
By: **Delegate Marriott**

Introduced and read first time: February 10, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Records - Expungement - Victimless Crimes**

3 FOR the purpose of adding the conviction for certain crimes for which there is no
4 evident victim to the circumstances under which an expungement of certain
5 records can be obtained; requiring expungement of certain records be made by a
6 certain method; providing a time period for which petitions for expungement of
7 certain records can be filed; prohibiting expungement of certain records under
8 certain circumstances; authorizing the access and use of certain expunged
9 records by certain individuals and agencies; and generally relating to the
10 expungement of certain criminal records for certain victimless crimes.

11 BY repealing and reenacting, with amendments,
12 Article 27 - Crimes and Punishments
13 Section 737 and 739
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1999 Supplement)

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

18 **Article 27 - Crimes and Punishments**

19 737.

20 (a) A person charged with the commission of a crime, including a violation of
21 the Transportation Article for which a term of imprisonment may be imposed, may
22 file a petition setting forth the relevant facts and requesting expungement of the
23 police records, court records, and other records maintained by the State of Maryland
24 and its subdivisions, pertaining to the charge if:

25 (1) The person is acquitted;

26 (2) The charge is otherwise dismissed or quashed;

27 (3) Except if charged with a violation of § 21-902 of the Transportation
28 Article, a judgment of probation before judgment is entered;

1 (4) A nolle prosequi is entered;

2 (5) The proceeding is placed on the stet docket;

3 (6) The case is compromised pursuant to § 766 of this article;

4 (7) The person is convicted of only one criminal act, which is not a crime
5 of violence, and is subsequently granted a full and unconditional pardon by the
6 Governor; [or]

7 (8) The charge was transferred to juvenile court jurisdiction under §
8 594A of this article; OR

9 (9) THE PERSON IS CONVICTED OF A CRIME FOR WHICH THERE IS NO
10 EVIDENT VICTIM, INCLUDING:

11 (I) POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE; OR

12 (II) PROSTITUTION.

13 (b) (1) If a criminal charge was transferred to the juvenile court under §
14 594A of this article, a court shall grant a petition for expungement if:

15 (i) The charge transferred under § 594A of this article did not
16 result in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings
17 Article; or

18 (ii) The charge did result in the filing of a petition under § 3-810 of
19 the Courts and Judicial Proceedings Article but the decision on the petition was a
20 finding of facts-not-sustained.

21 (2) (i) A petition for expungement of a criminal charge transferred to
22 the juvenile court under § 594A of this article may be filed at any time after:

23 1. If a petition is not filed under § 3-810 of the Courts
24 Article, the date of the decision not to file a petition; or

25 2. If a petition is filed under § 3-810 of the Courts Article,
26 the decision on a petition of facts-not-sustained.

27 (ii) If a charge transferred under § 594A of this article resulted in
28 the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article
29 and the adjudication of the child as delinquent, the court may grant a petition for
30 expungement on or after the 21st birthday of the petitioner.

31 (C) A PETITION FOR EXPUNGEMENT BASED ON A CONVICTION OF A CRIME
32 FOR WHICH THERE IS NO EVIDENT VICTIM, IF GRANTED, THE COURT SHALL ORDER
33 THE EXPUNGEMENT TO BE BY THE REMOVAL OF RECORDS TO A SECURE AREA, NOT
34 BY THE OBLITERATION OF RECORDS.

1 [(c)] (D) The petition shall be filed in the court in which the proceeding was
2 commenced. If the proceeding was commenced in one court and transferred to another
3 court, the petition shall be filed in the court to which the proceeding was transferred.
4 If the proceeding in a court of original jurisdiction was appealed to a court exercising
5 appellate jurisdiction, the petition shall be filed in the appellate court. However, the
6 appellate court may remand the matter to the court of original jurisdiction.

7 [(d)] (E) (1) Except as provided in paragraph (2) of this subsection, a
8 petition for expungement based on the following dispositions may not be filed earlier
9 than 3 years after the date of the disposition:

10 (i) An acquittal;

11 (ii) A nolle prosequi; or

12 (iii) A dismissal or quashing of a charge.

13 (2) A petition for expungement based on the dispositions described in
14 paragraph (1) of this subsection may be filed earlier than 3 years after the date of the
15 disposition if the person files with the petition a written general waiver and release,
16 in proper legal form, of all claims the person may have against any person for tortious
17 conduct arising from the charge.

18 [(e)] (F) A petition for expungement based on a probation before judgment
19 may not be filed earlier than the later of:

20 (1) 3 years after the date of the entry of judgment or order of probation;
21 or

22 (2) The date of the person's discharge from probation.

