
By: **Delegates Carter, Anderson, Dumais, Gutierrez, Howard, Kaiser,
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Vallario**

Introduced and read first time: February 4, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Expungement - Automatic**

3 FOR the purpose of prohibiting a court from assessing costs against a certain
4 defendant in connection with an expungement under certain circumstances;
5 altering a provision of law so as to make certain procedures relating to
6 expungement of certain records applicable only to certain arrests, detentions, or
7 confinements occurring before a certain date; establishing that for certain
8 arrests, detentions, or confinements occurring on or after a certain date, the
9 person arrested, detained, or confined is entitled to expungement of certain
10 police records; requiring a certain law enforcement unit to take certain actions
11 within a certain amount of time after release of a certain person entitled to
12 expungement of a certain police record; requiring certain entities to take certain
13 actions within a certain amount of time after receipt of a certain notice of
14 expungement; authorizing a certain person to apply for a certain order of
15 expungement under certain circumstances; altering a provision of law so as to
16 make certain procedures relating to expungement of certain records applicable
17 only to certain charges filed before a certain date; establishing that for certain
18 charges filed on or after a certain date, the person charged is entitled to
19 expungement of certain records under certain circumstances; requiring a court
20 to pass an order requiring the expungement of certain records under certain
21 circumstances; requiring a certain custodian of records to take certain actions
22 within a certain amount of time after a court enters an order of expungement;
23 altering a provision of law so as to make certain procedures relating to
24 expungement of certain juvenile records applicable only to certain charges filed
25 before a certain date; establishing that for certain charges filed on or after a
26 certain date, the person charged is entitled to expungement of the charge under
27 certain circumstances; requiring the juvenile court to pass an order requiring
28 the expungement of certain records under certain circumstances; requiring a
29 certain custodian of records to take certain actions within a certain amount of
30 time after a juvenile court enters an order of expungement; repealing a certain
31 provision denying entitlement to expungement under certain circumstances
32 relating to charges arising from the same incident, transaction, or set of facts;
33 providing that the right to expungement of one charge that arises from a

1 particular incident, transaction, or set of facts does not affect any right to
2 expungement of any other charge arising out of the same incident, transaction,
3 or set of facts; and generally relating to expungement of police and court records.

4 BY repealing and reenacting, without amendments,

5 Article - Criminal Procedure
6 Section 10-101
7 Annotated Code of Maryland
8 (2001 Volume and 2003 Supplement)

9 BY repealing and reenacting, with amendments,

10 Article - Criminal Procedure
11 Section 10-102 through 10-106
12 Annotated Code of Maryland
13 (2001 Volume and 2003 Supplement)

14 BY repealing

15 Article - Criminal Procedure
16 Section 10-107
17 Annotated Code of Maryland
18 (2001 Volume and 2003 Supplement)

19 BY adding to

20 Article - Criminal Procedure
21 Section 10-103.1, 10-105.1, 10-106.1, and 10-107
22 Annotated Code of Maryland
23 (2001 Volume and 2003 Supplement)

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

26 **Article - Criminal Procedure**

27 10-101.

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

29 (b) "Central Repository" means the Criminal Justice Information System
30 Central Repository in the Department.

31 (c) (1) "Court record" means an official record of a court about a criminal
32 proceeding that the clerk of a court or other court personnel keeps.

33 (2) "Court record" includes:

1 (i) a record of a violation of the Transportation Article for which a
2 term of imprisonment may be imposed; and

3 (ii) an index, docket entry, charging document, pleading,
4 memorandum, transcription of proceedings, electronic recording, order, and
5 judgment.

6 (d) "Expunge" means to remove information from public inspection in
7 accordance with this subtitle.

8 (e) "Expungement" with respect to a court record or a police record means
9 removal from public inspection:

10 (1) by obliteration;

11 (2) by removal to a separate secure area to which persons who do not
12 have a legitimate reason for access are denied access; or

13 (3) if access to a court record or police record can be obtained only by
14 reference to another court record or police record, by the expungement of it or the part
15 of it that provides access.

16 (f) "Law enforcement unit" means a State, county, or municipal police
17 department or unit, the office of a sheriff, the office of a State's Attorney, the office of
18 the State Prosecutor, or the office of the Attorney General of the State.

