

SENATE BILL 101

E2

(8lr1218)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senator Norman**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure — Expungement — Time for Filing Law — Crimes of Violence,**
3 **Expungement, and Drug Treatment**

4 FOR the purpose of ~~repealing the prohibition on the filing of a petition for expungement~~
5 ~~based on an acquittal, a dismissal, or a nolle prosequi within a certain time period~~
6 ~~after the disposition unless the petitioner files with the petition a certain waiver and~~
7 ~~release; requiring certain records that are ordered for expungement to be expunged~~
8 ~~by removing the records to a certain secured area; providing that certain records are~~
9 ~~subject to discovery in a civil action, except under certain circumstances; and~~
10 ~~generally relating to expungement of criminal records.~~ *providing that the use of a*
11 *firearm in the commission of a certain felony or other crime of violence constitutes a*
12 *crime of violence; altering the circumstances under which sexual abuse of a minor is*
13 *a crime of violence; eliminating parole eligibility for certain violent offenders under*
14 *certain circumstances; adding to a certain list of convictions that may be expunged*
15 *under certain circumstances; providing that a petition for expungement of a certain*

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.

Italics indicate opposite chamber/conference committee amendments.



charge may not be filed earlier than a certain number of years after the person satisfies a certain sentence or sentences; restricting a court from ordering a certain substance use evaluation and commitment for certain defendants serving a sentence for a crime of violence under certain circumstances; providing that certain provisions of this Act may not be construed to prohibit a defendant's participation in certain programs; prohibiting a person from possessing a regulated firearm if the person was previously convicted of a certain crime relating to possessing or using a firearm during and in relation to a drug trafficking crime or possessing or owning a firearm if the person has previously been convicted of a certain crime; providing that a person convicted under a certain provision of law is not prohibited from participating in a certain drug treatment program for a certain reason; and generally relating to crimes of violence, expungement, and drug treatment.

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 14-101(a) and (d)

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section ~~10-105(e)(1) and (e)(2)~~ 10-110

Annotated Code of Maryland

(2008 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 8-505(a), 8-506(a), and 8-507(a)

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Safety

Section 5-133(c)

Annotated Code of Maryland

(2011 Replacement Volume and 2017 Supplement)

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

Article – Criminal Law

14-101.

(a) In this section, “crime of violence” means:

(1) abduction;

- 1 (2) arson in the first degree;
- 2 (3) kidnapping;
- 3 (4) manslaughter, except involuntary manslaughter;
- 4 (5) mayhem;
- 5 (6) maiming, as previously proscribed under former Article 27, §§ 385 and
6 386 of the Code;
- 7 (7) murder;
- 8 (8) rape;
- 9 (9) robbery under § 3-402 or § 3-403 of this article;
- 10 (10) carjacking;
- 11 (11) armed carjacking;
- 12 (12) sexual offense in the first degree;
- 13 (13) sexual offense in the second degree;
- 14 (14) use of a [handgun] FIREARM in the commission of a felony **EXCEPT**
15 **POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE**
16 **UNDER § 5-602(2) OF THIS ARTICLE, or other crime of violence;**
- 17 (15) child abuse in the first degree under § 3-601 of this article;
- 18 (16) sexual abuse of a minor under § 3-602 of this article if:
- 19 (i) the victim is under the age of 13 years and the offender is an adult
20 at the time of the offense; and
- 21 (ii) the offense involved:
- 22 1. vaginal intercourse, as defined in § 3-301 of this article;
- 23 2. a sexual act, as defined in § 3-301 of this article;
- 24 3. an act in which a part of the offender's body penetrates,
25 however slightly, into the victim's genital opening or anus; or

1 4. the intentional touching[, not through the clothing,] of the
 2 victim's or the offender's genital, anal, or other intimate area for sexual arousal,
 3 gratification, or abuse;

4 (17) home invasion under § 6-202(b) of this article;

5 (18) an attempt to commit any of the crimes described in items (1) through
 6 (17) of this subsection;

7 (19) continuing course of conduct with a child under § 3-315 of this article;

8 (20) assault in the first degree;

9 (21) assault with intent to murder;

10 (22) assault with intent to rape;

11 (23) assault with intent to rob;

12 (24) assault with intent to commit a sexual offense in the first degree; and

13 (25) assault with intent to commit a sexual offense in the second degree.

14 (d) (1) (I) [On] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
 15 SUBSECTION, ON conviction for a second time of a crime of violence committed on or after
 16 October 1, 1994, a person shall be sentenced to imprisonment for the term allowed by law,
 17 but not less than 10 years, if the person:

18 [(i)] 1. has been convicted on a prior occasion of a crime of
 19 violence, including a conviction for a crime committed before October 1, 1994; and

20 [(ii)] 2. served a term of confinement in a correctional facility for
 21 that conviction.

