

SENATE BILL 11

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4lr1220

SB 589/20 – JPR

(PRE-FILED)

By: **Senator Carter**

Requested: October 27, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2024

CHAPTER _____

1 AN ACT concerning

2 ~~Criminal Procedure~~ **Department of Public Safety and Correctional Services and**
3 **Maryland Judiciary – Information Technology – Partial Expungement**

4 FOR the purpose of ~~authorizing a person to file a petition for partial expungement for a~~
5 ~~certain eligible offense even if another charge arising out of the same incident,~~
6 ~~transaction, or set of facts is not eligible for expungement; requiring a court to make~~
7 ~~a certain order where partial expungement is impracticable; repealing a provision of~~
8 ~~law prohibiting partial expungement~~ prohibiting the Department of Public Safety
9 and Correctional Services and the Maryland Judiciary from engaging in certain
10 procurement related to the central repository and judicial case management system;
11 and generally relating to partial expungement.

12 BY ~~repealing and reenacting, with amendments,~~ adding to
13 Article – Criminal Procedure
14 Section ~~10-105~~ 10-113
15 Annotated Code of Maryland
16 (2018 Replacement Volume and 2023 Supplement)

17 ~~BY repealing~~
18 ~~Article – Criminal Procedure~~
19 ~~Section 10-107~~
20 ~~Annotated Code of Maryland~~
21 ~~(2018 Replacement Volume and 2023 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
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, 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 cannabis 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.~~
- ~~(a-1) An expungement may not be obtained under subsection (a)(11) of this section for a conviction for sodomy as that offense existed before October 1, 2020, or a violation of § 3-322 of the Criminal Law Article as that offense existed before October 1, 2023, where the offense was committed:~~
- ~~(1) without consent;~~
- ~~(2) with a minor under the age of 16;~~
- ~~(3) with anyone the individual could not marry under § 2-202 of the Family Law Article;~~

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

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

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

~~(a-2) 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 and § 10-105.1 of this subtitle, 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 petition for expungement based on the conviction of a crime under subsection (a)(12) of this section may not be filed before satisfactory completion of the sentence, including probation, that was imposed for the conviction.~~

~~(9) 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) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, A COURT RECORD, OR ANY OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE NARRATIVE OF THE STATEMENT OF CHARGES THAT INCLUDES BOTH THE CHARGES THAT ARE ELIGIBLE FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR EXPUNGEMENT, THE COURT:~~

~~(i) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT REGARDING THE CHARGES ELIGIBLE FOR EXPUNGEMENT MAY NOT BE INCLUDED;~~

~~1. ON THE PUBLIC WEBSITE MAINTAINED BY THE
MARYLAND JUDICIARY; AND~~

~~2. WITHIN RECORDS SUBMITTED TO THE CENTRAL
REPOSITORY; AND~~

~~(H) MAY AUTHORIZE THE STATE OR A POLITICAL SUBDIVISION
OF THE STATE TO:~~

~~1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE;
AND~~

~~2. LIMIT INSPECTION OF THE WRITTEN RECORD TO A
CRIMINAL JUSTICE UNIT, AS DEFINED IN § 10-201 OF THIS TITLE, FOR LEGITIMATE
CRIMINAL JUSTICE PURPOSES.~~

~~(E) (1) Except as provided in § 10-105.1 of this subtitle, 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) Except as provided in § 10-105.1 of this subtitle and 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.~~

~~[(c)] (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 or possession of cannabis under § 5-601 of the Criminal Law Article, 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 or possession of cannabis under § 5-601 of the Criminal Law Article 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.~~

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

10-113.

(A) FOR PURPOSES OF THIS SECTION, "PARTIAL EXPUNGEMENT" MEANS THE ABILITY TO EXPUNGE A CHARGE OR CONVICTION THAT IS ELIGIBLE FOR EXPUNGEMENT 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 TITLE.

(B) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES AND THE MARYLAND JUDICIARY MAY NOT ENGAGE IN ANY PROCUREMENT RELATED TO THE CENTRAL REPOSITORY, THE JUDICIAL CASE MANAGEMENT SYSTEM, OR ANY SUCCESSOR DATABASE THAT SERVES THE SAME PURPOSE AS THE CENTRAL REPOSITORY OR JUDICIAL CASE MANAGEMENT SYSTEM, INCLUDING PROCUREMENT OF INFORMATION TECHNOLOGY SERVICES, SUPPLIES, SOFTWARE, OR EQUIPMENT, THAT IS NOT COMPATIBLE WITH THE PARTIAL EXPUNGEMENT OF CHARGES WITHIN A UNIT OF CHARGES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.