

HOUSE BILL 1343

E2
HB 977/19 – JUD

0lr2703
CF 0lr3416

By: **Delegates Mosby, J. Lewis, Anderson, Atterbeary, Barron, Bartlett, Carr, Crutchfield, D.M. Davis, W. Fisher, Harrison, Holmes, Moon, Smith, Washington, and Wilkins**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Expansion**

3 FOR the purpose of repealing a certain provision of law that authorizes the expungement
4 of certain convictions; authorizing a person who is the subject of a certain warrant
5 to file a certain petition for expungement; repealing a certain prohibition against the
6 expungement of records relating to the entry of probation before judgment for a
7 charge of violating a certain provision of law; authorizing a person who was found
8 guilty of a certain civil offense or infraction to file a certain petition for expungement;
9 authorizing a person who was convicted of a misdemeanor or a certain felony to file
10 a certain petition for expungement; correcting an erroneous reference; repealing a
11 certain waiting period or waiver and release filing requirement for the filing of a
12 certain petition for expungement based on an acquittal, a nolle prosequi, or a
13 dismissal; authorizing the immediate filing of a certain petition for expungement
14 based on an acquittal, a nolle prosequi, or a dismissal; establishing certain waiting
15 periods for the filing of certain petitions for expungement; requiring a court to send
16 certain notice of a certain expungement request to certain victims; requiring the
17 court to pass an order requiring the expungement of certain records under certain
18 circumstances; requiring the court to hold a hearing if a certain victim files a certain
19 objection to a certain petition; requiring the court to order the expungement of
20 certain records after a hearing if the court makes certain findings; repealing a certain
21 bar to expungement that applies when a petition for expungement is based on the
22 entry of a certain probation before judgment and the person has been convicted of a
23 certain crime at a certain time, or the person is a defendant in a certain proceeding;
24 altering a certain definition; and generally relating to expungement.

25 BY repealing
26 Article – Criminal Procedure
27 Section 10–110
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2018 Replacement Volume and 2019 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – Criminal Procedure
4 Section 10–101(a)
5 Annotated Code of Maryland
6 (2018 Replacement Volume and 2019 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Procedure
9 Section 10–101(h) and 10–105
10 Annotated Code of Maryland
11 (2018 Replacement Volume and 2019 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That Section(s) 10–110 of Article – Criminal Procedure of the Annotated Code of Maryland
14 be repealed.

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

17 **Article – Criminal Procedure**

18 10–101.

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

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

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

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

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

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

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

31 10–105.

1 (a) A person who has been charged with the commission of a crime, including a
2 violation of the Transportation Article for which a term of imprisonment may be imposed,
3 [or] who has been charged with a civil offense or infraction, except a juvenile offense, **OR**
4 **WHO IS THE SUBJECT OF AN INVALIDATED WARRANT OR A FUGITIVE WARRANT** may
5 file a petition listing relevant facts for expungement of a police record, court record, or other
6 record maintained by the State or a political subdivision of the State if:

7 (1) the person is acquitted;

8 (2) the charge **OR WARRANT** is otherwise dismissed **OR INVALIDATED**;

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

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

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

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

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

20 (8) the person:

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

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

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

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

27 (ii) panhandling or soliciting money;

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

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

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

1 (vi) loitering;

2 (vii) vagrancy;

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

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

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

10 (i) trespass;

11 (ii) disturbing the peace; or

12 (iii) telephone misuse;

13 (11) the person was convicted of a crime and the act on which the conviction
14 was based is no longer a crime; [or]

15 (12) the person was convicted of possession of marijuana under § 5–601 of
16 the Criminal Law Article;

17 **(13) THE PERSON WAS FOUND GUILTY OF A CIVIL OFFENSE OR**
18 **INFRACTION;**

19 **(14) THE PERSON WAS CONVICTED OF A MISDEMEANOR; OR**

20 **(15) THE PERSON WAS CONVICTED OF A FELONY, EXCEPT:**

21 **(I) A CRIME OF VIOLENCE UNDER § 14–101 OF THE CRIMINAL**
22 **LAW ARTICLE;**

23 **(II) A CRIME REQUIRING THE PERSON TO REGISTER ON THE**
24 **SEX OFFENDER REGISTRY UNDER TITLE 11, SUBTITLE 7 OF THIS ARTICLE;**

25 **(III) A HATE CRIME UNDER TITLE 10, SUBTITLE 3 OF THE**
26 **CRIMINAL LAW ARTICLE; OR**

27 **(IV) A CRIME OF ANIMAL CRUELTY UNDER TITLE 10, SUBTITLE**
28 **6 OF THE CRIMINAL LAW ARTICLE.**

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

4 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person
5 shall file a petition in the court in which the proceeding began.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (8) A petition for expungement based on the conviction of a crime under
12 subsection (a)(12) of this section may not be filed within 4 years after the conviction or
13 satisfactory completion of the sentence, including probation, that was imposed for the
14 conviction, whichever is later.

