

WHY CLEAR YOUR CRIMINAL RECORD

If you have ever been arrested or convicted of a crime, your criminal record is likely to be stored in a national or state database. The Georgia Crime Information Center (GCIC) keeps a record of all of your arrests or convictions in the state of Georgia. Often employers require a GCIC report to get a job. Public agencies may also require a GCIC report to get and keep public benefits. For these reasons, it is important that this report be accurate and reflects only the criminal history that is required by law.

Georgia law allows you to clear your criminal record maintained by the GCIC in certain instances. There are several steps you can take to clear your record, but they do not all bring the same result. First, you can contest the accuracy of information on your GCIC report. Second, you can seek expungement or removal of the arrest record for certain types of arrests in certain situations. Last, if you were convicted of a crime, then you can seek to restore your civil rights or get a pardon for your crimes. Restoring your civil rights and getting a pardon, however, will not erase the record from the GCIC report or undo your crime or conviction. By taking the following steps, you can make sure that only the information that is required by law is on your GCIC report.

STEP 1: GET A COPY OF YOUR GCIC CRIMINAL RECORD AND CHECK IT FOR ACCURACY.

You can get a copy of your GCIC from your local police department or sheriff's office. There is usually a small fee, around \$10.00, and you will need to show identification in order to get your record.

If your GCIC report contains information about another person (who may have used your name or social security number for instance), or the

information contained on it is not accurate, then you can contest the report. To find further information about contesting the accuracy of the report go to the GCIC website at <http://www.ganet.org/gbi/gcic.html> or call the GCIC's criminal records department at (404) 244-2639.

STEP 2: IF YOUR GCIC REPORT SHOWS THAT YOU WERE ARRESTED FOR A CRIME BUT NOT CONVICTED, THEN YOU MAY BE ELIGIBLE FOR EXPUNGEMENT.

Please remember, expungement applies in very limited circumstances and there is no absolute right to expungement of records. It will not be ordered just because a person asks for it. Official Code of Georgia Annotated § 35-3-37 (d) explains under what circumstances an expungement can be granted.

ARREST RECORDS CAN ONLY BE EXPUNGED IF:

1. No other criminal charges are pending against you; and
2. You have not been convicted of the same or similar offense within the last 5 years.

ARREST RECORDS THAT CAN BE EXPUNGED:

A. No Indictment or Accusation was filed because:

1. You were arrested, but were released without the offense being referred to the prosecuting attorney for prosecution, or
2. The prosecuting attorney dismissed the charges without seeking an indictment or filing an accusation.

B. An Indictment or Accusation was filed, but:

1. The charges were "nolle prossed,"
2. The charges were dead docketed, or
3. The charges were dismissed.

HOWEVER, if one of the following circumstances apply, expungement is NOT possible (O.C.G.A § 35-3-37 (d)(7)):

- A. Charges were dismissed because of a plea agreement that resulted in a conviction for an offense arising out of the same underlying transaction or occurrence as the conviction.
- B. The government was barred from introducing material evidence against you;
- C. A material witness refused to testify or was unavailable to testify against you, unless the witness refused to testify based on his or her statutory right to do so;
- D. You were in jail on other criminal charges and the prosecuting attorney decided not to prosecute for reasons of judicial economy;
- E. You successfully completed a pretrial diversion program that did not specifically provide for expungement of the arrest record;
- F. You were arrested for conduct that was part of a pattern of criminal activity which was prosecuted in another court of this state, the United States, another state, or foreign nation; or
- G. You had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution.

RECORDS THAT CANNOT BE EXPUNGED:

1. First Offender pleas; and
2. Nolo Contendere pleas.

HOW TO APPLY FOR EXPUNGEMENT:

1. To have your arrest record expunged, you must go to the agency that arrested you, such as the police

department or the Sheriff's office. If you have several arrests by different agencies, then you must go to each agency. The agency will give you the forms you need to fill out. The forms are usually free; however, some agencies may charge a fee.

Under the law, the fee cannot be more than \$50.00.

2. Generally, the form requires basic identifying information such as name, date of birth, social security number, and address. You will also need to know the name of the arresting agency, the date of the arrest and the offense for which you were arrested.

3. After you fill out the forms, make a complete copy to keep for yourself, and then give the originals back to the arresting agency. The agency will send the papers to the district attorney or solicitor general's office. The prosecuting attorney then determines whether you meet the criteria for expungement.

4. If the prosecuting attorney approves your request to expunge your arrest record, the agency will notify the GCIC. Within a reasonable time (this could be several weeks or months), the GCIC will expunge your arrest record.

5. If the prosecuting attorney denies your request for expungement, you can file a lawsuit in the Superior Court of the county where the arresting agency is located. **The lawsuit must be filed within thirty (30) days of receiving the denial.** This is a much more difficult process, and we recommend that you hire an attorney.

STEP 3: IF THERE ARE CRIMES REPORTED ON YOUR GCIC THAT ARE NOT ELIGIBLE FOR EXPUNGEMENT, YOU MAY SEEK TO HAVE YOUR CIVIL RIGHTS RESTORED OR GET A PARDON.

There are only two requirements to get your civil rights restored:

1. You must finish serving all your sentences; and
2. You must live in Georgia, or your request must involve a conviction from a Georgia court.

There are several requirements to qualify for a pardon:

1. You must finish serving all your sentences AND then wait at least 5 years before requesting a pardon,
2. You must be a law-abiding citizen after you finish serving your sentences,
3. You cannot have any other criminal charges pending against you; and
4. You cannot have any unpaid fines.
5. Your request must involve a conviction from a Georgia court. (Georgia CANNOT pardon convictions from other states or from a federal court on federal charges);

HOW TO APPLY TO HAVE YOUR CIVIL RIGHTS RESTORED, OR FOR A PARDON

1. To apply for either, you must fill out an application and mail it to the Georgia State Board of Pardons and Paroles, 2 Martin Luther King Drive, Ste. 458, Balcony Level East Tower, Atlanta, GA 30334-490
2. You can get the application from the Parole Board by calling them at (404) 656-5330 or looking at their website www.pap.state.ga.us/Pardon_Applicationjuly2010.pdf
3. There is no fee for submitting the application. Once you have submitted the application, the process takes at least six months.

A FEW CLOSING RECOMMENDATIONS

If you are ever arrested for a crime, you should talk with your attorney about possible implications for your criminal record. It is possible that a plea agreement could specifically provide for

expungement of the arrest record.

This brochure applies only to your criminal record maintained in the state of Georgia. Other states and national crime fighting organizations may have a record of other criminal activity. You should contact the other states or national organizations for more information about your rights with respect to their information. Be aware that your GCIC report may indicate that you have a criminal record in another state or national information database even though it generally does not report specifics of those arrests.

This brochure was published by Atlanta Legal Aid Society, Inc. (ALAS) with the advice and assistance of the Georgia Public Defenders Standards Council (GPDSC). ALAS and GPDSC are unable to provide representation for individuals attempting to clear their criminal records. There are non-profit organizations that provide free legal assistance in criminal matters who may be able to assist you in special circumstances; however, if you need assistance with the process you should hire an attorney.

Contact Us

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