

EXPUNGEMENTS

More and more, employers are conducting background searches of their current and prospective employees. Often time, employers will either refuse to hire candidates with a criminal background or will terminate current employees if they discover a blemish on their record. Employers may even refuse to hire applicants who have simply been arrested for an offense, even if the applicant's case is dismissed or if he or she is found not guilty.

I. WHAT IS AN EXPUNGEMENT?

Expungement is the removal of records from public inspection. In Maryland, records may be expunged from Motor Vehicle Administration (MVA) files, police files and court files. Each process removes very specific files and must be done through the proper agency. No single process can expunge records from all agencies.

a) Motor Vehicle Administration (MVA)

Many motor vehicle records are automatically expunged after 3 years; other records may be manually expunged, depending upon the offense for which you were convicted and the length of time since your conviction.

* **NOTE**: Convictions for Driving under the Influence (DUI) or Driving While Intoxicated (DWI) can never be expunged in Maryland.

b) Police Records

The Criminal Justice Information System (CJIS) of the Department of Public Safety & Correctional Services collects and maintains criminal records. Such records are not automatically expunged after a certain period and because CJIS will not provide legal assistance for expungements, it is important to retain a knowledgeable attorney to assist you with the expungement process.

* **NOTE**: If you were arrested, but no charges were filed against you, the procedure for expungement is different than if charges were filed.

- Effective 10/1/2007, if you were detained by a police agency, but were released without being charged, records will automatically be expunged within 60 days after release.

- Prior to 10/1/2007, if you were detained by a police agency, but were released without being charged, records may exist in police files. You must file for an expungement in the appropriate court's jurisdiction within 8 years of the date of your arrest.

II. AM I ELIGIBLE FOR AN EXPUNGEMENT?

- a) You may file a petition for expungement of court/police records with the court in the following situations:
- You were found not guilty
 - The charge was dismissed
 - You were found guilty or you pleaded guilty, and the charge resulted in probation before judgment (PBJ). Excluding charges of DUI, DWI or “crimes of violence”
 - The State’s Attorney did not prosecute (*nolle prosequi*) your charge
 - The Court indefinitely postponed your case (*stet*)
 - You were convicted of only one non-violent criminal act AND you were granted a full and unconditional pardon by the Governor
- b) You may NOT be eligible for expungement of court/police records with the court in the following situations:
- If you were found guilty of a crime and do not meet any of the above-mentioned criteria.
 - Your case had several charges and you were found guilty of one of the charges that does not meet any of the above-mentioned criteria.
 - Since the entry of probation before judgment (PBJ), *nolle prosequi*, *stet* or a pardon, you have subsequently been convicted of a crime other than a minor traffic violation OR you are a defendant in a pending criminal proceeding.
- c) Juvenile records
- Juvenile records are sealed and should not appear in criminal records. However, you should file for expungement of the record if the original charge was as an adult but later transferred to the juvenile court.

III. HOW ANDALMAN & FLYNN REPRESENTS YOU THROUGHOUT THE EXPUNGEMENT PROCESS

- a) We will assist you in completing the required Petition for Expungement of Police and Court Records and the General Wavier and Release for the specific jurisdiction in which you will need to file.
- b) If you are missing required information, such as the case number, date that you were arrested, summoned, or cited; the law enforcement agency that took the action; the offense with which you were charged; or the date your case was disposed, we will assist you in obtaining that information.
- c) We will file all required forms, providing copies to all necessary parties including the State's Attorney and each law enforcement agency named in the petition. We will make sure your petition is filed in the appropriate court jurisdiction (district, circuit, appellate) so that your expungement is processed in a timely manner.
- d) We will ensure that you have filed at the appropriate time. Filing too soon will cause the expungement to be denied. The fee is non-refundable.
- e) If and when a hearing is held on your Petition for Expungement, we will attend and represent your interests in court.

IV. HOW LONG DOES THE EXPUNGEMENT PROCESS TAKE?

The process should take approximately 90 days from the time we file your petition until your records are expunged, unless there is an objection or an appeal. If the State's Attorney and/or the law enforcement agency objects to your petition or the court initially denies your petition, then the court shall hold a hearing and we will represent you at that hearing.

If the State's Attorney and the law enforcement agencies do not object within 30 days of receiving the petition, the court shall pass an order requiring the expungement of all police and court records about the charges. The court will notify you that your petition has been granted or denied. If denied, you will be notified of a date for your hearing and we will represent you at that hearing.

V. AFTER THE EXPUNGEMENT IS GRANTED

After the court orders are sent to each required agency, then each agency has 60 days from the received date to comply with the court order. You will receive a Certificate of Compliance from each involved agency in the mail to notify you that your expungement has been completed. Until you receive your certificate of compliance from each involved agency listed on your petition, do not assume that your records have been expunged.

It is recommended that you have a background check done after the expungement process is completed. This is to double check that the expungement was done as well as check for any other occurrences that may appear.

Make sure you keep copies of all the expungement documents and the order since they may be needed for future reference. Once the case has been expunged, all documents pertaining to the case will be destroyed.

IV. MUST I DISCLOSE EXPUNGED CHARGES?

According to Maryland law, a potential employer may not request disclosure of information of expunged civil citations and criminal charges in an application, interview, or any other means, of a person who applies for employment.

Further, a person need not refer to or give information concerning an expunged charge when answering a question concerning a criminal charge or civil citation that did not result in a conviction or that the Governor pardoned.

If you have questions about expungement law or employment law, please contact us at (301) 563-6685 or visit our website www.andalmanflynn.com. You should always consult an attorney to determine how the law applies to your particular situation.

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