issued prior to the expiration of 30 days after service was made to the prosecutor.

If the court finds that the petitioner is eligible for relief under this section and that the petitioner does not represent a substantial danger to himself, any identifiable victim, or society, it shall issue an order granting expungement of the applicable records. The court shall also place the court files under seal, available for inspection only by order of that court. The court shall transmit a certified copy of the order to the division of criminal investigation.

The state, through the prosecutor, may appeal any order of expungement issued by any court under this section.

Nothing in this section shall be construed to allow a person who has previously received an expungement of records of conviction under this section to seek a second or subsequent expungement of records of conviction under this section.

§ 7-13-1502 (petition for expungement of records of conviction of certain felonies; filing fee; notice; objections; hearing; definitions; restoration of rights) – provides that a person convicted of a felony or felonies subject to expungement arising out of the same occurrence or related course of events, may petition the convicting court for an expungement of the records of conviction, subject to the following limitations:

- (1) At least 10 years have passed since the expiration of the terms of sentence imposed by the court, including any periods of probation, the completion of any program ordered by the court, and any restitution ordered by the court has been paid in full;
- (2) Other than the convictions sought to be expunged, the petitioner has not previously pleaded guilty or nolo contendere to or been convicted of a felony;

<u>WYOMING</u>	
Is expungement of records available?, cont'd	<p>(3) Lists the felonies not eligible for expungement under this section.</p> <p>Provides that the court may request a written report by the division of criminal investigation concerning the criminal history of the petition. Further provides that the prosecutor shall review the petition and file with the court an objection or recommendation, if any, to the petition within 90 days after service of the notice by the petitioner. If the prosecutor or victim submits a written objection to the court, or the petitioner objects to the criminal history report of the division, the court shall set a date for a hearing. Any person who has relevant information about the petitioner may testify at the hearing.</p> <p>If no objection is filed within 90 days after service of notice, the court may summarily enter an order if the court finds that the petitioner is otherwise eligible for relief under this section. No order granting expungement shall be issued prior to the expiration of 90 days after service was made to the prosecutor.</p> <p>If the court finds that the petitioner is eligible for relief under this section and that the petitioner does not represent a substantial danger to himself, any identifiable victim, or society, it shall issue an order granting expungement of the applicable records. The court shall also place the court files under seal, available for inspection only by order of that court. The court shall transmit a certified copy of the order to the division of criminal investigation.</p> <p>Provides that the state, through the prosecuting attorney, may appeal any order of expungement issued by any court under this section.</p> <p>Nothing in this section shall be construed to allow a person who has previously received an expungement of records of conviction under this section to seek a second or subsequent expungement of records of conviction under this section. An expungement of records pursuant to this section shall restore any rights removed as a result of the conviction for which the expungement has been granted.</p>

<u>WYOMING</u>	
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	There are no specific provisions related to drug offenses.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>GUAM</u>	
Statute(s) and regulation(s)	None
Effective date(s) of most recent substantive amendment(s)	N/A
Pardon provisions	N/A
Is sealing of records available?	N/A
Is expungement of records available?	N/A
Are any records eligible to be automatically sealed or expunged?	N/A
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	N/A
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>PUERTO RICO</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • P.R. CONST. Art. IV, § 4 (English translation current through 2011) (powers and duties of governor) • P.R. LAWS ANN. tit. 3, § 10 (English translation current through 2011) (records to be kept) • P.R. LAWS ANN. tit. 4, § 1615 (English translation current through 2011) (procedure) • P.R. LAWS ANN. tit. 33, § 4732 (English translation current through 2011) (rehabilitation of the sentenced person) • P.R. LAWS ANN. tit. 34, §§ 1725 to 1725e (English translation current through 2011) (collectively “Criminal Records Certificates”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • 1901 (§ 10) • 1917 (Art. IV, § 4) • September 15, 2004 (§§ 1725a-1 to 1725e) • May 1, 2005 (§ 4732) • August 9, 2008 (§ 1725a) • December 16, 2009 (§ 1615) • November 9, 2011 (§ 1725)
Pardon provisions	<p>Art. IV, § 4 – vests the governor with the power to grant pardons except in cases of impeachment.</p> <p>§ 10 – requires the governor to keep a register of all applications for pardons with a list of the official signatures and recommendations in favor of each application.</p>
Is sealing of records available?	No.
Is expungement of records available?	<p>Yes. § 1725 (issuance—authorization to police) – provides that the Puerto Rico Police Department is hereby authorized to issue a certificate denominated “Criminal Record Certificate” containing a list of the guilty verdicts found in the record of every person who, for having been sentenced in any court of the Commonwealth of Puerto Rico or in any other local, state, or federal jurisdiction, already has an open record in said agency or in any other similar agency or official data system in any other local, state, or federal jurisdiction.</p> <p>In the case of persons with criminal history and/or that do not comply with the five-year term in the case of felonies and six months in the case of misdemeanors, as provided in §§ 1725a-1 and 1725a-2 (see below), they may obtain a Certificate of Rehabilitation and Job Training that may substitute the Criminal Record Certificate. The evaluation process to obtain the same shall be determined by the</p>

