

# **Expunging Criminal Records in Wyoming**

**Angie Dorsch, J.D.  
Equal Justice Wyoming**

Criminal history records are easily and routinely checked by employers, landlords, schools, licensing agencies, and many others for a variety of reasons. Criminal records are public records and have become even more accessible through technology. Several different types of records are contained on an individual's criminal history. Arrests, criminal charges, amendments to charges and dispositions, whether or not they result in a conviction, are contained on an individual's criminal record.

Criminal records, unfortunately whether containing a conviction or just an arrest where no charges were filed, can adversely affect many aspects of an individual's life, including employment opportunities and career advancement, school admissions, financial aid and scholarships, housing, professional licensing, and an individual's reputation. Certain convictions can actually bar individuals from obtaining financial aid for school, qualifying to receive housing assistance or being approved to live in some housing units, getting certain professional licenses or working in certain career fields.

Expungement is a process provided by statute to allow individuals who are eligible a way to remove the taint of their criminal record in some circumstances. Expungement proceedings are civil proceedings, although many times the petition seeking expungement will need to be filed into the underlying criminal case. Expunging eligible records can be a step forward for a client to improve his or her life and become self-sufficient with opportunities for education, career advancement, and higher earning potential.

## **The Expungement Process**

### **1) Obtain and review an official copy of the client's criminal history**

Many individuals do not understand their own criminal records. Some individuals who believe they have been convicted may have actually resolved their charges without a conviction, and conversely, some individuals who do not believe they have a conviction, perhaps because they received probation, actually do have a criminal conviction on their records. For this reason, it is important for the attorney to get an official copy of a criminal history to ensure they have accurate information before beginning the expungement process. It is never advisable to rely solely on the client's recollection or interpretation of what is on their criminal record.

If you sign up to accept expungements through the Wyoming Volunteer Attorney Program, Equal Justice Wyoming will obtain a copy of the criminal history from the client and conduct a preliminary review of the client's eligibility for an expungement before referring the case to a volunteer attorney.



In some cases it may be necessary for the attorney to obtain further information about a record, including reviewing the court file in the criminal case, before beginning the process.

## **2) Determine the disposition of any charges**

The attorney must review each charge on the criminal record and determine the disposition of any and all charges. Possible dispositions of charges include amendments to reduce or enhance a charge, dismissal of the charge, acquittal, or conviction. There is also the possibility of a dismissal as the result of a deferred adjudication of guilt.

Determining the disposition of a charge is necessary to evaluate a) if the record is eligible to be expunged, and b) which statute for expungement applies. There are four primary statutes governing expungements in Wyoming.

## **3) If the charge(s) did NOT result in conviction -- Wyo. Stat. § 7-13-1401**

**Eligibility for Expungement:** A person may file a petition seeking to expunge the records of an arrest, charge, or dispositions which may have been made in a case in the following circumstances:

- 1) At least 180 days have elapsed since the date of arrest or from the date the criminal charge was dismissed; **AND**
- 2) there are no formal charges pending against the person when the petition is filed; **AND**
- 3) the petitioner must show at least one of the following:
  - a) there were no convictions pursuant to any charge, including a lesser, amended, or different charge, as the result of the incident that led to the person being arrested (this would be the case only if the person was acquitted of all charges and no convictions at all resulted from the incident that led to the person's arrest); **OR**
  - b) no criminal charges of any kind were filed as a result of the incident that led to the arrest; **OR**
  - c) all criminal charges against the person relating to the incident were dismissed by the prosecutor or the court.

**NOTE:** Persons who plead guilty to or are found guilty of a charge, but whose adjudication of guilt is deferred and the charge is later dismissed pursuant to Wyo. Stat. § 7-13-301 or Wyo. Stat. § 35-7-1037, are **not** eligible for expungement under this statute.

**The Court Process:** The petition must be filed in the court in which the proceeding occurred or would have occurred. There is no filing fee to file a petition for expungement under this statute. A petition filed under this statute must be verified by the petitioner.

A petition filed pursuant to this statute must be served on the prosecuting attorney. The prosecuting attorney has twenty (20) days to file an objection to the petition.



If an objection is filed by the prosecuting attorney, the court will set the matter for hearing to determine if the petition should be granted. If no objection is filed within the twenty days, the court may summarily enter an order granting the expungement if the court finds that the petitioner is eligible.

