

A chance for a clean slate

Automatic expungement law has helped thousands clear arrest records

By James Drew

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Thousands of Marylanders have had their arrest records removed from public view because of a new state law that requires automatic expungement for those who are detained and released without charge.

Proponents say the nine-month-old law is working as intended, removing potential barriers to obtaining employment, housing and loans. Another major change in state expungement law takes effect Oct. 1, when some criminal convictions in Maryland can be wiped out without a pardon from the governor.

The changes are seen as especially important in Baltimore City. Tens of thousands of residents, many of them young men, have minor criminal records - sometimes as a consequence of "zero-tolerance" policies that result in large numbers of arrests without charges or convictions.

But even the new laws don't go far enough, some advocates say. They want the legislature to help people with minor drug convictions - whom the new law would not directly benefit.

The law that took effect in October covers all crimes and has resulted in 7,092 automatic expungements through May 31. More than 6,000 originated in Baltimore, where most of the expungements have been triggered by police arresting people on suspicion of drug possession, failure to obey a police officer, loitering and alcohol violations - and then releasing them without charge after a review by prosecutors.

Previously, when prosecutors declined to bring charges, a person had to apply in writing, pay a \$30 fee and waive his or her right to sue if the person didn't want to wait three years to expunge a criminal record. Many people did not take those steps.

"Before the law took effect, individuals would be arrested and released without charge and they would have no concept that it would show up on their criminal record," said Natalie Finegar, an assistant public defender. "And it would show up in a way that was very confusing ... with 'no disposition found.' So it would make it seem like there was an open, pending charge."

Expungement is growing in importance as the economy tightens, said Robert Guiney, president of Just Temps Personnel, a Baltimore-based industrial labor staffing company.

"Jobs are scarcer, and we see people taking a harder look at things like criminal records simply because there are more people trying to get a job. The nuisance charge has become more of an issue. With the economy booming, employers may overlook that," he said.

Maryland law bars employers from requiring disclosure of expunged criminal charges in an application or interview. A person's refusal to disclose information about criminal charges that have been expunged also may not be the sole reason for an employer to fire or refuse to hire that person, state law says.

Neil E. Duke, a Baltimore attorney who specializes in employment law, said job-seekers often have to make a judgment call, especially because many employers use companies that conduct background checks and that have computerized criminal records covering years before charges are expunged.

"A prospective employee can take two tacks," Duke said. One is to "explain the [charge] and the basis of expungement. A different mind-set is that expungement is a cleansing of the record and as such, there is no record anymore. There is no quote-unquote need to confess."

Some advocates say additional changes to state law are needed to help more people who demonstrate they want to change their lives.

Mark P. Matthews was among those who urged the legislature this year, without success, to allow those with minor drug convictions to get the records removed from public inspection after finishing treatment and job-preparedness training.

"Otherwise, we will tie the hands of hundreds, if not thousands, of individuals who have paid their debt, re-evaluated their priorities and are willing to become productive members of society," said Matthews, a Baltimore resident with a criminal record who conducts expungement seminars.

"Without a clean or 'cleaner' record, they are doomed to repeat past behaviors in order to survive economically," Matthews said.

Matthews has been trying to help Cris Keeling. At 29, Keeling has a long rap sheet and is trying to wipe out charges of attempted murder, arson and auto theft that prosecutors didn't pursue or that were dismissed.

"I'm trying to change my life. I need a job. I have four kids. It's about time for me to put some bacon on the table," said Keeling, who said he has spent about 15 years in jail. "Something has got to change."

The law that takes effect Oct. 1 allows for expungement of "nuisance crimes," including public urination, panhandling, drinking alcohol in a public place and riding mass transit without paying the fare. It also covers nuisance crime convictions before Oct. 1 this year, according to the state Department of Legislative Services, but it does not cover drug convictions.

Del. Samuel I. Rosenberg, a Baltimore Democrat, said he sponsored the measure at the request of the nonprofit Jobs Opportunities Task Force.

"These offenses are the most minor, ones rooted in homelessness, poverty and sometimes being in the wrong place at the wrong time," said Michael Pinard, a law professor at the University of Maryland. "Drink a beer in the Ravens stadium, it is fine. Drink a beer two blocks away, it is not fine."

But the state police and Baltimore City State's Attorney Patricia C. Jessamy told legislators that they opposed the bill, with the state police saying it would "allow those criminals who graduate to more harmful offenses, such as robbery, theft or assault, to avoid progressive penalties as their past disruptive behaviors may have been purged from the record."

Jessamy and then-Police Commissioner Leonard D. Hamm supported the automatic expungement bill sponsored in 2007 by Del. Keith E. Haynes, a Baltimore Democrat. Law enforcement agencies noted that they are allowed to keep expunged records for investigative purposes but are barred from releasing them to the public.

Unlike last year's law that covers those who are released without charge, those who are convicted of "nuisance crimes" are required to apply for expungement. They must wait for three years after the conviction or the sentence is completed.

Also, they aren't eligible if they have been convicted of a crime other than a minor traffic violation within three years of the conviction they're trying to expunge.

The state has estimated that about 96,000 people in Maryland have "nuisance crimes" on their records. Those crimes frequently are among several charges from the same incident, according to the Department of Legislative Services. The nuisance charge can't be wiped out unless all the other charges are eligible for expungement.

Despite the changes in expungement law, many who are trying to rebound from brushes with the law say they find it difficult to navigate the complex process.

At a recent seminar on expungement conducted by Matthews at the Prisoners Aid Association of Maryland, Kimberly M. Randall asked several questions.

Randall, 46, is trying to remove a drug possession charge from her record. According to the police report, officers arrested her July 21, 2006, after she bought a "white rocklike substance, suspected cocaine."

Her case ended with Baltimore prosecutors deciding not to pursue the charge. But Randall - who worked for the state Department of Public Safety and Correctional Services for 15 years - said that after her arrest, she tested positive for drugs and lost her job.

Randall said she received treatment and has not used drugs for almost two years. She is doing janitorial work but wants to get the charge expunged so she can get a job in a parole or probation office.

"When people see 'possession' on your record, they prejudge you," she said.

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