



Expungement and Shielding

MARYLAND VOLUNTEER LAWYERS SERVICE

Expungement – What Is It?

- An arrest or a court case, **even if you are not convicted of a crime**, is a public record
 - It will show up on any background check, public court records
 - May impact getting a job, apartment, loan, credit, child custody

- With an expungement, arrest or criminal records are destroyed or sealed
 - Becomes unavailable to the public, employers and background check agencies
 - Removes both court record and criminal record
 - May be available to some government agencies, police, military, etc.

What Results Can Be Expunged?*

*Applies to the state of Maryland (not Federal or other states)

- Nolle Prosequi
- Stet – after a 3 year waiting period
- Probation Before Judgement (PBJ) – after 3 year waiting period or completion of probation, whichever longer
 - If there is no subsequent conviction within 3 years
 - DUIs can't be expunged
- Release Without Charge (RWOC)
- Not Guilty
- Dismissal
- Acquittal

What Results Can Be Expunged? (continued)

- Juvenile Transfer – If you were charged as adult, but then transferred to juvenile
 - The original Adult charge can be expunged from your record
 - There is a separate process for juvenile expungement (see slide 22)
- Civil Citations –
 - If could have been charged as a crime (ex. Open Container)
- A felony charge **can** be expunged if the result was Nolle Prosequi, Stet, Probation Before Judgement, Not Guilty, Dismissal, or Acquittal

Convictions That Can be Expunged

- Nuisance crimes – urinating in public, panhandling, drinking alcohol in public, vagrancy, loitering, using transit w/out payment, sleeping in public
 - 3 years from conviction or sentence, whichever longer
 - If found NCR (not criminally responsible), then trespass, telephone misuse, disturbing the peace is also expungable
- No Longer a Crime – ex. marijuana possession less than 10 grams, no longer a crime
 - Case search website may not indicate amount
 - May need to get case file from courthouse and get a copy of the police report
- Transit offenses
 - This covers minor violations like consuming food or drink on a transit vehicle or playing a radio without headphones
 - The exception is when the offense involves explosives, acids, a concealed weapon, or other dangerous articles

What Can't Be Expunged?

- Most convictions
 - The only exceptions are nuisance crimes, a crime that is no longer a crime, transportation & MTA citations
 - Probation after conviction is generally not expungable
- Pending criminal proceeding
 - Any request for expungement filed while there is a pending criminal action will be denied
 - Includes first year of stet, completion of the probation term of the Probation Before Judgment
- “Unit rule”
 - If there are multiple charges in one case, and any of the charges can't be expunged then none of the charges can be expunged.
 - The only exception is the conviction of a crime that is no longer a crime, which can be expunged
 - Ex. Someone was arrested while protesting. There was one case with multiple charges: disturbing the peace (result: nol pros), inciting violence (stet), second degree assault (guilty).
 - Because of guilty for **one action**, the nol pros and stet results can't be expunged either

What Can't Be Expunged? (cont.)

- Probation Before Judgment (PBJ)
 - If there is another conviction within 3 years of getting PBJ, then PBJ can't be removed
 - Minor traffic convictions (non-incarcerable) do not count for the subsequent rule
 - Violation of Probation (VOP) should not be considered a subsequent conviction
- Non-Incarcerable Traffic Offenses
 - The MVA has a separate expungement process for non-incarcerable traffic offenses.
 - (see slide 16)
- Civil Citations that could not be charged as a crime

Determining Your Record

- Maryland Judiciary Case Search
 - <http://casesearch.courts.state.md.us/casesearch>
 - Case Search only goes back to the 1990s
 - Be aware – information may be missing or wrong; names are commonly misspelled
 - Example: Would not include an arrest and release without formal charges, although this would be on your record

Determining Your Record (cont.)