PUERTO RICO**Is expungement of records available?, cont'd**

department of corrections, which may use the guidelines in effect for the issuance of the rehabilitation certificate established in tit. 33, § 4732. The employer reserves the right to require the Criminal Record Certificate in addition to the certificate of rehabilitation and job training.

The possible issuance of the certificate of rehabilitation herein provided shall not apply to persons who are in the registry of persons convicted of violent sexual crimes and child abuse or the registry of persons convicted of corruption.

§ 1725a (contents) – provides that the Criminal Record Certificate shall contain the full name of the person for whom the certificate is issued, date of sentence, offense for which the person was convicted, penalty imposed, if sentence is in the stage of appeal, date of the certificate, and the signature of the official issuing the certificate. The certificate shall also include a notice that the same shall not include convictions for misdemeanors if more than six months have elapsed since the sentence was served or convictions for felonies if more than five years have elapsed since the sentence was served.

§ 1725a-1 (elimination of a conviction—misdemeanor) – provides that any person who has been convicted of a misdemeanor may solicit that the police superintendent eliminate the conviction from the Criminal Record Certificate through a sworn statement, accompanied by the pertinent documents provided that six months have passed from the moment the sentence was served and that during that time the person has not committed another crime and that the person has a good reputation within the community.

§ 1725a-2 (elimination of a conviction; felony) – any person convicted of a felony who is not subject to the register of persons convicted for violent sexual crimes and abuse of minors nor to the register of persons convicted for corruption may solicit that the court issue an order for the elimination of the conviction from the Criminal Record Certificate provided that five years have elapsed from the moment the sentence was served and that during that time the person has not committed another crime, that the person has a good reputation within the community, and that the person has

<u>PUERTO RICO</u>	
Is expungement of records available?, cont'd	<p>been subjected to providing the sample required by the DNA Data Bank Act, if so required. The petitioner shall provide the documents needed to evidence the allegations of the petition. The department of justice may oppose or yield to the petition, in which case it shall not be necessary to hold a hearing.</p> <p>§ 1725a-3 (elimination of a conviction; review) – the decision of the superintendent may be revised by the court of appeals.</p> <p>§ 1725b (reversed verdict) – the Criminal Record Certificate shall not include the issue of any sentence that has been:</p> <ol style="list-style-type: none"> (1) Revoked; (2) Eliminated pursuant to the procedure pursuant to this chapter; (3) Given as served by a court pursuant to tit. 4, § 1615 or tit. 33, § 4732; (4) Validated by the central office of labor advisement and human resources administration; or (5) Eliminated from the register of persons convicted for violent sexual crimes and abuse of minors. <p>§ 1725c (negative report) – provides that when there is no open record for a specific person in the files a negative report shall be issued for that person.</p>
Are any records eligible to be automatically sealed or expunged?	No.
Does the state offer a certificate of relief or similar document?	<p>Yes. See discussion of § 1725 above.</p> <p>§ 1615 – provides that the court that pronounced the sentence may rule the sentence of any individual convicted of a felony has been served, when such person is eligible to benefit from a parole release, is availing him or herself of a reentry, house arrest, or probation program, or any other similar program offered by the department of corrections, subject to the rehabilitation certificate procedure set forth below.</p> <p>Should the secretary of the department of corrections conclude, based on evaluations conducted, that the sentenced person who has served his or her prison term and has been</p>

PUERTO RICO**Does the state offer a certificate of relief or similar document?, cont'd**

released on parole, is benefiting from any reentry, house arrest, or probation program, or any other similar program offered by the department, and has been rehabilitation, he or she shall issue a certification and file an application on behalf of the sentenced person for the remaining part of the punishment to be ruled as served.

