

# HOUSE BILL 13

E2  
HB 840/17 – JUD

(PRE-FILED)

9lr0762  
CF SB 238

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By: **Delegate Barron**

Requested: November 16, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Procedure – Partial Expungement and Expungement of Misdemeanor**  
3 **Conviction**

4 FOR the purpose of authorizing a person to file a petition for partial expungement of certain  
5 criminal records under certain circumstances; ~~setting forth certain actions that a~~  
6 ~~court is required and authorized to take if the partial expungement of a certain~~  
7 ~~record is impracticable for a certain reason; repealing a provision of law establishing~~  
8 ~~that if a person is not entitled to expungement of one charge or conviction in a certain~~  
9 ~~unit the person is not entitled to expungement of any other charge or conviction in~~  
10 ~~the unit; providing for a delayed effective date; establishing procedures for the filing~~  
11 ~~of a petition for partial expungement; authorizing a person to file a petition for~~  
12 ~~expungement of certain records if the person is convicted of fourth degree burglary;~~  
13 ~~making this Act subject to a certain contingency; requiring the State Court~~  
14 ~~Administrator to report to certain committees of the General Assembly and the~~  
15 ~~Department of Legislative Services on or before a certain date; requiring the State~~  
16 ~~Court Administrator to issue a status report under certain circumstances with a~~  
17 ~~certain frequency; defining a certain term; and generally relating to ~~partial~~~~  
18 ~~expungement of criminal records.~~

19 ~~BY repealing and reenacting, with amendments,~~  
20 ~~Article — Criminal Procedure~~  
21 ~~Section 10-105~~  
22 ~~Annotated Code of Maryland~~  
23 ~~(2018 Replacement Volume)~~

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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.



1 ~~BY repealing~~  
 2 ~~Article – Criminal Procedure~~  
 3 ~~Section 10–107~~  
 4 ~~Annotated Code of Maryland~~  
 5 ~~(2018 Replacement Volume)~~

6 BY adding to  
 7 Article – Criminal Procedure  
 8 Section 10–105.1  
 9 Annotated Code of Maryland  
 10 (2018 Replacement Volume)

11 BY repealing and reenacting, with amendments,  
 12 Article – Criminal Procedure  
 13 Section 10–110(a)(1)(ix)  
 14 Annotated Code of Maryland  
 15 (2018 Replacement Volume)

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

### 18 Article – Criminal Procedure

19 ~~10–105.~~

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

25 ~~(1) the person is acquitted;~~

26 ~~(2) the charge is otherwise dismissed;~~

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

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

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

- 1           ~~(6) the case is compromised under § 3-207 of the Criminal Law Article;~~
- 2           ~~(7) the charge was transferred to the juvenile court under § 4-202 of this~~  
3 ~~article;~~
- 4           ~~(8) the person:~~
- 5                 ~~(i) is convicted of only one criminal act, and that act is not a crime~~  
6 ~~of violence; and~~
- 7                 ~~(ii) is granted a full and unconditional pardon by the Governor;~~
- 8           ~~(9) the person was convicted of a crime or found not criminally responsible~~  
9 ~~under any State or local law that prohibits:~~
- 10                 ~~(i) urination or defecation in a public place;~~
- 11                 ~~(ii) panhandling or soliciting money;~~
- 12                 ~~(iii) drinking an alcoholic beverage in a public place;~~
- 13                 ~~(iv) obstructing the free passage of another in a public place or a~~  
14 ~~public conveyance;~~
- 15                 ~~(v) sleeping on or in park structures, such as benches or doorways;~~
- 16                 ~~(vi) loitering;~~
- 17                 ~~(vii) vagrancy;~~
- 18                 ~~(viii) riding a transit vehicle without paying the applicable fare or~~  
19 ~~exhibiting proof of payment; or~~
- 20                 ~~(ix) except for carrying or possessing an explosive, acid, concealed~~  
21 ~~weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation~~  
22 ~~Article, any of the acts specified in § 7-705 of the Transportation Article;~~
- 23           ~~(10) the person was found not criminally responsible under any State or~~  
24 ~~local law that prohibits misdemeanor:~~
- 25                 ~~(i) trespass;~~
- 26                 ~~(ii) disturbing the peace; or~~
- 27                 ~~(iii) telephone misuse;~~

