

HOUSE BILL 105

R3

(4lr1168)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegate Atterbeary**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Drunk Driving Offenses – Expungement and the Ignition Interlock System**
3 **Program**

4 FOR the purpose of authorizing a person to file a petition for expungement of certain records
5 relating to a probation before judgment for driving while impaired or driving while
6 under the influence; requiring the Motor Vehicle Administration to require certain
7 persons who are convicted of, or granted certain probation for, certain drunk driving
8 offenses to participate in the Ignition Interlock System Program for certain periods
9 of time; altering the time at which a participant is considered to have begun
10 participation in the Program to be the day the ignition interlock system is installed
11 in the participant's vehicle; requiring the Administration to collect and report certain
12 information; and generally relating to ~~participation in the Ignition Interlock System~~
13 ~~Program~~ drunk driving offenses.

14 BY repealing and reenacting, with amendments,

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.

Italics indicate opposite chamber/conference committee amendments.



1 Article – Criminal Procedure
 2 Section 10–105
 3 Annotated Code of Maryland
 4 (2018 Replacement Volume and 2023 Supplement)

5 BY repealing and reenacting, without amendments,
 6 Article – Transportation
 7 Section 16–404.1(a)(1), (4), and (5), (b)(1), and (d)(1)(ii) and (3)
 8 Annotated Code of Maryland
 9 (2020 Replacement Volume and 2023 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Article – Transportation
 12 Section 16–404.1(c)(1) ~~and~~, (d)(1)(i)1., (2)(i), and (4), and (h)
 13 Annotated Code of Maryland
 14 (2020 Replacement Volume and 2023 Supplement)

15 BY repealing
 16 Article – Transportation
 17 Section 16–404.1(d)(1)(i)2.
 18 Annotated Code of Maryland
 19 (2020 Replacement Volume and 2023 Supplement)

20 BY adding to
 21 Article – Transportation
 22 Section 16–404.1(d)(1)(i)2. and (s)
 23 Annotated Code of Maryland
 24 (2020 Replacement Volume and 2023 Supplement)

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

27 **Article – Criminal Procedure**

28 10–105.

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

34 (1) the person is acquitted;

35 (2) the charge is otherwise dismissed;

1 (3) a probation before judgment is entered, unless the person is charged with
2 a violation of [§ 21-902] § 21-902(C), (D), (H), OR (I) of the Transportation Article or Title
3 2, Subtitle 5 or § 3-211 of the Criminal Law Article;

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

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

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

10 (7) the charge was transferred to the juvenile court under § 4-202 of this
11 article;

12 (8) the person:

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

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

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

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

19 (ii) panhandling or soliciting money;

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

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

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

24 (vi) loitering;

25 (vii) vagrancy;

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

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

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

3 (i) trespass;

4 (ii) disturbing the peace; or

5 (iii) telephone misuse;

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

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

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

12 (a-1) An expungement may not be obtained under subsection (a)(11) of this section
13 for a conviction for sodomy as that offense existed before October 1, 2020, or a violation of §
14 3-322 of the Criminal Law Article as that offense existed before October 1, 2023, where the
15 offense was committed:

16 (1) without consent;

17 (2) with a minor under the age of 16;

18 (3) with anyone the individual could not marry under § 2-202 of the Family
19 Law Article;

20 (4) with a mentally incapacitated individual, as defined in § 3-301 of the
21 Criminal Law Article;

22 (5) with a physically helpless individual, as defined in § 3-301 of the
23 Criminal Law Article; or

24 (6) with a substantially cognitively impaired individual, as defined in §
25 3-301 of the Criminal Law Article.

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

29 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection and §
30 10-105.1 of this subtitle, a person shall file a petition in the court in which the proceeding
31 began.

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

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

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

10 (ii) The appellate court may remand the matter to the court of original
11 jurisdiction.

12 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
13 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
14 3 years after the disposition, unless the petitioner files with the petition a written general
15 waiver and release of all the petitioner's tort claims arising from the charge.

16 (2) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
17 PARAGRAPH, A petition for expungement based on a probation before judgment or a stet
18 with the requirement of drug or alcohol abuse treatment may not be filed earlier than the
19 later of:

20 [(i)] 1. the date the petitioner was discharged from probation or
21 the requirements of obtaining drug or alcohol abuse treatment were completed; or

22 [(ii)] 2. 3 years after the probation was granted or stet with the
23 requirement of drug or alcohol abuse treatment was entered on the docket.

