

Overview of Criminal Records & Legal Relief

I. Facts vs. Myths of Criminal Records

- A. All arrests are public record – even when the case was dismissed or the person was found not guilty.
- B. Criminal records never go away without filing an expungement or sealing – not after 7, 10 or 100 years!
- C. Prior to 2010, you are an adult at the age of 17.
- D. Employers are not prohibited by state or federal law to only go back a certain number of years to consider convictions.
- E. Just because a person has a criminal record does not mean they do not have rights – it is important for those with criminal records to know both state and federal laws.

II. How to Obtain Your Criminal Records

- A. The official source of records is extremely important. Charges, dates and sentences must be determined through the following sources of records. Mistakes are rampant in records, and the following two sources are how to rectify.
- B. Police Records
 - 1. City of Chicago Rap Sheets
 - a. Chicago Police Department – 4770 S. Kedzie – 8:00 to 12:00 – Monday through Friday.
 - b. \$16 – pick up is one week later.
 - 2. Illinois State Police Records
 - a. Can pay for a copy of all “conviction” records and can view copy of all arrests (“Access & Review”) by being printed at local law enforcement agency.
 - b. 815-740-5160 for information on how to receive ISP “conviction records.”
- C. Court Records
 - 1. Court Dispositions – final result of the case.
 - 2. Available at Clerk of the Circuit Court in the county where the case occurred
 - a. Cook County – records are \$9 per case (free to look at). Available at Clerk’s Office Daley Center, 26th Street or any suburban district.
 - b. Anyone can view court records at the county clerk’s office at the public access terminals.
 - c. Cost of dispositions vary based on county.

III. How Are Background Checks Conducted?

A. Private Employers

1. Background checks are conducted by private background check companies (“commercial record vendors), hired by the company.
2. The background check companies have access to Clerk’s/court records, not police records.
3. Background checks are not conducted on every applicant and regulations of the Fair Credit Reporting Act (FCRA) apply.
4. Private employers choose how to use criminal records, with some constraints by state and federal laws, which is why we are working on our Employment Guidelines Project.

B. Employers Regulated by Statute

1. Certain employers are regulated by state or local law. They are employers that conduct background checks through the Illinois State Police and/or Federal Bureau of Investigation.
2. Laws can outline which offenses disqualify employment, some set forth time frames and are all over Illinois statutes, regulations, policies and procedures.
3. HB 297 = requires Illinois Criminal Justice Information Authority to conduct an audit of all state laws.

IV. Expungement & Sealing – 20 ILCS 2630/5.2 (Criminal Identification Act)

A. EXPUNGEMENT

1. Expungement is available if a person has never been convicted – *all or nothing remedy!*
2. Convictions Include: (a) Probation; (b) Conditional Discharge; (c) Time Considered Served; (d) Jail or Prison Time (e) Fines for municipal ordinance violations (not in connection with supervision)
3. The following are not convictions:
 - a. Acquittals/Dismissals: Stricken off with Leave to Reinstate (SOL); Found Not Guilty (FNG); Nolle Prosequi; Non-Suit; Finding of No Probable Cause (FNPC); Released without Charging (RWOC)
 - b. Supervision (successfully completed)¹
 - c. 710-1410 Probation (successfully completed)
 - d. TASC Probation (successfully completed & vacated)

¹ The only supervisions that cannot be expunged are for Driving Under the Influence, Reckless Driving and Sex Offenses against minors. Note: the existence of one of these supervisions does not preclude expungement of the rest of the record (so long as there are no convictions).

