

# FAIRFAX CIRCUIT COURT

SERVING THE RESIDENTS OF FAIRFAX COUNTY AND THE CITY OF FAIRFAX

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## EXPUNGEMENT PROCEDURE GUIDELINES

An Expungement is an action used to remove from public access and to seal criminal charges, civil offenses or other offenses defined in Title §18.2 when any of the following has occurred:

- 1) The person has been acquitted; or
- 2) A nolle prosequi is taken or the charge is otherwise dismissed. This does not include a situation where the person has pleaded guilty or nolo contendere and was found guilty, who received a deferred disposition on the charge, or where a protective order was issued; or
- 3) A person was convicted of Possession of Marijuana; or
- 4) A person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification; or
- 5) A person has received an absolute pardon for the commission of the crime that a person did not commit or has had a writ vacating a conviction pursuant to §19.2-327.5 or §19.2-327.13.

An expungement will not cause the record to be destroyed, but it will be placed under seal and inaccessible by the public. (Note: Once the record is expunged it can only be accessed by Court Order.)

All Petitioners are required to **obtain a new set of fingerprints** for the expungement process. The police department will fingerprint the Petitioner as requested. After the fingerprint cards are completed, the police department will forward the Petition for Expungement with the set of fingerprint cards to the State Police to perform a criminal history check. Fingerprints will not be required for a person granted an absolute pardon for the commission of a crime that the person did not commit.

**Victim of identity theft:** For any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification may file with the court disposing of the charge a petition for relief pursuant to Va. Code §19.2-392.2. Va Code §18.2-186.5. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the Petitioner's fingerprints obtained from a law-enforcement agency. The individual may contact the Victim Notification Program of the Office of the Attorney General at 804-786-2071 to obtain information, not legal advice, and also to apply for an identification card that shows that he has been the victim of identity theft.

**REFERENCE:** Code of Virginia

- §19.2-392.2
- §19.2-392.2:2
- §18.2-186.5

**DOCUMENT TYPE:** Petition for Expungement**FILING AND SERVICE FEES:** (No fees for Victims of Identity Theft)

Effective July 1, 2016 – For all Expungements GRANTED on or after July 1, 2016, the Petitioner's costs (filing fee) will be refunded pursuant to Va. Code §19.2-392.2(L).

A separate filing fee and service fee for each Petition must be paid at the time of filing.

FILING FEE: \$86.00

SERVICE FEE: \$12.00

(Service fee only required if not hand-delivering a copy to the Commonwealth Attorney's Office and is non-refundable)

<https://www.fairfaxcounty.gov/circuit/sites/circuit/files/assets/documents/pdf/fees-civil-and-filing-instructions.pdf>

Payment is to be made by cash, money order or cashier's check payable to the Clerk of the Circuit Court. Personal checks are NOT accepted.

**Effective July 1, 2016 credit card payments are NOT accepted.**

**REQUIRED DOCUMENTS:**

- An original Petition for Expungement of Record.
- An Affidavit showing manifest injustice if the Petitioner has a prior criminal record or the arrest was for a felony offense. This Affidavit is not required if Petitioner has no prior criminal record and the arrest was for a misdemeanor or civil offense.
- A certified copy of the charge(s) with the disposition of the charge(s) that is requested to be expunged.
- Five (5) additional copies of the Petition for Expungement and charge(s) with disposition of the charge(s) that is requested to be expunged.
- Two (2) copies of an Order of Expungement.
- Two (2) self-addressed (petitioner address) stamped envelopes for the return of the fingerprint card and a certified copy of the final order. These are sent at different times if the Petitioner has not retrieved the fingerprint card at the time of the hearing according to Va. Code §19.2-392.2(E). Plus one (1) additional self-addressed (attorney address) for copy of final order.

- The copies will be used for the following:
  - One (1) copy to be attached to the Summons will be served on the Commonwealth Attorney (only required if Petitioner is unable to hand-deliver the documents to the Office of the Commonwealth's Attorney).
  - Four (4) copies will be returned to the Petitioner to do the following:
    - Two (2) of the date stamped copies with attachments are to be taken to the Fairfax County Police Department with one (1) copy to be attached to a complete set of Petitioner's fingerprints to be mailed to the VA State Police for the criminal history background check. The second copy of the Petition will be retained by the police department.
    - One copy of the Petition with attachments and an Order for Expungement should be taken by the Petitioner to the Office of the Commonwealth's Attorney on the 1<sup>st</sup> floor of the Courthouse.
    - The remaining set is for the Petitioner to retain as proof of filing with the court.

## **OBTAINING FORMS AND DOCUMENTS:**

The Supreme Court's website: <https://vacourts.gov/forms/circuit/civil.html>

The Legal Services of Northern Virginia also provides forms for filing a Petition for Expungement on their website in the Self-Help Resources, Expungements section: <http://www.lsnv.org/self-help-resources/expungements/>

## **JURISDICTION:**

The Petition for Expungement with a copy of the individual warrant or indictment, if reasonably available, shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain the following:

- File Number**
- Date of Arrest**
- Name of Arresting Agency**
- Specific Charge/Offense to be expunged**
- Date of Final Disposition of the Charge/Offense to be expunged**
- Petitioner's Date of Birth**
- Petitioner's Social Security Number**
- Full Name used by Petitioner at the time of arrest**
- Indicate if the Petitioner has any prior criminal record**

For unavailable records that are over ten (10) years old, a destruction letter must be obtained from the court where the disposition was rendered.

