

SENATE BILL 544

E2

3lr1472
CF 3lr1471

By: **Senators Muse, McCray, and Brooks**
Introduced and read first time: February 3, 2023
Assigned to: Judicial Proceedings

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;

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 (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.