

HB0266/168473/1

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 266
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “authorizing” in line 10 down through “proof” in line 20 and substitute “authorizing a court to order a person who has been convicted of human trafficking to pay restitution to the victim for certain expenses incurred by the victim; providing for the verification of certain expenses alleged to be incurred by the victim; establishing that certain absences of the victim may not be a basis for denial of restitution; establishing that this Act may not be construed to limit a person’s right to certain restitution; clarifying that certain provisions of law related to restitution apply to an order of restitution under this Act; authorizing the expungement of certain records by certain persons convicted of prostitution under certain circumstances”.

On page 2, in line 1, strike “without” and substitute “with”; and strike in their entirety lines 6 through 10, inclusive, and substitute:

“BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 10–105

Annotated Code of Maryland

(2008 Replacement Volume and 2010 Supplement)”.

AMENDMENT NO. 2

On page 3, after line 14, insert:

“(3) (1) IN ADDITION TO THE PENALTIES PROVIDED IN THIS SUBSECTION, THE COURT MAY ORDER A PERSON CONVICTED UNDER THIS

(Over)

SECTION TO PAY RESTITUTION TO THE VICTIM FOR EXPENSES INCURRED BY THE VICTIM:

1. THAT ARE A DIRECT RESULT OF THE PERSON'S CRIMINAL ACTIONS;

2. IN RELOCATING THE VICTIM AND THE VICTIM'S FAMILY AWAY FROM THE PERSON OR THE PERSON'S ASSOCIATES; OR

3. IN THE REPATRIATION OF THE VICTIM OR THE VICTIM'S FAMILY TO THE VICTIM'S COUNTRY OF CITIZENSHIP IF THE PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE VICTIM WAS BROUGHT TO THE UNITED STATES BY FRAUD OR DECEPTION.

(II) ANY EXPENSES ALLEGED TO BE INCURRED UNDER THIS PARAGRAPH MAY BE VERIFIED BY:

1. A LAW ENFORCEMENT OFFICER, AS TO EXPENSES ALLEGEDLY INCURRED IN RELATION TO THE SAFETY OF THE VICTIM OR THE VICTIM'S FAMILY; OR

2. A PROVIDER OF MENTAL HEALTH SERVICES, AS TO EXPENSES ALLEGEDLY INCURRED IN RELATION TO THE EMOTIONAL WELL-BEING OF THE VICTIM.

(III) THE RETURN OF THE VICTIM TO THE VICTIM'S COUNTRY OF CITIZENSHIP OR ANY OTHER ABSENCE OF THE VICTIM FROM THE VICTIM'S COUNTRY OF RESIDENCE MAY NOT BE A BASIS FOR A DENIAL OF RESTITUTION.

(IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

(V) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.”.

On pages 4 through 6, strike in their entirety the lines beginning with line 21 on page 4 through line 2 on page 6, inclusive, and substitute:

“10–105.

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

(1) the person is acquitted;

(2) the charge is otherwise dismissed;

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

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

(Over)

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

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

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

(8) the person:

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

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

[or]

(9) the person was convicted of a crime under any State or local law that prohibits:

(i) urination or defecation in a public place;

(ii) panhandling or soliciting money;

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

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

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

(vi) loitering;

(vii) vagrancy;

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

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

(10) (I) THE PERSON WAS CONVICTED OF PROSTITUTION UNDER § 11-306 OF THE CRIMINAL LAW ARTICLE; AND

(II) THE PERSON'S INVOLVEMENT IN PROSTITUTION WAS THE RESULT OF THE PERSON HAVING BEEN A VICTIM OF HUMAN TRAFFICKING UNDER § 11-303 OF THE CRIMINAL LAW ARTICLE OR UNDER FEDERAL LAW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the petition is based on the entry of probation before judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction for a crime specified in subsection (a)(9) of this section, or the grant of a pardon by the Governor; and

(Over)

(ii) the person:

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

2. is a defendant in a pending criminal proceeding.

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

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

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