4. If a record is a combination of the above non-convictions, you can expunge.....so long as the proper waiting period has passed.
 - a. Acquittals & Dismissals = immediately expungeable, *except* for SOL or non-suit (requires 120-160 days)
 - b. Supervision = 2 years after successful completion (very limited offenses require 5 years to pass from successful completion)
 - c. 710-1410 and TASC Probations = 5 years from completion – Proof of clean drug test required, taken within 30 days of the filing

B. SEALING

1. If a person has been convicted, they can only *seal* their criminal record, if that record is eligible under the law. **Partial sealing is allowed.**
2. Misdemeanors
 - a. All acquittals/dismissals are sealable
 - b. Convictions and supervisions are sealable if they are not violent or sexual in nature.
 - c. The following misdemeanor convictions and supervisions are not sealable.
 - i. Violent crimes = battery; assault; reckless conduct; domestic battery; criminal sexual abuse
 - ii. Sexual Crimes = soliciting a prostitute; patronization; public indecency; obscenity; pimping
 - iii. Driving Under the Influence; Reckless Driving
 - iv. Violations of Humane Care of Animals Act
3. Felonies
 - a. Only three felonies are eligible to be sealed – all Class 4 felonies.
 - i. Prostitution
 - ii. Possession of Cannabis
 - iii. Possession of Controlled Substance
 - b. Proof of clean drug test is required when sealing a Class 4 felony drug conviction.
 - c. Carry/Possession of Firearm between 1995 and 1999 can be amended to a misdemeanor and sealed – *People v. Cervantes*.
4. Waiting Periods
 - a. There is no waiting period for acquittals or dismissals, but a person cannot have any pending sentences or cases (includes parole).
 - b. 4 years after completion of LAST conviction
 - c. The longest waiting period must pass to be able to seal *any* eligible convictions or supervisions
5. When a record is sealed, a person can answer “no” to the question...“have you ever been convicted?”

C. Similarities & Differences Between Expungement & Sealing

1. Both are a court filing in the county where the record occurred (cases in different counties or different districts in Cook County require separate filings).
2. In Cook County, \$120 for a petition, plus \$9 per case upon filing – fee waivers are available if a person cannot afford the filing fee (based on federal poverty guidelines). Fees vary based on county.
3. Discretionary remedy!
4. Expunged records are available *to law enforcement only* for 5 year waiting period offenses (710-1410 probation).
5. All sealed records can be viewed by law enforcement.
6. Sealed felony conviction records can be viewed by any agency authorized by law (these are employers that require fingerprints for employment – the ones mentioned above that are regulated by statute):
 - a. Schools
 - b. Park Districts
 - c. Transportation
 - d. Department of Children & Family Services
 - e. Health Care Organizations
 - f. Department of Corrections
 - g. Firefighter Applicants

V. **Petitions for Executive Clemency**

- A. If a person cannot seal certain convictions on their record, they must petition the Governor for a pardon.
- B. Pardons are extraordinary remedies and may take years to receive an answer (although this State is in a much better position now).
- C. Clemency petitions are reviewed by the Prisoner Review Board (PRB) – www.state.il.us/prb
- D. Written petition, detailing your criminal record, personal life history and reasons for seeking clemency
- E. Hearing are held 4 times per year – April & October in Chicago – January & July in Springfield – petitions are due 75 days prior to hearing.
- F. Governor Quinn has granted 40% of the 1529 petitions he’s decided and 60% of decided CGLA petitions! We’ve had 93 decisions, with 169 pending.

VI. Waivers and Certificates

A. Health Care Waivers - 225 ILCS 46, et. seq.

1. Certain convictions prohibit a person from working in health care under the Healthcare Worker Background Check Act. See attached printout of disqualifying offenses.
2. Waivers are available, upon application, if granted by the Illinois Department of Public Health for non-licensed health care workers.
3. Similar to a clemency petition, must attach supporting documentation and prove “rehabilitation.”
4. Employers do not have to accept waivers, it just allows an employer to hire a qualified worker without being in violation of the law.

B. Certificates of Relief from Disability – 730 ILCS 5/5-5.5-15

1. Available to any “eligible offender” anytime during or after sentencing from the circuit court upon petition.
2. “Eligible offenders” are those with no more than 2 felony convictions that are not Class X, forcible felonies resulting in great bodily harm or aggravated DUI offenses.
3. Available for certain licensed professions that have a barrier based on conviction records.² These are professions licensed by the Illinois Department of Professional Regulation.
4. With or without a certificate, a person can still be licensed by IDFP, it’s just additional evidence to bring in pursuit of that license.
5. Provides employers protection from negligent hiring claims – but again, do not have to be accepted by an employer.

