

CRIMINAL RECORD EXPUNGEMENT

MARYLAND VOLUNTEER LAWYERS SERVICE



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OVERVIEW

PART ONE

- What's new
- Substantive expungement law

PART TWO

New expungement procedure:
Research, analysis,
and filing



WHAT'S NEW

NEW ELIGIBLE CONVICTIONS

- 4th degree burglary
- Driving on suspended license

NEW CASE SEARCH RULES

- *Nolle prosequi*, acquittal, dismissal hidden from Case Search
- Applies to all cases
- Applies to individual charges

AUTOMATIC EXPUNGEMENT

- *Nolle prosequi*, acquittal, dismissal automatically expunged after three years
- Applies to cases that occur after October 1, 2021



WHAT IS EXPUNGEMENT?

- An arrest and/or criminal charge is public record, even if you are not convicted of any crime
 - It will show up on any background check, public court records
 - May impact getting a job, apartment, child custody
- Expungement is the removal, destruction, or sealing of records pertaining to a criminal case
 - Becomes unavailable to the public
 - Record-keeping agencies are ordered to expunge (courts, police dept., prosecutor, other databases)
 - Some caveats



CASES ELIGIBLE FOR EXPUNGEMENT

NON-CONVICTIONS

CRIM PRO 10-105

- Nolle Prosequi
- Dismissal
- Acquittal

- 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
- Juvenile transfer

CONVICTIONS

CRIM PRO 10-110

- Certain categories
 - Nuisance, transit, act no longer a crime
- Specific charges
 - Drug possession
 - Theft
 - 2nd degree assault
 - Burglary
 - Trespass

UNIT RULE: All charges in a case must be eligible for expungement



EXPUNGEMENT OF NON-CONVICTIONS

SIMPLEST

- Nolle prosequi
- Acquittal
- Dismissal

- Can all be expunged immediately
- Waiver of claims required if filed within three years of disposition

MORE COMPLICATED

- Stet
 - 3-year waiting period
- Probation Before Judgment
 - 3 years or the end of probation, whichever is longer
 - No convictions within three years
 - DUI not eligible
- Juvenile transfer
 - Charges brought “as an adult” then moved to juvenile court – the adult case can be expunged. Juvenile case must be expunged separately.



EXPUNGEMENT OF CONVICTIONS

CATEGORIES

- Nuisance crimes – urinating in public, panhandling, drinking alcohol in public, vagrancy, loitering, sleeping in public
- An act no longer a crime
 - Marijuana possession less than 10 grams, open container, certain types of gambling
- Transit offenses
 - Nonpayment, eating on transit, playing loud music on transit

SPECIFIC CHARGES

- Drug possession
 - Includes paraphernalia
- Theft
- 2nd degree assault
- ***Burglary***
- Trespass
- CDS Possession w/ Intent to Distribute
- ***Driving on suspended license***
- Full list is extensive



CONVICTIONS FOR SPECIFIC CHARGES

- 3-year waiting period for nuisance crimes
- 4-year waiting period for marijuana possession
- 10-year waiting period for misdemeanors
- 15-year waiting period for felonies
 - Exception: 2nd degree assault (misdemeanor) is 15 years
- Requirements
 - No convictions during the waiting period
 - Waiting period begins when sentence ends (including any probation, parole, or supervision)
- A new conviction will restart the clock (“Subsequent Conviction Rule”)
- If the new conviction is not on the list of eligible charges, it will block the previous case from being expunged

Example –

2010: Guilty of CDS: Poss w/ intent to distribute

2018: Guilty of misdemeanor theft, one year probation

Both cases eligible for expungement in 2029

PREREQUISITES, CAVEATS, AND EXCEPTIONS TO THE RULES

- The petitioner must not be a defendant in a pending criminal case
 - Some grey area on whether or not first year of a stet counts as a “pending case”
- Generally, the petitioner should not owe fees/fines/penalties on the case
- “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
- Traffic cases
 - “Major” traffic offenses (carrying the possibility of incarceration) are treated like every other charge
 - “Major” traffic offenses are mostly absent from the list of eligible convictions
 - “Minor” traffic offenses are ineligible for expungement, though a separate process exists through MVA
 - “Minor” traffic offenses are an exception to the Unit Rule
- PBJs
 - Violation of probation does not count as a subsequent conviction or a pending criminal matter
 - A Probation Before Judgment on DUI/DWI can never be expunged
- Subsequent Conviction Rule does not apply to marijuana possession, nuisance/transit cases, or acts no longer a crime



GENERAL WAIVER AND RELEASE

- For Nol Pros, Not Guilty, Dismissal, and act no longer a crime
- Required when filing within less than three years from the disposition date
- Waiver of any claims you may have against any party to the proceeding
 - Police department, court, State of Maryland
- Because expungement is meant to erase any record of the case's existence, the waiver is required so that a petitioner cannot sue a party that has destroyed evidence of what may have happened



