

MODEL LEGISLATION FOR THE SEALING OF CONVICTION RECORDS

Following is a model law drafted by the Legal Action Center that states can use as they draft their own legislation to seal or expunge criminal records.

1. Except as otherwise provided in subsection 2, any person convicted of a criminal offense may petition the court of conviction for the sealing of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has been convicted of no more than 2 misdemeanors and 1 felony, after a period of time as follows:
 - (a) For drug offenses arising out of drug addiction, upon completion of the sentence imposed and successful completion of a drug treatment program, whichever is later.
 - (b) For non-violent crimes, after 5 years have elapsed from the completion of sentence for a felony conviction; after 2 years have elapsed for a misdemeanor conviction.
 - (c) For violent crimes, after 10 or more years have elapsed from the completion of the sentence for a felony conviction (time period will vary according to the grade of felony committed); after 5 years have elapsed from the completion of the sentence for a misdemeanor conviction.
 - (d) If petitioner has more than one conviction to be sealed, the time period petitioner must wait before filing the petition is based on the time period of the most serious conviction to be sealed. This time period starts from the last crime committed and must start over if petitioner is convicted for a new offense.
 - (e) Nothing in this section shall prevent a record which is sealed from being used in the prosecution or sentencing of future offenses committed by petitioner.
2. No petition shall be brought and no order sealing records shall be granted to a person convicted of a criminal offense:
 - (a) Which would subject the individual to a lifetime registration requirement under a state sex offender registration program.
 - (b) Which is a crime against a minor.

[Minor (under fifteen years of age [AZ]; offense committed against a child [KY]; crime against a child (victim under 18, crimes include kidnapping, false imprisonment, pandering or prostitution) [NV]; lists violent crimes that are excluded, including felonious child pornography, incest or endangering the welfare of a child [NH]; lists a series of crimes against children, including endangering the welfare, kidnapping, sex crimes committed against children [NJ]; offenses in circumstances in which the victim of the offense was under eighteen years of age when the offense is a

misdemeanor of the first degree or a felony [OH]; criminal mistreatment in the first degree when it would constitute child abuse and endangering the welfare of a minor [OR]; conviction involving a sexual act against a minor [UT]]

3. A petition, in order to be valid, must be signed under oath by the person whose conviction is to be sealed and contain the following:
 - (a) The full name and current address of the petitioner;
 - (b) A certified record of the conviction that is to be sealed;
 - (c) A statement as to whether the petitioner has previously filed a petition to seal this or any other conviction and, if so, the disposition of the petition;
 - (d) A statement as to whether the petitioner has any other criminal charge pending against him or her in any court in the United States or in any other country;
 - (e) A list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed;
 - (f) Information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed;
 - (g) If the petition is to seal a drug offense arising out of a drug addiction, petitioner must include documentation showing successful completion of a drug treatment program.
 - (h) A fee [to be determined by each state]. If a fee is imposed, such fee will be waived upon proof of indigency by petitioner.
4. Upon the filing of a petition, the court shall notify the prosecutor; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the sealing of the record and provide them with an opportunity to object to the petition. If an objection is filed within thirty days, the court shall set a date for a hearing on the petition.

In deciding whether or not to grant the sealing order, the court shall weigh the interest of the petitioner in having the records pertaining to conviction sealed against the legitimate needs, if any, of the government to maintain those records. The burden shall be on the government to show that the balance tips in its favor and the records should not be sealed. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of a sealing order.

If there is no timely objection, the court shall not set a date for a hearing and shall order the records sealed if the conditions for filing a petition are met. If the court denies the petition, the petitioner retains the right to appeal this decision.

5. Upon the entry of an order to seal the records, these records are deemed to be sealed on every level. The order shall specify that the court, the repository and the police shall seal the records in their possession pursuant to this section.
 - (a) Nothing in this section shall affect any right of law enforcement officers to maintain arrest and conviction records and to communicate information regarding the sealed

record of arrest or conviction to other law enforcement officers for legitimate investigative purposes or in defense of any civil suit arising out of the facts of the arrest, or for the purposes of determining the fitness of an individual to serve as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.

6. Once sealed, person may deny the existence of the record at all times, except those outlined in subsection 5(a).

(a) The persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, housing, credit or other type of application.

(b) An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the court may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.

7. A person is guilty of a misdemeanor if, during the life of another who has had a record of arrest or conviction sealed pursuant to this section, he or she discloses or communicates the existence of such record except for law enforcement purposes as provided in subsection 5(a).

Any agency and/or person who willfully refuses to carry out the sealing of the records of conviction or willfully releases or willfully allows access to records of conviction, knowing them to have been sealed, also shall be civilly liable.

8. This section shall be deemed to be retroactive.