

Court Service Center

New Hampshire Trial Courts

ANNULMENT OF CRIMINAL RECORDS

General information:

- Are you eligible to apply to have a criminal record annulled?
See RSA 651:5 and Criminal Court Rule 31 for more information on eligibility and time frames.
- If you are eligible will the charge be annulled?
Not necessarily. The court has discretion in many cases over whether a petition for annulment will be granted.
- If the charge to be annulled is personal possession of $\frac{3}{4}$ oz. or less of marijuana pursuant to RSA 318-B:2-c please refer to special instructions contained on a separate dedicated checklist.

Information regarding eligibility and forms:

What happens if you were charged with an offense but were NOT CONVICTED?

- You were arrested but no charge was ever entered with the court:
 - **Arrest occurred before 01/01/2019:** You may petition to have the arrest annulled at any time on Petition to Annul Record (NHJB-2317-DSe)
 - **Arrest occurred after 01/01/2019:** You may petition to have the arrest annulled at any time on Petition of Eligibility for Annulment of Record - Non Conviction (NHJB-3056-DSe)
- A charge was filed and disposed **before January 1, 2019** and was dismissed, *nolle prossed* (not prosecuted) or you were found not guilty by a judge: You may petition at any time on Petition to Annul Record (NHJB-2317-DSe)
- A charge was filed and disposed **after January 1, 2019**, and the charge was:
 - *Nolle prossed* (not prosecuted) or vacated,
You may petition at any time on Petition of Eligibility for Annulment of Record - Non Conviction (NHJB-3056-DSe)
 - The charge was dismissed by the court,
You may file your petition after the expiration of the appeal period (on the 31st day after the judge's dismissal order) on Petition of Eligibility for Annulment of Record - Non Conviction (NHJB-3056-DSe)
 - You were found NOT GUILTY
You may petition to have charge(s) annulled after the expiration of the appeal period only if you were found not guilty of all the charges stemming from the same incident on Petition of Eligibility for Annulment of Record - Non Conviction (NHJB-3056-DSe)

What happens if you were CONVICTED?

- Have you completed all the terms and conditions of the sentence?
The waiting period for annulments begins the day after you complete all the terms and conditions of your sentence. This means the day after the last day:
 - fines were paid in full,
 - restitution was paid in full,
 - a suspended sentence is complete and
 - a term of good behavior, probation or participation in any court ordered program is over.
- Were you sentenced to a drug court, a mental health court or through a veteran's track?
If yes – you may petition for annulment one year after you complete all programs and conditions imposed by the mental health court as well as all other terms of the court's sentence.

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- Is the offense you wish to have annulled listed under the Habitual Offender statute (RSA 259:39)?
If yes, this may limit whether the petition will be granted.
- Does the offense require a greater penalty if you are convicted a 2nd time within a certain period of time?
If yes – the annulment time frame does not begin to run until that period of time has lapsed.
- Is the conviction for the offense of a driving under the influence?
(RSA 265-A:2,I, 265:82, 265:82-a, *also see* RSA 265-A:21 which provides that no annulment petition may be filed for 10 years)
- Were you convicted of more than one offense stemming from the same arrest?
 - If yes, you must wait to file your petition to annul until all the time requirements for all charges have been met (see RSA 651:5 VI(b)), unless
 - The conviction was for a minor motor vehicle offense (not a Driving Under the Influence charge) in which case a petition to annul may be submitted unless otherwise prohibited by statute (see limitations under RSA 651:5, I through IV).
- Was the conviction for any violent crime, for a felony obstruction of justice crime or for an offense requiring an extended term of imprisonment under RSA 651:6?
If yes – your petition may be dismissed.
- Have you been charged with another offense since the date of your conviction that would bar annulment under RSA 651:5 or extend the time frames for annulment?
If yes – your petition may be dismissed.
- Generally speaking, if all the above have been satisfied you may file a petition to annul. However, the Judge always has discretion about whether to grant any petition for annulment. Please note - if your petition for annulment has been denied, no further petition may be filed with the court for 3 years.

What time frames govern charge readiness for annulment and what are the applicable forms?

