



CAYMAN ISLANDS  
GOVERNMENT

## GUIDANCE NOTES

### Expungement of Criminal Records:

#### Automatic Expungements

*The Criminal Records (Spent Convictions) Law (2018 Revision) and  
The Criminal Records (Spent Convictions) (Applications for Expungement) Regulations), 2018*

**(Please visit [www.odg.gov.ky](http://www.odg.gov.ky) for application forms and additional guidance notes.)**

#### COMPLETING THE APPLICATION FORM- Additional Guidance

##### See Question 13 on the Application form

- This question is asking for details about your conviction(s).
- Provide as much information as you can. Your application will still be processed, even if you are unable to provide all the information. The Expungement Board will make inquiries with relevant agencies to gather and confirm all information relevant to your application.

##### Question 14 on the Application form

- This question is asking you to identify the specific offence(s) that you are applying to have expunged.
- By Law, you can only receive two (2) Expungements (See Q2 below, for more information).

#### AUTOMATIC EXPUNGEMENT- Frequently Asked Questions (FAQs)

##### **Q1: Are there convictions and offences that cannot be expunged?**

A1: Yes. Section 12 of *The Criminal Records (Spent Convictions) Law* sets out the convictions that cannot be expunged, as follows:

12. (1) *The following convictions cannot be expunged –*
- (a) *a conviction for an offence specified in Schedule 2;*
  - (b) *a conviction resulting in a sentence of imprisonment for life;*

- (c) a conviction resulting in a term exceeding 5 years, subject to the power in section 16(1)(c);*
- (d) a conviction against a corporate body;*
- (e) a conviction resulting in a sentence of detention during the court's pleasure; and*
- (f) a conviction for an offence described in paragraph (c), regardless of the sentence imposed where the person convicted is not under seventeen years old and it is a first offence.*

**Important Note:**

- **In relation to 12(d) above, this means that if there is a conviction against a corporate body, the corporate body cannot apply to have that conviction expunged.**

Schedule 2 of the Law also sets out the following offences for which the records cannot be expunged:

**SCHEDULE 2 – OFFENCES THE RECORDS OF WHICH CANNOT BE EXPUNGED**

1. *Treason*
2. *Murder*
3. *Manslaughter*
4. *Offences Against Morality under Part VB of the Penal Code (2018 Revision) where a person is sentenced to a custodial sentence of five years or more*
5. *Offences Against the Person under Part VI of the Penal Code (2018 Revision) where a person is sentenced to a custodial sentence of five years or more*
6. *Offences relating to terrorism*
7. *Offences relating to the trafficking of persons*
8. *Offences relating to care and protection of children and vulnerable persons*
9. *Offences relating to child pornography*
10. *Offences relating to a firearm as defined in Section 2*

**Q2: Is there a limit to the number of expungements you can receive?**

A2: Yes, the Law limits you to two (2) expungements, except for some special circumstances. The Law sets out the following:

*42. A person shall not be eligible to obtain more than two expungements unless the convictions are for multiple offences for which concurrent sentences were imposed, in which case those sentences shall be considered to be one conviction.*

**Q3: What is an “Automatic Expungement”?**

A3: The Criminal Records (Spent Convictions) Law (2018 Revision) sets out the following:

***Automatic expungement***

*15. Where a person has been convicted of an offence and has been sentenced for a period not exceeding five years, upon the expiration of the prescribed crime-free period, that person's criminal record shall be treated as expunged.*

Therefore, an automatic expungement is an expungement of your criminal record for which you become “automatically” eligible, if you meet the requirements under this section.

**Q4: What are the requirements for an Automatic Expungement?**

A4: To be eligible for an automatic expungement, you have to meet the following requirements:

- Your sentence was not for a period longer than 5 years, and
- You must have completed the crime-free period for your conviction.

**Q5: What is a “Declaration of Expungement”?**

A5: This is the official document that you will receive from the Expungement Board, if you apply and qualify for an Automatic Expungement.

**Q6: Do you have to apply for a Declaration of Expungement?**

A6: Yes, if you wish to receive a Declaration of Expungement you need to apply to the Expungement Board.

This requirement is set out as follows, in *The Criminal Records (Spent Convictions) (Applications for Expungement) Regulations*, 2018:

*5. (1) Where pursuant to section 15 of the Law, a person's criminal record is expunged by operation of law and that person wishes a declaration of that expungement, that person may apply to the Board in the manner set out in Form 3 of the Schedule for a Declaration of Expungement.*

**Q7: What is a “conviction”?**

A7: Section 2 of the Law explains that a conviction means:

- (a) a conviction in the Islands;
- (b) a conviction by or before a court outside the Islands; or
- (c) a finding in criminal proceedings that a person has committed an offence, done an act or made the omission charged.

Section 7 of the Law provides the following:

7. *The following findings or orders of a court shall be treated as convictions for the purposes of this Law -*

(a) *a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an order releasing, the person conditionally on entering into a recognisance to be of good behavior for a specified period or on other conditions determined by the court; and*

(b) *in the case of the juvenile court an order other than an order dismissing a charge.*

In other words, all sentences are considered to be convictions.