C. Certificates of Good Conduct - 730 ILCS 5/5-5.5-25

1. Available to eligible offenders (defined above) and issued by the circuit court. Can remove employment bars under other Illinois laws.
2. Waiting periods include 1 year from a misdemeanor offense and 3 years from the last felony offense.
3. Also provides employer’s immunity from negligent hiring claims.
4. Individuals go through “rehabilitation hearings” before the Presiding Judge or sentencing judge.
5. Chicago Public Schools recognize this form of relief to work with their organization.

² Animal Welfare Act, Illinois Athletic Trainers Practice Act, Barber, Cosmetology, Esthetics, and nail Technology Act of 1985, Boiler and Pressure Vessel Repairer Regulation Act, Professional Boxing Act, Illinois Certified Shorthand Reporters Act of 1984, Illinois Farm Labor Contractor Certification Act, Interior Design Title Act, Illinois Professional Land Surveyor Act of 1989, Illinois Landscape Architecture Act of 1989, Marriage and Family Therapy Licensing Act, Private Employment Agency Act, Professional Counselor and Clinical Professional Counselor Licensing Act, Real Estate License Act of 2000, Illinois Roofing Industry Licensing Act, Professional Engineering Practice Act, Water Well and Pump Installation Contractors License Act, Eectrologist Licensing Act, Auction License Act, Illinois Architecture Practice Act of 1989, Dietetic and Nutrition Services Practice Act, Environmental Health Practitioner Licensing Act, Funeral Director and Embalmers Licensing Code, Land Sales Registration Act of 1999, Professional Geologist Licensing Act, Illinois Public Accounting Act, Structural Engineering Practice Act of 1989

VII. Other Laws Regarding Criminal Records

- A. Illinois Human Rights Act (775 ILCS 5/2-103)
 - 1. It is a civil rights violation for an employer to use arrest records in employment decisions – cases resulting in acquittal or dismissal).
 - 2. Employers cannot use expunged or sealed records in employment decisions.
 - 3. Employment applications can only ask whether a person has been found guilty – it cannot ask if a person has ever been arrested! It must also state a person need not disclose expunged or sealed records.
 - 4. Employers can use independent evidence of guilt to deny a person a job based on an arrest record.

- B. Title VII of the Civil Rights Act
 - 1. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin.
 - 2. The U.S. Equal Employment Opportunity Commission (EEOC) enforces this and other laws. Must file a charge with this agency to be able to obtain a “right to sue” letter to go into federal court.
 - 3. Policies that are “neutral” on their face may violate Title VII if it has a disparate impact on protected classes.
 - 4. Chicago Lawyers Committee for Civil Rights is looking for these types of cases – see attached flyer.

- C. Fair Credit Reporting Act
 - 1. You must sign an authorization to have a background check conducted – it cannot be a secret process by the employer.
 - 2. If you are denied a job based on your criminal record, you are entitled to a copy of the report.
 - 3. You are allowed to have your background corrected if any errors are discovered – including if the record was sealed or expunged.
 - 4. Non-convictions (including supervision and 710/1410 probation) can only be reported for 7 years).

VIII. How to Receive Legal Assistance

- A. CGLA Expungement Help Desk or Criminal Records Program – 312-738-2452
- B. Sargent Shriver National Center on Poverty Law - 312-368-5199
- C. Chicago Legal Clinic – 773-731-1762
 - Expungement, sealing, clemency petitions, health care waivers, sliding scale
- D. Chicago Lawyers Committee for Civil Rights Under Law
 - Title VII, Illinois Human Rights Act and Fair Credit Reporting Act violations
- E. Office of the State Appellate Defender
 - 866-787-1776 (Cook County) and 866-431-4907 (outside Cook)
 - Advise on expungement & sealing throughout the State of Illinois
- F. Illinois Legal Aid Online – www.illinoislegalaid.org