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Criminal Record Shielding

MARYLAND VOLUNTEER LAWYERS SERVICE

What Is Shielding

- The removal of court or police records from public view
  - How it is different from expungement
  - Records accessible by certain organizations – Criminal Procedure § 10-302
    - Written request to court
- Maryland Second Chance Act - MD Code Criminal Procedure §10-301 to § 10-306
  - Shielding – render a court record and police record relating to a conviction of crime inaccessible by members of the public

Why Shield

- Individual does not have to disclose shielded items to employers, schools, and others
- Some criminal records can't be expunged, but can be shielded
  - Expungement – better choice when item can be expunged or shielded
- Some convictions that can be shielded can remove bar to expunging other records
  - Shielded convictions not counted under three year look back period for PBJs (probation before judgments)

Shielding v. Expungement

- Shielding – record not destroyed, just removed from public view
- Shielding available only for convictions
- If conviction under the Justice Reinvestment Act for expungement and also is shieldable, waiting period for shielding is 3 years, expungement is 10-15 years
  - What is best strategy for client
- Only one shielding order during lifetime

What Can Be Shielded

Twelve Non-Violent Convictions - § 10-301

- Disorderly conduct
- Disturbing the Peace
- Failure to Obey a Reasonable and Lawful Order
- Malicious Destruction of Property
- Trespass on Posted Property
- Possessing or Administering a controlled dangerous substance
- Possessing or Administering a noncontrolled substance
- Use or possession with intent to use drug paraphernalia

What Can Be Shielded

- Driving Without a License
- Driving While Privilege is Canceled, Suspended, Refused, or Revoked
- Driving While Uninsured
- Prostitution Under § 11-306 (a)(1)
  - Must be specific statue
- § 10-301 specifies the relevant statute for each listed item
  - For example –
    - Driving without a License under § 16-101 of the Transportation Article

Shield or Expunge

- Disorderly conduct
- Disturbing the Peace
- Failure to Obey a Reasonable and Lawful Order
- Malicious Destruction of Property
- Trespass on Posted Property
- Possessing or Administering a controlled dangerous substance
- Possessing or Administering a noncontrolled substance
- Use or possession with intent to use drug paraphernalia
- Driving Without a License
- Driving While Privilege is Canceled, Suspended, Refused, or Revoked
- Driving While Uninsured
- Prostitution Under § 11-306 (a)(1)

Shield or Expunge

- Disorderly conduct – Shielding: 3-year wait; Expungement: 10-year wait
- Disturbing the Peace – Shielding: 3-year wait; Expungement: 10-year wait
- Failure to Obey a Reasonable and Lawful Order – Shielding: 3-year wait; Expungement: 10-year wait
- Malicious Destruction of Property – Shielding: 3-year wait; Expungement: Not eligible
- Trespass on Posted Property – Shielding: 3-year wait; Expungement: 10-year wait
- Possessing or Administering a controlled dangerous substance – Shielding: 3-year wait; Expungement: 10-year wait
- Possessing or Administering a noncontrolled substance – Shielding: 3-year wait; Expungement: 10-year wait
- Use or possession with intent to use drug paraphernalia – Shielding: 3-year wait; Expungement: 10-year wait
- Driving Without a License – Shielding: 3-year wait; Expungement: Not eligible
- Driving While Privilege is Canceled, Suspended, Refused, or Revoked – Shielding: 3-year wait; Expungement: Not eligible
- Driving While Uninsured – Shielding: 3-year wait; Expungement: Not eligible
- Prostitution Under § 11-306 (a)(1) – Shielding: 3-year wait; Expungement: 10-year wait

Accessing Shielded Records

- Police for legitimate criminal justice purposes
- Employers, school and government listing agencies if they are required to conduct a criminal background check
- Person required to inquire into criminal background under Family Law Article
  - Generally organizations that work with or supervise children
- The person that sought the shielding or their attorney
- Health occupation boards
- The Medical Cannabis Commission
- A person who uses volunteers to care for or supervise children
- A person who swears under oath that they employ or wish to employ a person to take care of or supervise a minor or vulnerable adult

Filing a Shielding Petition

- Obtaining the Full Record
  - Review on Maryland Judiciary Case Search
  - Obtain the official criminal record report from the Criminal Justice Information System
    - Because shielding can only be granted once, it is VERY IMPORTANT to make sure you know exactly what is on the client's record before you file
    - Clients can obtain their report at the Department of Public Safety and Corrections on Reistertown Road for $38
    - Or get fingerprinted at a local police department or finger printing business
  - Check with client for any aliases, maiden names, nicknames, or any other possible names

Filing a Shielding Petition

- The petition can only be filed in one court and one county
- Example
  - Client has the following on their record –
    - Disorderly Conduct in Baltimore City District Court; and
    - Disturbing the Peace in Baltimore City Circuit Court.
    - Is their record Shieldable?

