Rap Sheets

What Is A "Rap Sheet"?

If you have ever been arrested in Virginia and fingerprinted, you have a Virginia rap sheet. A "rap sheet" or "yellow sheet" is a record of your arrest and conviction history in Virginia. Rap sheets are maintained by the Central Criminal Records Exchange (CCRE) in Richmond. Each time you are arrested and fingerprinted, the police department sends a report of the arrest to CCRE.

CCRE keeps track of arrests in Virginia only. Out-of-state and federal cases will not appear on your Virginia rap sheet. The FBI keeps a complete list of your arrests in all states, and your CCRE file will have a notation of your FBI computer code number.

The state and local courts send information to CCRE, as well. After you have seen a judge, the court contacts CCRE to report the outcome of the case. This information is also known as the "disposition" of the case. There are many possible dispositions that could appear on your rap sheet. Some common dispositions include: "CONVICTED UPON A PLEA OF GUILTY," "DISMISSED," and "NOLLE PROSEQUI."[1] If you fail to appear on your assigned court date and a bench warrant is issued for your arrest, the court tells CCRE. A bench warrant will be added to your record and will appear on your rap sheet.

Remember: You will still have a CCRE record even if your case was dismissed, you were acquitted, your case was nolle prossed, or you were convicted but served no time in jail. A conviction is a ***guilty plea or a court's finding of guilt*** **for a "crime" or an "offense."**

Crimes Are

Felonies: Classes 1, 2, 3, 4, 5, or 6.
Misdemeanors: Classes 1, 2, 3, or 4.

Offenses Are

Traffic Infractions: these are often charged in the form of a summons and do not require an arrest.

NOTE: You can have a conviction even though you never served time in jail. If you received probation, paid a fine, did community service, or received a conditional or unconditional discharge, you have a conviction.

Who Can See Your CCRE Rap Sheet?

In Virginia, criminal history record dissemination is governed by statutory law.[2] Virginia is a "closed" state — meaning that your rap sheet is **not** distributed to

[1] A "nolle prosequi" is a discontinuance based on the prosecutor's decision to not prosecute the case. The accused is cleared of the charges, wiping the slate clean. To reinstate charges against the accused following nolle prosequi, the Commonwealth must seek a new indictment.
[2] VA. CODE ANN. § 19.2-389 (2000).

everyone who wants to see it. In contrast, in many so-called "open" states, anyone who wants to see your rap sheet is allowed to do so. Under the Virginia statute, various categories of people and agencies are entitled to see your rap sheet. Some are entitled to view or obtain your complete criminal record, while others are authorized access to your conviction data only. The following are permitted to obtain your **complete criminal record**:

Criminal Justice and Law Enforcement Agencies

- Police departments
- Courts
- Prosecutors and defense attorneys
- Parole and probation departments
- Corrections officials

Certain State Agencies

- Alcoholic Beverage Control Board
- Gaming Commission
- State Lottery
- State Board of Elections
- Virginia Racing Commission
- Department of Social Services-Mental Health/Retardation and Substance Abuse
- Office of Interdepartmental Regulations
- State Corporation Commission

Other Entities

- Specific volunteer agencies, including volunteer fire and rescue departments
- Private/parochial elementary or secondary schools
- Public school boards
- Foster care and adoption agencies
- Security guard companies, armed and unarmed
- Visa/passports for international travel
- Bonding agencies[3]

The following are permitted to obtain **your conviction data only**:

- Adult care facilities and homes
- Licensed and unlicensed child care centers
- Cities/counties under a duly enacted ordinance

YOU have the right to see your own rap sheet. You are entitled to your complete criminal history, including all convictions, and all arrests that have not been expunged (also known as set aside or dismissed). (See page 4 for information on how to review your rap sheet.)

Why You Should Review Your Rap Sheet

There are three good reasons for obtaining a copy of your rap sheet.

1. You can check for mistakes.
Rap sheets are often incomplete and contain mistakes that can affect your employment opportunities if they are seen by an employer. You can correct errors if you review your record before others get this information.

For example, if you were acquitted of a charge for which you had been arrested and tried, information concerning this

[3] A bond is a kind of insurance policy that an employer takes out on an individual employee to protect the employer in case that employee steals from the employer or from his or her customers. The agencies that issue bonds can get your rap sheet when deciding whether to bond you.

arrest can be expunged from your record. (See page 9 for information on expunging police and court records.)

2. You may not remember everything. Virginia law permits employers to ask job applicants about their criminal history.[4] If you do not answer truthfully and completely and the employer finds out, you can be denied a job or fired. Therefore, it is important to review the specific details of your criminal history so that you can fill out job applications accurately.

Problems arise because arrests and convictions may have occurred many years ago, and you may not remember all the charges and the courts where you were tried, or even the charge you were convicted of. Also, court proceedings can be very confusing and you may not fully understand the outcome of a case.

For example, a person may plead guilty to misdemeanor charges and receive an unconditional discharge, meaning that s/he does not have to pay a fine or serve time in jail. Even though there was no penalty, this is a conviction of a criminal offense that must be reported if a job application asks about criminal convictions. If you review your record before filling out a job application, you will be able to list your convictions accurately and not give misleading or false answers.

3. You can prepare for a job interview. While there are limitations on who can see your rap sheet, many employers and licensing agencies have legal access to your rap sheet, and other employers may obtain it unlawfully. Still others may ask you to list your criminal arrests and convictions. If you know exactly what your record reveals before you apply for a job or license, you will have the opportunity to think about the best way to explain your convictions to the job interviewer.

