

HOUSE BILL 836

E2
HB 1436/16 – JUD

7lr1099

By: **Delegates Folden, Afzali, Kittleman, McComas, and Metzgar**

Introduced and read first time: February 3, 2017

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2017

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Common Law Battery**

3 FOR the purpose of authorizing a person to file a petition for expungement based on a
4 conviction of common law battery; providing that a petition for expungement based
5 on a conviction of common law battery may not be filed within a certain time period
6 ~~after the person was convicted of a certain crime~~; providing for the effective date of
7 this Act; and generally relating to expungement.

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Procedure

10 Section ~~10–105~~ 10–110(a) and (c)

11 Annotated Code of Maryland

12 (2008 Replacement Volume and 2016 Supplement)

13 (As enacted by Chapter 515 of the Acts of the General Assembly of 2016)

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, as a~~

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.



~~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;~~

~~(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;~~

1 ~~(vii) vagrancy;~~

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

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

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

9 ~~(i) trespass;~~

10 ~~(ii) disturbing the peace; or~~

11 ~~(iii) telephone misuse; [or]~~

12 ~~(11) the person was convicted of a crime and the act on which the conviction~~
13 ~~was based is no longer a crime; OR~~

14 ~~(12) THE PERSON WAS CONVICTED OF COMMON LAW BATTERY.~~

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

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

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

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

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

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

31 ~~(e) (1) Except as provided in paragraph (2) of this subsection, a petition for~~
32 ~~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 A CONVICTION OF COMMON LAW BATTERY UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE FILED WITHIN 15 YEARS AFTER THE PERSON WAS 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.~~

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

~~(d) (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) (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) 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) (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.~~

10-110.

(a) A person 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 the person is convicted of a misdemeanor that is a violation of:

(1) § 6-320 of the Alcoholic Beverages Article;

(2) an offense listed in § 17-613(a) of the Business Occupations and Professions Article;

(3) § 5-712, § 19-304, § 19-308, or Title 5, Subtitle 6 or Subtitle 9 of the Business Regulation Article;

- 1 (4) § 3-1508 or § 10-402 of the Courts Article;
- 2 (5) § 14-1915, § 14-2902, or § 14-2903 of the Commercial Law Article;
- 3 (6) § 5-211 of the Criminal Procedure Article;
- 4 (7) § 3-203 or § 3-808 of the Criminal Law Article;
- 5 (8) § 5-601, § 5-618, § 5-619, § 5-620, § 5-703, § 5-708, or § 5-902 of the
6 Criminal Law Article;
- 7 (9) § 6-105, § 6-108, § 6-206, § 6-303, § 6-306, § 6-307, § 6-402, or §
8 6-503 of the Criminal Law Article;
- 9 (10) § 7-104, § 7-203, § 7-205, § 7-304, § 7-308, or § 7-309 of the Criminal
10 Law Article;
- 11 (11) § 8-103, § 8-206, § 8-401, § 8-402, § 8-404, § 8-406, § 8-408, § 8-503,
12 § 8-521, § 8-523, or § 8-904 of the Criminal Law Article;
- 13 (12) § 9-204, § 9-205, § 9-503, or § 9-506 of the Criminal Law Article;
- 14 (13) § 10-110, § 10-201, § 10-402, § 10-404, or § 10-502 of the Criminal
15 Law Article;
- 16 (14) § 11-306(a) of the Criminal Law Article;
- 17 (15) § 12-102, § 12-103, § 12-104, § 12-105, § 12-109, § 12-203, § 12-204,
18 § 12-205, or § 12-302 of the Criminal Law Article;
- 19 (16) § 13-401, § 13-602, or § 16-201 of the Election Law Article;
- 20 (17) § 4-509 of the Family Law Article;
- 21 (18) § 18-215 of the Health – General Article;
- 22 (19) § 4-411 or § 4-2005 of the Human Services Article;
- 23 (20) § 27-403, § 27-404, § 27-405, § 27-406, § 27-406.1, § 27-407, §
24 27-407.1, or § 27-407.2 of the Insurance Article;
- 25 (21) § 5-307, § 5-308, § 6-602, § 7-402, or § 14-114 of the Public Safety
26 Article;
- 27 (22) § 7-318.1, § 7-509, or § 10-507 of the Real Property Article;

1 (23) § 9–124 of the State Government Article;

2 (24) § 13–1001, § 13–1004, § 13–1007, or § 13–1024 of the Tax – General
3 Article;

4 (25) the common law offenses of affray, rioting, criminal contempt,
5 BATTERY, or hindering; or

6 (26) an attempt, a conspiracy, or a solicitation of any offense listed in items
7 (1) through (25) of this subsection.

8 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
9 expungement under this section may not be filed earlier than 10 years after the person
10 satisfies the sentence or sentences imposed for all convictions for which expungement is
11 requested, including parole, probation, or mandatory supervision.

12 (2) A petition for expungement for a violation of § 3–203 of the Criminal
13 Law Article, COMMON LAW BATTERY, or for an offense classified as a domestically related
14 crime under § 6–233 of the Criminal Procedure Article may not be filed earlier than 15
15 years after the person satisfies the sentence or sentences imposed for all convictions for
16 which expungement is requested, including parole, probation, or mandatory supervision.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2017, the effective date of Section 2 of Chapter 515 of the Acts of the General
19 Assembly of 2016. If the effective date of Section 2 of Chapter 515 is amended, this Act shall
20 take effect on the taking effect of Section 2 of Chapter 515.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.