

SENATE BILL 505

E2

3lr2271
CF HB 660

By: **Senator Muse**

Introduced and read first time: February 3, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2023

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement – ~~Convictions~~ and Shielding – Probation**
3 **Before Judgment for Driving While Impaired or Under the Influence**

4 FOR the purpose of authorizing a person to file a petition for expungement of certain
5 ~~misdemeanor and felony convictions~~ records relating to a probation before judgment
6 for driving while impaired or driving while under the influence; authorizing a certain
7 person to petition a court to shield certain records relating to a probation before
8 judgment for driving while impaired or driving while under the influence; and
9 generally relating to expungement and shielding.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section ~~10-110~~ 10-105, 10-301, and 10-303
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2022 Supplement)

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

17 **Article – Criminal Procedure**

18 ~~10-110.~~

19 (a) ~~A person may file a petition listing relevant facts for expungement of a police~~
20 ~~record, court record, or other record maintained by the State or a political subdivision of~~

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 ~~the State if the person is convicted of:~~

2 ~~(1) a misdemeanor that is a violation of:~~

3 ~~(i) § 6 320 of the Alcoholic Beverages Article;~~

4 ~~(ii) an offense listed in § 17 613(a) of the Business Occupations and~~
5 ~~Professions Article;~~

6 ~~(iii) § 5 712, § 19 304, § 19 308, or Title 5, Subtitle 6 or Subtitle 9 of~~
7 ~~the Business Regulation Article;~~

8 ~~(iv) § 3 1508 or § 10 402 of the Courts Article;~~

9 ~~(v) § 14 1915, § 14 2902, or § 14 2903 of the Commercial Law~~
10 ~~Article;~~

11 ~~(vi) § 5 211 of this article;~~

12 ~~(vii) § 3 203 or § 3 808 of the Criminal Law Article;~~

13 ~~(viii) § 5 601 not involving the use or possession of cannabis, §~~
14 ~~5 602(b)(1), § 5 618, § 5 619, § 5 620, § 5 703, § 5 708, or § 5 902 of the Criminal Law~~
15 ~~Article;~~

16 ~~(ix) § 6 105, § 6 108, § 6 205 (fourth degree burglary), § 6 206, §~~
17 ~~6 303, § 6 306, § 6 307, § 6 402, or § 6 503 of the Criminal Law Article;~~

18 ~~(x) § 7 104, § 7 203, § 7 205, § 7 304, § 7 308, or § 7 309 of the~~
19 ~~Criminal Law Article;~~

20 ~~(xi) § 8 103, § 8 206, § 8 401, § 8 402, § 8 404, § 8 406, § 8 408, §~~
21 ~~8 503, § 8 521, § 8 523, or § 8 904 of the Criminal Law Article;~~

22 ~~(xii) § 9 204, § 9 205, § 9 503, or § 9 506 of the Criminal Law Article;~~

23 ~~(xiii) § 10 110, § 10 201, § 10 402, § 10 404, or § 10 502 of the~~
24 ~~Criminal Law Article;~~

25 ~~(xiv) § 11 303, § 11 306, or § 11 307 of the Criminal Law Article;~~

26 ~~(xv) § 12 102, § 12 103, § 12 104, § 12 105, § 12 109, § 12 203, §~~
27 ~~12 204, § 12 205, or § 12 302 of the Criminal Law Article;~~

