

SENATE BILL 118

E2
HB 660/23 – JUD

(PRE-FILED)

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CF HB 867

By: **Senators Muse and Hettleman**

Requested: October 27, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 2, 2024

CHAPTER _____

1 AN ACT concerning

2 ~~Criminal Procedure – Expungement and Shielding – Probation Before~~
3 ~~Judgment for Driving While Impaired or Under the Influence~~
4 Drunk Driving Offenses – Expungement and the Ignition Interlock System
5 Program

6 FOR the purpose of authorizing a person to file a petition for expungement of certain
7 records relating to a probation before judgment for driving while impaired or driving
8 while under the influence; ~~authorizing a certain person to petition a court to shield~~
9 ~~certain records relating to a probation before judgment for driving while impaired or~~
10 ~~driving while under the influence~~ requiring the Motor Vehicle Administration to
11 require certain persons who are convicted of, or granted certain probation for, certain
12 drunk driving offenses to participate in the Ignition Interlock System Program for
13 certain periods of time; and generally relating to ~~expungement and shielding~~ drunk
14 driving offenses.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Procedure
17 Section 10-105, ~~10-301, and 10-303~~
18 Annotated Code of Maryland
19 (2018 Replacement Volume and 2023 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Transportation
22 Section 16-404.1(a)(1), (4), and (5), (b)(1), and (d)(1)(ii) and (3)

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 Annotated Code of Maryland
 2 (2020 Replacement Volume and 2023 Supplement)

3 BY repealing and reenacting, with amendments,
 4 Article – Transportation
 5 Section 16–404.1(c)(1) and (d)(1)(i)1., (2)(i), and (4)
 6 Annotated Code of Maryland
 7 (2020 Replacement Volume and 2023 Supplement)

8 BY repealing
 9 Article – Transportation
 10 Section 16–404.1(d)(1)(i)2.
 11 Annotated Code of Maryland
 12 (2020 Replacement Volume and 2023 Supplement)

13 BY adding to
 14 Article – Transportation
 15 Section 16–404.1(d)(1)(i)2.
 16 Annotated Code of Maryland
 17 (2020 Replacement Volume and 2023 Supplement)

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

20 **Article – Criminal Procedure**

21 10–105.

22 (a) A person who has been charged with the commission of a crime, including a
 23 violation of the Transportation Article for which a term of imprisonment may be imposed,
 24 or who has been charged with a civil offense or infraction, except a juvenile offense, may
 25 file a petition listing relevant facts for expungement of a police record, court record, or other
 26 record maintained by the State or a political subdivision of the State if:

27 (1) the person is acquitted;

28 (2) the charge is otherwise dismissed;

29 (3) a probation before judgment is entered, unless the person is charged
 30 with a violation of ~~§~~ 21–902(C), (D), (H), OR (I) of the Transportation Article or ~~§~~ Title 2,
 31 Subtitle 5 or § 3–211 of the Criminal Law Article;

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

1 (iii) telephone misuse;

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

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

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

8 (a-1) An expungement may not be obtained under subsection (a)(11) of this section
9 for a conviction for sodomy as that offense existed before October 1, 2020, or a violation of
10 § 3-322 of the Criminal Law Article as that offense existed before October 1, 2023, where
11 the offense was committed:

12 (1) without consent;

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

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

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

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

20 (6) with a substantially cognitively impaired individual, as defined in §
21 3-301 of the Criminal Law Article.

22 (a-2) A person's attorney or personal representative may file a petition, on behalf of
23 the person, for expungement under this section if the person died before disposition of the
24 charge by nolle prosequi or dismissal.

25 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection and §
26 10-105.1 of this subtitle, a person shall file a petition in the court in which the proceeding
27 began.

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

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

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

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

9 (c) (1) Except as provided in paragraph (2) of this subsection, a petition for
10 expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within
11 3 years after the disposition, unless the petitioner files with the petition a written general
12 waiver and release of all the petitioner's tort claims arising from the charge.

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

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

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

21 (II) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION
22 BEFORE JUDGMENT FOR A VIOLATION OF § 21–902(A) OR (B) OF THE
23 TRANSPORTATION ARTICLE MAY NOT BE FILED WITHIN ~~10~~ 15 YEARS AFTER THE
24 DATE THE PETITIONER WAS DISCHARGED FROM PROBATION.

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

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

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

34 (6) A petition for expungement based on the conviction of a crime under
35 subsection (a)(9) of this section may not be filed within 3 years after the conviction or

1 satisfactory completion of the sentence, including probation, that was imposed for the
2 conviction, whichever is later.

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

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

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

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

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

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

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

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

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

24 (i) **EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,** the
25 petition is based on the entry of probation before judgment, except a probation before
26 judgment for a crime where the act on which the conviction is based is no longer a crime,
27 and the person within ~~3 years of~~ **3 YEARS AFTER** the entry of the probation before
28 judgment has been convicted of a crime other than a minor traffic violation or a crime where
29 the act on which the conviction is based is no longer a crime;

30 **(II) THE PETITION IS BASED ON THE ENTRY OF PROBATION**
31 **BEFORE JUDGMENT FOR A VIOLATION OF § 21–902(A) OR (B) OF THE**
32 **TRANSPORTATION ARTICLE AND THE PERSON WITHIN 15 YEARS AFTER THE ENTRY**
33 **OF THE PROBATION BEFORE JUDGMENT HAS:**

1 1. BEEN CONVICTED OF A CRIME OTHER THAN A MINOR
 2 TRAFFIC VIOLATION OR A CRIME WHERE THE ACT ON WHICH THE CONVICTION IS
 3 BASED IS NO LONGER A CRIME; OR

4 2. RECEIVED PROBATION BEFORE JUDGMENT FOR A
 5 VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE; or

6 ~~(ii)~~ **(III)** the person is a defendant in a pending criminal
 7 proceeding.

