

CONTINUING LEGAL EDUCATION

Expungement Clinic Training 2024

January 10, 2024, 12:00PM – 1:00PM

Live at the DSBA (Webcast in Georgetown & Dover)



**Sponsored by the MLK Day of Service Planning Committee,
Clean Slate Delaware, and Office of Defense Services**

1.0 Hour of CLE credit for Delaware and Pennsylvania Attorneys

Visit www.dsba.org/cle or all the DSBA CLE seminar policies. Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

During this CLE, attendees will learn about the expungement eligibility criteria in Delaware, the different expungement pathways in the State, and practical tips for assisting people with understanding and navigating Delaware's record clearance processes. Attendees will leave the program with the knowledge necessary to assist expungement clinic clients, including at the Clean Slate Delaware Expungement Clinic* on Monday, January 15, 2024. This CLE program is free for attendees that also participate in the January 15th Expungement Clinic.

Speakers:

Welcome Remarks and Introduction

John Reynolds

ACLU of Delaware

Training

Eliza Hirst, Esquire

Office of Defense Services

John Reynolds Bio

John Reynolds joined ACLU of Delaware as Campaign Manager for Clean Slate Delaware in February 2021 before transitioning to Deputy Policy & Advocacy Director in May 2023. John is a committed advocate for racial justice and graduate of UCLA School of Law with a specialization in Critical Race Studies.

Prior to ACLU-DE, John lived in New York, where he coordinated legal education programming at the Federal Bar Council, managed direct service efforts at NYC Mission Society for students struggling with criminal justice, economic, and other challenges, and worked on campaigns for criminal justice reform and economic equity at the Center for Popular Democracy.

In addition to his role at ACLU-DE, John is co-founder of Native Roots Farm Foundation, an avid tennis player, and an eternally optimistic fan of mediocre sports teams.

Eliza M. Hirst, Esq., CWLS

Eliza M. Hirst, Esq., CWLS, is an Assistant Public Defender with the Office of Defense Services and heads the Post Disposition Unit. In that role, she represents youth and adult clients on expungements, sentence modifications, and other second chance litigation. Since 2019, Eliza has also been an Adjunct Professor at the Delaware Law School teaching Youth Defender Skills, Children and the Law, and Education Law. From 2010-2020, Eliza served as a Deputy Child Advocate with Delaware's Office of the Child Advocate where she represented children in dependency/neglect proceedings. Prior to being a Deputy Child Advocate, Eliza was a staff attorney for seven years at Community Legal Aid Society, Inc. in Wilmington, DE. Eliza earned her J.D. from the University of Texas Law School. She is a member of the Delaware, New York, and Pennsylvania Bars, and the U.S. District Court for the District of Delaware.

Post Disposition Relief

- ...or, why having a criminal record can be so damaging...

Agenda

Adult criminal record vs. juvenile criminal record

Collateral consequences of a criminal record (particularly a juvenile record)

Paths to clear a criminal record: expungements and pardons

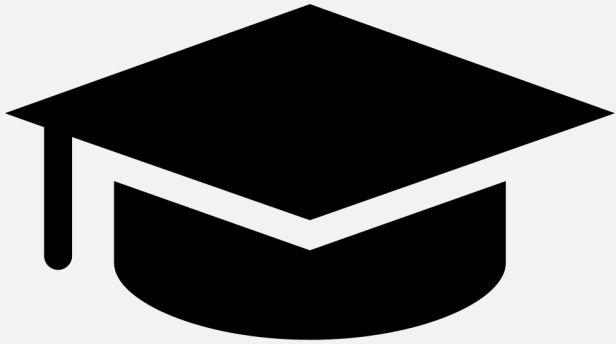
Criminal records

- For the purposes of employing or licensing any individual in this State pursuant to a statutory mandate or authorization, the State Bureau of Identification may release an individual's entire record including juvenile adjudications
- Juvenile records are **not** sealed in Delaware!