1 ~~(11) the person was convicted of a crime and the act on which the conviction~~  
2 ~~was based is no longer a crime; or~~

3 ~~(12) the person was convicted of possession of marijuana under § 5-601 of~~  
4 ~~the Criminal Law Article.~~

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

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

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

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

16 ~~(3) (i) If the proceeding in a court of original jurisdiction was appealed~~  
17 ~~to a court exercising appellate jurisdiction, the person shall file the petition in the appellate~~  
18 ~~court.~~

19 ~~(ii) The appellate court may remand the matter to the court of~~  
20 ~~original jurisdiction.~~

21 ~~(e) (1) Except as provided in paragraph (2) of this subsection, a petition for~~  
22 ~~expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within~~  
23 ~~3 years after the disposition, unless the petitioner files with the petition a written general~~  
24 ~~waiver and release of all the petitioner's tort claims arising from the charge.~~

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

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

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

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

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

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

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

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

14           ~~(8) A petition for expungement based on the conviction of a crime under~~  
15 ~~subsection (a)(12) of this section may not be filed within 4 years after the conviction or~~  
16 ~~satisfactory completion of the sentence, including probation, that was imposed for the~~  
17 ~~conviction, whichever is later.~~

18           ~~(9) A court may grant a petition for expungement at any time on a showing~~  
19 ~~of good cause.~~

20           ~~(d) (1) WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,~~  
21 ~~TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT~~  
22 ~~ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A~~  
23 ~~PETITION FOR PARTIAL EXPUNGEMENT OF THE CHARGES ELIGIBLE FOR~~  
24 ~~EXPUNGEMENT UNDER THIS SECTION.~~

25           ~~(2) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, COURT~~  
26 ~~RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL~~  
27 ~~SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE INCLUSION IN THE~~  
28 ~~STATEMENT OF CHARGES OF NARRATIVE RELATING TO BOTH THE CHARGES THAT~~  
29 ~~ARE ELIGIBLE FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR~~  
30 ~~EXPUNGEMENT, THE COURT:~~

31           ~~(i) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT~~  
32 ~~REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE~~  
33 ~~INCLUDED:~~

34           ~~1. ON THE PUBLIC WEBSITE MAINTAINED BY THE~~  
35 ~~MARYLAND JUDICIARY; AND~~

~~2. WITHIN RECORDS SUBMITTED TO THE CENTRAL REPOSITORY; AND~~

~~(H) MAY AUTHORIZE THE STATE OR A POLITICAL SUBDIVISION OF THE STATE TO:~~

~~1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE; AND~~

~~2. LIMIT INSPECTION OF THE WRITTEN RECORD TO A CRIMINAL JUSTICE UNIT, AS DEFINED IN § 10-201 OF THIS TITLE, FOR LEGITIMATE CRIMINAL JUSTICE PURPOSES.~~

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

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

~~[(c)] (F) (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 expungement, the court shall order the expungement of all police records and court records about the charge.~~

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

~~(4) The person is not entitled to expungement 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; or~~

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

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

~~[(g)] (H) (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.~~

~~§ 10-107.~~

~~(a) (1) In this subtitle, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit.~~

~~(2) A charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit.~~

~~(b) (1) If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit.~~

~~(2) The disposition of a charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in the unit does not affect any right to expungement of a charge or conviction in the unit.]~~

**10-105.1.**

**(A) IN THIS SECTION, "PARTIAL EXPUNGEMENT" MEANS THE REMOVAL OF AN INDIVIDUAL CRIMINAL CHARGE FROM THE MARYLAND JUDICIARY PUBLIC CASE SEARCH WEBSITE.**

**(B) 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 SUBTITLE, A PERSON MAY FILE A PETITION UNDER THIS SECTION FOR PARTIAL EXPUNGEMENT OF THE OTHER CHARGE OR CHARGES IN THE UNIT THAT OTHERWISE WOULD BE ELIGIBLE FOR EXPUNGEMENT.**

**(C) (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 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**

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

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

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

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

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

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

26 (5) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A  
27 PETITION FOR PARTIAL EXPUNGEMENT BASED ON A STET OR A COMPROMISE UNDER  
28 § 3-207 OF THE CRIMINAL LAW ARTICLE MAY NOT BE FILED WITHIN 3 YEARS AFTER  
29 THE STET OR COMPROMISE.

