

HOUSE BILL 238

E2
HB 1335/20 – JUD

(PRE-FILED)

11r1425

By: **Delegate Wells**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Automatic Expungement**

3 FOR the purpose of providing that a person who, on or after a certain date, has been
4 charged with the commission of a certain crime, has been charged with a certain civil
5 offense or infraction, or is the subject of a certain warrant, is entitled to automatic
6 expungement of certain records under certain circumstances; specifying that certain
7 dispositions are eligible for automatic expungement at certain times; requiring a
8 certain court to search diligently for and expunge certain court records and send a
9 certain notice to certain parties within a certain time period; requiring the Criminal
10 Justice Information System Central Repository, a booking facility, and a certain law
11 enforcement unit to search diligently for and expunge certain police and court
12 records and send a certain advisement to a certain person within a certain time
13 period; prohibiting a certain police or court record from being expunged by
14 obliteration until a certain amount of time after a certain disposition; requiring that,
15 during a certain time period, certain records be removed to a certain area; providing
16 that a legitimate reason for accessing certain records includes using the records for
17 certain purposes; authorizing a certain person to seek a certain redress and recover
18 court costs under certain circumstances; prohibiting a certain person from being
19 required to pay any fees or costs in connection with a certain expungement; requiring
20 a certain judge to inform a certain defendant at a certain time that certain records
21 will be automatically expunged under certain circumstances; authorizing a certain
22 person to opt out of a certain automatic expungement in a certain manner; providing
23 that opting out of a certain expungement does not bar expungement of certain
24 charges; and generally relating to expungement.

25 BY adding to
26 Article – Criminal Procedure
27 Section 10–105.1
28 Annotated Code of Maryland
29 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 **10–105.1.**

5 (A) SUBJECT TO SUBSECTION (I) OF THIS SECTION, A PERSON WHO, ON OR
6 AFTER OCTOBER 1, 2021, HAS BEEN CHARGED WITH THE COMMISSION OF A CRIME,
7 INCLUDING A VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM
8 OF IMPRISONMENT MAY BE IMPOSED, WHO HAS BEEN CHARGED WITH A CIVIL
9 OFFENSE OR INFRACTION, EXCEPT A JUVENILE OFFENSE, OR WHO IS THE SUBJECT
10 OF AN INVALIDATED WARRANT OR A FUGITIVE WARRANT IS ENTITLED TO
11 AUTOMATIC EXPUNGEMENT OF ALL POLICE RECORDS, COURT RECORDS, AND
12 OTHER RECORDS MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE
13 STATE RELATING TO THE MATTER IF:

14 (1) THE PERSON IS ACQUITTED;

15 (2) THE CHARGE OR WARRANT IS DISMISSED OR INVALIDATED;

16 (3) A PROBATION BEFORE JUDGMENT IS ENTERED, UNLESS THE
17 PERSON IS CHARGED WITH A VIOLATION OF § 21–902 OF THE TRANSPORTATION
18 ARTICLE OR TITLE 2, SUBTITLE 5 OR § 3–211 OF THE CRIMINAL LAW ARTICLE;

19 (4) A NOLLE PROSEQUI OTHER THAN A NOLLE PROSEQUI WITH THE
20 REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS ENTERED; OR

21 (5) THE COURT INDEFINITELY POSTPONES TRIAL OF THE CHARGE BY
22 MARKING THE CHARGE “STET” ON THE DOCKET, WITHOUT A REQUIREMENT OF
23 DRUG OR ALCOHOL TREATMENT.

24 (B) (1) AN ACQUITTAL, A DISMISSAL, OR A NOLLE PROSEQUI OTHER THAN
25 A NOLLE PROSEQUI WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS
26 ELIGIBLE FOR AUTOMATIC EXPUNGEMENT IMMEDIATELY ON DISPOSITION.

