

HOUSE BILL 791

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5lr2235
CF SB 388

By: **Delegates McComas, Anderson, Carozza, Dumais, Kittleman, McConkey,
B. Wilson, and C. Wilson**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Restorative Justice Programs**

3 FOR the purpose of adding community conferencing, community mediation, and similar
4 agreements to the list of requirements for the entering of a nolle prosequi or stet for
5 which a certain petition for expungement of court, police, and other governmental
6 records may be filed; prohibiting the filing of a certain petition for expungement until
7 community conferencing, community mediation, or certain other agreements are
8 completed under certain circumstances; prohibiting expungement under certain
9 circumstances; and generally relating to expungement of court, police, and other
10 governmental records.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 10–105
14 Annotated Code of Maryland
15 (2008 Replacement Volume and 2014 Supplement)

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

18 **Article – Criminal Procedure**

19 10–105.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) the person is acquitted;

2 (2) the charge is otherwise dismissed;

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

6 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
7 alcohol treatment **OR COMMUNITY CONFERENCING, COMMUNITY MEDIATION, OR**
8 **SIMILAR AGREEMENT** is entered;

9 (5) the court indefinitely postpones trial of a criminal charge by marking,
10 **ON THE DOCKET**, the criminal charge “stet” or stet with the requirement of:

11 (I) drug or alcohol abuse treatment [on the docket]; **OR**

12 (II) **COMMUNITY CONFERENCING, COMMUNITY MEDIATION, OR**
13 **SIMILAR AGREEMENT**;

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

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

17 (8) the person:

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

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

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

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

24 (ii) panhandling or soliciting money;

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

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

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

1 (vi) loitering;

2 (vii) vagrancy;

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

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

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

10 (i) trespass;

11 (ii) disturbing the peace; or

12 (iii) telephone misuse.

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

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

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

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

23 (ii) The appellate court may remand the matter to the court of
24 original jurisdiction.

25 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
26 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
27 3 years after the disposition, unless the petitioner files with the petition a written general
28 waiver and release of all the petitioner's tort claims arising from the charge.

29 (2) A petition for expungement based on a probation before judgment or a
30 stet with the requirement of drug or alcohol abuse treatment **OR COMMUNITY**
31 **CONFERENCING, COMMUNITY MEDIATION, OR SIMILAR AGREEMENT** may not be filed
32 earlier than the later of:

1 (i) the date the petitioner:

2 1. was discharged from probation [or];

3 2. **COMPLETED** the requirements of obtaining drug or
4 alcohol abuse treatment [were completed]; or

5 3. **COMPLETED THE REQUIREMENTS OF COMMUNITY**
6 **CONFERENCING, COMMUNITY MEDIATION, OR SIMILAR AGREEMENT; OR**

7 (ii) 3 years after the probation was granted or stet **WAS ENTERED**
8 **ON THE DOCKET** with the requirement of:

9 1. drug or alcohol abuse treatment [was entered on the
10 docket]; **OR**

11 2. **COMMUNITY CONFERENCING, COMMUNITY**
12 **MEDIATION, OR SIMILAR AGREEMENT.**

13 (3) A petition for expungement based on a nolle prosequi with the
14 requirement of drug or alcohol treatment **OR COMMUNITY CONFERENCING,**
15 **COMMUNITY MEDIATION, OR SIMILAR AGREEMENT** may not be filed until the
16 completion of the required treatment **OR PROGRAM REQUIREMENTS.**

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

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

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

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

30 (8) A court may grant a petition for expungement at any time on a showing
31 of good cause.

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

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

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

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

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

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

14 (i) the petition is based on the entry of probation before judgment,
15 a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol
16 treatment **OR COMMUNITY CONFERENCING, COMMUNITY MEDIATION, OR SIMILAR**
17 **AGREEMENT** or a stet with the requirement of drug or alcohol abuse treatment **OR**
18 **COMMUNITY CONFERENCING, COMMUNITY MEDIATION, OR SIMILAR AGREEMENT**, a
19 conviction for a crime specified in subsection (a)(9) of this section, a finding of not criminally
20 responsible, or the grant of a pardon by the Governor; and

21 (ii) the person:

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

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

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

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

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

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2015.

