



OFFICE OF THE STAFF JUDGE ADVOCATE
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Clearing an Arrest without a Subsequent Conviction

How to Clear an Arrest from Your Record

Can I clear an arrest from my record?

It depends. Some arrests can *never* be cleared, including arrests for sex-related crimes and drivers license suspensions.

Are there other requirements to clear an arrest from my record?

Yes. You must also meet these requirements:

- You had no felony convictions during the 5-year period before your arrest.
- You were released after your arrest and not charged or convicted of a crime.
- You have never been under community supervision for a sex-related crime for this arrest.
- Your arrest was not part of a “criminal episode,” and you have never been charged for any other crime as a part of a criminal episode.

What if I was convicted, but appealed and won?

If you won your appeal and you meet all other requirements, you are eligible to have the arrest cleared from your record.

How do I ask the Court to clear my record?

You must:

- Fill out a court form, called *Petition to Clear Record*.
- Sign the form in front of a Notary, then make extra copies.
- Submit an official record of your fingerprints. (The clerk’s office can tell you how to do this.)
- File the *Petition to Clear Record* and your fingerprints in the same county where you were arrested.
- Go to a court hearing. (The clerk will give you the date when you file your *Petition*.)

Do I have to fill out any other court forms?

Yes. You must also fill out a court form, called *Order to Clear Record*. Take it to your hearing. If the judge agrees to clear the arrest from your record, s/he will sign the *Order*. Then, the court clerk will send a certified copy of the *Order* to return or destroy all records about this arrest.

Will my court record be destroyed?

No. But the Court will not allow *anyone* to see or use your old record again. It is a misdemeanor to violate the Court Order.

If my record is cleared do I have to tell anyone about the arrest?

No, *unless* you are under oath in a criminal proceeding about the arrest. But, you can explain that the arrest was cleared from your record.

Do I have to go to Court to clear the record?

Yes. You must go to a court hearing so a judge can decide your case. Any of the people and agencies listed in your *Petition* may go to your hearing, too. If they do not want your record cleared, they can tell the judge at your hearing.

When will the hearing take place?

The hearing will be at least 30 days after you file your *Petition*. The court will send you a notice with the exact date, time, and location of your hearing.

Do I have to give notice to anyone?

Yes. You must send a copy of the *Petition* to the District Attorney. Send it by certified mail, return receipt requested. Keep the receipt or mailing of your records.

Will the Court automatically approve my Petition?

No. The Court will *not* approve your *Petition* if:

- You do not meet the requirements, or
- If an official or agency opposes your Petition, and the judge agrees with their opinion.

How can I prove my record was cleared?

If the court approves your *Petition*, everyone listed on your *Petition* will be ordered to remove the arrest from your record. [Should they ask for a record check to confirm record is cleared?]

Do I need a lawyer?

You do not *have to* have a lawyer, but it may be a good idea. Asking for a record clearance can be complicated. If you need help, contact your local lawyer referral service.

If you are eligible to speak with an attorney from the Client Services Office, free of cost, please visit our booking application to schedule an appointment at www.sjaclientservices0366.setmore.com.

I've Been 'TITLED!' – What Does That Mean and How Can I Fix It?



Q. What is Titling?

A. Titling is the decision to place the name of a person in the 'subject' block of a CID report of investigation (ROI). Unlike a criminal conviction, which requires proof beyond a reasonable doubt, to title someone only requires existence of credible information that a person committed a criminal offense. Legally, this is a very low standard, far below the standard required at trial by a court of law. Titling is not a legal or judicial decision, it is an operation procedure used by CID.

Q. If I'm titled, does that mean I'm going to trial?

A. Not always. Remember, a titling decision is not a legal or judicial decision. Titling does not mean an individual has been arrested, charged or convicted of a crime. The primary purpose of titling is to ensure that information contained in the CID report can be retrieved for law enforcement and security purposes. Once a person is titled, the ROI is indexed in the Defense Clearance and Investigations Index (DCII).