27 (2) A PROBATION BEFORE JUDGMENT IS ELIGIBLE FOR AUTOMATIC
28 EXPUNGEMENT AFTER SATISFACTORY COMPLETION OF ANY SENTENCE AND
29 PROBATIONARY CONDITIONS IMPOSED IN CONNECTION WITH THE PROBATION
30 BEFORE JUDGMENT DISPOSITION.

31 (3) A STET OTHER THAN A STET WITH THE REQUIREMENT OF DRUG
32 OR ALCOHOL TREATMENT IS ELIGIBLE FOR AUTOMATIC EXPUNGEMENT 3 YEARS

1 AFTER THE ENTRY OF THE STET.

2 (C) WITHIN 60 DAYS AFTER THE ELIGIBILITY DATE SET FORTH IN
3 SUBSECTION (B) OF THIS SECTION, THE COURT WITH JURISDICTION OVER THE
4 MATTER SHALL:

5 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH COURT RECORD
6 ABOUT THE CHARGE; AND

7 (2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT
8 FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING CHARGE TO:

9 (I) THE CENTRAL REPOSITORY;

10 (II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT
11 THAT THE COURT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST,
12 CONFINEMENT, OR CHARGE; AND

13 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

14 (D) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL
15 REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT
16 SHALL:

17 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE AND
18 COURT RECORD ABOUT THE ARREST, CONFINEMENT, OR CHARGING OF THE
19 PERSON; AND

20 (2) ADVISE IN WRITING THE PERSON ENTITLED TO EXPUNGEMENT OF
21 COMPLIANCE WITH THE ORDER.

22 (E) (1) A POLICE OR COURT RECORD EXPUNGED UNDER THIS SECTION
23 MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DISPOSITION
24 OF THE CHARGE.

25 (2) DURING THE 3-YEAR PERIOD DESCRIBED IN PARAGRAPH (1) OF
26 THIS SUBSECTION, THE RECORDS SHALL BE REMOVED TO A SEPARATE SECURE AREA
27 TO WHICH PERSONS WHO DO NOT HAVE LEGITIMATE REASON FOR ACCESS ARE
28 DENIED ACCESS.

29 (3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON FOR
30 ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES OF
31 PROCEEDINGS RELATING TO THE ARREST OR CHARGE.

1 **(F) IF A COURT, A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE**
2 **CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE OR COURT RECORD AS**
3 **REQUIRED UNDER SUBSECTION (C) OR (D) OF THIS SECTION, THE PERSON ENTITLED**
4 **TO EXPUNGEMENT MAY:**

5 **(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL REMEDY;**
6 **AND**

7 **(2) RECOVER COURT COSTS.**

8 **(G) A PERSON WHO IS ENTITLED TO AUTOMATIC EXPUNGEMENT UNDER**
9 **THIS SECTION MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION**
10 **WITH THE EXPUNGEMENT.**

11 **(H) AT THE TIME OF MAKING A DISPOSITION DESCRIBED IN SUBSECTION (A)**
12 **OF THIS SECTION, THE COURT SHALL INFORM THE DEFENDANT THAT ALL POLICE**
13 **RECORDS, COURT RECORDS, AND OTHER RECORDS RELATING TO THE MATTER WILL**
14 **BE AUTOMATICALLY EXPUNGED UNLESS THE DEFENDANT OPTS OUT OF THE**
15 **EXPUNGEMENT.**

16 **(I) (1) A PERSON WHO IS ENTITLED TO AUTOMATIC EXPUNGEMENT**
17 **UNDER THIS SECTION MAY OPT OUT OF THE AUTOMATIC EXPUNGEMENT BY SO**
18 **NOTIFYING THE COURT AT THE TIME OF DISPOSITION.**

19 **(2) OPTING OUT OF EXPUNGEMENT OF A PARTICULAR CHARGE DOES**
20 **NOT BAR EXPUNGEMENT OF OTHER ELIGIBLE CHARGES.**

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