

SENATE BILL 710

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By: **Senator Patterson**

Introduced and read first time: February 4, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Records – Modifications**

3 FOR the purpose of authorizing the expungement of certain arrest warrants under certain
4 circumstances; altering the waiting periods for applying for expungement of certain
5 records; altering the convictions for which an individual may seek expungement;
6 prohibiting certain records from being expunged by obliteration for a certain period
7 of time and limiting access to the records during that time; and generally relating to
8 expungement.

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Procedure
11 Section 10–101(a)
12 Annotated Code of Maryland
13 (2018 Replacement Volume and 2021 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 10–101(h), 10–105(a), (c), and (e), and 10–110
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2021 Supplement)

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

21 **Article – Criminal Procedure**

22 10–101.

23 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(h) (1) “Police record” means an official record that a law enforcement unit, booking facility, or the Central Repository maintains about the arrest and detention of, or further proceeding against, a person for:

[(1)] (I) a criminal charge;

[(2)] (II) a suspected violation of a criminal law;

[(3)] (III) a violation of the Transportation Article for which a term of imprisonment may be imposed; or

[(4)] (IV) a civil offense or infraction, except a juvenile offense, enacted under State or local law as a substitute for a criminal charge.

(2) **“POLICE RECORD” INCLUDES AN ARREST WARRANT AND A FUGITIVE WARRANT.**

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, **OR WHO IS THE SUBJECT OF AN ARREST WARRANT OR A FUGITIVE WARRANT** 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;

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

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

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

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

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

(8) the person:

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

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

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

(i) urination or defecation in a public place;

(ii) panhandling or soliciting money;

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

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

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

(vi) loitering;

(vii) vagrancy;

(viii) riding a transit vehicle without paying the applicable fare or 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;

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

(12) the person was convicted of possession of marijuana under § 5–601 of the Criminal Law Article; [or]

(13) the person was convicted of a crime and the conviction was vacated under § 8–302 of this article; OR

(14) THE ARREST WARRANT OR FUGITIVE WARRANT IS INVALIDATED.

(c) (1) (I) 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] IMMEDIATELY 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].

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

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

3. FOR PURPOSES OF THIS SUBPARAGRAPH, A LEGITIMATE REASON FOR ACCESSING THE RECORDS INCLUDES THE USE OF THE RECORDS FOR PURPOSES OF PROCEEDINGS RELATING TO THE ARREST OR 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)] (2) A petition for expungement based on a nolle prosequi, PROBATION BEFORE JUDGMENT, OR A STET with the requirement of drug or alcohol treatment may not be filed until the completion of the required treatment.

[(4)] (3) 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)] (4) 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] 1 YEAR after the stet or compromise.

1 ~~[(6)]~~ **(5)** A petition for expungement based on the conviction of a crime
2 under subsection (a)(9) of this section may not be filed within ~~[3 years]~~ **1 YEAR** after the
3 conviction or satisfactory completion of the sentence, including probation, that was imposed
4 for the conviction, whichever is later.

5 ~~[(7)]~~ **(6)** A petition for expungement based on a finding of not criminally
6 responsible under subsection (a)(9) or (10) of this section may not be filed within ~~[3 years]~~
7 **1 YEAR** after the finding of not criminally responsible was made by the court.

8 ~~[(8)]~~ **(7)** A petition for expungement based on the conviction of a crime
9 under subsection (a)(12) of this section may not be filed within ~~[4 years]~~ **1 YEAR** after the
10 conviction or satisfactory completion of the sentence, including probation, that was imposed
11 for the conviction, whichever is later.

12 ~~[(9)]~~ **(8)** A court may grant a petition for expungement at any time on a
13 showing of good cause.

14 (e) (1) If the State's Attorney files a timely objection to the petition, the court
15 shall hold a hearing.

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

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

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

22 (i) the petition is based on the entry of probation before judgment,
23 except a probation before judgment for a crime where the act on which the conviction is
24 based is no longer a crime, and the person ~~[within 3 years of the entry of the probation~~
25 ~~before judgment]~~ has been convicted of a crime other than a minor traffic violation or a
26 crime where the act on which the conviction is based is no longer a crime; or

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

28 10-110.

29 (a) A person may file a petition listing relevant facts for expungement of a police
30 record, court record, or other record maintained by the State or a political subdivision of
31 the State if the person is convicted of:

