

# HOUSE BILL 746

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3lr1471  
CF SB 544

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By: **Delegate Wells**

Introduced and read first time: February 8, 2023

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Records – Waiting Period**

3 FOR the purpose of repealing the waiting period for applying for expungement of certain  
4 records; prohibiting certain records from being expunged by obliteration for a certain  
5 period of time and limiting access to the records during that time; and generally  
6 relating to expungement of records.

7 BY repealing and reenacting, with amendments,  
8 Article – Criminal Procedure  
9 Section 10–105  
10 Annotated Code of Maryland  
11 (2018 Replacement Volume and 2022 Supplement)

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

14 **Article – Criminal Procedure**

15 10–105.

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

21 (1) the person is acquitted;

22 (2) the charge is otherwise dismissed;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

12 (8) the person:

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

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

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

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

19 (ii) panhandling or soliciting money;

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

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

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

24 (vi) loitering;

25 (vii) vagrancy;

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

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

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

3 (i) trespass;

4 (ii) disturbing the peace; or

5 (iii) telephone misuse;

6 (11) except as provided in subsection (a-1) of this section, the person was  
7 convicted of a crime and the act on which the conviction was based is no longer a crime;

8 (12) the person was convicted of possession of cannabis under § 5-601 of the  
9 Criminal Law Article; or

10 (13) the person was convicted of a crime and the conviction was vacated  
11 under § 8-302 of this article.

12 (a-1) An expungement may not be obtained under subsection (a)(11) of this section  
13 for a conviction for sodomy as that offense existed before October 1, 2020, where the offense  
14 was committed:

15 (1) without consent;

16 (2) with a minor under the age of 16;

17 (3) with anyone the individual could not marry under § 2-202 of the Family  
18 Law Article;

19 (4) with a mentally incapacitated individual, as defined in § 3-301 of the  
20 Criminal Law Article;

21 (5) with a physically helpless individual, as defined in § 3-301 of the  
22 Criminal Law Article; or

23 (6) with a substantially cognitively impaired individual, as defined in §  
24 3-301 of the Criminal Law Article.

25 (a-2) A person's attorney or personal representative may file a petition, on behalf of  
26 the person, for expungement under this section if the person died before disposition of the  
27 charge by nolle prosequi or dismissal.

28 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection and §  
29 10-105.1 of this subtitle, a person shall file a petition in the court in which the proceeding  
30 began.

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

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

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

10           (ii)   The appellate court may remand the matter to the court of  
11 original jurisdiction.

12           (c)   (1)   **(I)**   Except as provided in paragraph [(2)] **(3)** of this subsection, a  
13 petition for expungement based on A **NOT GUILTY VERDICT**, an acquittal, a nolle prosequi,  
14 or a dismissal may [not] be filed [within 3 years] **IMMEDIATELY** after the disposition[,  
15 unless the petitioner files with the petition a written general waiver and release of all the  
16 petitioner’s tort claims arising from the charge].

17                               **(II) 1. A POLICE OR COURT RECORD EXPUNGED UNDER**  
18 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT BE EXPUNGED BY OBLITERATION**  
19 **UNTIL 3 YEARS AFTER THE DATE OF DISPOSITION OF THE CHARGE.**

20                                       **2. DURING THE 3-YEAR PERIOD DESCRIBED IN**  
21 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE RECORDS SHALL BE REMOVED**  
22 **TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE**  
23 **REASON FOR ACCESS SHALL BE DENIED ACCESS.**

24   **3. FOR PURPOSES OF THIS SUBPARAGRAPH, A**  
25 **LEGITIMATE REASON FOR ACCESSING THE RECORDS INCLUDES THE USE OF THE**  
26 **RECORDS FOR PURPOSES OF PROCEEDINGS RELATING TO THE ARREST OR CHARGE.**

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

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

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

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

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

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

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

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

17           (8) A petition for expungement based on the conviction of a crime under  
18 subsection (a)(12) of this section may not be filed before satisfactory completion of the  
19 sentence, including probation, that was imposed for the conviction.

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

22           (d) (1) Except as provided in § 10–105.1 of this subtitle, the court shall have a  
23 copy of a petition for expungement served on the State’s Attorney.

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

27           (e) (1) If the State’s Attorney files a timely objection to the petition, the court  
28 shall hold a hearing.

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

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

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

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

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

7 (f) Except as provided in § 10–105.1 of this subtitle and unless an order is stayed  
8 pending an appeal, within 60 days after entry of the order, every custodian of the police  
9 records and court records that are subject to the order of expungement shall advise in  
10 writing the court and the person who is seeking expungement of compliance with the order.

11 (g) (1) The State’s Attorney is a party to the proceeding.

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2023.