
By: **Delegate C. Davis**

Introduced and read first time: February 11, 2003

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Erroneous Conviction, Sentence, and Confinement -**
3 **Expungement, Damages, and Restitution Relief**

4 FOR the purpose of discharging certain judgments of restitution against a person
5 released from confinement based on a determination by a court that the person
6 was erroneously convicted, sentenced, and confined for certain crimes the
7 person did not commit; authorizing a person to file a certain petition for
8 expungement of certain police or court records if the person filing the petition is
9 released from confinement based on a determination by a court that the person
10 was erroneously convicted, sentenced, and confined for certain crimes the
11 person did not commit; authorizing a court to grant a petition for expungement
12 at any time under certain circumstances; making a person released from
13 confinement, based on a determination by a court that the person was
14 erroneously convicted, sentenced, and confined for certain crimes the person did
15 not commit, eligible to receive a grant from the Board of Public Works for actual
16 damages sustained by the person due to confinement; and generally relating to
17 persons erroneously convicted, sentenced, and confined under certain
18 circumstances.

19 BY repealing and reenacting, with amendments,
20 Article - Correctional Services
21 Section 7-701
22 Annotated Code of Maryland
23 (1999 Volume and 2002 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Criminal Procedure
26 Section 10-105
27 Annotated Code of Maryland
28 (2001 Volume and 2002 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - State Finance and Procurement
31 Section 10-501

1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2002 Supplement)

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

5 **Article - Correctional Services**

6 7-701.

7 (a) If the Commission grants parole to an individual whom a court has ordered
8 to make restitution as part of a sentence or as a condition of probation, the
9 Commission shall require the individual to make restitution payments while on
10 parole as a condition of parole.

11 (b) Except as provided in subsection (c) of this section, a pardon, partial
12 pardon, conditional pardon, commutation of sentence, or parole does not affect any
13 judgment entered under Title 11, Subtitle 6 of the Criminal Procedure Article.

14 (c) (1) If the Governor orders a pardon and states as a part of the order that
15 the defendant was convicted in error, the order discharges any judgment against the
16 defendant under Title 11, Subtitle 6 of the Criminal Procedure Article.

17 (2) IF A COURT RELEASES AN INDIVIDUAL FROM CONFINEMENT BASED
18 ON A DETERMINATION THAT THE INDIVIDUAL WAS ERRONEOUSLY CONVICTED,
19 SENTENCED, AND CONFINED UNDER STATE LAW FOR A CRIME THE INDIVIDUAL DID
20 NOT COMMIT, THE ORDER THAT RELEASES THE INDIVIDUAL FROM CONFINEMENT
21 DISCHARGES ANY JUDGMENT AGAINST THE INDIVIDUAL UNDER TITLE 11, SUBTITLE
22 6 OF THE CRIMINAL PROCEDURE ARTICLE BASED ON THE ERRONEOUS CONVICTION.

23 **Article - Criminal Procedure**

24 10-105.

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

30 (1) the person is acquitted;

31 (2) the charge is otherwise dismissed;

32 (3) a probation before judgment is entered, unless the person is charged
33 with a violation of § 21-902 of the Transportation Article or Title 2, Subtitle 5 or §
34 3-211 of the Criminal Law Article;

35 (4) a nolle prosequi is entered;

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

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

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

6 (8) the person:

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

9 (ii) 1. is granted a full and unconditional pardon by the
10 Governor; OR

11 2. IS RELEASED FROM CONFINEMENT UNDER A COURT
12 ORDER THAT DETERMINED THAT THE PERSON HAS BEEN ERRONEOUSLY
13 CONVICTED, SENTENCED, AND CONFINED UNDER STATE LAW FOR A CRIME THE
14 PERSON DID NOT COMMIT.

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

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

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

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

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

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

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

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

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

1 (4) A petition for expungement based on a stet or a compromise under §
2 3-207 of the Criminal Law Article may not be filed within 3 years after the stet or
3 compromise.

4 (5) A court may grant a petition for expungement at any time on a
5 showing of good cause, INCLUDING AN EXPUNGEMENT BASED ON AN ERRONEOUS
6 CONVICTION, SENTENCE, AND CONFINEMENT UNDER STATE LAW FOR A CRIME THE
7 PETITIONER DID NOT COMMIT.

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

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

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

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

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

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

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

23 (ii) the person:

24 1. since the full and unconditional pardon or entry, has been
25 convicted of a crime other than a minor traffic violation; or

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

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

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

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

Article - State Finance and Procurement

10-501.

(a) (1) Subject to subsection (b) of this section, the Board of Public Works may grant to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit an amount commensurate with the actual damages sustained by the individual due to the confinement.

(2) In making a grant under paragraph (1) of this subsection, the Board of Public Works shall use money in the General Emergency Fund or money that the Governor provides in the annual budget.

(b) An individual is eligible for a grant under subsection (a) of this section only if the individual:

(1) has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error; OR

(2) HAS BEEN RELEASED FROM CONFINEMENT UNDER A COURT ORDER THAT DETERMINED THAT THE INDIVIDUAL HAS BEEN ERRONEOUSLY CONVICTED, SENTENCED, AND CONFINED UNDER STATE LAW FOR A CRIME THE INDIVIDUAL DID NOT COMMIT.

(c) The Board of Public Works may pay the grant determined under subsection (a) of this section in a lump sum or in installments.

(d) (1) The Board of Public Works may not pay any part of a grant made under this section to any individual other than the pardoned OR RELEASED individual.

(2) (i) An individual may not pay any part of a grant received under this section to another person for services rendered in connection with the collection of the grant.

(ii) An obligation incurred in violation of this paragraph is void.

(iii) A payment made in violation of this paragraph shall be forfeited to the State.

(e) This section does not prohibit an individual from contracting for services to:

(1) determine the individual's innocence;

(2) obtain a pardon; or

(3) obtain the individual's release from confinement.

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

