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By: **Delegates Petzold, Anderson, Heller, Hennessy, Kelley, Mandel,  
McComas, Menes, Montgomery, Murray, Quinter, Sophocleus, Stern,  
and Vallario**

Introduced and read first time: January 21, 2004

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Identity Theft - Victim - Expungement of False Criminal Record**

3 FOR the purpose of authorizing a court to order a defendant who pleads guilty or is  
4 found guilty of using another person's name or other identification without  
5 consent or authorization to make restitution to the victim for certain costs  
6 associated with an expungement proceeding for the victim that arose because of  
7 the identity theft; allowing a person to file a petition for expungement of certain  
8 records if the records resulted from the arrest of another using the person's  
9 name or other identification without consent or authorization; requiring the  
10 court, if it finds the person is entitled to expungement, to note in writing that  
11 expungement is ordered because the person is the victim of identity theft;  
12 clarifying a certain provision concerning not being entitled to expungement of  
13 criminal records for certain reasons; and generally relating to identity theft.

14 BY repealing and reenacting, without amendments,  
15 Article - Criminal Law  
16 Section 8-301(a), (b), and (c)  
17 Annotated Code of Maryland  
18 (2002 Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Criminal Law  
21 Section 8-301(f)  
22 Annotated Code of Maryland  
23 (2002 Volume and 2003 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article - Criminal Procedure  
26 Section 10-105(a), (d), and (e)  
27 Annotated Code of Maryland  
28 (2001 Volume and 2003 Supplement)

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

3 **Article - Criminal Law**

4 8-301.

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

6 (2) "Payment device number" has the meaning stated in § 8-213 of this  
7 title.

8 (3) "Personal identifying information" means a name, address, telephone  
9 number, driver's license number, Social Security number, place of employment,  
10 employee identification number, mother's maiden name, bank or other financial  
11 institution account number, date of birth, personal identification number, credit card  
12 number, or other payment device number.

13 (b) A person may not knowingly, willfully, and with fraudulent intent possess,  
14 obtain, or help another to possess or obtain any personal identifying information of an  
15 individual, without the consent of the individual, in order to use, sell, or transfer the  
16 information to get a benefit, credit, good, service, or other thing of value in the name  
17 of the individual.

18 (c) A person may not knowingly and willfully assume the identity of another:

19 (1) to avoid identification, apprehension, or prosecution for a crime; or

20 (2) with fraudulent intent to:

21 (i) get a benefit, credit, good, service, or other thing of value; or

22 (ii) avoid the payment of debt or other legal obligation.

23 (f) In addition to restitution under Title 11, Subtitle 6 of the Criminal  
24 Procedure Article, a court may order a person who pleads guilty or nolo contendere or  
25 who is found guilty under this section to make restitution to the victim for reasonable  
26 costs, including reasonable attorney's fees, incurred:

27 (1) for clearing the victim's credit history or credit rating; [and]

28 (2) in connection with a civil or administrative proceeding to satisfy a  
29 debt, lien, judgment, or other obligation of the victim that arose because of the  
30 violation; AND

31 (3) IN CONNECTION WITH AN EXPUNGEMENT PROCEEDING UNDER §  
32 10-105(A)(2) OF THE CRIMINAL PROCEDURE ARTICLE FOR THE VICTIM THAT AROSE  
33 BECAUSE OF THE VIOLATION.

**Article - Criminal Procedure**

10-105.

(a) (1) A person who has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, 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:

[(1)] (I) the person is acquitted;

[(2)] (II) the charge is otherwise dismissed;

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

[(4)] (IV) a nolle prosequi is entered;

[(5)] (V) the court indefinitely postpones trial of a criminal charge by marking the criminal charge "stet" on the docket;

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

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

[(8)] (VIII) the person:

[(i)] 1. is convicted of only one criminal act, and that act is not a crime of violence; and

[(ii)] 2. is granted a full and unconditional pardon by the Governor.

(2) A PERSON MAY FILE A PETITION FOR EXPUNGEMENT OF A POLICE RECORD, COURT RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IF THE RECORD RESULTED FROM THE ARREST OF ANOTHER PERSON USING, WITHOUT CONSENT OR AUTHORIZATION IN VIOLATION OF § 8-301 OF THE CRIMINAL LAW ARTICLE, THE NAME OR OTHER IDENTIFICATION OF THE PERSON SEEKING EXPUNGEMENT.

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

(2) Unless the State's Attorney files an objection to the petition for expungement within 30 days after the petition is served, the court shall:

1 (I) pass an order requiring the expungement of all police records  
2 and court records about the charge; AND

3 (II) IF THE PETITION FOR EXPUNGEMENT IS FILED UNDER  
4 SUBSECTION (A)(2) OF THIS SECTION, NOTE IN WRITING THAT THE EXPUNGEMENT IS  
5 ORDERED BECAUSE THE PERSON IS THE VICTIM OF A VIOLATION OF § 8-301 OF THE  
6 CRIMINAL LAW ARTICLE.

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

9 (2) If the court at the hearing finds that the person is entitled to  
10 expungement, the court shall:

11 (I) order the expungement of all police records and court records  
12 about the charge; AND

13 (II) IF THE PETITION FOR EXPUNGEMENT IS FILED UNDER  
14 SUBSECTION (A)(2) OF THIS SECTION, NOTE IN WRITING THAT THE EXPUNGEMENT IS  
15 ORDERED BECAUSE THE PERSON IS THE VICTIM OF A VIOLATION OF § 8-301 OF THE  
16 CRIMINAL LAW ARTICLE.

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

19 (4) The person is not entitled to expungement UNDER SUBSECTION (A)(1)  
20 OF THIS SECTION if:

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

23 (ii) the person:

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

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

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