For the issuance of such certification, it shall be required that the secretary have a psychological evaluation and recommendation stating that the convicted person is qualified to live freely in the community at large and that the other professionals who have evaluated the individual shall render a written report of their findings.

The court shall hold a hearing and be fully empowered to rule on the application, taking into consideration the evidence submitted, after the mandatory service of notice. No rehabilitation certification shall be issued until the rehabilitation programs are created and implement in compliance with the guidelines in this chapter.

§ 4732 – if the secretary of the department of corrections concludes, based on the evaluations performed, that the convict in a penal institution is rehabilitation, he or she shall issue a certification and, in consultation with the secretary of justice, file an application on behalf of the convict before the court to the effect that the remainder of the sentence involving restriction of freedom be deemed as served.

The secretary of the department of corrections shall receive a psychological evaluation and recommendation for the issuing of said certification that the individual is capable of living in the free community and that the other professionals who evaluated him or her submit detailed written reports on their findings regarding the rehabilitation of the individual, especially that there is no longer any risk of danger represented by the crime for which the person serves the sentence. Sets forth the time periods that must elapse before the individual is eligible.

Provides that the court shall hold a hearing and shall have full power to decide in favor of or against the certification of rehabilitation. If the court decides in favor, it shall order the police superintendent not to include the conviction in the

<u>PUERTO RICO</u>	
Does the state offer a certificate of relief or similar document?, cont'd	penal record certificate, but to register it in the convict's criminal records only for purposes of recidivism.
Are drug convictions eligible for relief?	There are no specific provisions related to drugs.
Miscellaneous provisions	None.
Recently proposed legislation	None.

<u>U.S. VIRGIN ISLANDS</u>	
Statute(s) and regulation(s)	<ul style="list-style-type: none"> • V.I. ORGANIC ACT OF 1954, § 11 (2024) (governor and lieutenant governor; election; powers and duties generally) • V.I. CODE ANN. tit. 5, § 3711 (2024) (suspension of sentence and probation) • V.I. CODE ANN. tit. 5, §§ 3731 to 3731 (2024) (collectively “Expungement”) • V.I. CODE ANN. tit. 19, § 607 (2024) (penalty for simple possession; conditional discharge and expunging of records for first offense) • V.I. CODE ANN. tit. 24, §§ 467 to 469 (2024) (included within “Limited Use of Criminal Records in Hiring Practices”)
Effective date(s) of most recent substantive amendment(s)	<ul style="list-style-type: none"> • November 10, 1998 (§ 11) • November 25, 2009 (§§ 3738, 3740) • May 3, 2013 (§ 3711) • December 19, 2014 (§ 607) • July 30, 2015 (§§ 3733, 3734, 3735, 3737) • November 10, 2018 (§§ 467 to 469) • January 18, 2023 (§§ 3731, 3732, 3734a, 3736, 3739)
Pardon provisions	§ 11 – vests the governor with the power to grant pardons for offenses against local laws.
Is sealing of records available?	Yes. 5, § 3731 defines “expungement” to mean “sealing of all records.” See below for more information.
Is expungement of records available?	<p>Yes. 5, § 3731 (definitions) – defines “expungement” to mean the sealing of criminal records within any court, correctional facility, police department, or other law enforcement agency concerning a person’s arrest, detention, apprehension, trial, or disposition of an offense within the criminal justice system.</p> <p>5, § 3732 (expungement of criminal records that do not result in prosecution) – provides that the arrest record, including fingerprints, mugshots, and DNA samples, and any other police or judicial proceeding records of a person must be expunged upon petition when:</p> <ol style="list-style-type: none"> (1) A person successfully completes the pretrial intervention program under tit. 5, § 4611, et seq.; (2) A person has received a statement of nolle prosequi because the People are unable to meet their burden of proof;

U.S. VIRGIN ISLANDS**Is expungement of records available?, cont'd**

- (3) A person whose case has been dismissed with prejudice and the person has no other charges or arrest pending; or
- (4) A person has been arrested, and no complaint or information has been filed, and the statute of limitation has expired.