For example, your record may report a conviction for a drug-related charge like "Possession of a Hypodermic Needle." An employer who sees this charge on your rap sheet might assume that you are currently a drug abuser. If you look at your record before your interview, you can be prepared to talk about this issue. You might then decide to present the employer with a letter from your drug treatment program as proof of your rehabilitation and recovery.

How To Get A Copy Of Your Rap Sheet

You are entitled to obtain a copy of your Virginia rap sheet from CCRE.[5] To do so, request a "Criminal History Record Request" form, number SP-167 (Revised 7-1-99), from the following address:

Virginia State Police
CCRE
P.O. Box 85076
Richmond, VA 23261-5076
(804) 674-2024

You may also download this form from the internet at http://www.vsp.state.va.us/. Return the completed form to CCRE with

[4] Employers in Virginia may ask about most arrests and all convictions. They are not, however, entitled to information regarding expunged records. Consequently, if you are asked, "Have you ever been arrested?", you must list all arrests and convictions, unless an arrest has been expunged. If you are asked about arrests and do not reveal your convictions, you can be fired for not being truthful on your job application. (VA. CODE ANN. § 19.2-392.4 (2000)).
[5] VA. CODE ANN. § 19.2-389 (2000).

a copy of your fingerprints, which can be obtained from any law enforcement agency, and a certified check or money order in the amount of $15 payable to the "Virginia State Police." CCRE will not waive the application fee for individuals facing "financial hardship" or inmates. You must have your signature on Form SP167 notarized. In addition, you must obtain and submit a letter to CCRE from the agency that took your fingerprints (on official letterhead), stating that it verified your identification. You should receive a copy of your criminal history record within seven working days.

To obtain a copy of your rap sheet from the FBI, write to:

U.S. Department of Justice
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, WV 26306

Your letter to the FBI should state that you are requesting your rap sheet under the Freedom of Information Act, and include your name, address, date of birth, place of birth, and a complete set of fingerprints. The FBI will charge you $18 for your FBI record, unless you send them a notarized letter explaining that you cannot pay the fee.

Warning: If you think that there may be an outstanding warrant for your arrest, you should clear it up before you contact CCRE. To clear up an open warrant, contact an attorney or call your local public defender.

Other options

There are a couple of other ways you may be able to see, and perhaps get a copy of, your rap sheet. First, when you are arraigned for a criminal case, your lawyer may be given a copy of your rap sheet. This copy will remain in your lawyer's file and you can ask to see it. If you were represented by a Legal Aid Society attorney or public defender, you may be able to see your rap sheet by calling the office that represented you.

Second, if you are currently on parole or probation or were released recently, your parole or probation officer (P.O.) may have a copy of your rap sheet and be willing to show it to you.

How To Read Your Rap Sheet

Your rap sheet is divided into three vertical columns. (See page 7 for sample rap sheet.) Different arrests are separated by a double dotted line which runs across the page. Each charge in an arrest is separated by a single dotted line. The column on the left contains information about the arrest, including the arresting agency and the court in which the case was heard.

The middle column of the record lists two dates: (1) the arrest date; and (2) the disposition date of the charges.
The column on the right is the most important section of your file: it is sup-

posed to indicate your arrest/arraignment charges and the outcome or disposition. A complete disposition entry contains the date your case was heard, the name of the court, and the outcome of your case in court, i.e., you entered a guilty plea, you were convicted after a trial, or you were acquitted. If you were convicted, the disposition column should also report the sentence or fine you received. Recent arrest entries may also indicate whether you were represented by a Legal Aid Society lawyer or public defender.

The sample rap sheet on page 7 is annotated to help you find the above information and other information you may need to know.

What To Look For On Your Rap Sheet

The first thing you should do when you review your rap sheet is check it carefully for mistakes. Rap sheets very often have one or more mistakes. The simplest explanation for this is that your case had to pass through a number of different agencies: the arresting agency; the prosecutor's office; the court; the probation or parole department; and, finally, CCRE. There are plenty of opportunities for part of your file to get lost or for someone to make an error at some stage of the process. Following are some common mistakes:

Incomplete entries

Rap sheets often report arrests without stating the final disposition. An omission like this can be damaging because people who see your record might assume you were found guilty of the original arrest charges, when you may have been acquitted or convicted of less serious charges. Or people might assume that the charges are still outstanding and there is an open warrant for your arrest.

Incorrect entries

Any computer system is subject to human error. A simple error made while typing the penal code number could result in a terrible mistake. For example, a rap sheet could report a conviction for murder[6] when an individual had, in fact, only been arrested for and pleaded guilty to conspiracy to trespass.[7] You should check your rap sheet carefully to make sure that, as far as you can tell, all of the information is correct.

Double entries

Sometimes, information about one arrest will get split into two or more separate entries on your rap sheet. This mistake makes your criminal record look longer and more serious than it really is.

Cases that could be expunged but are not

Cases that can be expunged under Virginia law are not expunged automatically. See pages 9-14 for a full discussion of expungement.

[6] §18.2-32 of the Virginia Penal Code.
[7] §18.2-23 of the Virginia Penal Code.

Arrests That Happened When You Were A Youth

In Virginia, persons under 18 years of age are generally not criminally responsible for their conduct and are processed in the Family Court. Those who are found to have committed a "delinquent act" are adjudicated "delinquent." A person 18 years or older, on the other hand, is considered an adult under the Penal Code, and may be tried and convicted of criminal charges.

The records of juvenile cases that are heard in Family Court are not forwarded to CCRE and are not in the CCRE computer. Consequently, most juvenile delinquency adjudications will not appear on your CCRE rap sheet. However, if your juvenile case was not heard in Family Court because you were tried as an adult, then the records will be forwarded to CCRE and the case will appear on your rap sheet. In addition, if you were 14 years of age or older and adjudicated delinquent for an act that would be a felony if committed by an adult, the adjudication will appear on your rap sheet. On the other hand, if your case started out in criminal court but was later transferred to Family Court, the records from Family Court will not be forwarded to CCRE and will not appear on your rap sheet.

