

SENATE BILL 589

E2
SB 328/16 – JPR

0lr3374
CF HB 1336

By: **Senators Carter and Sydnor**
Introduced and read first time: January 31, 2020
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 7, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Partial Expungement and Maryland Judiciary Case**
3 **Search**

4 FOR the purpose of ~~authorizing a person to file a petition for a partial expungement of~~
5 ~~certain criminal records under certain circumstances; authorizing a court to~~
6 ~~authorize a certain person to maintain certain records and limit inspection of certain~~
7 ~~records under certain circumstances; requiring a court to order that certain records~~
8 ~~may not be included on a certain website or within certain records; repealing a~~
9 ~~provision of law establishing that, if a person is not entitled to expungement of one~~
10 ~~charge or conviction in a certain unit, the person is not entitled to expungement of~~
11 ~~any other charge or conviction in the unit; and generally relating to expungement of~~
12 ~~criminal records~~ prohibiting the Maryland Judiciary Case Search from in any way
13 referring to the existence of certain records relating to certain charges entered on or
14 after a certain date; establishing the Partial Expungement Workgroup; providing for
15 the composition, chair, and staffing of the Workgroup; prohibiting a member of the
16 Workgroup from receiving certain compensation, but authorizing the reimbursement
17 of certain expenses; requiring the Workgroup to study, develop a plan, and make
18 recommendations regarding certain matters; requiring the Workgroup to report its
19 findings and recommendations to the General Assembly on or before a certain date;
20 providing for the termination of certain provisions of this Act; and generally relating
21 to partial expungement and the Maryland Judiciary Case Search.

22 ~~BY repealing and reenacting, with amendments,~~
23 ~~Article – Criminal Procedure~~
24 ~~Section 10-105~~

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.



1 ~~Annotated Code of Maryland~~
 2 ~~(2018 Replacement Volume and 2019 Supplement)~~

3 ~~BY repealing~~
 4 ~~Article – Criminal Procedure~~
 5 ~~Section 10–107~~
 6 ~~Annotated Code of Maryland~~
 7 ~~(2018 Replacement Volume and 2019 Supplement)~~

8 BY adding to
 9 Article – Criminal Procedure
 10 Section 10–401 to be under the new subtitle “Subtitle 4. Maryland Judiciary Case
 11 Search Records”
 12 Annotated Code of Maryland
 13 (2018 Replacement Volume and 2019 Supplement)

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

16 Article – Criminal Procedure

17 ~~10–105.~~

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

23 ~~(1) the person is acquitted;~~

24 ~~(2) the charge is otherwise dismissed;~~

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

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

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

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

- 1 ~~(7) the charge was transferred to the juvenile court under § 4-202 of this~~
2 ~~article;~~
- 3 ~~(8) the person:~~
- 4 ~~(i) is convicted of only one criminal act, and that act is not a crime~~
5 ~~of violence; and~~
- 6 ~~(ii) is granted a full and unconditional pardon by the Governor;~~
- 7 ~~(9) the person was convicted of a crime or found not criminally responsible~~
8 ~~under any State or local law that prohibits:~~
- 9 ~~(i) urination or defecation in a public place;~~
- 10 ~~(ii) panhandling or soliciting money;~~
- 11 ~~(iii) drinking an alcoholic beverage in a public place;~~
- 12 ~~(iv) obstructing the free passage of another in a public place or a~~
13 ~~public conveyance;~~
- 14 ~~(v) sleeping on or in park structures, such as benches or doorways;~~
- 15 ~~(vi) loitering;~~
- 16 ~~(vii) vagrancy;~~
- 17 ~~(viii) riding a transit vehicle without paying the applicable fare or~~
18 ~~exhibiting proof of payment; or~~
- 19 ~~(ix) except for carrying or possessing an explosive, acid, concealed~~
20 ~~weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation~~
21 ~~Article, any of the acts specified in § 7-705 of the Transportation Article;~~
- 22 ~~(10) the person was found not criminally responsible under any State or~~
23 ~~local law that prohibits misdemeanor:~~
- 24 ~~(i) trespass;~~
- 25 ~~(ii) disturbing the peace; or~~
- 26 ~~(iii) telephone misuse;~~
- 27 ~~(11) the person was convicted of a crime and the act on which the conviction~~
28 ~~was based is no longer a crime; or~~

