

# Court Holds Md. Judges May Expunge Records

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The Maryland Court of Appeals has ruled that judges in the state have the authority to order expunged the arrest records of persons who have been released or acquitted of crimes regardless of whether existing law specifically permits such expungement.

The decision came in the case of a Georgetown University Law Center employee arrested in 1973 and charged with committing an unnatural sex act. Charges were dropped against the man, identified only by the pseudonym John Doe. He sought in Montgomery County Circuit Court to have the arrest records destroyed or returned to him on the grounds that preserving or disseminating them violated his constitutional rights.

The case was appealed after Circuit Court Judge John J. Mitchell ruled against him

saying Maryland law permits such erasure of records only for drug abusers who are first-time offenders.

The appellate decision appears to establish for the first time that expungement may be claimed as a constitutional, civil or personal right in Maryland courts.

"We think the lower court was wrong in its fundamental conclusion that, because specific legislative authorization to expunge criminal arrest records existed only in connection with certain drug abuse cases, a court of equity was without jurisdiction to pass upon the merits. . . ." Chief Judge Robert C. Murphy wrote in the Appeals Court's unanimous decision.

He cited a 1951 ruling that constitutional questions can rightfully be raised and con-

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sued in equity courts, which hear civil cases that do not involve monetary damages.

The decision pointed out that courts have not been uniform in rulings on expungement in the past.

The Court of Appeals action returns the "John Doe" case to the lower court for further action on the man's request to have his arrest record expunged. The decision noted that "the propriety of granting the relief sought necessarily depends upon 'the facts and circumstances' of each individual case.

The opinion said equity court handling of matters involving constitutional ques-

tions is not favored where remedies exist through the laws, but no such remedy now exists in Maryland.

The Maryland legislature, in its 1974 session, passed a bill allowing court authorities to destroy arrest records of persons who were not convicted. Gov. Marvin Mandel vetoed it because of "insurmountable administrative and procedural difficulties," which its opponents had argued would be created by such a law.

"Doe" said in his suit that because the charges against him were unfounded and erroneous, the arrest record would adversely affect his opportunities for future employment and infringe his constitutional right to privacy, "creating a permanent scar" on his life.