

SENATE BILL 88

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EMERGENCY BILL
(PRE-FILED)

3lr0532

By: **Senators Waldstreicher and Carter**

Requested: October 11, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Automatic Expungement – Pardoned Conviction of**
3 **Possession of Cannabis**
4 **(Pardons for Simple Possession of Cannabis Act of 2023)**

5 FOR the purpose of requiring that certain records relating to a certain conviction of
6 possession of cannabis that has been fully and unconditionally pardoned by the
7 Governor be automatically expunged; establishing a procedure for the automatic
8 expungement of pardoned possession of cannabis convictions; and generally relating
9 to expungement of records.

10 BY repealing and reenacting, without amendments,
11 Article – Criminal Procedure
12 Section 10–105(a) and 10–107
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2022 Supplement)

15 BY adding to
16 Article – Criminal Procedure
17 Section 10–113
18 Annotated Code of Maryland
19 (2018 Replacement Volume and 2022 Supplement)

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

22 **Article – Criminal Procedure**

23 10–105.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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, may
4 file a petition listing relevant facts for expungement of a police record, court record, or other
5 record maintained by the State or a political subdivision of the State if:

6 (1) the person is acquitted;

7 (2) the charge is otherwise dismissed;

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

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

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

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

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

19 (8) the person:

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

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

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

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

26 (ii) panhandling or soliciting money;

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

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

30 (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) except as provided in subsection (a-1) of this section, the person was
14 convicted of a crime and the act on which the conviction was based is no longer a crime;

15 (12) the person was convicted of possession of cannabis under § 5-601 of the
16 Criminal Law Article; or

17 (13) the person was convicted of a crime and the conviction was vacated
18 under § 8-302 of this article.

19 10-107.

20 (a) (1) In this subtitle, if two or more charges, other than one for a minor traffic
21 violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from
22 the same incident, transaction, or set of facts, they are considered to be a unit.

23 (2) A charge for a minor traffic violation or possession of cannabis under §
24 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of
25 facts as a charge in the unit is not a part of the unit.

26 (b) (1) If a person is not entitled to expungement of one charge or conviction in
27 a unit, the person is not entitled to expungement of any other charge or conviction in the
28 unit.

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

1 **10-113.**

2 (A) A POLICE RECORD, COURT RECORD, OR OTHER RECORD MAINTAINED
3 BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE RELATING TO A
4 CONVICTION OF POSSESSION OF CANNABIS UNDER § 5-601 OF THE CRIMINAL LAW
5 ARTICLE THAT HAS BEEN FULLY AND UNCONDITIONALLY PARDONED BY THE
6 GOVERNOR SHALL BE AUTOMATICALLY EXPUNGED.

7 (B) (1) ON OR BEFORE 60 DAYS AFTER THE GOVERNOR'S FULL AND
8 UNCONDITIONAL PARDON OF A CONVICTION OF POSSESSION OF CANNABIS UNDER §
9 5-601 OF THE CRIMINAL LAW ARTICLE BECOMES EFFECTIVE, OR AUGUST 1, 2023,
10 WHICHEVER IS LATER, THE COURT WITH JURISDICTION OVER THE MATTER SHALL:

11 (I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH COURT
12 RECORD ABOUT THE CONVICTION AND UNDERLYING CHARGE; AND

13 (II) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL
14 RELEVANT FACTS ABOUT THE EXPUNGEMENT, CONVICTION, AND UNDERLYING
15 CHARGE TO:

16 1. THE CENTRAL REPOSITORY;

17 2. EACH BOOKING FACILITY OR LAW ENFORCEMENT
18 UNIT THAT THE COURT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE
19 UNDERLYING ARREST, CONFINEMENT, OR CHARGE; AND

20 3. THE PERSON ENTITLED TO EXPUNGEMENT.

21 (2) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE IN PARAGRAPH
22 (1)(II) OF THIS SUBSECTION, THE CENTRAL REPOSITORY, A BOOKING FACILITY, AND
23 ANY OTHER LAW ENFORCEMENT UNIT SHALL:

24 (I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE AND
25 COURT RECORD ABOUT THE ARREST, CONFINEMENT, CHARGING, OR CONVICTION
26 OF THE PERSON; AND

27 (II) ADVISE, IN WRITING, THE PERSON ENTITLED TO
28 EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.

29 (C) (1) A POLICE OR COURT RECORD EXPUNGED UNDER THIS SECTION
30 MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE CONVICTION.

1 **(2) DURING THE 3-YEAR PERIOD DESCRIBED IN PARAGRAPH (1) OF**
2 **THIS SUBSECTION, THE RECORDS SHALL BE REMOVED TO A SEPARATE SECURE AREA**
3 **TO WHICH PERSONS WHO DO NOT HAVE LEGITIMATE REASON FOR ACCESS ARE**
4 **DENIED ACCESS.**

5 **(3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON FOR**
6 **ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES OF**
7 **PROCEEDINGS RELATING TO THE UNDERLYING ARREST OR CHARGE.**

8 **(D) THE FOLLOWING DOES NOT PROHIBIT THE EXPUNGEMENT OF A**
9 **RECORD OF A PERSON WHO QUALIFIES FOR EXPUNGEMENT UNDER SUBSECTION (A)**
10 **OF THIS SECTION:**

11 **(1) THE PERSON IS CURRENTLY INCARCERATED; OR**

12 **(2) THE PERSON HAS BEEN CONVICTED OF ANOTHER CRIME AFTER:**

13 **(I) THE DATE OF THE SENTENCE FOR POSSESSION OF**
14 **CANNABIS UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;**

15 **(II) THE DATE OF RELEASE FROM INCARCERATION FOR**
16 **POSSESSION OF CANNABIS UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;**

17 **(III) THE DATE OF DISCHARGE FROM PAROLE FOR POSSESSION**
18 **OF CANNABIS UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE; OR**

19 **(IV) THE DATE OF DISCHARGE FROM PROBATION FOR**
20 **POSSESSION OF CANNABIS UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE.**

21 **(E) IF THE AUTOMATIC EXPUNGEMENT OF RECORDS RELATING TO A**
22 **PARDONED CONVICTION OF POSSESSION OF CANNABIS IS NOT EFFECTUATED AS**
23 **REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, THE PERSON ENTITLED TO**
24 **EXPUNGEMENT MAY FILE A PETITION FOR EXPUNGEMENT UNDER § 10-105(A)(12)**
25 **OF THIS SUBTITLE.**

26 **(F) A PERSON WHO IS ENTITLED TO AUTOMATIC EXPUNGEMENT UNDER**
27 **THIS SECTION MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION**
28 **WITH THE EXPUNGEMENT.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
30 measure, is necessary for the immediate preservation of the public health or safety, has
31 been passed by a yea and nay vote supported by three-fifths of all the members elected to
32 each of the two Houses of the General Assembly, and shall take effect from the date it is
33 enacted.