

Getting, erasing or correcting your criminal record



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What is expungement?

Expungement is erasing or removing a charge or a conviction from your criminal record.

You have a criminal record IF:

- You have ever been arrested
- You have been charged with a crime, even if you were not convicted
- You had a criminal case against you that was dismissed
- You pled guilty to a crime
- You were convicted of a crime

If you have a charge or conviction erased, it is like it never happened. The charge or conviction that was erased will not show up on a public background check.

Be sure to check your criminal record. See if there is something on there that could be erased. You must know what you were charged with to tell if you can get it erased. Keep reading to find out how to get and check your record.

Why get an expungement?

Were you arrested or charged with a crime but not convicted? Then you have a criminal record. Were you convicted of a crime or pled guilty to a crime? You have a criminal record. A criminal record can keep you from getting a job, getting a place to live or getting a professional license.



But if you get that arrest or conviction erased, you can legally say it never happened. **Example:** You are arrested for shoplifting and then that charge is dropped. It is still on your criminal record. If a job application asks if you've ever been arrested, you have to say "yes." But if you get that arrest erased, you can legally say "no."

Is the conviction that was erased the only time you have ever been found guilty? Then you can say "no" when asked if you've ever been

convicted of a crime. Erasing your crime may help you:

- Get a job or
- Get into school or
- Get a professional license

! **Wait! Are you an immigrant (born in another country)?** Then talk to an immigration lawyer **before** trying to have your record erased.

! **Wait! Are you in the military or did you used to be? Or are you about to go in the military?** Talk to a lawyer **before** trying to have your record erased.

How can I get a copy of my criminal record?

There are several ways to get your RAP (record of arrest and prosecution) sheet:

1. **Were you turned down for a job or from housing because of your criminal record?** Ask the employer or housing agency for a copy of the record. They may have to give it to you for free or tell you where you can get it for free.
2. **OR do you know the county where you were charged in Tennessee?** Call the Criminal, Circuit, or General Sessions Court Clerk in the county where you were charged. Ask what crimes are on your record. For some counties, you can ask for this information on the court's website. You need to know your name, birth date and may need your Social Security Number. Call Legal Aid if they refuse to give you this information.
3. **OR were all of your charges in Tennessee?** The Tennessee Bureau of Investigation or TBI has your criminal record for all of Tennessee. You must pay \$29 to get the record. You can do this by mail if you send in a check or money order. You must also fill out and send in a Tennessee Criminal History Information Request Form. You can get the paper on the TBI's



website. Go to www.tn.gov/assets/entities/tbi/attachments/Mail-In%20Form%20%20Information.pdf on the internet.

4. **OR did you get charged in another state or was it a federal crime?** Then you can get your RAP sheet or **Identity History Summary** from the FBI.

There are several things you must mail to the FBI. To get the papers you need, go to <https://www.fbi.gov/services/cjis/identity-history-summary-checks> on the internet.

- Fill out an **Applicant Information** paper. Also tell them:
 - Your mailing address
 - Your phone number
 - Your e-mail address
- You must send your **finger prints** to the FBI with your letter. Get the FD-258 finger print card on the FBI website. Put your name, date of birth and Social Security Number on the card. If you can, have your finger prints taken by someone whose job is finger printing. Some agencies that help people with criminal records can help with finger printing. You must send in prints of all 10 fingers.
- You must pay \$18 to get your records. Send a certified check or a money order made out to the "U.S. Treasurer." Or you can pay by credit card. Can't pay the fee? Send a letter that says why you can't pay. You must sign this letter in front of a notary.
- Do you think there is a warrant for your arrest? Take care of it **BEFORE** you are fingerprinted.
- Mail the letter, fingerprint form, and check or money order to:



FBI CJIS Division – Summary Request
1000 Custer Hollow Road
Clarksburg, WV 26306

What kinds of expungement are there?