24 (II) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION
25 BEFORE JUDGMENT FOR A VIOLATION OF § 21-902(A) OR (B) OF THE
26 TRANSPORTATION ARTICLE MAY NOT BE FILED WITHIN 15 YEARS AFTER THE DATE
27 THE PETITIONER WAS DISCHARGED FROM PROBATION.

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

31 (4) A petition for expungement based on a full and unconditional pardon by
32 the Governor may not be filed later than 10 years after the pardon was signed by the
33 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 after
10 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 before satisfactory completion of the
13 sentence, including probation, that was imposed for the conviction.

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

16 (d) (1) Except as provided in § 10-105.1 of this subtitle, the court shall have a
17 copy of a petition for expungement served on the State's Attorney.

18 (2) Unless the State's Attorney files an objection to the petition for
19 expungement within 30 days after the petition is served, the court shall pass an order
20 requiring the expungement of all police records and court records about the charge.

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

23 (2) If the court at the hearing finds that the person is entitled to
24 expungement, the court shall order the expungement of all police records and court records
25 about the charge.

26 (3) If the court finds that the person is not entitled to expungement, the court
27 shall deny the petition.

28 (4) The person is not entitled to expungement if:

29 (i) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, the
30 petition is based on the entry of probation before judgment, except a probation before
31 judgment for a crime where the act on which the conviction is based is no longer a crime,
32 and the person within [3 years of] 3 YEARS AFTER the entry of the probation before
33 judgment has been convicted of a crime other than a minor traffic violation or a crime where
34 the act on which the conviction is based is no longer a crime;

1 (II) THE PETITION IS BASED ON THE ENTRY OF PROBATION
 2 BEFORE JUDGMENT FOR A VIOLATION OF § 21-902(A) OR (B) OF THE
 3 TRANSPORTATION ARTICLE AND THE PERSON WITHIN 15 YEARS AFTER THE ENTRY
 4 OF THE PROBATION BEFORE JUDGMENT HAS:

5 1. BEEN CONVICTED OF A CRIME OTHER THAN A MINOR
 6 TRAFFIC VIOLATION OR A CRIME WHERE THE ACT ON WHICH THE CONVICTION IS
 7 BASED IS NO LONGER A CRIME; OR

8 2. RECEIVED PROBATION BEFORE JUDGMENT FOR A
 9 VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE; or

10 (III) the person is a defendant in a pending criminal proceeding.

11 (f) Except as provided in § 10-105.1 of this subtitle and unless an order is stayed
 12 pending an appeal, within 60 days after entry of the order, every custodian of the police
 13 records and court records that are subject to the order of expungement shall advise in writing
 14 the court and the person who is seeking expungement of compliance with the order.

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

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

18 Article – Transportation

19 16-404.1.

20 (a) (1) In this section the following words have the meanings indicated.

21 (4) “Participant” means a participant in the Ignition Interlock System
 22 Program.

23 (5) “Program” means the Ignition Interlock System Program.

24 (b) (1) The Administration shall establish an Ignition Interlock System
 25 Program in accordance with this section.

26 (c) An individual may be a participant if:

27 (1) The individual's license is suspended or revoked under § 16-205 of this
 28 title for a violation of [§ 21-902(b) or (c)] **§ 21-902(C)** of this article or § 16-404 of this
 29 subtitle for an accumulation of points under § 16-402(a)(29) of this subtitle **FOR DRIVING**
 30 **WHILE IMPAIRED BY A DRUG, A COMBINATION OF DRUGS, OR A COMBINATION OF**
 31 **ONE OR MORE DRUGS AND ALCOHOL;**

1 (d) (1) (i) Notwithstanding subsection (c) of this section, an individual
2 shall be a participant if:

3 1. The individual is convicted of, **OR IS GRANTED**
4 **PROBATION BEFORE JUDGMENT UNDER § 6-220 OF THE CRIMINAL PROCEDURE**
5 **ARTICLE FOR**, a violation of § 21-902(a) **OR (B)** of this article;