    - Or client's disorderly conduct is in Baltimore City District Court; and
    - Disturbing the Peace in Baltimore County District Court.
    - Is their record Shieldable?

    - Or client's disorderly conduct, and disturbing the peace are both in Baltimore City District Court in different cases.
    - Is their record Shieldable?

Filing a Shielding Petition

- The petition can only be filed in one court and one county
- Example
  - Client has the following on their record –
    - Disorderly Conduct in Baltimore City District Court; and
    - Disturbing the Peace in Baltimore City Circuit Court.
    - Is their record Shieldable? **NO. CLIENT COULD ONLY SHIELD ONE OF THESE.**

    - Or client's disorderly conduct is in Baltimore City District Court; and
    - Disturbing the Peace in Baltimore County District Court.
    - Is this Shieldable? **NO. CLIENT COULD ONLY SHIELD ONE OF THESE.**

    - Or client's disorderly conduct, and disturbing the peace are both in Baltimore City District Court in different cases.
    - Is this Shieldable? **YES. CLIENT COULD SHIELD BOTH OF THESE.**

Filing a Shielding Petition

- If client has charges in multiple counties, they will have to choose which to shield
- If the client has charges in both District and Circuit court, they will have to choose which to shield
- If client has multiple eligible convictions all in one court and county, then can file all on one petition
- Practice Tip – If your client has multiple charges in multiple counties, have a conversation about whether shielding will accomplish their goals
  - Given that shielding can only be done once in a lifetime, it may not be worth using that one opportunity if it won't have the desired results
    - Second consideration - has the client stopped engaging in criminal activity?
    - Given that filing a shielding position will permanently eliminate this option in the future, you and the client need to make sure this is the right course for the client

Filing a Shielding Petition

- Petition – similar to expungement petition
- Form – CC-DC-CR-148
  - https://www.courts.state.md.us/sites/default/files/import/courtforms/joint/ccdccr148.pdf
- Filing Fee - $30
  - If MVLS client, utilize filing fee waiver
    - https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccdc088.pdf
- Waiting Period
  - Can't file until three years after the end of any jail term, probation, parole or mandatory supervision
    - Not three years from disposition date

☐ CIRCUIT COURT ☐ DISTRICT COURT OF MARYLAND FOR _____
City/County

Located at _____ Case No. _____
Court Address 1st Case Listed

_____
Petitioner

PETITION FOR SHIELDING UNDER MD. SECOND CHANCE ACT
(Criminal Procedure §§ 10-301 through 10-306)

Petitioner, _____ (Name), _____ (Date of Birth) hereby requests shielding of certain criminal convictions as authorized by law, and says in support thereof:

1. Petitioner was convicted of the following offense(s) in the following cases:

☐ Disorderly conduct under § 10-201(c)(2) of the Criminal Law Article, Case No(s): _____

☐ Disturbing the peace under § 10-201(c)(4) of the Criminal Law Article, Case No(s): _____

☐ Failure to obey a reasonable and lawful order under § 10-201(c)(3) of the Criminal Law Article, Case No(s): _____

☐ Malicious destruction of property in the lesser degree under § 6-301 of the Criminal Law Article, Case No(s): _____

☐ Trespass on posted property under § 6-402 of the Criminal Law Article, Case No(s): _____

☐ Possessing or administering a controlled dangerous substance under § 5-601 of the Criminal Law Article, Case No(s): _____

☐ Possessing or administering a noncontrolled substance under § 5-618(a) of the Criminal Law Article, Case No(s): _____

☐ Use of or possession with intent to use drug paraphernalia under § 5-619(c)(1) of the Criminal Law Article, Case No(s): _____

☐ Driving without a license under § 16-101 of the Transportation Article, Case No(s): _____

☐ Driving while privilege is canceled, suspended, refused, or revoked under § 16-303 of the Transportation Article, Case No(s): _____

☐ Driving while uninsured under § 17-107 of the Transportation Article, Case No(s): _____

☐ Prostitution (not assignation) under § 11-306(a)(1) of the Criminal Law Article, Case No(s): _____

2. Petitioner was not convicted of an offense arising from the same incident, transaction, and/or set of facts that is not eligible for shielding.
3. At least three (3) years have passed since the Petitioner has satisfied the sentence(s) - including parole, probation, and/or mandatory supervision - for all convictions for which shielding is requested, and Petitioner has not been convicted of a new crime during this time period.
4. There are no pending criminal charges against the Petitioner.
5. This Petitioner has not previously been granted shielding.

