

SB0238/558872/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 238
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Partial”; in the same line, after “Expungement” insert “and Shielding”; strike beginning with “partial” in line 3 down through “expungement” in line 10 and substitute “repealing the prohibition on the filing of a petition for expungement based on an acquittal, a dismissal, or a nolle prosequi within a certain time period after the disposition unless the petitioner files with the petition a certain waiver and release; requiring certain records that are ordered for expungement to be expunged by removing the records to a certain secured area; providing that certain records are subject to discovery in a civil action, except under certain circumstances; establishing procedures for the filing of a certain petition for shielding; authorizing a person to file a petition for expungement of certain records if the person is convicted of fourth degree burglary; making certain provisions of this Act subject to a certain contingency; requiring the State Court Administrator to report to certain committees of the General Assembly and the Department of Legislative Services on or before a certain date; requiring the State Court Administrator to issue a status report under certain circumstances with a certain frequency; and generally relating to expungement and shielding”; in line 13, strike “10–105” and substitute “10–105(c)(1) and (e)(2) and 10–110(a)(1)(ix)”; and strike in their entirety lines 16 through 20, inclusive, and substitute:

“BY adding to

Article - Criminal Procedure
Section 10-303.1
Annotated Code of Maryland
(2018 Replacement Volume)”.

AMENDMENT NO. 2

(Over)

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On pages 1 through 6, strike in their entirety the lines beginning with line 24 on page 1 through line 28 on page 6, inclusive, and substitute:

“10–105.

(c) (1) Except as provided in paragraph (2) of this subsection, a petition for expungement based on an acquittal, a nolle prosequi, or a dismissal may [not be filed within 3 years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner’s tort claims arising from the charge] **BE FILED AT ANY TIME.**

(e) (2) (I) [If] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF the court at the hearing finds that the person is entitled to expungement, the court shall order the expungement of all police records and court records about the charge.

(II) 1. IF A PETITION FOR EXPUNGEMENT UNDER SUBSECTION (C)(1) OF THIS SECTION IS GRANTED WITHIN 3 YEARS AFTER THE DISPOSITION, THE EXPUNGEMENT SHALL BE ACCOMPLISHED BY REMOVING THE RECORDS TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS.

2. UNLESS A JUDICIAL OFFICER FINDS THAT THE RECORD IS PRIVILEGED OR OTHERWISE PROTECTED FROM DISCOVERY UNDER THE MARYLAND RULES, A RECORD EXPUNGED UNDER THIS SUBPARAGRAPH IS SUBJECT TO DISCOVERY IN A CIVIL ACTION.

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(a) A person 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 the person is convicted of:

(1) a misdemeanor that is a violation of:

(ix) § 6-105, § 6-108, § 6-205 (FOURTH DEGREE BURGLARY), § 6-206, § 6-303, § 6-306, § 6-307, § 6-402, or § 6-503 of the Criminal Law Article;

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

Article – Criminal Procedure

10-303.1.

(A) NOTWITHSTANDING § 10-303 OF THIS SUBTITLE, WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT ELIGIBLE FOR EXPUNGEMENT UNDER § 10-105 OF THIS TITLE, A PERSON MAY FILE A PETITION UNDER THIS SECTION FOR SHIELDING OF THE OTHER CHARGE OR CHARGES IN THE UNIT THAT OTHERWISE WOULD BE ELIGIBLE FOR EXPUNGEMENT.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A PERSON SHALL FILE A PETITION IN THE COURT IN WHICH THE PROCEEDING BEGAN.

(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF THE PROCEEDING BEGAN IN ONE COURT AND WAS TRANSFERRED

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TO ANOTHER COURT, THE PERSON SHALL FILE THE PETITION IN THE COURT TO WHICH THE PROCEEDING WAS TRANSFERRED.

(II) IF THE PROCEEDING BEGAN IN ONE COURT AND WAS TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OR § 4-202.2 OF THIS ARTICLE, THE PERSON SHALL FILE THE PETITION IN THE COURT OF ORIGINAL JURISDICTION FROM WHICH THE ORDER OF TRANSFER WAS ENTERED.

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

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

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PETITION FOR SHIELDING BASED ON AN ACQUITTAL, A NOLLE PROSEQUI, OR A DISMISSAL MAY BE FILED IMMEDIATELY.

(2) A PETITION FOR SHIELDING BASED ON A PROBATION BEFORE JUDGMENT OR A STET WITH THE REQUIREMENT OF DRUG OR ALCOHOL ABUSE TREATMENT MAY NOT BE FILED EARLIER THAN THE LATER OF:

(I) THE DATE THE PETITIONER WAS DISCHARGED FROM PROBATION OR THE REQUIREMENTS OF OBTAINING DRUG OR ALCOHOL ABUSE TREATMENT WERE COMPLETED; OR

(II) 3 YEARS AFTER THE PROBATION WAS GRANTED OR STET WITH THE REQUIREMENT OF DRUG OR ALCOHOL ABUSE TREATMENT WAS ENTERED ON THE DOCKET.

