

HOUSE BILL 914

E2

6lr2360

By: **Delegate Carter**

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Acquittal, Dismissal, and Nolle Prosequi**

3 FOR the purpose of providing that a person who has been charged with the commission of
4 a certain crime is entitled to automatic expungement of certain records under certain
5 circumstances; requiring a certain court to take certain actions within a certain time
6 after a certain disposition; requiring the Criminal Justice Information System
7 Central Repository, a booking facility, and a certain law enforcement unit to take
8 certain actions within a certain period of time after receipt of a certain notice;
9 providing that a certain police or court record may not be expunged by obliteration
10 during a certain time; requiring that certain records be removed to a certain area
11 during a certain time; authorizing a certain person entitled to expungement to take
12 certain actions if a court, a law enforcement unit, a booking facility, or the Central
13 Repository fails to expunge a police or court record in accordance with this Act;
14 providing that a person who is entitled to expungement under this Act may not be
15 required to pay any fee or costs in connection with the expungement; making
16 conforming changes; and generally relating to expungement.

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 10–105
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2015 Supplement)

22 BY adding to
23 Article – Criminal Procedure
24 Section 10–105.1
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2015 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Procedure

1

2 10–105.

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

9 (1) [the person is acquitted;

10 (2) the charge is otherwise dismissed;

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

14 [(4) (2) a [nolle prosequi or] nolle prosequi with the requirement of drug
15 or alcohol treatment is entered;

16 [(5) (3) the court indefinitely postpones trial of a criminal charge by
17 marking the criminal charge “stet” or stet with the requirement of drug or alcohol abuse
18 treatment on the docket;

19 [(6) (4) the case is compromised under § 3–207 of the Criminal Law
20 Article;

21 [(7) (5) the charge was transferred to the juvenile court under § 4–202 of
22 this article;

23 [(8) (6) the person:

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

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

27 [(9) (7) the person was convicted of a crime or found not criminally
28 responsible under any State or local law that prohibits:

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

30 (ii) panhandling or soliciting money;

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

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

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

5 (vi) loitering;

6 (vii) vagrancy;

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

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

12 [(10)] (8) the person was found not criminally responsible under any State
13 or local law that prohibits misdemeanor:

14 (i) trespass;

15 (ii) disturbing the peace; or

16 (iii) telephone misuse; or

17 [(11)] (9) the person was convicted of a crime and the act on which the
18 conviction was based is no longer a crime.

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

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

24 (2) (i) Except as provided in subparagraph (ii) of this paragraph, if the
25 proceeding began in one court and was transferred to another court, the person shall file
26 the petition in the court to which the proceeding was transferred.

27 (ii) If the proceeding began in one court and was transferred to the
28 juvenile court under § 4-202 or § 4-202.2 of this article, the person shall file the petition in
29 the court of original jurisdiction from which the order of transfer was entered.

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

4 (ii) The appellate court may remand the matter to the court of
5 original jurisdiction.

6 (c) (1) [Except as provided in paragraph (2) of this subsection, a petition for
7 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
8 3 years after the disposition, unless the petitioner files with the petition a written general
9 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

17 [(3)] (2) A petition for expungement based on a nolle prosequi with the
18 requirement of drug or alcohol treatment may not be filed until the completion of the
19 required treatment.

20 [(4)] (3) A petition for expungement based on a full and unconditional
21 pardon by the Governor may not be filed later than 10 years after the pardon was signed
22 by the Governor.

23 [(5)] (4) Except as provided in paragraph [(2)] (1) of this subsection, a
24 petition for expungement based on a stet or a compromise under § 3–207 of the Criminal
25 Law Article may not be filed within 3 years after the stet or compromise.

26 [(6)] (5) A petition for expungement based on the conviction of a crime
27 under subsection [(a)(9)] (A)(7) of this section may not be filed within 3 years after the
28 conviction or satisfactory completion of the sentence, including probation, that was imposed
29 for the conviction, whichever is later.

30 [(7)] (6) A petition for expungement based on a finding of not criminally
31 responsible under subsection [(a)(9) or (10)] (A)(7) OR (8) of this section may not be filed
32 within 3 years after the finding of not criminally responsible was made by the court.

33 [(8)] (7) A court may grant a petition for expungement at any time on a
34 showing 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 except a probation before judgment for a crime where the act on which the conviction is
16 based is no longer a crime, and the person within 3 years of the entry of the probation before
17 judgment has been convicted of a crime other than a minor traffic violation or a crime where
18 the act on which the conviction is based is no longer a crime; or

19 (ii) the person is a defendant in a pending criminal proceeding.

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

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

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

27 **10-105.1.**

28 (A) UNLESS THE STATE OBJECTS AND SHOWS CAUSE WHY A RECORD
29 SHOULD NOT BE EXPUNGED, A PERSON WHO HAS BEEN CHARGED WITH THE
30 COMMISSION OF A CRIME, INCLUDING A VIOLATION OF THE TRANSPORTATION
31 ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED, OR WHO HAS
32 BEEN CHARGED WITH A CIVIL OFFENSE OR AN INFRACTION, EXCEPT A JUVENILE
33 OFFENSE, AS A SUBSTITUTE FOR A CRIMINAL CHARGE, IS ENTITLED TO AUTOMATIC
34 EXPUNGEMENT OF ALL POLICE RECORDS, COURT RECORDS, AND OTHER RECORDS

1 MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE RELATING
2 TO THE MATTER IF:

3 (1) THE PERSON IS ACQUITTED;

4 (2) THE CHARGE IS DISMISSED; OR

5 (3) A NOLLE PROSEQUI OTHER THAN A NOLLE PROSEQUI WITH THE
6 REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS ENTERED.

7 (B) WITHIN 60 DAYS AFTER A DISPOSITION OF A CHARGE UNDER
8 SUBSECTION (A) OF THIS SECTION, THE COURT WITH JURISDICTION OVER THE
9 MATTER SHALL:

10 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH COURT RECORD
11 ABOUT THE CHARGE; AND

12 (2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT
13 FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING CHARGE TO:

14 (I) THE CENTRAL REPOSITORY;

15 (II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT
16 THAT THE COURT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST,
17 CONFINEMENT, OR CHARGE; AND

18 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

19 (C) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL
20 REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT
21 SHALL:

22 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE AND
23 COURT RECORD ABOUT THE ARREST, CONFINEMENT, OR CHARGING OF THE
24 PERSON; AND

25 (2) ADVISE IN WRITING THE PERSON ENTITLED TO EXPUNGEMENT OF
26 COMPLIANCE WITH THE ORDER.

27 (D) (1) A POLICE OR COURT RECORD EXPUNGED UNDER THIS SECTION
28 MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DATE OF
29 EXPUNGEMENT.

1 **(2) DURING THE 3-YEAR PERIOD DESCRIBED IN PARAGRAPH (1) OF**
2 **THIS SUBSECTION, THE RECORDS SHALL BE REMOVED TO A SEPARATE SECURE AREA**
3 **TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE**
4 **DENIED ACCESS.**

5 **(3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON FOR**
6 **ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES OF**
7 **PROCEEDINGS RELATING TO THE ARREST OR CHARGE.**

8 **(E) IF A COURT, A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE**
9 **CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE OR COURT RECORD AS**
10 **REQUIRED UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON ENTITLED**
11 **TO EXPUNGEMENT MAY:**

12 **(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL REMEDY;**
13 **AND**

14 **(2) RECOVER COURT COSTS.**

15 **(F) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION**
16 **MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE**
17 **EXPUNGEMENT.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2016.