The background of the slide features a light gray, torn paper-like texture. The top edge is jagged and irregular, while the bottom edge is a smoother, wavy line. The central area is white, providing a high-contrast background for the text.

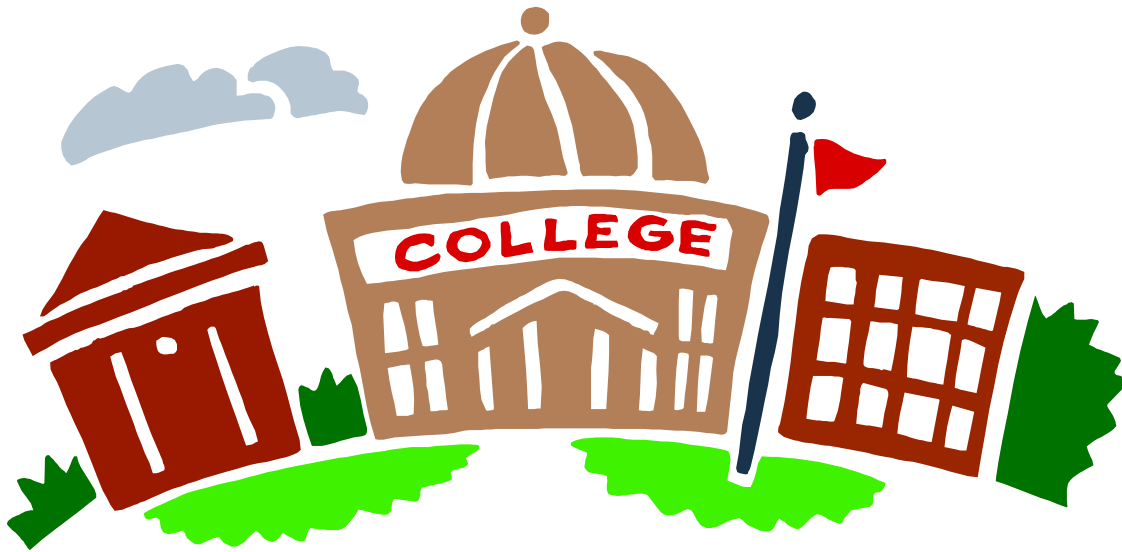
COLLATERAL CONSEQUENCES OF HAVING A CRIMINAL RECORD

Collateral Consequences: EDUCATION



- Expulsion or suspension from school
 - In the public school system, certain crimes require mandatory reporting to law enforcement and referrals to alternative schools, suspension or expulsion
 - A youth found with a weapon in a safe school and recreation zone must be expelled for a minimum of 180 days (although this may be modified by the local school board on a case-by-case basis or due to a student's disabilities.)

