

WHAT ARE THE LAWS ON JUVENILE CRIMINAL RECORDS IN FLORIDA?

What is a juvenile criminal record?

A criminal history record is created when a person is arrested and fingerprinted. A record is created by the arresting agency. The Florida Department of Law Enforcement (FDLE) stores criminal history records for the entire state. When a youth is arrested for a felony or certain misdemeanor crimes the arresting agency is required by law to submit information about the arrest and the youth's fingerprints to the FDLE. The arresting agency is also allowed by statute to submit arrest information and fingerprints to FDLE for all youth arrests. Many law enforcement agencies routinely report all juvenile arrests to FDLE. If a youth was fingerprinted at the time of an arrest, the chances are that his arrest information and fingerprints were sent to the FDLE. The Department of Juvenile Justice is also required to inform the FDLE of the dispositions for all juvenile felonies and certain misdemeanor crimes. (The disposition is the outcome of the case.)

Who can see juvenile records?

As a general rule, public access to juvenile records is limited, but there are exceptions. All traffic violations by youth are public record and are treated the same as adult traffic violations. Until 1994, law enforcement agencies could only release the name of juveniles ages 16 and older who had been charged with one of a few specific crimes. In 1994, a change in laws governing the confidentiality of juvenile records eliminated the age restriction and expanded what juvenile records could be disclosed. The law now allows law enforcement agencies to disclose to the public the name, photograph, address, and the arrest report of any child arrested for a felony. This same information may be disclosed if a child has been found by a court to have committed three or more misdemeanors. This information may also be disclosed for youth who are transferred to the adult system. Criminal justice agencies may have access to all FDLE juvenile criminal records for criminal justice purposes. The general public may be provided access to criminal justice histories by FDLE for a fee, which can include any juvenile arrests that FDLE is authorized under statute to provide.

Does a juvenile record go away when a youth becomes an adult?

No, at least not right away. In most cases, the FDLE may keep a youth's criminal record until the individual turns 24 years old. At that time most juveniles' records are then *expunged* (destroyed). There are some exceptions:

- If the youth was classified as a serious habitual offender or ever was committed to a juvenile correctional facility or juvenile prison, then the FDLE may keep the record until the individual turns 26 years old.

- If a person over 18 years old is charged with a forcible felony before their juvenile record is destroyed, then their juvenile record is added to their adult criminal record.
- If a youth under age 18 is adjudicated as an adult for a forcible felony, his juvenile record is added to his adult criminal record.
- If a youth has been adjudicated as a sexual offender, his juvenile record is merged with his adult criminal record.

What is a sealed criminal record?

When a record is sealed, access to the record is limited. The record is not available for the public to see. Criminal justice agencies are allowed access to it for criminal justice purposes and to screen job applicants. Certain agencies are allowed to receive information in the criminal history to screen job applicants for positions working directly with children, the elderly, the disabled, or in schools.

If a record is sealed, the person whose record has been sealed may lawfully deny or fail to report the arrest included in a sealed report in many situations, such as on applications for employment with most noncriminal justice employers. However, the person could not lawfully deny the arrest if applying for a job with a criminal justice agency, applying to The Florida Bar, applying for many jobs working with children, the disabled, and the elderly, if prosecuted for another criminal charge, or when purchasing a firearm when a criminal background check is required.

What is an expunged record?

In general, when a criminal record is expunged, access to it is even more limited than for a sealed record. Florida statutes place limits on what information is kept and who can have access to the information in the record, depending on what type of case it is. There are several different ways that a juvenile criminal record may be expunged.

An individual's juvenile criminal history record is automatically expunged or destroyed by FDLE when that person turns 24 years old (with some exceptions).

