

# NEW YORK

A youthful offender adjudication is not a criminal conviction, and does not disqualify a youth from later holding public office or public employment, nor does it prevent a youth from receiving any license granted by public authority. N.Y. CRIM. PROC. § 720.35.

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## Juvenile Record Contents

A juvenile record describes all “accusatory instrument[s]” filed against a youth. N.Y. CRIM PROC. § 720.15. A record for a youthful offender includes all official records that are on file with the court, police agency, and the division of criminal justice services. N.Y. CRIM PROC. § 720.35.

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## Confidentiality of Law Enforcement Records

There is no distinction between law enforcement and court records.

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## Confidentiality of Court Records

Juvenile records relating to the juvenile’s arrest and disposition are kept separate from adult records and are not accessible to the public. N.Y. FAM. CT. ACT § 381.3.

### Exceptions:

- Any institution to which a youth has been committed. N.Y. CRIM. PROC. § 720.35.
- The Division of Parole and Probation. N.Y. CRIM. PROC. § 720.35.
- Court personnel: If a child is later convicted of a crime, the judge in the court in which he was convicted may view the juvenile records. N.Y. CRIM. PROC. § 381.3.
- School personnel: The designated educational official of the juvenile’s school may receive notice of the adjudication only, and only for purposes related to the student’s educational plan and reentry into the community. The notification must be kept separate from the juvenile’s school records and must be destroyed when the child leaves the school district. N.Y. CRIM. PROC. § 720.35.
- Commissioner of Mental Health. N.Y. N.Y. FAM. CT. ACT § 380.1.
- Commissioner of Mental Retardation and Developmental Disabilities. N.Y. FAM. CT. ACT § 380.1.
- Case review panel. N.Y. FAM. CT. ACT § 380.1.
- Attorney General. N.Y. FAM. CT. ACT § 380.1.
- Child’s parent or guardian. N.Y. FAM. CT. ACT § 381.3.
- Child. N.Y. FAM. CT. ACT § 381.3.
- Records may also be made available upon court order.

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## Availability of Records Online or in Commercial Background Reports

Juvenile records are not available online.

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## Consequences for Unlawfully Sharing Confidential Information

No information found.

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## Sealing or Expungement

**Sealing:** N.Y. FAM. CT. ACT § 375.3. *See Also* N.Y. CRIM. PROC. § 720.15; N.Y. FAM. CT. ACT §§ 375.1, 2.

**Expungement:** There is no statutory provision authorizing expungement of juvenile records, but the Family Court has the power to expunge records originating from its own court. *See In re Daniel PP*, 224 A.D.2d 906 (N.Y. App. Div. 1996). *See also In re Dorothy D.*, 400 N.E.2d 1342, 1343-44 (N.Y. 1980).

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## Excluded Offenses

Most felonies cannot be sealed, including, but not limited to, murder, kidnapping, robbery, arson, sexually motivated offenses, and offenses using firearms or weapons on school property. N.Y. FAM. CT. ACT § 375.2. *See also* N.Y. FAM. CT. ACT § 301.2.

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## Automatic (without application)

**Sealing:** If a delinquency proceeding ends “in favor of the child,” the record will be sealed, unless within 8 days any party or the court on its own motion demonstrates that it would be against the interests of justice. *See, e.g.*, N.Y. FAM. CT. ACT § 375.1. *Matter of Steven R.*, 121 Misc.2d 245 (N.Y. FAM. CT. 1983); *Matter of David H.*, 124 Misc.2d 190 (N.Y. Fam.Ct. 1984). “In favor of” means that the petition is withdrawn, dismissed, adjusted by the probation department, or the presentment agency chooses not to proceed to petition. Sealing under this provision may occur even if there are subsequent charges pending against the juvenile. *See, e.g., Matter of Robert S.*, 123 Misc. 2d 225, 227 (N.Y. Fam. Ct. 1984).

