

SENATE BILL 328

E2
HB 1292/12 – JUD

6lr2706
CF HB 220

By: **Senator Conway**
Introduced and read first time: January 27, 2016
Assigned to: Judicial Proceedings

A BILL ENTITLED

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.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Procedure
14 Section 10–105
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2015 Supplement)

17 BY repealing
18 Article – Criminal Procedure
19 Section 10–107
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2015 Supplement)

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

24 **Article – Criminal Procedure**

25 10–105.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

7 (1) the person is acquitted;

8 (2) the charge is otherwise dismissed;

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

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

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

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

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

20 (8) the person:

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

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

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

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

27 (ii) panhandling or soliciting money;

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

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

31 (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;

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; or

13 (11) the person was convicted of a crime and the act on which the conviction
14 was based is no longer a crime.

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

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

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

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

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

29 (ii) The appellate court may remand the matter to the court of
30 original jurisdiction.

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

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

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

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

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

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

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

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

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

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

30 (d) (1) **WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,
31 TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT
32 ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A
33 PETITION FOR PARTIAL EXPUNGEMENT FOR THE CHARGES ELIGIBLE FOR
34 EXPUNGEMENT UNDER THIS SECTION.**

1 **(2) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, COURT**
2 **RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL**
3 **SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE NARRATIVE OF THE**
4 **STATEMENT OF CHARGES THAT INCLUDES BOTH THE CHARGES THAT ARE ELIGIBLE**
5 **FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR**
6 **EXPUNGEMENT, THE COURT:**

7 **(I) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT**
8 **REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE**
9 **INCLUDED:**

10 **1. ON THE PUBLIC WEB SITE MAINTAINED BY THE**
11 **MARYLAND JUDICIARY; AND**

12 **2. WITHIN RECORDS SUBMITTED TO THE CENTRAL**
13 **REPOSITORY; AND**

14 **(II) MAY AUTHORIZE THE STATE OR POLITICAL SUBDIVISION OF**
15 **THE STATE TO:**

16 **1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE;**
17 **AND**

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

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

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

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

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

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

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

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

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

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

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

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

14 [10–107.

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

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

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

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

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