

MVLS Shielding Presentation Outline

1. What is Shielding
 - a. Removal of court or police records from the public view
 - i. The cases must be removed from case search.
 - ii. It is different from expungement.
 - iii. The records can only be accessed by a specific list of organizations laid out in the statute. Criminal Procedure § 10-302.
 1. These parties must file a request form with the court before accessing the case.
 - b. Why Shield
 - i. Employers, schools, and state agencies cannot ask anyone to disclose their shielded criminal record during interviews, nor can they fire or deny anyone because they did not disclose their shielded record.
 - ii. Expungement of the convictions may be impossible.
 - iii. Shielded records will not be considered convictions for MD Code Crim. Pro. §10-105 purposes.
 1. Shielded convictions will not be considered convictions within the probation before judgment window when considering the eligibility of expungement petitions.
 - c. Shielding vs Expungement
 - i. Shielding does not remove the records from the court database like expungement. It only removes it from case search and other public searches.
 1. Courts, police, and other agencies will not destroy shielded records like they do with expunged records.
 - ii. Expungement is not always available for convictions, but shielding is only available for convictions.
 - iii. The crimes eligible for expungement differ some from those eligible for shielding.
 - iv. For convictions listed in the Justice Reinvestment Act, you must wait 10 to 15 years to expunge, but shielding only requires a three year waiting period.
 - v. Only one shielding order can be granted in a lifetime.
 1. If your petition is denied, you can continue to file shielding petitions until one is granted.
 - d. Relevant Law
 - i. Maryland Second Chance Act (MD Code Crim. Pro. §10-301 to §10-306)
2. What can be shielded
 - a. Maryland Code Criminal Procedure §10-301 lists 12 nonviolent convictions are eligible for shielding;
 - i. Disorderly conduct;
 - ii. Disturbing the peace;
 - iii. Failure to obey a reasonable and lawful order;

- iv. Malicious destruction of property in the lesser degree;
- v. Trespass on posted property;
- vi. Possessing or administering a controlled dangerous substance;
- vii. Possessing or administering a noncontrolled substance;
- viii. Use or possession with intent to use drug paraphernalia;
- ix. Driving without a license;
- x. Driving while privilege is canceled, suspended, refused, or revoked;
- xi. Driving while uninsured;
- xii. Prostitution under §11-306(a)(1).

3. Who Can Access Shielded Records?

- a. The statute allows for nine instances where the client's shielded records can be viewed.
 - i. Police for legitimate criminal justice purposes;
 - ii. Employers, schools, and government licensing agencies if they are required by law or regulation to conduct a criminal background check;
 - iii. A person that is authorized or required to inquire into an individual's criminal background under §5-561(b), (c), (d), (e), (f), or (g) of the Family Law Article;
 - 1. Mostly organizations that work with or supervise children.
 - iv. The person who asked for the shielding or that person's attorney;
 - v. Health occupations boards which determine licensing of physicians;
 - vi. The Medical Cannabis Commission;
 - vii. A person who uses volunteers to care for or supervise children;
 - viii. 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;
 - ix. A person who is accessing the shielded record on behalf of and with written authorization from a person or governmental entity described above.
- b. In order to view these records, the person or organization would have to file a request form with the court where the shielding petition was filed.
- c. If a person or entity is granted their petition to view the shielded records, they may not share the information contained in the records with anyone who was not granted the privilege to view them by the court.

4. How to File

- a. Gather Complete Records
 - i. Check Maryland Judiciary Case Search to find your client's criminal record.
 - 1. If the cases are old enough they may either not appear on case search, or their dispositions may not appear.
 - 2. You can order a disposition from the court where the offense was prosecuted.

- a. The courts each have their own system to handle these requests, so call the court and ask for the process if you are unsure.
 - ii. Have client obtain a CJIS (Criminal Justice Information System) report
 - 1. Individual can go to Department of Public Safety and Corrections, Reisterstown Road Plaza, 6776 Reisterstown Road, Suite 102, Baltimore, MD 21215.
8:30 am to 6 pm- Monday- Friday.
1st and 3rd Saturday from 8 am to 4:30 pm.
\$38 payable in money order, certified or personal check to CJIS- Central Repository. NO CASH.
 - 2. Or go to local police department or fingerprinting business.
 - iii. Ask client for any aliases or other possible names.
 - iv. Make sure that the incidents your client wishes to shield are convictions.
 - 1. If your client has a charge for one of the crimes eligible for shielding, but was not convicted, then they may be eligible for an expungement.
- b. You must file a Petition for Shielding Form with only one court and in only one county.
 - i. Check the box next to the conviction or convictions your client wishes to shield and list the case numbers.
 - 1. Make sure to list all shielding eligible convictions on the form because the court will only grant one petition.
 - ii. Form CC-DC-CR-148- Petition for Shielding Under Maryland Second Chance Act.
 - 1. <https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccd-ccr148.pdf>.
- c. File the petition with the court whose records you wish to shield.
 - i. If the client has charges in multiple counties then the client must choose one county's charges they wish to shield.
 - ii. If they have charges in both a Circuit Court and District Court in the same county, you can only shield convictions in one.
 - iii. The court will shield any convictions in any cases that were concluded in that court.
 - 1. If a case began in District Court, but was later transferred to Circuit Court, then you must file the petition in Circuit Court to shield the conviction.
- d. There is \$30 filing fee.
 - i. Use the filing fee waiver for MVLS clients.
<https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccdc088.pdf>.
- e. Petitions cannot be filed until three years after the end of any jail term, probation, parole or mandatory supervision.

- i. If your client wants to shield multiple convictions, then you must file three years after the end of any jail term, probation, or parole of the most recent conviction.
 - 1. Remember only one shielding petition will be granted in a person's lifetime, so it may be worthwhile to wait to file if a conviction is not yet eligible.
- ii. Unlike expungements, no general waiver form is ever needed for shielding because of the mandatory three year waiting period.
- f. There is no limit to the number of convictions that can be shielded in one petition.

5. Barriers to Shielding

a. Domestically Related Crimes (Crim. Pro. §6-233)

- i. If the victim in the case your client wants to shield falls into one of two categories, then the case cannot be shielded.
 - 1. The victim was in a sexual relationship with the defendant within 12 months of the crime; or
 - 2. The victim was a person eligible for relief as defined in MD Code Family Law §4-501. These include;
 - a. Current or former spouse;
 - b. Cohabitant;
 - i. Person who had a sexual relationship with the client and lived with the client for a period of at least 90 days within 1 year before the crime.
 - c. Related to client by blood, marriage or adoption;
 - d. Parent, stepparent, child or stepchild of either the client or the person eligible for relief who resides or resided with the client or person eligible for relief for at least 90 days within 1 year before the crime;
 - e. Vulnerable adult;
 - i. Adult who lacks the physical or mental capacity to provide for their daily needs.
 - f. Person who has a child with the client;
 - g. Person who was in a sexual relationship with the client within 1 year before the crime.

b. Unit Crimes

- i. If a defendant receives multiple convictions stemming from the same incident, then in order to shield any of those convictions, all the convictions from that incident must be eligible for shielding.
 - 1. If one of the conviction in a unit is not eligible, then none of them are.

c. Pending Criminal Matter

- i. If the defendant has a pending criminal matter, then the court will not grant a shielding petition.

d. Waiting Period – Subsequent Conviction

