

SENATE BILL 328

E2
HB 1292/12 – JUD

6lr2706
CF HB 220

By: ~~Senator Conway~~ **Senators Conway, Hough, McFadden, Muse, Ramirez, Raskin, and Zirkin**

Introduced and read first time: January 27, 2016

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2016

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – ~~Partial~~ Expungement**

3 FOR the purpose of ~~authorizing a person to file a petition for a partial expungement of~~
4 ~~certain criminal records under certain circumstances; authorizing a court to~~
5 ~~authorize a certain person to maintain certain records and limit inspection of certain~~
6 ~~records under certain circumstances; requiring a court to order that certain records~~
7 ~~may not be included on a certain Web site or within certain records; repealing a~~
8 ~~provision of law establishing that if a person is not entitled to expungement of one~~
9 ~~charge or conviction in a certain unit the person is not entitled to expungement of~~
10 ~~any other charge or conviction in the unit; and generally relating to expungement of~~
11 ~~criminal records~~ authorizing a person to file a petition for expungement of certain
12 misdemeanor convictions; specifying certain convictions that are eligible for
13 expungement; requiring a person to file a petition for expungement in a certain court;
14 providing that a petition for expungement of certain misdemeanor convictions may
15 not be filed earlier than a certain time; providing that a person is not eligible for
16 expungement under certain circumstances; requiring the court to serve a copy of a
17 petition on the State's Attorney and provide notice of the petition to certain victims;
18 requiring the court to order the expungement of certain records under certain
19 circumstances; requiring the court to hold a hearing on the petition under certain
20 circumstances; authorizing the court to order the expungement of certain records
21 after a hearing if the court makes certain findings on the record; requiring the court
22 to deny a certain petition under certain circumstances; requiring certain custodians
23 of certain records to destroy the records within a certain time after an order granting
24 a petition; providing that the State's Attorney is a party to a certain proceeding;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 providing that a party to the proceeding is entitled to appellate review; and generally
 2 relating to expungement.

3 ~~BY repealing and reenacting, with amendments, adding to~~

4 ~~Article – Criminal Procedure~~

5 ~~Section ~~10-105~~ 10-110~~

6 ~~Annotated Code of Maryland~~

7 ~~(2008 Replacement Volume and 2015 Supplement)~~

8 ~~BY repealing~~

9 ~~Article – Criminal Procedure~~

10 ~~Section 10-107~~

11 ~~Annotated Code of Maryland~~

12 ~~(2008 Replacement Volume and 2015 Supplement)~~

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

14 That the Laws of Maryland read as follows:

15 **Article – Criminal Procedure**

16 ~~10-105.~~

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

23 ~~(1) the person is acquitted;~~

24 ~~(2) the charge is otherwise dismissed;~~

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

28 ~~(4) a nolle prosequi or nolle prosequi with the requirement of drug or~~
 29 ~~alcohol treatment is entered;~~

30 ~~(5) the court indefinitely postpones trial of a criminal charge by marking~~
 31 ~~the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment~~
 32 ~~on the docket;~~

33 ~~(6) the case is compromised under § 3-207 of the Criminal Law Article;~~

- 1 ~~(7) the charge was transferred to the juvenile court under § 4-202 of this~~
2 ~~article;~~
- 3 ~~(8) the person:~~
- 4 ~~(i) is convicted of only one criminal act, and that act is not a crime~~
5 ~~of violence; and~~
- 6 ~~(ii) is granted a full and unconditional pardon by the Governor;~~
- 7 ~~(9) the person was convicted of a crime or found not criminally responsible~~
8 ~~under any State or local law that prohibits:~~
- 9 ~~(i) urination or defecation in a public place;~~
- 10 ~~(ii) panhandling or soliciting money;~~
- 11 ~~(iii) drinking an alcoholic beverage in a public place;~~
- 12 ~~(iv) obstructing the free passage of another in a public place or a~~
13 ~~public conveyance;~~
- 14 ~~(v) sleeping on or in park structures, such as benches or doorways;~~
- 15 ~~(vi) loitering;~~
- 16 ~~(vii) vagrancy;~~
- 17 ~~(viii) riding a transit vehicle without paying the applicable fare or~~
18 ~~exhibiting proof of payment; or~~
- 19 ~~(ix) except for carrying or possessing an explosive, acid, concealed~~
20 ~~weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation~~
21 ~~Article, any of the acts specified in § 7-705 of the Transportation Article;~~
- 22 ~~(10) the person was found not criminally responsible under any State or~~
23 ~~local law that prohibits misdemeanor:~~
- 24 ~~(i) trespass;~~
- 25 ~~(ii) disturbing the peace; or~~
- 26 ~~(iii) telephone misuse; or~~
- 27 ~~(11) the person was convicted of a crime and the act on which the conviction~~
28 ~~was based is no longer a crime.~~