If the court finds the petitioner is eligible, the court shall enter an order granting the expungement of the record and place the court's file under seal and remove any public identification of the court's file from the record. The court shall also transmit a certified copy of the order to the division of criminal investigation.

Upon receipt of the order of expungement, any record of arrest, charge, or disposition maintained in the state's central repository at the division of criminal investigations shall be removed from public access and will thereafter only be available to state or federal criminal justice agencies.

**Note:** A person who receives an expungement under this section may legally respond to any inquiry as though the arrest or charge did not occur (unless otherwise provided by law).

#### **4) Charges resulting in a misdemeanor conviction -- Wyo. Stat. §7-13-1501**

**Eligibility for Expungement:** A person who has pleaded guilty or no contest or who has been convicted of a charge for a misdemeanor may petition the court in which the conviction occurred for an expungement of the records of conviction. (Persons who plead guilty to or are found guilty of a charge, but whose adjudication of guilt is deferred and the charge is later dismissed pursuant to Wyo. Stat. § 7-13-301 or Wyo. Stat. § 35-7-1037 may be eligible for expungement under this statute if otherwise eligible.)

**Misdemeanors which may be expunged.** All misdemeanors may be expunged, unless the crime involved the use or attempted use of a firearm. Misdemeanor is defined as all crimes not deemed felonies (felonies may be punished by death or by imprisonment for more than one (1) year).

**However, only one expungement allowed under this section:** A person may receive only one expungement under this statute. The statute does not allow a person who has previously received an expungement under this section to receive a second or subsequent expungement under this section.

To qualify for an expungement of misdemeanors pursuant to this provision, the petitioner must show that:

- 1) at least five (5) years have passed for a non-status offense or at least (1) one year has passed for status offenses as defined by Wyo. Stat. § 7-1-107(b)(iii) since the expiration of the sentence imposed by the court, including any periods of probation or completion of any program ordered by the court; **AND**



- 2) the misdemeanor for which the person is seeking expungement did not involve the use or attempted use of a firearm; **AND**
- 3) the petitioner is not a substantial danger to himself, any identifiable victim, or society.

**The Court Process:** The petition for expungement pursuant to this provision must be filed in the convicting court. There is a \$100 filing fee to file a petition for expungement under this statute. A petition filed under this statute must be verified by the petitioner.

A petition filed under this statute must be served on the prosecuting attorney **and** the division of criminal investigations. It is important to note that under this statute, the prosecuting attorney must serve notice of the petition to any identifiable victims of the misdemeanors. The court, in its discretion may also request a written report by the division of criminal investigation concerning the criminal history of the petitioner.

The prosecuting attorney has thirty (30) days to file an objection or recommendation, if any, in response to the petition. If an objection is filed by the prosecuting attorney or any victim, the court will set the matter for hearing to determine if the petition should be granted. If no objection is filed within the thirty days, the court may summarily enter an order granting the expungement if the court finds that the petitioner is eligible, but the court shall not issue an order granting expungement prior to the expiration of thirty days after service was made on the prosecuting attorney.

If the prosecuting attorney or a victim objects to the petition, or if the petitioner objects to the criminal history report, if one is submitted, the court shall set the case for hearing and notify the petitioner, prosecuting attorney, the division of criminal investigation, and any victim who submitted an objection, of the date and time of hearing. Any person with relevant information about the petitioner may testify at the hearing.

If the court finds that the petitioner is eligible and that the petitioner does not represent a substantial danger to himself, any victim, or society, the court shall issue and order granting expungement.

If the court finds the petitioner is eligible, the court shall enter an order granting the expungement of the record and place the court's file under seal and remove any public identification of the court's file from the record. The court shall also transmit a certified copy of the order to the division of criminal investigation.

Upon receipt of the order of expungement, any record of arrest, charge, or disposition maintained in the state's central repository at the division of criminal investigations shall be removed from public access and will thereafter only be available to state or federal criminal justice agencies.



## 5) Charges resulting in a felony conviction – Wyo. Stat. § 7-13-1502

If the charge resulted in a felony conviction, consult Wyo. Stat. § 7-13-1502 to see if the record is eligible for expungement.

**Eligibility for Expungement:** A person convicted of a felony or felonies subject to expungement under this statute may petition to expunge the records. Under this statute, any felony, **other than those listed below**, may be eligible for expungement.

