

I have a misdemeanor deferral-dismissal. Am I eligible to seal my record?

What is deferral-dismissal?

When a person is charged with certain offenses for the first time and has never been convicted of a felony, Virginia courts will sometimes defer (avoid) convicting the person even though the court has enough evidence to convict. The person will typically have to complete some type of probation and pay all fines, fees, and restitution associated with the case. If the person is successful, the court will dismiss the case. This is a “deferral-dismissal.”

Automatic Sealing

If you received a deferral-dismissal of the following misdemeanors, your record may be automatically sealed when the new law takes effect on October 1, 2025:

- Underage alcohol possession
- Marijuana possession

Additional requirements for misdemeanor automatic sealing:

- On the date of your conviction, you were not also convicted of—or received a deferral-dismissal for—another offense not listed above
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years

Asking a court to seal your record (non-automatic)

If you received a deferral-dismissal for any other misdemeanor except DUI or assault and battery of a family or household member, you can petition a court to seal your record on July 1, 2025. If you cannot afford to hire an attorney to help you with the court process, the new law says you can ask the court to appoint one for you.

Additional requirements for a misdemeanor petition:

- You were never convicted of a Class 1 or 2 felony
- You were not convicted of a Class 3 or 4 felony in the last 20 years
- You were not convicted of any felony in the last 10 years
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years
- If court records indicate the offense involved the use or dependence of alcohol or drugs, you must demonstrate your rehabilitation

Lifetime limits

The new law imposes a lifetime limit on the number of times a person can seal convictions and deferral-dismissals. Each person can seal convictions and deferrals from only two sentencing events. You may have been convicted of multiple charges by a court on the same day—if so, these count as one sentencing event. The lifetime limit does not apply to non-convictions (dismissals, acquittals, nolle prosequi).

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Visit justice4all.org/expungement to learn more*

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What happens when my record is sealed?

What is sealing?

The commonwealth keeps two copies of every criminal record. One is kept by the Virginia State Police and the other is kept by the court where the person was charged. The new law defines sealing as prohibiting the dissemination sharing of these two records - which means that the court won't tell anyone you were charged except in certain circumstances where there is a court order (see below).

Can sealed records still be accessed in some situations?

Yes. The General Assembly created a list of situations in which certain individuals or government agencies can access sealed records but only if they obtain a court order to do so. Police and prosecutors cannot view sealed records unless they get a court order.

Here are a few situations when a court order can be obtained to access a sealed criminal record:

- Child custody proceedings
- Protective order proceedings
- To impeach the credibility of a witness testifying in a court proceeding
- To determine a person's eligibility to possess a firearm
- To determine a person's eligibility to serve as a juror
- The Department of Social Services and local departments of social services may request such records to carry out their duties.
- You can also request a copy of your own sealed record.

What do you mean by "most" potential employers?

Some employers require the disclosure of all records—even sealed records. If you are applying to work (or even volunteer) for the Virginia State Police or a local police department or sheriff's office and you do not disclose your sealed record, you can be convicted of perjury, a felony. Other employers may also require the disclosure of sealed records if other state or federal laws say disclosure is necessary, or if disclosure is in the interest of national security. Because perjury requires a willful act, the potential employer has an obligation to tell you that you must disclose the sealed record.

Most potential employers will not be able to require you to disclose a sealed record. An employer who asks about sealed records when the law does not require you to disclose it will be guilty of a Class 1 misdemeanor.

What can I do if my record is sealed but it still appears on background checks?

The new law addresses this situation by requiring companies that buy and sell criminal records to delete sealed records. The new law requires these companies to register with the Virginia State Police and keep their records updated. If a company refuses to delete your sealed record, under the new law you or the Attorney General of Virginia can file a lawsuit and recover money damages from the company.