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

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

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

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

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

15 ~~(ii) The appellate court may remand the matter to the court of~~
16 ~~original jurisdiction.~~

17 ~~(e) (1) Except as provided in paragraph (2) of this subsection, a petition for~~
18 ~~expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within~~
19 ~~3 years after the disposition, unless the petitioner files with the petition a written general~~
20 ~~waiver and release of all the petitioner's tort claims arising from the charge.~~

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

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

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

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

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

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

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

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

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

13 ~~(d) (1) WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,~~
14 ~~TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT~~
15 ~~ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A~~
16 ~~PETITION FOR PARTIAL EXPUNGEMENT FOR THE CHARGES ELIGIBLE FOR~~
17 ~~EXPUNGEMENT UNDER THIS SECTION.~~

18 ~~(2) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, COURT~~
19 ~~RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL~~
20 ~~SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE NARRATIVE OF THE~~
21 ~~STATEMENT OF CHARGES THAT INCLUDES BOTH THE CHARGES THAT ARE ELIGIBLE~~
22 ~~FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR~~
23 ~~EXPUNGEMENT, THE COURT:~~

24 ~~(i) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT~~
25 ~~REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE~~
26 ~~INCLUDED:~~

27 ~~1. ON THE PUBLIC WEB SITE MAINTAINED BY THE~~
28 ~~MARYLAND JUDICIARY; AND~~

29 ~~2. WITHIN RECORDS SUBMITTED TO THE CENTRAL~~
30 ~~REPOSITORY; AND~~

31 ~~(ii) MAY AUTHORIZE THE STATE OR POLITICAL SUBDIVISION OF~~
32 ~~THE STATE TO:~~

33 ~~1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE;~~
34 ~~AND~~

~~2. LIMIT INSPECTION OF THE WRITTEN RECORD TO A CRIMINAL JUSTICE UNIT, AS DEFINED IN § 10-201 OF THIS TITLE, FOR LEGITIMATE CRIMINAL JUSTICE PURPOSES.~~

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

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

~~[(c)] (F) (1) If the State's Attorney files a timely objection to the petition, the court shall hold a hearing.~~

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

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

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

~~(i) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within 3 years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime; or~~

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

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

~~[(g)] (H) (1) The State's Attorney is a party to the proceeding.~~

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

~~[10-107.~~

~~(a) (1) In this subtitle, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit.~~

~~(2) A charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit.~~

~~(b) (1) If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit.~~

~~(2) The disposition of a charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in the unit does not affect any right to expungement of a charge or conviction in the unit.]~~

10-110.

(A) A PERSON MAY FILE A PETITION LISTING RELEVANT FACTS FOR EXPUNGEMENT OF A POLICE RECORD, COURT RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IF THE PERSON IS CONVICTED OF A MISDEMEANOR THAT IS A VIOLATION OF:

(1) § 6-320 OF THE ALCOHOLIC BEVERAGES ARTICLE;

(2) AN OFFENSE LISTED IN § 17-613(A) OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

(3) § 5-712, § 19-304, § 19-308, OR TITLE 5, SUBTITLE 6 OR SUBTITLE 9 OF THE BUSINESS REGULATION ARTICLE;

(4) § 3-1508 OR § 10-402 OF THE COURTS ARTICLE;

(5) § 14-1915, § 14-2902, OR § 14-2903 OF THE COMMERCIAL LAW ARTICLE;

(6) § 5-211 OF THE CRIMINAL PROCEDURE ARTICLE;

(7) § 3-203 OR § 3-808 OF THE CRIMINAL LAW ARTICLE;

(8) § 5-601, § 5-618, § 5-619, § 5-620, § 5-703, § 5-708, OR § 5-902 OF THE CRIMINAL LAW ARTICLE;

