

Sealing and Expunction of Criminal Records & Restoration of Civil Rights

PRESENTED BY:

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First Question: Are you eligible to have criminal charge(s) sealed or expunged?

Ineligible:

- Adjudication of guilt: (in any state or county)
 - Criminal offense, comparable ordinance violation, or criminal traffic violation
- Adjudicated delinquent (i.e. as a juvenile) for committing any felony or misdemeanor specified in Florida Statute 943.051(3)(b)
- Pending or open criminal charge(s)
 - Includes active court supervision such as probation
- Prior/pending sealing or expunction (exception exists)
- Certain criminal charges may not be sealed nor expunged

Not really sure if you qualify?

Request criminal history information from

- Florida Department of Law Enforcement (F.D.L.E.)
<https://www2.fdle.state.fl.us/cchinet/>
- Federal Bureau of Investigations (F.B.I.)
http://www.fbi.gov/about-us/cjis/background_checks

Sealing vs. Expunction

Sealing	Expunction
<p>The preservation of a criminal record under such circumstances that:</p> <ul style="list-style-type: none"> ▪ It is secure and ▪ Inaccessible to any person not having a legal right of access to the record or the information contained therein. 	<p>Any criminal record of a minor or an adult which is ordered expunged by a court:</p> <ul style="list-style-type: none"> ▪ Must be physically destroyed by any criminal agency having custody of such record, EXCEPT... <p>Any criminal record in the custody of the F.D.L.E. must be retained in all cases!</p>

Second Question:

Which is appropriate: sealing or expunction?

<ul style="list-style-type: none"> ▪ Sealing, (943.059, Fla. Stat.) <ul style="list-style-type: none"> • Usually, charge(s) were brought to trial and resulted in the following findings: <ul style="list-style-type: none"> • Adjudication withheld • Acquitted • <i>Note: Charge <u>may be eligible for expunction</u> after it has been sealed for at least 10 years!</i> ▪ Expunction, (943.0585, Fla. Stat.) <ul style="list-style-type: none"> • Usually, charge(s) dismissed prior to trial: <ul style="list-style-type: none"> • Nolle Prosequi, No Information Filed, or similar finding
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Scenario #1

After gathering the necessary documents, John petitioned the court to have his worthless check charge sealed and was successful. Now, it has been eleven (11) years and John would like to have this same charge expunged. However, five(5) years ago, John was charged with and formally convicted guilty of driving with a suspended driver license. Adjudication WAS NOT withheld.

Is he eligible to have the worthless check charge expunged?

Third Question:
Which charge should you expunge or seal?

- Felony vs. Misdemeanor
- **Multiple charges stemming from one arrest or incident**
 - The court may only order expunction or sealing of a criminal record pertaining to **one arrest or one incident** of alleged criminal activity.
 - The court **may, at its sole discretion**, order the expunction or sealing of a criminal record pertaining to more than one arrest **if the additional arrests directly relate to the original arrest.**
 - A portion of the criminal record may be expunged or sealed

Scenario #2

Kimberly received an automatic expunction of her juvenile record when she turned 24 years old. She is now 30 years old and has a petit theft charge on her record (adjudication withheld).

Is she eligible to have her record sealed or expunged?

6 Step Process for Expunction

- 1. Obtain a certified Case Action Report for the specific charge you would like expunged.**
 - Go to Clerk of Court in county where charge filed.
 - Report should indicate final disposition of charge.
- 2. Complete F.D.L.E. Application for Certificate of Eligibility.**
 - Go to F.D.L.E. website for application package materials.
- 3. Forward Application to state attorney office (S.A.O.) where charge filed, along with certified Case Action Report, a cover letter, and self-addressed envelope.** (this step is not required for sealing!)
 - S.A.O. will complete Section B of Application and return it to applicant.
- 4. Obtain \$75 money order or cashier's check (made payable to F.D.L.E.) and fingerprints.**
 - Contact your nearest law enforcement agency for fingerprint requirements

Sealing Process (continued)

5. Once you receive a Certificate of Eligibility from the F.D.L.E., you are ready to petition the court!

- You will need:
 - A cover letter to the Clerk of Court
 - Filing fee (varies according to jurisdiction)
 - For clarification, contact the Clerk of Court in the county where petition will be filed
 - Petition for Court-Ordered Sealing of Criminal Records
 - Requirements found in Fla. R. Crim. P. 3.692, 3.989 & 943.059, Fla. Stat.
 - Certificate of Eligibility (original)
 - Affidavit in Support of Petition (signed by Petitioner)
 - Order to Seal Records (for Judge to sign)
 - Self-addressed envelopes

Can you legally deny or fail to acknowledge arrest?

