

HANDLING CRIMINAL RECORDS THAT ARE A BARRIER TO EMPLOYMENT¹

Jacksonville Area Legal Aid, Inc. offers assistance to qualified applicants to seal or expunge criminal records.

Are employers allowed to ask about or check my criminal history?

Yes. In fact, employers are required by federal and Florida law to run a criminal background check on applicants or employees in certain jobs that involve positions of trust or security or the care of children, the disabled or the elderly. Employers are not prohibited from obtaining criminal history records so long as their policies regarding obtaining and using such records are applied in a non-discriminatory way.

What does it mean to seal or expunge criminal records?

Sealing a criminal record means removing it from public view. Expunging a record means that it is physically destroyed. The effect of either is that with certain exceptions, you are lawfully allowed to deny that the sealed or expunged offense occurred. You may have to admit a sealed or expunged offense if applying for or working in jobs that involve positions of trust or security or the care of children, the disabled or the elderly.

Who is eligible to seal or expunge a criminal record?

Under Florida law, you may seal or expunge only one criminal record in a lifetime unless the offenses are related. Only those who were never convicted of any crime are eligible. Under the applicable law, you are not considered to have been “convicted” if found guilty but adjudication was withheld. Therefore, you may be eligible so long as you have no offense where there was an “adjudication of guilt.” In addition, if the record was disposed of as adjudication withheld, you cannot seek an expungement until after it has been sealed for ten (10) years or no prosecution must have occurred. Certain dangerous offenses may not be sealed or expunged depending on your plea.

What is the cost to seal or expunge a criminal record?

If eligible for services through Jacksonville Area Legal Aid, Inc., there is no charge for attorney’s fees. However, there are fees to other agencies, such as the Florida Department of Law Enforcement and the county clerk of court.

What if I am not eligible to seal or expunge a criminal record but am having trouble finding a job because of the record?

On job applications and in interviews, you must be honest about the criminal record, so it is important that you know what your record contains. If you are not sure, obtain a copy of your record so you can be prepared to deal with it. You can obtain copies of Florida criminal history records through the arresting agencies, courts where the offenses were prosecuted or the Florida Department of Law Enforcement.

If you believe there is an error on your record, take action to correct it. If an offense appears that did not involve you, it may involve identity theft where someone used your name and identifying information when arrested. This can be easily corrected at no

¹ The information provided here is general in nature and not intended as legal advice. The laws discussed are subject to change without notice. Seek legal advice for more information.

charge by submitting a Compromised Identity Review Claim Form to the Florida Department of Law Enforcement. (Obtain the form at www.fdle.state.fl.us. Click on the Criminal History Records Search button, then look for the link for Compromised Identify Review.) Other mistakes, such as an offense by someone with the same or similar name and birth date may need to be corrected at the court where the offense was prosecuted and the agency that reported the offense under your name.

Failure to be honest about your record on a job application or in an interview can result in not being hired or immediate discharge if the employer learns of the offense. Even if the employer was not concerned about your record, it may decide not to hire you or fire you for being dishonest if you did not disclose the offense when asked. Most employment applications contain language stating that you certify that the information you provided is *true and complete*, meaning that you answered all questions honestly and thoroughly.

Be sure to read questions on employment applications carefully and only answer what is asked. If asked only about felonies, you have no duty to volunteer information about misdemeanors. If asked only about offenses within a certain time period, you have no duty to volunteer information beyond that time period. If asked only about offenses for which you were found guilty, you have no duty to volunteer information about arrests where charges were dismissed or you were found not guilty.

On applications and in interviews, admit the offense and express remorse, then focus on the positive things you have done since that time - such as education, training or accomplishments; letters of recommendation from employers or community members; the length of time since the last offense; the fact that the offense occurred when you were young; etc.

Search out employers who hire ex-offenders. Employers are given incentives to hire ex-offenders through a tax credit. If otherwise unable to find work, try to locate employers who participate in this program. In addition, you may qualify for a free, limited-time fidelity bond that protects an employer against theft crimes by you. Your local **WorkSource** office can assist with more information about special programs for employment of ex-offenders.

You may request a pardon from the Governor. While obtaining a pardon does not change your eligibility to seal or expunge a record, it may help you in your job search because it shows forgiveness of the offense. For more information about how to request a pardon, call (850) 488-2952.

Where can I get help?

Call Jacksonville Area Legal Aid at 356-8371 for information on applying for help.

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Employment Law Project**