5, § 3733 (expungement of criminal records—when expungement required) – provides that the records of an arrest, a criminal complaint, or an information that does not result in a conviction must be expunged upon petition to the court:

- (1) Where the case has been dismissed without prejudice and the statute of limitation has expired;
- (2) Where the case has been tried resulting in an acquittal; or
- (3) Where there is a statement of nolle prosequi, and the People have not filed an information or complaint, and the statute of limitation has expired.

The records of an arrest, a complaint, or an information that does not result in a conviction may be expunged by petition to the court except where the person flees the jurisdiction to avoid prosecution or where a person has a subsequent arrest, unless there are extraordinary circumstances to which the court finds expungement in the best interest of public policy.

5, § 3734 (expungement of misdemeanor conviction) – provides that the court may expunge the record of a misdemeanor conviction of an individual, including fingerprints, photographs, and DNA samples, and records of other police or judicial proceedings of the individual, upon the petition of the individual and subject to the provisions of this chapter and rules of the court. Any person wishing to have his record of misdemeanor conviction expunged must petition the court and send a copy of the petition to the Department of Justice. The department has the burden of proving by clear and convincing evidence that a petition for expungement should not be granted. The court shall grant the petition if the department fails to meet its burden.

5, § 3735 (expungement petition) – sets forth the information required to be included in a petition for expungement. If the

<u>U.S. VIRGIN ISLANDS</u>	
Is expungement of records available?, cont'd	<p>Department of Justice objects to the expungement, the court shall set the matter for a hearing. If the department does not file an opposition to the petition, or does not file a timely objection, the court may grant the petition. The court may schedule a hearing for expungement despite the lack of opposition or response from the department if the petitioner is seeking to have more than one record of misdemeanor conviction expunged.</p> <p>5, § 3736 (hearing on petition for expungement) – at the hearing on the petition, the court shall consider (a) whether the petitioner is employed, in school, or in the armed forces; (b) for marijuana-related crimes or offenses, whether the individual would be charged with such a crime under title 19, chapter 34, or any other law legalizing adult use of marijuana; and (c) any other fact that the court may consider relevant to the proceeding.</p> <p>5, § 3737 (non-appealable) – sets forth the waiting times required before an individual can file a petition for expungement.</p> <p>5, § 3738 (effect of expungement) – upon the issuance of an expungement order, the petitioner shall be treated as not having been arrested except for the keeping of confidential records.</p> <p>5, § 3739 (expunged records) – the court may order the disclosure of expunged conviction records to a court when preparing presentences, conducting jury selection, detention, or setting bail; and to an agency of the territorial or federal government that is considering the person for a position. Expunged conviction records of marijuana-related crimes or offenses are not subject to disclosure under this section or any other law.</p> <p>5, § 3740 (enforcement) – upon entry of an expungement order, the court shall cause a certified copy of the order to be delivered to the commissioner of police who shall have 10 days after receipt to expunge the arrest record of the person whose name appears on the order and shall have 10 additional days to notify the National Crime Information Center (NCIC) and any other agency which receives a copy of arrest records that the arrest record of the person whose</p>

