



Court Records: Expungement

2021

Definitions

Expungement

If your case meets certain conditions, you may ask the court to expunge a criminal record. Expungement removes information about a case from court and law enforcement records. The result is as if the case never existed. Currently, civil cases cannot be expunged.

Shielding

If you were convicted of certain crimes, you may ask the court (only once) to keep those records out of public view. This process is called "shielding." When a case is shielded, it will no longer be displayed in Case Search or be available to the public. Law enforcement and certain agencies and individuals may still be able to review the shielded information. The information will still be available during a background check.

Sealing

Cases, court papers, orders, notices and information about certain crimes you may have committed can be sealed by court order. A motion must be filed by a party to the case to ask the court to limit inspection of all or portions of the case record. A special and compelling reason must be given as to why the public should not be able to see the case information. The court rules on the motion and decides the stipulations of the limited inspection (i.e. for how long, cannot be opened without the judge's permission)

Timeline: Electronic Criminal Court Records



1970's

Records Kept in Paper Form

1976 – 8th Circuit Court
Criminal and Juvenile



1980's

Some Electronic Data

1980 – 8th Circuit Court
Criminal, Civil, Jury, Juvenile
1985 – District Court Traffic
and Criminal



1990's

Mostly Electronic Data

8th Circuit Court
Paternity/Non-support
District Court
Commissioners, Clerks,
Warrants, Courtroom
Circuit Court – Corts, UCS



2000's

**Multiple Case Management
Systems (CMS)**

District Court Bondsmen
Circuit Court – UCS
Court of Special Appeals



2010-20's

Moving to Single CMS

MDEC – Maryland Electronic
Courts (2 Locations to be
implemented)

Contents of a Record

PHYSICAL AND ELECTRONIC CONTENT

- Electronic Data
- Electronic Documents
- Paper documents
- Exhibits
- Audio Recordings

NARRATIVE CONTENT

- One case may have multiple charges
- Statement of charges detailing incident may have multiple charges
- Orders may reference several charges
- Audio Recordings may reference several charges

Partially redacting the physical, electronic and narrative content is a manual process, that is labor intensive, time consuming, and in some instances impossible.

SB 1005/Ch 515 - Justice Reinvestment Act

Effective October 1, 2017

Expungement provisions: This bill authorizes a person to file a petition for expungement of a police, court, or other record if the person is convicted of specified misdemeanors. A petition for expungement may not be filed earlier than ten years after the person satisfied the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. The time period is 15 years in the case of second degree assault and domestically related crimes.

Adds almost 100 crimes that can be expunged even if there is a conviction.

Crim. Proc. 10-110 has almost 10 pages of crimes that can be expunged even with a conviction.

HB 83/Ch 21 – Charge of Possession of Marijuana – Removal from Case Search

Effective March 14, 2021

This bill prohibits the Maryland Judiciary Case Search from in any way referring to the existence of a District Court criminal case in which a charge of possession of marijuana under § 5-601 of the Criminal Law Article is the only charge in the case and the charge was disposed of before October 1, 2014.

HB 1336/Ch 31 — Partial Expungement, Case Search, and Expungement of Misdemeanor Conviction

