

HOUSE BILL 680

E3, E2

0lr1402

By: **Delegates Carter, Anderson, Barnes, Dumais, Ramirez, Rosenberg, Schuler, Valderrama, Conaway, and Kramer**

Introduced and read first time: February 4, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Proceedings – Expungement of Records**

3 FOR the purpose of authorizing a person who has been charged with a juvenile offense
4 to file a certain petition for expungement of the juvenile record if certain
5 conditions are met; clarifying that a person is entitled to expungement of a
6 criminal charge transferred to the juvenile court under a certain provision of
7 law; establishing that, for certain detentions or confinements in a juvenile
8 proceeding occurring before a certain date, the person detained or confined may
9 request the expungement of the juvenile record under certain circumstances;
10 establishing that, for certain detentions or confinements in a juvenile
11 proceeding occurring on or after a certain date, the person detained or confined
12 is entitled to expungement of all juvenile records under certain circumstances;
13 requiring a certain law enforcement unit or the Department of Juvenile Services
14 to conduct a certain investigation and take certain actions under certain
15 circumstances; requiring certain entities to take certain actions within a certain
16 amount of time after receipt of a certain notice of expungement; authorizing a
17 person to apply to the District Court for an order of expungement under certain
18 circumstances; establishing certain appeal rights for certain parties to an
19 expungement proceeding; prohibiting the expungement by obliteration of an
20 expunged juvenile record until after a certain date; requiring expunged juvenile
21 records to be removed to a certain separate secure area; establishing certain
22 legitimate reasons for accessing certain expunged juvenile records; authorizing
23 a person entitled to expungement of a juvenile record to seek legal redress and
24 recover certain costs if certain entities fail to expunge a juvenile record;
25 prohibiting a person who is entitled to expungement of certain juvenile records
26 under certain circumstances from being required to pay any fees or costs in
27 connection with the expungement; defining certain terms; and generally
28 relating to juvenile proceedings and expungement of records.

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure
2 Section 10–105 and 10–106
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2009 Supplement)

5 BY adding to
6 Article – Criminal Procedure
7 Section 10–106.1
8 Annotated Code of Maryland
9 (2008 Replacement Volume and 2009 Supplement)

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

12 **Article – Criminal Procedure**

13 10–105.

14 (a) A person who has been charged with the commission of a crime, including
15 a violation of the Transportation Article for which a term of imprisonment may be
16 imposed, [or who has been charged with] a civil offense or infraction[, except a
17 juvenile offense,] as a substitute for a criminal charge, **OR A JUVENILE OFFENSE**
18 may file a petition listing relevant facts for expungement of a police record, court
19 record, **JUVENILE RECORD**, or other record maintained by the State or a political
20 subdivision of the State if:

21 (1) the person is acquitted;

22 (2) the charge is otherwise dismissed;

23 (3) 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) a nolle prosequi or nolle prosequi with the requirement of drug or
27 alcohol treatment is entered;

28 (5) the court indefinitely postpones trial of a criminal charge by
29 marking the criminal charge “stet” or stet with the requirement of drug or alcohol
30 abuse treatment on the docket;

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

33 (7) the charge was transferred to the juvenile court under § 4–202 of
34 this article;

1 **(8) THE DECISION ON THE DELINQUENCY PETITION WAS THAT**
2 **THERE WAS A FINDING OF FACTS–NOT–SUSTAINED;**

3 **[(8)] (9)** the person:

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

6 (ii) is granted a full and unconditional pardon by the Governor;
7 or

8 **[(9)] (10)** the person was convicted of a crime **OR FOUND INVOLVED**
9 **IN A JUVENILE PROCEEDING** under any State or local law that prohibits:

10 (i) urination or defecation in a public place;

11 (ii) panhandling or soliciting money;

12 (iii) drinking an alcoholic beverage in a public place;

13 (iv) obstructing the free passage of another in a public place or a
14 public conveyance;

15 (v) sleeping on or in park structures, such as benches or
16 doorways;

17 (vi) loitering;

18 (vii) vagrancy;

19 (viii) riding a transit vehicle without paying the applicable fare or
20 exhibiting proof of payment; or

21 (ix) except for carrying or possessing an explosive, acid,
22 concealed weapon, or other dangerous article as provided in § 7–705(b)(6) of the
23 Transportation Article, any of the acts specified in § 7–705 of the Transportation
24 Article.

