CRIMINAL RECORD EXPUNGEMENT

MARYLAND VOLUNTEER LAWYERS SERVICE

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OVERVIEW

- This presentation pertains to Maryland law only
- Each state has its own expungement process
- The Federal system has its own expungement process

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, loan, credit, child custody
- Expungement is the removal, destruction, or sealing of records pertaining to a criminal case
  - Becomes unavailable to the public, employers and background check agencies
  - Record-keeping agencies are ordered to expunge (courts, police dept., prosecutor, other databases)
  - Some caveats

CASES ELIGIBLE FOR EXPUNGEMENT

NON-CONVICTIONS, CANNABIS, & NUISANCE CRIMES: 10-105

- Cases where no charge resulted in a conviction can generally be expunged.
  - The offense charged is not relevant, except for DUI
- Cannabis possession convictions can always be expunged.
- Nuisance and transit convictions can be expunged after 3 years
  - These are enumerated in the statute

CONVICTIONS: 10-110

- Specific charges enumerated in the statute, categorized by 5-, 7-, or 10-year waiting periods
- Common examples:
  - Drug possession
  - Theft
  - 2nd degree assault
  - Burglary
  - Trespass

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

EXPUNGEMENT OF NON-CONVICTIONS – 10-105

SIMPLEST DISPOSITIONS

- Nolle prosequi
- Acquittal
- Dismissal
- Transferred to juvenile court

REQUIREMENTS

- Can all be expunged immediately
- No subsequent cases can block expungement
- If disposition date is less than three years ago, waiver of all civil claims against State/Police/Any party must accompany petition

NON-CONVICTIONS CONTINUED

ELEVATED DISPOSITIONS

- Stet
  - 3-year waiting period
  - Subsequent convictions will not block
- Probation Before Judgment
  - 3 years or the end of probation, whichever is longer
  - A conviction within 3 years of disposition date will prevent expungement
  - DUI = 15-year wait, new DUI PBJ will block

- If a case has a mix of dispositions, analysis turns on whichever charge has the most stringent prerequisites

- For example:
  - Count 1 – nolle prosequi
  - Count 2 – nolle prosequi
  - Count 3 – stet

- Petitioner must wait 3 years to expunge the case

CRIM PRO 10-105 CONTINUED: MINOR CONVICTIONS

3 - YEAR WAIT

- Nuisance crimes
  - Urinating in public, panhandling, drinking alcohol in public, vagrancy, loitering, sleeping in public
- Transit offenses
  - Nonpayment, eating on transit, playing loud music on transit

CANNABIS, ETC

- Cannabis possession can be expunged under two provisions

- "Convicted for an act no longer considered a crime"
- Cannabis possession is explicitly made eligible by statute
- Other charges "no longer a crime" include certain types of open container and street-level gambling (they have been made civil offenses)

EXPUNGEMENT OF CONVICTIONS: CRIM PRO 10-110

COMMON CHARGES

- Drug possession
  - Includes paraphernalia
- Theft
- 2nd degree assault
- Burglary (1st, 2nd, 3rd, and 4th)
- Trespass
- CDS Possession w/ Intent to Distribute
- Full list is extensive

GENERAL REQUIREMENTS

- Must finish sentence, then waiting period begins
  - 5-, 7-, and 10-year categories
- Must remain free of new convictions during waiting period
- New conviction will either block or extend waiting period

CONVICTIONS FOR SPECIFIC CHARGES

- 5-year waiting period for misdemeanors
  - Exception: 2nd degree assault is 7 years
  - Long enumerated list found in 10-110
  - Generally nonviolent offenses
- 7-year waiting period for certain felonies
  - CDSpossessionw/intent to distribute, 3rd degree burglary
- 10-year wait for more serious felonies
  - Felony theft, 1st & 2nd degree burglary

- Requirements
  - Noconvictions 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

EXAMPLES

Example 1 –

2010: Guilty of CDS: Poss w/ intent to distribute, 2 years incarceration

2018: Guilty of misdemeanor theft, one year probation

2010 case must wait until 2019. 2018 case is an eligible subsequent conviction that extends the waiting period. Both cases eligible for expungement in 2024.

Example 2 –

2015: Guilty of felony theft, 2 years incarceration

2018: Stet for disorderly conduct

2020: Guilty of robbery

2015 case must wait until 2027 and be free from ineligible convictions. 2020 case blocks 2015 case, and neither are eligible. 2018 case is eligible.