(3) A PETITION FOR SHIELDING BASED ON A NOLLE PROSEQUI WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT MAY NOT BE FILED UNTIL THE COMPLETION OF THE REQUIRED TREATMENT.

(4) A PETITION FOR SHIELDING BASED ON A FULL AND UNCONDITIONAL PARDON BY THE GOVERNOR MAY NOT BE FILED LATER THAN 10 YEARS AFTER THE PARDON WAS SIGNED BY THE GOVERNOR.

(5) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PETITION FOR SHIELDING BASED ON A STET OR A COMPROMISE UNDER § 3-207 OF THE CRIMINAL LAW ARTICLE MAY NOT BE FILED WITHIN 3 YEARS AFTER THE STET OR COMPROMISE.

(6) A PETITION FOR SHIELDING BASED ON THE CONVICTION OF A CRIME UNDER § 10-105(A)(9) OF THIS TITLE MAY NOT BE FILED WITHIN 3 YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION, WHICHEVER IS LATER.

(7) A PETITION FOR SHIELDING BASED ON A FINDING OF NOT CRIMINALLY RESPONSIBLE UNDER § 10-105(A)(9) OR (10) OF THIS TITLE MAY NOT BE FILED WITHIN 3 YEARS AFTER THE FINDING OF NOT CRIMINALLY RESPONSIBLE WAS MADE BY THE COURT.

(8) A PETITION FOR SHIELDING BASED ON THE CONVICTION OF A CRIME UNDER § 10-105(A)(12) OF THIS TITLE MAY NOT BE FILED WITHIN 4 YEARS

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AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION, WHICHEVER IS LATER.

(9) A COURT MAY GRANT A PETITION FOR SHIELDING AT ANY TIME ON A SHOWING OF GOOD CAUSE.

(D) (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR SHIELDING SERVED ON THE STATE'S ATTORNEY.

(2) UNLESS THE STATE'S ATTORNEY FILES AN OBJECTION TO THE PETITION FOR SHIELDING WITHIN 30 DAYS AFTER THE PETITION IS SERVED, THE COURT SHALL PASS AN ORDER REQUIRING THE SHIELDING OF THE CHARGE OR CHARGES.

(E) (1) IF THE STATE'S ATTORNEY FILES A TIMELY OBJECTION TO THE PETITION, THE COURT SHALL HOLD A HEARING.

(2) IF THE COURT AT THE HEARING FINDS THAT THE PERSON IS ENTITLED TO SHIELDING, THE COURT SHALL ORDER THE SHIELDING OF THE CHARGE OR CHARGES.

(3) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO SHIELDING, THE COURT SHALL DENY THE PETITION.

(4) THE PERSON IS NOT ENTITLED TO SHIELDING UNDER THIS SECTION IF:

(I) THE PETITION IS BASED ON THE ENTRY OF PROBATION BEFORE JUDGMENT, EXCEPT A PROBATION BEFORE JUDGMENT FOR A CRIME

WHERE THE ACT ON WHICH THE CONVICTION IS BASED IS NO LONGER A CRIME, AND THE PERSON WITHIN 3 YEARS OF THE ENTRY OF THE PROBATION BEFORE JUDGMENT HAS BEEN CONVICTED OF A CRIME OTHER THAN A MINOR TRAFFIC VIOLATION OR A CRIME WHERE THE ACT ON WHICH THE CONVICTION IS BASED IS NO LONGER A CRIME;

(II) THE PERSON IS A DEFENDANT IN A PENDING CRIMINAL PROCEEDING; OR

(III) THE COURT FINDS AND STATES ON THE RECORD THAT THE STATE'S ATTORNEY HAS SHOWN GOOD CAUSE FOR WHY THE PERSON'S RECORDS SHOULD NOT BE SHIELDED.

(5) GOOD CAUSE UNDER SUBPARAGRAPH (4)(III) OF THIS SUBSECTION MAY INCLUDE THAT SHIELDING THE PERSON'S RECORDS WOULD BE CONTRARY TO THE INTEREST OF PUBLIC SAFETY.

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Section 2 of this Act is contingent on a determination by the State Court Administrator that the technical capabilities of the Judicial Information System and Case Search 2.0 are sufficient to comply with the requirements of Section 2 of this Act and funding for the required technical improvements is available in the State budget.

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(b) The State Court Administrator shall notify the Department of Legislative Services and, in accordance with § 2-1246 of the State Government Article, the Senate Judicial Proceedings Committee and the House Judiciary Committee within 5 days after the State Court Administrator makes a determination that the contingencies under subsection (a) of this section have been satisfied.

(c) If notification under subsection (b) of this section is not made by October 1, 2021, the State Court Administrator shall issue a status report on October 1 of that year and every 6 months thereafter until the contingencies under subsection (a) of this section have been satisfied.”.

On page 6, strike lines 29 and 30 and substitute:

“SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, this Act shall take effect June 1, 2019.”.