32 (1) a misdemeanor ~~[that is a violation of:~~

- 1 (i) § 6–320 of the Alcoholic Beverages Article;
- 2 (ii) an offense listed in § 17–613(a) of the Business Occupations and
3 Professions Article;
- 4 (iii) § 5–712, § 19–304, § 19–308, or Title 5, Subtitle 6 or Subtitle 9 of
5 the Business Regulation Article;
- 6 (iv) § 3–1508 or § 10–402 of the Courts Article;
- 7 (v) § 14–1915, § 14–2902, or § 14–2903 of the Commercial Law
8 Article;
- 9 (vi) § 5–211 of this article;
- 10 (vii) § 3–203 or § 3–808 of the Criminal Law Article;
- 11 (viii) § 5–601 not involving the use or possession of marijuana, §
12 5–618, § 5–619, § 5–620, § 5–703, § 5–708, or § 5–902 of the Criminal Law Article;
- 13 (ix) § 6–105, § 6–108, § 6–205 (fourth degree burglary), § 6–206, §
14 6–303, § 6–306, § 6–307, § 6–402, or § 6–503 of the Criminal Law Article;
- 15 (x) § 7–104, § 7–203, § 7–205, § 7–304, § 7–308, or § 7–309 of the
16 Criminal Law Article;
- 17 (xi) § 8–103, § 8–206, § 8–401, § 8–402, § 8–404, § 8–406, § 8–408, §
18 8–503, § 8–521, § 8–523, or § 8–904 of the Criminal Law Article;
- 19 (xii) § 9–204, § 9–205, § 9–503, or § 9–506 of the Criminal Law Article;
- 20 (xiii) § 10–110, § 10–201, § 10–402, § 10–404, or § 10–502 of the
21 Criminal Law Article;
- 22 (xiv) § 11–303, § 11–306, or § 11–307 of the Criminal Law Article;
- 23 (xv) § 12–102, § 12–103, § 12–104, § 12–105, § 12–109, § 12–203, §
24 12–204, § 12–205, or § 12–302 of the Criminal Law Article;
- 25 (xvi) § 13–401, § 13–602, or § 16–201 of the Election Law Article;
- 26 (xvii) § 4–509 of the Family Law Article;
- 27 (xviii) § 18–215 of the Health – General Article;
- 28 (xix) § 4–411 or § 4–2005 of the Housing and Community Development
29 Article;

(xx) § 27–403, § 27–404, § 27–405, § 27–406, § 27–406.1, § 27–407, § 27–407.1, or § 27–407.2 of the Insurance Article;

(xxi) § 8–725.4, § 8–725.5, § 8–725.6, § 8–725.7, § 8–726, § 8–726.1, § 8–727.1, or § 8–738.2 of the Natural Resources Article or any prohibited act related to speed limits for personal watercraft;

(xxii) § 5–307, § 5–308, § 6–602, § 7–402, or § 14–114 of the Public Safety Article;

(xxiii) § 7–318.1, § 7–509, or § 10–507 of the Real Property Article;

(xxiv) § 9–124 of the State Government Article;

(xxv) § 13–1001, § 13–1004, § 13–1007, or § 13–1024 of the Tax – General Article;

(xxvi) § 16–303 of the Transportation Article; or

(xxvii) the common law offenses of affray, rioting, criminal contempt, battery, or hindering]; **OR**

(2) a felony [that is a violation of] **OTHER THAN:**

[(i) § 7–104 of the Criminal Law Article;

(ii) the prohibition against possession with intent to distribute a controlled dangerous substance under § 5–602(2) of the Criminal Law Article; or

(iii) § 6–202(a), § 6–203, or § 6–204 of the Criminal Law Article; or]

(I) A CRIME OF VIOLENCE;

(II) A HATE CRIME UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;

(III) A CRIME OF ANIMAL CRUELTY UNDER TITLE 10, SUBTITLE 6 OF THE CRIMINAL LAW ARTICLE; OR

(IV) A CRIME REQUIRING THE PERSON TO REGISTER AS A SEX OFFENDER UNDER TITLE 11, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE.

[(3) an attempt, a conspiracy, or a solicitation of any offense listed in item (1) or (2) of this subsection.]

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person shall file a petition for expungement 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 paragraphs (2) and (3) of this subsection, a petition for expungement under this section may not be filed earlier than [10 years after] **THE LATER OF:**

(I) THE DATE the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision; **OR**

(II) 3 YEARS AFTER THE DATE OF THE CONVICTION.

(2) A petition for expungement for a violation of § 3–203 of the Criminal Law Article, common law battery, or for an offense classified as a domestically related crime under § 6–233 of this article may not be filed earlier than [15 years after] **THE LATER OF:**

(I) THE DATE the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision; **OR**

(II) 5 YEARS AFTER THE DATE OF THE CONVICTION.

(3) A petition for expungement of a felony may not be filed earlier than [15 years after] **THE LATER OF:**

(I) THE DATE the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision; **OR**

(II) 5 YEARS AFTER THE DATE OF THE CONVICTION.

(d) (1) If the person is convicted of a new crime during the applicable time period set forth in subsection (c) of this section, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.

(2) A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding.

(3) If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

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

(2) The court shall send written notice of the expungement request to each listed victim in the case in which the petitioner is seeking expungement at the address listed in the court file, advising the victim of the right to offer additional information relevant to the expungement petition to the court.

(3) Unless the State's Attorney or a victim 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.

(f) (1) If the State's Attorney or a victim files a timely objection to the petition, the court shall hold a hearing.

(2) The court shall order the expungement of all police records and court records about the charge after a hearing, if the court finds and states on the record:

(i) that the conviction is eligible for expungement under subsection (a) of this section;

(ii) that the person is eligible for expungement under subsection (d) of this section;

(iii) that giving due regard to the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety; and

(iv) that an expungement would be in the interest of justice.

(g) If at a hearing the court finds that a person is not entitled to expungement, the court shall deny the petition.

(h) Unless an order is stayed pending appeal, within 60 days after entry of the order, every custodian of the police records and court records that are subject to the order

1 of expungement shall advise in writing the court and the person who is seeking
2 expungement of compliance with the order.

3 (i) (1) The State's Attorney is a party to the proceeding.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2022.