

HOUSE BILL 836

E2
HB 1436/16 – JUD

7lr1099

By: **Delegates Folden, Afzali, Kittleman, McComas, and Metzgar**

Introduced and read first time: February 3, 2017

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Common Law Battery**

3 FOR the purpose of authorizing a person to file a petition for expungement based on a
4 conviction of common law battery; providing that a petition for expungement based
5 on a conviction of common law battery may not be filed within a certain time period
6 after the person was convicted of a certain crime; and generally relating to
7 expungement.

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Procedure

10 Section 10–105

11 Annotated Code of Maryland

12 (2008 Replacement Volume and 2016 Supplement)

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

14 That the Laws of Maryland read as follows:

15 **Article – Criminal Procedure**

16 10–105.

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

23 (1) the person is acquitted;

24 (2) the charge is otherwise dismissed;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

12 (8) the person:

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

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

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

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

19 (ii) panhandling or soliciting money;

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

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

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

24 (vi) loitering;

25 (vii) vagrancy;

26 (viii) riding a transit vehicle without paying the applicable fare or
27 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;

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 crime and the act on which the conviction
10 was based is no longer a crime; **OR**

11 **(12) THE PERSON WAS CONVICTED OF COMMON LAW BATTERY.**

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

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

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

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

28 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
29 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
30 3 years after the disposition, unless the petitioner files with the petition a written general
31 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

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

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

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

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

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

24 **(8) A PETITION FOR EXPUNGEMENT BASED ON A CONVICTION OF**
25 **COMMON LAW BATTERY UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE**
26 **FILED WITHIN 15 YEARS AFTER THE PERSON WAS CONVICTED OF A CRIME OTHER**
27 **THAN A MINOR TRAFFIC VIOLATION OR A CRIME WHERE THE ACT ON WHICH THE**
28 **CONVICTION IS BASED IS NO LONGER A CRIME.**

29 **[(8)] (9)** A court may grant a petition for expungement at any time on a
30 showing of good cause.

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

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

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

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

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

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

9 (i) the petition is based on the entry of probation before judgment,
10 except a probation before judgment for a crime where the act on which the conviction is
11 based is no longer a crime, and the person within 3 years of the entry of the probation before
12 judgment has been convicted of a crime other than a minor traffic violation or a crime where
13 the act on which the conviction is based is no longer a crime; or

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2017.