- Criminal Justice Information System (CJIS) – will include any activity that involved being fingerprinted
 - To obtain CJIS, go between 8:30 a.m. and 6:00 p.m., Monday through Friday, and the 1st and 3rd Saturday of the month from 8:00 a.m. and 4:30 p.m. to Reisterstown Plaza, 6776 Reisterstown Road, Suite 102, Baltimore, Maryland.
 - Cost is \$38.00 payable in money order, certified or personal check to CJIS-Central Repository. Cash is not accepted.
- General recommendations
 - If you have only a few items on your record and have a good understanding of exactly what interaction you've had with the police and judicial process, you generally don't need CJIS and can use Case Search.
 - If you have many items on your record, it is better to get a CJIS.
 - If you have a common name, you may want to get your report to identify all items.

Filing Your Expungement

- <http://mdexpungement.com/>
 - Put in each case number, and it will automatically determine if the case is likely expungable
 - Will assemble petition documents for court submission
- Each petition is \$30, unless request filing fee waiver or assisted by legal services organization
 - No filing fee for Not Guilty
- Petitions for a client don't have to all be filed at the same time: If you file a petition, and then identify more expungable items, you can file more petitions

Filing Your Expungement (cont.)

- When completing the form, use caution to not include incriminating information
 - Ex. You received a nol pros for disturbing the peace. In the expungement form, you mention that you discharged a firearm and shot someone. State's Attorney could use that information to re-open the case and prosecute.
 - Generally, just list what the crime was that you were charged with
 - If you're using www.mdexpungements.com, it will automatically do this
- If you are listed as co-defendant
 - When an expungement order is issued in your case, it should remove your listing as co-defendant as well

General Waiver and Release

- For Nol Pros, Not guilty, Dismissal, and Pardon
 - If less than 3 years from disposition date (the day the judge issues the decision, not guilty, PBJ, etc., not the day you were charged)– expungement requires General Waiver form
 - Waives any claims you might have against police or other (ex. police brutality)

Once Your Expungement is Filed

- States' Attorney has 30 days to object
- If there is an objection, a hearing will be scheduled
- It is supposed to take 90 days for the court to issue the order to expunge
 - In Baltimore City, the process can take 4 to 7 months
- Once the order is issued:
 - Court removes records in approximately 24-48 hours
 - Agencies (police department, criminal record bank, etc.) have 60 days

Next Steps

- Check your records
 - Do a Case Search of all the cases, including those where you are co-defendant
 - You may want to get another CJIS report to confirm removal
- Always keep a copy of your court records and expungement order.
 - Court destroys records once they are expunged

Removing Other Records

- For RWOC (release without charge)
 - You can request to do this expungement with the police department that arrested you
 - This requires a different form specific to each police department
- From Oct. 1, 2007 forward, these should be automatically removed
 - Arrests prior to then – not removed without expungement

Removing Other Records (cont.)

- For minor traffic offenses:
 - Must file request with the Motor Vehicle Administration
 - Applies **only** to minor traffic offenses (generally, those that are payable with a fine)
 - Fee: There is no fee for requesting a MVA expungement, although you will need to get a driving record (approximately \$10)
 - Go to the MVA to request the form or go to the MVA website
- MVA will automatically expunge your driver record 3 years after a conviction if:
 - You were not convicted of another moving violation or criminal offense involving a motor vehicle during the previous 3 years; and
 - Your driver's license has never been suspended or revoked; and
 - You have never been convicted of, or been granted Probation Before Judgment (PBJ) for DUI or failing to remain at scene of accident resulting in injury or death

Shielding

- Shielding does not destroy the record, but removes it from public view
- **You can only shield your record once**
 - **In no more than one court (district or circuit) and one county**
- - Specific nonviolent misdemeanor convictions
 - Disorderly conduct
 - Disturbing the peace
 - Failure to obey a lawful order
 - Malicious destruction of property under \$1000
 - Trespass – posted property
 - Drug/paraphernalia possession in very limited circumstances
 - Prostitution
 - Incarcerable driving offenses
 - Driving without a license, on a suspended/cancelled/revoked license, or uninsured
- There is a 3 year waiting period **AFTER** completing any parole, probation, etc.
 - No pending criminal activity
 - No subsequent convictions (guilty)