(9) § 6-105, § 6-108, § 6-206, § 6-303, § 6-306, § 6-307, § 6-402, OR § 6-503 OF THE CRIMINAL LAW ARTICLE;

(10) § 7-104, § 7-203, § 7-205, § 7-304, § 7-308, OR § 7-309 OF THE CRIMINAL LAW ARTICLE;

1 (11) § 8-103, § 8-206, § 8-401, § 8-402, § 8-404, § 8-406, § 8-408, §
2 8-503, § 8-521, § 8-523, OR § 8-904 OF THE CRIMINAL LAW ARTICLE;

3 (12) § 9-204, § 9-205, § 9-503, OR § 9-506 OF THE CRIMINAL LAW
4 ARTICLE;

5 (13) § 10-110, § 10-201, § 10-402, § 10-404, OR § 10-502 OF THE
6 CRIMINAL LAW ARTICLE;

7 (14) § 11-306(A) OF THE CRIMINAL LAW ARTICLE;

8 (15) § 12-102, § 12-103, § 12-104, § 12-105, § 12-109, § 12-203, §
9 12-204, § 12-205, OR § 12-302 OF THE CRIMINAL LAW ARTICLE;

10 (16) § 13-401, § 13-602, OR § 16-201 OF THE ELECTION LAW ARTICLE;

11 (17) § 4-509 OF THE FAMILY LAW ARTICLE;

12 (18) § 18-215 OF THE HEALTH – GENERAL ARTICLE;

13 (19) § 4-411 OR § 4-2005 OF THE HUMAN SERVICES ARTICLE;

14 (20) § 27-403, § 27-404, § 27-405, § 27-406, § 27-406.1, § 27-407, §
15 27-407.1, OR § 27-407.2 OF THE INSURANCE ARTICLE;

16 (21) § 5-307, § 5-308, § 6-602, § 7-402, OR § 14-114 OF THE PUBLIC
17 SAFETY ARTICLE;

18 (22) § 7-318.1, § 7-509, OR § 10-507 OF THE REAL PROPERTY
19 ARTICLE;

20 (23) § 9-124 OF THE STATE GOVERNMENT ARTICLE;

21 (24) § 13-1001, § 13-1004, § 13-1007, OR § 13-1024 OF THE
22 TAX – GENERAL ARTICLE;

23 (25) THE COMMON LAW OFFENSES OF AFFRAY, RIOTING, CRIMINAL
24 CONTEMPT, OR HINDERING; OR

25 (26) AN ATTEMPT, CONSPIRACY, OR SOLICITATION OF ANY OFFENSE
26 LISTED IN ITEMS (1) THROUGH (25) OF THIS SUBSECTION.

27 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
28 SUBSECTION, A PERSON SHALL FILE A PETITION FOR EXPUNGEMENT IN THE COURT
29 IN WHICH THE PROCEEDING BEGAN.

1 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
2 **PARAGRAPH, IF THE PROCEEDING BEGAN IN ONE COURT AND WAS TRANSFERRED**
3 **TO ANOTHER COURT, THE PERSON SHALL FILE THE PETITION IN THE COURT TO**
4 **WHICH THE PROCEEDING WAS TRANSFERRED.**

5 **(II) IF THE PROCEEDING BEGAN IN ONE COURT AND WAS**
6 **TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OR § 4-202.2 OF THIS**
7 **ARTICLE, THE PERSON SHALL FILE THE PETITION IN THE COURT OF ORIGINAL**
8 **JURISDICTION FROM WHICH THE ORDER OF TRANSFER WAS ENTERED.**

9 **(3) (I) IF THE PROCEEDING IN A COURT OF ORIGINAL**
10 **JURISDICTION WAS APPEALED TO A COURT EXERCISING APPELLATE JURISDICTION,**
11 **THE PERSON SHALL FILE THE PETITION IN THE APPELLATE COURT.**

12 **(II) THE APPELLATE COURT MAY REMAND THE MATTER TO THE**
13 **COURT OF ORIGINAL JURISDICTION.**

14 **(C) A PETITION FOR EXPUNGEMENT UNDER THIS SECTION MAY NOT BE**
15 **FILED EARLIER THAN 10 YEARS AFTER THE PERSON SATISFIES THE SENTENCE OR**
16 **SENTENCES IMPOSED FOR ALL CONVICTIONS FOR WHICH EXPUNGEMENT IS**
17 **REQUESTED, INCLUDING PAROLE, PROBATION, OR MANDATORY SUPERVISION.**