EXPUNGEMENT OF CANNABIS CHARGES

REQUIREMENTS

- Non-conviction: same rules as any other case
- Conviction:
  - Possession: Immediatelyeligible
  - Possession w/ intent to distribute: 3-year wait from completion of sentence
  - Manufacturing/Distribution: Still a crime, not eligible for expungement

ADDITIONAL CONSIDERATIONS

- Cannabis possession charges are exempt from the unit rule
  - i.e.you canexpunge a cannabis charge from a case that contains ineligible charges
- Cases where possession is the only charge are to be automatically expunged
  - Work-in-progress, some may still appear online

TRAFFIC CASES

"Major" traffic offenses (carrying the possibility of incarceration) are treated like every other charge

- Listed on MVLS website

"Minor" traffic offenses are ineligible for expungement, though a separate process exists through MVA

- "Minor" traffic offenses are an exception to the unit rule and the subsequent conviction rule. Will not block otherwise eligible cases.

PREREQUISITES, CAVEATS, AND EXCEPTIONS TO THE RULES

- The petitioner must not be a defendant in a pending criminal case
  - Active probation or case “open” for unpaid fees is not a pending criminal matter
- PBJs
  - Violation of probation does not count as a subsequent conviction or a pending criminal matter
- *Abhishek* – Appellate case which held that, in most cases, violation of probation that results in termination will prevent expungement of an otherwise eligible case
  - Overridden by the 2025 legislative session. *Abhishek* will no longer apply as of October 1st, 2025.

ANALYZING A CRIMINAL RECORD

- Maryland Judiciary Case Search
  - http://casesearch.courts.state.md.us/casesearch
  - Generally goes back to 1990, records before then are largely incomplete
- MDEC Smart Search (e-filing system)
  - https://mdecportal.courts.state.md.us/MDODYSSEYPORTAL/Home/Dashboard/29
- Westlaw People Search
  - MVLS provides a Westlaw background report to volunteers
- Criminal Justice Information System (CJIS)
  - Fingerprint background check
  - A fee is charged
  - More complete than Case Search

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

WESTLAW BACKGROUND REPORT

- 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:	[redacted]
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

Available for all counties

Less functional than traditional Case Search

Can sort by date of birth

Link to Smart Search

FILING EXPUNGEMENT

- MVLS has developed an expungement web tool – MDExpungement Chrome extension (separate training video available)
  Free to file for non-convictions
-
- Convictions - $30 fee unless represented by an authorized pro bono agency
- Statewillhaveopportunity toobject
  - If there's an objection, court schedules a hearing

CLOSING OUT A CASE

When expungement is granted, the court issues an order and serves it on all state agencies that have a record of the case

Court will mail a copy of the order (or electronically serve) to attorney and petitioner

Each agency (police, state's attorney, court clerk) must file a Certificate of Compliance stating that their records are expunged

Required to file within 30 days of the order, but often takes much longer

Can expect to receive these documents within 4-6 months from date of filing

2025 LEGISLATIVE UPDATES

- Expungement Reform Act of 2025 (Governor's Bill)
- Overrides *Abhishek* decision – violation of probation no longer barrier to expungement effective Oct. 1, 2025
  - Court can consider petitioner's success at probation and ability to pay restitution
- Adds three eligible convictions to 10-110
  - Driving w/o license
  - Cashing bad check
  - Using stolen credit card
- Hides Stets from case search as well as pardoned cannabis offenses
  - Effective January 31, 2026

Further questions?

Please Email:csweeney@mvlslaw.org

Maryland Volunteer Lawyers Service (MVLS) is a nonprofit organization that removes barriers to justice through free civil legal help, community engagement, and advocacy for equitable laws.

Sample of cases MVLS can assist with:

Family
- Divorce & Custody
- Adoption
- Guardianship (Adult and Child)
- Name Changes/Birth Certificate Corrections

Housing
- Landlord/Tenant Disputes
- Foreclosure & Tax Sale
- Deed Changes
- Ground Rent

Consumer
- Bankruptcy (Chapter 7)
- Collections
- Contract Disputes

Other
- Expungement/Shielding/Vacatur
- Income Tax Disputes
- Estate Planning and Administration
- Uninsured Motorist Tort

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