

SENATE BILL 238

E2

9lr1662
CF HB 13

By: **Senators Carter, Smith, Washington, and Zirkin**

Introduced and read first time: January 25, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Partial Expungement**

3 FOR the purpose of authorizing a person to file a petition for partial expungement of certain
4 criminal records under certain circumstances; setting forth certain actions that a
5 court is required and authorized to take if the partial expungement of a certain
6 record is impracticable for a certain reason; repealing a provision of law establishing
7 that if a person is not entitled to expungement of one charge or conviction in a certain
8 unit the person is not entitled to expungement of any other charge or conviction in
9 the unit; providing for a delayed effective date; and generally relating to partial
10 expungement of criminal records.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 10–105
14 Annotated Code of Maryland
15 (2018 Replacement Volume)

16 BY repealing
17 Article – Criminal Procedure
18 Section 10–107
19 Annotated Code of Maryland
20 (2018 Replacement Volume)

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

23 **Article – Criminal Procedure**

24 10–105.

25 (a) A person who has been charged with the commission of a crime, including a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 violation of the Transportation Article for which a term of imprisonment may be imposed,
2 or who has been charged with a civil offense or infraction, except a juvenile offense, may
3 file a petition listing relevant facts for expungement of a police record, court record, or other
4 record maintained by the State or a political subdivision of the State if:

5 (1) the person is acquitted;

6 (2) the charge is otherwise dismissed;

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

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

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

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

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

18 (8) the person:

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

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

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

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

25 (ii) panhandling or soliciting money;

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

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

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

30 (vi) loitering;

1 (vii) vagrancy;

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

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

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

9 (i) trespass;

10 (ii) disturbing the peace; or

11 (iii) telephone misuse;

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

14 (12) the person was convicted of possession of marijuana under § 5-601 of
15 the Criminal Law Article.

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

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

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

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

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

30 (ii) The appellate court may remand the matter to the court of
31 original jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

34 (d) (1) **WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,**
35 **TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT**
36 **ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A**

1 PETITION FOR PARTIAL EXPUNGEMENT OF THE CHARGES ELIGIBLE FOR
2 EXPUNGEMENT UNDER THIS SECTION.

3 (2) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, COURT
4 RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL
5 SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE INCLUSION IN THE
6 STATEMENT OF CHARGES OF NARRATIVE RELATING TO BOTH THE CHARGES THAT
7 ARE ELIGIBLE FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR
8 EXPUNGEMENT, THE COURT:

9 (I) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT
10 REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE
11 INCLUDED:

12 1. ON THE PUBLIC WEBSITE MAINTAINED BY THE
13 MARYLAND JUDICIARY; AND

14 2. WITHIN RECORDS SUBMITTED TO THE CENTRAL
15 REPOSITORY; AND

16 (II) MAY AUTHORIZE THE STATE OR A POLITICAL SUBDIVISION
17 OF THE STATE TO:

18 1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE;
19 AND

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

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

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

28 [(e)] (F) (1) If the State's Attorney files a timely objection to the petition, the
29 court shall hold a hearing.

30 (2) If the court at the hearing finds that the person is entitled to
31 expungement, the court shall order the expungement of all police records and court records
32 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)] (G)** Unless an order is stayed pending an appeal, within 60 days after entry
11 of the order, every custodian of the police records and court records that are subject to the
12 order of expungement shall advise in writing the court and the person who is seeking
13 expungement of compliance with the order.

14 **[(g)] (H)** (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 [10–107.

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

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

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2021.