**Q8: What is “a crime-free period”?**

A8: For adults, the Law sets out the following:

21. (1) *The crime-free period (in the case of an order of a court other than an order of a juvenile court) means the period after a sentence is served during which the person has not been –*

(a) *convicted of an offence punishable by imprisonment;*

(b) *in prison because of a conviction for an offence; and*

(c) *unlawfully at large.*

For juveniles, the Law sets out the following:

22. (1) *The crime-free period (in the case of an order of the juvenile court) is the period after the date of the order during which the person has not been –*

(a) *subject to a control order;*

(b) *convicted of an offence punishable by imprisonment;*

(c) *in prison because of a conviction for an offence; and*

(d) *unlawfully at large.*

**Q9: How can you find out what crime-free period applies to your conviction?**

A9: There are different crime-free periods for adults and juveniles in Schedule 3 of the Law, as listed below:

**SCHEDULE 3 - CRIME-FREE PERIODS IN RELATION TO SENTENCES**

<b>Sentence</b>	<b>Crime-free period</b>
1. <i>A sentence of life imprisonment</i>	<i>No Expungement</i>
2. <i>A sentence exceeding five years</i>	<i>15 years, but subject to the approval of the Board in accordance with the criteria prescribed in and under section 16(1)(c)</i>
3. <i>A sentence of imprisonment for a term exceeding three years but not exceeding five years</i>	<i>10 years</i>
4. <i>Sentence of imprisonment for a term exceeding six months but not exceeding three years</i>	<i>7 years (adult) 5 years (juvenile)</i>
5. <i>A sentence of imprisonment for a term not exceeding six months</i>	<i>5 years (adult) 2.5 years (juvenile)</i>
6. <i>A fine or any community based order</i>	<i>5 years (adult) 2.5 years (juvenile)</i>
7. <i>An order sending the person to a rehabilitation school under section 21(1)(b) as read with section 20(3)(a) of the Youth Justice Law (2005 Revision)</i>	<i>2.5 years</i>
8. <i>A sentence of probation</i>	<i>5 years</i>
9. <i>A community service order under section 42 of the Penal Code (2018 Revision)</i>	<i>5 years</i>
10. <i>An order made under section 20(1)(b) of the Youth Justice Law (2005 Revision)</i>	<i>2.5 years</i>
11. <i>An order imposing a disqualification, disability or prohibition, or any other penalty other than a conviction</i>	<i>A period beginning with the date of conviction and ending on the date on which that disqualification, disability, prohibition or other penalty, other than a fine or conviction ceases or ceased to have effect</i>
12. <i>A curfew order or exclusion order as defined in sections 5 and 11, respectively, of the Alternative Sentencing Law, (2008 Revision)</i>	<i>5 years</i>
13. <i>A sentence of being bound over to keep the peace, an absolute discharge, conditional discharge, or admonishment and discharge</i>	<i>6 months. If the order itself exceeds 6 months, then the crime-free period will be completed at the time of completion of the order</i>

14. <i>A suspended sentence (including a suspended sentence supervision order referred to in section 21 of the Alternative Sentencing Law (2008 Revision)</i>	7 years
15. <i>An order under section 158 of the Criminal Procedure Code (2017 Revision) (Special verdict where accused found insane, after trial, at the time of offence charged)</i>	7 years for a term not exceeding 6 months but not exceeding 36 months and 5 years for a sentence of imprisonment for a term not exceeding 6 months

**Q10: How do you calculate when your crime-free period begins and ends?**

A10: Section 18 of the Law provides as follows:

*18. For the purposes of this Law, a reference to the expiration according to law of a sentence of imprisonment imposed for an offence shall be read as a reference to the day on which the sentence expires, without taking into account –*

- (a) any period during which the person could be entitled to statutory release or any period following a statutory release date;*
- (b) any remission that stands to the credit of the person in respect of an offence; or*
- (c) an earlier date of release due to parole.*

Therefore, it depends:

- If you served the full sentence ordered by the Court for your conviction, then your sentence expires and your crime-free period starts on the date you are released.
- If you were released earlier (e.g. on parole), your sentence expires and your crime-free period starts after the date of period you would have served, had you completed the full sentence ordered by the Court for your conviction.

**Q11: What is the effect of an expungement?**

A11: The Law sets out the following as the effect of an expungement of a criminal record, in general:

*26. A person shall where the criminal record of that person has been expunged, be treated, for all purposes in law, as a person who has not –*

- (a) committed;*
- (b) been charged with;*
- (c) been prosecuted for;*
- (d) been convicted of; or*
- (e) been sentenced for,*

*the offence which was the subject of that criminal record.*

See also Sections 27-30 of the Law for the effect of expungement in relation to specific proceedings and circumstances.

**Q12: Are there circumstances where you have to disclose an expunged criminal record?**

A12: Yes. Sections 33(1) & (2) set out the circumstances where persons shall disclose expunged criminal records.

**Q13: Who deals with applications for Expungement?**

A13: An Expungement Board, appointed by Cabinet under the Law, deals with applications for Expungements.

**Q14: What are the powers of the Expungement Board?**

A14: The Expungement Board has the power “*to approve, disapprove or revoke the expungement of a criminal record*” (S6 (2)).

**Q15: How do I find out more information about expungements?**

A15: You should refer to *the Criminal Records (Spent Convictions) Law (2018 Revision)* and any Regulations made under this Law.

You can also visit [www.odg@gov.ky](http://www.odg@gov.ky) or submit questions to [Expungement@gov.ky](mailto:Expungement@gov.ky)

**DISCLAIMER:** The guidelines contained in these guidance notes are for general commentary only. None of the material is, or should be regarded as, legal advice or as a guarantee that any application made for an expungement of one’s record will be granted. Accordingly, no person should rely on any of the contents of these guidance notes or other information on the website without first obtaining legal advice from a qualified Attorney-at-Law. The Office of the Deputy Governor, their principals, employees and/or agents or the Expungement Board, accept no responsibility to any person who acts or relies in any way on any of the material provided herein without first obtaining legal advice.