

HOUSE BILL 1058

E2

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By: **Delegates Carter, Anderson, Conaway, Glenn, McCray, Oaks, and B. Robinson**
Introduced and read first time: February 13, 2015
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Nonviolent Convictions**

3 FOR the purpose of authorizing a certain person to file a certain petition for expungement
4 of a certain record if the person was convicted of a certain nonviolent crime;
5 specifying the time period within which a petition for expungement under this Act
6 may not be filed; providing that the determination as to whether a person who has
7 filed a petition under this Act is entitled to expungement is within the discretion of
8 the court; requiring the court to take certain circumstances into consideration when
9 making a certain determination; making a conforming change; making a certain
10 technical correction; and generally relating to expungement of criminal 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 is entered;
- 8 (5) the court indefinitely postpones trial of a criminal charge by marking
9 the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment
10 on the docket;
- 11 (6) the case is compromised under § 3–207 of the Criminal Law Article;
- 12 (7) the charge was transferred to the juvenile court under § 4–202 of this
13 article;
- 14 (8) the person:
 - 15 (i) is convicted of only one criminal act, and that act is not a crime
16 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 responsible
19 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 doorways;
 - 26 (vi) loitering;
 - 27 (vii) vagrancy;
 - 28 (viii) riding a transit vehicle without paying the applicable fare or
29 exhibiting proof of payment; or

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

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

6 (i) trespass;

7 (ii) disturbing the peace; or

8 (iii) telephone misuse; OR

9 **(11) THE PERSON WAS CONVICTED OF A NONVIOLENT CRIME OTHER**
10 **THAN A MISDEMEANOR LISTED IN ITEM (9) OF THIS SUBSECTION.**

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

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

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

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

21 (ii) The appellate court may remand the matter to the court of
22 original jurisdiction.

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

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

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

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

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

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

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

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

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

19 **(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A**
20 **NONVIOLENT CRIME UNDER SUBSECTION (A)(11) OF THIS SECTION MAY NOT BE**
21 **FILED BEFORE SATISFACTORY COMPLETION OF THE SENTENCE, INCLUDING**
22 **PROBATION, THAT WAS IMPOSED FOR THE CONVICTION.**

23 **[(8)] (9)** A court may grant a petition for expungement at any time on a
24 showing of good cause.

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

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

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

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

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

3 (4) (I) IT IS WITHIN THE DISCRETION OF THE COURT TO
4 DETERMINE WHETHER A PERSON WHO HAS FILED A PETITION BASED ON THE
5 CONVICTION OF A NONVIOLENT CRIME UNDER SUBSECTION (A)(11) OF THIS
6 SECTION IS ENTITLED TO EXPUNGEMENT, INCLUDING WHETHER THE CONVICTION
7 QUALIFIES AS NONVIOLENT.

8 (II) IN MAKING A DETERMINATION UNDER THIS PARAGRAPH,
9 THE COURT SHALL TAKE INTO CONSIDERATION THE SPECIFIC CIRCUMSTANCES OF
10 THE CASE AND OF THE PETITIONER.

11 [(4)] (5) The person is not entitled to expungement if:

12 (i) the petition is based on the entry of probation before judgment,
13 a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol
14 treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction
15 for a crime [specified in subsection (a)(9) of this section], a finding of not criminally
16 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 of
19 not criminally responsible, or conviction has been convicted of a crime other than a minor
20 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 of the
23 order, every custodian of the police records and court records that are subject to the order
24 of expungement shall advise in writing the court and the person who is seeking
25 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 appellate
28 review as provided in the Courts Article.

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