- You can legally deny or fail to acknowledge the arrest(s) covered by the sealed or expunged charge **UNLESS:**
 - Applying to change your immigration status,
 - Currently a defendant in a criminal prosecution, or
 - Seeking any of the following:
 - Employment with a criminal justice agency,
 - Employment/Contract with, or license by the Department of Children and Family services, laboratory school, any charter school, any private or parochial school, or any local government entity that licenses child care facilities,
 - Employment/use by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged or elderly,
 - Purchasing a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law (specific to sealing); or
 - Employment/access to a seaport,
 - Admission to the Florida Bar, OR
 - Petition to seal/expunge.

Restoration of Civil Rights In Florida

Constitution of the State of Florida
As revised in 1968

ARTICLE VI, SECTION 4.

Disqualifications.--

- (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

ARTICLE IV, SECTION 8A.

Except in cases of treason and in cases where impeachment results in conviction, **the governor may**, by executive order filed with the secretary of state, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, **with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights**, commute punishment, and remit fines and forfeitures for offenses.

Restoration of Civil Rights

- “The Restoration of Civil Rights restores to an applicant all the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.”
- Through the restoration of civil rights, a person gains the:
 - right to vote,
 - sit on a jury
 - hold public office.

Restoration of Civil Rights

- Civil Rights are not lost for:
 - Misdemeanor Convictions
 - Felony offenses - Adjudication is Withheld
 - Juvenile Offenses – Adjudicated Delinquent

Clemency Board

- The right to restore civil rights is vested in the sole discretion of the Governor and the Cabinet sitting as the Board of Executive Clemency

The Florida Board of Executive Clemency



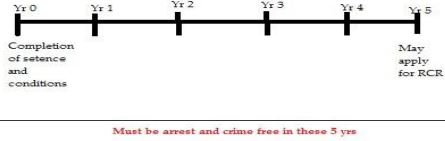
Rick Scott
Governor

Pam Bondi
Attorney General

Jeff Atwater
Chief Financial Officer

Adam H. Putnam
Commissioner of Agriculture

Without a Hearing – Rule 9



Without a Hearing – The Process

1. Submit an application.
2. Attach a CERTIFIED copy of the charging instrument and a CERTIFIED copy of the judgment and sentence for **EACH** felony conviction to your application.
3. Parole Commission will review the application to ensure that the applicant meets the requirements of Rule 9.
4. Parole Commission will then submit a preliminary review list of individuals eligible for RCR without a hearing to the Clemency Board.

Without a Hearing – The Process

5. Within 60 days of getting the preliminary list from the Parole Commission, the Clemency Board will either grant or deny application for RCR.
6. If the Governor plus two members of the Board approve the application for RCR, the Coordinator will issue a certificate granting the request for civil rights to the last known address of the applicant.
7. If the application for RCR is denied, the applicant can pursue rights with a hearing.

Scenario #3

Jane completed her probation for grand theft 5 1/2 years ago. Grand theft is a felony but it is not a disqualifying offense. She has not been arrested nor convicted since she completed her probation. She owed \$1,000 in restitution. She paid \$700 and \$300 was converted to a civil judgment. Jane has paper work that shows her probation has been terminated.

Is Jane eligible to apply to have her civil rights restored WITHOUT a hearing?