## **FILING THE PETITION FOR EXPUNGEMENT:**

The Petition for Expungement and other required documents may be filed in person at Fairfax Circuit Court or mailed to:

**Fairfax Circuit Court  
Attention: Civil Intake 3<sup>rd</sup> Floor  
4110 Chain Bridge Road  
Fairfax, Virginia 22030**

The case will be assigned a Civil Action case number. This is a number by which the court references your case and must appear on any future documents regarding your Expungement. The case number will consist of CL, a 4 digit year indicator & the case number. (e.g., CL-2024-0000001)

## **SERVICE OF THE PETITION:**

A copy of the Petition shall be served on the attorney for the Commonwealth. This can either be done by hand-delivering a copy to the Commonwealth's Attorney's Office by the Petitioner or by service through the Sheriff's Office. The attorney for the Commonwealth may file an objection or answer to the petition within twenty-one (21) days after it is served. (§19.2-392.2(D) & Rule 3:5)

## **FINGERPRINT CARDS: §19.2-392.2(E &F)**

**NOTE:** Not required for expungement due to absolute pardon.

All Petitioners are required to **obtain a new set of fingerprints** for the Expungement process. The Petitioner shall obtain from a law enforcement agency one (1) complete set of their fingerprints and shall provide that law enforcement agency with two (2) copies of the **date-stamped Petition** showing proof that a Petition for Expungement has been filed with a Circuit Court.

To request fingerprint cards you must provide the law enforcement agency with two (2) forms of identification with name and date of birth. One form of identification must be photo identification.

After completing the fingerprint cards, the police department will forward one (1) copy of the Petition for Expungement with the set of fingerprint cards to the State Police to perform a criminal history check. The State Police will then forward the criminal record check under seal to the court. One (1) copy of the Petition for Expungement will be retained at the local Police Department.

## **OBTAINING FINGERPRINT CARDS:**

Petitioners may obtain their fingerprint cards from the Fairfax County Police Department – Central Records Division. The office hours are **Monday through Friday from 8:00 a.m. to 4:00 p.m.** The cost of the fingerprint card is \$10.00 for the first card and \$5.00 for each additional card, payable by cash, check or credit card (VISA and MasterCard only).

**PUBLIC SAFETY HEADQUARTERS  
Fairfax County Police Department  
Central Records Division  
12099 Government Center Parkway  
Fairfax, Virginia 22035**

- **Out of State Individuals** may obtain a new set of fingerprints from their local law enforcement agency.
- Contact the local law enforcement agency to determine the costs of obtaining a fingerprint card.
- The Petitioner must provide a copy of the Petition for Expungement and two (2) forms of identification to their local law enforcement agency.
- The local law enforcement agency shall mail a copy of the Petition with the set of fingerprint cards to the Virginia State Police to perform a criminal record check.

### **Mailing of Fingerprint cards and petition for Criminal History Check:**

The law enforcement agency will mail the fingerprint card along with the date stamped filed Petition to:

**Virginia State Police  
PO Box 27472  
Richmond, VA 23261-7472**

**Return of Fingerprint cards to the Petitioner per Va. Code §19.2-392.2(E)**: Upon completion of the hearing, the court shall return the fingerprint card to the Petitioner. If no hearing was conducted, upon the entry of an Order of Expungement or an Order denying the Petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the Petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the Clerk of the Court a self-addressed, stamped envelope for the return of the fingerprint card.

## **SUBMITTING A FULLY ENDORSED ORDER OF EXPUNGEMENT**

After filing a Petition for Expungement with the Clerk of Court, the Petitioner should hand deliver one copy of the Petition with attachments and a proposed Expungement Order to the Office of the Commonwealth's Attorney. They will review the Petition and proposed Order and, if acceptable, will endorse the Order as "agreed" and will forward the signed Order to the Clerk's Office. Once the statutory fingerprint card and background check have been completed, the Order will be forwarded to a Judge for review and signature if it meets all of the statutory requirements. If it does not meet the statutory requirements, the Judge will deny the Petition for Expungement and send a notice to the Petitioner indicating the reasons for the rejection. At that point, the matter can be set for a hearing by the Petitioner as described below.

If the Petitioner does not receive an entered Expungement Order from the Court within forty-five (45) days of service on the Office of the Commonwealth's Attorney, then the Petitioner may set the matter for a hearing as described below.