1. You can have your criminal records erased IF:

- The charge against you was dismissed **OR**
- You were found “not guilty” in court **OR**
- You were arrested and then released without being charged **OR**
- You went in front of a grand jury and their verdict was “no true bill” **OR**
- The case was dismissed with a judgment of “nolle prosequi” **OR**
- Your conviction was reversed on appeal



Were any of these true for you? Then you can have the charge removed from your record for **FREE**. You can do this any time. There is no waiting period.

Wait! Was the case “dismissed with cost?” You must pay the cost before asking to have your record erased for free.

Was your case retired? This means it was put on hold for a very long time. If so, you must first ask the court to dismiss the case. You need 3 papers:

- An Order of Dismissal
- An Order of Expungement
- A Motion to Dismiss Retired Case

Go to the Court that heard your case. Get these papers from the Criminal Court Clerk’s office. Fill them out and give them back to the Clerk. If the court dismisses the case, they can also erase the charge from your record.

NOTE: Did someone file for an Order of Protection against you? Was it dismissed or denied by the court? Then you may be able to get it erased for free.

2. You can have your record erased if you completed a pre-trial diversion program.

A pre-trial diversion program suspends your case if you sign an agreement. This lets you avoid a trial where you might be convicted. The agreement says what things you have to do to

avoid trial. If you don’t complete the program, the prosecutor can take the case back to court.

Have you completed everything in your agreement? Then you can have the case erased from your record for \$280.

3. You can have your record erased if you complete a judicial diversion program

Judicial diversion lets you plead guilty but it is not on your record. Your case is suspended while you are on supervised probation. You must pay the court costs and follow the rules for your probation. The court can then dismiss the case against you. You can’t get judicial diversion if, before this case, you were convicted of:

- A felony **OR**
- Class A misdemeanor **OR**
- Class B misdemeanor

The court can sentence you and put the conviction on your record **IF:**

- You get arrested **OR**
- You break the rules of your probation **OR**
- You don’t pay the court costs

Have you completed all the requirements of the judicial diversion program? **AND** has the case been dismissed? Then you can have it erased from your record for \$280.



4. Were you convicted of a felony or misdemeanor?

Three things must be true for you to have a conviction erased from your record:

- You were found guilty of **only 2 crimes**. They can be 2 misdemeanors or 1 felony and 1 misdemeanor. **Each crime** must qualify for expungement. Traffic tickets don’t count. Driving offences may not either.
- You finished your sentence or probation at least 5 years ago. (10 years ago for drug fraud).

- You have done everything the court said to do in your sentence. This means:
 - You paid all fines, restitution, court costs and any other costs the court said to pay **AND**
 - You finished any jail or prison time or probation **AND**
 - You met all the conditions of your release **AND**
 - You have been alcohol and drug free for at least 1 year, if this was part of your sentence.

Are **all 3** of these true for you? You may be able to get the conviction erased for \$280.

Did you do the crime BEFORE November 1, 1989?



You can only get it erased IF:

- You served a sentence of 3 years or less **or**
- You never had a crime erased after going to a diversion program **AND**
- Your crime meets these rules:
 - You did not use, try to use or threaten to use physical force during the crime
 - The crime was not one that usually uses physical force
 - You did not use or have a deadly weapon with you during the crime
 - It was not a sex crime against a minor
 - You are not registered as a sex offender or violent sex offender because of the crime
 - No one was killed or hurt during the crime
 - The crime did not involve drugs or alcohol and a motor vehicle
 - You were not selling or distributing Schedule I, II, III or IV drugs
 - The victim of your crime was not a minor
 - The crime did not cause the victim to lose money or property worth \$25,000 or more

Did you do the crime ON or AFTER November 1, 1989?