Key To Sample CCRE Rap Sheet

This sample rap sheet contains information about three arrests, separated by double horizontal lines. The numbers below correspond to the information identified on the rap sheet.

1. Arrest date
2. Arresting agency
3. Arrest charges, including a description of each charge, its criminal code number and the level of the charged offense, such as "Felony" or "Misdemeanor"
4. Docket number
5. The court in which the case was heard
6. Whether the individual's civil rights have been restored, and the date
7. Sentence
8. Offense convicted of
9. Disposition of case
10. Date of disposition

Sample CCRE Rap Sheet

SID: 512718 FBI: 9015173

NAMES RECORDED IN VIRGINIA FILES:	SEX	RACE	DATE OF BIRTH
JOHN DOE	M	B	02/16/67

LAST REPORTED ADDRESS: 1919 MOCKINGBIRD LANE
RICHMOND, VA 23218

SOCIAL SECURITY NO (S): 086-55-4897

CONTRIBUTOR/CASE	DATE	CHARGE/DISPOSITION
PD RICHMOND CITY VA (2)	09/13/1998 (1)	01/CHARGED WITH FELONY 18.2-58.1 (3)
ORI : VA1170030		
OCA: 368964		RICHMOND CITY 11/09/1998
		CARJACKING (8)
RICHMOND GD CT DIV2	12/11/1998	6 MO. SUSPENDED SENTENCE (7)
ORI : VA117041J		RESTORATION OF CIVIL RIGHTS (6)
CCN: NOT RECORDED		1/31/99
DCN: G017985 (4)	0956/1266 0975/1802	

PD RICHMOND CITY VA	11/09/1998	01/CHARGED WITH	MSDMNR 18.2-108
ORI : VA1170001		RECEIVING STOLEN GOODS	(10)
OCA: 368964		RICHMOND CITY (9)	11/09/1998
RICHMOND GD CT DIV2	12/11/1998	NOLLE PROSSED	
ORI : VA117041J			
CCN: NOT RECORDED			
DCN: G017998	0956/1266	0975/1802	

PD RICHMOND CITY VA	11/09/1998	01/CHARGED WITH	FELONY 18.2-95
ORI : VA1170032		GRAND LARCENY	
OCA: 368964		RICHMOND CITY	11/09/1998
RICHMOND GD CT DIV2 (5)	12/11/1998	NOLLE PROSSED	
ORI : VA117041J			
CCN: NOT RECORDED			
DCN: G017990	0956/1267	0975/1801	

Cleaning Up Your Rap Sheet

In Virginia, there are two processes for cleaning up your rap sheet: expunging records and correcting mistakes. The first step for both is to obtain a copy of the order from the court that disposed of your case and compare the order to your rap sheet, looking for discrepancies and inconsistencies.

The order is an official court record of a criminal case consisting of two documents: a warrant and a summons. The order contains the arrest charge(s), the docket number of the case, and the disposition of the case (dismissal, nolle prossed, or conviction). If the case led to conviction, it will describe the conviction charge(s), which may be different from the arrest charges, the date of conviction, and the sentence. The order should have correct information. If you disagree with the information, you will need a lawyer to investigate it.

To obtain a copy of an order, contact the court clerk in the court where your case was heard. In Virginia, misdemeanors are handled in the general district courts or circuit courts, and felonies are disposed of in the circuit courts. Your rap sheet should indicate the name of the court in the right-hand column. The quickest way to get a copy of an order is to go to the clerk's office in person. If you are incarcerated or cannot get to the court, you can write to the clerk's office. However, it may take two to three months to obtain a copy of your order by mail. (See *Model Letter #1: Letter to court requesting certified copy of an order* on page 10. See also Appendix #2 for a list of addresses of major courts in Virginia.) Whether you write or go in person, you must provide your name, any aliases used, date of arrest, indictment number, or docket number. This information should be on your rap sheet. If you cannot provide a docket number or arrest date, your name and the approximate date that the case was heard will probably be enough. The fee for orders is 50 cents per page, and $2 to have the copies certified. Generally, the order will be two pages long, so the total charge will be $3. Take identification when you go to the court to obtain records.

Correcting Mistakes

It is the policy of CCRE to correct mistakes or make modifications to your rap sheet if it receives information that a record is in error. This notification must come from the contributor of the record, i.e., the arresting agency or the court where your case was adjudicated. The process takes time, so start as early as you can.

Take the following steps to correct an error on your rap sheet:

1. For errors with the **arrest information,** contact the police department or law enforcement agency that arrested you and request that it send information to CCRE

correcting the mistake. (See *Model Letter #2, Letter requesting correction based upon error concerning arrest information* on page 11.)

2. For errors in the **final disposition** of the case, contact the court where the case was adjudicated and request that it submit the correct information to CCRE. (See *Model Letter #3, Letter requesting correction based upon error concerning final disposition of case* on page 12.)

3. For errors on your rap sheet regarding your **identity,** two procedures exist:

a) If your name or other identification was used without your authorization by another person who has been charged or arrested in your name, you may petition the court disposing of the charge for expungement.[8] (See page 9 for information on expunging police and court records.)

b) You may dispute the error with CCRE directly by initiating a "Challenge of a Record." You begin by reporting the error to a local law enforcement agency and having your fingerprints taken. The official must document your identity and fingerprints on agency letterhead and send the materials to:

Manager
Central Criminal Records Exchange
Virginia Department of State Police
P.O. Box 27472
Richmond, VA 23261-7472

Results of the fingerprint search and record of any modification(s) should be received by the requesting agency within five business days.

