

HOUSE BILL 931

I3, E2

71r1608

By: **Delegates Kipke, Beidle, Beitzel, Benson, V. Clagett, Costa, Dwyer, Eckardt, Elmore, Frank, Frush, Gaines, Hubbard, Ivey, Kach, J. King, Kullen, Love, McComas, Mizeur, Montgomery, Pena-Melnyk, Schuh, Shank, Shewell, Smigiel, Sossi, Stocksdales, Stukes, Stull, and Tarrant**

Introduced and read first time: February 9, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud - 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 that arose because of the identity
7 fraud; allowing a person to request that the Office of the Attorney General file a
8 petition for expungement of certain records if the records resulted from the
9 arrest of another using the person's name or other identification without
10 consent or authorization; requiring the Office of the Attorney General to create
11 a certain form for requests for the filing of a petition for the expungement of
12 certain records and requiring that the form be made available over the Internet;
13 authorizing the Office of the Attorney General to charge a certain fee for
14 processing a certain request; requiring the court, if it finds the person is entitled
15 to expungement, to note in writing that expungement is ordered because the
16 person is the victim of identity fraud; clarifying a certain provision concerning
17 not being entitled to expungement of criminal records for certain reasons; and
18 generally relating to identity fraud.

19 BY repealing and reenacting, without amendments,

20 Article - Criminal Law

21 Section 8-301(a), (b), and (c)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2002 Volume and 2006 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Criminal Law
5 Section 8–301(f)
6 Annotated Code of Maryland
7 (2002 Volume and 2006 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section 10–105(a), (d), and (e)
11 Annotated Code of Maryland
12 (2001 Volume and 2006 Supplement)

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

15 **Article – Criminal Law**

16 8–301.

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

18 (2) “Payment device number” has the meaning stated in § 8–213 of
19 this title.

20 (3) “Personal identifying information” means a name, address,
21 telephone number, driver’s license number, Social Security number, place of
22 employment, employee identification number, mother’s maiden name, bank or other
23 financial institution account number, date of birth, personal identification number,
24 credit card number, or other payment device number.

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

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

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

1 (2) with fraudulent intent to:

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

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

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

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

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

12 **(3) BY THE VICTIM, IN CONNECTION WITH AN EXPUNGEMENT**
13 **PROCEEDING UNDER § 10-105(A)(2) OF THE CRIMINAL PROCEDURE ARTICLE.**

14 **Article - Criminal Procedure**

15 10-105.

16 (a) **(1)** A person who has been charged with the commission of a crime,
17 including a violation of the Transportation Article for which a term of imprisonment
18 may be imposed, may file a petition listing relevant facts for expungement of a police
19 record, court record, or other record maintained by the State or a political subdivision
20 of the State if:

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

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

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

26 [(4)] **(IV)** a nolle prosequi or nolle prosequi with the requirement of
27 drug or alcohol treatment is entered;

1 [(5)] (V) the court indefinitely postpones trial of a criminal charge by
2 marking the criminal charge “stet” or stet with the requirement of drug or alcohol
3 abuse treatment on the docket;

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

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

8 [(8)] (VIII) the person:

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

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

13 (2) (I) **A PERSON MAY REQUEST THAT THE OFFICE OF THE**
14 **ATTORNEY GENERAL FILE A PETITION FOR EXPUNGEMENT ON THE PERSON’S**
15 **BEHALF OF A POLICE RECORD, COURT RECORD, OR OTHER RECORD**
16 **MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IF THE**
17 **RECORD RESULTED FROM THE ARREST OF ANOTHER PERSON USING, WITHOUT**
18 **CONSENT OR AUTHORIZATION IN VIOLATION OF § 8–301 OF THE CRIMINAL LAW**
19 **ARTICLE, THE NAME OR OTHER IDENTIFICATION OF THE PERSON SEEKING**
20 **EXPUNGEMENT.**

21 (II) 1. **THE OFFICE OF THE ATTORNEY GENERAL SHALL**
22 **CREATE A FORM FOR USE BY A PERSON WHO REQUESTS AN EXPUNGEMENT**
23 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

24 2. **THE FORM SHALL BE MADE AVAILABLE OVER THE**
25 **INTERNET.**

26 (III) **THE OFFICE OF THE ATTORNEY GENERAL MAY CHARGE**
27 **A FEE NOT EXCEEDING \$75 TO PROCESS A REQUEST TO FILE A PETITION FOR**
28 **EXPUNGEMENT.**

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

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

3 (I) pass an order requiring the expungement of all police
4 records and court records about the charge; **AND**

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

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

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

13 (I) order the expungement of all police records and court
14 records about the charge; **AND**

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

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

21 (4) The person is not entitled to expungement **UNDER SUBSECTION**
22 **(A)(1) OF THIS SECTION** if:

23 (i) the petition is based on the entry of probation before
24 judgment, a nolle prosequi, or a stet, including a nolle prosequi with the requirement
25 of drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
26 treatment, or the grant of a pardon by the Governor; and

27 (ii) the person:

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

