

# SENATE BILL 1246

E2  
HB 220/16 – JUD

8lr4068

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By: **Senator Zirkin**

Introduced and read first time: March 5, 2018

Assigned to: Rules

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## 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; requiring a court to order that  
5 certain records be removed from a certain website; providing that only a certain  
6 record is eligible for partial expungement; repealing a provision of law establishing  
7 that, if a person is not entitled to expungement of one charge or conviction in a  
8 certain unit, the person is not entitled to expungement of any other charge or  
9 conviction in the unit; and generally relating to expungement of criminal records.

10 BY repealing and reenacting, with amendments,  
11 Article – Criminal Procedure  
12 Section 10–105  
13 Annotated Code of Maryland  
14 (2008 Replacement Volume and 2017 Supplement)

15 BY repealing  
16 Article – Criminal Procedure  
17 Section 10–107  
18 Annotated Code of Maryland  
19 (2008 Replacement Volume and 2017 Supplement)

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

22 **Article – Criminal Procedure**

23 10–105.

24 (a) A person who has been charged with the commission of a crime, including a  
25 violation of the Transportation Article for which a term of imprisonment may be imposed,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or who has been charged with a civil offense or infraction, except a juvenile offense, as a  
2 substitute for a criminal charge may file a petition listing relevant facts for expungement  
3 of a police record, court record, or other record maintained by the State or a political  
4 subdivision of the State if:

5 (1) the person is acquitted;

6 (2) the charge is otherwise dismissed;

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

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

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

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

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

18 (8) the person:

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

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

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

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

25 (ii) panhandling or soliciting money;

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

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

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

30 (vi) loitering;

1 (vii) vagrancy;

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

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

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

9 (i) trespass;

10 (ii) disturbing the peace; or

11 (iii) telephone misuse;

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

14 (12) the person was convicted of possession of marijuana under § 5-601 of  
15 the Criminal Law Article.

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

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

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

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

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

30 (ii) The appellate court may remand the matter to the court of  
31 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 petition for expungement based on the conviction of a crime under  
29 subsection (a)(12) of this section may not be filed within 4 years after the conviction or  
30 satisfactory completion of the sentence, including probation, that was imposed for the  
31 conviction, whichever is later.

32 (9) A court may grant a petition for expungement at any time on a showing  
33 of good cause.

34 (d) (1) **WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,**  
35 **TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT**  
36 **ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A**

1 PETITION FOR PARTIAL EXPUNGEMENT FOR THE CHARGES ELIGIBLE FOR  
2 EXPUNGEMENT UNDER THIS SECTION.

3           **(2)** THE COURT SHALL ORDER THAT A POLICE OR COURT RECORD  
4 REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT BE REMOVED  
5 FROM THE PUBLIC WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.

6           **(3)** ONLY A POLICE OR COURT RECORD THAT IS MAINTAINED  
7 ELECTRONICALLY ON THE PUBLIC WEBSITE OF THE MARYLAND JUDICIARY IS  
8 ELIGIBLE FOR PARTIAL EXPUNGEMENT.

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

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

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

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

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

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

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

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

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

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

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

3 [10–107.

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

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

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

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

15           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2018.