Upon receipt of information that a record is in error, CCRE will start an audit of your record and coordinate corrections or modifications directly with the contributing agency. The time needed to complete the process varies depending on how quickly the contributor advises CCRE that a correction is appropriate.

Expunging Police And Court Records

What is an expungement?

If you have arrests or charges that were resolved in your favor, you may be eligible to have your police and court records expunged. Having a record "expunged" means that information about the expunged arrest or charge is removed from the version of the rap sheet that will be sent to employers and others. However, **it is important to note that the record of an expunged arrest or charge is never completely destroyed**. A record of all your arrests, charges, and fingerprints will remain in a CCRE vault. Courts may order CCRE to expunge police and court records for individuals whose arrest did not lead to a conviction or who are deemed innocent.

[8] VA. CODE ANN. § 19.2-392.2 (2000).

Model Letter #1, Letter to court requesting certified copy of an order

(Date)

(Court)
(Address)

Dear Sir/Madam:

Please send me a certified copy of a court order for the following case. I was the defendant in this matter.

ARREST DATE _____

ARREST CHARGES _____

DOCKET/INDICTMENT # _____

NAME/ALIASES _____

Thank you for your attention.

Sincerely,

(Your name)
(Your address)

Model Letter #2, Letter requesting correction based upon error concerning arrest information

(Date)

Virginia Department of State Police
P.O. Box 27472
Richmond, VA 23261-7472

Re: CCRE record of (Your name)
VASID #_____

Dear Sir/Madam:

On (date), I reviewed a copy of my rap sheet with a CCRE representative in Richmond. I discovered an error in my record and am writing to request that a correction be made. I am enclosing a certified copy of the court order for clarification. Please forward information to Central Criminal Records Exchange to correct the following error:

Information pertaining to my (date of arrest) arrest is split into two separate entries on my rap sheet. Please consolidate the arrest and corrections information into one entry. See attached order with docket number_____.

Please inform me once you have forwarded the required information to Central Criminal Records Exchange. Thank you for your attention.

Sincerely,

(Your name)
(Your address)

Model Letter #3, Letter requesting correction based upon error concerning final disposition of case

(Date)

(Court)
(Address)

Re: CCRE record of _____
VASID #_____

Dear Sir/Madam:

On (date), I reviewed a copy of my rap sheet with a CCRE representative in Richmond. I discovered an error in my record and am writing to request that a correction be made. I am enclosing a certified copy of the court order for clarification. Please forward information to Central Criminal Records Exchange to correct the following error:

No disposition is reported for my (date of arrest) arrest. The attached court transcript with docket number _____ reveals that all charges were dismissed following this arrest. Please add this information to your files, as well.

Please inform me once you have forwarded the required information to Central Criminal Records Exchange. Thank you for your attention.

Sincerely,

(Your name)
(Your address)

Who can apply for expungement?

Expungement is discretionary in all circumstances, so a court is not required to expunge a person's records. However, **misdemeanor and felony convictions cannot be expunged** unless an absolute pardon is granted. Expungement is available in the following situations:

1. acquittals;

2. a nolle prosequi is taken, or the charge is otherwise dismissed (including by accord and satisfaction;[9] or

3. an absolute pardon for the commission of a crime is granted.[10]

Where to begin

To seek expungement, file a petition in the circuit court of the county or city in which the case was adjudicated. A copy of the petition must also be served on the Commonwealth Attorney of the city or county in which the petition is filed. The Commonwealth Attorney may file an objection or answer to the petition within twenty-one days.[11]

The petition must be filed with a copy of the warrant or indictment, and must identify the date of the arrest and the name of the arresting agency. If the arrest date and name of the arresting agency are not available, the petition must state the reason for unavailability. The petition must also state:

1. the specific criminal charge to be expunged;

2. the date of final disposition of the charge;

3. the petitioner's date of birth; and

4. the full name used by the petitioner at the time of arrest.

What happens next?

The court will conduct a hearing on the petition. If the court finds the risk of dissemination of the criminal history information creates a manifest injustice, it will enter an expungement order. If you had no prior criminal record and the arrest was for a misdemeanor, you are entitled to expungement of the records relating to the charge, unless the Commonwealth shows good cause. The court **may** deny the petition and not order the expungement if, for example, the petitioner did not demonstrate "factual innocence."[12]

What if I am incarcerated and cannot make an appearance in court?

A court that requires people to appear in person to petition for expungement will generally waive the requirement if you are incarcerated. You can mail your petition to the court clerk and enclose a letter explaining your situation. (See *Model Letter #4, Cover letter to send to*

[9] In certain cases, if the injured person appears in court and states in writing that the accused has made restitution, the court will dismiss the case. Common charges for which accord and satisfaction are available are simple assault and battery.

[10] VA. Code Ann. § 19.2-151 (2000).

[11] VA. Code Ann. §19.2-392.2 (2000).

[12] For purposes of the expungement statute, the Virginia courts have required a finding of "innocence." The courts will not grant expungement in cases where evidence of guilt exists, such as a guilty plea or a suppressed confession. (Gregg v. Commonwealth, 227 Va. 504, 507, 316 S.E.2d 741, 743 (1984)).

court with an expungement petition on page 15.) Also, tell the clerk that you have mailed a copy of the petition papers to the Commonwealth Attorney. Mail your petition papers by certified mail, return receipt requested, to make sure that your request does not get lost.

How long does it take to expunge the records of a case?

Do not expect immediate results if you are trying to expunge entries on your rap sheet. The Commonwealth Attorney has twenty-one days to respond from the date the petition is received. A hearing date must be scheduled for a judge to hear the petition. If a judge grants your petition to have an arrest expunged from your rap sheet, the court will order CCRE to expunge the record.