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

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

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

15 ~~10-301.~~

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

17 ~~(b) "Court record" has the meaning stated in § 10-101 of this title.~~

18 ~~(c) "Criminal justice unit" has the meaning stated in § 10-201 of this title.~~

19 ~~(d) "Police record" has the meaning stated in § 10-101 of this title.~~

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

24 ~~(f) "Shieldable conviction" means a conviction of one of the following crimes:~~

25 ~~(1) disorderly conduct under § 10-201(e)(2) of the Criminal Law Article;~~

26 ~~(2) disturbing the peace under § 10-201(e)(4) of the Criminal Law Article;~~

27 ~~(3) failure to obey a reasonable and lawful order under § 10-201(e)(3) of the~~
 28 ~~Criminal Law Article;~~

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

1 ~~(5) trespass on posted property under § 6-402 of the Criminal Law Article;~~

2 ~~(6) possessing or administering a controlled dangerous substance under §~~
3 ~~5-601 of the Criminal Law Article;~~

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

6 ~~(8) use of or possession with intent to use drug paraphernalia under §~~
7 ~~5-619(e)(2) of the Criminal Law Article;~~

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

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

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

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

15 ~~(g) "SHIELDABLE OFFENSE" MEANS A VIOLATION OF § 21-902 OF THE~~
16 ~~TRANSPORTATION ARTICLE FOR WHICH THE DEFENDANT RECEIVED PROBATION~~
17 ~~BEFORE JUDGMENT.~~

18 ~~(H) "Unit" means two or more convictions, OR A CONVICTION OR CONVICTIONS~~
19 ~~AND A SHIELDABLE OFFENSE, that arise from the same incident, transaction, or set of~~
20 ~~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 ~~(e) If a person is not eligible for shielding of one conviction OR SHIELDABLE~~
6 ~~OFFENSE in a unit, the person is not eligible for shielding of any other conviction OR~~
7 ~~SHIELDABLE OFFENSE in the unit.~~

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

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

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

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

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

23 ~~(4) A person may be granted only one shielding petition over the lifetime of~~
24 ~~the person.~~

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

29 Article – Transportation

30 16-404.1.

31 (a) (1) In this section the following words have the meanings indicated.

32 (4) “Participant” means a participant in the Ignition Interlock System
33 Program.

1 (5) “Program” means the Ignition Interlock System Program.

2 (b) (1) The Administration shall establish an Ignition Interlock System
3 Program in accordance with this section.

4 (c) An individual may be a participant if:

5 (1) The individual’s license is suspended or revoked under § 16–205 of this
6 title for a violation of [§ 21–902(b) or (c)] § 21–902(C) of this article or § 16–404 of this
7 subtitle for an accumulation of points under § 16–402(a)(29) of this subtitle **FOR DRIVING**
8 **WHILE IMPAIRED BY A DRUG, A COMBINATION OF DRUGS, OR A COMBINATION OF**
9 **ONE OR MORE DRUGS AND ALCOHOL;**

10 (d) (1) (i) Notwithstanding subsection (c) of this section, an individual
11 shall be a participant if:

12 1. The individual is convicted of, **OR IS GRANTED**
13 **PROBATION BEFORE JUDGMENT UNDER § 6–220 OF THE CRIMINAL PROCEDURE**
14 **ARTICLE FOR, a violation of § 21–902(a) OR (B) of this article;**

15 2. The individual is convicted of a violation of §
16 21–902(b)(2) of this article and the minor who was transported was under the age of 16
17 years:]

18 2. **THE INDIVIDUAL’S LICENSE IS SUSPENDED OR**
19 **REVOKED UNDER § 16–205 OF THIS TITLE FOR A VIOLATION OF § 21–902(B) OF THIS**
20 **ARTICLE OR UNDER § 16–404 OF THIS SUBTITLE FOR AN ACCUMULATION OF POINTS**
21 **UNDER § 16–402(A)(29) OF THIS SUBTITLE FOR DRIVING WHILE IMPAIRED BY**
22 **ALCOHOL;**

23 (ii) If an individual is subject to this paragraph and fails to
24 participate in the Program or successfully complete the Program, the Administration shall
25 suspend, notwithstanding § 16–208 of this title, the individual’s license until the individual
26 successfully completes the Program.

27 (2) (i) Notwithstanding subsection (c) of this section, an individual
28 shall be a participant as a condition of modification of a suspension or revocation of a license
29 or issuance of a restricted license if the individual:

30 1. Is required to be a participant by a court order under [§
31 27–107] § 21–902.2 of this article; **OR**

32 2. [Is convicted of a violation of § 21–902(b) of this article and
33 within the preceding 5 years the individual has been convicted of any violation of § 21–902
34 of this article; or

1 3.] Was under the age of 21 years on the date of a violation by
2 the individual of:

3 A. An alcohol restriction imposed under § 16-113(b)(1) of this
4 title; or

5 B. [\§ 21-902(b) or (c)] § 21-902(C) of this article.

6 (3) Except as provided in § 16-205 of this title, an individual who is subject
7 to this subsection shall participate in the Program for:

8 (i) 6 months the first time the individual is required under this
9 subsection to participate in the Program;

10 (ii) 1 year the second time the individual is required under this
11 subsection to participate in the Program; and

12 (iii) 3 years the third or any subsequent time the individual is
13 required under this subsection to participate in the Program.

14 (4) Paragraph (3) of this subsection does not limit a longer period of
15 Program participation that is required by:

16 (i) A court order under [\§ 27-107] § 21-902.2 of this article; or

17 (ii) The Administration in accordance with another provision of this
18 title.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 ~~October~~ July 1, 2024.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.