## **SETTING A HEARING DATE (Only if the Commonwealth's Attorney or a Judge rejects a proposed Order)**

If the Petitioner has submitted a proposed Expungement Order to the Office of the Commonwealth's Attorney and does not obtain an entered expungement order within forty-five (45) days of service on the Office of the Commonwealth's Attorney, or has had a proposed Order rejected by the Commonwealth's Attorney or a Judge, the Petitioner may set this matter for a hearing. However, prior to setting the hearing, the Petitioner must confirm that the fingerprint card and criminal history have been received by the Court.

To confirm whether the criminal history and fingerprint card have been received, call Circuit Court Civil Case Information:

**703-691-7320 press 3, 1, 2 and 2.**

Hearing dates for expungement cases are set on the Circuit Court Criminal Docket Monday through Thursday at 10:00 am.

An original "**Notice of Hearing**" must be filed in the Civil Division, located on the 3<sup>rd</sup> floor, no less than three (3) business days prior to the hearing date. The Notice of Hearing form can be obtained in the Fairfax Circuit Court Clerk's Office or on the Court's website:

<https://www.fairfaxcounty.gov/circuit/sites/circuit/files/assets/documents/pdf/expungement-notice-of-hearing.pdf>

To file a Notice of hearing the Petitioner may appear in person at the Fairfax Circuit Court or mail the original "Notice of Hearing" to:

**Fairfax Circuit Court  
Attention: Civil Division – 3<sup>rd</sup> floor  
4110 Chain Bridge Road  
Fairfax, Virginia 22030**

A copy of the Notice of Hearing must be mailed or hand delivered to the Commonwealth Attorney's Office. A copy of the Notice of Hearing must be filed with the Court and Commonwealth Attorney no less than three business days prior to the hearing date to:

**Commonwealth Attorney's Office  
4110 Chain Bridge Road, Room 114  
Fairfax, Virginia 22030**

**You must appear in Court on the date that your case is set to be heard.**

## **FINAL ORDER:**

After the Order either granting or denying the Petition for Expungement is entered, the clerk shall mail a certified copy of the final order to the petitioner in the self-addressed stamped envelope provided at the time of filing of the Petition.

**REMOVAL OF RECORDS FROM PUBLIC ACCESS:**

Granted Petitions for Expungement are forwarded to the Department of State Police.

**STATE POLICE PROCESSING ORDER TO EXPUNGE:**

- Documents and the Order to Expunge are received from the Courts.
- Reviews the documentation and the Order to Expunge.
- Letter is sent to the Court(s) directing that the records be removed from public access.

**COURTS PROCESSING ORDER TO EXPUNGE:**

- Letter is received from State Police directing the removal of the record from public access.
- Courts remove record from public access.
- Letter is sent to State Police advising that the Court has complied with the directive to remove the records from public access.
- Fingerprint card is returned to the petitioner.

It can take anywhere from 90 to 180 days from the date the State Police receive the Order to Expunge for the record to be removed from public access.

## EXPUNGEMENT PROCESS CHECK LIST

### PRIOR TO FILING:

- Obtain certified copy of each charge with disposition to be expunged
- Make six (6) additional copies of each charge with disposition
- Sign and notarize an Affidavit showing manifest injustice (if required) and attach to the Petition
- Prepare an original Petition with six (6) additional copies
- Prepare two copies of the Order for Expungement
- Prepare two (2) self-addressed stamped envelopes

### FILING WITH CIRCUIT COURT

- Original Petition plus six (6) copies
- Certified copy of charge(s) & disposition, Affidavit showing manifest injustice (if required) plus six (6) copies
- Two copies of the Order of Expungement
- Two (2) self-addressed (petitioner address) stamped envelopes
- One (1) self-addressed (attorney address) stamped envelope
- Filing & service fee (if required) payable by certified check or money order to Fairfax Circuit Court

### OBTAINING FINGERPRINT CARD FOR CRIMINAL HISTORY CHECK:

**NOTE:** Not required for expungement due to absolute pardon.

- Go to local police to obtain a fingerprint card for criminal history
- Give local police two (2) date stamped copies of the Petition for Expungement
- Pay processing fee of \$10.00 to local police by cash or check

### CHECK WITH COURT TO DETERMINE IF CRIMINAL HISTORY FILED:

- Two to Four weeks after filing petition, contact:

**Circuit Court CIVIL CASE INFORMATION  
703-691-7320 PRESS 3, 1, 2 AND 2.**

- If the record has been filed – you are now ready to file your notice of hearing.

### SUBMIT PETITION AND PROPOSED ORDER TO THE COMMONWEALTH'S ATTORNEY'S OFFICE

- After filing with the Clerk's Office, submit Petition and proposed Order to Commonwealth's Attorney's Office on the 1<sup>st</sup> floor of the Courthouse
- After review, if the Order is acceptable to the Commonwealth's Attorney, they will endorse the Order and return it to the Clerk's Office for review by a Judge.

### SETTING OF A HEARING (Only if the Commonwealth's Attorney or a Judge rejects a proposed Order)

- File Notice of Hearing with the Civil Division of the court (3<sup>rd</sup> Floor)
- File a copy of the Notice of Hearing with the Commonwealth's Attorney Office (1<sup>st</sup> Floor)
- Appear on court date