

# HOUSE BILL 1237

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HB 904/15 – JUD

7lr2969

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By: **Delegates C. Wilson, Ali, Angel, Atterbeary, Barron, Conaway, Glass, Haynes, Kittleman, Moon, Morales, Mosby, Oaks, Rosenberg, Tarlau, Valentino-Smith, Vallario, A. Washington, M. Washington, B. Wilson, and P. Young**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Court and Police Records – Acquittal,**  
3 **Dismissal, or Nolle Prosequi**

4 FOR the purpose of providing that a person who is entitled to expungement under a certain  
5 provision of law based on an acquittal, a dismissal, a nolle prosequi, or a nolle  
6 prosequi with the requirement of drug or alcohol treatment may not be required to  
7 pay any fee or costs in connection with the expungement; and generally relating to  
8 the expungement of a court or police record.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Procedure  
11 Section 10–105  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume and 2016 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:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (1) the person is acquitted;
- 2 (2) the charge is otherwise dismissed;
- 3 (3) a probation before judgment is entered, unless the person is charged  
4 with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5 or § 3–211  
5 of the Criminal Law Article;
- 6 (4) a nolle prosequi or nolle prosequi with the requirement of drug or  
7 alcohol treatment is entered;
- 8 (5) the court indefinitely postpones trial of a criminal charge by marking  
9 the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment  
10 on the docket;
- 11 (6) the case is compromised under § 3–207 of the Criminal Law Article;
- 12 (7) the charge was transferred to the juvenile court under § 4–202 of this  
13 article;
- 14 (8) the person:
  - 15 (i) is convicted of only one criminal act, and that act is not a crime  
16 of violence; and
  - 17 (ii) is granted a full and unconditional pardon by the Governor;
- 18 (9) the person was convicted of a crime or found not criminally responsible  
19 under any State or local law that prohibits:
  - 20 (i) urination or defecation in a public place;
  - 21 (ii) panhandling or soliciting money;
  - 22 (iii) drinking an alcoholic beverage in a public place;
  - 23 (iv) obstructing the free passage of another in a public place or a  
24 public conveyance;
  - 25 (v) sleeping on or in park structures, such as benches or doorways;
  - 26 (vi) loitering;
  - 27 (vii) vagrancy;

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

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

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

8 (i) trespass;

9 (ii) disturbing the peace; or

10 (iii) telephone misuse; or

11 (11) the person was convicted of a crime and the act on which the conviction  
12 was based is no longer a crime.

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

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

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

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

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

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

29 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for  
30 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within  
31 3 years after the disposition, unless the petitioner files with the petition a written general  
32 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 court may grant a petition for expungement at any time on a showing  
25 of good cause.

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

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

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

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

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

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

4 (i) the petition is based on the entry of probation before judgment,  
5 except a probation before judgment for a crime where the act on which the conviction is  
6 based is no longer a crime, and the person within 3 years of the entry of the probation before  
7 judgment has been convicted of a crime other than a minor traffic violation or a crime where  
8 the act on which the conviction is based is no longer a crime; or

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

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

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

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

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

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