How do I know that my case has been expunged?

The easiest way to check whether your records have been expunged from the CCRE computer is to request a second copy of your rap sheet.

How do I expunge a case on my FBI rap sheet?

When CCRE expunges an arrest record, it notifies the FBI that the arrest in the FBI record should be purged. Once again, the only way to be sure that the FBI record is cleaned up is to send for another copy of it.

The FBI does not purge records of expunged state offenses on its own; it responds to information received from CCRE. If a case that has been expunged on your CCRE rap sheet appears on your FBI rap sheet, or if there is an error on your FBI rap sheet you wish to correct, contact CCRE and speak to the CCRE/FBI liaison.

Can I ever get my misdemeanor or felony convictions expunged?

Virginia law does not allow misdemeanor or felony convictions to be expunged unless an individual obtains an absolute pardon. (See page 17 for information about seeking a pardon.)

Do I have to disclose information about my expunged arrest records to a prospective employer?

No. You are not required to disclose information about arrests that have been expunged. In fact, civil and criminal penalties exist for employers who wrongfully seek criminal records. CCRE is subject to these same penalties for wrongful dissemination of criminal history record information.[13]

What You Can Do About Your Misdemeanor And Felony Convictions

Two forms of **clemency** are available in Virginia: Restoration of Civil Rights and Pardons. The Governor of Virginia has the sole authority to grant either form of clemency under the Virginia Constitution,

[13] VA. CODE ANN. §§ 9-194, 9-195.

Model Letter #4, Cover letter to send to court with expungement petition

(Your name)
(Your address)

(Date)

Certified Mail

(Court)
(Address)

Dear Sir/Madam:

Enclosed you will find a petition to expunge the records of my arrest on ___(date)___, pursuant to Section 19.2-392.2 of the Criminal Procedure Code, along with a certified copy of the indictment and a final order. This case was (describe disposition of case) under docket number _____.

Please process my expungement petition accordingly. I cannot deliver this motion in person or make an appearance in court because I am incarcerated.

Please notify me of the outcome of this motion. Thank you.

Sincerely,

(Your name)

cc: Commonwealth Attorney's Office

Art. V, Sect. 12, and Virginia statutory law.[14] In addition, the Governor has discretion to establish guidelines and policies regarding the eligibility of those seeking clemency. If convicted of a felony, your civil rights must be restored before you can be considered for a pardon. There is no guarantee that either form of clemency will be granted, nor is there a right of appeal. You may, however, reapply after a two-year period.

Neither type of clemency significantly improves employment opportunities, because only an "absolute pardon" entitles individuals to expungement of their criminal records, and these are rarely granted. Unless you have obtained Restoration of Civil Rights and an absolute pardon, you must still report criminal convictions.

Restoration Of Civil Rights

Individuals with a felony conviction from any Virginia court (or in any other state or federal court) lose their civil rights in Virginia. These rights include the right to vote, to run for and hold public office, to serve on juries, and to serve as a notary public. When you have completed your sentence, period of probation or parole, or suspended sentence, the Department of Corrections will notify you about the loss of your civil rights and process for Restoration of Civil Rights.[15] This process is a prerequisite to application for any type of pardon for individuals with felony convictions. However, individuals with misdemeanor convictions may apply directly for a pardon without having their civil rights restored because these individuals do not lose their civil rights upon conviction.

You are eligible to have your rights restored if you:

- have completed all prison or jail terms;
- are not under probation or parole supervision, or any suspended sentence;
- have no pending charges in any locality;
- have paid all fines, restitution and/or court costs for any prior conviction;
- have been free of any suspended sentence, parole or probation for at least five years (seven years for drug convictions).

You must also demonstrate good, law-abiding character. For instance, participation in community organizations, volunteer work, child care, elder parent care, or membership in religious organizations can be evidence of such character.

Having your civil rights restored does **not** erase the record of your conviction. It also does not protect you from being denied a job or license. You must still list your convictions on job applications that ask for them, and an employer will see your convictions if he or she asks for your rap sheet when you apply for a job.

[14] VA. CODE ANN. §§ 53.1-229 - 53.1-231 (2000).
[15] VA. CODE ANN. § 53.1-231.1 (2000).

You may request an application for Restoration of Civil Rights from the Secretary of the Commonwealth, One Capitol Square, 14th Floor, 830 East Main Street, Richmond, VA 23219. (See *Model Letter #5, Letter requesting an application for Restoration of Civil Rights* on page 18.) You may also download an application packet from the following website: www.soc.state.va.us. Instructions for completing the application will be included in the packet. The application and decision process takes several months from the time an application is received. Applications are reviewed as they are received, but only if complete. Therefore, confirm that all required documents are included with your petition.

Pardons

The second form of clemency available in Virginia is a pardon. The application process for a pardon applies similarly to those with a felony conviction, as to those with a misdemeanor conviction. However, while an individual with a misdemeanor conviction may apply directly for a pardon, an individual with a felony conviction must first apply for Restoration of Civil Rights. Petitions for pardons are strictly scrutinized. Three types of pardons exist: absolute, conditional, and simple.

Absolute Pardon

An absolute pardon, which is rarely granted, is based on the belief that the petitioner was unjustly convicted and is innocent. An absolute pardon is the only form of executive clemency that will allow you to petition the court for expungement of a misdemeanor or felony conviction.

Conditional Pardon

A conditional pardon is only available to those who are currently incarcerated and provides for conditional early release. If the conditions of release are violated, the individual is subject to reincarceration. Extraordinary circumstances must be present for an inmate to be considered for such a pardon. For example, an extremely ill individual might be conditionally pardoned if adequate medical care is otherwise unavailable.

