
By: Delegate Vallario

Introduced and read first time: January 24, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Expungement of Records - Revision - Waiver for Nolle Prosequi**

3 FOR the purpose of revising stylistically certain provisions concerning expungement of
4 records relating to criminal charges; prohibiting the expungement of a nolle
5 prosequi until a certain time unless a certain waiver is filed with the petition for
6 expungement; and generally relating to expungement of records of criminal charges.

7 BY repealing and reenacting, with amendments,
8 Article 27 - Crimes and Punishments
9 Section 737
10 Annotated Code of Maryland
11 (1992 Replacement Volume and 1995 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 27 - Crimes and Punishments**

15 737.

16 (a) A person charged with the commission of a crime may file a petition setting
17 forth the relevant facts and requesting expungement of the police records, court records,
18 and other records maintained by the State of Maryland and its subdivisions, pertaining to
19 the charge if:

20 (1) The person is acquitted,

21 (2) The charge is otherwise dismissed or quashed,

22 (3) A judgment of probation [without finding a verdict or probation on stay
23 of entry of] BEFORE judgment is entered,

24 (4) A nolle prosequi is entered,

25 (5) The proceeding is placed on the stet docket,

26 (6) The case is compromised pursuant to Article 10, § 37 of this Code,

27 (7) The person is convicted of only one criminal act, which is not a crime of
28 violence, and is subsequently granted a full and unconditional pardon by the Governor, or

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1 (8) The charge was transferred to Juvenile Court jurisdiction under § 594A
2 of this article.

3 (b) (1) [A] IF A CRIMINAL CHARGE WAS TRANSFERRED TO THE JUVENILE
4 COURT UNDER § 594A OF THIS ARTICLE, A court shall grant a petition [under
5 subsection (a)(8) of this section] FOR EXPUNGEMENT if:

6 (i) The charge transferred under § 594A of this article did not result
7 in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article; or

8 (ii) The charge did result in the filing of a petition under § 3-810 of
9 the Courts and Judicial Proceedings Article but the decision on the petition was a finding
10 of facts-not-sustained.

11 (2) (I) A PETITION FOR EXPUNGEMENT OF A CRIMINAL CHARGE
12 TRANSFERRED TO THE JUVENILE COURT UNDER § 594A OF THIS ARTICLE MAY BE
13 FILED AT ANY TIME AFTER:

14 1. IF A PETITION IS NOT FILED UNDER § 3-810 OF THE
15 COURTS ARTICLE, THE DATE OF THE DECISION NOT TO FILE A PETITION; OR

16 2. IF A PETITION IS FILED UNDER § 3-810 OF THE COURTS
17 ARTICLE, THE DECISION ON A PETITION OF FACTS-NOT-SUSTAINED.

18 [(2)] (II) If a charge transferred under § 594A of this article resulted in the
19 filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article and the
20 adjudication of the child as delinquent, the court may grant a petition[of] FOR
21 expungement [under subsection (a)(8) of this section] on or after the 21st birthday of the
22 petitioner.

23 (c) The petition shall be filed in the court in which the proceeding was
24 commenced. If the proceeding was commenced in one court and transferred to another
25 court, the petition shall be filed in the court to which the proceeding was transferred. If
26 the proceeding in a court of original jurisdiction was appealed to a court exercising
27 appellate jurisdiction, the petition shall be filed in the appellate court. However, the
28 appellate court may remand the matter to the court of original jurisdiction.

29 [(d) (1) With the exception of a petition based on subsection (a)(3), (4), (7), or
30 (8) of this section or a petition filed under paragraph (2) of this subsection, the petition
31 may not be filed earlier than 3 years after the date the judgment or order was entered or
32 the action was taken which terminated the proceeding. However, except for an acquittal
33 on grounds of insanity, the three-year waiting period does not apply to a circumstance
34 specified in subsection (a)(1) or subsection (a)(2) if a person files, with the petition, a
35 written general waiver and release, in proper legal form, of all claims she may have against
36 any person for tortious conduct arising from the charge. With respect to subsection (a)(3)
37 of this section, the petition may not be filed earlier than the later of: (1) 3 years after the
38 date of the judgment or order of probation; or (2) the date of the person's discharge from
39 probation. With respect to subsection (a)(4), the petition may be filed immediately after
40 the nolle prosequi is entered. With respect to subsection (a)(7) of this section, the
41 petition may not be filed earlier than 5 years nor later than 10 years after the pardon was
42 signed by the Governor.