6 [2. The individual is convicted of a violation of §
7 21-902(b)(2) of this article and the minor who was transported was under the age of 16
8 years;]

9 **2. THE INDIVIDUAL'S LICENSE IS SUSPENDED OR**
10 **REVOKED UNDER § 16-205 OF THIS TITLE FOR A VIOLATION OF § 21-902(B) OF THIS**
11 **ARTICLE OR UNDER § 16-404 OF THIS SUBTITLE FOR AN ACCUMULATION OF POINTS**
12 **UNDER § 16-402(A)(29) OF THIS SUBTITLE FOR DRIVING WHILE IMPAIRED BY**
13 **ALCOHOL;**

14 (ii) If an individual is subject to this paragraph and fails to
15 participate in the Program or successfully complete the Program, the Administration shall
16 suspend, notwithstanding § 16-208 of this title, the individual's license until the individual
17 successfully completes the Program.

18 (2) (i) Notwithstanding subsection (c) of this section, an individual
19 shall be a participant as a condition of modification of a suspension or revocation of a license
20 or issuance of a restricted license if the individual:

21 1. Is required to be a participant by a court order under [§
22 27-107] **§ 21-902.2** of this article; **OR**

23 2. [Is convicted of a violation of § 21-902(b) of this article and
24 within the preceding 5 years the individual has been convicted of any violation of § 21-902
25 of this article; or

26 3.] Was under the age of 21 years on the date of a violation by
27 the individual of:

28 A. An alcohol restriction imposed under § 16-113(b)(1) of this
29 title; or

30 B. [§ 21-902(b) or (c)] **§ 21-902(C)** of this article.

31 (3) Except as provided in § 16-205 of this title, an individual who is subject
32 to this subsection shall participate in the Program for:

1 (i) 6 months the first time the individual is required under this
2 subsection to participate in the Program;

3 (ii) 1 year the second time the individual is required under this
4 subsection to participate in the Program; and

5 (iii) 3 years the third or any subsequent time the individual is
6 required under this subsection to participate in the Program.

7 (4) Paragraph (3) of this subsection does not limit a longer period of
8 Program participation that is required by:

9 (i) A court order under [§ 27-107] § 21-902.2 of this article; or

10 (ii) The Administration in accordance with another provision of this
11 title.

12 (h) A participant is considered to [begin] HAVE BEGUN participation in the
13 Program [when the participant provides evidence of the installation of an ignition interlock
14 system by an approved service provider in a manner required by the Administration] ON
15 THE DAY THE IGNITION INTERLOCK SYSTEM IS INSTALLED IN THE PARTICIPANT'S
16 VEHICLE.

17 (S) (1) THE ADMINISTRATION SHALL COLLECT THE FOLLOWING
18 INFORMATION ABOUT THE INDIVIDUALS REQUIRED TO PARTICIPATE IN THE
19 PROGRAM UNDER SUBSECTIONS (C) AND (D) OF THIS SECTION:

20 (I) THE NUMBER OF INDIVIDUALS WHO WERE CONVICTED OF A
21 VIOLATION OF § 21-902 OF THIS ARTICLE;

22 (II) THE NUMBER OF INDIVIDUALS WHO WERE GRANTED A
23 PROBATION BEFORE JUDGMENT UNDER § 6-220 OF THE CRIMINAL PROCEDURE
24 ARTICLE FOR A VIOLATION OF § 21-902 OF THIS ARTICLE; AND

25 (III) THE NUMBER OF INDIVIDUALS WHO WERE GRANTED A
26 PROBATION BEFORE JUDGMENT UNDER § 6-220 OF THE CRIMINAL PROCEDURE
27 ARTICLE FOR A VIOLATION OF § 21-902 OF THIS ARTICLE AND WERE
28 SUBSEQUENTLY CHARGED WITH OR CONVICTED OF A FURTHER VIOLATION OF §
29 21-902 OF THIS ARTICLE.

30 (2) ON OR BEFORE DECEMBER 1, 2028, AND EACH DECEMBER 1
31 THEREAFTER, THE ADMINISTRATION SHALL REPORT THE INFORMATION
32 COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE GOVERNOR AND,
33 IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE
34 GENERAL ASSEMBLY.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.