28 ~~(xvi) § 13 401, § 13 602, or § 16 201 of the Election Law Article;~~

29 ~~(xvii) § 4 509 of the Family Law Article;~~

- 1 ~~(xviii) § 18-215 of the Health General Article;~~
- 2 ~~(xix) § 4-411 or § 4-2005 of the Housing and Community Development~~
3 ~~Article;~~
- 4 ~~(xx) § 27-403, § 27-404, § 27-405, § 27-406, § 27-406.1, § 27-407, §~~
5 ~~27-407.1, or § 27-407.2 of the Insurance Article;~~
- 6 ~~(xxi) § 8-725.4, § 8-725.5, § 8-725.6, § 8-725.7, § 8-726, § 8-726.1, §~~
7 ~~8-727.1, or § 8-738.2 of the Natural Resources Article or any prohibited act related to speed~~
8 ~~limits for personal watercraft;~~
- 9 ~~(xxii) § 5-307, § 5-308, § 6-602, § 7-402, or § 14-114 of the Public~~
10 ~~Safety Article;~~
- 11 ~~(xxiii) § 7-318.1, § 7-500, or § 10-507 of the Real Property Article;~~
- 12 ~~(xxiv) § 9-124 of the State Government Article;~~
- 13 ~~(xxv) § 13-1001, § 13-1004, § 13-1007, or § 13-1024 of the Tax~~
14 ~~General Article;~~
- 15 ~~(xxvi) § 16-303 OR § 21-902 of the Transportation Article; or~~
- 16 ~~(xxvii) the common law offenses of affray, rioting, criminal contempt,~~
17 ~~battery, or hindering;~~
- 18 ~~(2) a felony that is a violation of:~~
- 19 ~~(i) § 7-104 of the Criminal Law Article;~~
- 20 ~~(ii) the prohibition against possession with intent to distribute a~~
21 ~~controlled dangerous substance under § 5-602 of the Criminal Law Article; [or]~~
- 22 ~~(iii) § 6-202(a), § 6-203, or § 6-204 of the Criminal Law Article; [or]~~
- 23 ~~(IV) § 3-202 OF THE CRIMINAL LAW ARTICLE, IF THE CRIME DID~~
24 ~~NOT INVOLVE DOMESTIC VIOLENCE AND THE PERSON HAS NO OTHER CONVICTIONS;~~
- 25 ~~(V) § 3-403 OF THE CRIMINAL LAW ARTICLE; OR~~
- 26 ~~(VI) § 3-405 OF THE CRIMINAL LAW ARTICLE; OR~~
- 27 ~~(3) an attempt, a conspiracy, or a solicitation of any offense listed in item~~
28 ~~(1) or (2) of this subsection.~~

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

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

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

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

12 ~~(ii) The appellate court may remand the matter to the court of~~
13 ~~original jurisdiction.~~

14 ~~(c) (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a~~
15 ~~petition for expungement under this section may not be filed earlier than 10 years after the~~
16 ~~person satisfies the sentence or sentences imposed for all convictions for which~~
17 ~~expungement is requested, including parole, probation, or mandatory supervision.~~

18 ~~(2) A petition for expungement for a violation of § 3-203 of the Criminal~~
19 ~~Law Article, common law battery, or for an offense classified as a domestically related crime~~
20 ~~under § 6-233 of this article may not be filed earlier than 15 years after the person satisfies~~
21 ~~the sentence or sentences imposed for all convictions for which expungement is requested,~~
22 ~~including parole, probation, or mandatory supervision.~~

23 ~~(3) Except as provided in paragraph (4) of this subsection, a petition for~~
24 ~~expungement of a felony may not be filed earlier than 15 years after the person satisfies~~
25 ~~the sentence or sentences imposed for all convictions for which expungement is requested,~~
26 ~~including parole, probation, or mandatory supervision.~~

27 ~~(4) A petition for expungement of a conviction of possession with intent to~~
28 ~~distribute cannabis under § 5-602 of the Criminal Law Article may not be filed earlier than~~
29 ~~3 years after the person satisfies the sentence or sentences imposed for all convictions for~~
30 ~~which expungement is requested, including parole, probation, or mandatory supervision.~~

31 ~~(d) (1) If the person is convicted of a new crime during the applicable time~~
32 ~~period set forth in subsection (c) of this section, the original conviction or convictions are~~
33 ~~not eligible for expungement unless the new conviction becomes eligible for expungement.~~

34 ~~(2) A person is not eligible for expungement if the person is a defendant in~~
35 ~~a pending criminal proceeding.~~

1 ~~(3) If a person is not eligible for expungement of one conviction in a unit,~~
2 ~~the person is not eligible for expungement of any other conviction in the unit.~~

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

5 ~~(2) The court shall send written notice of the expungement request to each~~
6 ~~listed victim in the case in which the petitioner is seeking expungement at the address~~
7 ~~listed in the court file, advising the victim of the right to offer additional information~~
8 ~~relevant to the expungement petition to the court.~~

9 ~~(3) Unless the State's Attorney or a victim files an objection to the petition~~
10 ~~for expungement within 30 days after the petition is served, the court shall pass an order~~
11 ~~requiring the expungement of all police records and court records about the charge.~~

