

SENATE BILL 741

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6lr3182
CF 6lr3376

By: **Senator Muse**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement**

3 FOR the purpose of providing that a certain person is entitled to expungement of a certain
4 arrest warrant and certain police records if an arrest warrant is issued but
5 invalidated before being served; requiring a law enforcement unit to take certain
6 actions within a certain amount of time after invalidation of an arrest warrant;
7 requiring the Criminal Justice Information System Central Repository, a booking
8 facility, and a certain law enforcement unit to take certain actions within a certain
9 amount of time after receiving a certain notice; providing that a certain person may
10 not be required to pay any fee or costs in connection with a certain expungement;
11 authorizing a person to file a petition for expungement if the person was convicted
12 of a certain misdemeanor; repealing a provision of law prohibiting the filing of a
13 petition for expungement based on a probation before judgment earlier than the later
14 of the date the petitioner was discharged from probation or a certain amount of time
15 after the probation was granted; prohibiting the filing of a petition for expungement
16 based on a probation before judgment earlier than the date the petitioner was
17 discharged from probation; establishing a time period within which a petition for
18 expungement based on a conviction of a certain crime may not be filed; prohibiting a
19 person from selling information relating to certain records that have been expunged;
20 applying certain penalties; authorizing an individual who is aggrieved by a failure
21 to comply with a certain provision of law to seek certain redress and recover court
22 costs; defining a certain term; and generally relating to expungement.

23 BY adding to

24 Article – Criminal Procedure

25 Section 10–103.2

26 Annotated Code of Maryland

27 (2008 Replacement Volume and 2015 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10–105 and 10–109
2 Annotated Code of Maryland
3 (2008 Replacement Volume and 2015 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Public Safety
6 Section 2–511
7 Annotated Code of Maryland
8 (2011 Replacement Volume and 2015 Supplement)

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

11 **Article – Criminal Procedure**

12 **10–103.2.**

13 (A) WHEN AN ARREST WARRANT IS ISSUED BUT IS SUBSEQUENTLY
14 INVALIDATED BEFORE BEING SERVED, THE PERSON FOR WHOM THE WARRANT WAS
15 ISSUED IS ENTITLED TO EXPUNGEMENT OF THE INVALIDATED WARRANT AND ALL
16 OTHER POLICE RECORDS RELATING TO THE MATTER.

17 (B) WITHIN 60 DAYS AFTER INVALIDATION OF AN ARREST WARRANT, THE
18 LAW ENFORCEMENT UNIT SHALL:

19 (1) SEARCH DILIGENTLY FOR AND EXPUNGE THE WARRANT AND EACH
20 POLICE RECORD ABOUT THE WARRANT; AND

21 (2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT
22 FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING INVALIDATED ARREST
23 WARRANT TO:

24 (I) THE CENTRAL REPOSITORY;

25 (II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT
26 THAT THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT
27 THE ARREST WARRANT; AND

28 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

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

1 **(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD**
2 **ABOUT THE ARREST WARRANT; AND**

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

5 **(D) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION**
6 **MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE**
7 **EXPUNGEMENT.**

8 10–105.

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

15 (1) the person is acquitted;

16 (2) the charge is otherwise dismissed;

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

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

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

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

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

28 (8) the person:

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

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

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

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

4 (ii) panhandling or soliciting money;

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

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

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

9 (vi) loitering;

10 (vii) vagrancy;

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

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

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

18 (i) trespass;

19 (ii) disturbing the peace; or

20 (iii) telephone misuse; [or]

21 (11) the person was convicted of a crime and the act on which the conviction
22 was based is no longer a crime; **OR**

23 **(12) THE PERSON WAS CONVICTED OF A MISDEMEANOR OTHER THAN A**
24 **MISDEMEANOR LISTED IN ITEM (9) OF THIS SUBSECTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **(8) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION BEFORE**
5 **JUDGMENT MAY NOT BE FILED EARLIER THAN THE DATE THE PETITIONER WAS**
6 **DISCHARGED FROM PROBATION.**

7 **(9) A PETITION FOR EXPUNGEMENT BASED ON A CONVICTION OF A**
8 **MISDEMEANOR UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE FILED**
9 **WITHIN 10 YEARS AFTER THE CONVICTION.**

10 ~~[(8)]~~ **(10)** A court may grant a petition for expungement at any time on a
11 showing of good cause.