<u>U.S. VIRGIN ISLANDS</u>	
Is expungement of records available?, cont'd	name appears on the order should be treated as not having been arrested and no record of the NCIC or any other agency shall be accepted in any court of the Virgin Islands after an order of expungement has been entered by the court. The court may make and adopt any rules necessary to carry out the mandates of this act.
Are any records eligible to be automatically sealed or expunged?	Yes. See discussion of 5, § 3734a below. 5, § 3711 – upon finding of guilty or upon receipt of a verdict of guilty or plea of guilty wherein the alleged offense did not result in the personal injury or death of any person and where no deadly weapon was used in perpetrating the crime, the court may, without entering a judgment of guilty or accepting the plea and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such terms and conditions as it may require; provided, the accused has never been convicted of a misdemeanor or felony in this jurisdiction or under the laws of the United States, any state or territory thereof, or foreign jurisdiction. Upon fulfillment of the terms of probation, the defendant shall be discharged without court adjudication of guilt and an order shall be entered expunging the finding, verdict or plea of guilty, and all records as the case may be. Upon violation of the terms of probation, the court may enter an adjudication of guilt and proceed to impose a fine or imprisonment, or both, as provided by law.
Does the state offer a certificate of relief or similar document?	No.
Are drug convictions eligible for relief?	Yes. 19, § 607 – provides that if any person who has not previously been convicted of knowingly or intentionally possessing a controlled substance or designer drug relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, or designer drugs is found guilty after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. If, during the period of such probation, the person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings. Discharge and dismissal shall be without court adjudication of guilt, but a nonpublic

U.S. VIRGIN ISLANDS**Are drug convictions eligible for relief?, cont'd**

record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge and dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose. Discharge and dismissal may only occur once with respect to any person.

Upon the dismissal and discharge, such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the department, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order.

The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

5, § 3734a (expungement of criminal records of marijuana—related convictions) – the records of an arrest, a criminal complaint, conviction, and other information that results in a conviction must be automatically expunged for marijuana-related crimes or offenses where the amount of marijuana seized as part of the crime or offense was not more than two ounces total weight. This expungement must be limited to marijuana-related crimes or offenses only, and may not be extended to any other crimes or offenses committed in conjunction with the marijuana-related crimes or offenses. Moreover, a conviction for a marijuana-related misdemeanor is already covered under the existing law.

<u>U.S. VIRGIN ISLANDS</u>	
Miscellaneous provisions	<p>24, § 467 (handling of criminal records) – provides that it is unlawful for a peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local enforcement criminal justice agency to knowingly disclose, with intent to affect a person’s employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post-trial diversion program, to any person not authorized by law to receive that information.</p> <p>It is unlawful for any other person authorized by law to receive criminal offender record information maintained by a local law enforcement or criminal justice agency to knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post-trial diversion program, to any person not authorized by law to receive that information.</p> <p>It is unlawful for any person, who knowing he is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post-trial diversion program, to receive or possess that information.</p> <p>Provides that nothing in this subchapter requires the Department of Justice to remove entries relating to an arrest not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.</p> <p>24, § 468 (penalties) – sets forth the penalties for violations of § 467.</p> <p>24, § 469 (exceptions) – provides that this subchapter does not apply if state or federal law requires an applicant to be rejected based on criminal history; the employment requires a satisfactory criminal background check; a standard fidelity or equivalent bond is required and a conviction of one or</p>

<u>U.S. VIRGIN ISLANDS</u>	
Miscellaneous provisions, cont'd	more specified criminal offenses would disqualify the applicant from obtaining such a bond; or the employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults.
Recently proposed legislation	None.

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<u>Alaska</u> H.B. 28, 33 rd Leg., 2d Sess. (Alaska 2024) (5/11/2024 – referred to Senate rules committee)	Amend § 12.62.160 to provide that an agency may not release criminal justice information of a criminal case in which the defendant was convicted under § 11.71.060, or a municipal ordinance with similar elements, for possession of less than one ounce of a schedule VIA controlled substance, was 21 years of age or older at the time of commission of the offense, was not convicted of any other criminal charges in that case, and requests that the agency not release the records.
<u>California</u> A.B. 2420, Reg. Sess. (Cal. 2024) (5/16/2024 – in committee; held under submission)	Amends Penal Code § 851.91 to provide that a person may also file a petition to have his or her arrest records sealed if the prosecuting attorney filed an accusatory pleading, a conviction occurred, but has been dismissed pursuant to Penal Code §§ 1203.4 or 1203.4a.
<u>California</u> A.B. 2641, Reg. Sess. (Cal. 2024) (4/15/2024 – re- referred to committee on public safety)	Deletes Government Code § 12017 requiring the governor to report to the legislature each pardon granted at each legislative session and amends Penal Code § 4807 to provide that, instead of requiring a report at the beginning of every regular session of the legislature, such report shall be made on or before February 15 of each year.
<u>California</u> S.B. 1430, Reg. Sess. (Cal. 2024) (5/16/2024 – hearing: held in committee and under submission)	Amends Penal Code § 851.86 to provide that when a person is convicted of a charge and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall inform the defendant of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. Provides that the records be sealed upon written or oral motion of a party in the case or the court.