12 ~~(f) (1) If the State's Attorney or a victim files a timely objection to the petition,~~
13 ~~the court shall hold a hearing.~~

14 ~~(2) The court shall order the expungement of all police records and court~~
15 ~~records about the charge after a hearing, if the court finds and states on the record:~~

16 ~~(i) that the conviction is eligible for expungement under subsection~~
17 ~~(a) of this section;~~

18 ~~(ii) that the person is eligible for expungement under subsection (d)~~
19 ~~of this section;~~

20 ~~(iii) that giving due regard to the nature of the crime, the history and~~
21 ~~character of the person, and the person's success at rehabilitation, the person is not a risk~~
22 ~~to public safety; and~~

23 ~~(iv) that an expungement would be in the interest of justice.~~

24 ~~(g) If at a hearing the court finds that a person is not entitled to expungement,~~
25 ~~the court shall deny the petition.~~

26 ~~(h) Unless an order is stayed pending 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 ~~(i) (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 the appellate~~
32 ~~review as provided in the Courts Article.~~

33 10-105.

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;

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

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

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

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;

23 (9) the person was convicted of a crime or found not criminally responsible
24 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;

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

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

1 (vi) loitering;

2 (vii) vagrancy;

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

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

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

10 (i) trespass;

11 (ii) disturbing the peace; or

12 (iii) telephone misuse;

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

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

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

19 (a-1) An expungement may not be obtained under subsection (a)(11) of this section
20 for a conviction for sodomy as that offense existed before October 1, 2020, where the offense
21 was committed:

22 (1) without consent;

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

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

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

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

1 (6) with a substantially cognitively impaired individual, as defined in §
2 3–301 of the Criminal Law Article.

3 (a–2) A person’s attorney or personal representative may file a petition, on behalf of
4 the person, for expungement under this section if the person died before disposition of the
5 charge by nolle prosequi or dismissal.

6 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection and §
7 10–105.1 of this subtitle, a person shall file a petition in the court in which the proceeding
8 began.

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

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

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

18 (ii) The appellate court may remand the matter to the court of
19 original jurisdiction.

20 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
21 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
22 3 years after the disposition, unless the petitioner files with the petition a written general
23 waiver and release of all the petitioner’s tort claims arising from the charge.

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

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

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

32 (II) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION
33 BEFORE JUDGMENT FOR A VIOLATION OF § 21–902 OF THE TRANSPORTATION
34 ARTICLE MAY NOT BE FILED WITHIN 10 YEARS AFTER THE DATE THE PETITIONER
35 WAS DISCHARGED FROM PROBATION.

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

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

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

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

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

17 (8) A petition for expungement based on the conviction of a crime under
18 subsection (a)(12) of this section may not be filed before satisfactory completion of the
19 sentence, including probation, that was imposed for the conviction.

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

22 (d) (1) Except as provided in § 10–105.1 of this subtitle, the court shall have a
23 copy of a petition for expungement served on the State’s Attorney.

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

27 (e) (1) If the State’s Attorney files a timely objection to the petition, the court
28 shall hold a hearing.

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

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

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

1 (i) the petition is based on the entry of probation before judgment,
2 except a probation before judgment for a crime where the act on which the conviction is
3 based is no longer a crime, and the person within 3 years of the entry of the probation before
4 judgment has been convicted of a crime other than a minor traffic violation or a crime where
5 the act on which the conviction is based is no longer a crime; or

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

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

11 (g) (1) The State’s Attorney is a party to the proceeding.

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

14 10–301.

15 (a) In this subtitle the following words have the meanings indicated.

16 (b) “Court record” has the meaning stated in § 10–101 of this title.

17 (c) “Criminal justice unit” has the meaning stated in § 10–201 of this title.

18 (d) “Police record” has the meaning stated in § 10–101 of this title.

19 (e) “Shield” means to render a court record and police record relating to a
20 conviction of a crime **OR ENTRY OF PROBATION BEFORE JUDGMENT FOR AN OFFENSE**
21 **UNDER § 21–902 OF THE TRANSPORTATION ARTICLE** inaccessible by members of the
22 public.