Felonies

Was the crime a Class E felony? Then it can ONLY be erased if these 3 things are all true:

1. You committed the crime **ON** or **AFTER** November 1, 1989 **AND**
2. You were sentenced to 3 years or less **AND**
3. The crime is on the list below:
 - Accessory after the fact
 - Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume)
 - Burglary of an auto
 - Communication theft (\$501-\$999 (fine only)
 - Counterfeit controlled substance
 - Criminal simulation (up to \$1,000)
 - Custodial interference where person not voluntarily returned by defendant
 - Cutting off lights, gas or water or damaging property
 - Destroying or hiding someone's will
 - Destroying valuable papers worth \$501 to \$999
 - Evading arrest in motor vehicle where no risk to bystanders
 - Failure to appear (felony)
 - Forgery (up to \$1,000)
 - Fraudulent or false insurance claim (\$501-\$999)
 - Fraudulent qualifying for set aside programs (\$501-\$999)
 - Fraudulent transfer of motor vehicle with value of less than \$20,000
 - Fraudulent use of credit or debit card (\$501-\$999)
 - Gifts of adulterated candy or food
 - Hindering secured creditors
 - Lying when you apply for low-income housing
 - Manufacture, delivery, sale or possession of not less than 1/2 ounce and not more than 10 pounds of Schedule VI; drug marijuana (fine not greater than \$1,000)
 - Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000)



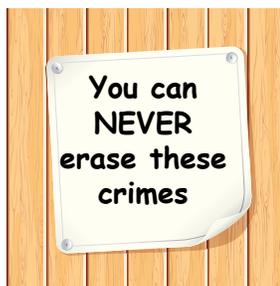
- o Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000)
- o Pretending to be a licensed professional
- o Pretending you can't pay your debts (fraud in insolvency)
- o Selling a recording of a live performance without consent (\$501-\$999)
- o Selling glue for unlawful purpose
- o Sharing cell phone calls that were recorded illegally (knowing dissemination of illegally recorded cellular communication)
- o Simple possession or casual exchange (3rd offense)
- o Stealing a car - Burglary of an auto
- o Stealing something worth between \$501 and \$999
- o Taking telecommunication device into penal institution
- o Theft (\$501 - \$999)
- o Theft of trade secrets (\$501-\$999)
- o Unauthorized solicitation for police, judicial or safety associations
- o Unlawful drug paraphernalia uses and activities
- o Unsolicited bulk electronic mail (\$500-\$999)
- o Vandalism (\$501-\$999)
- o Violation of Tennessee Personal and Commercial Computer Act (\$501-\$999)
- o Writing bad checks totaling between \$501 and \$999

- Allow person 18-21 to consume alcohol on person's premises
- Assault
- Assault (offensive or provocative physical contact)
- Child abuse (where child is between ages 7 - 17)
- Child neglect and endangerment (where child is between ages 7 - 13)
- Coercion — abortion
- Disorderly conduct at funerals
- Display for sale or rental of material harmful to minors
- Disseminating smoking paraphernalia to minor after 3 prior violations
- Domestic assault
- Driving under the influence of an intoxicant
- Enticing a child to purchase intoxicating liquor — purchasing alcoholic beverage for child
- Failure of adult to report juvenile carrying gun in school
- Failure to surrender handgun carry permit upon suspension
- Fraudulent use of credit/debit card (up to \$500)
- Harboring or hiding a runaway child
- Importing, preparing, distributing, processing, or appearing in obscene material or A misdemeanors
- Indecent exposure (victim 13 years old or older)
- Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard
- Misuse of official information by public servant
- Non parent providing handgun to a juvenile
- Possession of firearm after being convicted of misdemeanor crime of domestic violence
- Possession of firearm while order of protection in effect
- Possession of firearm while order of protection is in effect
- Possession of firearm while prohibited by state or federal law



Misdemeanors

Many misdemeanors can be erased. But, you can **NEVER** have your misdemeanor erased if both of the following are true:



1. The date of the crime was **on** or **after** November 1, 1989 **AND**
2. Your crime is on this list:
 - Aggravated assault of public employee
 - Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property