With a Hearing – Rule 10

- You can apply for RCR **WITH** a hearing if:
 - You **were convicted** of one or more of the disqualifying offenses
 - You have **completed the 7 year waiting period** (7 years have passed since **completing your sentence, supervision, and probation**)
 - During the waiting period, you **have not** been convicted of a felony
 - You have **no pending charges or detainers**
 - You have **paid all court-ordered restitution**

With a Hearing – Rule 10



Completion of sentence and conditions

May apply for RCR

Must not have been convicted of a felony during these 7 years

With a Hearing – The Process

- 1. Submit an application.
- 2. Attach a CERTIFIED copy of the charging instrument and a CERTIFIED copy of the judgment and sentence for **EACH** felony conviction to the application.
- 3. Parole Commission will review the application to ensure that the applicant meets the requirements of Rule 10.
- 4. After the Parole Commission investigation is complete, the Coordinator will place applicant's case on the Clemency Board's agenda for consideration.

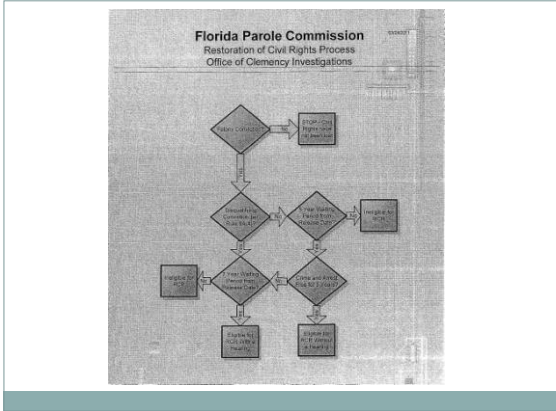
With a Hearing – The Process

- 5. Case is then heard by the Clemency Board.
- 6. If the Governor plus two members of the Board approve the application for RCR, the Coordinator will issue a certificate granting the request for civil rights to the last known address of the applicant.
- 7. If the application for RCR is denied, the applicant may **NOT** reapply for further executive clemency for at least **two years** from the date that such action became final.

Scenario #4

David was convicted and sentenced for an aggravated assault. He completed his sentence and all conditions 10 years ago. The aggravated assault is his only felony conviction. However, 5 years ago he was convicted of a misdemeanor petit theft. He completed 6 months probation and paid the restitution for the petit theft.

Is David eligible to apply to have his civil rights restored? Can he apply under rule 9 (without a hearing) or under rule 10 (with a hearing)?



Other Things To Know

1. **Free certified copies:**
 - a. **Fla. Stat. 940.04 – Copy of Information or indictment to be furnished without charge.**—In the event any applicant for executive clemency is required to supply a certified copy of the applicant's information, indictment, judgment, or sentence, said document shall be furnished by the clerk of court to the applicant free of charge and without delay.
2. You **may** attach the following to your application:
 - a. Character references
 - b. Letters of support
 - c. Any other documents that are relevant to the application for clemency

Other Things To Know

3. **Voting**—If your rights are restored, you **MUST** complete and submit a voter registration form to be eligible to vote.
4. **Cases of Exceptional Merit**—Any member of the Clemency Board may place a case on the upcoming agenda for consideration.
5. **Hearings Before Clemency Board**
 - a. The Clemency Board holds hearings in **March, June, September, and December**.
 - b. Applicants are not required to attend the hearings but they are **highly encouraged to attend**.

Office of Executive Clemency

Phone: (850) 488-2952 or 1-800-435-8286

Fax: (850) 488-0695

E-mail: clemencyweb@fpc.state.fl.us

Website: <https://fpc.state.fl.us/Clemency.htm>

Verify Rights Restored: www.flrestoremyrights.com

Restoration of Civil Rights
Application Assistance

For local assistance contact
The University of Florida Levin College of Law
Virgil Hawkins Civil Clinic
(352) 273-0800

Sealing and Expunction
Application Assistance

For local assistance contact
Three Rivers Legal Services, Inc.
901 N.W. 8th Avenue, Suite D-5
Gainesville, Florida 32601
(352)372-0519

Free Application Assistance - Gainesville

- October 6, 2011 — GTEC Building
2153 S.E. Hawthorne Road
- November 3, 2011 — Library Partnership
1130 NE 16th Avenue
- December 1, 2011 — Library Partnership
1130 NE 16th Avenue



**NOT
LOCKED UP
BUT STILL
LOCKED
OUT ...**

QUESTIONS?