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>Georgia</u> H.B. 909, 157th Gen. Assemb. (Ga. 2024) (3/20/2024 – read second time)</p> <p>S.B. 512, 157th Gen. Assemb. (Ga. 2024) (3/28/2024 – House passed/ adopted by substitute)</p>	<p>These bills amend § 42-8-62.1 to permit a person who was sentenced pursuant to this article prior to July 1, 2024, and has not had their sentence revoked and adjudicated guilty, to petition the court that ordered the sentence for an order to limit public access to his or her case information. Add a new provision to require that the clerk of the court display on a criminal history record file a notice to all court personnel that such file is sealed from public view.</p> <p>Add new subsections to provide that if a court revokes an individual’s First Offender Act sentence and adjudicates the defendant guilty, the restriction and sealing of court records shall be removed and permits the records to be disseminated.</p> <p>Amend the statute to provide that only certain entities may access court records during the period of time a defendant has been sentenced pursuant to this article but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order.</p> <p>Finally, these bills create § 42-8-62.2 which provides that, at the time a defendant who has been sentenced pursuant to this article has been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to court order, the court records shall be restricted except as otherwise provided by law. If such exoneration and discharge occurs prior to July 1, 2024, the defendant may petition the court for an order to seal records.</p>
<p><u>Illinois</u> H.B. 4834, 103rd Gen. Assemb., 2d Reg. Sess. (Ill. 2024) (5/31/2024 – re-referred to rules committee)</p>	<p>Amends 2630/5.2 to change the required time periods that must elapse before certain records may be sealed.</p>
<p><u>Illinois</u> H.B. 4851, 103rd Gen. Assemb., 2d Reg. Sess. (Ill. 2024) (4/19/2024 – re-referred to rules committee)</p>	<p>Amends 2630/5.2 to provide that the court shall not order the sealing or expungement of records of arrests or charges not initiated by arrest that result in an order of supervision for a conviction of Section 11-501 of the Illinois Vehicle Code or similar local ordinance; except that the court may order the sealing of one misdemeanor record of arrest or charge not initiated by arrest that results in an order of supervision for or conviction of such section if the petitioner meets the required conditions.</p>

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>Illinois</u> S.B. 3695, 103rd Gen. Assemb., 2d Reg. Sess. (Ill. 2024) (6/24/2024 – referred to assignments committee)</p>	<p>Amends 2630/5.2 to provide for the automatic expungement of records related to certain drug offenses.</p>
<p><u>Kansas</u> H.B. 2655, 90th Leg., Reg. Sess. (Kan. 2024) (4/30/2024 – died in committee)</p> <p>S.B. 393, 90th Leg., Reg. Sess. (Kan. 2024) (4/30/2024 – died in committee)</p>	<p>Creates a new section that provides that, on and after July 1, 2025, if a court enters an order of acquittal of criminal charges or enters an order dismissing, with or without prejudice, all criminal charges in a case against a person, the court shall order the record of such charges and related arrest records expunged 30 days after such order is entered unless the person objects to the expungement, an appeal is filed, or the prosecutor files a written objection to the expungement. It further provides that, if an appeal is filed and the appeals court affirms the dismissal, the court shall order the records expunged 30 days after such affirmation. An order expunging records pursuant to this paragraph shall not require any action by the person. The new section would also permit a person to petition for expungement if the records are not automatically expunged pursuant to the provisions above. Sets forth the uses to which expunged records may be used.</p> <p>The bill also amends § 21-6614 to delete references to expungement of diversion agreements.</p>
<p><u>Maryland</u> S.B. 118, 446th Reg. Sess. (Md. 2024) (4/8/2024 – third reading passed in House)</p>	<p>Amends Crim. Proc. § 10-303 to provide that a person may petition to shield the person’s records no earlier than five years after the person was discharged from probation for the offense.</p>
<p><u>Mississippi</u> H.B. 1609, 139th Leg. Sess. (Miss. 2024) (4/2/2024 – died in committee)</p>	<p>Amends § 99-19-71 to provide that expungement is limited to US citizens. Also amends this section to provide that a person who is a US citizen and has been convicted of an eligible felony shall automatically have the record of conviction expunged five years after the successful completion of all terms and conditions of the sentence for the conviction. Provides that “automatically” means without the requirement of a petition being filed by the person who is the subject of the record.</p>