22 [(2)] (II) The court may not suspend all or part of the mandatory 10-year
 23 sentence required under this [subsection] PARAGRAPH.

24 (2) (I) ON CONVICTION FOR A SECOND TIME OF A CRIME OF
 25 VIOLENCE COMMITTED ON OR AFTER OCTOBER 1, 2018, A PERSON SHALL BE
 26 SENTENCED TO IMPRISONMENT FOR THE TERM ALLOWED BY LAW, BUT NOT LESS
 27 THAN 10 YEARS, IF THE PERSON:

28 1. HAS BEEN CONVICTED ON A PRIOR OCCASION OF A
 29 CRIME OF VIOLENCE, INCLUDING A CONVICTION FOR A CRIME COMMITTED BEFORE
 30 OCTOBER 1, 2018; AND

2. SERVED A TERM OF CONFINEMENT IN A CORRECTIONAL FACILITY FOR THAT CONVICTION.

(II) THE COURT MAY NOT SUSPEND ALL OR PART OF THE MANDATORY 10-YEAR SENTENCE REQUIRED UNDER THIS PARAGRAPH.

(III) A PERSON SENTENCED UNDER THIS PARAGRAPH IS NOT ELIGIBLE FOR PAROLE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE.

Article – Criminal Procedure

~~10-105.~~

~~(e) (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] BE FILED AT ANY TIME.~~

~~(e) (2) (i) [If] SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH, IF the court at the hearing finds that the person is entitled to expungement, the court shall order the expungement of all police records and court records about the charge.~~

~~(H) 1. IF A PETITION FOR EXPUNGEMENT UNDER SUBSECTION (C)(1) OF THIS SECTION IS GRANTED WITHIN 3 YEARS AFTER THE DISPOSITION, THE EXPUNGEMENT SHALL BE ACCOMPLISHED BY REMOVING THE RECORDS TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS.~~

~~2. UNLESS A JUDICIAL OFFICER FINDS THAT THE RECORD IS PRIVILEGED OR OTHERWISE PROTECTED FROM DISCOVERY UNDER THE MARYLAND RULES, A RECORD EXPUNGED UNDER THIS SUBPARAGRAPH IS SUBJECT TO DISCOVERY IN A CIVIL ACTION.~~

~~10-110.~~

(a) A person 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 the person is convicted of:

(1) a misdemeanor that is a violation of:

[(1)] (I) § 6-320 of the Alcoholic Beverages Article;

1 [(2)] (II) an offense listed in § 17-613(a) of the Business Occupations and
2 Professions Article;

3 [(3)] (III) § 5-712, § 19-304, § 19-308, or Title 5, Subtitle 6 or Subtitle 9 of
4 the Business Regulation Article;

5 [(4)] (IV) § 3-1508 or § 10-402 of the Courts Article;

6 [(5)] (V) § 14-1915, § 14-2902, or § 14-2903 of the Commercial Law
7 Article;

8 [(6)] (VI) § 5-211 of this article;

9 [(7)] (VII) § 3-203 or § 3-808 of the Criminal Law Article;

10 [(8)] (VIII) § 5-601 not involving the use or possession of marijuana, § 5-618,
11 § 5-619, § 5-620, § 5-703, § 5-708, or § 5-902 of the Criminal Law Article;

12 [(9)] (IX) § 6-105, § 6-108, § 6-206, § 6-303, § 6-306, § 6-307, § 6-402, or
13 § 6-503 of the Criminal Law Article;

14 [(10)] (X) § 7-104, § 7-203, § 7-205, § 7-304, § 7-308, or § 7-309 of the
15 Criminal Law Article;

16 [(11)] (XI) § 8-103, § 8-206, § 8-401, § 8-402, § 8-404, § 8-406, § 8-408, §
17 8-503, § 8-521, § 8-523, or § 8-904 of the Criminal Law Article;

18 [(12)] (XII) § 9-204, § 9-205, § 9-503, or § 9-506 of the Criminal Law Article;

19 [(13)] (XIII) § 10-110, § 10-201, § 10-402, § 10-404, or § 10-502 of the
20 Criminal Law Article;

21 [(14)] (XIV) § 11-306(a) of the Criminal Law Article;

22 [(15)] (XV) § 12-102, § 12-103, § 12-104, § 12-105, § 12-109, § 12-203,
23 § 12-204, § 12-205, or § 12-302 of the Criminal Law Article;

