

MVLS - Expungement 101

1. What Is Expungement
 - a. Removal of a court or police record from public access
 - b. What is included in court/police record
 - i. Nearly any touch with the criminal system – arrests, citations, convictions and non-convictions
 - c. Why Expunge
 - i. Barriers to employment, housing, loans, credit, child custody, etc.
 - d. Relevant Law – Criminal Procedure – Title 10

2. What Can Be Expunged – Criminal Procedure Article – 10-101 to 10-109
 - a. Generally only non-convictions can be expunged
 - i. Nolle Prosequi – State’s Attorney (SA) declines to prosecute
 1. Limitations – must wait 3 years or sign waiver
 - ii. Stet – SA places on indefinite stet docket. Case can be reopened for any reason within the first year by any party, and for good cause by judge in year two & three.
 1. Limitations – must wait 3 years.
 - a. Exception – good cause motion.
 - i. Fairly high threshold – specific testimony - employer
 - iii. Probation Before Judgement (PBJ) – Individual is found guilty, but judges strikes the guilty and imposes probation. Sentencing is suspended.
 1. Limitations – Later of 3 years or probation discharge (3 year max for district, 5 year max for circuit), and if subsequent conviction within 3 years, PBJ is no longer expungable.
 - a. Exception – good cause motion.
 - i. Fairly high threshold – specific testimony - employer
 - b. Not expungable – DUI
 - c. Subsequent conviction can be shielded
 - d. Oct. 1 law change – removes subsequent conviction rule for nol pros and stet, but not entirely for PBJ
 - iv. Release Without Charge (RWOC) – SA brings no formal charge. Primarily Baltimore City
 1. Note – There is no court case, so no court expungement. Must contact police department to obtain appropriate request form.
 - v. Not guilty
 1. No filing fee or waiver required
 2. Limitations – must wait 3 years or sign waiver
 - vi. Dismissal – judge dismisses case
 1. Limitations – must wait 3 years or sign waiver
 - vii. Juvenile Transfer - Individual charged as an adult, and then transferred to juvenile court. Expungement for adult charge.
 1. Limitations – none, no waiting period, no waiver
 - viii. Pardon

1. Limitations – must wait 3 years or sign waiver
- b. Expungable Convictions
- i. No Longer a Crime
 1. Exs. – marijuana possession less than 10 grams, rental car agreement violation
 2. If it's a really unusual disposition, may want to confirm it's still a crime
 - ii. Nuisance Crimes, includes:
 1. Limitations – Later of 3 year waiting period of 3 years after completing sentence or probation
 - a. Urinating/defecating in public place
 - b. Panhandling
 - c. Drinking alcohol in public
 - d. Vagrancy
 - e. Loitering
 - f. Utilizing transit without payment
 - g. Sleeping in public
 - h. Obstructing free passage of another in public place
 - iii. Nuisance Crimes, BUT only if found NCR (not criminally responsible)
 1. Limitations – 3 years after being found NCR
 - a. Trespass
 - b. Telephone Misuse
 - c. Disturbing the Peace
 - iv. Transportation Crimes –
 1. Jailable traffic offenses – Transportation Article 27-101
 - a. List in Appendix
 - b. Limitations
 - i. DUIs – not expungable
 2. MTA - Transportation Article 7-705, except (b)(6) - Carry or possess any explosives, acids, concealed weapons or other dangerous articles
 - a. Limitations – 3 year waiting period or waiver
 - b. Expectorant
 - c. Smoke or carry a lighted or smoldering pipe, cigar, or cigarette
 - d. Consume food or drink, or carry any open food or beverage container
 - e. Discard litter, except into receptacles designated for that purpose
 - f. Play or operate any radio, cassette, cartridge, tape player, or similar electronic device or musical instruments, unless such device is connected to an earphone that limits the sound to the hearing of the individual user
 - g. Carry or possess any live animals, except seeing-eye animals and hearing-ear animals properly harnessed and accompanied by a

- blind person or a deaf person, and small animals properly packaged;
 - h. Board any transit vehicle through the rear exit door, unless so directed by an employee or agent of the Maryland Transit Administration
 - i. Urinate or defecate, except in restrooms
 - j. Fail to move to the rear of any transit vehicle when requested to do so by the operator or a police officer
 - k. Fail to vacate a seat designated for the elderly or handicapped when requested to do so by the transit vehicle operator, train conductor, or a police officer
 - l. Except by contract with the Administration, solicit the purchase of any goods or services.
 - m. Obstruction, hinderance, or interference with operation of transit vehicle or railroad passenger car.
 - v. Minor (non-jailable) traffic offenses – not expungeable, but can contact MVA to remove.
 - 1. Tip – to determine if it’s a minor traffic offense, on Case Search, if the record includes a dollar amount next to the category “Fine”, then it is likely a minor traffic offense.
 - vi. Civil citations – if could have been charged as a crime, it is expungable
 - c. Additional Expungement Hurdles
 - i. Pending/open criminal action
 - 1. Any other criminal matter must be closed
 - a. Arrests, warrants, charges, etc.
 - b. First year of stet = open
 - c. PBJ – during time of probation = open
 - ii. Unit Rule – if any of the charges within a case can’t be expunged, then none can.
 - a. Ex. Protesting – one case with multiple charges: disturbing the peace (nol pros), inciting violence (stet), second degree assault (guilty).
 - i. Because of the guilty (2nd degree assault), the nol pros and stet also can’t be expunged.
3. How to Expunge
 - a. Gather Complete Record
 - i. Case Search
 - 1. <http://casesearch.courts.state.md.us/casesearch//inquiry-index.jsp>
 - ii. Criminal Justice Information System (CJIS)
 - 1. Individual must go to Department of Public Safety and Corrections, Reisterstown Road Plaza, 6776 Reisterstown Road, Suite 102, Baltimore, MD 21215.
 - 2. 8:30 am to 6 pm – Monday – Friday
 - 3. 1st and 3rd Saturday from 8 am to 4:30 pm