Collateral Consequences: HIGHER EDUCATION

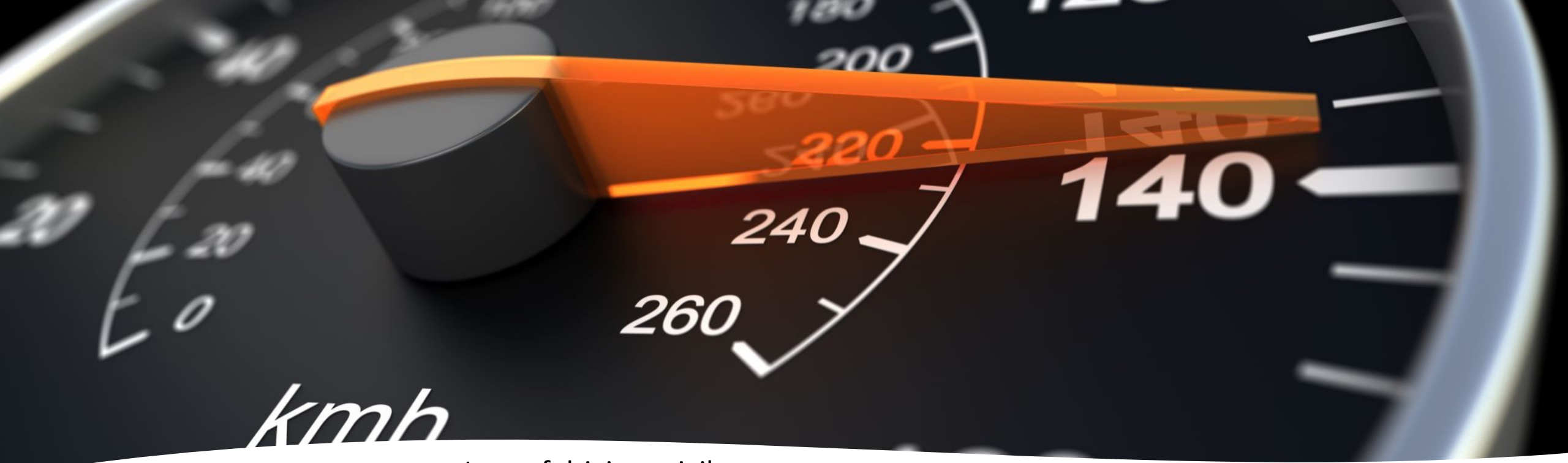


- College Applications
 - College applications may ask an applicant to disclose if the individual has ever been arrested, convicted, suspended or expelled
- Loss of Scholarship or Loan Money
 - Convictions and adjudications for offenses involving possession, distribution or use of a controlled substance will disqualify an individual for eligibility for federal financial assistance, loans or grants

Collateral Consequences: CUSTODY and FOSTER/ADOPTIVE PARENTS

- Ability to be a Foster/Adoptive Parent may be compromised
 - Child Protective Services conduct a background investigation which include juvenile adjudications and arrests
 - Adjudications for sex offenses and offenses against children will bar an adoption
 - Most adult convictions will prevent individuals from become foster/adoptive parents





Collateral Consequences: DRIVING PRIVILEGES

- Loss of driving privileges
 - Family Court may order the DMV to suspend or revoke driving privileges or licenses, postpone eligibility to obtain driving privileges or licenses
 - Family Court may order all traffic, alcohol or drug adjudications to be entered on an individual's driving record
 - School expulsion may result in loss of license
- Some offenses require a mandatory loss of license. These offenses include:
 - DUI and Drinking While Driving
 - Driving Without a Valid License

