

SENATE BILL 168

E2

5lr1047
CF 5lr0713

By: **Senators Feldman, King, Montgomery, Pinsky, and Raskin**

Introduced and read first time: January 30, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Marijuana Possession**

3 FOR the purpose of authorizing a person to file a certain petition for expungement if the
4 person was convicted of a certain crime involving the use or possession of less than
5 10 grams of marijuana; excluding certain charges involving less than 10 grams of
6 marijuana that arise from the same incident, transaction, or set of facts as another
7 charge from a certain unit for the purposes of a certain petition for expungement;
8 and generally relating to expungement of criminal records.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 10–105 and 10–107
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2014 Supplement)

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

16 **Article – Criminal Procedure**

17 10–105.

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

24 (1) the person is acquitted;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) the charge is otherwise dismissed;

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

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

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

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

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

13 (8) the person:

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

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

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

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

20 (ii) panhandling or soliciting money;

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

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

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

25 (vi) loitering;

26 (vii) vagrancy;

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

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

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

6 (i) trespass;

7 (ii) disturbing the peace; or

8 (iii) telephone misuse; **OR**

9 **(11) THE PERSON WAS CONVICTED OF A VIOLATION OF § 5-601 OF THE**
10 **CRIMINAL LAW ARTICLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10**
11 **GRAMS OF MARIJUANA.**

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

15 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person
16 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 transferred.

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

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

24 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
25 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
26 3 years after the disposition, unless the petitioner files with the petition a written general
27 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

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

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

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

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

16 (7) A petition for expungement based on a finding of not criminally
17 responsible under subsection (a)(9) or (10) of this section may not be filed within 3 years
18 after the finding of not criminally responsible was made by the court.

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

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

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

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

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

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

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

1 (i) the petition is based on the entry of probation before judgment,
2 a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol
3 treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction
4 for a crime specified in subsection (a)(9) of this section, a finding of not criminally
5 responsible, or the grant of a pardon by the Governor; and

6 (ii) the person:

7 1. since the full and unconditional pardon, entry, finding of
8 not criminally responsible, or conviction has been convicted of a crime other than a minor
9 traffic violation; or

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

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

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

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

18 10–107.

19 (a) (1) **[In] EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS**
20 **SUBSECTION, IN this subtitle, if two or more charges[, other than one for a minor traffic**
21 **violation,] arise from the same incident, transaction, or set of facts, they are considered to**
22 **be a unit.**

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

25 **(3) A CHARGE INVOLVING THE USE OR POSSESSION OF LESS THAN 10**
26 **GRAMS OF MARIJUANA OR A CHARGE INVOLVING THE USE OR POSSESSION OF DRUG**
27 **PARAPHERNALIA RELATED TO LESS THAN 10 GRAMS OF MARIJUANA THAT ARISES**
28 **FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS AS A CHARGE IN THE**
29 **UNIT IS NOT A PART OF THE UNIT.**

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

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2015.