

HOUSE BILL 914

E2

6lr2360

By: ~~Delegate Carter~~ Delegates Carter, Anderson, Morales, Adams, Barron, Branch, Carozza, Conaway, Dumais, Folden, Fraser-Hidalgo, Glass, Hayes, Moon, B. Robinson, Rosenberg, Smith, Sydnor, Vallario, Vaughn, Waldstreicher, Walker, M. Washington, West, and C. Wilson

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2016

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Acquittal, Dismissal, and Nolle Prosequi**

3 FOR the purpose of ~~providing that a person who has been charged with the commission of~~
4 ~~a certain crime is entitled to automatic expungement of certain records under certain~~
5 ~~circumstances; requiring a certain court to take certain actions within a certain time~~
6 ~~after a certain disposition; requiring the Criminal Justice Information System~~
7 ~~Central Repository, a booking facility, and a certain law enforcement unit to take~~
8 ~~certain actions within a certain period of time after receipt of a certain notice;~~
9 ~~providing that a certain police or court record may not be expunged by obliteration~~
10 ~~during a certain time; requiring that certain records be removed to a certain area~~
11 ~~during a certain time; authorizing a certain person entitled to expungement to take~~
12 ~~certain actions if a court, a law enforcement unit, a booking facility, or the Central~~
13 ~~Repository fails to expunge a police or court record in accordance with this Act;~~
14 providing that a person who is entitled to expungement under this Act a certain
15 provision of law based on an acquittal, a dismissal, a nolle prosequi, or a nolle
16 prosequi with the requirement of drug or alcohol treatment may not be required to
17 pay any fee or costs in connection with the expungement; making conforming
18 changes; and generally relating to expungement.

19 ~~BY repealing and reenacting, with amendments,~~

20 ~~Article – Criminal Procedure~~

21 ~~Section 10-105~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Annotated Code of Maryland~~
 2 ~~(2008 Replacement Volume and 2015 Supplement)~~

3 BY adding to
 4 Article – Criminal Procedure
 5 Section ~~10–105.1~~ 10–105(h)
 6 Annotated Code of Maryland
 7 (2008 Replacement Volume and 2015 Supplement)

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

10 **Article – Criminal Procedure**

11 10–105.

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

18 ~~(1) [the person is acquitted;~~

19 ~~(2) the charge is otherwise dismissed;~~

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

23 ~~[(4)] (2) a [nolle prosequi or] nolle prosequi with the requirement of drug~~
 24 ~~or alcohol treatment is entered;~~

25 ~~[(5)] (3) the court indefinitely postpones trial of a criminal charge by~~
 26 ~~marking the criminal charge “stet” or stet with the requirement of drug or alcohol abuse~~
 27 ~~treatment on the docket;~~

28 ~~[(6)] (4) the case is compromised under § 3–207 of the Criminal Law~~
 29 ~~Article;~~

30 ~~[(7)] (5) the charge was transferred to the juvenile court under § 4–202 of~~
 31 ~~this article;~~

32 ~~[(8)] (6) the person;~~

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

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

4 ~~[(9)] (7) the person was convicted of a crime or found not criminally~~
5 ~~responsible under any State or local law that prohibits:~~

6 ~~(i) urination or defecation in a public place;~~

7 ~~(ii) panhandling or soliciting money;~~

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

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

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

12 ~~(vi) loitering;~~

13 ~~(vii) vagrancy;~~

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

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

19 ~~[(10)] (8) the person was found not criminally responsible under any State~~
20 ~~or local law that prohibits misdemeanor:~~

21 ~~(i) trespass;~~

22 ~~(ii) disturbing the peace; or~~

23 ~~(iii) telephone misuse; or~~

24 ~~[(11)] (9) the person was convicted of a crime and the act on which the~~
25 ~~conviction was based is no longer a crime.~~

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

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

3 ~~(2) (i) Except as provided in subparagraph (ii) of this paragraph, if the~~
4 ~~proceeding began in one court and was transferred to another court, the person shall file~~
5 ~~the petition in the court to which the proceeding was transferred.~~

6 ~~(ii) If the proceeding began in one court and was transferred to the~~
7 ~~juvenile court under § 4-202 or § 4-202.2 of this article, the person shall file the petition in~~
8 ~~the court of original jurisdiction from which the order of transfer was entered.~~

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

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

14 ~~(c) (1) [Except as provided in paragraph (2) of this subsection, a petition for~~
15 ~~expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within~~
16 ~~3 years after the disposition, unless the petitioner files with the petition a written general~~
17 ~~waiver and release of all the petitioner's tort claims arising from the charge.~~

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

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

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

25 ~~[(3)] (2) A petition for expungement based on a nolle prosequi with the~~
26 ~~requirement of drug or alcohol treatment may not be filed until the completion of the~~
27 ~~required treatment.~~

