

# Records Disappearing? Auto Expungement?

## Updates on Maryland Judiciary Case Search and Criminal Record Relief in Maryland

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*Hosted By the Human Trafficking Prevention Project*

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# Background Checks & Criminal Records

**Every arrest, regardless of whether it leads to a formal court case, is a matter of public record** - most will show up on background checks and on Maryland Judiciary Case Search!

Criminal Records may impact getting a job, apartment, child custody, loan, credit, etc.:

- Between 80-92% of employers run background checks
- There are presently 16,772 licensing/occupational laws with criminal record provisions
- Most heavily licensed: Health Care & Education
- Public Housing Authorities, owners of federally-assisted public housing, and private landlords generally screen for criminal records
- Criminal records factor into child custody and visitation

# Slide re MVLS' Workforce Development Program

# What Criminal Records Are Publicly Available?

## Maryland Judiciary Case Search:

- <http://casesearch.courts.state.md.us/casesearch>
- Case search is a publicly searchable database of many Maryland arrest/court records:
  - Information may or may not be accurate
  - Information may be missing or wrong -e.g. names misspelled, wrong month on DOB, incorrect demographics
- Database is currently undergoing transition:
  - Cases ending in a dismissal, a finding of not guilty, a *nolle pross*, etc. are now shielded from public view, but all other dispositions and active cases still searchable/visible
  - Regardless of whether a case is shielded from case search, it is still legally “there”

# Get screenshot of MD case search

One with certain charges shielded

# Why Do These Changes Make it Harder to Expunge Cases/Access Criminal Record Relief?

# Options for Determining Your Record

## Criminal Justice Information System (CJIS) - Maryland

- <https://www.dpscs.state.md.us/publicservs/fingerprint.shtml>
- Report will include any activity that involved being fingerprinted – even cases that are shielded on case search
- To obtain a background check from CJIS, you can go to any authorized location that provides fingerprinting services in Maryland, including private providers. Main office on Reisterstown Road in NW Baltimore.
- Cost is generally \$38 - \$52, request record for “Individual Review”

# Options for Determining Your Record

## FBI Background Check – Nationwide

- Report will include criminal legal involvement in any of the 50 states – most comprehensive search
- Findings can be inconsistent with state records, as the database reflects only the information that has been provided to the federal government by each individual state
- Available at various sites; cost averages around \$50
- <https://www.fieldprint.com/fieldprint-websites/>



# What is Expungement?

**Definition:** The removal of police and court records from public inspection (MD Judiciary Case Search, CJIS, etc.)

## What court records can be expunged?

- Records of a criminal or incarcerable traffic offense
- Automatic expungement of non-incarcerable traffic offenses

## Why expungement is crucial:

- The disposition of many criminal charges is publicly available, even if the case didn't result in a conviction
- Disclosure of expunged or shielded charges *not required* on job applications or during interviews

# What Can Be Expunged and What Are the Waiting Periods?

- **All non-convictions:**
  - Cases that result in a dismissal, an acquittal, a *nolle pross*, or a finding of not guilty – eligible to be expunged immediately
    - However, if filing within three years of the closing of the case, the petitioner would also need to sign a waiver of liability stating they will not sue
  - Stets – after a 3-year waiting period
  - Probation Before Judgments (PBJ's) – after 3 year waiting period *or* completion of probation, whichever longer
    - If there is a subsequent conviction within 3 years of the entry of the PBJ, the PBJ is no longer eligible for expungement
    - PBJ's for DUIs cannot be expunged under any circumstances
- **Adult criminal charges transferred to juvenile court – immediately expungeable**

# What Can Be Expunged and What Are the Waiting Periods?

## Convictions for “Nuisance Crimes”

- Urinating in public, panhandling, drinking alcohol in public, vagrancy, loitering, using transit w/out payment, sleeping in public, etc.
- Can be filed 3 years after conviction or end of sentence, whichever longer

## Not Criminally Responsible (NCR)

- Only applies to convictions for trespass, telephone misuse, and disturbing the peace
- Immediately expungeable

## Convictions for Crimes That Are No Longer a Crime

- Consensual sodomy, Gaming/Cards/Dice, Public Consumption, Open Container, Possession of a Revoked/Cancelled/Suspended License
- Immediately expungeable

## ALL Convictions for Marijuana Possession

- 4 years from date of conviction or completion of sentence, including probation

# Expungement of Convictions Under the Justice Reinvestment Act (§ 10-110)

- Second Degree Assault (§ 3-203)
- Possession/Administration of CDS (§ 5-601)
- Possession/Purchase of Non-CDS (§ 5-618)
- Drug Paraphernalia (§ 5-619)
- Controlled Paraphernalia (§ 5-620)
- CDS- Inhalant (§ 5-708)
- Trespass- Posted Property (§ 6-402)
- **Misdemeanor** Theft (§ 7-104)
- Unauthorized Removal of Property (§ 7-203)
- Failure to Return Rental Vehicle (§ 7-205)
- Obtaining Property/Services by Bad Check (§ 8-103)
- Disorderly Conduct (§ 10-201)
- Prostitution (§ 11-303, 306, 307)
- Since 2016, five additional felonies added:
  - Possession with Intent to Distribute: (§ 5-602(2))
  - 1<sup>st</sup> degree burglary, *not* home invasion (§ 6-202(a))
  - 2<sup>nd</sup> degree burglary (§ 6-203)
  - 3<sup>rd</sup> degree burglary (§ 6-204)
  - **Felony** Theft (§ 7-104)