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1 (2) The court may grant a petition for expungement at any time upon a
2 showing of good cause by the petitioner.]

3 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
4 PETITION FOR EXPUNGEMENT BASED ON THE FOLLOWING DISPOSITIONS MAY NOT
5 BE FILED EARLIER THAN 3 YEARS AFTER THE DATE OF THE DISPOSITION:

6 (I) AN ACQUITTAL;

7 (II) A NOLLE PROSEQUI; OR

8 (III) A DISMISSAL OR QUASHING OF A CHARGE.

9 (2) (I) A PETITION FOR EXPUNGEMENT BASED ON THE DISPOSITIONS
10 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION MAY BE FILED EARLIER THAN 3
11 YEARS AFTER THE DATE OF THE DISPOSITION IF THE PERSON FILES WITH THE
12 PETITION A WRITTEN GENERAL WAIVER AND RELEASE, IN PROPER LEGAL FORM,
13 OF ALL CLAIMS THE PERSON MAY HAVE AGAINST ANY PERSON FOR TORTIOUS
14 CONDUCT ARISING FROM THE CHARGE.

15 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)
16 OF THIS PARAGRAPH, A PETITION FOR EXPUNGEMENT MAY NOT BE FILED EARLIER
17 THAN 3 YEARS AFTER ACQUITTAL IF THE ACQUITTAL WAS ON THE GROUNDS OF A
18 VERDICT OF NOT CRIMINALLY RESPONSIBLE.

19 (E) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION BEFORE
20 JUDGMENT MAY NOT BE FILED EARLIER THAN 3 YEARS AFTER THE LATER OF:

21 (1) THE DATE OF THE ENTRY OF JUDGMENT OR ORDER OF PROBATION;
22 OR

23 (2) THE DATE OF THE PERSON'S DISCHARGE FROM PROBATION.

24 (F) A PETITION FOR EXPUNGEMENT BASED ON A FULL AND UNCONDITIONAL
25 PARDON BY THE GOVERNOR FOR A CONVICTION FOR ONLY ONE CRIMINAL ACT
26 WHICH IS NOT A CRIME OF VIOLENCE MAY NOT BE FILED EARLIER THAN 5 YEARS
27 NOR LATER THAN 10 YEARS AFTER THE PARDON WAS SIGNED BY THE GOVERNOR.

28 (G) A PETITION FOR EXPUNGEMENT BASED ON THE ENTRY OF A STET OR A
29 COMPROMISE UNDER ARTICLE 10, § 37 OF THE CODE MAY NOT BE FILED EARLIER
30 THAN 3 YEARS AFTER THE JUDGMENT OR ORDER WAS ENTERED.

31 (H) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A COURT
32 MAY GRANT A PETITION FOR EXPUNGEMENT AT ANY TIME ON A SHOWING OF
33 GOOD CAUSE BY THE PETITIONER.

34 [(e)] (I) A copy of the petition shall be served on the State's Attorney. Unless the
35 State's Attorney files an objection to the petition within 30 days after it is served on him,
36 the court shall enter an order requiring the expungement of police records and court
37 records pertaining to the charge.

38 [(f)] (J) If the State's Attorney files a timely objection to the petition, the court
39 shall conduct a hearing. If the court finds that the person is entitled to expungement, it

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1 shall enter an order requiring the expungement of police records and all court records
2 pertaining to the charge. Otherwise, it shall deny the petition. If the petition is based
3 upon the entry of a judgment of probation [without finding a verdict, probation on stay of
4 entry of judgment] BEFORE JUDGMENT, a nolle prosequi, placement on the stet docket,
5 or a full and unconditional pardon by the Governor, the person is not entitled to
6 expungement if:

7 (1) He has since been convicted of any crime, other than violations of the
8 State vehicle laws or other traffic laws, ordinances, or regulations not carrying a possible
9 sentence of imprisonment[.]; or

10 (2) He is then a defendant in a pending criminal proceeding.

11 [(g)] (K) The State's Attorney is a party to the proceeding. Any party aggrieved by
12 the decision of the court has the right of appellate review provided in the Courts and
13 Judicial Proceedings Article.

14 [(h)] (L) Every custodian of the police records and court records subject to the
15 order shall, within 60 days after entry of the order, unless it is stayed pending an appeal,
16 advise the court and the person in writing of compliance with the order.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1996.