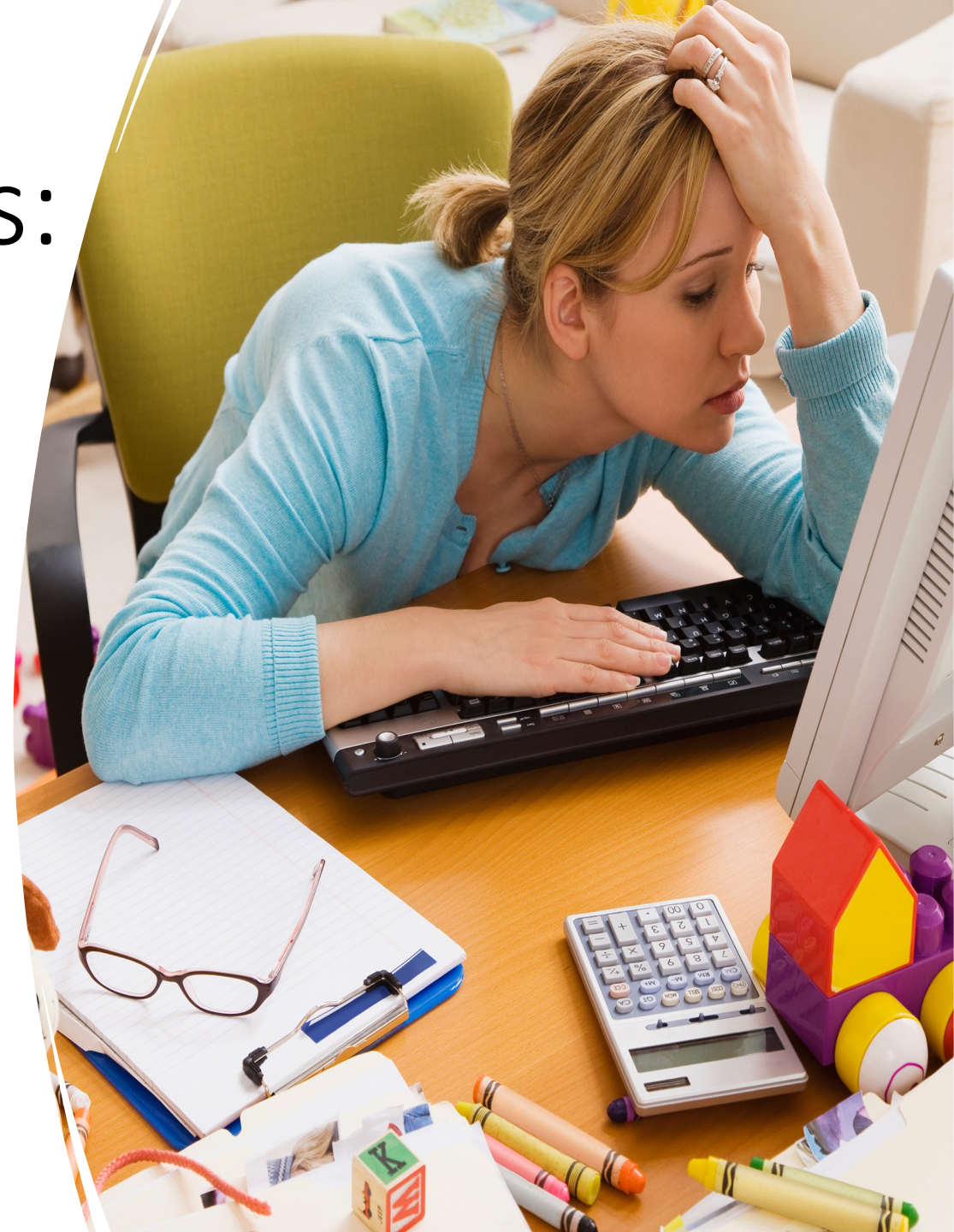
A group of skydivers in formation against a blue sky with a white map of the United States overlay. The skydivers are silhouetted against the sky, and the map of the United States is a large, white, irregular shape that covers the right side of the image. The skydivers are in various poses, some with arms outstretched, and they are arranged in a loose formation. The background is a clear blue sky with a bright light source on the left, creating a lens flare effect. The map of the United States is a large, white, irregular shape that covers the right side of the image, with the title text overlaid on it.

Collateral Consequences: MILITARY SERVICE

- Barriers to military service
 - Military background checks include juvenile adjudications, even ones that have been sealed or expunged
 - Youth adjudicated or convicted of felonies are not eligible for the military without special approval from the Secretary of Defense
 - Some misdemeanor adjudications or active probation may bar military service

Collateral Consequences: EMPLOYMENT

- Barriers to employment
 - In certain professions, employers have statutory mandates that allow them to obtain juvenile adjudication records
 - These employers include public schools, child care facilities, health care providers and criminal justice agencies
 - Admission into certain professions that require licensure may be affected



Collateral Consequences: HOUSING



- Applicants for federally assisted housing are screened through a criminal history background check
- Admission to public housing or Section 8 subsidy programs may be prohibited if any household member has, or is currently engaged in, drug-related or violent criminal activity or criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity
- Youth already in public housing with delinquency arrests or adjudications may lead to eviction for the entire family
- Adults with criminal convictions may have difficulty accessing mortgages, rental properties, or other housing restrictions.