19 (g) "Minor traffic violation" means a nonincarcerable violation of the
20 Maryland Vehicle Law or any other traffic law, ordinance, or regulation.

21 (h) "Police record" means an official record that a law enforcement unit,
22 booking facility, or the Central Repository maintains about the arrest and detention
23 of, or further proceeding against, a person for:

24 (1) a criminal charge;

25 (2) a suspected violation of a criminal law; or

26 (3) a violation of the Transportation Article for which a term of
27 imprisonment may be imposed.

28 10-102.

29 (a) A police record or a court record [may be expunged] IS SUBJECT TO
30 EXPUNGEMENT under this subtitle.

31 (b) (1) A court record or a police record that existed before July 1, 1975, and
32 is still maintained, may be expunged under this subtitle.

33 (2) A person who is entitled to the expungement of a court record or a
34 police record that existed before July 1, 1975, may use the procedures for
35 expungement provided under this subtitle.

1 (3) The limitation periods provided in §§ 10-103 and 10-105 of this
2 subtitle begin when the person becomes entitled to expungement of a court record or
3 a police record that existed before July 1, 1975.

4 (4) The custodian of court records or police records that were made
5 before July 1, 1975, and that may be expunged under this subtitle:

6 (i) shall make a reasonable search for a record requested for
7 expungement; but

8 (ii) need not expunge a court record or a police record that is not
9 found after a reasonable search.

10 (c) This subtitle does not apply to:

11 (1) a record about a minor traffic violation;

12 (2) the published opinion of a court;

13 (3) a cash receipt or disbursement record that is necessary for audit
14 purposes;

15 (4) a transcript of court proceedings made by a court reporter in a
16 multiple defendant case;

17 (5) an investigatory file; or

18 (6) a record of the work product of a law enforcement unit that is used
19 solely for police investigation.

20 (D) A COURT MAY NOT ASSESS ANY COSTS AGAINST A DEFENDANT IN
21 CONNECTION WITH AN EXPUNGEMENT THAT IS EFFECTED UNDER THIS SUBTITLE.

22 10-103.

23 (a) [A] FOR ARRESTS, DETENTIONS, OR CONFINEMENTS OCCURRING
24 BEFORE OCTOBER 1, 2004, A person who is arrested, detained, or confined by a law
25 enforcement unit for the suspected commission of a crime and then is released
26 without being charged with the commission of a crime may:

27 (1) give written notice of these facts to a law enforcement unit that the
28 person believes may have a police record about the matter; and

29 (2) request the expungement of the police record.

30 (b) (1) Except as provided in paragraph (2) of this subsection, a person may
31 not give notice under this subtitle before the statute of limitations expires for all tort
32 claims that arise from the incident.

1 (2) (i) A person may give notice before the statute of limitations
2 expires if the person attaches to the notice a written general waiver and release, in
3 legal form, of all tort claims that the person has arising from the incident.

4 (ii) The notice and waiver are not subject to expungement.

5 (3) The law enforcement unit shall keep the notice and waiver at least
6 until any applicable statute of limitations expires.

7 (4) The person shall give the notice within 8 years after the date of the
8 incident.

9 (c) (1) On receipt of a timely filed notice, the law enforcement unit promptly
10 shall investigate and try to verify the facts stated in the notice.

11 (2) If the law enforcement unit finds the facts are true, the law
12 enforcement unit shall:

13 (i) search diligently for each police record about the arrest,
14 detention, or confinement of the person;

15 (ii) expunge each police record it has about the arrest, detention, or
16 confinement within 60 days after receipt of the notice; and

17 (iii) send a copy of the notice and the law enforcement unit's
18 verification of the facts in the notice to:

19 1. the Central Repository;

20 2. each booking facility or law enforcement unit that the law
21 enforcement unit believes may have a police record about the arrest, detention, or
22 confinement; and

23 3. the person requesting expungement.

24 (d) Within 30 days after receipt of the notice, the Central Repository, booking
25 facility, and any other law enforcement unit shall search diligently for and expunge a
26 police record about the arrest, detention, or confinement.

27 (e) If the law enforcement unit to which the person has sent notice finds that
28 the person is not entitled to an expungement of the police record, the law enforcement
29 unit, within 60 days after receipt of the notice, shall advise the person in writing of:

30 (1) the denial of the request for expungement; and

31 (2) the reasons for the denial.