24 [(16)] (XVI) § 13-401, § 13-602, or § 16-201 of the Election Law Article;

25 [(17)] (XVII) § 4-509 of the Family Law Article;

26 [(18)] (XVIII) § 18-215 of the Health – General Article;

27 [(19)] (XIX) § 4-411 or § 4-2005 of the Human Services Article;

1 [(20)] (XX) § 27-403, § 27-404, § 27-405, § 27-406, § 27-406.1, § 27-407, §
2 27-407.1, or § 27-407.2 of the Insurance Article;

3 [(21)] (XXI) § 5-307, § 5-308, § 6-602, § 7-402, or § 14-114 of the Public
4 Safety Article;

5 [(22)] (XXII) § 7-318.1, § 7-509, or § 10-507 of the Real Property Article;

6 [(23)] (XXIII) § 9-124 of the State Government Article;

7 [(24)] (XXIV) § 13-1001, § 13-1004, § 13-1007, or § 13-1024 of the Tax-
8 General Article;

9 [(25)] (XXV) the common law offenses of affray, rioting, criminal contempt,
10 battery, or hindering; or

11 **(2) A FELONY THAT IS A VIOLATION OF:**

12 **(I) § 7-104 OF THE CRIMINAL LAW ARTICLE;**

13 **(II) THE PROHIBITION AGAINST POSSESSION WITH INTENT TO**
14 **DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE UNDER § 5-602(2) OF THE**
15 **CRIMINAL LAW ARTICLE; OR**

16 **(III) § 6-202(A), § 6-203, OR § 6-204 OF THE CRIMINAL LAW**
17 **ARTICLE; OR**

18 [(26)] (3) an attempt, a conspiracy, or a solicitation of any offense listed in
19 [items] ITEM (1) [through (25)] OR (2) of this subsection.

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

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

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.

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

1 (ii) The appellate court may remand the matter to the court of original
2 jurisdiction.

3 (c) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (3)** of this
4 subsection, a petition for expungement under this section may not be filed earlier than 10
5 years after the person satisfies the sentence or sentences imposed for all convictions for which
6 expungement is requested, including parole, probation, or mandatory supervision.

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

12 **(3) A PETITION FOR EXPUNGEMENT OF A FELONY MAY NOT BE FILED**
13 **EARLIER THAN 15 YEARS AFTER THE PERSON SATISFIES THE SENTENCE OR**
14 **SENTENCES IMPOSED FOR ALL CONVICTIONS FOR WHICH EXPUNGEMENT IS**
15 **REQUESTED, INCLUDING PAROLE, PROBATION, OR MANDATORY SUPERVISION.**

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

19 (2) A person is not eligible for expungement if the person is a defendant in
20 a pending criminal proceeding.

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

23 (e) (1) The court shall have a copy of a petition for expungement served on the
24 State’s Attorney.

25 (2) The court shall send written notice of the expungement request to each
26 listed victim in the case in which the petitioner is seeking expungement at the address listed
27 in the court file, advising the victim of the right to offer additional information relevant to
28 the expungement petition to the court.

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

32 (f) (1) If the State’s Attorney or a victim files a timely objection to the petition,
33 the court shall hold a hearing.

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

1 (i) that the conviction is eligible for expungement under subsection
2 (a) of this section;

3 (ii) that the person is eligible for expungement under subsection (d) of
4 this section;

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

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

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

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

15 (i) (1) The State's Attorney is a party to the proceeding.

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

18 **Article – Health – General**

19 8-505.

20 (a) (1) **(I) [Before] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
21 **SUBSECTION, BEFORE or during a criminal trial, before or after sentencing, or before or**
22 **during a term of probation, the court may order the Department to evaluate a defendant to**
23 **determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may**
24 **benefit from treatment if:**

25 **[(i)] 1. It appears to the court that the defendant has an alcohol or**
26 **drug abuse problem; or**

27 **[(ii)] 2. The defendant alleges an alcohol or drug dependency.**

28 **[(2)] (II) A court shall set and may change the conditions under which an**
29 **examination is to be conducted under this section.**

30 **[(3)] (III) The Department shall ensure that each evaluation under this**
31 **section is conducted in accordance with regulations adopted by the Department.**

1 **(2) (I) IF A DEFENDANT IS SERVING A SENTENCE FOR A CRIME OF**
2 **VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, A COURT MAY**
3 **NOT ORDER THE DEPARTMENT TO EVALUATE A DEFENDANT UNDER THIS SECTION**
4 **UNTIL THE DEFENDANT IS ELIGIBLE FOR PAROLE.**

5 **(II) NOTHING IN THIS PARAGRAPH MAY BE CONSTRUED TO**
6 **PROHIBIT A DEFENDANT WHO IS SERVING A SENTENCE FOR A CRIME OF VIOLENCE,**
7 **AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE FROM PARTICIPATING IN**
8 **ANY OTHER TREATMENT PROGRAM OR RECEIVING TREATMENT UNDER THE**
9 **SUPERVISION OF THE DEPARTMENT UNDER ANY OTHER PROVISION OF LAW.**

10 8-506.

