

HOUSE BILL 410

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4r1162
CF SB 376

By: Delegates Anderson, Rosenberg, Carter, Branch, Braveboy, Conaway, Davis, Gaines, Glenn, Harper, Haynes, Holmes, Ivey, Jones, Nathan-Pulliam, Oaks, Pena-Melnyk, Proctor, B. Robinson, Stukes, Summers, Swain, Tarrant, V. Turner, Vaughn, A. Washington, M. Washington, and Wilson

Introduced and read first time: January 24, 2014

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2014

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement – ~~Misdemeanor Convictions~~ Subsequent**
3 **Conviction or Pending Criminal Proceeding**

4 FOR the purpose of ~~authorizing a certain person to file a certain petition for~~
5 ~~expungement of a certain record if the person was convicted of a nonviolent~~
6 ~~misdemeanor and has never previously been convicted of a certain crime;~~
7 ~~specifying the time periods within which a petition for expungement based on a~~
8 ~~conviction of a certain misdemeanor may not be filed; making a conforming~~
9 ~~change~~ repealing a provision of law establishing that a person is not entitled to
10 expungement if the person has been convicted of a crime other than a certain
11 violation or is a defendant in a pending criminal proceeding under certain
12 circumstances; and generally relating to expungement of criminal records.

13 BY repealing and reenacting, with amendments,

14 Article – Criminal Procedure

15 Section 10–105

16 Annotated Code of Maryland

17 (2008 Replacement Volume and 2013 Supplement)

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

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 **Article – Criminal Procedure**

2 10–105.

3 (a) A person who has been charged with the commission of a crime, including
4 a violation of the Transportation Article for which a term of imprisonment may be
5 imposed, or who has been charged with a civil offense or infraction, except a juvenile
6 offense, as a substitute for a criminal charge may file a petition listing relevant facts
7 for expungement of a police record, court record, or other record maintained by the
8 State or a political subdivision of the State if:

9 (1) the person is acquitted;

10 (2) the charge is otherwise dismissed;

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

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

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

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

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

23 (8) the person:

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

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

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

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

30 (ii) panhandling or soliciting money;

- 1 (iii) drinking an alcoholic beverage in a public place;
- 2 (iv) obstructing the free passage of another in a public place or a
3 public conveyance;
- 4 (v) sleeping on or in park structures, such as benches or
5 doorways;
- 6 (vi) loitering;
- 7 (vii) vagrancy;
- 8 (viii) riding a transit vehicle without paying the applicable fare or
9 exhibiting proof of payment; or

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

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

- 16 (i) trespass;
- 17 (ii) disturbing the peace; or
- 18 (iii) telephone misuse; ~~OR~~

19 ~~(11) THE PERSON WAS CONVICTED OF A NONVIOLENT~~
20 ~~MISDEMEANOR AND HAS NEVER PREVIOUSLY BEEN CONVICTED OF A CRIME~~
21 ~~OTHER THAN A NONINCARCERABLE TRAFFIC VIOLATION.~~

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

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

27 (2) If the proceeding began in one court and was transferred to
28 another court, the person shall file the petition in the court to which the proceeding
29 was transferred.

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

1 (ii) The appellate court may remand the matter to the court of
2 original jurisdiction.

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

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

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

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

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

18 (4) A petition for expungement based on a full and unconditional
19 pardon by the Governor may not be filed later than 10 years after the pardon was
20 signed by the Governor.

21 (5) Except as provided in paragraph (2) of this subsection, a petition
22 for expungement based on a stet or a compromise under § 3-207 of the Criminal Law
23 Article may not be filed within 3 years after the stet or compromise.

24 (6) A petition for expungement based on the conviction of a crime
25 under subsection (a)(9) of this section may not be filed within 3 years after the
26 conviction or satisfactory completion of the sentence, including probation, that was
27 imposed for the conviction, whichever is later.

28 (7) A petition for expungement based on a finding of not criminally
29 responsible under subsection (a)(9) or (10) of this section may not be filed within 3
30 years after the finding of not criminally responsible was made by the court.

31 ~~(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION~~
32 ~~OF A MISDEMEANOR UNDER SUBSECTION (A)(11) OF THIS SECTION MAY NOT BE~~
33 ~~FILED WITHIN 2 YEARS AFTER THE CONVICTION OR SATISFACTORY~~
34 ~~COMPLETION OF THE SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED~~
35 ~~FOR THE CONVICTION, WHICHEVER IS LATER.~~

1 ~~[(8)] (9)~~ A court may grant a petition for expungement at any time
2 on a showing of good cause.

3 (d) (1) The court shall have a copy of a petition for expungement served
4 on the State's Attorney.

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

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

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

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

15 ~~[(4)~~ The person is not entitled to expungement if:

16 (i) the petition is based on the entry of probation before
17 judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of
18 drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
19 treatment, a conviction for a crime ~~specified in subsection (a)(9) of this section~~, a
20 finding of not criminally responsible, or the grant of a pardon by the Governor; and

21 (ii) the person:

22 1. since the full and unconditional pardon, entry, finding
23 of not criminally responsible, or conviction has been convicted of a crime other than a
24 minor traffic violation; or

25 2. is a defendant in a pending criminal proceeding.]

26 (f) Unless an order is stayed pending an appeal, within 60 days after entry
27 of the order, every custodian of the police records and court records that are subject to
28 the order of expungement shall advise in writing the court and the person who is
29 seeking expungement of compliance with the order.

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.