

SENATE BILL 949

E2

7lr3079
CF HB 379

By: **Senators Smith and Madaleno**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2017

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Possession of Marijuana ~~and Fees~~**

3 FOR the purpose of authorizing a person to file a certain petition for expungement ~~if the~~
4 within a certain amount of time after a person was convicted of possession of
5 marijuana before a certain time; requiring that filing fees for petitions for
6 expungement collected by the District Court be remitted to the Administrative Office
7 of the Courts to be used only for a certain purpose; providing for the effective date of
8 certain provisions of this Act; and generally relating to expungement of records.

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 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 10–110(a)(8)
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2016 Supplement)
19 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)

20 ~~BY adding to~~
21 ~~Article – Courts and Judicial Proceedings~~
22 ~~Section 7–302(h)~~

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.



~~Annotated Code of Maryland~~
~~(2013 Replacement Volume and 2016 Supplement)~~

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

Article – Criminal Procedure

10–105.

(a) 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 infraction, except a juvenile offense, as a substitute for a criminal charge may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if:

(1) the person is acquitted;

(2) the charge is otherwise dismissed;

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

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

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

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

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

(8) the person:

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

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

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

- 1 (i) urination or defecation in a public place;
- 2 (ii) panhandling or soliciting money;
- 3 (iii) drinking an alcoholic beverage in a public place;
- 4 (iv) obstructing the free passage of another in a public place or a
5 public conveyance;
- 6 (v) sleeping on or in park structures, such as benches or doorways;
- 7 (vi) loitering;
- 8 (vii) vagrancy;
- 9 (viii) riding a transit vehicle without paying the applicable fare or
10 exhibiting proof of payment; or

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

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

- 16 (i) trespass;
- 17 (ii) disturbing the peace; or
- 18 (iii) telephone misuse; [or]

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

21 **(12) THE PERSON WAS CONVICTED OF POSSESSION OF MARIJUANA**
22 **UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE BEFORE OCTOBER 1, 2014.**

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

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

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

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

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

7 (ii) The appellate court may remand the matter to the court of
8 original jurisdiction.

9 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
10 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
11 3 years after the disposition, unless the petitioner files with the petition a written general
12 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

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

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

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

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

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

1 (8) A court may grant a petition for expungement at any time on a showing
2 of good cause.

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

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

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

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

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

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

16 (i) the petition is based on the entry of probation before judgment,
17 except a probation before judgment for a crime where the act on which the conviction is
18 based is no longer a crime, and the person within 3 years of the entry of the probation before
19 judgment has been convicted of a crime other than a minor traffic violation or a crime where
20 the act on which the conviction is based is no longer a crime; or

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

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

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
30 as follows:

31 Article – Criminal Procedure

32 10–110.

1 (a) A person may file a petition listing relevant facts for expungement of a police
2 record, court record, or other record maintained by the State or a political subdivision of
3 the State if the person is convicted of a misdemeanor that is a violation of:

4 (8) § 5-601 NOT INVOLVING THE USE OR POSSESSION OF MARIJUANA,
5 § 5-618, § 5-619, § 5-620, § 5-703, § 5-708, or § 5-902 of the Criminal Law Article;

6 ~~Article—Courts and Judicial Proceedings~~

7 ~~7-302.~~

8 ~~(H) (1) FILING FEES FOR PETITIONS FOR EXPUNGEMENT COLLECTED BY~~
9 ~~THE DISTRICT COURT SHALL BE REMITTED TO THE ADMINISTRATIVE OFFICE OF~~
10 ~~THE COURTS.~~

11 ~~(2) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY USE MONEY~~
12 ~~RECEIVED UNDER THIS SUBSECTION ONLY FOR THE PURPOSE OF FUNDING THE~~
13 ~~PROCESSING OF EXPUNGEMENTS.~~

14 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
15 effect October 1, 2017, the effective date of Section 2 of Chapter 515 of the Acts of the
16 General Assembly of 2016. If the effective date of Section 2 of Chapter 515 of the Acts of
17 the General Assembly of 2016 is amended, Section 2 of this Act shall take effect on the
18 taking effect of Section 2 of Chapter 515 of the Acts of the General Assembly of 2016.

19 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this
20 Act, this Act shall take effect October 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.