

**Purpose:**

To provide all local community-based probation and pretrial services agencies with a consistent and uniform procedure for expunging individuals' written and electronic records of criminal history and, in the case of PTCC, all other case-related information.

**Authority:** §9.1-102, and §9.2-392.2 of the *Code of Virginia*; 6VAC20-120-80 of the Virginia Administrative Code.

**Discussion:**

For the purposes of this guideline, the director of the local community-based probation or pretrial services agency is considered the "custodian of the local record". DCJS is considered the custodian of the PTCC or electronic record. Expungement is not the same thing as destruction of a record. It is the removal from ready access and sealing of the file should the record need to be retrieved in the future. This is very important for felony cases, any case that has been *nolle prossed* and for deferred proceedings cases.

**Procedure:** When a local community-based probation or pretrial services agency receives a court order on a case set for expungement from the Virginia State Police, the agency shall,

A. On the Local Level:

1. Check if they have the defendant or offender on record
2. Check if the reason for expungement is valid (see attachment).
3. Check if there is a hard file.
4. Check PTCC and if there is any PTCC information on the defendant/offender (NOTE: There may only be information in the screening module for a pretrial defendant but it is important to copy this information and to put this in a file to be sealed for expungement), print all of the information and either
  - a. add it to the hard file, or
  - b. create a hard file
5. Not attempt to delete the file from PTCC.
6. Put the PTCC printed information in a hard file, seal it, mark it "CONFIDENTIAL" and "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."
7. File this as required for expungement in a secure/locked file designated solely for this purpose, accessible only by the director of the agency.

B. On the State Level:

1. Contact the PTCC Help Desk and tell them a file needs to be expunged from PTCC
2. Tell Help Desk personnel the Name, Placement Number, and Case I.D. which is required to log a defendant/offender on PTCC

3. Send a copy of the court order received by the agency from the State Police to the Help Desk so that the expungement may be verified. For confidentiality purposes, if the agency must fax a copy of the court order, ensure that Help Desk personnel will be physically at the fax machine to receive the order. If the court order must be mailed, allow a few days for delivery.
4. Expect the Help Desk to contact you with confirmation once the court order is received.
5. Expect written notification from DCJS that they have expunged the record from PTCC.
6. Notify the Virginia State Police that expungement of the electronic file has been executed.

## Administrative Code

### Database updated through 22:20 V.A.R. June 12, 2006

6VAC20-120-80. Expungement and sealing.

A. Responsibility of the Superintendent of the Virginia Department of State Police. The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition and other supporting documents for the expungement of a criminal history record, the superintendent, pursuant to [§19.2-392.2](#) of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. Responsibility of agencies with a record to be expunged. The record named in the Virginia Department of State Police's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See [§19.2-392.3](#) of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

C. Procedure for expungement and sealing of hard copy records.

1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the original shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e., "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. Procedure for expunging automated records. Should the record to be expunged be maintained in an automated system, the Central Criminal Record Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

E. Department to be notified following expungement. Upon receipt of a request from the Virginia Department of State Police to expunge and seal a record, the affected agency or agencies shall perform

the steps above, and notify the Virginia Department of State Police of their action in writing within 120 days of their receipt of the request.

F. Expungement order not received by department. Should a court ordered expungement be directed to a criminal justice agency other than the Virginia Department of State Police, the directed criminal justice agency shall comply as outlined herein and advise the superintendent without delay of such order. The superintendent shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

### **Statutory Authority**

[§9.1-102](#) of the Code of Virginia.

#### Historical Notes

Derived from VR240-02-1 §2.6, eff. April 1, 1986; amended, Virginia Register Volume 6, Issue 4, eff. January 1, 1990; Volume 10, Issue 7, eff. February 1, 1994.

Amended, Virginia Register Volume 22, Issue 20, eff. July 12, 2006.

#### Effect of Amendment

The July 12, 2006 amendment, in subsec. A, in the catchline, changed "director" to "Superintendent of the Virginia Department of State Police", and, in the second sentence, changed "director of the department" to "superintendent"; in subsec. B, in the first sentence, changed "department's" to "Virginia Department of State Police's"; in subsec. E, changed "department" to "Virginia Department of State Police "in two locations; and, in subsec. F, in the first sentence, changed "department" to "Virginia Department of State Police" and changed "director" to "superintendent" and, in the second sentence, changed "director" to "superintendent".

### **Criminal Code**

§ [19.2-392.2](#). Expungement of police and court records.

A. If a person is charged with the commission of a crime and

1. Is acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § [19.2-151](#), or

3. Is granted an absolute pardon for the commission of a crime for which he has been unjustly convicted, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. If 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, he may file a petition with the court disposing of the charge for relief pursuant to this section.

Attachment: Administrative Code, Statutory Authority, Criminal Code

C. The petition with a copy of the 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, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition within twenty-one days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner.

F. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement.

G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

H. Notwithstanding any other provision of this section, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection I hereof.

I. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § [9.1-134](#), direct the manner by which the appropriate expungement or removal of such records shall be effected.

J. Costs shall be as provided by § [17.1-275](#), but shall not be recoverable against the Commonwealth. (1977, c. 675; 1983, c. 394; 1984, c. 642; 1990, c. 603; 1992, c. 697; 2001, cc. 40, 345.)