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



1           **(7) A PETITION FOR PARTIAL EXPUNGEMENT BASED ON A FINDING OF**  
2 **NOT CRIMINALLY RESPONSIBLE UNDER § 10-105(A)(9) OR (10) OF THIS SUBTITLE**  
3 **MAY NOT BE FILED WITHIN 3 YEARS AFTER THE FINDING OF NOT CRIMINALLY**  
4 **RESPONSIBLE WAS MADE BY THE COURT.**

5           **(8) A PETITION FOR PARTIAL EXPUNGEMENT BASED ON THE**  
6 **CONVICTION OF A CRIME UNDER § 10-105(A)(12) OF THIS SUBTITLE MAY NOT BE**  
7 **FILED WITHIN 4 YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF**  
8 **THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION,**  
9 **WHICHEVER IS LATER.**

10           **(9) A COURT MAY GRANT A PETITION FOR PARTIAL EXPUNGEMENT AT**  
11 **ANY TIME ON A SHOWING OF GOOD CAUSE.**

12           **(E) (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR PARTIAL**  
13 **EXPUNGEMENT SERVED ON THE STATE'S ATTORNEY.**

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

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

20           **(2) IF THE COURT AT THE HEARING FINDS THAT THE PERSON IS**  
21 **ENTITLED TO PARTIAL EXPUNGEMENT, THE COURT SHALL ORDER THE PARTIAL**  
22 **EXPUNGEMENT OF THE CHARGE OR CHARGES.**

23           **(3) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO**  
24 **PARTIAL EXPUNGEMENT, THE COURT SHALL DENY THE PETITION.**

25           **(4) THE PERSON IS NOT ENTITLED TO PARTIAL EXPUNGEMENT IF:**

26           **(I) THE PETITION IS BASED ON THE ENTRY OF PROBATION**  
27 **BEFORE JUDGMENT, EXCEPT A PROBATION BEFORE JUDGMENT FOR A CRIME**  
28 **WHERE THE ACT ON WHICH THE CONVICTION IS BASED IS NO LONGER A CRIME, AND**  
29 **THE PERSON WITHIN 3 YEARS OF THE ENTRY OF THE PROBATION BEFORE**  
30 **JUDGMENT HAS BEEN CONVICTED OF A CRIME OTHER THAN A MINOR TRAFFIC**  
31 **VIOLATION OR A CRIME WHERE THE ACT ON WHICH THE CONVICTION IS BASED IS NO**  
32 **LONGER A CRIME; OR**

1                    (II) THE PERSON IS A DEFENDANT IN A PENDING CRIMINAL  
2 PROCEEDING.

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

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

6 10-110.

7            (a) A person may file a petition listing relevant facts for expungement of a police  
8 record, court record, or other record maintained by the State or a political subdivision of  
9 the State if the person is convicted of:

10                    (1) a misdemeanor that is a violation of:

11                                    (ix) § 6-105, § 6-108, § 6-205 (FOURTH DEGREE BURGLARY), §  
12 6-206, § 6-303, § 6-306, § 6-307, § 6-402, or § 6-503 of the Criminal Law Article;

13                    SECTION 2. AND BE IT FURTHER ENACTED, That:

14            (a) Section 1 of this Act is contingent on a determination by the State Court  
15 Administrator that the technical capabilities of the Judicial Information System and Case  
16 Search 2.0 are sufficient to comply with the requirements of Section 1 of this Act and  
17 funding for the required technical improvements is available in the State budget.

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

23            (c) If notification under subsection (b) of this section is not made by October 1,  
24 2021, the State Court Administrator shall issue a status report on October 1 and every 6  
25 months thereafter until the contingencies under subsection (a) of this section have been  
26 satisfied.

27                    ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
28 ~~October 1, 2021.~~

29                    SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this  
30 Act, this Act shall take effect October 1, 2019.