

HOUSE BILL 19

E2

9lr0818

(PRE-FILED)

By: **Delegate Glenn**

Requested: November 20, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Nonviolent Convictions**

3 FOR the purpose of authorizing a certain person to file a certain petition for expungement
4 of a certain record if the person was convicted of a nonviolent crime; authorizing a
5 court to determine whether a person who has filed a petition under this Act is
6 entitled to expungement; requiring the court to take certain circumstances into
7 consideration when making a certain determination; making certain technical
8 corrections; and generally relating to expungement of criminal records.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 10–110
12 Annotated Code of Maryland
13 (2018 Replacement Volume)

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 10–110.

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

21 (1) a misdemeanor that is a violation of:

22 (i) § 6–320 of the Alcoholic Beverages Article;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (ii) [an offense listed in] § 17–613(a) of the Business Occupations
2 and Professions Article;
- 3 (iii) § 5–712, § 19–304, § 19–308, or Title 5, Subtitle 6 or Subtitle 9 of
4 the Business Regulation Article;
- 5 (iv) § 3–1508 or § 10–402 of the Courts Article;
- 6 (v) § 14–1915, § 14–2902, or § 14–2903 of the Commercial Law
7 Article;
- 8 (vi) § 5–211 of this article;
- 9 (vii) § 3–203 or § 3–808 of the Criminal Law Article;
- 10 (viii) § 5–601 not involving the use or possession of marijuana, §
11 5–618, § 5–619, § 5–620, § 5–703, § 5–708, or § 5–902 of the Criminal Law Article;
- 12 (ix) § 6–105, § 6–108, § 6–206, § 6–303, § 6–306, § 6–307, § 6–402, or
13 § 6–503 of the Criminal Law Article;
- 14 (x) § 7–104, § 7–203, § 7–205, § 7–304, § 7–308, or § 7–309 of the
15 Criminal Law Article;
- 16 (xi) § 8–103, § 8–206, § 8–401, § 8–402, § 8–404, § 8–406, § 8–408, §
17 8–503, § 8–521, § 8–523, or § 8–904 of the Criminal Law Article;
- 18 (xii) § 9–204, § 9–205, § 9–503, or § 9–506 of the Criminal Law Article;
- 19 (xiii) § 10–110, § 10–201, § 10–402, § 10–404, or § 10–502 of the
20 Criminal Law Article;
- 21 (xiv) § 11–306(a) of the Criminal Law Article;
- 22 (xv) § 12–102, § 12–103, § 12–104, § 12–105, § 12–109, § 12–203, §
23 12–204, § 12–205, or § 12–302 of the Criminal Law Article;
- 24 (xvi) § 13–401, § 13–602, or § 16–201 of the Election Law Article;
- 25 (xvii) § 4–509 of the Family Law Article;
- 26 (xviii) § 18–215 of the Health – General Article;
- 27 (xix) § 4–411 or § 4–2005 of the Housing and Community Development
28 Article;
- 29 (xx) § 27–403, § 27–404, § 27–405, § 27–406, § 27–406.1, § 27–407, §

1 27–407.1, or § 27–407.2 of the Insurance Article;

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

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

5 (xxiii) § 9–124 of the State Government Article; **OR**

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

8 [(xxv)] **(2)** the common law [offenses] **OFFENSE** of affray, rioting,
9 criminal contempt, battery, or hindering; [or]

10 **[(2)] (3)** a felony that is a violation of:

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

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

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

15 **[(3)] (4)** **ANY OTHER NONVIOLENT CRIME; OR**

16 **(5)** an attempt, a conspiracy, or a solicitation of any offense listed in [item
17 (1) or (2)] **ITEMS (1) THROUGH (4)** of this subsection.

18 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person
19 shall file a petition for expungement 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.

1 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
2 petition for expungement under this section may not be filed earlier than 10 years after the
3 person satisfies the sentence or sentences imposed for all convictions for which
4 expungement is requested, including parole, probation, or mandatory supervision.

5 (2) A petition for expungement for a violation of § 3–203 of the Criminal
6 Law Article, common law battery, or for an offense classified as a domestically related crime
7 under § 6–233 of this article may not be filed earlier than 15 years after the person satisfies
8 the sentence or sentences imposed for all convictions for which expungement is requested,
9 including parole, probation, or mandatory supervision.

10 (3) A petition for expungement of a felony may not be filed earlier than 15
11 years after the person satisfies the sentence or sentences imposed for all convictions for
12 which expungement is requested, including parole, probation, or mandatory supervision.

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

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

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

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

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

26 (3) Unless the State's Attorney or a victim files an objection to the petition
27 for expungement within 30 days after the petition is served, the court shall pass an order
28 requiring the expungement of all police records and court records about the charge.

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

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

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

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

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

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

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

9 **(H) (1) IT IS WITHIN THE DISCRETION OF THE COURT TO DETERMINE**
10 **WHETHER A PERSON WHO HAS FILED A PETITION BASED ON THE CONVICTION OF A**
11 **NONVIOLENT CRIME UNDER SUBSECTION (A)(4) OF THIS SECTION IS ENTITLED TO**
12 **EXPUNGEMENT, INCLUDING WHETHER THE CONVICTION QUALIFIES AS**
13 **NONVIOLENT.**

14 **(2) IN MAKING A DETERMINATION UNDER THIS SUBSECTION, THE**
15 **COURT SHALL TAKE INTO CONSIDERATION THE SPECIFIC CIRCUMSTANCES OF THE**
16 **CASE AND OF THE PETITIONER.**

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

21 **[(i)] (J) (1)** The State's Attorney is a party to the proceeding.

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2019.