**Expungement:** N.Y. family courts have authority to expunge their own records. *See, e.g., Matter of Daniel PP*, 224 A.D.2d 906 (N.Y. App. Div. 1996). *See also* N.Y. FAM. CT. ACT § 375.3, *Matter of Andrew L.*, No. D-21217/10, 2012 WL 679676, at \*3 (N.Y. Fam. Ct. 2012). However, the Family Court does not have the authority to expunge police records; thus, there is no mechanism for expunging police records. *In re Dorothy D.*, 400 N.E.2d 1342, 1343-44 (N.Y. 1980). Expungement is available for fingerprints, palmprints and photographs, if a juvenile was adjudicated for a felony, is at least 21 years old, and has no criminal convictions. N.Y. FAM. CT. ACT § 354.1.

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## Eligibility

**Sealing:** If the delinquency proceeding ends “in favor of” the child, the clerk of court must notify him or her, and seal the record. N.Y. FAM. CT. ACT § 375.1. If a child is adjudicated delinquent, with a few exceptions (“designated felony acts” – see above) the court can seal the record upon the written motion of the child, once he or she has turned 16. N.Y. FAM. CT. ACT § 375.2.

**Expungement:** Expungement applies when there was no merit to the charges brought against the child. *See, e.g., Matter of Todd H.*, 49 N.Y.2d 1022 (N.Y., 1980) (in which the court recognized the power of Family Court to order the NYC Police Department to destroy its records relating to respondent’s arrest and the charges of juvenile delinquency filed against him when the court lacked a finding that he committed the crime).

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## Notification

If the delinquency proceeding ends “in favor of” the child, the clerk of court must notify him or her, in addition to the presentment agency, the heads of the probation and police departments and other law enforcement agencies, and seal the record. N.Y. FAM. CT. ACT § 375.1.

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## Petition/Application

**Sealing:** If a child is adjudicated delinquent, with a few exceptions (“designated felony acts” – see above), the court can seal the record upon the written motion of the child, once he or she has turned 16. N.Y. FAM. CT. ACT § 375.2. Notice of the motion must be sent to “the presentment agency” at least 8 days before the return date of the motion; answering affidavits are served at least 2 days before. N.Y. FAM. CT. ACT § 375.2.

**Expungement:** Although there is no formal process outlined by statute, NY Family Court law states that the court has the inherent power to expunge court records. *See, e.g., Matter of Daniel PP*, 224 A.D.2d 906 (N.Y.A.D. 3 Dept., 1996). *See also* N.Y. FAM. CT. ACT § 375.3, *Matter of Andrew L.*, No. D-21217/10, 2012 WL 679676, at\*3 (N.Y. Fam. Ct. 2012).

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## Hearing

None found.

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## Court Process

**Sealing:** Once a motion to seal the record has been filed, the court will state on the record its reasons for granting or denying the motion—if it is denied, the child cannot reapply for at least one year, unless the denial order specifically permits it. N.Y. FAM. CT. ACT § 375.2. Among the reasons to grant the motion are that it would best serve “the continued rehabilitation” of the individual. *Matter of A.B.*, No. D-0000-04/06B, 2006 WL 3437735 (N.Y. Fam. Ct. 2006). The motion will not be granted, however, if the court finds that it would not serve “the interest of justice.” *In re Carlton B.*, 268 A.D.2d 368 (N.Y. App. Div. 2000) (rejecting a petitioner’s motion to seal his juvenile adjudication for assault, after he had been convicted of murder).

**Expungement:** There is no formal process outlined by statute, but family courts in New York can expunge its own records if it chooses to. *See, e.g., Matter of Daniel PP*, 224 A.D.2d 906 (N.Y.App. Div. 1996). *See also* N.Y. FAM. CT. ACT § 375.3, *Matter of Andrew L.*, No. D-21217/10, 2012 WL 679676, at\*3 (N.Y. Fam. Ct. 2012).

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## Effect

**Sealing:** Once a record is sealed, it is made available only to the child, or his or her designated agent. The records and papers of the probation department may be used by any probation service for the purpose of adjustment of cases, but the probation department may not use the records for the purpose of preparing an investigation or report. CW2D § 119A:496.

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## Fee

None found.

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## Consequences for Sharing Sealed/Expunged Information

None found.

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## Resources

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, Inmate Population Information Search, <http://nysdoccslookup.doccs.ny.gov/>