

Expungement

Clearing Your Criminal Record

*If your criminal history report shows that you were arrested for a crime but not convicted, then you may be eligible for expungement. There is no absolute right to expungement and it applies in only a limited set of circumstances.

The Official Code of Georgia Annotated 35-3-37 (d) explains under what circumstances an expungement can be granted.

1. No other criminal charges are pending against you; and
2. You have not been convicted of the same or similar offense within the last 5 years.

Arrest records that can only be expunged if:

1. No Indictment or Accusation was filed because:
 - a. You were arrested, but were released without the offense being referred to the prosecuting attorney for prosecution.
 - b. The prosecuting attorney dismissed the charges without seeking an indictment or filing an accusation.
2. An Indictment or Accusation was filed, but:
 - a. The charges were “nolle prossed”
 - b. The charges were dead docketed, or
 - c. The charges were dismissed.

Expungement is not possible if one of the following circumstances apply (35-3-37 (d)(7):

1. Charges were dismissed because of a plea agreement that resulted in a conviction for an offense arising out of the same underlying transaction or occurrence as the conviction.
2. The government was barred from introducing material evidence against you;
3. A material witness refused to testify or was unavailable to testify against you, unless the witness refused to testify based on his or her statutory right to do so;
4. You were in jail on other criminal charges and the prosecuting attorney decided not to prosecute for reasons of judicial economy;
5. You successfully completed a pretrial diversion program that did not specifically provide for expungement of the arrest record;
6. You were arrested for conduct that was part of a pattern of criminal activity which was prosecuted in another court of this state, the United States, another state, or foreign nation; or
7. You had diplomatic, consular, or similar immunity.

Records that CANNOT be expunged:

1. First Offender pleas
2. Nolo Contendere pleas

How to Apply for Expungement:

To have your arrest record expunged, you must go to the agency that arrested you, such as the police department or the Sheriff's Office. If you have several arrests by different agencies, then you must go to each agency. The

agency will give you the forms you need to fill out. The forms are usually free; however, some agencies may charge a fee. Under the law, the fee cannot be more than \$50.00

Generally, the form requires basic identifying information such as name, date of birth, social security number and address. You will also need to know the name of the arresting agency, the date of the arrest and the offense for which you were arrested.

After you fill out the forms, make a complete copy for yourself, and then give the originals back to the arresting agency. The agency will send the papers to the district attorney or solicitor general's office. The prosecuting attorney then determines whether you meet the criteria for expungement.

If the prosecuting attorney approves your request to expunge your arrest record, the agency will notify the GCIC. Within a reasonable time (this could be several weeks or months); the GCIC will expunge your arrest record.

If the prosecuting attorney denies your request for expungement, you can file a lawsuit in the Superior Court of the county where the arresting agency is located. The lawsuit must be filed within thirty (30) days after receiving the denial. This is a much more difficult process and you may want to hire an attorney.

**Instructions and forms can be downloaded by accessing www.gbi.georgia.gov. Click on "Publications" and then "Georgia Criminal History Record Expungements." Please be aware that as of August 1, 2009, GCIC will require a fee of \$25.00 from the applicant to process each request approved by the prosecuting attorney.