Effective March 14, 2021

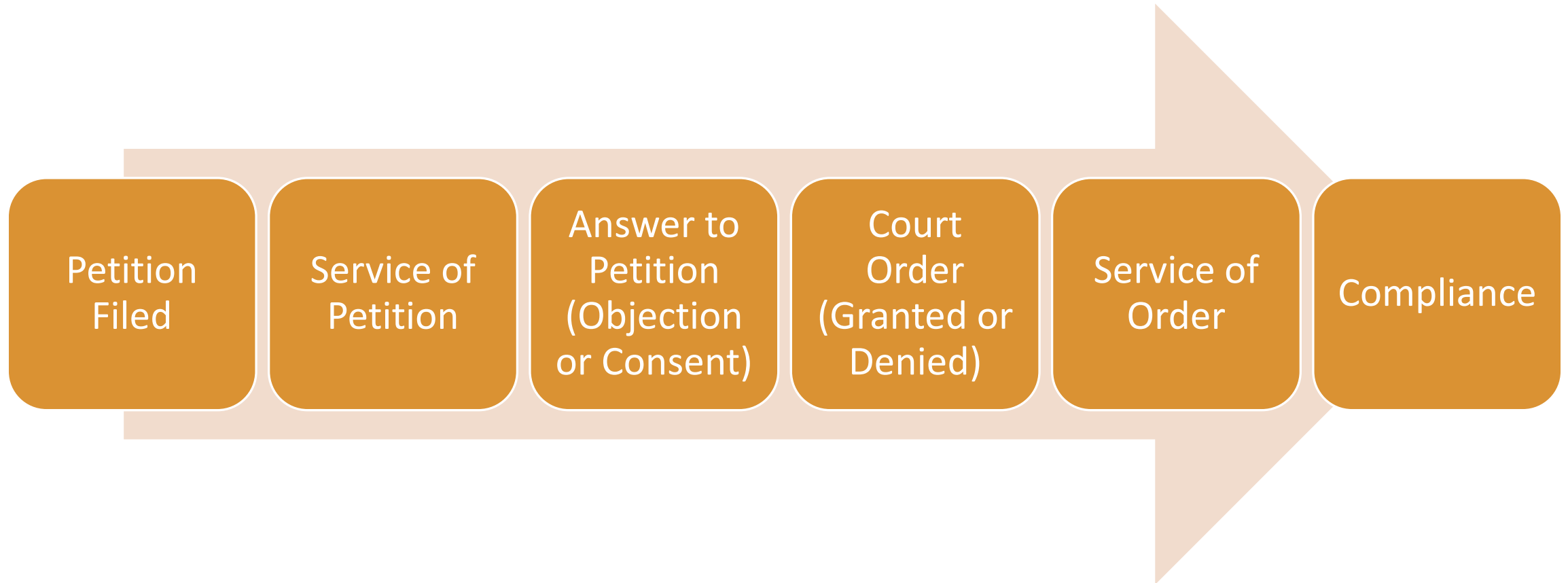
This bill (1) adds fourth-degree burglary to the list of misdemeanors eligible for expungement under § 10-110 of the Criminal Procedure Article; (2) prohibits the Maryland Judiciary Case Search from in any way referring to the existence of records of a charge in a case with electronic records if the charge resulted in acquittal, dismissal, or nolle prosequi, except nolle prosequi with the requirement of drug or alcohol treatment; and (3) establishes the Partial Expungement Workgroup.

SB 201/Ch 680 – Criminal Procedure – Expungement of Records

Effective October 1, 2021

Beginning October 1, 2021, any police record, court record or other record maintained by the State or a political subdivision of the State relating to the charging of a crime or a civil offense under § 5-601 (c)(2)(ii) of the Criminal Law Article (possession of less than 10 grams of marijuana), including a must-appear violation of the Transportation Article, must be expunged three years after a disposition of the charge if no charge in the case resulted in a disposition other than acquittal; dismissal; not guilty; or nolle prosequi, other than nolle prosequi with a requirement of drug or alcohol treatment. For a case eligible for expungement under these conditions, the court must send notice of the disposition of each charge in the case and the date on which expungement is required to the (1) Central Repository; (2) each booking facility, law enforcement unit, and other unit of the State and political subdivision of the State that the court believes may have a record subject to expungement under these conditions; and (3) the person entitled to expungement.