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

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

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

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

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

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

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

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

31 (f) Unless an order is stayed pending an appeal, within 60 days after entry of the
32 order, every custodian of the police records and court records that are subject to the order
33 of expungement shall advise in writing the court and the person who is seeking
34 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 10-109.

5 (a) (1) Disclosure of expunged information about criminal charges in an
6 application, interview, or other means may not be required:

7 (i) by an employer or educational institution of a person who applies
8 for employment or admission; or

9 (ii) by a unit, official, or employee of the State or a political
10 subdivision of the State of a person who applies for a license, permit, registration, or
11 governmental service.

12 (2) A person need not refer to or give information concerning an expunged
13 charge when answering a question concerning:

14 (i) a criminal charge that did not result in a conviction; or

15 (ii) a conviction that the Governor pardoned.

16 (3) Refusal by a person to disclose information about criminal charges that
17 have been expunged may not be the sole reason for:

18 (i) an employer to discharge or refuse to hire the person; or

19 (ii) a unit, official, or employee of the State or a political subdivision
20 of the State to deny the person's application.

21 **(B) (1) FOR PURPOSES OF THIS SUBSECTION, "SELL" MEANS TO**
22 **TRANSFER IN EXCHANGE FOR REMUNERATION.**

23 **(2) A PERSON MAY NOT SELL INFORMATION RELATING TO RECORDS**
24 **THAT HAVE BEEN EXPUNGED UNDER THIS SUBTITLE.**

25 **[(b)] (C) (1)** A person who violates this section is guilty of a misdemeanor and
26 on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year
27 or both for each violation.

28 (2) In addition to the penalties provided in paragraph (1) of this subsection,
29 an official or employee of the State or a political subdivision of the State who is convicted
30 under this section may be removed or dismissed from public service.

Article – Public Safety

1

2 2–511.

3 (a) (1) Except as provided in paragraph (2) of this subsection, any DNA
4 samples and records generated as part of a criminal investigation or prosecution shall be
5 destroyed or expunged automatically from the State DNA data base if:

6 (i) a criminal action begun against the individual relating to the
7 crime does not result in a conviction of the individual;

8 (ii) the conviction is finally reversed or vacated and no new trial is
9 permitted; or

10 (iii) the individual is granted an unconditional pardon.

11 (2) A DNA sample or DNA record may not be destroyed or expunged
12 automatically from the State DNA data base if the criminal action is put on the stet docket
13 or the individual receives probation before judgment.

14 (b) If the DNA sample or DNA record was obtained or generated only in
15 connection with a case in which eligibility for expungement has been established, the DNA
16 sample shall be destroyed and the DNA record shall be expunged.

17 (c) Any DNA record expunged in accordance with this section shall be expunged
18 from every data base into which it has been entered, including local, State, and federal data
19 bases.

20 (d) An expungement or destruction of sample under this section shall occur within
21 60 days of an event listed in subsection (a) of this section.

22 (e) A letter documenting expungement of the DNA record and destruction of the
23 DNA sample shall be sent by the Director to the defendant and the defendant's attorney at
24 the address specified by the court in the order of expungement.

25 (f) A record or sample that qualifies for expungement or destruction under this
26 section and is matched concurrent with or subsequent to the date of qualification for
27 expungement:

28 (1) may not be utilized for a determination of probable cause regardless of
29 whether it is expunged or destroyed timely; and

30 (2) is not admissible in any proceeding for any purpose.

31 (g) The Director shall adopt procedures to comply with this section.

1 **(H) AN INDIVIDUAL WHO IS AGGRIEVED BY A FAILURE TO COMPLY WITH**
2 **THIS SECTION MAY:**

3 **(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL REMEDY;**
4 **AND**

5 **(2) RECOVER COURT COSTS.**

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