Simple Pardon

A simple pardon does not allow you to expunge the record of your conviction. However, it does constitute official forgiveness and consequently removes some of the stigma ex-offenders encounter in obtaining employment and education. For this type of pardon, evidence of good, law-abiding character is required. (See page 16.) Favorable recommendations from the officials involved in the case and the Virginia Parole Board are also necessary.

How do I apply for a Pardon?

To petition the Governor for a pardon, you must submit a letter addressed to the Governor stating the following:

1. the reasons for the request;
2. your date of birth;
3. your Social Security Number;

Model Letter #5, Letter requesting an application for Restoration of Civil Rights

(Your address)

(Date)

Office of the Governor
830 East Main Street, 14th Floor
Richmond, VA 23219

Dear Sir/Madam:

Please forward me the forms required to apply for Restoration of Civil Rights. The proper period has elapsed since my release from incarceration/supervision on (date). In addition, I have paid all court costs, fines, and restitution.

Thank you for your attention.

Sincerely,

(Your name)

4. your current address;
5. your conviction(s) including the date(s) and court(s) of your conviction(s);
6. sentence or other disposition of conviction(s);
7. date civil rights were restored (for felony convictions); and
8. location of any incarceration.

Send the letter to the following address:

Office of the Governor
830 East Main Street, 14th Floor
Richmond, VA 23219

The pardon process can take over a year to complete and will involve a complete investigation by the Virginia Parole Board. Any questions concerning executive clemency should be directed to the Secretary of the Commonwealth at (804) 786-2441.

Neither Restoration of Civil Rights nor a pardon prevents you from being denied a job or license because of your criminal record. If you have a misdemeanor or felony conviction, it cannot be expunged unless you obtain an absolute pardon.

Although the Restoration of Civil Rights or conditional or simple pardon will appear on your rap sheet — informing employers and licensing agencies that you have received clemency — you must still list your convictions (that are not expunged) if asked about them.

In addition, neither Restoration of Civil Rights nor any type of pardon removes most statutory bars. Consequently, clemency does not improve most employment opportunities. However, an employer or licensing agency might consider you "rehabilitated" if you have received clemency.

Completing Employment Applications

"I've received my rap sheet, reviewed it, and made corrections. I still do not know what to put on employment applications!"

What Must I Disclose About My Criminal Record?

Virginia law requires that you disclose the following information about your criminal history when asked by a prospective employer:

- conviction information
- arrest information that has not been expunged.

How do I list my criminal record?

You must disclose all your convictions and any arrests that have not been expunged. Pay attention to the questions you are asked. If the application allows you to eliminate some cases, such as those that resulted in a traffic infraction or an arrest that has been expunged, or if the employer is only interested in knowing about convictions within the past five or seven years, then only disclose the information requested. Most employers want to know — and are entitled to know — the "disposition" (or outcome) of those cases that resulted in conviction. In addition, employers are entitled to inquire about arrests that have not been expunged. Be prepared to provide some basic information, such as the **arrest date, disposition date, crime or offense you were convicted of, and sentence.**

As an example, turn to the sample rap sheet on page 7 of this manual. Here is how you could explain this record if it were yours:

Arrest Date	Disposition Date
11/9/1998	12/1/1998
Disposition/ Conviction	Sentence
PL. 18.2-95 Nolle Prossed	None

Under the conviction heading, notice that we put the Virginia Penal Law cite for the charge. This number is the cite where the charge is defined. You must disclose this arrest if asked about it, even though the charges were nolle prossed. However, if you had this record expunged, you would not have to reveal this arrest.

Let's assume that for the last case, you obtained a copy of an order that verified that on 1/25/84 you pled guilty to carjacking (PL 18.2-58.1) and were sentenced to a three-year suspended sentence. You then would have to add this case to the above list:

Arrest Date	Disposition Date
9/13/1998	12/11/1998

Disposition/ Conviction	Sentence
PL. 18.2-58.1	3 yrs. suspended sentence

Here are some questions you may see on an employment application along with some appropriate responses:

Q: "Have you ever been arrested? If so, explain."
A: Answer "yes" if you have arrests that have not been expunged. List all convictions. List any arrest that has not been expunged.

Q: "Have you ever been convicted of a crime, offense or violation of the law? If so, explain."
A: If "yes," list all convictions.

Q: "Have you ever pleaded guilty or been found guilty of a crime or an offense? If so, explain."
A: If "yes," list all convictions.

Q: "Have you been convicted of a crime in the past 7 years? If so, explain."
A: If "yes," list misdemeanor and felony convictions during the past seven years. (Remember: traffic infractions are not crimes.)

Q: "Have you ever been convicted of an offense or violation of the law anywhere? If so, explain."
A: If "yes," list all convictions.

Seeking A Job That Has A Statutory Bar Or License Requirement

Individuals who have convictions are prohibited from holding particular jobs in Virginia. There is no complete list of the jobs that convicted felons are barred from, but law enforcement jobs (police officer, court officer, or security guard), notary public positions, and elective offices have "felony bars." In addition, Virginia law prohibits the following employers from hiring individuals with certain felony convictions:

1. child welfare agencies[16]
2. specific mental health service providers[17]
3. nursing homes[18]
4. home care organizations[19]
5. adult day care centers[20]
6. assisted living facilities[21]

[16] VA. CODE ANN. § 63.1-198.1 (2000).
[17] VA. CODE ANN. § 37.1-197.2 (2000).
[18] VA. CODE ANN. § 32.1-126.01 (2000).
[19] VA. CODE ANN. § 32.1-162.9:1 (2000).
[20] VA. CODE ANN. § 63.1-194.13 (2000).
[21] VA. CODE ANN. § 63.1-173.2 (2000).