Signature of Attorney | Date

Printed Name

Address

City, State, Zip | Telephone Number

E-mail | Cell Phone Number

Signature of Petitioner | Date

Address

City, State, Zip | Telephone Number

E-mail | Cell Phone Number

Notice to Victim(s): You have the right to offer objections or additional information relevant to the petition to shield criminal records under the Md. Second Chance Act in all proposed actions. Submit your information in writing to the court listed above. The Court may take action as soon as 30 days after the petition is served.

CC-DC-CR-148 (10/2015)

Reset

Barriers to Shielding

Similar to Expungement -

- Unit Rule
  - All convictions from the one incident must be shieldable. If one isn't, then none can be shielded.
- Pending Criminal Matter
  - An active criminal case is a bar to granting a shielding petition
- Waiting Period
  - If the client is convicted of another crime within the three years shielding waiting period, then the client must wait until the subsequent conviction becomes eligible for shielding before the first conviction can be shielded
    - If the subsequent conviction isn't eligible for shielding, then the prior conviction also won't be eligible if it's within the three year waiting period

Barriers to Shielding

Domestically Related Crimes - § 6-233

If a victim falls within one of these two categories, then it can't be shielded

- The victim was in a sexual relationship with the defendant within 12 months of the crime; or
- The victim was a person eligible for relief as defined in Family Law § 4-501
  - Current or former spouse
  - Cohabitant – person who had a sexual relationship and lived with client for at least 90 days in last year
  - Related by blood, marriage or adoption
  - Parent, stepparent, child or stepchild of client or victim who resides or resided with either for 90 days in last year
  - Vulnerable adult
  - Person who has a child with the client
  - Person who was in sexual relationship with client within last year

After You File

- The Court forwards the petition to the State's Attorney's Office
- The SAO has 30 days to object to the petition
- The Court also sends written notice to the victim(s) in the case, and gives them an opportunity to provide relevant information
- If the SAO objects, a hearing will be scheduled

Next Steps

- The timeline is similar to the expungement timeline in each court
- When you file, make sure to request a date stamped copy, if non-MDEC
- Calendar for six months to check-in with the court
- Once you receive the order, confirm it's been removed from Case Search

