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By: **Delegate Marriott**

Introduced and read first time: February 7, 2003

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Expungement of Misdemeanor Records**

3 FOR the purpose of authorizing a person convicted of certain misdemeanor offenses to  
4 seek expungement of certain criminal records after a certain period of time has  
5 passed from the person's conviction or the satisfactory disposition of the person's  
6 sentence under certain circumstances; modifying the category of certain  
7 individuals not entitled to seek expungement to those who have committed  
8 certain offenses under certain circumstances; eliminating the disallowance of  
9 expungement in certain multiple charge incident situations; and generally  
10 relating to the expungement of misdemeanor offense records.

11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Procedure  
13 Section 10-105 and 10-107  
14 Annotated Code of Maryland  
15 (2001 Volume and 2002 Supplement)

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

18 **Article - Criminal Procedure**

19 10-105.

20 (a) A person who has been charged with the commission of a crime, including  
21 a violation of the Transportation Article for which a term of imprisonment may be  
22 imposed, may file a petition listing relevant facts for expungement of a police record,  
23 court record, or other record maintained by the State or a political subdivision of the  
24 State if:

25 (1) the person is acquitted;

26 (2) the charge is otherwise dismissed;

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

4 (4) a nolle prosequi is entered;

5 (5) the court indefinitely postpones trial of a criminal charge by marking  
6 the criminal charge "stet" on the docket;

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

8 (7) the charge was transferred to the juvenile court under § 4-202 of this  
9 article; [or]

10 (8) the person:

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

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

14 (9) THE PERSON IS CONVICTED OF A MISDEMEANOR, OTHER THAN A  
15 MISDEMEANOR LISTED UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE.

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

18 (2) If the proceeding began in one court and was transferred to another  
19 court, the person shall file the petition in the court to which the proceeding was  
20 transferred.

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

24 (ii) The appellate court may remand the matter to the court of  
25 original jurisdiction.

26 (c) (1) A petition for expungement based on an acquittal, a nolle prosequi, or  
27 a dismissal may not be filed within 3 years after the disposition, unless the petitioner  
28 files with the petition a written general waiver and release of all the petitioner's tort  
29 claims arising from the charge.

30 (2) A petition for expungement based on a probation before judgment  
31 may not be filed earlier than the later of:

32 (i) the date the petitioner was discharged from probation; or

33 (ii) 3 years after the probation was granted.

1           (3)     A petition for expungement based on a full and unconditional pardon  
2 by the Governor may not be filed earlier than 5 years or later than 10 years after the  
3 pardon was signed by the Governor.

4           (4)     A petition for expungement based on a stet or a compromise under §  
5 3-207 of the Criminal Law Article may not be filed within 3 years after the stet or  
6 compromise.

7           (5)     A PETITION FOR EXPUNGEMENT OF A MISDEMEANOR CONVICTION  
8 MAY NOT BE FILED WITHIN 7 YEARS AFTER THE CONVICTION, OR THE  
9 SATISFACTORY COMPLETION OF THE DISPOSITION OF THE SENTENCE, WHICHEVER  
10 IS LATER.

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

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

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

18         (e)     (1)     If the State's Attorney files a timely objection to the petition, the  
19 court shall hold a hearing.

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

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

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

26                         (i)     the petition is based on the entry of probation before judgment,  
27 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

28                         (ii)    the person:

29   1.     since the full and unconditional pardon or entry, has been  
30 convicted of a crime [other than a minor traffic violation] UNDER TITLE 3, SUBTITLE  
31 3 OF THE CRIMINAL LAW ARTICLE; or

32   2.     is a defendant in a pending criminal proceeding.

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

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

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

4 10-107.

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

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2003.