Collateral Consequences: IMMIGRATION



- Specific adult convictions can lead to automatic deportation (usually felonies)
- A delinquency adjudication in a juvenile court proceeding is not a criminal conviction for immigration purposes and will not trigger mandatory immigration consequences
- Some delinquency adjudications are deemed “bad conduct” and can trigger immigration penalties, including ineligibility for legal immigrant status and deportation
- Waivers of bad conduct can occur except for drug trafficking
- Impacts status of undocumented foster children

COLLATERAL CONSEQUENCE: STIGMA

- Having a criminal record can bring shame and embarrassment to individuals and their families.





Collateral Consequence: Purchase/Possess a Firearm

Felony adjudications impact a person's right to carry, possess, or own a firearm until 25.

It can also be a barrier to future application for a conceal carry license *even after* an expungement.

Collateral Consequence: Restitution and Fines



- Unpaid restitution can lead to:
 - Capias after 18
 - Credit score impact
 - Access to loans

Expungement Process

- Expungement is a civil process
- Expungements are not automatic...yet! (Some will be in August 2024)
 - Arrests that terminate in the accused's favor and most misdemeanor adjudications are subject to mandatory expungement
- Most felony convictions are subject to discretionary expungement after a period of time (except for violent felonies, multiple convictions, or other specific offenses)
- Juvenile arrests and adjudications *may* be expunged (except for adjudications for murder, rape, arson, and attempts)

Eligibility to
have your
record
cleared

You have no pending
or unresolved charges

Your offenses occurred
in the state of
Delaware

Pathways To Clearing Your Criminal Record

Expungements

- Mandatory
- Discretionary
- Youth cases

Pardons

Criminal Records

Charges that have been dismissed /nolle prossed

Adult convictions

Juvenile adjudications

TYPES OF CRIMINAL DISPOSITIONS

- **Guilty**- convicted of a misdemeanor and/or felony.
- **Dismissed**- case is terminated; no guilty findings.
- **NolleProsequi**- Latin phrase meaning “will no longer prosecute”; non-conviction.
- **Probation Before Judgment(PBJ)** -a non-conviction contingent upon successful completion of probation.
- **First Offender**-type of diversion typically offered to one with no previous criminal record; non-conviction.
- **Juvenile found delinquent**-a minor that is found guilty/adjudicated.

Adult Mandatory Expungements

- All charges terminated in your Favor
- Single violation of a conviction +3 years
- Certain types of single misdemeanor convictions (or single case disposition) + 5 years

- **Exclusions Apply*

- **Eligible Applicants must:**
 - Complete fingerprints through Idenitgo (\$72)
 - Receive Official Eligibility letter and SBI Report
 - Complete application and return form and filing fee to SBI's Office directly with \$75 fee

Adult Discretionary Expungement

- Single misdemeanor conviction for one or more charges relating to the same case for specified offenses + 3 years
- Multiple misdemeanor convictions for one or more charges relating to the same case for specified offenses not included above + 7 years
- Single felony conviction (nonviolent) + 7 years
- Multiple misdemeanor convictions for specified offenses + 5 years (if individual cases are eligible for a mandatory expungement)
- After a Governor's Pardon

***Exclusions Apply**

Eligible Applicants must:

- Complete fingerprints with Identigo (\$72)
- Receive Eligibility letter and SBI Report
- File petition and filing fee with applicable court (Family or Superior Court (\$75))
- AG will send a response to the Court indicating its opposition or support
- Hearing only if necessary, and the Court has discretion to grant or deny the petition

Adult Discretionary Expungement

Contents of Petition

- **Specific, relevant facts demonstrating that continued existence and possible dissemination of information relating to the arrest/adjudication causes or may cause circumstances that constitute a MANIFEST INJUSTICE**
- Attach Certified Criminal Record
- **Suggested Exhibits**
 - Letters of support
 - Rejection/Denial Letters
 - Documentation of education, employment, rehabilitation
 - Any other document to support “manifest injustice”

