

Records Disappearing? Automatic Expungement?

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

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What is Expungement and Why is it Important?

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

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.:

- Upwards of 90% of employers run background checks during the hiring process
- There are approximately 32,000 laws specific to occupational licensing and business licenses 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 also factor into child custody/visitation, immigration, and benefits
- For survivors, this greatly impacts their ability to heal and to avoid continued exploitation!

*ABA National Inventory of Collateral Consequences of Conviction

What Can Be Expunged and What Are the Waiting Periods?

All Non-Convictions:

- Cases that result in a **dismissal**, an **acquittal**, or a *nolle pross* – 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** – eligible after a 3-year waiting period
- **Probation Before Judgment (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))
 - 1st degree burglary, *not* home invasion (§ 6-202(a))
 - 2nd degree burglary (§ 6-203)
 - 3rd degree burglary (§ 6-204)
 - **Felony** Theft (§ 7-104)

**As of 10/1/21 - 4th Degree Burglary and Driving with a Suspended License will be added*

Wait Times: **10 years** after conviction, *after* completing any assigned parole, probation or mandatory supervision; **15 years** for 2nd 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.

Red Flag Issues for Expungement

If your client is 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 from their databases

- They may pull your data **before** your record has been expunged and then keep that information in their system
- They generally do not update their information to remove items

A Federal background check may contain cases expunged at the State level (as well as other inaccurate information)

Important Changes to Maryland Expungement Laws and Process

Starting October 1st, non-convictions will be automatically expunged three years after date of disposition

- Non-convictions can still be expunged within that three-year period if the petitioner agrees to sign a waiver of liability
- Does not apply to Stet or PBJ
- If a non-conviction is part of a unit of charges that includes a conviction or other non-expungeable charge, it *will not* automatically be expunged, only shielded from public view
- **NOT Retroactive** – only for dispositions October 1st and later
- This means that even though a non-conviction disposed of prior to October 1st may not be visible on case search, *it still needs to be expunged!*

How Are Criminal Records Publicly Available?

Maryland Judiciary Case Search:

- <http://casesearch.courts.state.md.us/casesearch>

Case Search is a publicly searchable database of many Maryland arrest and court records

- Free and accessible by the public
- Contains info on criminal, civil, and traffic cases
- Search by name and date of birth or case number
- Information may be missing or wrong - names misspelled, wrong DOB, incorrect demographic info, lack of disposition/sentencing info

Important Changes to Maryland Judiciary Case Search

Database is currently undergoing transition - all non-convictions are being shielded from MD Judiciary Case Search

- Cases ending in a dismissal, a finding of not guilty, or a *nolle pross*, will be shielded from public view, meaning they will be invisible on Case Search
- All other dispositions and active cases will still be searchable/visible
- Includes non-convictions that are part of a unit of charges which include a conviction or other non-expungeable charge

What Shielding of Different Cases Containing Non-Convictions Looks Like on Case Search

BEFORE

- Case XXXXX
 - Theft – Misdemeanor
 - Disposition: Nolle Prosequi
- Case YYYYYY
 - Burglary, 4th Degree
 - Disposition: Nolle Prosequi
- Case ZZZZZ
 - Trespass
 - Disposition: Guilty

AFTER

- Case ZZZZZ
 - Trespass
 - Disposition: Guilty

What Shielding of Non-Convictions Within One Case Looks Like on Case Search

BEFORE

- Case ZZZZZ
 - Charge 1: Trespass
 - Disposition: Not Guilty

- Charge 2: CDS Possession
- Disposition: Guilty

- Charge 3: Prostitution
- Disposition: Not Guilty

AFTER

- Case ZZZZZ
 - Charge 2: CDS Possession
 - Disposition: Guilty

Benefits and Challenges of Shielding Non-Convictions on Case Search

Benefits:

- Shielding certain cases and charges makes it harder for employers, landlords, and the general public to find cases
- Non-convictions are now hidden, so larger units of charges may be less burdensome

Challenges:

- While certain cases and/or charges are shielded – **they still legally exist!!**
- Background checks (especially by private agencies scraping data) may still show these records
- Finding cases that are eligible for expungement is now more difficult

How Do These Changes Make it Harder to Access Expungement?

- The most eligible types of cases are now hidden (not guilty, dismissed, or dropped)
- Fingerprint checks are burdensome
 - Requires going in person
 - Need to pay fee
 - May retraumatize the client
- Fingerprint checks are incomplete as they lack essential information needed for expungement such as:
 - Case Number
 - Final Disposition

Automatic Expungement and Shielding Quiz

**Will the cases below be automatically expunged, and if so, when?
Which charges will be shielded on Maryland Judiciary Case Search?**

- Lucinda was arrested for trespass and fourth degree burglary, but the Court dismissed both charges on August 29th, 2021.
- Monica was arrested for second degree assault. The Court found her not guilty on October 3, 2021.
- Sarah was arrested and charged with loitering and CDS possession. She was convicted of CDS possession by the Court on October 10, 2021, and the loitering charge was nolle prossed.
- Sid was arrested for prostitution and CDS possession. The Court entered a stet for both charges on October 20, 2021.