Individuals with misdemeanors "involving moral turpitude" may also be barred from employment with home care organizations, adult day care centers, and assisted living facilities.[22] Some minor drug-related charges, such as "possession of a controlled substance," fall into this category.[23] Because many rules exist, you should investigate whether the particular job you seek has a statutory bar. One way to do this is to approach the Attorney General and ask whether there is a felony or statutory bar for certain kinds of convictions. Or, you may contact the licensing agency directly and ask about statutory bars.

Office of the Attorney General
900 East Main Street
Richmond, VA 23219
(804) 786-2071

However, Virginia's Criminal Procedure Code provides some protection to persons with criminal records. Occupational licensing authorities are prohibited from denying an individual a license based upon a prior criminal conviction unless the conviction is "directly related" to the license sought. A "directly related" conviction has a bearing on the individual's suitability for employment in the particular position.[24]

Consider, for example, a job applicant who has a conviction for driving while intoxicated (DWI). This individual's DWI conviction would be considered to be job-related if s/he applies for a job as a school bus driver, but would not be if s/he were applying for a job as a stock clerk with no driving duties. Whether a conviction is job-related must be determined on a case-by-case basis. Individuals who have convictions that are not job-related may, like other applicants, be denied a license, if found "unfit" or "unsuited" based on other information.[25] Individuals who believe they have been unlawfully denied a license based upon their criminal history may file a complaint with the Director of the Virginia Department of Professional and Occupational Regulation (see Employment Discrimination and What to Do About It, a manual prepared and distributed by the Legal Action Center).

A similar barrier you might face is a statutorily required background check. For example, Virginia law requires the following employers to check applicants' criminal records:

1. hospital pharmacies[26]

2. juvenile residential facilities[27]

3. all public schools and accredited private and parochial secondary schools[28]

Although these employers are not required by law to reject individuals with

[22] VA. CODE ANN. §§ 32.1-162.9:1, 63.1-194.13, 63.1-173.2 (2000).
[23] VA. CODE ANN. § 18.2-250 (2000), Portaluppi v. Shell Oil Co., 684 F. Supp. 900 (E.D. Va.1988), *aff'd*, 869 F.2d 245 (4th Cir. 1989).
[24] VA. CODE ANN. § 54.1-204.
[25] VA. CODE ANN. § 54.1-204.
[26] VA. CODE ANN. § 32.1-126.02 (2000).
[27] VA. CODE ANN. § 63.1-248.7:2 (2000).
[28] VA. CODE ANN. § 22.1-296.2 to .3 (2000).

criminal convictions, they are nevertheless likely to do so for some positions. Consequently, it is as if these positions have a statutory bar.

Mandatory driver's license revocation statutes can also have the same effect as statutory bars to employment. You are likely to forfeit your driver's license in Virginia for multiple convictions of driving under the influence or even a single drug-possession conviction.[29] In such cases, you will be ineligible for all jobs that require driving. Even if you must only drive yourself to work, you may have lost your means of transportation. However, the law provides for some exceptions and courts may grant individuals limited driving privileges for employment purposes.

While clemency is a way to regain some of the rights that you lost upon your felony conviction, it generally does not lift statutory bars to employment. One of the few employment opportunities affected by clemency is funeral service.[30] Either Restoration of Civil Rights or a pardon allows an individual to apply for licensure as a resident trainee for funeral service. However, with respect to the other jobs mentioned above, Restoration of Civil Rights restores only the rights to serve as a notary public and to run for and hold elective office.

The Key To Your Success Is Preparation.

Good Luck!

[29] VA. CODE ANN. §§ 18.2-259.1, 46.2-391 (2000).
[30] VA. CODE ANN. § 54.1-2817 (2000).

Appendices

Appendix #1

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

_____,
Petitioner,

V. IN CHANCERY NO.

COMMONWEALTH OF VIRGINIA
Respondent.

PETITION FOR EXPUNGEMENT

TO: THE HONORABLE JUDGES OF THE AFORESAID COURT

Your Petitioner, _____, respectfully represents unto this Honorable Court as follows:

1. His/Her full name is _____, his/her social security number is _____, and his/her date of birth is _____.

2. That on _____, your Petitioner was charged by the Norfolk Police Department with _____, in violation of Virginia Code Section (s) _____. A copy of the summons/warrant received by Petitioner is attached hereto as Exhibit "A" and by this reference is made a part hereto.

2a. That the said charge(s) were _____on _____, in the Norfolk _____Court.

3. That the continued existence and possible dissemination of information relating to the arrest of the Petitioner caused or may cause circumstances which constitute a manifest injustice to the Petitioner.

WHEREFORE, your Petitioner prays that this Honorable Court enter an Order of Expungement in the matter.

_____
Name, Petitioner

CITY OF NORFOLK
STATE OF VIRGINIA, to wit

The foregoing instrument was subscribed and sworn before me this _____ day of

_____, 20 _____.

_____

Notary Public

MY COMMISSION EXPIRES: _____

CERTIFICATE

I hereby certify that a true copy of the foregoing Petition for Expungement was (hand-delivered or mailed) to John Doe, Commonwealth's Attorney, Office of the Commonwealth's Attorney, 800 East City Hall Avenue, Suite 600, Norfolk, Virginia 23510, this _____ day of _____, 20 _____.

_____

Name, Petitioner

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

_____,
Petitioner.

V. IN CHANCERY NO.

COMMONWEALTH OF VIRGINIA
Respondent.