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>New Hampshire</u> H.B. 1539, 168th Gen. Ct. (N.H. 2024) (5/16/2024 – referred to interim study)</p>	<p>Amends § 651:5-b to change “marijuana” to “cannabis” and change the possession amount from 3/4 of an ounce to whichever quantity is greater: 2oz of cannabis or 5g of hashish or an amount of cannabis that is legal under New Hampshire law for adults 21 and older to possess. Permits any person arrested or convicted for any cannabis-related offense to, at any time, petition to annul the person’s arrest or court record, or both, when the petitioner has completed the sentence. Provides that there shall be a presumption that granting the petition would be in the interests of justice due to the decriminalization or legalization of cannabis for adults and the unequal enforcement of cannabis laws.</p> <p>Creates § 651:5-c which provides for the automatic annulment of all convictions and arrests for misdemeanor or violation level offenses for possession of cannabis.</p>
<p><u>New Hampshire</u> H.B. 1633, 168th Gen. Ct. (N.H. 2024) (6/13/2024 – remove from table)</p>	<p>Amends § 651:5-b to change “marijuana” to “cannabis” and to change the possession limit from 3/4 ounce to “no more than the possession limit” as defined in § 318-F:1, XVIII.</p> <p>Creates § 318-F:8, cannabis advisory board, which provides that, among other things, the board shall recommend procedures for automatic annulment of cannabis convictions and charges. Also creates § 318-F:22, data collection related to cannabis legalization and regulation, to provide that, no later than six months after the effective date of this chapter, 18 months after the effective date of this chapter, and every two years thereafter, the judicial branch shall produce and publish a report that includes the number of cases annulled pursuant to § 651:5-b.</p>
<p><u>New Jersey</u> A.B. 3265, 221st Leg., 1st Ann. Sess. (N.J. 2024) (5/20/2024 – amended but not reported)</p>	<p>Amends §§ 2C:52-2 to 2C:52-5, 2C:52-8, and 2C:52-14 to expand expungement eligibility, eliminate the caps on the number of convictions a person may expunge, and eliminate the limitation on the number of times a person may be granted an expungement.</p>

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>Ohio</u> H.B. 460, 135th Gen. Assemb. (Ohio 2024) (4/2/2024 – referred to criminal justice committee)</p>	<p>Amends § 2953.32 to provide that, in a civil action or administrative proceeding alleging negligence or other fault, no case that has been sealed or expunged shall be considered as evidence against an employer for negligent hiring or negligent supervision, and the sealing or expungement provides immunity for the employer to the extent that a sealed or expunged record is the basis of a claim against the employer for negligent hiring or negligent supervision.</p> <p>Creates § 2953.321 to establish a procedure for the automatic sealing of certain criminal history records.</p>
<p><u>Ohio</u> H.B. 513, 135th Gen. Assemb. (Ohio 2024) (5/7/2024 – referred to criminal justice committee)</p>	<p>Creates § 2953.41 to provide that any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B) of section 2903.11 as it existed prior to the effective date of this section may apply to the sentencing court for the expungement of the record of conviction. The person may file an application at any time on or after the effective date of this section. Sets forth the other elements related to <u>applying for expungement under the new section.</u></p>
<p><u>Ohio</u> H.B. 522, 135th Gen. Assemb. (Ohio 2024) (5/21/2024 – referred to criminal justice committee)</p>	<p>Creates § 2953.321 to provide for the automatic sealing of records for certain convictions if all requirements of this section are met.</p>
<p><u>Ohio</u> H.B. 608, 135th Gen. Assemb. (Ohio 2024) (5/21/2024 – referred to criminal justice committee)</p>	<p>Amends § 2953.33 to delete the provisions related to individuals who have been found not guilty of an offense by a jury or a court. Creates § 2953.331 to provide that, except as provided in § 2953.61, any person who is found not guilty of an offense by a jury or a court may apply to the court for an order to seal or expunge the person’s official records in the case. A request for sealing or expungement under this section may be made at any time after the <u>finding of not guilty is made.</u></p>
<p><u>Rhode Island</u> H.B. 7053, Leg. Sess. (R.I. 2024) (6/13/2024 – House passed substitute A)</p>	<p>Amends § 12-1.3-2 to provide that, notwithstanding the definition of “first offender,” any person who has been convicted solely of one felony and one misdemeanor may file a motion for the expungement of the felony by filing a motion in the court in which the convictions took place. Sets forth the offenses ineligible for expungement under this provision.</p>