Options for Determining What's On Your Criminal Record in 2021

Start by looking at Maryland Judiciary Case Search!

- <http://casesearch.courts.state.md.us/casesearch>
- This option is free and easily accessible
- Important to realize what records are easily viewed by the public
- It is recommended that you print out or save screenshots of cases listed – provides helpful information when reviewing other types of background check documents

Options for Determining What's On Your Criminal Record in 2021

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 make an appointment with any authorized location that provides fingerprinting services in Maryland, including private providers
- CJIS' main office is on Reisterstown Road in NW Baltimore
- Cost is generally \$38 - \$52, request record for “Individual Review”

Options for Determining What's On Your Criminal Record in 2021

FBI Background Check – Nationwide Record Search

- Report will include criminal legal involvement in any of the 50 states – most comprehensive search
- Smart choice if you think your client may have been trafficked in multiple states!
- Findings can be inconsistent with state records, as the federal 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/>

Additional Options for Determining What's On Your Criminal Record in 2021

Request Court Records in Person:

- How this is done varies by county
 - Sometimes records are located in the courthouse where case occurred
 - Sometimes all records housed at a central location elsewhere
- Can be burdensome in terms of time, travel, and cost

Work with an attorney to access MDEC Smart Search:

- <https://mdecportal.courts.state.md.us/MDODYSSEYPORTAL/Home/Dashboard/29>
- Does not work for Baltimore City, Prince George's County, & Montgomery County
- Harder to use compared to Maryland Case Search

Filing for Expungement

Online Expungement Tool:

- <http://mdexpungement.com/>
- Put in each case number, and the system will automatically determine if certain cases are "likely expungable"
- Does not evaluate eligibility of convictions under the JRA
- Cases completely shielded as per the new changes to case search will not be recognized by the system!
- 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)
- All petitions don't have to be filed at the same time
 - If you file a petition and then identify more expungable items, you can file additional petitions

Once An Expungement is Filed

- **States' Attorney has 30 days to object**
 - This 30-day period begins when the petition hits the SA's desk
 - 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 from Case Search within approximately 24-48 hours
 - Agencies who maintain portions of the expunged record (police department, State's Attorney's Office, etc.) have 60 days to expunge those records
 - Check your records via Case Search or new CJIS report
 - Always keep a copy of your court records and expungement orders!

Disclosing Criminal Records

Does a person have to disclose arrests on employment applications?

- Once arrests have been expunged or shielded, you do not have to disclose them
- But some employers are still going to have access to these records – military, security clearance, etc. In those circumstances, it's generally better to disclose.

Does a person 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 depending on the kind of background check they perform

Legal Help With Expungements

Human Trafficking Prevention Project

- 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/>

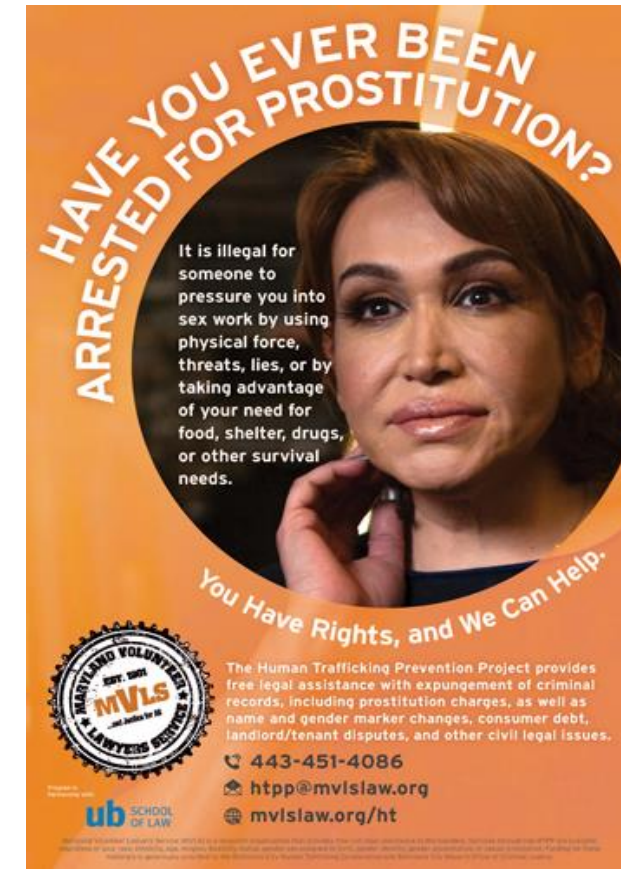
Office of the Public Defender (if you are already represented by OPD in criminal matter)

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

MVLS' Workforce Development Program

- Partnership with job training sites in Baltimore City
 - Construction, CNA/GNA, solar installation, biotechnology, welding, and more
- Provides legal services such as expungement to job trainees
- Supplements network of services supporting trainee success
- Provides community outreach through presentations and clinics
- Began in 2016 as part of One Baltimore for Jobs

Visit the HTPP Website to Make Referrals and Request Outreach Materials



Please visit:

www.mvlslaw.org/ht

To request materials for your organization, please email: http@mvislaw.org

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Visit www.mvlslaw.org/events for more
info on upcoming training and clinics!

Thank you!

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