

SENATE BILL 890

E2

6lr3110

By: **Senator Zirkin**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Expungement – Misdemeanor Convictions**

3 FOR the purpose of authorizing a person to file a petition for expungement of certain
4 misdemeanor convictions; specifying certain convictions that are not eligible for
5 expungement except under certain circumstances; authorizing a sentencing court to
6 order certain misdemeanor convictions eligible for expungement; requiring a person
7 to file a petition for expungement in a certain court; providing that a petition for
8 expungement of certain misdemeanor convictions may not be filed earlier than a
9 certain time; providing that a person is not eligible for expungement under certain
10 circumstances; requiring the court to serve a copy of a petition on the State's
11 Attorney and provide notice of the petition to certain victims; requiring the court to
12 hold a hearing on the petition; authorizing the court to grant a petition after making
13 certain findings on the record; requiring the court to order expungement of certain
14 records if the court grants the petition; requiring certain custodians of certain
15 records to destroy the records within a certain time after an order granting a petition;
16 providing that the State's Attorney is a party to a certain proceeding; providing that
17 a party to the proceeding is entitled to appellate review; and generally relating to
18 expungement.

19 BY adding to

20 Article – Criminal Procedure

21 Section 10–110

22 Annotated Code of Maryland

23 (2008 Replacement Volume and 2015 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

25 That the Laws of Maryland read as follows:

26 **Article – Criminal Procedure**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-110.**

2 (A) A PERSON MAY FILE A PETITION LISTING RELEVANT FACTS FOR
3 EXPUNGEMENT OF A POLICE RECORD, COURT RECORD, OR OTHER RECORD
4 MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IF THE
5 PERSON IS CONVICTED OF A MISDEMEANOR, AS PROVIDED IN THIS SECTION.

6 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
7 CONVICTION OF A MISDEMEANOR IS NOT ELIGIBLE FOR EXPUNGEMENT UNDER THIS
8 SECTION IF IT IS A VIOLATION OF:

9 (1) TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE;

10 (2) TITLE 3, SUBTITLE 2, 3, 6, OR 7 OF THE CRIMINAL LAW ARTICLE,
11 EXCEPT FOR A VIOLATION OF § 3-203;

12 (3) TITLE 4, SUBTITLE 1, 2, 3, OR 4 OF THE CRIMINAL LAW ARTICLE;

13 (4) TITLE 10, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;

14 (5) TITLE 11, SUBTITLE 2 OR 3 OF THE CRIMINAL LAW ARTICLE,
15 EXCEPT FOR A VIOLATION OF § 11-306;

16 (6) TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE;

17 (7) TITLE 5, SUBTITLE 1 OR 2 OF THE PUBLIC SAFETY ARTICLE;

18 (8) § 3-828 OR § 3-8A-30 OF THE COURTS ARTICLE;

19 (9) § 10-439 OF THE ECONOMIC DEVELOPMENT ARTICLE;

20 (10) § 4-509, § 5-705.2, § 9-304, OR § 10-203 OF THE FAMILY LAW
21 ARTICLE;

22 (11) § 7-1102, § 18-601, § 18-601.1, OR § 18-907(A) OF THE
23 HEALTH - GENERAL ARTICLE;

24 (12) § 4-1201(D)(2) OR § 10-426 OF THE NATURAL RESOURCES
25 ARTICLE;

26 (13) § 5-314 OR § 11-114 OF THE PUBLIC SAFETY ARTICLE;

1 (14) § 20-102, § 21-902, § 21-904(D) OR (E), OR § 21-1124.3 OF THE
2 TRANSPORTATION ARTICLE;

3 (15) § 3-802, § 3-803, § 3-805, § 3-807, § 3-809, § 3-902, § 3-903, OR §
4 3-1001 OF THE CRIMINAL LAW ARTICLE;

5 (16) § 5-624, § 5-701, § 5-702, OR § 5-709 OF THE CRIMINAL LAW
6 ARTICLE;

7 (17) § 6-106 OR § 6-107 OF THE CRIMINAL LAW ARTICLE;

8 (18) § 7-301 OR § 7-302(C)(1) OF THE CRIMINAL LAW ARTICLE;

9 (19) § 8-801(C)(2) OF THE CRIMINAL LAW ARTICLE;

10 (20) § 9-302, § 9-303(A), § 9-305, § 9-402, § 9-403, § 9-802, OR § 9-803
11 OF THE CRIMINAL LAW ARTICLE;

12 (21) § 10-604 OR § 10-605 OF THE CRIMINAL LAW ARTICLE;

13 (22) THE COMMON LAW OFFENSES OF SOLICITATION, CONSPIRACY, OR
14 ATTEMPT TO COMMIT A FELONY OR A VIOLATION DESCRIBED IN ITEMS (1) THROUGH
15 (21) OF THIS SUBSECTION; OR

16 (23) THE COMMON LAW OFFENSE OF FALSE IMPRISONMENT.

17 (C) ON CONVICTION FOR A MISDEMEANOR INCLUDED IN SUBSECTION (B) OF
18 THIS SECTION, THE SENTENCING COURT MAY ORDER THAT THE PERSON WILL BE
19 ELIGIBLE TO PETITION FOR EXPUNGEMENT IN ACCORDANCE WITH THIS SECTION ON
20 COMPLETION OF ANY CONDITIONS THE SENTENCING COURT FINDS APPROPRIATE.