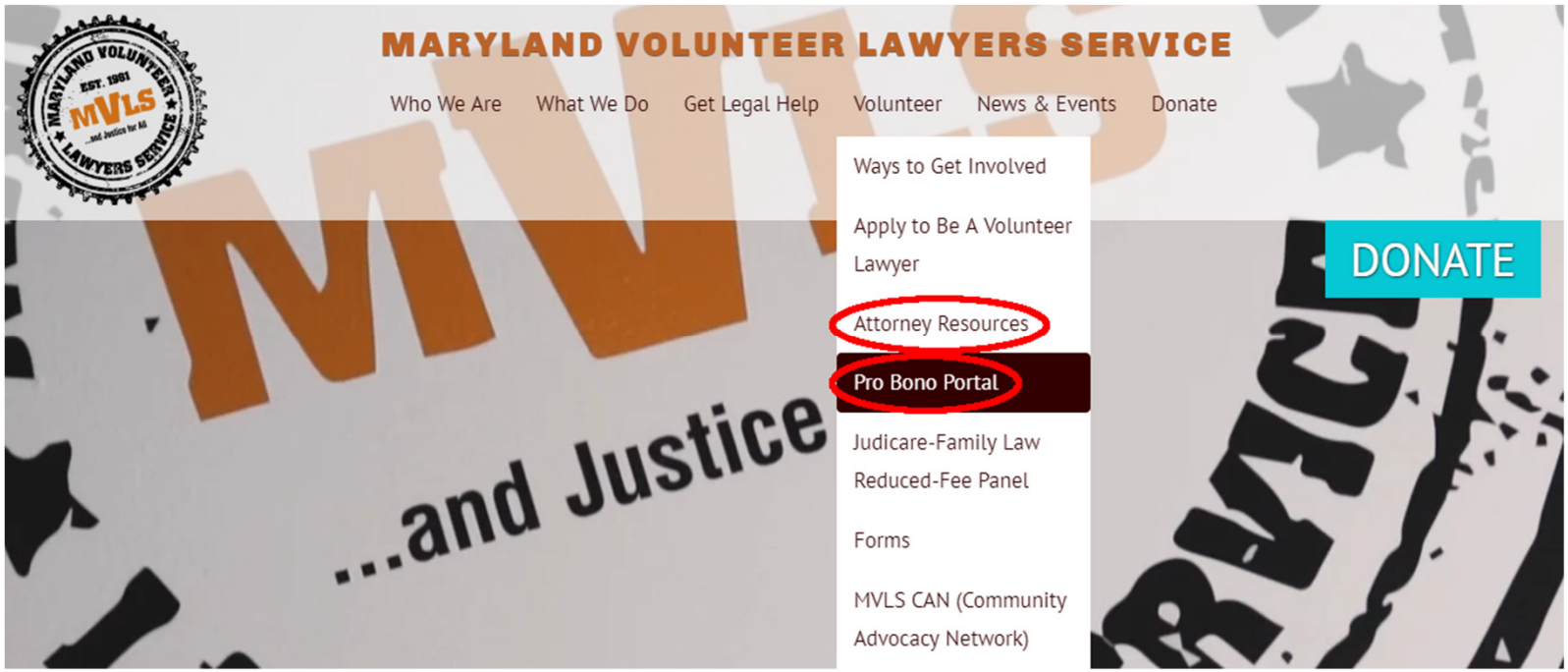
Expungement Updates

- October 1 changes to expungement law
- Use expungement petition with October 2018 date
  - Some courts rejecting, even though the non-guilty petition didn't change, other than the date
- All civil citations fall under expungement category
- 3 felonies added as expungable
  - Burglary - 1st, 2nd and 3rd. 4th is not expungable.
  - Felony theft. Often a theft charge with "more than" means felony.
  - Controlled Dangerous Substance (CDS) possession with intent to distribute. Must be "intent", not actual distribution.
- All come with 15 year waiting period and no subsequent convictions that can't be expunged

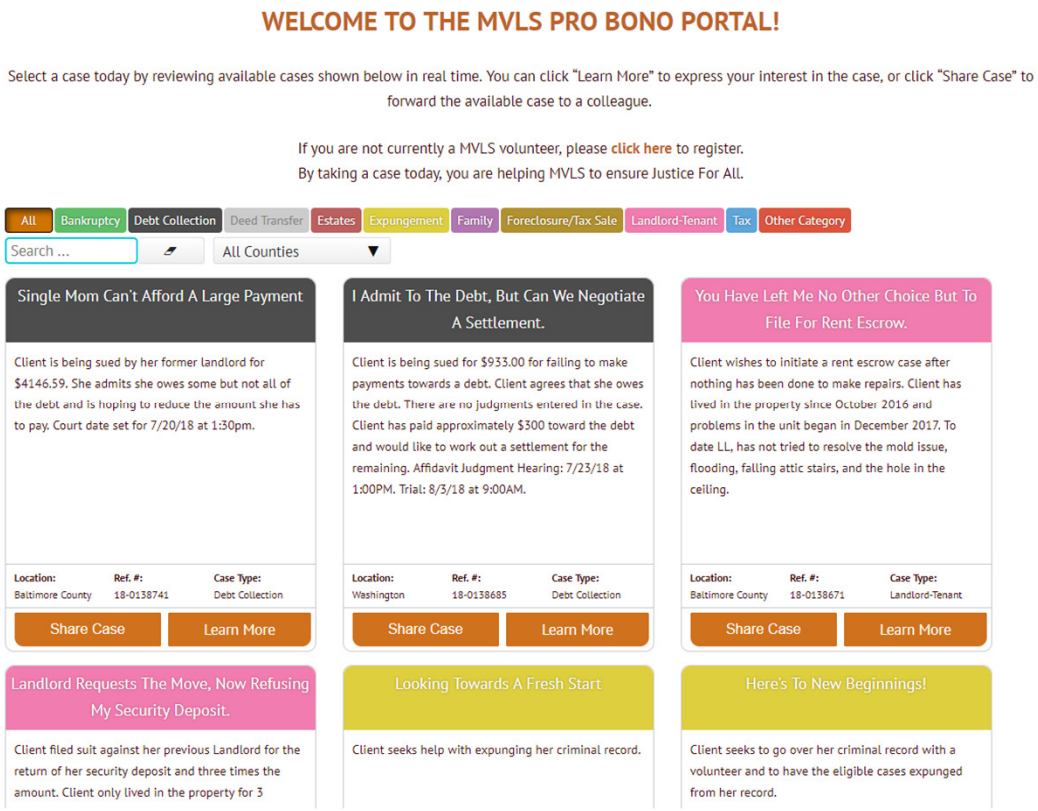
Questions?

- Chris Sweeney, Workforce Development Coordinator, csweeney@mvlslaw.org or 443-451-4094.
- Susan Francis, Deputy Director, sfrancis@mvlslaw.org or 443-451-4084.

Resources for MVLS Volunteers:
Looking for Pro Bono Cases?



New Pro Bono Portal



FREE Upcoming Training & Volunteer Opportunities:
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Jan. 30 – Bankruptcy: Nuts and Bolts of Chapter 7
9 am – 3 pm

February 7 – Estate Planning 101

9 am – 12:30 pm

February 7 – Estate Administration 101
1 - 5pm

Feb. 12 – Love and Taxes: How to Counsel Your Clients in Sticky Romantic Situations
12 - 1 pm

Feb. 21 – Of Love and Regret: Family Law Hot Topics

12 - 1 pm