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

17 **(10) A PETITION FOR EXPUNGEMENT BASED ON THE ENTRY OF**
18 **PROBATION BEFORE JUDGMENT FOR A CHARGE OF VIOLATING § 21–902 OF THE**
19 **TRANSPORTATION ARTICLE MAY NOT BE FILED WITHIN 3 YEARS AFTER THE ENTRY**
20 **OF PROBATION BEFORE JUDGMENT.**

21 **(11) A PETITION FOR EXPUNGEMENT BASED ON A FINDING OF GUILT**
22 **OF A CIVIL OFFENSE OR INFRACTION UNDER SUBSECTION (A)(13) OF THIS SECTION**
23 **MAY NOT BE FILED WITHIN 3 YEARS AFTER THE FINDING OF GUILT.**

24 **(12) EXCEPT AS PROVIDED IN PARAGRAPH (13) OF THIS SUBSECTION,**
25 **A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A MISDEMEANOR**
26 **UNDER SUBSECTION (A)(14) OF THIS SECTION MAY NOT BE FILED WITHIN 3 YEARS**
27 **AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE SENTENCE,**
28 **INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION, WHICHEVER IS**
29 **LATER.**

30 **(13) A PETITION FOR EXPUNGEMENT UNDER SUBSECTION (A)(14) OF**
31 **THIS SECTION BASED ON A CONVICTION OF SECOND-DEGREE ASSAULT UNDER §**
32 **3–203 OF THE CRIMINAL LAW ARTICLE, COMMON LAW BATTERY, OR A CRIME**
33 **CLASSIFIED AS A DOMESTICALLY RELATED CRIME UNDER § 6–233 OF THIS ARTICLE**
34 **MAY NOT BE FILED WITHIN 5 YEARS AFTER THE CONVICTION OR SATISFACTORY**
35 **COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR**
36 **THE CONVICTION, WHICHEVER IS LATER.**

1 **(14) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A**
2 **FELONY UNDER SUBSECTION (A)(15) OF THIS SECTION MAY NOT BE FILED WITHIN 5**
3 **YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE SENTENCE,**
4 **INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION, WHICHEVER IS**
5 **LATER.**

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

8 **(2) FOR PETITIONS FILED UNDER SUBSECTION (A)(14) AND (15) OF**
9 **THIS SECTION, THE COURT SHALL SEND WRITTEN NOTICE OF THE EXPUNGEMENT**
10 **REQUEST TO EACH LISTED VICTIM IN THE CASE IN WHICH THE PETITIONER IS**
11 **SEEKING EXPUNGEMENT AT THE ADDRESS LISTED IN THE COURT FILE, ADVISING**
12 **THE VICTIM OF THE RIGHT TO OFFER ADDITIONAL INFORMATION RELEVANT TO THE**
13 **EXPUNGEMENT PETITION TO THE COURT.**

14 **[(2)] (3) [Unless] FOR PETITIONS FILED UNDER SUBSECTION (A)(1)**
15 **THROUGH (13) OF THIS SECTION, UNLESS** the State's Attorney files an objection to the
16 petition for expungement within 30 days after the petition is served, the court shall pass
17 an order requiring the expungement of all police records and court records about the charge.

18 **(4) FOR PETITIONS FILED UNDER SUBSECTION (A)(14) AND (15) OF**
19 **THIS SECTION, UNLESS THE STATE'S ATTORNEY OR A LISTED VICTIM FILES AN**
20 **OBJECTION TO THE PETITION FOR EXPUNGEMENT WITHIN 30 DAYS AFTER THE**
21 **PETITION IS SERVED, THE COURT SHALL PASS AN ORDER REQUIRING THE**
22 **EXPUNGEMENT OF ALL POLICE RECORDS AND COURT RECORDS ABOUT THE**
23 **CHARGE.**

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

26 **(2) IF A LISTED VICTIM FILES A TIMELY OBJECTION TO A PETITION**
27 **FILED UNDER SUBSECTION (A)(14) OR (15) OF THIS SECTION, THE COURT SHALL**
28 **HOLD A HEARING.**

29 **[(2)] (3) [If] FOR PETITIONS FILED UNDER SUBSECTION (A)(1)**
30 **THROUGH (13) OF THIS SECTION, IF** the court at the hearing finds that the person is
31 entitled to expungement, the court shall order the expungement of all police records and
32 court records about the charge.

33 **(4) FOR PETITIONS FILED UNDER SUBSECTION (A)(14) AND (15) OF**
34 **THIS SECTION, THE COURT SHALL ORDER THE EXPUNGEMENT OF ALL POLICE**
35 **RECORDS AND COURT RECORDS ABOUT THE CHARGE AFTER A HEARING, IF THE**
36 **COURT FINDS AND STATES ON THE RECORD THAT:**

1 **(I) THE CONVICTION IS ELIGIBLE FOR EXPUNGEMENT UNDER**
2 **SUBSECTION (A) OF THIS SECTION;**

3 **(II) GIVING DUE REGARD TO THE NATURE OF THE CRIME, THE**
4 **HISTORY AND CHARACTER OF THE PERSON, AND THE PERSON'S SUCCESS AT**
5 **REHABILITATION, THE PERSON IS NOT A RISK TO PUBLIC SAFETY; AND**

6 **(III) EXPUNGEMENT IS IN THE INTEREST OF JUSTICE.**

7 **[(3) (5)** If the court finds that the person is not entitled to expungement,
8 the court shall deny the petition.

9 **[(4)** The person is not entitled to expungement if:

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

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

16 (f) Unless an order is stayed pending an appeal, within 60 days after entry of the
17 order, every custodian of the police records and court records that are subject to the order
18 of expungement shall advise in writing the court and the person who is seeking
19 expungement of compliance with the order.

20 (g) (1) The State's Attorney is a party to the proceeding.

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

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2020.