Expungement Process



Expungement Processing Time

Petition to Answer = minimum 30 days

Objection to Hearing = minimum 14 days

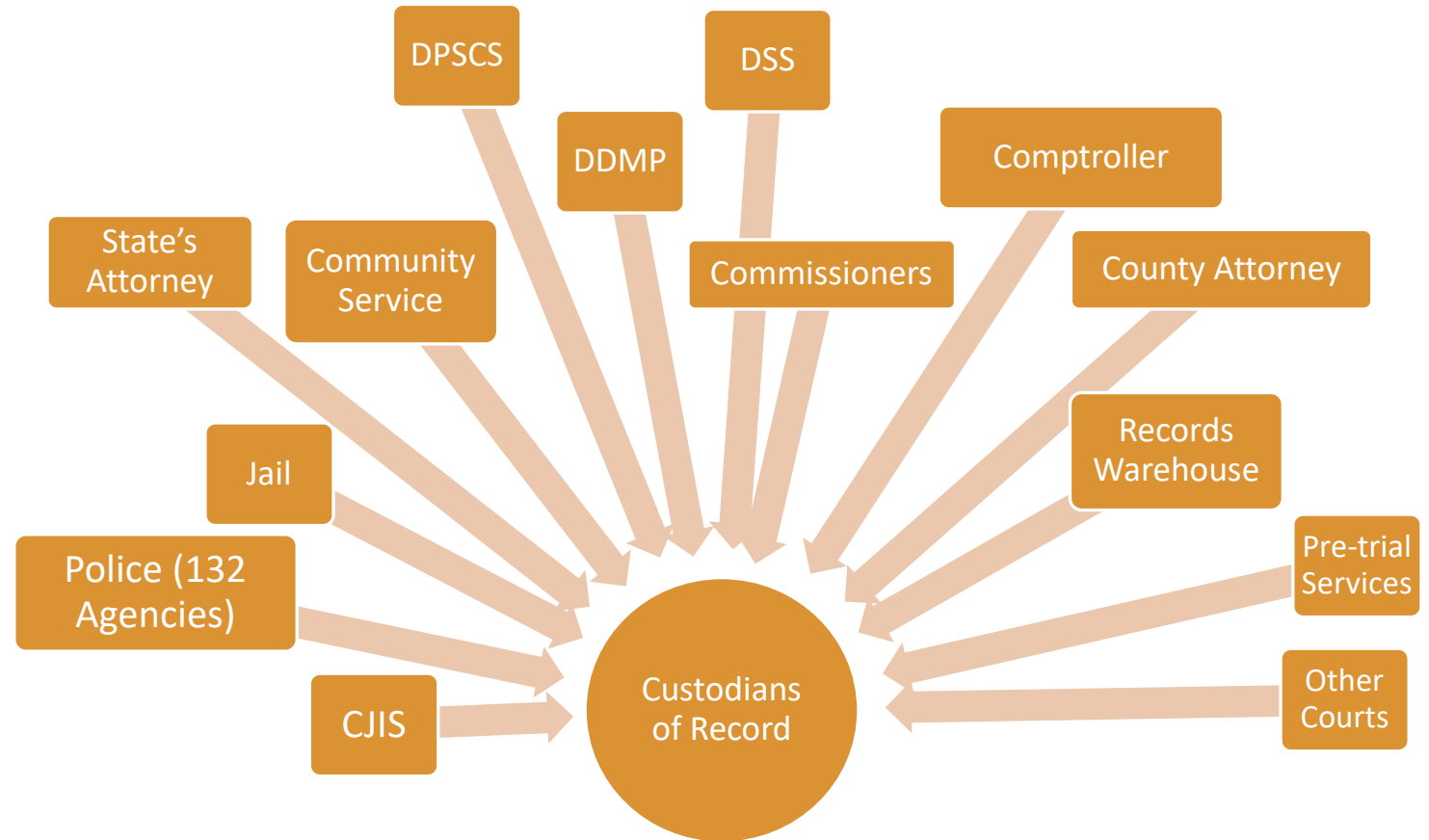
Order to Compliance = minimum 30 -60 days (depending on order of stay)

Minimum processing time = 60 – 90 days

Clerk hours per expungement vary based on the complexity of the case, how many custodians of record, and objections filed.