32 (f) (1) (i) If a request by the person for expungement of a police record is
33 denied under subsection (e) of this section, the person may apply for an order of
34 expungement in the District Court that has proper venue against the law
35 enforcement unit.

1 (ii) The person shall file the application within 30 days after the
2 written notice of the denial is mailed or delivered to the person.

3 (2) After notice to the law enforcement unit, the court shall hold a
4 hearing.

5 (3) If the court finds that the person is entitled to expungement, the
6 court shall order the law enforcement unit to expunge the police record.

7 (4) If the court finds that the person is not entitled to expungement of
8 the police record, the court shall deny the application.

9 (5) (i) The law enforcement unit is a party to the proceeding.

10 (ii) Each party to the proceeding is entitled to appellate review on
11 the record, as provided in the Courts Article for appeals in civil cases from the District
12 Court.

13 10-103.1.

14 (A) FOR ARRESTS, DETENTIONS, OR CONFINEMENTS OCCURRING ON OR
15 AFTER OCTOBER 1, 2004, A PERSON WHO IS ARRESTED, DETAINED, OR CONFINED BY
16 A LAW ENFORCEMENT UNIT FOR THE SUSPECTED COMMISSION OF A CRIME AND
17 THEN IS RELEASED WITHOUT BEING CHARGED WITH THE COMMISSION OF A CRIME
18 IS ENTITLED TO EXPUNGEMENT OF ALL POLICE RECORDS RELATING TO THE
19 MATTER.

20 (B) WITHIN 30 DAYS AFTER RELEASE OF A PERSON ENTITLED TO
21 EXPUNGEMENT OF A POLICE RECORD UNDER SUBSECTION (A) OF THIS SECTION, THE
22 LAW ENFORCEMENT UNIT SHALL:

23 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD
24 ABOUT THE ARREST, DETENTION, OR CONFINEMENT OF THE PERSON; AND

25 (2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT
26 FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING ARREST, DETENTION, OR
27 CONFINEMENT TO:

28 (I) THE CENTRAL REPOSITORY;

29 (II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT
30 THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE
31 ARREST, DETENTION, OR CONFINEMENT; AND

32 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

33 (C) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL
34 REPOSITORY, BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL:

35 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD
36 ABOUT THE ARREST, DETENTION, OR CONFINEMENT OF THE PERSON; AND

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

3 (D) (1) IF A LAW ENFORCEMENT UNIT, BOOKING FACILITY, OR THE
4 CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE RECORD AS REQUIRED UNDER
5 SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON MAY APPLY FOR AN ORDER OF
6 EXPUNGEMENT IN THE DISTRICT COURT THAT HAS PROPER VENUE AGAINST THE
7 LAW ENFORCEMENT UNIT OR OTHER RESPONDENT.

8 (2) AFTER NOTICE TO THE RESPONDENT, THE COURT SHALL HOLD A
9 HEARING.

10 (3) IF THE COURT FINDS THAT THE PERSON IS ENTITLED TO
11 EXPUNGEMENT, THE COURT SHALL ORDER THE RESPONDENT TO EXPUNGE THE
12 POLICE RECORD.

13 (4) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO
14 EXPUNGEMENT OF THE POLICE RECORD, THE COURT SHALL DENY THE
15 APPLICATION.

16 10-104.

17 [(a) Unless] FOR CHARGES FILED BEFORE OCTOBER 1, 2004, UNLESS the State
18 objects and shows cause why a record should not be expunged, if the State enters a
19 nolle prosequi as to all charges in a criminal case within the jurisdiction of the
20 District Court with which a defendant has not been served, the District Court may
21 order expungement of each court record, police record, or other record that the State
22 or a political subdivision of the State keeps as to the charges.

23 [(b) The District Court may not assess any costs against a defendant for a
24 proceeding under subsection (a) of this section.]

25 10-105.