<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>Rhode Island</u> S.B. 2677, Leg. Sess. (R.I. 2024) (6/11/2024 – read and passed)</p> <p>S.B. 3106, Leg. Sess. (R.I. 2024) (5/29/2024 – introduced; referred to Senate judiciary)</p>	<p>Amends § 12-1.3-2 to provide that any person who has been convicted of more than one felony and who has not been convicted of a felony which is considered a crime of violence, may file a motion for expungement of any or all of those felonies, provided that multiple convictions for offenses under chapter 29 of title 12 are not eligible for and may not be expunged. Provides that a person may file a motion after 10 years from the date of completion of their last sentence.</p> <p>Also amends § 12-1.3-3 to provide that in the 10 years preceding the filing of the motion, if the convictions were for multiple felonies, the petitioner has not been convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending against the person, and they have exhibited good moral character.</p>
<p><u>Rhode Island</u> S.B. 2193, Leg. Sess. (R.I. 2024) (4/2/2024 – committee recommended measure be held for further study)</p>	<p>Amends § 12-1-12.1 to provide that cases or individual counts of a criminal complaint or indictment dismissed pursuant to rule of criminal procedure 48(a) shall be sealed administratively by the court clerk at the request of the defendant and any sealing order of the superior court entered as a result shall be sent electronically by the clerk to the bureau of criminal identification and served upon the arresting law enforcement agency within five days of the entry of the order and shall be carried out within 90 days of the receipt of the order.</p>
<p><u>South Carolina</u> S.B. 112, 125th Gen. Assemb., 2nd Reg. Sess. (S.C. 2024) (5/20/2024 – vetoed by governor)</p>	<p>Amends § 34-11-90 to provide that, notwithstanding any other provision of law, if a defendant receives multiple convictions within a three-year period of time in magistrates court for a violation of this section, the defendant may, after 10 years from the date of the last conviction, apply or cause someone acting on his behalf to apply, to the court for an order expunging the records of arrest and the multiple convictions. Provides that this provision does not apply to any crime classified as a felony. Requires the court to issue an order expunging the records if the defendant receives no other convictions during the 10-year period following the last conviction under this section and full restitution has been made on all checks that are the subject of the convictions.</p> <p>Amends § 17-1-43 to provide that not later than 180 days after an investigation by a law enforcement or prosecution agency reveals that a person was arrested as a result of mistaken identity, the agency with appropriate jurisdiction shall destroy the arrest records of that person made as a result of mistaken identity. Provides that the agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and 120 days.</p>

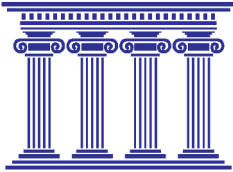
<u>PENDING STATE LEGISLATION</u>	
State/Bill Number/ Status	Description
<p><u>Virginia</u> S.B. 504, Reg. Sess. (Va. 2024) (4/17/2024 – Senate sustained governor’s veto)</p>	<p>Amends § 19.2-392.2 to provide that the term “otherwise dismissed” as set forth in this section includes those circumstances when a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2 and the initial charge is reduced or amended to another offense, including a lesser included offense or the same offense with a lesser gradient of punishment, so that such person is not convicted of the initial charge.</p> <p>Also amends section to permit a person to file a petition without the payment of fees and costs and request court-appointed counsel and requires the court to appoint counsel to file the petition and represent the petitioner in the proceedings.</p>

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