18 **(D) (1) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING THE**
19 **APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (C) OF THIS SECTION, THE**
20 **ORIGINAL CONVICTION OR CONVICTIONS ARE NOT ELIGIBLE FOR EXPUNGEMENT**
21 **UNLESS THE NEW CONVICTION BECOMES ELIGIBLE FOR EXPUNGEMENT.**

22 **(2) A PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT IF THE PERSON**
23 **IS A DEFENDANT IN A PENDING CRIMINAL PROCEEDING.**

24 **(3) IF A PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT OF ONE**
25 **CONVICTION IN A UNIT, THE PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT OF ANY**
26 **OTHER CONVICTION IN THE UNIT.**

27 **(E) (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR**
28 **EXPUNGEMENT SERVED ON THE STATE'S ATTORNEY.**

29 **(2) THE COURT SHALL SEND WRITTEN NOTICE OF THE**
30 **EXPUNGEMENT REQUEST TO ALL LISTED VICTIMS IN THE CASE IN WHICH THE**
31 **PETITIONER IS SEEKING EXPUNGEMENT AT THE ADDRESS LISTED IN THE COURT**
32 **FILE, ADVISING THE VICTIM OR VICTIMS OF THE RIGHT TO OFFER ADDITIONAL**
33 **INFORMATION RELEVANT TO THE EXPUNGEMENT PETITION TO THE COURT.**

1 **(3) UNLESS THE STATE'S ATTORNEY OR A VICTIM FILES AN**
2 **OBJECTION TO THE PETITION FOR EXPUNGEMENT WITHIN 30 DAYS AFTER THE**
3 **PETITION IS SERVED, THE COURT SHALL PASS AN ORDER REQUIRING THE**
4 **EXPUNGEMENT OF ALL POLICE RECORDS AND COURT RECORDS ABOUT THE**
5 **CHARGE.**

6 **(F) (1) IF THE STATE'S ATTORNEY OR A VICTIM FILES A TIMELY**
7 **OBJECTION TO THE PETITION, THE COURT SHALL HOLD A HEARING.**

8 **(2) THE COURT SHALL ORDER THE EXPUNGEMENT OF ALL POLICE**
9 **RECORDS AND COURT RECORDS ABOUT THE CHARGE AFTER A HEARING, IF THE**
10 **COURT FINDS AND STATES ON THE RECORD:**

11 **(I) THAT THE CONVICTION IS ELIGIBLE FOR EXPUNGEMENT**
12 **UNDER SUBSECTION (A) OF THIS SECTION;**

13 **(II) THAT THE PERSON IS ELIGIBLE FOR EXPUNGEMENT UNDER**
14 **SUBSECTION (D) OF THIS SECTION;**

15 **(III) THAT GIVING DUE REGARD TO THE NATURE OF THE CRIME,**
16 **THE HISTORY AND CHARACTER OF THE PERSON, AND THE PERSON'S SUCCESS AT**
17 **REHABILITATION, THE PERSON IS NOT A RISK TO PUBLIC SAFETY; AND**

18 **(IV) THAT AN EXPUNGEMENT WOULD BE IN THE INTEREST OF**
19 **JUSTICE.**

20 **(G) IF AT A HEARING THE COURT FINDS THAT A PERSON IS NOT ENTITLED**
21 **TO EXPUNGEMENT, THE COURT SHALL DENY THE PETITION.**

22 **(H) UNLESS AN ORDER IS STAYED PENDING APPEAL, WITHIN 60 DAYS AFTER**
23 **ENTRY OF ORDER, EVERY CUSTODIAN OF THE POLICE RECORDS AND COURT**
24 **RECORDS THAT ARE SUBJECT TO THE ORDER OF EXPUNGEMENT SHALL ADVISE IN**
25 **WRITING THE COURT AND THE PERSON WHO IS SEEKING EXPUNGEMENT OF**
26 **COMPLIANCE WITH THE ORDER.**

27 **(I) (1) THE STATE'S ATTORNEY IS A PARTY TO THE PROCEEDING.**

28 **(2) A PARTY AGGRIEVED BY THE DECISION OF THE COURT IS**
29 **ENTITLED TO THE APPELLATE REVIEW AS PROVIDED IN THE COURTS ARTICLE.**

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