28 ~~[(4)] (3) A petition for expungement based on a full and unconditional~~
29 ~~pardon by the Governor may not be filed later than 10 years after the pardon was signed~~
30 ~~by the Governor.~~

31 ~~[(5)] (4) Except as provided in paragraph [(2)] (1) of this subsection, a~~
32 ~~petition for expungement based on a stet or a compromise under § 3-207 of the Criminal~~
33 ~~Law Article may not be filed within 3 years after the stet or compromise.~~

1 ~~[(6)] (5) A petition for expungement based on the conviction of a crime~~
2 ~~under subsection [(a)(9)] (A)(7) of this section may not be filed within 3 years after the~~
3 ~~conviction or satisfactory completion of the sentence, including probation, that was imposed~~
4 ~~for the conviction, whichever is later.~~

5 ~~[(7)] (6) A petition for expungement based on a finding of not criminally~~
6 ~~responsible under subsection [(a)(9) or (10)] (A)(7) OR (8) of this section may not be filed~~
7 ~~within 3 years after the finding of not criminally responsible was made by the court.~~

8 ~~[(8)] (7) A court may grant a petition for expungement at any time on a~~
9 ~~showing of good cause.~~

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

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

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

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

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

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

23 ~~(i) the petition is based on the entry of probation before judgment,~~
24 ~~except a probation before judgment for a crime where the act on which the conviction is~~
25 ~~based is no longer a crime, and the person within 3 years of the entry of the probation before~~
26 ~~judgment has been convicted of a crime other than a minor traffic violation or a crime where~~
27 ~~the act on which the conviction is based is no longer a crime; or~~

28 ~~(ii) the person is a defendant in a pending criminal proceeding.~~

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

33 ~~(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.~~

~~10-105.1.~~

~~(A) UNLESS THE STATE OBJECTS AND SHOWS CAUSE WHY A RECORD SHOULD NOT BE EXPUNGED, 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 AN INFRACTION, EXCEPT A JUVENILE OFFENSE, AS A SUBSTITUTE FOR A CRIMINAL CHARGE, IS ENTITLED TO AUTOMATIC EXPUNGEMENT OF ALL POLICE RECORDS, COURT RECORDS, AND OTHER RECORDS MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE RELATING TO THE MATTER IF:~~

~~(1) THE PERSON IS ACQUITTED;~~

~~(2) THE CHARGE IS DISMISSED; OR~~

~~(3) A NOLLE PROSEQUI OTHER THAN A NOLLE PROSEQUI WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS ENTERED.~~

~~(B) WITHIN 60 DAYS AFTER A DISPOSITION OF A CHARGE UNDER SUBSECTION (A) OF THIS SECTION, THE COURT WITH JURISDICTION OVER THE MATTER SHALL:~~

~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH COURT RECORD ABOUT THE CHARGE; AND~~

~~(2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING CHARGE TO:~~

~~(i) THE CENTRAL REPOSITORY;~~

~~(ii) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT THE COURT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST, CONFINEMENT, OR CHARGE; AND~~

~~(iii) THE PERSON ENTITLED TO EXPUNGEMENT.~~

~~(C) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL:~~

1 ~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE AND~~
2 ~~COURT RECORD ABOUT THE ARREST, CONFINEMENT, OR CHARGING OF THE~~
3 ~~PERSON; AND~~

4 ~~(2) ADVISE IN WRITING THE PERSON ENTITLED TO EXPUNGEMENT OF~~
5 ~~COMPLIANCE WITH THE ORDER.~~

6 ~~(D) (1) A POLICE OR COURT RECORD EXPUNGED UNDER THIS SECTION~~
7 ~~MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DATE OF~~
8 ~~EXPUNGEMENT.~~

9 ~~(2) DURING THE 3-YEAR PERIOD DESCRIBED IN PARAGRAPH (1) OF~~
10 ~~THIS SUBSECTION, THE RECORDS SHALL BE REMOVED TO A SEPARATE SECURE AREA~~
11 ~~TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE~~
12 ~~DENIED ACCESS.~~

13 ~~(3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON FOR~~
14 ~~ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES OF~~
15 ~~PROCEEDINGS RELATING TO THE ARREST OR CHARGE.~~

16 ~~(E) IF A COURT, A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE~~
17 ~~CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE OR COURT RECORD AS~~
18 ~~REQUIRED UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON ENTITLED~~
19 ~~TO EXPUNGEMENT MAY:~~

20 ~~(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL REMEDY;~~
21 ~~AND~~

22 ~~(2) RECOVER COURT COSTS.~~

23 ~~(F) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION~~
24 ~~MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE~~
25 ~~EXPUNGEMENT.~~

26 ~~(H) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION~~
27 ~~BASED ON AN ACQUITTAL, A DISMISSAL, A NOLLE PROSEQUI, OR A NOLLE PROSEQUI~~
28 ~~WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT MAY NOT BE~~
29 ~~REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE EXPUNGEMENT.~~

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2016.