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

27 (2) If the proceeding began in one court and was transferred to
28 another court, the person shall file the petition in the court to which the proceeding
29 was transferred.

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

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

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

11 (2) A petition for expungement based on a probation before judgment
12 or a stet with the requirement of drug or alcohol abuse treatment may not be filed
13 earlier than the later of:

14 (i) the date the petitioner was discharged from probation or the
15 requirements of obtaining drug or alcohol abuse treatment were completed; or

16 (ii) 3 years after the probation was granted or stet with the
17 requirement of drug or alcohol abuse treatment was entered on the docket.

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

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

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

27 (6) A petition for expungement based on the conviction of a crime
28 under subsection [(a)(9)] **(A)(10)** of this section may not be filed within 3 years after
29 the conviction or satisfactory completion of the sentence, including probation, that was
30 imposed for the conviction, whichever is later.

31 (7) A court may grant a petition for expungement at any time on a
32 showing of good cause.

33 (d) (1) The court shall have a copy of a petition for expungement served
34 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 pass an order
3 requiring the expungement of all police records and court records about the charge.

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

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

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

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

12 (i) the petition is based on the entry of probation before
13 judgment, a nolle prosequi, a stet, including a nolle prosequi with the requirement of
14 drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse
15 treatment, a conviction for a crime specified in subsection [(a)(9)] **(A)(10)** of this
16 section, or the grant of a pardon by the Governor; and

17 (ii) the person:

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

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

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

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

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

28 10-106.

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

31 (b) A person [may file, and a court shall grant, a petition for] **IS ENTITLED**
32 **TO** expungement of a criminal charge transferred to the juvenile court under § 4-202
33 of this article.

1 **(B) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS**
2 **SECTION MAY NOT BE REQUIRED TO PAY ANY FEES OR COSTS IN CONNECTION**
3 **WITH THE EXPUNGEMENT.**

4 **10-106.1**

5 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
6 **MEANINGS INDICATED.**

7 **(2) “DELINQUENCY PETITION” MEANS A PETITION FILED UNDER**
8 **§ 3-8A-10 OF THE COURTS ARTICLE ALLEGING THAT A CHILD IS A DELINQUENT**
9 **CHILD.**

10 **(3) “DELINQUENT ACT” MEANS AN ACT THAT WOULD BE A CRIME**
11 **IF COMMITTED BY AN ADULT.**

12 **(4) “DEPARTMENT” MEANS THE DEPARTMENT OF JUVENILE**
13 **SERVICES.**

14 **(5) “JUVENILE RECORD” MEANS AN OFFICIAL RECORD THAT THE**
15 **CENTRAL REPOSITORY, A BOOKING FACILITY, A LAW ENFORCEMENT UNIT, OR**
16 **THE DEPARTMENT MAINTAINS ABOUT THE ARREST AND DETENTION OF, OR**
17 **FURTHER PROCEEDING AGAINST, A PERSON FOR A SUSPECTED DELINQUENT**
18 **ACT.**

19 **(B) (1) FOR DETENTIONS OR CONFINEMENTS IN A JUVENILE**
20 **PROCEEDING OCCURRING BEFORE OCTOBER 1, 2010, A PERSON WHO AS A**
21 **MINOR IS DETAINED OR CONFINED BY A LAW ENFORCEMENT UNIT OR THE**
22 **DEPARTMENT FOR THE SUSPECTED COMMISSION OF A DELINQUENT ACT MAY**
23 **REQUEST THE EXPUNGEMENT OF THE JUVENILE RECORD IF THE PERSON IS**
24 **RELEASED:**

25 **(I) WITHOUT THE FILING OF A DELINQUENCY PETITION OR**
26 **PEACE ORDER; OR**

27 **(II) IN ACCORDANCE WITH AN INFORMAL ADJUSTMENT**
28 **PROCEDURE UNDER § 3-8A-10 OF THE COURTS ARTICLE.**

29 **(2) (I) ON RECEIPT OF A TIMELY FILED REQUEST, THE LAW**
30 **ENFORCEMENT UNIT OR THE DEPARTMENT SHALL INVESTIGATE AND TRY TO**
31 **VERIFY THE FACTS STATED IN THE REQUEST.**

