

HOUSE BILL 840

E2
HB 220/16 – JUD

7lr2046

By: **Delegates Barron, Vallario, and Sydnor**

Introduced and read first time: February 3, 2017

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Partial Expungement**

3 FOR the purpose of requiring the Administrative Office of the Courts in conjunction with
4 the Criminal Justice Information System Central Repository to report to the General
5 Assembly annually on or before a certain date regarding implementation of partial
6 expungement; authorizing a person to file a petition for a partial expungement of
7 certain criminal records under certain circumstances; requiring a court to order that
8 certain records be removed from a certain Web site under certain circumstances;
9 providing that only a certain record is eligible for partial expungement; repealing a
10 provision of law establishing that if a person is not entitled to expungement of one
11 charge or conviction in a certain unit the person is not entitled to expungement of
12 any other charge or conviction in the unit; providing for the effective date of certain
13 provisions of this Act; providing for the termination of certain provisions of this Act;
14 and generally relating to partial expungement of criminal records.

15 BY adding to
16 Article – Criminal Procedure
17 Section 10–105.1
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2016 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Procedure
22 Section 10–105
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2016 Supplement)

25 BY repealing
26 Article – Criminal Procedure
27 Section 10–107
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2008 Replacement Volume and 2016 Supplement)

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

Article – Criminal Procedure

10–105.1.

ON OR BEFORE OCTOBER 1, 2018, AND EVERY OCTOBER 1 THEREAFTER
UNTIL OCTOBER 1, 2021, THE ADMINISTRATIVE OFFICE OF THE COURTS, IN
COLLABORATION WITH THE INFORMATION TECHNOLOGY TEAM OF THE CENTRAL
REPOSITORY, SHALL PROVIDE A REPORT, IN ACCORDANCE WITH § 2–1246 OF THE
STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY DETAILING:

(1) THE ESTIMATED COST FOR THE IMPLEMENTATION OF PARTIAL
EXPUNGEMENTS INCLUDING:

(I) REQUIRED ADDITIONAL STAFF; AND

(II) REQUIRED INVESTMENT IN TECHNOLOGY;

(2) CHALLENGES IDENTIFIED IN THE POTENTIAL IMPLEMENTATION
OF PARTIAL EXPUNGEMENTS; AND

(3) A PLAN TO IMPLEMENT PARTIAL EXPUNGEMENT PROCEDURES
BEGINNING OCTOBER 1, 2021.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
as follows:

Article – Criminal Procedure

10–105.

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

(1) the person is acquitted;

(2) the charge is otherwise dismissed;

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

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

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

(i) trespass;

(ii) disturbing the peace; or

(iii) telephone misuse; or

(11) the person was convicted of a crime and the act on which the conviction was based is no longer a crime.

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

(b) (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 article, the person shall file the petition in the court of original jurisdiction from which the order of transfer was entered.

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

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

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

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

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

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

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

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

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

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

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

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

(d) (1) 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 THIS SECTION, A PERSON MAY FILE A PETITION FOR PARTIAL EXPUNGEMENT FOR THE CHARGES ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION.

(2) THE COURT SHALL ORDER THAT A POLICE OR COURT RECORD REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT BE REMOVED FROM THE PUBLIC WEB SITE MAINTAINED BY THE MARYLAND JUDICIARY.

(3) ONLY A POLICE OR COURT RECORD THAT IS MAINTAINED ELECTRONICALLY ON THE PUBLIC WEB SITE OF THE MARYLAND JUDICIARY IS ELIGIBLE FOR PARTIAL EXPUNGEMENT.

(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.

[(e)] (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.

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

4 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
5 effect October 1, 2021.

6 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this
7 Act, this Act shall take effect October 1, 2017. Section 1 shall remain effective for a period
8 of 4 years and, at the end of September 30, 2021, with no further action required by the
9 General Assembly, Section 1 of this Act shall be abrogated and of no further force and effect.