

HOUSE BILL 238

E2
HB 1335/20 – JUD

(PRE-FILED)

11r1425

By: **Delegate Wells**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2021

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – ~~Automatic~~ Expungement of Records**

3 FOR the purpose of ~~providing that a person who, on or after a certain date, has been~~
4 ~~charged with the commission of a certain crime, has been charged with a certain civil~~
5 ~~offense or infraction, or is the subject of a certain warrant, is entitled to automatic~~
6 ~~expungement of certain records under certain circumstances; specifying that certain~~
7 ~~dispositions are eligible for automatic expungement at certain times; requiring a~~
8 ~~certain court to search diligently for and expunge certain court records and send a~~
9 ~~certain notice to certain parties within a certain time period; requiring the Criminal~~
10 ~~Justice Information System Central Repository, a booking facility, and a certain law~~
11 ~~enforcement unit to search diligently for and expunge certain police and court~~
12 ~~records and send a certain advisement to a certain person within a certain time~~
13 ~~period; prohibiting a certain police or court record from being expunged by~~
14 ~~obliteration until a certain amount of time after a certain disposition; requiring that,~~
15 ~~during a certain time period, certain records be removed to a certain area; providing~~
16 ~~that a legitimate reason for accessing certain records includes using the records for~~
17 ~~certain purposes; authorizing a certain person to seek a certain redress and recover~~
18 ~~court costs under certain circumstances; prohibiting a certain person from being~~
19 ~~required to pay any fees or costs in connection with a certain expungement; requiring~~
20 ~~a certain judge to inform a certain defendant at a certain time that certain records~~
21 ~~will be automatically expunged under certain circumstances; authorizing a certain~~
22 ~~person to opt out of a certain automatic expungement in a certain manner; providing~~
23 ~~that opting out of a certain expungement does not bar expungement of certain~~
24 ~~charges; requiring the expungement of certain records after a certain period of time~~

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.



under certain circumstances; requiring a court to send a certain notice under certain circumstances; requiring a court to notify a certain defendant of certain information relating to expungement; providing for notice under this Act to be made by mail under certain circumstances; requiring a court to mail a certain written form to a certain defendant; and generally relating to expungement of records.

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 10–105(b)(1), (d)(1), and (f)

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Criminal Procedure

Section 10–105.1 and 10–105.2

Annotated Code of Maryland

(2018 Replacement Volume and 2020 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) SUBJECT TO SUBSECTION (I) OF THIS SECTION, A PERSON WHO, ON OR AFTER OCTOBER 1, 2021, 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, WHO HAS BEEN CHARGED WITH A CIVIL OFFENSE OR INFRACTION, EXCEPT A JUVENILE OFFENSE, OR WHO IS THE SUBJECT OF AN INVALIDATED WARRANT OR A FUGITIVE WARRANT IS ENTITLED TO AUTOMATIC EXPUNGEMENT OF ALL POLICE RECORDS, COURT RECORDS, AND OTHER RECORDS MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE RELATING TO THE MATTER IF:~~

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

~~(2) THE CHARGE OR WARRANT IS DISMISSED OR INVALIDATED;~~

~~(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 OTHER THAN A NOLLE PROSEQUI WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS ENTERED; OR~~

1 ~~(5) THE COURT INDEFINITELY POSTPONES TRIAL OF THE CHARGE BY~~
2 ~~MARKING THE CHARGE "STET" ON THE DOCKET, WITHOUT A REQUIREMENT OF~~
3 ~~DRUG OR ALCOHOL TREATMENT.~~

4 ~~(B) (1) AN ACQUITTAL, A DISMISSAL, OR A NOLLE PROSEQUI OTHER THAN~~
5 ~~A NOLLE PROSEQUI WITH THE REQUIREMENT OF DRUG OR ALCOHOL TREATMENT IS~~
6 ~~ELIGIBLE FOR AUTOMATIC EXPUNGEMENT IMMEDIATELY ON DISPOSITION.~~

7 ~~(2) A PROBATION BEFORE JUDGMENT IS ELIGIBLE FOR AUTOMATIC~~
8 ~~EXPUNGEMENT AFTER SATISFACTORY COMPLETION OF ANY SENTENCE AND~~
9 ~~PROBATIONARY CONDITIONS IMPOSED IN CONNECTION WITH THE PROBATION~~
10 ~~BEFORE JUDGMENT DISPOSITION.~~

11 ~~(3) A STET OTHER THAN A STET WITH THE REQUIREMENT OF DRUG~~
12 ~~OR ALCOHOL TREATMENT IS ELIGIBLE FOR AUTOMATIC EXPUNGEMENT 3 YEARS~~
13 ~~AFTER THE ENTRY OF THE STET.~~

14 ~~(C) WITHIN 60 DAYS AFTER THE ELIGIBILITY DATE SET FORTH IN~~
15 ~~SUBSECTION (B) OF THIS SECTION, THE COURT WITH JURISDICTION OVER THE~~
16 ~~MATTER SHALL:~~

17 ~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH COURT RECORD~~
18 ~~ABOUT THE CHARGE; AND~~

19 ~~(2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT~~
20 ~~FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING CHARGE TO:~~

21 ~~(I) THE CENTRAL REPOSITORY;~~

22 ~~(II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT~~
23 ~~THAT THE COURT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST,~~
24 ~~CONFINEMENT, OR CHARGE; AND~~

