

When Criminal Documents are Sealed or Expunged 10/31/18

DEFINITIONS:

Confidential Records: Confidential records are not subject to inspection by the public, but can be viewed by staff. In response to a public inquiry regarding a confidential document, staff should reply that there is no record publically available. For a full list of confidential records, see **Rule 6 of Rules for Public Access to Court Records**.

Sealed Records: Sealed records are not subject to inspection by the public or by court staff. Per **13 VSA §7607 Effect of sealing**, in response to any inquiry regarding a sealed record, staff shall respond that "NO RECORD EXISTS." Sealed records may be unsealed for inspection only by court order.

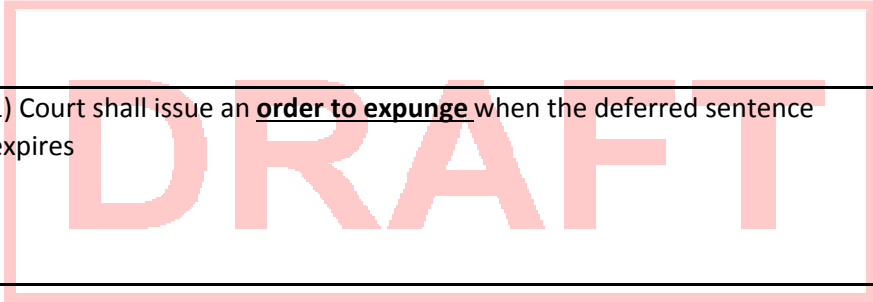
Expunged Records: Expunged records have been destroyed. Per **13 VSA §7606 Effect of expungement**, in response to any inquiry regarding an expunged record, staff shall respond that "NO RECORD EXISTS." A confidential special index of expunged cases shall be maintained together with the expungement orders and expungement certificates. Inspection of this index by the public is only allowable by permission from the Chief Superior Judge.

**** A case may only be expunged if all fees, fines, surcharges and restitution have been paid. ****

No Conviction				
What to do with Criminal record when...	Action(s)	Is Notice Required?	Is Order Issued?	Statutory or Rule Reference
<ul style="list-style-type: none"> • Probable cause (PC) is not found; or • Probable cause (PC) is found at first, but a later motion to review PC finds there is no PC 	1) Record is confidential , but is not immediately sealed. 2) Court shall issue order to seal record 12 months after no PC found. 3) Court shall issue an order to expunge the sealed record after the statute of limitations has expired.	No	Yes "crosenc"	<ul style="list-style-type: none"> • 13 V.S.A. §7603(a) and (f) • Vt. Pub. Acc. Ct. Rec. Rule 6(b)
<ul style="list-style-type: none"> • Charge is dismissed without prejudice 	1) Court shall issue order to seal record 12 months after dismissal. 2) Court shall issue an order to expunge the sealed record after the statute of limitations has expired.	No	Yes "crosenc"	<ul style="list-style-type: none"> • 13 V.S.A. §7603(a) and (f)
<ul style="list-style-type: none"> • Defendant is acquitted of charges; or • Charge is dismissed with prejudice 	1) Court shall issue an order to expunge after 7 days but no more than 45 days after acquittal or dismissal with prejudice.	No	Yes "crosenc"	<ul style="list-style-type: none"> • 13 V.S.A. §7603(e) • 13 V.S.A. §7403
<ul style="list-style-type: none"> • Charge was dismissed for no conviction and sealed pursuant to a petition prior to July 1, 2018 	1) Court identifies the sealed cases 2) Court shall provide a bulk notice of intent to expunge to State's Attorney 30 days prior to expungement 3) If no party objects, the court shall issue order to expunge in 30 days.	Yes. Notice to SA, 30 days prior to expungement	Yes	<ul style="list-style-type: none"> • 13 V.S.A. §7603(h)
<ul style="list-style-type: none"> • No conviction occurred prior to July 1, 2018 	1) Defendant may file a petition to seal or expunge criminal record at any time 2) Court processes petition per the usual course	Yes. Though deft is responsible for notice, staff should give copy of petition to SA.	Yes "crce" or "crce"	<ul style="list-style-type: none"> • 13 V.S.A. §7603(g)