Juvenile Sealing & Expungements

- Why expunge your juvenile record?
 - Records are not automatically sealed
 - Record will show up as “sealed”, better to expunge and entirely remove, if eligible
- These factors must be in place:
 - You are 18 or older and it has been 2 years since juvenile action
 - You were adjudicated delinquent only once
 - There has been no conviction since the juvenile case
 - You have had no pending delinquency or criminal matters
 - You can't expunge a juvenile offense that if you were tried as an adult would be a felony, violent crime or 4th degree sexual offense
 - You were not required to register as a sex offender
 - The case didn't involve a firearm in a crime of violence
 - All restitution has been fully paid; and
 - The outcome of the case was nol pros, dismissed, didn't find allegations to be true, or not held within 2 years after petition filed

Juvenile Sealing & Expungements (cont.)

- Court also considers
 - Individual's best interest
 - Individual's stability in community
 - Safety of public

Pardons

- Very limited
 - Granted by Governor and discretionary
 - MVLS and other legal service providers do not assist with pardons
 - For more information, please visit <https://www.dpscs.state.md.us/publicservs/pardons.shtml>

Disclosing Your Record

- Do you have to disclose **arrests** on employment applications?
 - Once they have been expunged or shielded, you do not have to disclose them
 - But some employers are still going to have access – military, security clearance, etc. In these circumstances, it's generally better to disclose.
- Do you have to disclose **convictions** on employment applications?
 - If your conviction has been expunged or shielded, you do not have to disclose it
 - Again, some employers will still have access to this information

Red Flag Issues for Expungement

- If you are not a United States citizen – use caution
 - Can create issues between state and federal records
 - Consult an immigration attorney
- Private, third party businesses that perform background checks for a fee can't be made to remove your record
 - They may pull your data **before** your record has been expunged and then keep that information in their system
 - When someone pays for a background check, they may get your record as it was before the expungement

Get Help with Expungements

- Maryland Volunteer Lawyers Service
 - Phone intake – (800)510-0050
 - Online – <http://mvlslaw.org/get-legal-help/apply-for-services/>
- Homeless Persons Representation Project
 - Phone – 410-685-6589
 - <http://www.hprplaw.org/>
- Office of the Public Defender – if you are already represented by OPD in criminal matter
- Legal Aid Bureau – Lawyer in the Library clinic
 - Enoch Pratt Free Library, Pennsylvania Avenue branch, 1531 W. North Avenue, Baltimore, MD 21217
 - 4th Saturdays of the month – 12 – 2 pm



Need Legal Help?

Maryland Volunteer Lawyers Service can help.

MVLS is a nonprofit organization that provides quality pro bono civil legal assistance to Marylanders with limited or no income at low or no cost.

Sample of cases MVLS can assist with:

- | | | |
|------------------------------|---------------------------------|-------------------------------------|
| Adoption | Divorce & Custody | Public Benefit Denial |
| Adult and Child Guardianship | Income Tax Disputes | Reinstatement of License (not auto) |
| Bankruptcy – Chapter 7 | Landlord/Tenant Disputes | School Suspension |
| Contract Disputes | Foreclosure/Property Issues | Tax Sale Foreclosure |
| Expungements | Name Changes/Birth Certificates | Tort Defense |
| Debt/Consumer Disputes | Nonprofit Organizations | Unemployment Compensation |
| Deed Changes | Wills/Estates | Wage Claims |



APPLY ONLINE
www.mvlslaw.org

CALL MVLS
410-547-6537-6537 · 800-510-0050

PHONE INTAKE HOURS
Monday - Thursday · 9 - 1 pm⁴