

Record Sealing and Expungement in D.C.

What do these terms mean? What are D.C.'s current laws? Is D.C. in line with the rest of the U.S.? What does research say?

1. What are record sealing and expungement? How do they differ?

Over 70 million Americans have some sort of a criminal record, even if they were never charged or convicted, or were found innocent by a jury.

- **Record sealing** is similar to locking records in a filing cabinet to which only the courts, law enforcement agencies, and certain employers, like day care centers, have a key.
- With **expungement**, practically no trace is left behind; the conviction record is destroyed and the legal system and courts treat it as if it never happened.

When individuals are able to seal or expunge the record related to an arrest, an old case, or a low-level charge or conviction on their record, it will not show up on a public background check and as a result, **they are more likely to be able to remain tax-paying, positively-contributing members of their communities and local economies.**

2. What is the current law in D.C. around record sealing and expungement?

District law provide a balanced approach to record sealing and expungement of non-convictions, decriminalized charges, and some limited old convictions. A person in D.C. can petition to have certain misdemeanor records **sealed** five years after completion of their sentence, with the record automatically sealed after ten years for low-level offenses; those with a felony conviction record can petition to have it sealed eight years after sentence completion. Certain criminal records related to citations, arrests, charges or convictions for offenses that have been decriminalized, legalized, or declared unconstitutional and some simple possession of marijuana violations will be automatically **expunged**, as will the records of people who were found innocent or otherwise cleared of the offense in question.

Current D.C. law provides multiple safeguards to protect potential public safety concerns.

- Many types of serious convictions are not eligible for record sealing or expungement at all, including murder, child and adult sexual abuse, and armed carjacking, burglary, kidnapping and assault.
- When reviewing requests, judges shall weigh the community's interest in furthering the individual's rehabilitation and enhancing opportunities for education, employment and housing; and the community's and employers' interest in retaining access to those records in promoting public safety and hiring decisions.
- Judges may also consider statements made by victims; the position of the prosecutor; the nature and circumstances of and individual's role in the offense; and the individual's character, employment and criminal histories, and conduct.

3. How does D.C.'s law compare to other places in the United States?

A number of states have enacted statutes providing for record sealing and expungement. Arkansas allows for most misdemeanor convictions to be sealed after successful completion of one's sentence, and Oklahoma and Utah allow eligible records to be automatically expunged.[i] California enacted a 'Clean Slate Act' in 2022 that automatically seals the records for people with misdemeanor convictions who meet the conditions of their probation for the entire probationary period.[ii] The District's policies are also in line with many other states, like Kansas, North Dakota, Wyoming, Maryland, California, and New York, which provide record sealing for certain felonies and misdemeanors.

4. What does the data and research on this issue show?

Employment rates are lower for individuals with a criminal record and has led to about one-third of working-age men being unable to participate in the formal economy.[iii] Many professional licensing applications and 70% of four-year colleges also require a background check or a disclosure of a criminal record.[iv] Additionally, barriers to housing, including due to criminal background information, contribute to homelessness; **formerly incarcerated people are ten times more likely to experience being unhoused than the general public.**[v]

While the often-given rationale for considering a person's criminal record is public safety, the reality is that most people desist from crime over time. **Research indicates that individuals with criminal records who have abstained from crime for four to seven years are no more likely to be arrested than those with no criminal record.**[vi] A U.S. Bureau of Justice Statistics study of people released from prison showed that only 4% were arrested for any offense after being arrest-free in the community for six years; those who were incarcerated for a violent offense were the least likely to ever be rearrested.[vii]

[i] <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2-2/>

[ii] <https://ccresourcecenter.org/state-restoration-profiles/california-restoration-of-rights-pardon-expungement-sealing>

[iii] <https://www.irs.gov/pub/irs-soi/22rpimpactofcriminalrecordsonemployment.pdf>

[iv] https://www.aacrao.org/docs/default-source/signature-initiative-docs/trending-topic-docs/criminal-history---college-admissions/criminal-history-report_12172019_release.pdf

[v] <https://www.vera.org/investing-in-communities/opening-doors-to-housing-initiative#:~:text=10X-,Formerly%20incarcerated%20people%20are%2010%20times%20more%20likely,general%20public%20to%20be%20unhoused.&text=Unhoused%20people%20are%2011%20times,than%20people%20with%20stable%20housing>

[vi] <https://www.ojp.gov/pdffiles1/nij/grants/240100.pdf>

[vii] <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>

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Council for Court Excellence's (CCE's) mission is to bring people together to conduct research, educate, and advocate to make D.C.'s unique legal systems more just, equitable, and accountable to the community.



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