4. \$38 payable in money order, certified or personal check to CJIS-Central Repository. NO CASH.
 - iii. Petition requires case number (court records) and tracking number (CJIS & court record)
 - iv. Ask client if any aliases or other possible names
- b. File Petition
- i. For RWOC – file form with police department
 - ii. For minor traffic offense, file form with MVA
 - iii. For expungements, file where case was ultimately resolved (District or Circuit)
 1. If transferred from District to Circuit, include both cases on petition, file in Circuit if decided there
 2. Only Maryland criminal records
 3. File in city/county where criminal issue resolved
 - a. Baltimore City – file with specific courthouse
 - i. Info. on Case Search listing
 - b. Baltimore County – Towson
 - c. Other jurisdictions – call court to confirm
 - iv. One petition for each expungable case
 - v. Filing fee is \$30 per petition
 1. Except for not guilty and dismissal
 2. Filing fee waiver should be filed with each petition
 3. <http://mdcourts.gov/courtforms/joint/ccdc088.pdf>
 - vi. Form 4-504.1 – Petition for Expungement of Records
 1. <http://www.courts.state.md.us/courtforms/joint/ccdccc072.pdf>
 - vii. Tool for filing – mdexpungement.com
 1. May not be comprehensive, still need to review Case Search & CJIS
 2. Put in case numbers and prepare court filing
 - viii. General Waiver and Release – if filing before 3 year waiting period
 1. Releases any tort claims
 2. Best practice:
 - a. Do not advise individual on whether to waive right
 - b. Have client sign release - MVLS has sample language
 3. <http://www.courts.state.md.us/courtforms/joint/ccdccc078.pdf>
- c. Court Process (4-6 months)
- i. Clerk will serve SA and law enforcement agencies
 - ii. Upon receipt, SA has 30 days to object
 1. If no object, judge must grant expungement
 2. If objection:
 - a. Must state specific objection
 - b. Judge will schedule a hearing
 - iii. Judge grants Order for Expungement
 1. Court records should be expunged within 48 hours of Order

2. Clerk serves Order on each records custodian.
3. Each custodian has 60 days to comply

d. Tips –

- i. Representation agreement – MVLS sample
 1. <http://mvlslaw.org/attorneyresources/> - under Attorney Packets, titled Sample Representation Agreement
- ii. Preparing petition
 1. Do not include incriminating information in petition, as case can be reopened by SA
 - a. Ex. As a result of the following incident
 - i. Went to Court
 - ii. Charged with _____
 - b. I was charged with...
 - i. List main charge with “and related charges”
- iii. Advise client that any new criminal activity will prevent expungement
- iv. Check Case Search to make sure records have been removed
- v. Keep copies of all records. Once item is expunged, records aren’t retrievable.
- vi. If client asks, generally once expunged, they do not have to disclose on application
- vii. Red flag issue – immigration
 1. Anyone that isn’t a citizen should consult with an immigration legal services organization or attorney prior to seeking an expungement.
 - a. Expungement creates inconsistencies between state criminal record and federal criminal record that can lead to citizenship application being denied.

4. Shielding – Criminal Procedure Article – 10-301 to 10-306

- a. Can only use once in lifetime, one county and one court (district or circuit)
- b. 3 year waiting period after completing any parole, probation, sentencing
- c. Eligible convictions
 - i. Limitations – Bar if found guilty of any other activities during three year waiting period
 - ii. No pending cases
 - iii. Specific nonviolent convictions
 1. Disorderly conduct
 2. Disturbing the peace
 3. Failure to obey a lawful order
 4. Malicious destruction of property under \$1000
 5. Trespass – posted property
 6. Possession
 - a. Drug possession
 - b. Paraphernalia possession
 7. Prostitution

- 8. Incarcerable driving offenses
 - a. Driving without a license, on a suspended/cancelled/revoked license, or uninsured
 - d. Considerations – generally better to expunge all eligible items first.
 - i. Shielding – one time only
 - ii. Expungement – no limit to number of expungements that can be filed
 - e. Court form – available
5. General Issues
- a. Malpractice Coverage – both clinic & full representation
 - b. Conflict of Interest
 - i. Clinics – exception to general conflicts of interest, unless known
 - ii. Regular screening for case acceptance
6. Appendix
- a. Filing Fee Waiver
 - b. Representation Agreement
 - c. Expungement
 - i. Expungement Petition
 - ii. General Waiver
 - iii. Sample Release
 - iv. CJIS Sample
 - v. Case Search Sample
 - vi. Statutes
 - d. Shielding
 - i. Court Forms
 - ii. Statutes
 - e. Juvenile Expungement
 - i. Sample Motion
 - ii. Statutes