

SB0101/492812/1

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 101
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Procedure – Expungement – Time for Filing” and substitute “Law – Crimes of Violence, Expungement, and Drug Treatment”; strike beginning with “repealing” in line 3 down through “records.” in line 9 and substitute “providing that the use of a firearm in the commission of a certain felony or other crime of violence constitutes a crime of violence; altering the circumstances under which sexual abuse of a minor is a crime of violence; eliminating parole eligibility for certain violent offenders under certain circumstances; adding to a certain list of convictions that may be expunged under certain circumstances; providing that a petition for expungement of a certain 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)”;

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in line 12, strike “10–105(c)(1) and (e)(2)” and substitute “10–110”; and after line 14, insert:

“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)”.

AMENDMENT NO. 2

On page 1, after line 16, insert:

“Article – Criminal Law

14–101.

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

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

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- (5) mayhem;
- (6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;
- (7) murder;
- (8) rape;
- (9) robbery under § 3–402 or § 3–403 of this article;
- (10) carjacking;
- (11) armed carjacking;
- (12) sexual offense in the first degree;
- (13) sexual offense in the second degree;
- (14) use of a [handgun] FIREARM in the commission of a felony EXCEPT POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE UNDER § 5–602(2) OF THIS ARTICLE, or other crime of violence;
- (15) child abuse in the first degree under § 3–601 of this article;
- (16) sexual abuse of a minor under § 3–602 of this article if:
 - (i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and
 - (ii) the offense involved:

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1. vaginal intercourse, as defined in § 3–301 of this article;

2. a sexual act, as defined in § 3–301 of this article;

3. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or

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

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

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

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

(20) assault in the first degree;

(21) assault with intent to murder;

(22) assault with intent to rape;

(23) assault with intent to rob;

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

and

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

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

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

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

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

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

1. HAS BEEN CONVICTED ON A PRIOR OCCASION OF A CRIME OF VIOLENCE, INCLUDING A CONVICTION FOR A CRIME COMMITTED BEFORE 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.

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(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.

AMENDMENT NO. 3

On pages 1 and 2, strike in their entirety the lines beginning with line 18 on page 1 through line 17 on page 2, inclusive, and substitute:

“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;

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

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

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

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

[(6) (VI) § 5-211 of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A FELONY THAT IS A VIOLATION OF:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article – Health – General

8-505.

(Over)

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

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

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

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

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

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

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

(a) [A] SUBJECT TO THE ELIGIBILITY RESTRICTIONS UNDER § 8-505(A) OF THIS SUBTITLE, A court may commit a defendant to the Department for inpatient evaluation as to drug or alcohol abuse if:

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

(2) After an initial evaluation, the Department:

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

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

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

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

8-507.

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

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

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

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

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

Article – Public Safety

5-133.

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

(i) a crime of violence;

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

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

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

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

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

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

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

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

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

(5) A PERSON CONVICTED UNDER THIS SUBSECTION IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §

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8-507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.