**Felonies which are NOT eligible for expungement:** Felonies subject to expungement under this section shall NOT include:

- a) Violent felonies as defined in W.S. 6-1-104(a)(xii); (these include Murder, Manslaughter, Kidnapping, Sexual Assault in the first or second degree, Robbery, Aggravated Assault, Aircraft Hijacking, Arson in the first or second degree, or Aggravated Burglary, or a violation of W.S. 6-2-314(a)(i) or 6-2-315(a)(ii));
- b) Any offense punishable under W.S. 6-2-106(b) – Aggravated Homicide by Vehicle;
- c) Any offense punishable under W.S. 6-2-108 – Drug Induced Homicide;
- d) Any offense punishable under W.S. 6-2-301 through 6-2-320- Crimes involving sexual assault;
- e) Any offense punishable under W.S. 6-2-501(f) as in effect prior to July 1, 2014 and any offense punishable under W.S. 6-2-511(b)(iii) – A second or subsequent Domestic Battery;
- f) Any offense punishable under W.S. 6-2-503 – Child Abuse;
- g) Any offense punishable under W.S. 6-2-508(b) – Aggravated Assault and Battery on a Corrections or Detention Officer;
- h) Any offense punishable under W.S. 6-4-303(b)(i) through (iii) – Sexual exploitation of children;
- i) Any offense punishable under W.S. 6-4-402(b) – Incest;
- j) Any offense punishable under W.S. 6-4-405 – Endangering children with controlled substances;
- k) Any offense punishable under W.S. 6-5-102 – Bribery;
- l) Any offense punishable under W.S. 6-5-204(c) – Disarming a peace officer on official duty;
- m) Any offense punishable under W.S. 6-5-206 or 6-5-207 – Escape from official detention or escape by violence or assault or while armed;
- n) Any offense punishable under W.S. 6-8-101 or 6-8-102 – Weapons Offenses; or
- o) Any offense subject to registration under W.S. 7-19-302(g) through (j) – Registered sex offenders.

To qualify for an expungement of a felony other than those listed above pursuant to this provision, the petitioner must show that:

- 1) At least ten (10) years have passed since:



- a. The expiration of the terms of sentence imposed by the court, including any periods of probation;
  - b. The completion of any program ordered by the court; **AND**
  - c. Any restitution ordered by the court has been paid in full; **AND**
- 2) Petitioner has not previously pleaded guilty or nolo contendere to or been convicted of a felony (other than the conviction for which expungement is sought); **AND**
- 3) The felony or felonies for which the person is seeking expungement did not involve the use or attempted use of a firearm; **AND**
- 4) The petitioner is not a substantial danger to himself, any identifiable victim, or society.

**Only one expungement allowed under this section:** A person may receive only one expungement under this statute. The statute does not allow a person who has previously received an expungement under this section to receive a second or subsequent expungement of records of conviction under this section. However, a person may receive expungement of multiple felonies under this section if the felonies arose out of the same occurrence or related course of events.

**The Court Process:** The petition for expungement pursuant to this provision must be filed in the convicting court. There is a \$300 filing fee to file a petition for expungement under this statute. A petition filed under this statute must be verified by the petitioner.

A petition filed under this statute must be served on the prosecuting attorney and the division of criminal investigations. It is important to note that under this statute, the prosecuting attorney must serve notice of the petition to any identifiable victims of the crimes. The court, in its discretion may request a written report by the division of criminal investigation concerning the criminal history of the petitioner.

The prosecuting attorney has thirty (90) days to file an objection or recommendation, if any, in response to the petition. If an objection is filed by the prosecuting attorney or any victim, the court will set the matter for hearing to determine if the petition should be granted. If no objection is filed within the ninety (90) days, the court may summarily enter an order granting the expungement if the court finds that the petitioner is eligible, but the court shall not issue an order granting expungement prior to the expiration of ninety (90) days after service was made on the prosecuting attorney.

If the prosecuting attorney or a victim objects to the petition, or if the petitioner objects to the criminal history report, if one is submitted, the court shall set the case for hearing and notify the petitioner, prosecuting attorney, the division of criminal investigation, and any victim who submitted an objection, of the date and time of hearing. Any person with relevant information about the petitioner may testify at the hearing.

