

My Laws, My Courts, My Maryland:
EXPUNGEMENT

STEPS:

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Although it is important for court records to be open to the public, in certain cases, criminal records may be expunged. When a court grants a petition (or a formal request) for expungement, all information about a criminal case is removed from court and law enforcement records. In this video, we will talk about the types of cases that may be eligible for expungement, and when you may be able to file a petition for expungement. We will talk about how to file for expungement, and about what happens after the court rules on your request. Finally, this video will briefly address expungement of juvenile records. This video is an overview on how to expunge Maryland court and law enforcement records only, not records from other state agencies.

[Who is eligible for an Expungement]

Who is eligible for expungement of their criminal charges? Defendants in Maryland state criminal and juvenile cases can file for expungement in the Maryland state courts. You may be eligible for an expungement of your criminal case if any of the following instances occurred:

1. You were found not guilty;
2. The charge was dismissed;

3. The State's Attorney's Office chose not to prosecute your case, which is reflected in court records as a "nolle pros;"
4. The case was indefinitely postponed or "stetted;"
5. You received probation before judgment;
6. You were convicted of a crime and the act on which the conviction was based is no longer a crime;
7. The Governor pardoned you; or
8. You were convicted of or found not criminally responsible for certain nuisance crimes listed in the Maryland Code, Criminal Procedure Article, Section 10-105(a)(9) and (10).

However your case **cannot** be expunged if either of the following circumstances occurred:

1. you received a guilty verdict or probation before judgment in a driving while intoxicated (DWI) or driving under the influence (DUI) case; OR
2. you received probation before judgement and
 - o either you have since been convicted of another crime, other than a minor traffic offense; or
 - o you are currently a defendant in a pending criminal case.

If you were charged with multiple charges in a "unit" and one of the charges in the unit is not eligible for expungement, then other charges in the unit are likewise not eligible for expungement. However, minor traffic charges that do not involve the possibility of a jail sentence are not considered to be part of the unit even if they are part of the same incident.

Finally, a note about traffic cases. Expungement is not available for minor traffic offenses. Only the Maryland Motor Vehicle Administration, the “MVA,” can expunge minor traffic offenses. Many motor vehicle records are automatically expunged after 3 years. Other motor vehicle records can be expunged through the MVA. For additional information about expunging motor vehicle records, contact the MVA.

If you are a victim or witness in a criminal case or want to limit public access in a civil case, there is a different process sometimes called “sealing” or “shielding.” For more information on sealing or shielding (limiting public access to particular court records), visit www.mdcourts.gov/legalhelp/courtrecords.

[When to File]

When can you file for expungement? Timing is important if you decide to file for expungement. The type of case in which you were charged and the sentence you received, if any, determine when you can file.

- If you are the defendant in a criminal case that is still ongoing, you must wait until the case is over to ask that the record be expunged.
- If you have been ordered to attend drug or alcohol counseling, you usually must complete the counseling before the court will grant an expungement.
- If you have been pardoned by the Maryland Governor, you may file for expungement within 10 years of the Governor signing the pardon.
- You may file for expungement without waiting if the act on which your conviction was based is no longer a crime.
- You may also file without waiting if you can show “good cause.”

[If 3 Years Have Passed OR You File a Waiver]

In most other instances, you must wait 3 years after the completion of your sentence, including probation, before filing for expungement. In a few instances, you can file earlier than 3 years if you agree to waive certain rights, including the right to pursue claims for wrongful arrest, detention, or confinement. You must do this in writing. There are instances when you can request an expungement after 3 years or earlier with a waiver:

- One of those instances is if you were found “not guilty.”
- Another instance is if the state did not prosecute the charge against you, sometimes called “nolle pros.”
- Finally, you may request an expungement earlier than three years if your case was dismissed.

If you choose to file a General Waiver and Release in your case instead of waiting 3 years, you should know that you are waiving some of your legal rights. If you do not understand the rights you are waiving or have questions, talk to a lawyer.

[If 3 Years Have Passed]

In certain cases, you cannot file the waiver and must wait the full 3 years. This applies in the following circumstances:

1. You received probation before judgment, except a probation before judgement for a crime where the act on which the conviction is based is no longer a crime;
2. The court indefinitely postponed your case or placed it on the “stet” docket;
3. You were charged with assault and all parties agreed to dismiss the case under the Md. Code, Criminal Law Article Section 3-207; or

4. The crime you were convicted of is a particular type of nuisance crime listed in the Md. Code, Criminal Procedure Section 10-105(a)(9).

[How to file]

How do you file for expungement? File your petition for expungement in the clerk's office of the court where your case was heard. You can find the forms you will need at www.mdcourts.gov/courtforms. After you fill them out and pay the required fee, the process can take up to 3 months. After a judge reviews your petition, you will receive notice that your petition has been granted or denied. If there is an objection by the State's Attorney or law enforcement agency, the case may take longer because the court must schedule a hearing. If a hearing is scheduled, the court will notify you by mail so that you can participate in the hearing. A hearing allows the judge to get more information from both sides and make a decision on the expungement request. You can be represented by a lawyer at the hearing. Even if you do not hire a lawyer to represent you at the hearing, you may want to consult with a lawyer for legal advice prior to the hearing.

[After Expungement]

If the judge decides to grant your request for an expungement, the court will send you a final copy of the court order expunging the record. Be sure to keep a copy of all documents from your case, including the final court order stating that the expungement was granted. Once a case is expunged, court documents are destroyed. The court will not be able to provide you with another copy if you need one in the future.

Even after a record has been expunged, it may continue to be available to individuals performing background checks. Some companies and agencies download case information and retain it for a long period of time. If they have access to older data, they may find the information which has since been expunged from the official court record. If you are asked about expunged information, you may need to provide a copy of the court order to prove the record has been expunged.

[Juvenile Records]

Finally, a word about juvenile records. Generally, juvenile delinquency records are confidential. They are maintained in a separate system from adult criminal records. There is a separate process that you must follow if you want to expunge juvenile records. If a juvenile case is first filed in criminal court and then transferred to juvenile court, you can file for expungement of both the juvenile and adult criminal records. Note that there is a different process to follow if you want to expunge juvenile records. For more information about juvenile records, contact the Juvenile Division of the court where your case was heard.

Let's review what you have just learned. To file for expungement, you must be a criminal defendant in a Maryland state criminal case and your case must qualify. Be sure that your case is over, or that it is the right time to file for expungement. File the forms and pay the fees. Unless a hearing is scheduled, you will receive a notice from the court regarding the outcome of your petition. If the records are expunged, be sure to retain a copy of all documents in a secure place as you may need them in the future.

This has been a production of the Access to Justice Department of the Administrative Office of the Courts. For more information, please visit www.mdcourts.gov.