

HOUSE BILL 904

E2

5lr1464

By: **Delegates Carter, Conaway, Glenn, Haynes, McCray, Oaks, and B. Robinson**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2015

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Court and Police Records – Acquittal or,**
3 **Dismissal, or Nolle Prosequi**

4 FOR the purpose of ~~requiring the expungement of certain court and police records relating~~
5 ~~to a certain criminal charge or civil offense or infraction under certain circumstances;~~
6 ~~requiring a certain law enforcement unit to search for certain information and send~~
7 ~~a certain notice; requiring the Criminal Justice Information System Central~~
8 ~~Repository, a certain booking facility, and a certain law enforcement unit to search~~
9 ~~for and expunge certain information and advise a certain person in a certain manner~~
10 ~~under certain circumstances; prohibiting a certain police record from being expunged~~
11 ~~in a certain manner for a certain period of time under certain circumstances;~~
12 ~~requiring an expunged police record to be stored in a certain manner during a certain~~
13 ~~time period; establishing a certain legitimate reason to access certain records during~~
14 ~~a certain time period; authorizing a certain person to seek certain redress and~~
15 ~~recover certain court costs under certain circumstances; prohibiting a certain person~~
16 ~~from being charged a certain fee or costs in connection with a certain expungement;~~
17 ~~providing that a certain charge is not a part of the same unit as another charge for~~
18 ~~the purposes of an~~ providing that a person who is entitled to expungement under a
19 certain provision of law based on an acquittal, a dismissal, a nolle prosequi, or a nolle
20 prosequi with the requirement of drug or alcohol treatment may not be required to
21 pay any fee or costs in connection with the expungement; and generally relating to
22 the expungement of a court or police record.

23 ~~BY adding to~~
24 ~~Article – Criminal Procedure~~

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.



~~Section 10-105.1~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2014 Supplement)~~

BY repealing and reenacting, with amendments,
 Article – Criminal Procedure
 Section ~~10-107~~ 10-105
 Annotated Code of Maryland
 (2008 Replacement Volume and 2014 Supplement)

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

Article – Criminal Procedure

~~10-105.1.~~

~~(A) FOR CHARGES OCCURRING ON OR AFTER OCTOBER 1, 2015, UNLESS THE STATE OBJECTS AND SHOWS CAUSE WHY A RECORD SHOULD NOT BE EXPUNGED, A PERSON WHO HAS BEEN CHARGED WITH THE COMMISSION OF A CRIME, INCLUDING A VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED, OR WHO HAS BEEN CHARGED WITH A CIVIL OFFENSE OR INFRACTION, EXCEPT A JUVENILE OFFENSE, AS A SUBSTITUTE FOR A CRIMINAL CHARGE IS ENTITLED TO EXPUNGEMENT OF ALL COURT AND POLICE RECORDS RELATING TO THE CHARGE IF:~~

~~(1) THE PERSON IS ACQUITTED; OR~~

~~(2) THE CHARGE IS OTHERWISE DISMISSED.~~

~~(B) WITHIN 60 DAYS AFTER AN ACQUITTAL OR DISMISSAL OF A CHARGE AGAINST A PERSON ENTITLED TO EXPUNGEMENT UNDER SUBSECTION (A) OF THIS SECTION, THE LAW ENFORCEMENT UNIT SHALL:~~

~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD RELATING TO THE CHARGE; AND~~

~~(2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING ARREST OR CONFINEMENT TO:~~

~~(i) THE CENTRAL REPOSITORY;~~

~~(ii) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST OR CONFINEMENT; AND~~

~~(H) THE PERSON ENTITLED TO EXPUNGEMENT.~~

~~(C) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL:~~

~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD ABOUT THE CHARGE AGAINST THE PERSON; AND~~

~~(2) ADVISE IN WRITING THE PERSON ENTITLED TO EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.~~

~~(D) (1) A POLICE RECORD EXPUNGED UNDER THIS SECTION MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DATE OF EXPUNGEMENT.~~

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

~~(3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON FOR ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES OF PROCEEDINGS RELATING TO ANY OTHER CHARGES THAT ARISE FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS.~~

~~(E) IF A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE RECORD AS REQUIRED UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON ENTITLED TO EXPUNGEMENT MAY:~~

~~(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL REMEDY; AND~~

~~(2) RECOVER COURT COSTS.~~

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

~~10-107.~~

~~(a) (1) In this subtitle, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit.~~

~~(2) A charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit.~~

~~(3) A CHARGE IN WHICH THE STATE ENTERS A NOLLE PROSEQUI THAT ARISES FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS AS A CHARGE IN THE UNIT IS NOT A PART OF THE UNIT.~~

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

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

10-105.

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

(1) the person is acquitted;

(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;

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

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

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

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

(8) the person:

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

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

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

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

7 (ii) panhandling or soliciting money;

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

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

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

12 (vi) loitering;

13 (vii) vagrancy;

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

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

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

21 (i) trespass;

22 (ii) disturbing the peace; or

23 (iii) telephone misuse.

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

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

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

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

6 (ii) The appellate court may remand the matter to the court of
7 original jurisdiction.

8 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
9 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
10 3 years after the disposition, unless the petitioner files with the petition a written general
11 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

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

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

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

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

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

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

3 (d) (1) The court shall have a copy of a petition for expungement served on the
4 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 court
9 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 records
12 about the charge.

13 (3) If the court finds that the person is not entitled to expungement, the
14 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 judgment,
17 a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol
18 treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction
19 for a crime specified in subsection (a)(9) of this section, a finding of not criminally
20 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 of
23 not criminally responsible, or conviction has been convicted of a crime other than a minor
24 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 of the
27 order, every custodian of the police records and court records that are subject to the order
28 of expungement shall advise in writing the court and the person who is seeking
29 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 appellate
32 review as provided in the Courts Article.

1 **(H) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION**
 2 **BASED ON AN ACQUITTAL, A DISMISSAL, A NOLLE PROSEQUI, OR A NOLLE PROSEQUI**
 3 **WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT MAY NOT BE**
 4 **REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE EXPUNGEMENT.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 6 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.