25 ~~(III) THE PERSON ENTITLED TO EXPUNGEMENT.~~

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

29 ~~(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE AND~~
30 ~~COURT RECORD ABOUT THE ARREST, CONFINEMENT, OR CHARGING OF THE~~
31 ~~PERSON; AND~~

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

~~(E) (1) A POLICE OR COURT RECORD EXPUNGED UNDER THIS SECTION MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DISPOSITION OF THE CHARGE.~~

~~(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 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 THE ARREST OR CHARGE.~~

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

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

~~(2) RECOVER COURT COSTS.~~

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

~~(H) AT THE TIME OF MAKING A DISPOSITION DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE COURT SHALL INFORM THE DEFENDANT THAT ALL POLICE RECORDS, COURT RECORDS, AND OTHER RECORDS RELATING TO THE MATTER WILL BE AUTOMATICALLY EXPUNGED UNLESS THE DEFENDANT OPTS OUT OF THE EXPUNGEMENT.~~

~~(I) (1) A PERSON WHO IS ENTITLED TO AUTOMATIC EXPUNGEMENT UNDER THIS SECTION MAY OPT OUT OF THE AUTOMATIC EXPUNGEMENT BY SO NOTIFYING THE COURT AT THE TIME OF DISPOSITION.~~

~~(2) OPTING OUT OF EXPUNGEMENT OF A PARTICULAR CHARGE DOES NOT BAR EXPUNGEMENT OF OTHER ELIGIBLE CHARGES.~~

1 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection AND §
2 10-105.1 OF THIS SUBTITLE, a person shall file a petition in the court in which the
3 proceeding began.

4 (d) (1) [The] EXCEPT AS PROVIDED IN § 10-105.1 OF THIS SUBTITLE, THE
5 court shall have a copy of a petition for expungement served on the State's Attorney.

6 (f) [Unless] EXCEPT AS PROVIDED IN § 10-105.1 OF THIS SUBTITLE AND
7 UNLESS an order is stayed pending an appeal, within 60 days after entry of the order, every
8 custodian of the police records and court records that are subject to the order of
9 expungement shall advise in writing the court and the person who is seeking expungement
10 of compliance with the order.

11 10-105.1.

12 (A) BEGINNING OCTOBER 1, 2021, ANY POLICE RECORD, COURT RECORD,
13 OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF
14 THE STATE RELATING TO THE CHARGING OF A CRIME OR A CIVIL OFFENSE UNDER §
15 5-601(C)(2)(II) OF THE CRIMINAL LAW ARTICLE, INCLUDING A MUST-APPEAR
16 VIOLATION OF THE TRANSPORTATION ARTICLE, SHALL BE EXPUNGED 3 YEARS
17 AFTER A DISPOSITION OF THE CHARGE IF NO CHARGE IN THE CASE RESULTED IN A
18 DISPOSITION OTHER THAN:

19 (1) ACQUITTAL;

20 (2) DISMISSAL;

21 (3) NOT GUILTY; OR

22 (4) NOLLE PROSEQUI, EXCEPT NOLLE PROSEQUI WITH A
23 REQUIREMENT OF DRUG OR ALCOHOL TREATMENT.

24 (B) FOR A CASE DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE
25 COURT SHALL SEND NOTICE OF THE DISPOSITION OF EACH CHARGE IN THE CASE
26 AND THE DATE ON WHICH EXPUNGEMENT IS REQUIRED TO:

27 (1) THE CENTRAL REPOSITORY;

28 (2) EACH BOOKING FACILITY, LAW ENFORCEMENT UNIT, AND OTHER
29 UNIT OF THE STATE AND POLITICAL SUBDIVISION OF THE STATE THAT THE COURT
30 BELIEVES MAY HAVE A RECORD SUBJECT TO EXPUNGEMENT UNDER THIS SECTION;
31 AND

32 (3) THE PERSON ENTITLED TO EXPUNGEMENT.

1 **10-105.2.**

2 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AFTER DISPOSITION OF**
3 **ALL CHARGES IN A CASE INVOLVING A CRIMINAL OFFENSE OR A CIVIL OFFENSE**
4 **UNDER § 5-601(C)(2)(II) OF THE CRIMINAL LAW ARTICLE, INCLUDING A**
5 **MUST-APPEAR VIOLATION OF THE TRANSPORTATION ARTICLE, THE COURT SHALL**
6 **NOTIFY THE DEFENDANT OF THE DEFENDANT’S RIGHT TO EXPUNGEMENT UNDER §**
7 **10-105 OF THIS SUBTITLE IF NO CHARGE IN THE CASE RESULTED IN A DISPOSITION**
8 **OTHER THAN:**

9 **(1) ACQUITTAL;**

10 **(2) DISMISSAL;**

11 **(3) NOT GUILTY; OR**

12 **(4) NOLLE PROSEQUI, EXCEPT NOLLE PROSEQUI WITH A**
13 **REQUIREMENT OF DRUG OR ALCOHOL TREATMENT.**

14 **(B) (1) IF THE DEFENDANT IS NOT PRESENT IN COURT FOR THE**
15 **DISPOSITION, THE COURT SHALL NOTIFY THE DEFENDANT BY MAIL.**

16 **(2) THE NOTICE PROVIDED UNDER THIS SECTION SHALL INCLUDE A**
17 **WRITTEN FORM FOR GENERAL WAIVER AND RELEASE OF ALL TORT CLAIMS**
18 **RELATING TO THE CHARGE OR CHARGES ELIGIBLE FOR EXPUNGEMENT UNDER §**
19 **10-105 OF THIS SUBTITLE.**

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.