

HOUSE BILL 195

E2

4r0457
CF SB 211

By: **Delegates Rosenberg, Carter, and Oaks**
Introduced and read first time: January 16, 2014
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Misdemeanor Convictions**

3 FOR the purpose of authorizing a certain person to file a certain petition for
4 expungement of a certain record if the person was convicted of a certain
5 misdemeanor and was under a certain age at the time of the conviction;
6 specifying the time period within which a petition for expungement based on a
7 conviction of a certain misdemeanor may not be filed; making a conforming
8 change; and generally relating to expungement of criminal records.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 10–105
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2013 Supplement)

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

16 **Article – Criminal Procedure**

17 10–105.

18 (a) A person who has been charged with the commission of a crime, including
19 a violation of the Transportation Article for which a term of imprisonment may be
20 imposed, or who has been charged with a civil offense or infraction, except a juvenile
21 offense, as a substitute for a criminal charge may file a petition listing relevant facts
22 for expungement of a police record, court record, or other record maintained by the
23 State or a political subdivision of the State if:

24 (1) the person is acquitted;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) the charge is otherwise dismissed;

2 (3) a probation before judgment is entered, unless the person is
3 charged with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5
4 or § 3–211 of the Criminal Law Article;

5 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
6 alcohol treatment is entered;

7 (5) the court indefinitely postpones trial of a criminal charge by
8 marking the criminal charge “stet” or stet with the requirement of drug or alcohol
9 abuse treatment on the docket;

10 (6) the case is compromised under § 3–207 of the Criminal Law
11 Article;

12 (7) the charge was transferred to the juvenile court under § 4–202 of
13 this article;

14 (8) the person:

15 (i) is convicted of only one criminal act, and that act is not a
16 crime of violence; and

17 (ii) is granted a full and unconditional pardon by the Governor;

18 (9) the person was convicted of a crime or found not criminally
19 responsible under any State or local law that prohibits:

20 (i) urination or defecation in a public place;

21 (ii) panhandling or soliciting money;

22 (iii) drinking an alcoholic beverage in a public place;

23 (iv) obstructing the free passage of another in a public place or a
24 public conveyance;

25 (v) sleeping on or in park structures, such as benches or
26 doorways;

27 (vi) loitering;

28 (vii) vagrancy;

29 (viii) riding a transit vehicle without paying the applicable fare or
30 exhibiting proof of payment; or

1 (ix) except for carrying or possessing an explosive, acid,
2 concealed weapon, or other dangerous article as provided in § 7-705(b)(6) of the
3 Transportation Article, any of the acts specified in § 7-705 of the Transportation
4 Article; [or]

5 (10) the person was found not criminally responsible under any State or
6 local law that prohibits misdemeanor:

7 (i) trespass;

8 (ii) disturbing the peace; or

9 (iii) telephone misuse; **OR**

10 **(11) THE PERSON:**

11 **(I) WAS CONVICTED OF A MISDEMEANOR OTHER THAN A**
12 **MISDEMEANOR LISTED IN ITEM (9) OF THIS SUBSECTION; AND**

13 **(II) WAS UNDER THE AGE OF 35 YEARS AT THE TIME OF THE**
14 **MISDEMEANOR CONVICTION.**

15 (a-1) A person's attorney or personal representative may file a petition, on
16 behalf of the person, for expungement under this section if the person died before
17 disposition of the charge by nolle prosequi or dismissal.

18 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
19 person shall file a petition in the court in which the proceeding began.

20 (2) If the proceeding began in one court and was transferred to
21 another court, the person shall file the petition in the court to which the proceeding
22 was transferred.

23 (3) (i) If the proceeding in a court of original jurisdiction was
24 appealed to a court exercising appellate jurisdiction, the person shall file the petition
25 in the appellate court.

26 (ii) The appellate court may remand the matter to the court of
27 original jurisdiction.

28 (c) (1) Except as provided in paragraph (2) of this subsection, a petition
29 for expungement based on an acquittal, a nolle prosequi, or a dismissal may not be
30 filed within 3 years after the disposition, unless the petitioner files with the petition a
31 written general waiver and release of all the petitioner's tort claims arising from the
32 charge.

1 (2) A petition for expungement based on a probation before judgment
2 or a stet with the requirement of drug or alcohol abuse treatment may not be filed
3 earlier than the later of:

4 (i) the date the petitioner was discharged from probation or the
5 requirements of obtaining drug or alcohol abuse treatment were completed; or

6 (ii) 3 years after the probation was granted or stet with the
7 requirement of drug or alcohol abuse treatment was entered on the docket.

8 (3) A petition for expungement based on a nolle prosequi with the
9 requirement of drug or alcohol treatment may not be filed until the completion of the
10 required treatment.

11 (4) A petition for expungement based on a full and unconditional
12 pardon by the Governor may not be filed later than 10 years after the pardon was
13 signed by the Governor.

14 (5) Except as provided in paragraph (2) of this subsection, a petition
15 for expungement based on a stet or a compromise under § 3–207 of the Criminal Law
16 Article may not be filed within 3 years after the stet or compromise.

17 (6) A petition for expungement based on the conviction of a crime
18 under subsection (a)(9) of this section may not be filed within 3 years after the
19 conviction or satisfactory completion of the sentence, including probation, that was
20 imposed for the conviction, whichever is later.

21 (7) A petition for expungement based on a finding of not criminally
22 responsible under subsection (a)(9) or (10) of this section may not be filed within 3
23 years after the finding of not criminally responsible was made by the court.

24 **(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION**
25 **OF A MISDEMEANOR UNDER SUBSECTION (A)(11) OF THIS SECTION MAY NOT BE**
26 **FILED WITHIN 10 YEARS AFTER THE CONVICTION OR SATISFACTORY**
27 **COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED**
28 **FOR THE CONVICTION, WHICHEVER IS LATER.**

29 **[(8) (9)]** A court may grant a petition for expungement at any time
30 on a showing of good cause.

31 (d) (1) The court shall have a copy of a petition for expungement served
32 on the State's Attorney.

1 (2) Unless the State's Attorney files an objection to the petition for
2 expungement within 30 days after the petition is served, the court shall pass an order
3 requiring the expungement of all police records and court records about the charge.

4 (e) (1) If the State's Attorney files a timely objection to the petition, the
5 court shall hold a hearing.

6 (2) If the court at the hearing finds that the person is entitled to
7 expungement, the court shall order the expungement of all police records and court
8 records about the charge.

9 (3) If the court finds that the person is not entitled to expungement,
10 the court shall deny the petition.

11 (4) The person is not entitled to expungement if:

12 (i) the petition is based on the entry of probation before
13 judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of
14 drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
15 treatment, a conviction for a crime [specified in subsection (a)(9) of this section], a
16 finding of not criminally responsible, or the grant of a pardon by the Governor; and

17 (ii) the person:

18 1. since the full and unconditional pardon, entry, finding
19 of not criminally responsible, or conviction has been convicted of a crime other than a
20 minor traffic violation; or

21 2. is a defendant in a pending criminal proceeding.

22 (f) Unless an order is stayed pending an appeal, within 60 days after entry
23 of the order, every custodian of the police records and court records that are subject to
24 the order of expungement shall advise in writing the court and the person who is
25 seeking expungement of compliance with the order.

26 (g) (1) The State's Attorney is a party to the proceeding.

27 (2) A party aggrieved by the decision of the court is entitled to
28 appellate review as provided in the Courts Article.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2014.