11 **(a) [A] SUBJECT TO THE ELIGIBILITY RESTRICTIONS UNDER § 8-505(A) OF**
12 **THIS SUBTITLE, A COURT MAY COMMIT A DEFENDANT TO THE DEPARTMENT FOR INPATIENT**
13 **EVALUATION AS TO DRUG OR ALCOHOL ABUSE IF:**

14 **(1) The court finds it is not clinically appropriate for the defendant to be**
15 **evaluated in a detention facility or an appropriate outpatient facility; and**

16 **(2) After an initial evaluation, the Department:**

17 **(i) Recommends a comprehensive inpatient evaluation of the**
18 **defendant;**

19 **(ii) Certifies that an appropriate facility is either currently, or within**
20 **a reasonable time will be able to, conduct the evaluation;**

21 **(iii) Provides to the court a date by which the evaluation can be**
22 **conducted; and**

23 **(iv) Gives the court prompt notice when an evaluation can be**
24 **conducted.**

25 8-507.

26 **(a) (1) [Subject] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
27 **SUBSECTION AND SUBJECT to the limitations in this section, a court that finds in a**
28 **criminal case or during a term of probation that a defendant has an alcohol or drug**
29 **dependency may commit the defendant as a condition of release, after conviction, or at any**
30 **other time the defendant voluntarily agrees to participate in treatment, to the Department**
31 **for treatment that the Department recommends, even if:**

32 **[(1)] (I) The defendant did not timely file a motion for reconsideration**
33 **under Maryland Rule 4-345; or**

1 [(2)] (II) The defendant timely filed a motion for reconsideration under
2 Maryland Rule 4-345 which was denied by the court.

3 (2) (I) IF A DEFENDANT IS SERVING A SENTENCE FOR A CRIME OF
4 VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, A COURT MAY
5 NOT ORDER THE DEPARTMENT TO ~~EVALUATE~~ TREAT A DEFENDANT UNDER THIS
6 SECTION UNTIL THE DEFENDANT IS ELIGIBLE FOR PAROLE.

7 (II) NOTHING IN THIS PARAGRAPH MAY BE CONSTRUED TO
8 PROHIBIT A DEFENDANT WHO IS SERVING A SENTENCE FOR A CRIME OF VIOLENCE,
9 AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, FROM PARTICIPATING IN
10 ANY OTHER TREATMENT PROGRAM OR RECEIVING TREATMENT UNDER THE
11 SUPERVISION OF THE DEPARTMENT UNDER ANY OTHER PROVISION OF LAW.

12 Article – Public Safety

13 5-133.

14 (c) (1) A person may not possess a regulated firearm if the person was
15 previously convicted of:

16 (i) a crime of violence;

17 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, §
18 5-613, [or] § 5-614, § 5-621, OR § 5-622 of the Criminal Law Article; or

19 (iii) an offense under the laws of another state or the United States
20 that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed
21 in this State.

22 (2) (i) Subject to paragraph (3) of this subsection, a person who violates
23 this subsection is guilty of a felony and on conviction is subject to imprisonment for not less
24 than 5 years and not exceeding 15 years.

25 (ii) The court may not suspend any part of the mandatory minimum
26 sentence of 5 years.

27 (iii) Except as otherwise provided in § 4-305 of the Correctional
28 Services Article, the person is not eligible for parole during the mandatory minimum
29 sentence.

30 (3) At the time of the commission of the offense, if a period of more than 5
31 years has elapsed since the person completed serving the sentence for the most recent
32 conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment,
33 mandatory supervision, probation, and parole:

1 (i) the imposition of the mandatory minimum sentence is within the
2 discretion of the court; and

3 (ii) the mandatory minimum sentence may not be imposed unless the
4 State's Attorney notifies the person in writing at least 30 days before trial of the State's
5 intention to seek the mandatory minimum sentence.

6 (4) Each violation of this subsection is a separate crime.

7 (5) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT
8 PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §
9 8-507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE
10 SENTENCE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.