*\*As of 10/1/21 - 4<sup>th</sup> Degree Burglary and Driving with a Suspended License*

**Wait Times:** **10 years** after conviction, *after* completing any assigned parole, probation or mandatory supervision; **15 years** for 2<sup>nd</sup> degree assault, all eligible felonies, or any eligible crime that is related to an incident of domestic abuse, including parole, probation, or supervision, so long as no subsequent conviction during wait time.

# Changes to Maryland Expungement Laws and Process – Oct. 1st, 2021

- **Already in Process: All non-convictions are being shielded from MD Judiciary Case Search**
  - Includes non-convictions that are part of a unit of charges that include a conviction or other non-expungeable charge
  - This has both positives and negatives!
- **Starting Oct. 1st, all non-convictions will be automatically expunged three years after date of conviction**
  - Non-convictions can still be expunged within that three-year period if the petitioner agrees to sign a waiver of liability
  - If a non-conviction is part of a unit of charges that includes a conviction or other non-expungeable charge, it *will not* be automatically expunged, only shielded from public view
  - NOT Retroactive – only for dispositions Oct. 1st and onward
    - This means that even though a non-conviction disposed of prior to October 1<sup>st</sup> may not be visible on case search, *it still needs to be expunged!*

# How Can An Attorney Help??

# Filing for Expungement

<http://mdexpungement.com/>

- Put in each case number, and it can automatically determine if certain cases are likely expungable – does not evaluate eligibility of convictions under the JRA!
- Will assemble documentation needed for court submission
- Petitions to expunge non-convictions are free to file
- Each petition to expunge a conviction is \$30, unless the petitioner requests a waiver of filing fees or is assisted by a legal services provider (like MVLS!)
- Petitions 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

# Once Your Expungement is Filed

- **States' Attorney has 30 days to object**
  - If there is an objection, a hearing will be scheduled
- **If no objection, 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, State's Attorney's Office, etc.) have 60 days
  - Check your records via Case Search or new CJIS report
  - Always keep a copy of your court records and expungement orders!



# Legal Help With Expungements

## Human Trafficking Prevention Project

- [www.mvlslaw.org/ht](http://www.mvlslaw.org/ht) (“Get Help/Refer” menu option)

## Maryland Volunteer Lawyers Service

- Phone intake – (800) 510-0050 or 410-547-6537, open from 9am to noon Monday through Thursday
- Apply online – <http://mvlslaw.org/get-legal-help/apply-for-services/>

**Office of the Public Defender** (if you are already represented by OPD in criminal matter)

**Maryland Legal Aid** (visit <https://www.mdlab.org/>)

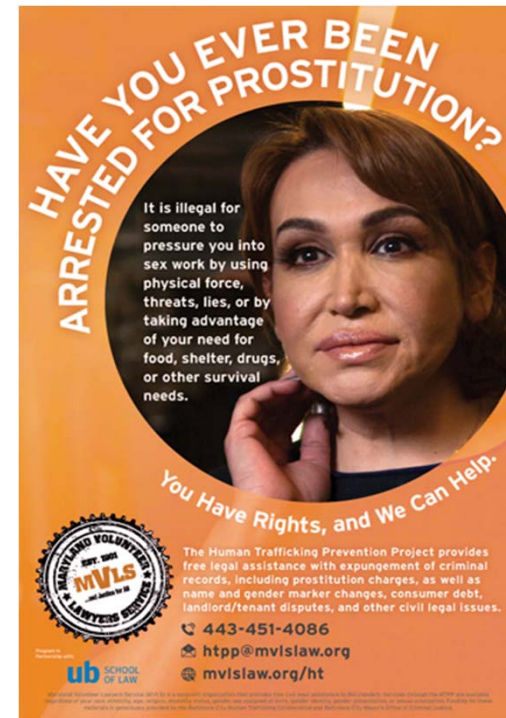
# Visit the HTPP Website to Make Referrals and Request Outreach Materials



Please visit:

[www.mvlslaw.org/ht](http://www.mvlslaw.org/ht)

To request a package of mailed to your organization, please email: [htpp@mvlslaw.org](mailto:htpp@mvlslaw.org)



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info on upcoming training and clinics!

# Thank you!

To learn more about MVLS' Workforce Development Program, please contact:

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