26 (a) [A] FOR CHARGES FILED BEFORE OCTOBER 1, 2004, A person who has been
27 charged with the commission of a crime, including a violation of the Transportation
28 Article for which a term of imprisonment may be imposed, may file a petition listing
29 relevant facts for expungement of a police record, court record, or other record
30 maintained by the State or a political subdivision of the State if:

31 (1) the person is acquitted;

32 (2) the charge is otherwise dismissed;

33 (3) a probation before judgment is entered, unless the person is charged
34 with a violation of § 21-902 of the Transportation Article or Title 2, Subtitle 5 or §
35 3-211 of the Criminal Law Article;

36 (4) a nolle prosequi is entered;

1 (5) the court indefinitely postpones trial of a criminal charge by marking
2 the criminal charge "stet" on the docket;

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

4 (7) the charge was transferred to the juvenile court under § 4-202 of this
5 article; or

6 (8) the person:

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

9 (ii) is granted a full and unconditional pardon by the Governor.

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

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

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

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

20 (c) (1) A petition for expungement based on an acquittal, a nolle prosequi, or
21 a dismissal may not be filed within 3 years after the disposition, unless the petitioner
22 files with the petition a written general waiver and release of all the petitioner's tort
23 claims arising from the charge.

24 (2) A petition for expungement based on a probation before judgment
25 may not be filed earlier than the later of:

26 (i) the date the petitioner was discharged from probation; or

27 (ii) 3 years after the probation was granted.

28 (3) 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
30 the Governor.

31 (4) A petition for expungement based on a stet or a compromise under §
32 3-207 of the Criminal Law Article may not be filed within 3 years after the stet or
33 compromise.

34 (5) A court may grant a petition for expungement at any time on a
35 showing of good cause.

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

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

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

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

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

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

14 (i) the petition is based on the entry of probation before judgment,
15 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

16 (ii) the person:

17 1. since the full and unconditional pardon or entry, has been
18 convicted of a crime other than a minor traffic violation; or

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

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

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

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

27 10-105.1.

28 (A) FOR CHARGES FILED ON OR AFTER OCTOBER 1, 2004, A PERSON WHO HAS
29 BEEN CHARGED WITH THE COMMISSION OF A CRIME, INCLUDING A VIOLATION OF
30 THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE
31 IMPOSED, IS ENTITLED TO EXPUNGEMENT OF A POLICE RECORD, COURT RECORD, OR
32 OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE
33 STATE IF:

34 (1) THE PERSON IS ACQUITTED;

35 (2) THE CHARGE IS OTHERWISE DISMISSED;

1 (3) A PROBATION BEFORE JUDGMENT IS ENTERED, UNLESS THE
2 PERSON IS CHARGED WITH A VIOLATION OF § 21-902 OF THE TRANSPORTATION
3 ARTICLE OR TITLE 2, SUBTITLE 5 OR § 3-211 OF THE CRIMINAL LAW ARTICLE;

4 (4) A NOLLE PROSEQUI IS ENTERED;

5 (5) THE COURT INDEFINITELY POSTPONES TRIAL OF A CRIMINAL
6 CHARGE BY MARKING THE CRIMINAL CHARGE "STET" ON THE DOCKET;

7 (6) THE CASE IS COMPROMISED UNDER § 3-207 OF THE CRIMINAL LAW
8 ARTICLE;

9 (7) THE CHARGE WAS TRANSFERRED TO THE JUVENILE COURT UNDER §
10 4-202 OF THIS ARTICLE; OR

11 (8) THE PERSON:

12 (I) IS CONVICTED OF ONLY ONE CRIMINAL ACT, AND THAT ACT IS
13 NOT A CRIME OF VIOLENCE; AND

14 (II) IS GRANTED A FULL AND UNCONDITIONAL PARDON BY THE
15 GOVERNOR.

16 (B) IMMEDIATELY AFTER DISPOSITION OF A CHARGE AS SET FORTH IN
17 SUBSECTION (A) OF THIS SECTION, THE COURT EFFECTING THE DISPOSITION SHALL
18 PASS AN ORDER REQUIRING THE EXPUNGEMENT OF ALL POLICE RECORDS AND
19 COURT RECORDS ABOUT THE CHARGE.

20 (C) WITHIN 30 DAYS AFTER ENTRY OF THE ORDER, EACH CUSTODIAN OF THE
21 POLICE RECORDS AND COURT RECORDS THAT ARE SUBJECT TO THE ORDER OF
22 EXPUNGEMENT SHALL:

23 (1) SEARCH DILIGENTLY FOR AND EXPUNGE ALL POLICE RECORDS AND
24 COURT RECORDS RELATING TO THE CHARGE; AND

25 (2) ADVISE IN WRITING THE COURT AND THE PERSON ENTITLED TO
26 EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.