23 (f) “Shieldable conviction” means a conviction of one of the following crimes:

24 (1) disorderly conduct under § 10–201(c)(2) of the Criminal Law Article;

25 (2) disturbing the peace under § 10–201(c)(4) of the Criminal Law Article;

26 (3) failure to obey a reasonable and lawful order under § 10–201(c)(3) of the
27 Criminal Law Article;

28 (4) malicious destruction of property in the lesser degree under § 6–301 of
29 the Criminal Law Article;

30 (5) trespass on posted property under § 6–402 of the Criminal Law Article;

1 (6) possessing or administering a controlled dangerous substance under §
2 5-601 of the Criminal Law Article;

3 (7) possessing or administering a noncontrolled substance under §
4 5-618(a) of the Criminal Law Article;

5 (8) use of or possession with intent to use drug paraphernalia under §
6 5-619(c)(2) of the Criminal Law Article;

7 (9) driving without a license under § 16-101 of the Transportation Article;

8 (10) driving while privilege is canceled, suspended, refused, or revoked
9 under § 16-303 of the Transportation Article;

10 (11) driving while uninsured under § 17-107 of the Transportation Article;
11 or

12 (12) a prostitution offense under § 11-303 of the Criminal Law Article if the
13 conviction is for prostitution and not assignation.

14 (g) **“SHIELDABLE OFFENSE” MEANS A VIOLATION OF § 21-902 OF THE**
15 **TRANSPORTATION ARTICLE FOR WHICH THE DEFENDANT RECEIVED PROBATION**
16 **BEFORE JUDGMENT.**

17 (H) **“Unit” means two or more convictions OR A CONVICTION OR CONVICTIONS**
18 **AND A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE FOR WHICH THE**
19 **DEFENDANT RECEIVED PROBATION BEFORE JUDGMENT that arise from the same**
20 **incident, transaction, or set of facts.**

21 10-303.

22 (a) **(1)** **A person may petition the court to shield the person’s court and police**
23 **records relating to one or more shieldable convictions entered in the circuit court or the**
24 **District Court in one county no earlier than 3 years after the person satisfies the sentence**
25 **or sentences imposed for all convictions for which shielding is requested, including parole,**
26 **probation, or mandatory supervision.**

27 **(2)** **A PERSON MAY PETITION THE COURT TO SHIELD THE PERSON’S**
28 **COURT AND POLICE RECORDS RELATING TO A SHIELDABLE OFFENSE NO EARLIER**
29 **THAN 5 YEARS AFTER THE PERSON WAS DISCHARGED FROM PROBATION FOR THE**
30 **OFFENSE.**

31 (b) (1) **If the person is convicted of a new crime during the applicable time**
32 **period set forth in subsection (a) of this section, [the original conviction or convictions are**

1 not] NO SHIELDABLE CONVICTION OR SHIELDABLE OFFENSE IS eligible for shielding
2 unless the new conviction becomes eligible for shielding.

3 (2) A person is not eligible for shielding if the person is a defendant in a
4 pending criminal proceeding.

5 (c) If a person is not eligible for shielding of one conviction OR VIOLATION OF §
6 21-902 OF THE TRANSPORTATION ARTICLE FOR WHICH THE PERSON RECEIVED
7 PROBATION BEFORE JUDGMENT in a unit, the person is not eligible for shielding of any
8 other conviction OR VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE in
9 the unit.

10 (d) (1) The court shall have a copy of a petition for shielding served on the
11 State's Attorney.

12 (2) Unless the State's Attorney files an objection to the petition for
13 shielding within 30 days after the petition is served, the court may order the shielding of
14 all police records and court records relating to [the conviction or convictions] ALL
15 ELIGIBLE SHIELDABLE CONVICTIONS AND SHIELDABLE OFFENSES after taking into
16 consideration any objections or additional information provided by the State's Attorney or
17 the victim.

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

20 (2) If the court, at the hearing, finds that the person is entitled to shielding,
21 the court shall order the shielding of all police records and court records relating to [the
22 conviction or convictions] ALL ELIGIBLE SHIELDABLE CONVICTIONS AND SHIELDABLE
23 OFFENSES.

24 (3) The court may grant a petition under this subsection for good cause.

25 (4) A person may be granted only one shielding petition over the lifetime of
26 the person.

27 (f) The court shall send written notice of the proposed action to all listed victims
28 in the case in which the petitioner is seeking shielding at the address listed in the court file
29 advising the victim or victims of the right to offer additional information relevant to the
30 shielding petition to the court.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2023.