

SENATE BILL 16

E2
SB 139/14 – JPR

5lr1071

By: **Senator Conway**
Introduced and read first time: January 15, 2015
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement – Misdemeanor and Felony 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 certain misdemeanor or a certain
5 felony; specifying the time periods within which a petition for expungement based
6 on a conviction of a certain misdemeanor or a certain felony may not be filed; making
7 a conforming change; and generally relating to expungement of criminal records.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section 10–105
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2014 Supplement)

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

15 **Article – Criminal Procedure**

16 10–105.

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

23 (1) the person is acquitted;

24 (2) the charge is otherwise dismissed;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

12 (8) the person:

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

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

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

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

19 (ii) panhandling or soliciting money;

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

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

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

24 (vi) loitering;

25 (vii) vagrancy;

26 (viii) riding a transit vehicle without paying the applicable fare or
27 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; [or]

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;

9 **(11) THE PERSON WAS CONVICTED OF A MISDEMEANOR OTHER THAN A**
10 **MISDEMEANOR LISTED IN ITEM (9) OF THIS SUBSECTION; OR**

11 **(12) THE PERSON WAS CONVICTED OF A FELONY OTHER THAN:**

12 **(I) MURDER;**

13 **(II) RAPE;**

14 **(III) SEXUAL OFFENSE IN THE FIRST DEGREE;**

15 **(IV) SEXUAL OFFENSE IN THE SECOND DEGREE;**

16 **(V) SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE**
17 **CRIMINAL LAW ARTICLE;**

18 **(VI) KIDNAPPING; OR**

19 **(VII) CONTINUING COURSE OF CONDUCT WITH A CHILD UNDER §**
20 **3-315 OF THE CRIMINAL LAW ARTICLE.**

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

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

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

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

4 (ii) The appellate court may remand the matter to the court of
5 original jurisdiction.

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

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

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

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

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

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

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

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

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

33 **(8) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A**
34 **MISDEMEANOR UNDER SUBSECTION (A)(11) OF THIS SECTION MAY NOT BE FILED**
35 **WITHIN 7 YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE**

1 SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION,
2 WHICHEVER IS LATER.

3 (9) A PETITION FOR EXPUNGEMENT BASED ON THE CONVICTION OF A
4 FELONY UNDER SUBSECTION (A)(12) OF THIS SECTION MAY NOT BE FILED WITHIN
5 12 YEARS AFTER THE CONVICTION OR SATISFACTORY COMPLETION OF THE
6 SENTENCE, INCLUDING PROBATION, THAT WAS IMPOSED FOR THE CONVICTION,
7 WHICHEVER IS LATER.

8 [(8)] (10) A court may grant a petition for expungement at any time on a
9 showing of good cause.

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

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

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

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

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

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

23 (i) the petition is based on the entry of probation before judgment,
24 a nolle prosequi, a stet, including a nolle prosequi with the requirement of drug or alcohol
25 treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction
26 for a crime [specified in subsection (a)(9) of this section], a finding of not criminally
27 responsible, or the grant of a pardon by the Governor; and

28 (ii) the person:

29 1. since the full and unconditional pardon, entry, finding of
30 not criminally responsible, or conviction has been convicted of a crime other than a minor
31 traffic violation; or

32 2. is a defendant in a pending criminal proceeding.

1 (f) Unless an order is stayed pending an appeal, within 60 days after entry of the
2 order, every custodian of the police records and court records that are subject to the order
3 of expungement shall advise in writing the court and the person who is seeking
4 expungement of compliance with the order.

5 (g) (1) The State's Attorney is a party to the proceeding.

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

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