

NAMSDL



National Alliance for Model State Drug Laws

**LEGAL BARRIERS FOR PEOPLE
IN RECOVERY FROM DRUG AND
ALCOHOL ADDICTION:
EXPUNGEMENT AND CIVIL RIGHTS**

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Twenty-four states provide a means by which a person convicted of a drug related offense may have the conviction expunged, set aside, vacated or the records sealed, or by which the convicted person may receive a certificate of relief from disabilities, certificate of good conduct, or certificate of rehabilitation.¹ This memorandum will discuss how the receipt of an expungement or certificate affects the convicted person's civil rights, including the right to vote and, for ease of reference, will refer to expungement, vacation, sealing of records, setting aside of convictions, and certificates of relief from disabilities, good conduct and rehabilitation as "expungement or certificate." For more information on expungement and its effect on a person's ability to receive a license or credential or expungement in general, please see the Barriers to Reentry: Licenses and Credentials memo and/or chart or contact a lawyer in your state.

Of the twenty-four states that provide expungement or certificates, five of those states do not correlate the expungement or certificate with a restoration of civil rights.² This is not to say that there is no other means by which a person convicted in Colorado, Maryland, North Dakota, Utah or Wisconsin can be restored to their civil rights after conviction of a crime, it simply means that such restoration is not included in the statutes regarding expunction or receipt of a certificate.

Arkansas Code Annotated § 16-90-902 provides that expungement of a criminal record restores all rights and privileges to the convicted person and the record shall not affect the individual's civil rights. Illinois³, Louisiana⁴, Nevada⁵, Ohio⁶, Rhode Island⁷, and Washington⁸ have similar provisions providing that a person is restored to all rights upon receipt of either an expungement or certificate.

¹ See, Ark. Code Ann. §§ 16-90-1201 and 16-90-902 – 16-90-906; Cal. Penal Code §§ 4852.01 – 4852.21; Colo. Rev. Stat. §§ 24-72-308.5 and 24-72-308.6; Haw. Rev. Stat. §§ 706-622.5, 706-622.8 and 831-3.2; 730 Il. Comp. Stat. § 5/5-5-5; Kan. Stat. Ann. § 21-6614; Ky. Rev. Stat. Ann. § 431.078; La. Rev. Stat. Ann. § 44:9; Md. Code Ann. Crim. Proc. §§ 10-105 and 10-109; Mass. Gen. Laws Ch. 94C §§ 34 and 44; Mich. Comp. Laws §§ 780.621 – 780.624; Minn. Stat. §§ 609A.01 – 609A.03; Miss. Code Ann. §§ 9-23-23, 41-29-139, 41-29-150, 99-15-26 and 99-19-71; Nev. Rev. Stat. §§ 179.245, 179.285 and 179.259; N.H. Rev. Stat. Ann. § 651:5; N.J. Stat. Ann. §§ 2A:168A-1 – 2A:168A-16; N.Y. Crim. Proc. Law § 160.58; N.Y. Correct. Law §§ 700 – 703-b; N.D. Cent. Code § 19-03.1-23; Ohio Rev. Code Ann. §§ 2953.32, 2953.33 and 2953.36; Or. Rev. Stat. § 137.225; R.I. Gen. Laws §§ 12-1.3-2 – 12-1.3-4; Utah Code Ann. §§ 77-40-101 – 77-40-113; Wash. Rev. Code §§ 9.92.066, 9.94A.637, 9.94A.640, 9.95.240 and 9.96.060; and Wis. Stat. § 973.015

² See, Colo. Rev. Stat. §§ 24-72-308.5 and 24-72-308.6; Md. Code Ann. Crim. Proc. §§ 10-105 and 10-109; N.D. Cent. Code § 19-03.1-23; Utah Code Ann. §§ 77-40-101 – 77-40-113; and Wis. Stat. § 973.015

³ 730 Il. Comp. Stat. § 5/5-5-5

⁴ La. Rev. Stat. Ann. § 44:9

⁵ Nev. Rev. Stat. § 179.285

⁶ Ohio Rev. Code Ann. § 2953.33

⁷ R.I. Gen. Laws § 12-1.3-4

⁸ Wash. Rev. Code §§ 9.92.066, 9.94A.637, 9.94A.640, 9.95.240 and 9.96.060

A certificate of rehabilitation which has been granted in California is automatically sent to the governor and acts as an application for a full pardon. If pardon is granted, the person is thereafter restored to all civil and political rights lost as a result of the conviction.⁹

In other states, namely Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, New Hampshire, and Oregon, the receipt of an expungement or certificate makes it as though the person was never arrested or convicted or that the proceedings against the individual had never occurred.¹⁰ Kansas restores all rights except the rights with regard to firearms.¹¹

In Minnesota, an order sealing the records of a person convicted of a controlled substance offense restores the person to the status that he or she occupied prior to being arrested.¹² In New Jersey and New York, a certificate of relief from disabilities may suspend disabilities arising from the arrest and conviction or may suspend only certain disabilities as named specifically in the document.¹³ New York law also provides that a certificate of good conduct may relieve a person of all disabilities or only some upon receipt of the certificate.¹⁴

Arkansas, Illinois and Kentucky provide exceptions in their housing statutes with regard to discrimination against persons with convictions for certain controlled substance crimes.¹⁵ Although not specifically mentioned in any of their expungement statutes, it would seem safe to assume that the restoration of a person's civil rights following expungement of a criminal conviction involving controlled substances would also involve the right to be free of discrimination in housing. However, any such assumption should be confirmed with an attorney in that state.

⁹ Cal. Penal Code §§ 4852.16 and 4852.17

¹⁰ See, Haw. Rev. Stat. § 831-3.2; Kan. Stat. Ann. § 21-6614; Ky. Rev. Stat. Ann. § 431.078; Mass. Gen. Laws Ch. 94C § 34; Mich. Comp. Laws §§ 780.622; Miss. Code Ann. §§ 41-29-139, 41-29-150, 99-15-26 and 99-19-71; N.H. Rev. Stat. Ann. § 651:5; Or. Rev. Stat. § 137.225

¹¹ Kan. Stat. Ann. § 21-6614

¹² Minn. Stat. § 609A.03

¹³ N.J. Stat. Ann. § 2A:168A-8 and N.Y. Correct. Law § 701

¹⁴ N.Y. Correct. Law § 703-a

¹⁵ See, Ark. Code Ann. § 16-123-307(e); 775 Il. Comp. Stat. § 5/3-106(G); and Ky. Rev. Stat. Ann. § 344.365(4) and the NAMSDL Barriers to Reentry memorandum regarding housing

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