1 ~~(12) the person was convicted of possession of marijuana under § 5-601 of~~
2 ~~the Criminal Law Article.~~

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

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

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

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

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

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

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

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

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

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

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

33 ~~(4) A petition for expungement based on a full and unconditional pardon~~
34 ~~by the Governor may not be filed later than 10 years after the pardon was signed by the~~
35 ~~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 ~~(d) (1) WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,~~
18 ~~TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT~~
19 ~~ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A~~
20 ~~PETITION FOR PARTIAL EXPUNGEMENT FOR THE CHARGES ELIGIBLE FOR~~
21 ~~EXPUNGEMENT UNDER THIS SECTION.~~

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

28 ~~(i) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT~~
29 ~~REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE~~
30 ~~INCLUDED:~~

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

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

~~(H) MAY AUTHORIZE THE STATE OR 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) 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.~~

~~[(c)] (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.~~

1 ~~10-107.~~

2 ~~(a) (1) In this subtitle, if two or more charges, other than one for a minor traffic~~
 3 ~~violation, arise from the same incident, transaction, or set of facts, they are considered to~~
 4 ~~be a unit.~~

5 ~~(2) A charge for a minor traffic violation that arises from the same incident,~~
 6 ~~transaction, or set of facts as a charge in the unit is not a part of the unit.~~

7 ~~(b) (1) If a person is not entitled to expungement of one charge or conviction in~~
 8 ~~a unit, the person is not entitled to expungement of any other charge or conviction in the~~
 9 ~~unit.~~

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

13 **SUBTITLE 4. MARYLAND JUDICIARY CASE SEARCH RECORDS.**

14 **10-401.**

15 **ON OR BEFORE OCTOBER 1, 2020, THE MARYLAND JUDICIARY CASE SEARCH**
 16 **MAY NOT IN ANY WAY REFER TO THE EXISTENCE OF RECORDS OF A CHARGE IN A**
 17 **CASE WITH ELECTRONIC RECORDS IF THE CHARGE RESULTED IN:**

18 **(1) ACQUITTAL;**

19 **(2) DISMISSAL; OR**

20 **(3) NOLLE PROSEQUI OR NOLLE PROSEQUI WITH THE REQUIREMENT**
 21 **OF DRUG OR ALCOHOL TREATMENT.**

22 **SECTION 2. AND BE IT FURTHER ENACTED, That:**

23 **(a) There is a Partial Expungement Workgroup.**

24 **(b) The Workgroup consists of the following members:**

25 **(1) two members of the Senate of Maryland, appointed by the President of**
 26 **the Senate;**

27 **(2) two members of the House of Delegates, appointed by the Speaker of**
 28 **the House;**

29 **(3) the Public Defender, or the Public Defender's designee;**

1 (4) one representative of the Administrative Office of the Courts;

2 (5) the President of the Maryland State's Attorneys' Association, or the
3 President's designee; and

4 (6) one representative of the Job Opportunities Task Force.

5 (c) The Workgroup shall designate the chair of the Workgroup.

6 (d) The Governor's Office of Crime Prevention, Youth, and Victim Services shall
7 provide staff for the Workgroup.

8 (e) A member of the Workgroup:

9 (1) may not receive compensation as a member of the Workgroup; but

10 (2) is entitled to reimbursement for expenses under the Standard State
11 Travel Regulations, as provided in the State budget.

12 (f) The Workgroup shall study and develop a plan and legislative
13 recommendations for enabling the expungement of criminal charges that are currently not
14 eligible for expungement because of the requirements of § 10-107 of the Criminal Procedure
15 Article.

16 (g) On or before January 5, 2021, the Workgroup shall report its plan and
17 legislative recommendations to the General Assembly, in accordance with § 2-1257 of the
18 State Government Article.

19 SECTION 3. AND BE IT FURTHER ENACTED, That § 10-105.1 of the Criminal
20 Procedure Article, as enacted by Section 1 of this Act, shall be construed to apply
21 retroactively and prospectively and shall be applied to and interpreted to affect electronic
22 records created before and after October 1, 2020.

23 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 ~~October 1, 2020~~ June 1, 2020. Section 2 of this Act shall remain effective for a period of 1
25 year and 1 month and, at the end of June 30, 2021, Section 2 of this Act, with no further
26 action required by the General Assembly, shall be abrogated and of no further force and
27 effect.