21 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
22 SUBSECTION, A PERSON SHALL FILE A PETITION FOR EXPUNGEMENT IN THE COURT
23 IN WHICH THE PROCEEDING BEGAN.

24 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
25 PARAGRAPH, IF THE PROCEEDING BEGAN IN ONE COURT AND WAS TRANSFERRED
26 TO ANOTHER COURT, THE PERSON SHALL FILE THE PETITION IN THE COURT TO
27 WHICH THE PROCEEDING WAS TRANSFERRED.

28 (II) IF THE PROCEEDING BEGAN IN ONE COURT AND WAS
29 TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OR § 4-202.2 OF THIS

1 ARTICLE, THE PERSON SHALL FILE THE PETITION IN THE COURT OF ORIGINAL
2 JURISDICTION FROM WHICH THE ORDER OF TRANSFER WAS ENTERED.

3 (3) (I) IF THE PROCEEDING IN A COURT OF ORIGINAL
4 JURISDICTION WAS APPEALED TO A COURT EXERCISING APPELLATE JURISDICTION,
5 THE PERSON SHALL FILE THE PETITION IN THE APPELLATE COURT.

6 (II) THE APPELLATE COURT MAY REMAND THE MATTER TO THE
7 COURT OF ORIGINAL JURISDICTION.

8 (E) A PETITION FOR EXPUNGEMENT UNDER THIS SECTION MAY NOT BE
9 FILED EARLIER THAN 10 YEARS AFTER THE PERSON SATISFIES THE SENTENCE OR
10 SENTENCES IMPOSED FOR ALL CONVICTIONS FOR WHICH EXPUNGEMENT IS
11 REQUESTED, INCLUDING PAROLE, PROBATION, OR MANDATORY SUPERVISION.

12 (F) (1) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING THE
13 APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (E) OF THIS SECTION, THE
14 ORIGINAL CONVICTION OR CONVICTIONS ARE NOT ELIGIBLE FOR EXPUNGEMENT
15 UNLESS THE NEW CONVICTION BECOMES ELIGIBLE FOR EXPUNGEMENT.

16 (2) A PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT IF THE PERSON
17 IS A DEFENDANT IN A PENDING CRIMINAL PROCEEDING.

18 (3) IF A PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT OF ONE
19 CONVICTION IN A UNIT, THE PERSON IS NOT ELIGIBLE FOR EXPUNGEMENT OF ANY
20 OTHER CONVICTION IN THE UNIT.

21 (G) (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR
22 EXPUNGEMENT SERVED ON THE STATE'S ATTORNEY.

23 (2) THE COURT SHALL SEND WRITTEN NOTICE OF THE
24 EXPUNGEMENT REQUEST TO ALL LISTED VICTIMS IN THE CASE IN WHICH THE
25 PETITIONER IS SEEKING EXPUNGEMENT AT THE ADDRESS LISTED IN THE COURT
26 FILE, ADVISING THE VICTIM OR VICTIMS OF THE RIGHT TO OFFER ADDITIONAL
27 INFORMATION RELEVANT TO THE EXPUNGEMENT PETITION TO THE COURT.

28 (H) (1) THE COURT SHALL HOLD A HEARING ON THE PETITION.

29 (2) THE COURT MAY GRANT THE PETITION FOR EXPUNGEMENT IF
30 THE COURT FINDS AND STATES ON THE RECORD THAT:

31 (I) THE CONVICTION IS ELIGIBLE FOR EXPUNGEMENT UNDER
32 SUBSECTION (A) OR (C) OF THIS SECTION;

1 (II) IF THE CONVICTION IS ELIGIBLE FOR EXPUNGEMENT
2 UNDER SUBSECTION (C) OF THIS SECTION, THE PERSON HAS MET ALL THE
3 CONDITIONS FOR ELIGIBILITY ORDERED BY THE SENTENCING COURT;

4 (III) THE PERSON IS ELIGIBLE FOR EXPUNGEMENT UNDER
5 SUBSECTION (F) OF THIS SECTION; AND

6 (IV) THE PERSON HAS PROVEN BY A PREPONDERANCE OF
7 EVIDENCE THAT THE PERSON IS NOT A RISK TO PUBLIC SAFETY AND THAT AN
8 EXPUNGEMENT WOULD BE IN THE INTEREST OF JUSTICE.

9 (I) (1) IF THE COURT AT THE HEARING FINDS THAT THE PERSON IS
10 ENTITLED TO EXPUNGEMENT, THE COURT SHALL ORDER THE EXPUNGEMENT OF
11 ALL POLICE RECORDS AND COURT RECORDS ABOUT THE CHARGE.

12 (2) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO
13 EXPUNGEMENT, THE COURT SHALL DENY THE PETITION.

14 (J) UNLESS AN ORDER IS STAYED PENDING AN APPEAL, WITHIN 60 DAYS
15 AFTER ENTRY OF THE ORDER, EVERY CUSTODIAN OF THE POLICE RECORDS AND
16 COURT RECORDS THAT ARE SUBJECT TO THE ORDER OF EXPUNGEMENT SHALL
17 ADVISE IN WRITING THE COURT AND THE PERSON WHO IS SEEKING EXPUNGEMENT
18 OF COMPLIANCE WITH THE ORDER.

19 (K) (1) THE STATE'S ATTORNEY IS A PARTY TO THE PROCEEDING.

20 (2) A PARTY AGGRIEVED BY THE DECISION OF THE COURT IS
21 ENTITLED TO APPELLATE REVIEW AS PROVIDED IN THE COURTS ARTICLE.

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