

HOUSE BILL 1294

E2
HB 1058/15 – JUD

6lr0311

By: **Delegate Carter**

Introduced and read first time: February 12, 2016

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; specifying the
5 time period within which a petition for expungement under this Act may not be filed;
6 providing that the determination as to whether a person who has filed a petition
7 under this Act is entitled to expungement is within the discretion of the court;
8 requiring the court to take certain circumstances into consideration when making a
9 certain determination; making a conforming change; making a certain technical
10 correction; and generally relating to expungement of criminal records.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 10–105(a), (c), and (e)
14 Annotated Code of Maryland
15 (2008 Replacement Volume and 2015 Supplement)

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

18 **Article – Criminal Procedure**

19 10–105.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (1) the person is acquitted;
- 2 (2) the charge is otherwise dismissed;
- 3 (3) a probation before judgment is entered, unless the person is charged
4 with a violation of § 21–902 of the Transportation Article or Title 2, Subtitle 5 or § 3–211
5 of the Criminal Law Article;
- 6 (4) a nolle prosequi or nolle prosequi with the requirement of drug or
7 alcohol treatment is entered;
- 8 (5) the court indefinitely postpones trial of a criminal charge by marking
9 the criminal charge “stet” or stet with the requirement of drug or alcohol abuse treatment
10 on the docket;
- 11 (6) the case is compromised under § 3–207 of the Criminal Law Article;
- 12 (7) the charge was transferred to the juvenile court under § 4–202 of this
13 article;
- 14 (8) the person:
 - 15 (i) is convicted of only one criminal act, and that act is not a crime
16 of violence; and
 - 17 (ii) is granted a full and unconditional pardon by the Governor;
- 18 (9) the person was convicted of a crime or found not criminally responsible
19 under any State or local law that prohibits:
 - 20 (i) urination or defecation in a public place;
 - 21 (ii) panhandling or soliciting money;
 - 22 (iii) drinking an alcoholic beverage in a public place;
 - 23 (iv) obstructing the free passage of another in a public place or a
24 public conveyance;
 - 25 (v) sleeping on or in park structures, such as benches or doorways;
 - 26 (vi) loitering;
 - 27 (vii) vagrancy;
 - 28 (viii) riding a transit vehicle without paying the applicable fare or
29 exhibiting proof of payment; or

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

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

6 (i) trespass;

7 (ii) disturbing the peace; or

8 (iii) telephone misuse; [or]

9 (11) the person was convicted of a crime and the act on which the conviction
10 was based is no longer a crime; **OR**

11 **(12) THE PERSON WAS CONVICTED OF A NONVIOLENT CRIME.**

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

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

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

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

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

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

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

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

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

8 **(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A**
9 **NONVIOLENT CRIME UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE**
10 **FILED BEFORE SATISFACTORY COMPLETION OF THE SENTENCE, INCLUDING**
11 **PROBATION, THAT WAS IMPOSED FOR THE CONVICTION.**

12 ~~[(8)]~~ **(9)** A court may grant a petition for expungement at any time on a
13 showing of good cause.

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

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

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

21 **(4) (I) IT IS WITHIN THE DISCRETION OF THE COURT TO**
22 **DETERMINE WHETHER A PERSON WHO HAS FILED A PETITION BASED ON THE**
23 **CONVICTION OF A NONVIOLENT CRIME UNDER SUBSECTION (A)(12) OF THIS**
24 **SECTION IS ENTITLED TO EXPUNGEMENT, INCLUDING WHETHER THE CONVICTION**
25 **QUALIFIES AS NONVIOLENT.**

26 **(II) IN MAKING A DETERMINATION UNDER THIS PARAGRAPH,**
27 **THE COURT SHALL TAKE INTO CONSIDERATION THE SPECIFIC CIRCUMSTANCES OF**
28 **THE CASE AND OF THE PETITIONER.**

29 ~~[(4)]~~ **(5)** The person is not entitled to expungement if:

30 (i) the petition is based on the entry of probation before judgment,
31 except a probation before judgment for a crime where the act on which the conviction is
32 based is no longer a crime, and the person within 3 years of 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; or

35 (ii) the person is a defendant in a pending criminal proceeding.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.