Juvenile Expungements

- **Mandatory Expungement**—File a petition in Family Court
 - Cases terminated in your favor, or only 1 adjudication for nonviolent, non-sex offense case + 3 years
- **Discretionary Expungement**- File a petition in Family Court
 - Misdemeanor Sex offense or one violent felony + 3 years have passed
 - Felony sex offense + 5 years
 - Multiple adjudications (except violent felonies and felony sex offenses) +5 years
 - Multiple adjudications including violent felonies and felony sex offenses + 7 years

JUVENILE DISCRETIONARY EXPUNGEMENTS

Burden of Proof:

- Rebuttable presumption that juvenile records cause a manifest injustice
- Burden on Petitioner:
 - Petitioner to allege specific facts in support of allegation of manifest injustice
 - Preponderance of the Evidence standard

JUVENILE DISCRETIONARY EXPUNGEMENTS

Contents of Petition

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 - Letters of support
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 - Any other document to support “manifest injustice”

Pardon Process

- A pardon is an official statement of forgiveness by the Governor
- Many adult criminal convictions are only eligible for a Governor's pardon
- Pardon is a two-step process: Application to the Board of Pardons, then on to the Governor for consideration
- If the Governor grants an “unconditional pardon”, then the Pardon restores all civil rights including:
 - Right to vote
 - Serve on a jury
 - Purchase deadly weapons
 - Seek/hold public office

Eligibility for a pardon

Convictions must have occurred in the state of Delaware.

Completion of all phases of your sentence including probations and parole

Generally, you must have paid your restitution, fines and fees

No pending charges

At least 3 years have elapsed since your most recent offense or arrest

Criteria for a Pardon

You accept responsibility

You have given a compelling reason for why you want a pardon

You must explain what you have done to improve your life since you were convicted

Letters of support always help!

Pardon Process

Many adult criminal convictions are only eligible for a Governor's pardon

Pardon is a two step process: Application to the Board of Pardons, then on to the Governor for consideration.

Often requires an evaluation/psychiatric examination

Timing of a Pardon—1-2 years

Even if the Governor pardons someone, some convictions may never be expunged (e.g. murder, rape).

- A pardon removes a juvenile delinquency record

If the Governor grants an “unconditional pardon”, then the Pardon restores all civil rights including:

- Right to vote
- Serve on a jury
- Purchase deadly weapons
- Seek/hold public office

Tips At the Expungement Clinic

- When you meet with a client, please advise them that they will **not** receive an expungement or pardon today and that this advice is preliminary. SBI makes the actual determination.
- They **must** go to an SBI location to obtain their certified criminal history and get an official determination for expungement eligibility.
- Do **not** hand over the DELJIS print out to the attendees! Every DELJIS printout must be returned to ODS.

Tips At the Expungement Clinic

- If **mandatory expungement**: it is \$72 to obtain a certified criminal history.
 - For adults, please advise that they must file the \$75 fee (certified check or money order) along with the Mandatory Expungement Form provided by SBI within **30 days** of the date of the certified criminal history.
 - Process takes 1-3 months generally.
- If **discretionary expungement**, advise them that it is \$72 to obtain a certified criminal history, and advise them that an attorney will be assigned from ODS or a referral to another attorney/organization will be made. Emphasize that the client should contact the attorney as soon as the client receives the certified criminal history because it is only valid for 45 days!
 - Process takes 6-9 months generally.

Tips At the Expungement Clinic

- For **Youth**, either type of expungement requires a petition in court with a 45 day time frame (there is some leeway).
 - No Fee! Refer cases to ODS (Eliza will handle).
- If **Pardon**, direct them to APEX.
- Anyone in need of financial assistance may be eligible for grant funding to cover the filing fees/



Questions?

Eliza Hirst, Esq., CWLS

Assistant Public Defender, Post Disposition Relief

(302) 577-5217

Eliza.Hirst@Delaware.Gov