FILING EXPUNGEMENT

- MVLS has developed an expungement web tool – MDExpungement Chrome extension
- Free to file for non-convictions
- Convictions - \$30 fee unless represented by an authorized pro bono agency
- State will have opportunity to object
 - If there's an objection, court schedules a hearing
- If court finds you eligible for expungement, it issues an order to all agencies that have records of the case, instructing them to remove their records
 - The law says this must happen within 30 days if no State objection, reality is 3-6 months



NEXT STEPS

- Check your records
 - Check Case Search to see if the case has been removed
 - You may want to get a CJIS report to confirm removal
- Always keep a copy of your court records and expungement order
 - Court may destroy records once they are expunged



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 discrepancies between state and federal records
 - Consult an immigration attorney
- Private, third party businesses that perform background checks 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
- A Federal background check may contain cases expunged at the State level



**NEW EXPUNGEMENT
PROCEDURE**



NEW CASE SEARCH RULES

- As of summer 2021, Maryland Judiciary Case Search no longer displays criminal charges that resulted in
 - *Nolle prosequi*
 - Acquittal
 - Dismissal
- These cases are not automatically expunged, just hidden from the site
- A case where all charges received one of these dispositions will not appear on Case Search
- These cases will still appear on certain background checks, fingerprint reports, and MDEC, until they are expunged



NEW CASE SEARCH RULES

BEFORE

- **Poss: CDS**
 - Disp: Nolle prosequi
- **Trespass**
 - Disp: Guilty
- **Burglary 4th degree**
 - Disp: Nolle prosequi

AFTER

- **Trespass**
 - Disp: Guilty



NEW EXPUNGEMENT PROCEDURE

- **Search Case Search as usual**
 - Will still find stet, pbj, guilty
 - Perform analysis
 - Use MDExpungement web tool to create petitions



NEXT STEPS

- You will receive “people search” results from WestLaw
- These results may contain cases that have already been expunged

Offense 1

Offense Number:	1
Case Number:	<input type="text"/>
Case Type:	CRIMINAL
Case Status:	CLOSED
Case Comment:	DOCUMENT TYPE: STATEMENT OF CHARGES
Case Information:	CASE DISPO: TRIAL, CJIS CODE: 4 3550
Statute Violated:	CR.5.601.(A)(1)
Offense Charged:	CDS:POSSESS-NOT MARIHUANA
Date of Offense:	03/17/2010
Disposition:	STET
Disposition Date:	06/11/2010
Original Plea:	OTHER PLEA
Court:	DISTRICT COURT FOR BALTIMORE CITY - CRIMINAL SYSTE
Jurisdiction County:	BALTIMORE



MDEC SMART SEARCH



MDEC's version of Case Search, called Smart Search, is available in any jurisdiction that uses e-filing

Everywhere except Baltimore City, Prince George's, and Montgomery Counties



Less functional than traditional Case Search

Can sort by date of birth



[Link to Smart Search](#)



CROSS-REFERENCING WESTLAW REPORT

- You will need to determine whether or not the cases on the WestLaw “people search” results have been expunged
- If the case appears on MDEC Smart Search, it has not been expunged
- If the case appears on a fingerprint report, it has not been expunged
- If neither of the above apply, you will need to call the court, give the clerk your case numbers, and confirm that the case has not been expunged



FINGERPRINT CHECK

- A fingerprint check, aka CJIS Report, will show all cases on a client's record
 - MVLS does not require that clients obtain a fingerprint check as a prerequisite to case acceptance, and we ask that our volunteers not require one
- If the previous methods are not satisfactory, consider suggesting that the client obtain a fingerprint report
 - Must be obtained in person, and carries a fee. May be reimbursable through litigation fund. Check Pro Bono Resource Center website.
- Fingerprint report will not show court case number
 - Can use tracking number lookup tool on our website



FILING

- Once you have a list of all expungeable cases, create your petitions
- Can use MDExpungement website or Chrome tool for any stet, pbj, guilty
- Can try other cases on MDExpungement.com
- May need to complete petitions manually
 - Forms available on our website

Filing expungements is more involved than it used to be. Many people with criminal records will benefit from their cases being hidden from Case Search. However, until those cases are expunged, they can still be found by employers, landlords, and others. Assisting your client with filing expungement is still the best way to clear their records to help find jobs and housing.



AUTOMATIC EXPUNGEMENT

- Case where all charges resulted in *nolle prosequi*, acquittal, and dismissal
 - Three years after disposition
- For case occurring on or after October 1st, 2021
 - Won't see the effects until October 2024
- Defendant can file for expungement at any time
- Expungement will still be a necessary practice area
 - Thousands of eligible cases are unaffected



MORE RESOURCES AVAILABLE AT [MVLRAW.ORG](https://mvlslaw.org)

TAKE A CASE AT OUR PRO
BONO PORTAL

SIGN UP TO BECOME A
VOLUNTEER