Adult Diversion				
<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>
<ul style="list-style-type: none"> Prosecuting attorney notifies court in writing of his or her intention to refer a person to diversion 	1) Record shall become confidential	No	No	3 V.S.A. §164(e)
<ul style="list-style-type: none"> Adult diversion successfully completed on or after July 1, 2018 	1) Court identifies cases eligible for expungement using Diversion Completed report Rrcr16 2) Court shall issue a notice of intent to expunge to all parties within 30 days after the two-year anniversary of successful completion. 3) If no party objects, the court shall issue an order to expunge in 30 days.	Yes. To all parties. "crniead"	Yes "croead"	3 V.S.A. §164(g)
<ul style="list-style-type: none"> Adult diversion successfully completed between July 1, 2002 and July 1, 2018 	1) Court identifies the adult diversion cases that were sealed between July 1, 2002 and July 1, 2018 2) Court shall provide a bulk notice of intent to expunge to State's Attorney 30 days prior to expungement 3) If no party objects, the court shall issue order to expunge in 30 days.	Yes. To SA only.	Yes	3 V.S.A. §164(g)
<ul style="list-style-type: none"> Case is referred to Tamarack program 	1) Record shall become confidential when referred to Tamarack 2) However, if there are conditions of release , the case is no longer confidential while the conditions are in place. Once deft completes Tamarack and State dismisses charges the case becomes confidential again. 3) Court shall issue a notice of intent to expunge to all parties within 30 days after the two-year anniversary of successful completion. 4) If no party objects, the court shall issue an order to expunge in 30 days.	Yes. To all parties. "crniead"	Yes "croead"	n/a See 10/31/18 memo re: Confidentiality of cases in Tamarack diversion program
Deferred Sentences				
<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>



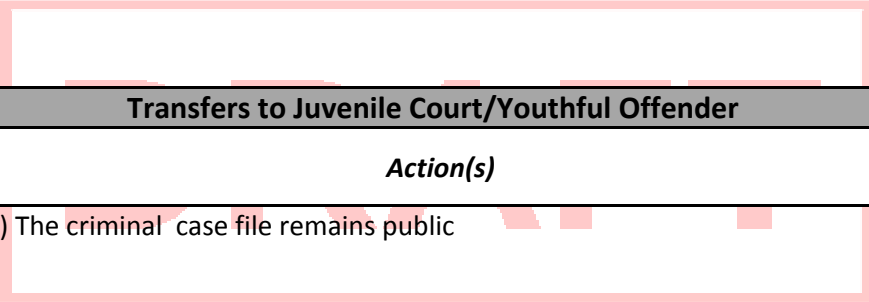


18-21 Year Old Offenders

<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>
<ul style="list-style-type: none"> Defendant was 18-21 years old at the time of committing a qualifying crime and successfully completed the terms and conditions of the sentence on or after July 1, 2018 and qualifying crime was not filed with a nonqualifying crime 	1) Court shall issue an order to expunge within 30 days after the date on which the individual successfully completed the terms and conditions of sentence	No	Yes "croe18_21"	13 V.S.A. §7609(a) and (b)
<ul style="list-style-type: none"> Defendant was 18-21 years old at the time of committing a qualifying crime and successfully completed the terms and conditions of the sentence prior to July 1, 2018 	1) The individual may file a petition to expunge the criminal history record 2) Court processes the petition per the normal course	Yes. Though deft is responsible for notice, staff should give copy of petition to SA.	Yes "croe18_21"	13 V.S.A. §7609(c)

Minors in Criminal Court

<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>
<ul style="list-style-type: none"> Defendant was charged with a criminal offense after July 1, 2006 and prior to attaining the age of majority and the charge was dismissed 	1) The case shall be immediately sealed	No	No	33 V.S.A. §5119(h)
<ul style="list-style-type: none"> Defendant was charged with a criminal offense prior to July 1, 2006, prior to attaining the age of majority, and the charge was dismissed 	1) Defendant may file a petition to seal or expunge the criminal record at any time 2) Court will process the petition in the normal course	Yes. Though deft is responsible for notice, staff should give copy of petition to SA.	Yes "cros"	33 V.S.A. §5119(h)



Transfers to Juvenile Court/Youthful Offender				
<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>
<ul style="list-style-type: none">Defendant files motion to proceed as a youthful offender in juvenile court	1) The criminal case file remains public	No	No	33 V.S.A. § 5281
<ul style="list-style-type: none">Defendant successfully completes youthful offender program	1) Family court will provide an order to dismiss to Criminal Division 2) Criminal division shall dismiss case 3) Criminal division shall issue an <u>order to expunge</u>	No	Yes "cryodo"	33 V.S.A. § 5287(c) and (d)
Petitions				
<i>What to do with Criminal record when...</i>	<i>Action(s)</i>	<i>Is Notice Required?</i>	<i>Is Order Issued?</i>	<i>Statutory or Rule Reference</i>
<ul style="list-style-type: none">Defendant files petition to seal or expunge criminal records	<ul style="list-style-type: none">If defendant and State's Attorney/Attorney General stipulate to the granting of the petition, the court will grant order to expunge or seal without a hearing. -or- <ul style="list-style-type: none">If State's Attorney/Attorney General objects then a hearing will be scheduled and court will make a determination as to whether to grant petition to expunge or seal	Yes. Though deft is responsible for notice, staff should give copy of petition to SA.	Yes "crce" or "crcs"	13 V.S.A. § 7602