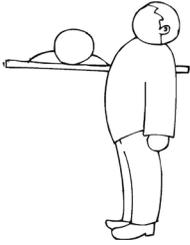
- Possession of or consuming alcoholic beverages on K-12 school premises
- Possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids
- Public indecency — first or second offense (punishable by \$500 fine only)
- Public indecency 3rd or subsequent offense
- Reckless burning
- Sale or loan to minors of harmful materials
- Sale or possession of synthetic derivatives or analogues of methcathinone
- Soliciting minor to engage in Class E sexual offense
- Stalking
- Three or more violations of “Child Rape Protection Act of 2006”
- Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits
- Unlawful exhibition of obscene material
- Unlawful massage or exposure of erogenous areas
- Unlawful sexual contact by authority figure
- Using substance or device to falsify drug test results and selling synthetic urine
- Violation of community supervision by sex offender not constituting offense or constituting misdemeanor
- Violation of protective or restraining order
- Violent felon owning or possessing vicious dog



There are 3 other ways some crimes can be erased from your record

1. **Were you convicted of a non-violent crime after January 1, 1980?** You may be able to get the crime erased.

You must ask the court where you were convicted of the crime. You must pay \$280 to have the crime erased. The crime will be erased from your record **IF:**

- The judge decides the crime was non-violent **AND**
 - When you asked, the Board of Parole voted to pardon you **AND**
 - The governor pardoned you for the crime
- 
2. **Were you charged with other crimes that you weren't convicted for?** You can ask the court to erase any public records about those other crimes.
 3. **Were you convicted of more than one crime committed at the same time and place?** They may be erased **IF:**
 - All of the crimes were committed at the same time and place **AND**
 - The crimes were all part of a single crime with a single purpose. This is called “a single continuous criminal episode with a single criminal intent.” **AND**
 - All the convictions meet the rules for being erased.

How can I get an expungement?

You must ask the court in the county where your case took place. Not all counties have the same rules. Call the criminal court clerk or the district attorney's office in that county. Ask how to get records erased. A clerk may be able to explain it if you go in person. Most of the time, you will:

- Fill out an **Order for Expungement** paper. To find a copy, look on the court clerk's website. Or go to the court clerk's office. Be sure you fill out the right paper. Some counties have one paper for convictions. They have different papers for cases that were dismissed.
- Take it to the Criminal Court Clerk's office.
- Bring a photo ID with you, like a driver's license.

- Pay the \$280 fee, if there is one. What if you can't pay the full cost all at once? Talk with the clerk. You may be able to set up a payment plan. **BUT**, the judge will not sign the order until all of the fee is paid.



Important!

- Before you have your records erased, ask for a copy of the judgment and charges. Once the crime is erased, you can't get these papers again. All papers about your records will be erased forever.
- **Ask the court clerk for a certified copy of the order.** This is your only proof that your record was erased. You **MUST** get the certified copy when you get the expungement. You can't get it after that because your record will be erased. The copy will be mailed to you after the judge signs it.

How long does it take to get your record erased?

After you file the order, it takes about 90 days (3 months) before it is erased from the county records.



The court will send the order to the Tennessee Bureau of Investigation. This will erase your state record and your criminal fingerprints. TBI will send the order to the FBI. The FBI will erase your federal record. It takes 9 months to a year before the crime is erased from TBI's records.

Can I get TBI to erase the record sooner?

Yes, in some cases. You might want the record erased quickly **IF**:

- You are being fingerprinted for a job **OR**
- You apply for a gun carry permit **OR**
- You want to buy a gun **OR**
- You want to adopt a child

To get it erased quicker, you must fax the order to **615-744-4653**. You **MUST** put your name, address, phone and e-mail address on the cover sheet.

They will use that to let you know when the record is erased.

Questions? Call Legal Aid Society at **1-800-238-1443**. It's a free call.



Legal Aid Society
of Middle Tennessee & the Cumberland

Working Together. Doing Justice. Restoring Hope.

1-800-238-1443

It's a free call.

On the internet at **www.las.org**

This booklet is not meant to take the place of legal advice. It does not cover everything about expungement. Each case is different and needs individual attention.

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