If the person being titled is in the Army, they will also be indexed in the Army Crimes Records Center (CRC). Being indexed in the DCII and the CRC means that the titling can follow you around and be accessed when you apply for some types of jobs, especially federal jobs.

Think of it as similar in some ways to an arrest. There might be enough evidence to arrest a person, but not enough to go to trial. Even though the person does not have a conviction, a check of their criminal history might show an arrest that the person will need to explain to a future employer.

Q. Can Titling affect military AND civilian careers?

A. Yes. The information contained in these databases may be used for a variety of purposes such as: making civilian employment decisions, military assignment decisions, such as battalion and brigade commander assignments, military promotion decisions and security determinations

More than 27 agencies have access to the DCII and it receives approximately 35,000 requests for information a day. This information is retrievable from DCII and CRC for 40 years.

Q. Can my command take any actions based solely upon the Titling decision?

A. Yes. If a Soldier is titled, his or her commander will be notified. Additionally, a commander may flag a Soldier based on an initial ROI. A commander may also recommend suspension of a Soldier or DoD civilian's security clearance. An individual who has been titled will also have his or her name listed in the DCII, which is a computerized registry that contains all DoD investigations.

Q. Am I allowed to request an amendment to the CID Report and titling decision?

A. Yes, but you bear the burden of proof of substantiating the request. It is nearly impossible to get "untitled," i.e. getting your name removed from the ROI. To have a name removed, a person must conclusively establish that the wrong person's name has been entered as a result of mistaken identity.

But wait - there's another tactic you can try. The good news is that it is much easier to amend the ROI from founded to unfounded.

The first step is getting the ROI. If you do not have a copy, you must submit a request under the Privacy Act of 1974 to the director of CRC at: Director, U.S. Army Crime Records Center, Attention: Freedom of Information/Privacy Act Division, US Army Records Center, 27130 Telegraph Road, Quantico, VA 22134.

Next, the Soldier comes to the legal assistance office for help in drafting a memorandum, with supporting documentation, on why the amendment to the ROI should be granted. (Please be aware that "new and relevant" information we need to bring your request for a formal review does not include information about career goals, exemplary changes in life, and similar justifications. These will not be considered as a basis for the decision to amend.)

After receipt of the request to amend, the CRC will then forward these documents to the CID Staff Judge Advocate and the CID Investigative Operations Section. If everybody agrees then the ROI will be amended. If this approach fails, the Soldier can apply for redress with the Army Board for Correction of Military Records. Your Legal Assistance Office can also help you with this process as well.

Q. I'm out of the Army and no longer entitled to Legal Assistance services. Can you provide further information on how to amend the CID report?

A. Here's the exact language from 32 Code of Federal Regulations (CFR) § 633.12, Amendment to CID reports, which says "USACIDC reports of investigation (ROI) are exempt from the amendment provisions of the Privacy Act and AR 340-21. Requests for

amendment will be considered only under the provisions of this regulation. Requests to amend USACIDC reports will be granted only if the individual submits new, relevant and material facts that are determined to warrant their inclusion in or revision of the ROI. The burden of proof is on the individual to substantiate the request. Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a USACIDC report of investigation is an investigative determination that is independent of whether or not subsequent judicial, nonjudicial or administrative action is taken against the individual. Within these parameters, any changes in the ROI rest within the sole discretion of the Commanding General. USACIDC, whose decision will constitute final action on behalf of the Secretary of the Army with respect to this regulation."

You should send your request for amendment, along with new and relevant information, to: Director, U.S. Army Crime Records Center, Attention: Freedom of Information/Privacy Act Division, US Army Records Center, 27130 Telegraph Road, Quantico, VA 22134.

Here's a link to an excellent article by MAJ Patricia A. Ham, printed in the *The Army Lawyer*, explaining the Titling process in greater depth.

https://www.loc.gov/rr/frd/Military_Law/pdf/08-1998.pdf

Q. What if I have more questions?

A. If you are entitled to Legal Assistance, please email at usarmy.cambell.101-abn-div.mbx.client-services@mail.mil and schedule an appointment with a legal assistance attorney.