If the court finds that the petitioner is eligible and that the petitioner does not represent a substantial danger to himself, any victim, or society, the court shall issue and order granting expungement.





## 6) Order Granting Expungement

If the court finds the petitioner is eligible for expungement under Wyo. Stat. 7-13-1401, 7-13-1501, or 7-13-1502, the court shall:

- a) Enter an order granting the expungement of the record;
- b) Place the court's file under seal and remove any public identification of the court's file from the record;
- c) The court shall also transmit a certified copy of the order to the division of criminal investigation.

Upon receipt of the order of expungement, any record of arrest, charge, or disposition maintained in the state's central repository at the division of criminal investigations shall be removed from public access and will thereafter only be available to state or federal criminal justice agencies.

It is important to note that in Wyoming, an expunged record is not destroyed; the record is only removed from public access and sealed. Expunged records of adult offenses in Wyoming can still be used for criminal justice purposes and agencies other than the division of criminal investigations may still have records reflecting the incident, arrest, or charges.

## 7) Expungement of Juvenile Records – Wyo. Stat. § 14-6-241

**Eligibility for Expungement:** Any person adjudicated delinquent as a result of having committed a delinquent act other than a violent felony as defined by W.S. 6-1-104(a)(iii), under the Juvenile Justice Act, may petition the adjudicating court, either juvenile court, municipal court, or circuit court, for an expungement of his record upon reaching the age of majority.

The petitioner must show the following:

- 1) Petitioner has reached the age of majority;
- 2) Petitioner has not been convicted of a felony since the adjudication
- 3) That no felony is pending or being instituted against the petitioner; **AND**
- 4) Rehabilitation of the petitioner has been reached to the satisfaction of the court or the prosecuting attorney.

**The Court Process:** The petition for expungement under this statute must be filed in the court which made the adjudication of delinquency. Although the process for obtaining an expungement under this provision is not specified, the prosecuting attorney should receive notice of the petition or should join in or consent to the petitioner for expungement.

Due to the vagueness in this statute as to procedure, it may be necessary to refer to the local rules or common practice in a particular court before filing the petition.



Upon entry of an order granting an expungement under this section, the court shall order expunged all records in the custody of the court or any agency or official, pertaining to the petitioner's case. Copies of the order shall be sent to each agency or official named in the order.

**Note:** Once the court grants the expungement, the proceedings in the petitioner's case are deemed never to have occurred and the petitioner may reply accordingly to any inquiry into the matter.

## **8) Advising Clients After an Expungement**

An expungement ordinarily means that the arrest or conviction is "sealed," or erased from a person's criminal record for most purposes. In Wyoming, this means the arrest or conviction will be removed from the DCI record after expungement of adult records. Wyoming's juvenile expungement statute and expungements under W.S. 7-13-1401 clearly allow the petitioner to legally deny that the case ever occurred. However, in regards to W.S. 7-13-1501 and 7-13-1502, the Wyoming expungement statutes are vague as to the specific rights and status of those who have been granted an expungement.

After the expungement process is complete, an arrest or a criminal conviction which was expunged ordinarily does not need to be disclosed by the person who was arrested or convicted. For example, when filling out an application for a job or apartment, an applicant whose arrest or conviction has been expunged does not need to disclose that arrest or conviction. In most cases, no record of an expunged arrest or conviction will appear if a potential employer, educational institution, or other company conducts a public records inspection or background search of an individual's criminal record.

However, there are some exceptions. The expunged arrest or conviction is not completely erased, in the literal sense of the word. An expungement will ordinarily be accessible by certain government agencies, including law enforcement and the criminal courts, for criminal justice purposes.

It is also important to explain to clients that, even after an expungement is granted, the information may still be publicly available from other sources, such as newspaper articles or other public sources that regularly publish arrests, police blotter, or jail records. Although it may be unlikely that anyone would find that information if available only in print, some arrests are published in online versions of newspapers, so you may want to run a search for the client's name on the internet to see if any criminal information is readily accessible online from public sources. If the information appears in online public sources, there is usually no way to remove that information. It is best to have a discussion with the client about how to best address the issue with employers or others who may see it.

It is best to look at the specifics of each case and whether there is other publicly available information about the arrest or incident that has been expunged and give each client the best possible advice based upon that information and the current law.