ORDER

IT APPEARING to the Court that your Petitioner, _____, has filed in this Court a Petition pursuant to Section 19.2-392.2 of the Code of Virginia, 1950, as amended, praying that police and court records relating to charges more particularly set forth herein be expunged, and that a copy of any order for expungement be served upon the Department of Criminal Justice Services to be acted upon in accordance with the rules and regulations adopted pursuant to Section 9-190 of the Code of Virginia, 1950, as amended; and,

WHEREAS, IT FURTHER APPEARING TO THE Court that the continued existence and possible dissemination of information relating to the arrest of Petitioner, _____, may cause circumstances which constitute a manifest injustice to said Petitioner,

NOW, THEREFORE, in consideration of the foregoing, it is ADJUDGED, ORDERED and DECREED that all police and court records relating to charges against said Petitioner, _____, more particularly set forth and described in the Petition filed herein, be, and they hereby are expunged; and it is further ORDERED that the Clerk of this Court serve a copy of this Order of Expungement upon the Department of Criminal Justice Services to be acted on in accordance with the rules and regulations adopted pursuant to Section 9-150 of the code of Virginia, 1950, as amended.

Enter:

_____
Judge

Date: _____

I ASK FOR THIS

_____
Petitioner

SEEN AND AGREED/OBJECTED TO:

_____
Commonwealth's Attorney

Appendix #2

GENERAL DISTRICT COURTS - VIRGINIA

13th District
Richmond General District Court
Criminal Division
Safety Health & Welfare Bldg.
501 North Ninth St.
Richmond, VA 23219
(804) 646-6677

18th District
Alexandria General District Court
P.O. Box 20206
Franklin P. Backus Courthouse
520 King St., Room 201
Alexandria, VA 22314
(703) 838-4010

23rd District
Roanoke County General District Court
Courthouse
305 East Main St.
P.O. Box 997
Salem, VA 24153-0997
(540) 387-6168

Virginia Beach General District Court
2425 Nimmo Parkway
Virginia Beach, VA 23456
(757) 563-1065

4th General District
Norfolk General District Court
811 East City Hall Avenue
Norfolk, VA 23510-2772
(757) 664-4910

CIRCUIT COURTS - VIRGINIA

13th Circuit
Richmond Circuit Court
John Marshall Courts Bldg.
400 North Ninth St.
Richmond, VA 23219
(804) 646-8505

18th Circuit
Alexandria Circuit Court
Courthouse
520 King St.
Alexandria, VA 22314
(703) 838-4044

23rd Circuit
Roanoke County Circuit Court
P.O. Box 1126
Salem, VA 24153-0997
(540) 387-6213

Virginia Beach Circuit Court
Virginia Beach Judicial Center
2425 Nimmo Parkway
Virginia Beach, VA 23456
(757) 427-4181

4th Circuit
Norfolk Circuit Court
100 St. Paul's Blvd.
Norfolk, VA 23510
(757) 664-4380

How to Get and Clean Up Your Virginia Rap Sheet

LEGAL ACTION CENTER

This booklet was made possible through the generous support of the **Charles Stewart Mott Foundation.**

The Legal Action Center would also like to thank **Public/Private Ventures** for its advice and assistance in preparing this manual.

The **Legal Action Center** is the only nonprofit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of alcohol and drug dependence, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas.

Legal Action Center

153 Waverly Place, New York, NY 10014
(212) 243-1313 • FAX (212) 675-0286

236 Massachusetts Avenue, NE, Suite 505, Washington, DC 20002
(202) 544-5478 • FAX (202) 544-5712

www.lac.org

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Foreword

- **Do you have a criminal record?**
- **Have you ever been arrested?**
- **Do you have arrest charges that were never heard in court or dismissed, or were you acquitted of the charges?**
- **Have you recently filled out a job application and been asked the question: "Have you ever been convicted of a crime?"**

"How to Get and Clean Up Your Virginia Rap Sheet" has been written by staff at the Legal Action Center to help you understand your criminal history record and answer questions about it. After reading this manual you will know:

- how to obtain a copy of your state rap sheet
- how to read what is on your rap sheet
- how to correct any errors that may be on your rap sheet
- whether you are eligible to and how to expunge/erase or seal portions of your criminal record
- who is entitled to see your rap sheet

There is also a section in the manual that will advise you how to answer questions on job applications that ask about your criminal history. You will be shown how to list your convictions. There is even a section on how to present yourself at a job interview. Being prepared is one of the most important steps you can take to overcome obstacles to obtaining employment.

This manual provides the most up-to-date information possible. But remember that laws and rules can change and could affect some of the advice. The agencies that have been identified in the manual should provide assistance if you need additional information.

Introduction

In Virginia, there are more than 1.5 million arrest records that date back to the 1960s and are kept on file in the computers of the Central Criminal Records Exchange (CCRE). If you have ever been arrested and fingerprinted for violating a state or local law in Virginia, even if you were never found guilty of the charges, you have an arrest record on permanent file at CCRE. These records — also called "rap sheets" — cannot be destroyed or expunged.

Virginia law grants many criminal justice agencies, such as police departments, courts, prosecutors, correction facilities, and probation and parole offices, the right to see your rap sheet. Certain employers, licensing agencies, and others may also have access to your criminal records. If you have a rap sheet, it is important for you to review it. You should know what information it contains, and you should make sure that information is accurate.

This booklet will teach you how to get a copy of your rap sheet and understand it. It will also explain what you can do to make your record appear less threatening to potential employers and anyone else who may be entitled to see it. These steps are essential for finding a job.

Throughout this manual, the terms "rap sheet," "record," "criminal history record," "criminal record," and "CCRE record" will be used interchangeably.

The **Legal Action Center** is a nonprofit, public interest organization that works with people with criminal records, people with histories of drug or alcohol dependence, and people with HIV/AIDS. The Center has helped thousands of individuals "clean up" their rap sheets.