27 10-106.

28 (a) In this section AND § 10-107 OF THIS SUBTITLE, "delinquency petition"
29 means a petition filed under § 3-8A-10 of the Courts Article alleging that a child is a
30 delinquent child.

31 (b) [A] FOR CHARGES FILED BEFORE OCTOBER 1, 2004, A person may file a
32 petition for expungement of a criminal charge transferred to the juvenile court under
33 § 4-202 of this article:

34 (1) after the date of the decision not to file a delinquency petition; or

35 (2) after the decision on the delinquency petition of facts-not-sustained.

1 (c) The court may grant a petition for expungement to a person when the
2 person becomes 21 years old, if a charge transferred under § 4-202 of this article
3 resulted in the adjudication of the person as a delinquent child.

4 (d) A court shall grant a petition for expungement of a criminal charge that
5 was transferred to the juvenile court under § 4-202 of this article, if:

6 (1) the charge that was transferred under § 4-202 of this article did not
7 result in the filing of a delinquency petition; or

8 (2) the decision on the delinquency petition was that there was a finding
9 of facts-not-sustained.

10 10-106.1.

11 (A) FOR CHARGES FILED ON OR AFTER OCTOBER 1, 2004, A PERSON IS
12 ENTITLED TO EXPUNGEMENT OF A CRIMINAL CHARGE TRANSFERRED TO THE
13 JUVENILE COURT UNDER § 4-202 OF THIS ARTICLE:

14 (1) AFTER THE DATE OF THE DECISION NOT TO FILE A DELINQUENCY
15 PETITION;

16 (2) AFTER THE DECISION ON THE DELINQUENCY PETITION OF
17 FACTS-NOT-SUSTAINED; OR

18 (3) WHEN THE PERSON BECOMES 21 YEARS OLD, IF THE CHARGE
19 RESULTED IN THE ADJUDICATION OF THE PERSON AS A DELINQUENT CHILD.

20 (B) IMMEDIATELY AFTER DISPOSITION OF A CHARGE AS SET FORTH IN
21 SUBSECTION (A) OF THIS SECTION, THE JUVENILE COURT SHALL PASS AN ORDER
22 REQUIRING THE EXPUNGEMENT OF ALL POLICE RECORDS AND COURT RECORDS
23 ABOUT THE CHARGE.

24 (C) WITHIN 30 DAYS AFTER ENTRY OF THE ORDER, EACH CUSTODIAN OF THE
25 POLICE RECORDS AND COURT RECORDS THAT ARE SUBJECT TO THE ORDER OF
26 EXPUNGEMENT SHALL:

27 (1) SEARCH DILIGENTLY FOR AND EXPUNGE ALL POLICE RECORDS AND
28 COURT RECORDS RELATING TO THE CHARGE; AND

29 (2) ADVISE IN WRITING THE JUVENILE COURT AND THE PERSON
30 ENTITLED TO EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.

31 [10-107.

32 (a) (1) In this subtitle, if two or more charges, other than one for a minor
33 traffic violation, arise from the same incident, transaction, or set of facts, they are
34 considered to be a unit.

35 (2) A charge for a minor traffic violation that arises from the same
36 incident, transaction, or set of facts as a charge in the unit is not a part of the unit.

1 (b) (1) If a person is not entitled to expungement of one charge in a unit, the
2 person is not entitled to expungement of any other charge in the unit.

3 (2) The disposition of a charge for a minor traffic violation that arises
4 from the same incident, transaction, or set of facts as a charge in the unit does not
5 affect any right to expungement of a charge in the unit.]

6 10-107.

7 THE RIGHT TO EXPUNGEMENT OF ONE CHARGE THAT ARISES FROM A
8 PARTICULAR INCIDENT, TRANSACTION, OR SET OF FACTS DOES NOT AFFECT ANY
9 RIGHT TO EXPUNGEMENT OF ANOTHER CHARGE ARISING OUT OF THE SAME
10 INCIDENT, TRANSACTION, OR SET OF FACTS.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2004.