Florida statutes allow for the criminal records to be expunged for some youth who have successfully completed a pre-arrest or post-arrest diversion program. When someone gets an expunction through the diversion program option, records maintained by local criminal justice agencies in the county where the arrest happened are sealed. FDLE keeps the record and may make the information in the record available to criminal justice agencies for the purpose of seeing if a person qualifies for a diversion program if arrested again. FDLE may also share the information in the record if it is requested as part of a criminal investigation or when the individual is a job candidate with a criminal justice agency.

When the court orders a record to be expunged, the record must be destroyed by all criminal justice agencies except the FDLE. The FDLE may disclose the existence of the record to other criminal justice agencies for licensing and employment decisions, but it may not provide any of the details in the report without a court order.

If a record is expunged, the individual may lawfully deny or fail to report the arrest included in an expunged report, such as when asked about prior arrests on an application for employment with noncriminal justice employers. However, the person could not lawfully deny the arrest if applying for a job with a criminal justice agency, applying to The Florida Bar, applying for many jobs working with children, the disabled, and the elderly, if prosecuted for another criminal charge, or when purchasing a firearm when a criminal background check is required.

What cases can be expunged?

To be eligible for expunction, the case must have never been filed on by the state attorney, or if filed, was dismissed before trial. If the case went to trial, it must have been previously sealed for a minimum of 10 years to be eligible for expunction.

What cases cannot be sealed or expunged?

The case is not eligible to be sealed or expunged if the youth:

- Was adjudicated delinquent (found guilty) for the charge for which he is petitioning the court to have sealed or expunged.
- Has been adjudicated delinquent at any time for committing any felony.
- Has been adjudicated delinquent at any time for one of the misdemeanor charges specified in Florida Statute 943.151(3)(b). Some of the charges included under this statute are assault, battery, petit theft, carrying a concealed weapon, unlawful possession of a firearm, use of destructive devices or bombs, negligent treatment of children, cruelty to animals, arson, and others.
- Certain traffic violations are also classified as criminal and, if found guilty of these charges, the record could not be sealed or expunged. These include Driving Under the Influence, reckless driving, and some charges related to driving while a license is suspended.
- A youth who has previously had a criminal history sealed or expunged is also not eligible to have an additional record sealed or expunged. A person can only have one record sealed or expunged.

How does one get a record expunged if a youth completed a diversion program?

Florida statutes allows for some criminal records to be expunged for youths who have successfully completed a pre-arrest or post-arrest diversion program. This option only applies when a youth was arrested for a non-violent misdemeanor that would not qualify as an act of domestic violence. One cannot have had any other previous criminal offenses. One can only use this option one time. The youth's parent or guardian, or the youth if he is at least age 18, must submit an application to the FDLE no later than six months after completing the diversion program. A \$75 processing fee and a statement from the State Attorney confirming that the youth successfully completed the diversion program must accompany the application. The criminal history record of a youth whose record is expunged under this option can still be made available to criminal justice agencies to determine if the youth would be eligible for a diversion program if arrested again. The record can also be made available if requested as part of a criminal investigation or if the youth is a candidate for employment with a criminal justice agency. A person whose record is expunged under this option may lawfully deny or fail to admit the arrest covered by the expunged record, except if applying for employment with a criminal justice agency. For more information go to the FDLE web site at www.fdle.state.fl.us/expunge/.

How can one get a juvenile record sealed or expunged, other than for a diversion case?

Getting a record sealed or expunged through a court order is a two-stage process. Before petitioning the court to seal or expunge a criminal history record, a person seeking to do so must first apply to FDLE for a Certificate of Eligibility. The required forms are available at the FDLE website at www.fdle.state.fl.us/expunge/. The FDLE web site explains the process, eligibility requirements, and application fees. Once a person receives a Certificate of Eligibility from FDLE, they may then petition the court to have a record sealed or expunged. It should be noted that a Certificate of Eligibility for sealing or expunction is valid for one year after it is issued by FDLE.

This information was prepared by the Juvenile Assessment Center of Lee County. It is provided as a general overview of the juvenile criminal records laws in the state of Florida as of 2010. It is not intended as a substitute for legal advice.