23 [(f)] (G) A petition for expungement based on a full and unconditional pardon
24 by the Governor for a conviction for only one criminal act which is not a crime of
25 violence may not be filed earlier than 5 years nor later than 10 years after the pardon
26 was signed by the Governor.

27 [(g)] (H) A petition for expungement based on the entry of a stet or a
28 compromise under § 12A-5 of this article may not be filed earlier than 3 years after
29 the judgment or order was entered.

30 (I) A PETITION FOR EXPUNGEMENT BASED ON A CONVICTION OF A CRIME
31 FOR WHICH THERE IS NO EVIDENT VICTIM MAY NOT BE FILED BEFORE THE LATER
32 OF:

33 (1) 3 YEARS FROM THE DATE OF ENTRY OF THE JUDGMENT OF
34 CONVICTION; OR

35 (2) THE DATE OF THE PERSON'S DISCHARGE FROM THE JURISDICTION
36 OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

1 [(h)] (J) Notwithstanding any other provision of this section, a court may
2 grant a petition for expungement at any time on a showing of good cause by the
3 petitioner.

4 [(i)] (K) A copy of the petition shall be served on the State's Attorney. Unless
5 the State's Attorney files an objection to the petition within 30 days after it is served
6 on him, the court shall enter an order requiring the expungement of police records
7 and court records pertaining to the charge.

8 [(j)] (L) If the State's Attorney files a timely objection to the petition, the
9 court shall conduct a hearing. If the court finds that the person is entitled to
10 expungement, it shall enter an order requiring the expungement of police records and
11 all court records pertaining to the charge. Otherwise, it shall deny the petition. If the
12 petition is based upon the entry of a judgment of probation before judgment, a nolle
13 prosequi, placement on the stet docket, [or] a full and unconditional pardon by the
14 Governor, OR A CONVICTION OF A CRIME FOR WHICH THERE IS NO EVIDENT VICTIM,
15 the person is not entitled to expungement if:

16 (1) He has since been convicted of any crime, other than violations of the
17 State vehicle laws or other traffic laws, ordinances, or regulations not carrying a
18 possible sentence of imprisonment; or

19 (2) He is then a defendant in a pending criminal proceeding.

20 [(k)] (M) The State's Attorney is a party to the proceeding. Any party aggrieved
21 by the decision of the court has the right of appellate review provided in the Courts
22 and Judicial Proceedings Article.

23 [(l)] (N) Every custodian of the police records and court records subject to the
24 order shall, within 60 days after entry of the order, unless it is stayed pending an
25 appeal, advise the court and the person in writing of compliance with the order.

26 739.

27 (a) [It] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IT IS
28 unlawful for any person having or acquiring access to an expunged record to open or
29 review it or to disclose to another person any information from it without an order
30 from the court which ordered the record expunged, or, in the case of police records
31 expunged pursuant to § 736, the District Court having venue.

32 (b) Except as provided in subsection (c), a court shall not enter an order
33 authorizing the opening or review of an expunged record or the disclosure of
34 information from it except after a hearing held upon notice to the person to whom the
35 record pertains and upon good cause shown.

36 (c) Upon a verified petition filed by the State's Attorney alleging that the
37 record is needed by a law enforcement agency for purposes of a pending criminal
38 investigation and that the investigation will be jeopardized or that life or property
39 will be endangered without immediate access to the record, the court may enter an ex

1 parte order, without notice to the person, permitting such access. An ex parte order
2 may permit a review of the record, but may not permit a copy to be made of it.

3 (d) [A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A person
4 who violates this section is guilty of a misdemeanor, and, upon conviction, is subject to
5 a fine of not more than \$1,000 or imprisonment for not more than one year, or both. If
6 the person is an official or employee of the State or of any subdivision of the State, he
7 shall, in addition to these penalties, be subject to removal or dismissal from public
8 service on grounds of misconduct in office.

9 (E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE
10 EXPUNGED RECORD OF A PERSON WHOSE EXPUNGEMENT WAS BASED ON THE
11 CONVICTION OF A CRIME FOR WHICH THERE IS NO EVIDENT VICTIM FROM BEING
12 ACCESSED AND USED BY:

13 (1) A LAW ENFORCEMENT AGENCY IN THE INVESTIGATION AND
14 PROSECUTION OF THE PERSON FOR A SUBSEQUENT OFFENSE;

15 (2) A COURT, COUNSEL FOR A DEFENDANT, OR STATE'S ATTORNEY IF
16 THE PERSON IS CHARGED WITH A SUBSEQUENT OFFENSE; OR

17 (3) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
18 SERVICES IF THE PERSON IS CHARGED WITH A SUBSEQUENT OFFENSE.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2000.