Compliance

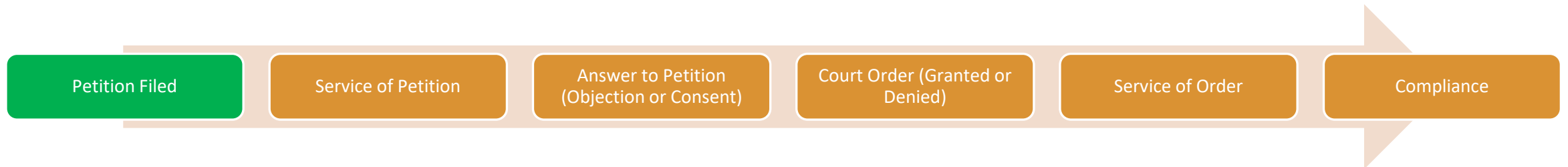
When an Order for Expungement is granted, a clerk must send a copy of the order to all custodians of record. The clerk must monitor the return of compliances to the court to ensure that all custodians have notified the court that the requirements of the order have been met.



Expungement Automation

Automatic expungement has different meanings.

1. It can refer to the process of applying for an expungement similar to SB 201. There is no need to file an application or petition. The expungement will take place by operation of law;
2. Pushing a button where the expungable changes will be removed from the case records. There is currently no technological solution for this type of expungement and the process is manual.



Complexity of Partial Expungement

If a marijuana offense is part of a case with multiple charges, it is not possible to fully comply with an order for expungement to obliterate the record. The charge would appear as “Charge Removed.” The charges cannot be renumbered.

Hearing audio recordings are very difficult to partially delete.

Narrative in statement of probable cause and statement of charges must be reviewed individually and manually redacted.

Contact Information

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Criminal Justice Impacts of Cannabis Legalization

Michael Hartman | October 2021

Presented to the House Cannabis Legalization
Workgroup



Roadmap

System Impacts to Consider

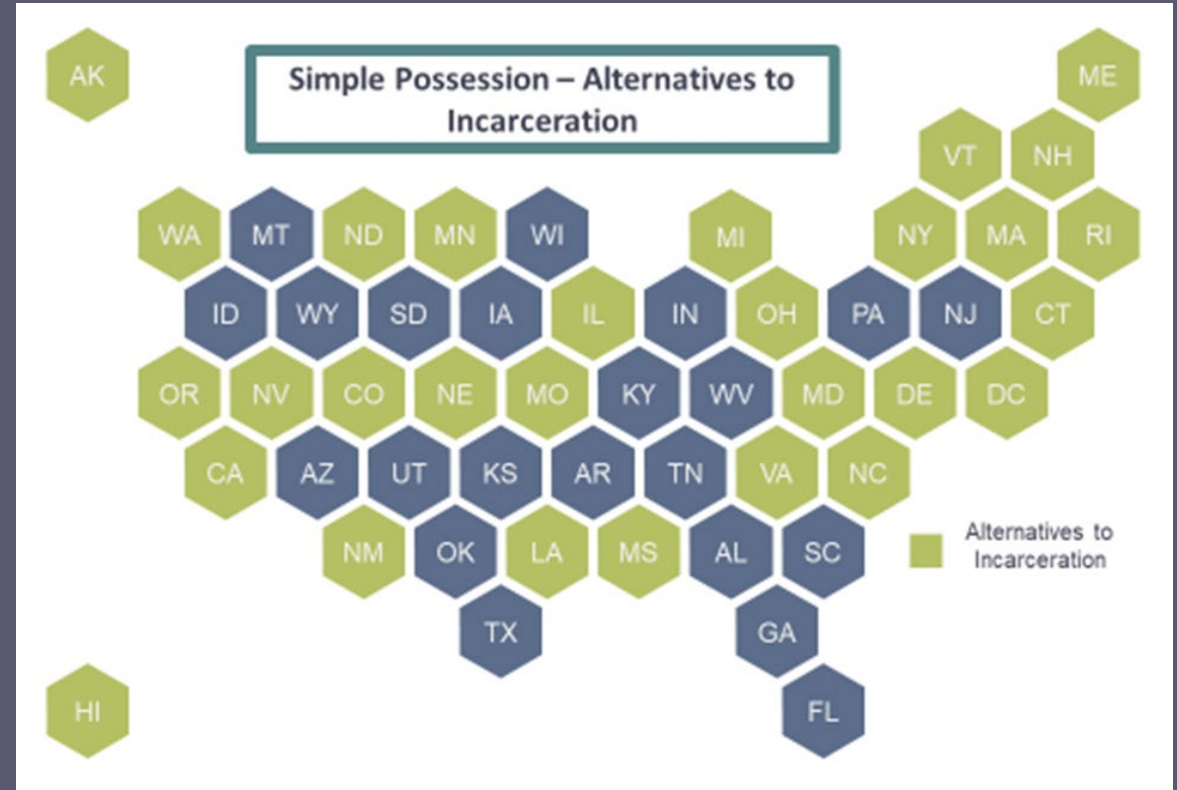
1. Decriminalization of Unlawful Use
2. Record Clearing
3. Court Supervision