- Convictions prior to: 01/01/2019 use Petition to Annul Record (NHJB-2317-DSe).
- Convictions after: 01/01/2019 use Petition of Eligibility for Annulment of Record - Conviction (NHJB-3057-DSe).
- For a VIOLATION:
One (1) year after all the terms and conditions of the sentence are complete unless any of the above exceptions apply. (Also see separate detailed instructions and forms for the charge of Personal Possession of Marijuana $\frac{3}{4}$ oz or less.)
- For a CLASS B MISDEMEANOR or for a CLASS A MISDEMEANOR charge under RSA 318-b:26, II(d) or (e):
Two (2) years after all the terms and condition of the sentence are complete unless any of the above exceptions apply.
- For CLASS A MISDEMEANOR convictions under RSA 631:2-b – Domestic Violence:
Ten (10) years unless within that ten (10 year period the applicant is again convicted under RSA 631:2-b in which case annulment of the earlier offense shall not be granted until the more recent conviction is eligible.
- For all other CLASS A MISDEMEANORS:
Three (3) years after all the terms and conditions of the sentence are complete unless any of the above **exceptions** apply.

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- For FELONIES:
For a CLASS A FELONY (except felony offense under RSA 318-B:26, II):
Ten (10) Years.
For a CLASS B FELONY (except felony offense under RSA 645:1, II or RSA 318-B:26, II):
Five (5) Years.
For a FELONY offense under RSA 645:1, II:
Ten (10) Years.
For a FELONY offense under RSA 318-B:26, II:
Two (2) Years.

How to begin the process of filing a petition to annul?

- You may request a computer case summary from the court or from the Information Center to assist if you do not have all the case information you need to complete a petition.
- You must complete and file a separate petition for each charge you seek to have annulled. Each petition must be filed with the court jurisdiction where the charge was disposed.
- Make sure you select the correct Petition form for charges that occur either before or after January 1, 2019 because the process is slightly different for the two time frames. There are also separate instructions and forms if the charge you wish to annul is personal possession of $\frac{3}{4}$ of an ounce or less of marijuana. Please refer to those instructions and the appropriate forms.
- You will need to include your name, address, phone number and date of birth.
- You will need the case number, the offense, the offense date, RSA violated, date of conviction, date sentence was completed, and a full description of the sentence that was imposed (if convicted).

How much will this cost?

- Filing fee of **\$125 per court location**. This covers multiple cases if the petitions are filed at the same time.
- If the petition requires the matter to be referred to the Department of Corrections (DOC), you will be charged an additional **\$100** for an investigation of your criminal record. That fee is paid directly to the DOC not to the court. DOC will notify you by letter when the fee is due.
- Unless the charge was dismissed, not prosecuted or found not guilty, the Department of Safety will also charge a fee of **\$100** to research and correct the criminal history if the Petition to annul is granted. This fee is paid directly to them, not to the court. They will notify you by letter when the fee is due.
- You may request that any of the above fees be waived if you can demonstrate you do not have the present ability to pay the fee. Your request to waive a fee must be made to the agency or court where the fee is owed.

What happens next?

- If there was **no conviction** and all appeal periods have expired the court will issue an order on the petition.
- If the conviction was prior to January 1, 2019 or is a Class A misdemeanor or Felony**, the petition will be mailed to the DOC and to the arresting law enforcement agency for an investigation and report.

The DOC will contact you to fill out a questionnaire and pay the required fee. The court will not take action on the petition until the DOC files their report, so your prompt response will expedite the process.

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In most cases you will be notified by mail of the Court's decision. In some instances, a hearing may be scheduled prior to the court making a decision.

The annulment process is lengthy. Do not expect an immediate answer. It can take several months for the Court to receive the information from DOC and law enforcement and rule on the petition. Plan ahead if this affects a job opportunity.

- If the conviction is for a Violation or Class B misdemeanor after January 1, 2019**, the court will review your request and either grant or deny the request. If it issues an order conditionally granting the petition, notice will be sent to the prosecutor who will have 20 days from the day they receive the court notice to file an objection. The charge will not be referred to DOC for an investigation. If no objection is filed and the court grants your petition, the court will issue a certificate of annulment which will be mailed to you.

Forms and Instructions are available at any NH District or Superior Court

Additional information can be found at:

<http://www.courts.state.nh.us/>