

HOUSE BILL 13

E2

HB 840/17 – JUD

(PRE-FILED)

9lr0762

By: **Delegate Barron**

Requested: November 16, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Partial Expungement**

3 FOR the purpose of authorizing a person to file a petition for partial expungement of certain
4 criminal records under certain circumstances; setting forth certain actions that a
5 court is required and authorized to take if the partial expungement of a certain
6 record is impracticable for a certain reason; repealing a provision of law establishing
7 that if a person is not entitled to expungement of one charge or conviction in a certain
8 unit the person is not entitled to expungement of any other charge or conviction in
9 the unit; providing for a delayed effective date; and generally relating to partial
10 expungement of criminal records.

11 BY repealing and reenacting, with amendments,

12 Article – Criminal Procedure

13 Section 10–105

14 Annotated Code of Maryland

15 (2018 Replacement Volume)

16 BY repealing

17 Article – Criminal Procedure

18 Section 10–107

19 Annotated Code of Maryland

20 (2018 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

22 That the Laws of Maryland read as follows:

23 **Article – Criminal Procedure**

24 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;

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

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

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;

(9) the person was convicted of a crime or found not criminally responsible 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;

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

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

(vi) loitering;

(vii) vagrancy;

(viii) riding a transit vehicle without paying the applicable fare or payment; or

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

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

(i) trespass;

(ii) disturbing the peace; or

(iii) telephone misuse;

13 (11) the person was convicted of a crime and the act on which the conviction
14 was based is no longer a crime; or

15 (12) the person was convicted of possession of marijuana under § 5-601 of
16 the Criminal Law Article.

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

31 (ii) The appellate court may remand the matter to the court of
32 original jurisdiction.

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

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

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

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

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

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

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

34 (d) (1) WHEN TWO OR MORE CHARGES ARISE FROM THE SAME INCIDENT,
35 TRANSACTION, OR SET OF FACTS, AND ONE OR MORE OF THE CHARGES ARE NOT

1 ELIGIBLE FOR EXPUNGEMENT UNDER THIS SECTION, A PERSON MAY FILE A
2 PETITION FOR PARTIAL EXPUNGEMENT OF THE CHARGES ELIGIBLE FOR
3 EXPUNGEMENT UNDER THIS SECTION.

4 (2) IF THE PARTIAL EXPUNGEMENT OF A POLICE RECORD, COURT
5 RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL
6 SUBDIVISION OF THE STATE IS IMPRACTICABLE DUE TO THE INCLUSION IN THE
7 STATEMENT OF CHARGES OF NARRATIVE RELATING TO BOTH THE CHARGES THAT
8 ARE ELIGIBLE FOR EXPUNGEMENT AND THE CHARGES THAT ARE NOT ELIGIBLE FOR
9 EXPUNGEMENT, THE COURT:

10 (I) SHALL ORDER THAT THE OFFICIAL RECORD OF THE COURT
11 REGARDING THE CHARGES ELIGIBLE FOR PARTIAL EXPUNGEMENT MAY NOT BE
12 INCLUDED:

13 1. ON THE PUBLIC WEBSITE MAINTAINED BY THE
14 MARYLAND JUDICIARY; AND

15 2. WITHIN RECORDS SUBMITTED TO THE CENTRAL
16 REPOSITORY; AND

17 (II) MAY AUTHORIZE THE STATE OR A POLITICAL SUBDIVISION
18 OF THE STATE TO:

19 1. MAINTAIN THE WRITTEN RECORD WITHOUT CHANGE;
20 AND

21 2. LIMIT INSPECTION OF THE WRITTEN RECORD TO A
22 CRIMINAL JUSTICE UNIT, AS DEFINED IN § 10-201 OF THIS TITLE, FOR LEGITIMATE
23 CRIMINAL JUSTICE PURPOSES.

24 (E) (1) The court shall have a copy of a petition for expungement served on the
25 State's Attorney.

26 (2) Unless the State's Attorney files an objection to the petition for
27 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 [(e)] (F) (1) If the State's Attorney files a timely objection to the petition, the
30 court shall hold a hearing.

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

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

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

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

10 [f] (G) Unless an order is stayed pending an appeal, within 60 days after entry
11 of the order, every custodian of the police records and court records that are subject to the
12 order of expungement shall advise in writing the court and the person who is seeking
13 expungement of compliance with the order.

14 [(g)] (H) (1) The State's Attorney is a party to the proceeding.

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

17 [10-107.

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2021.