Public Impact Studies

1. CATO
2. California
3. Colorado
4. Massachusetts
5. Washington

Alternatives to Incarceration (Decriminalization)

28 States, the Virgin Islands and Washington D.C. have alternatives to incarceration in place specifically for cannabis possession



Other Recent Decriminalization Examples

North Dakota (2019)

- ½ Ounce (14 grams)
- \$1,000 fine
- 21+ = Infraction
- 20 and Below = Class B Misdemeanor

Virginia (2020)

- 1 Ounce (28 grams)
- \$25 fine
- Civil Offense
- Rebuttable presumption that 1 ounce or less is for personal use

Louisiana (2021)

- Up to 14 grams
- \$100 fine
- Summon in Lieu of Custodial Arrest
- Provides Indigency Alternatives

Record Clearing

24 States and Washington D.C. have record clearing laws specific to cannabis, decriminalized, or legalized offenses



Terminology

Annulment	The act of nullifying or making void.
Destruction	To damage (something) so thoroughly as to make unusable, unreliable or nonexistent; to ruin.
Dismissal	Termination of an action, claim or charge without further hearing, especially before a trial; a judge's decision to stop a court case with an order or judgment that imposes no civil or criminal liability on the defendant with respect to the case.
Erasure	The removal of a conviction (especially for a first offense) from a person's criminal record.
Expungement	To remove from a record, list or book; to erase or destroy.
Sealing	To prevent access to (a document, record, etc.), especially by court order; to seal the record of the proceedings.
Set-Aside	To annul or vacate (a judgment, order, etc.).
Vacatur	The act of annulling or setting aside.

*Definitions taken from Black's Law Dictionary (11th ed. 2019)

Record Clearing Processes

On Petition

Convicted offender files a motion with the courts to clear a record. If the petition is successful, record clearing will be ordered by the Court

Oftentimes allows for challenges to the record clearing by prosecutor or others

Automatic

Records of eligible convictions are automatically cleared by courts and agencies following mandatory criteria to do so

Does not require action on the part of the defendant

Increases the number of records affected

Automated

Brings together automatic record clearing with modern technology

Software used to automatically clear records

Large upfront cost, but reduced expenses over time

Court Supervision Under Legal Cannabis

How to deal with individuals under court supervision?

Abstinence-based
Approach

Tolerance-based
Approach

Adaptive Approach

Source: *Problem-Solving Court Policies on Cannabis Use*, Nathaniel P. Morris, MD, J AM Acad Psychiatry Law 47(4) online, 2019.

Public Impact Studies

Data is incomplete – We may never have the specific answers we are looking for



CATO



California



Colorado



Massachusetts



Washington

THANK
YOU

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Reach out anytime!

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