1 **(II) IF THE LAW ENFORCEMENT UNIT OR THE DEPARTMENT**
2 **FINDS THE FACTS ARE TRUE, THE LAW ENFORCEMENT UNIT OR THE**
3 **DEPARTMENT SHALL:**

4 **1. SEARCH DILIGENTLY FOR EACH POLICE RECORD**
5 **ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON;**

6 **2. EXPUNGE EACH POLICE RECORD THE LAW**
7 **ENFORCEMENT UNIT OR THE DEPARTMENT HAS ABOUT THE DETENTION OR**
8 **CONFINEMENT WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST; AND**

9 **3. SEND A COPY OF THE REQUEST AND THE LAW**
10 **ENFORCEMENT UNIT'S OR THE DEPARTMENT'S VERIFICATION OF THE FACTS IN**
11 **THE REQUEST TO:**

12 **A. THE CENTRAL REPOSITORY;**

13 **B. EACH BOOKING FACILITY, LAW ENFORCEMENT**
14 **UNIT, AND DEPARTMENTAL UNIT THAT THE LAW ENFORCEMENT UNIT OR THE**
15 **DEPARTMENT BELIEVES MAY HAVE A POLICE RECORD CONCERNING THE**
16 **DETENTION OR CONFINEMENT;**

17 **C. THE PERSON REQUESTING THE EXPUNGEMENT.**

18 **(3) WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST, THE**
19 **CENTRAL REPOSITORY, BOOKING FACILITY, ANY OTHER LAW ENFORCEMENT**
20 **UNIT, OR THE DEPARTMENT SHALL SEARCH DILIGENTLY FOR AND EXPUNGE A**
21 **JUVENILE RECORD ABOUT THE DETENTION OR CONFINEMENT.**

22 **(4) IF THE LAW ENFORCEMENT UNIT OR THE DEPARTMENT TO**
23 **WHICH THE PERSON HAS SENT A REQUEST FINDS THAT THE PERSON IS NOT**
24 **ENTITLED TO AN EXPUNGEMENT OF THE JUVENILE RECORD, THE LAW**
25 **ENFORCEMENT UNIT OR THE DEPARTMENT, WITHIN 60 DAYS AFTER RECEIPT**
26 **OF THE REQUEST, SHALL ADVISE THE PERSON IN WRITING OF:**

27 **(I) THE DENIAL OF THE REQUEST FOR EXPUNGEMENT; AND**

28 **(II) THE REASONS FOR THE DENIAL.**

29 **(5) (I) 1. IF A REQUEST BY THE PERSON FOR**
30 **EXPUNGEMENT OF A JUVENILE RECORD IS DENIED UNDER PARAGRAPH (4) OF**
31 **THIS SUBSECTION, THE PERSON MAY APPLY FOR AN ORDER OF EXPUNGEMENT**
32 **IN THE DISTRICT COURT THAT HAS PROPER VENUE AGAINST THE LAW**
33 **ENFORCEMENT UNIT OR THE DEPARTMENT.**

1 **2. THE PERSON SHALL FILE THE APPLICATION**
2 **WITHIN 30 DAYS AFTER THE WRITTEN NOTICE OF THE DENIAL IS MAILED OR**
3 **DELIVERED TO THE PERSON.**

4 **(II) AFTER NOTICE TO THE LAW ENFORCEMENT UNIT OR**
5 **THE DEPARTMENT, THE COURT SHALL HOLD A HEARING.**

6 **(III) IF THE COURT FINDS THAT THE PERSON IS ENTITLED**
7 **TO EXPUNGEMENT OF THE JUVENILE RECORD, THE COURT SHALL ORDER THE**
8 **LAW ENFORCEMENT UNIT OR THE DEPARTMENT TO EXPUNGE THE JUVENILE**
9 **RECORD.**

10 **(IV) IF THE COURT FINDS THAT THE PERSON IS NOT**
11 **ENTITLED TO EXPUNGEMENT OF THE JUVENILE RECORD, THE COURT SHALL**
12 **DENY THE APPLICATION.**

13 **(V) 1. THE LAW ENFORCEMENT UNIT OR THE**
14 **DEPARTMENT IS A PARTY TO THE PROCEEDING.**

15 **2. EACH PARTY TO THE PROCEEDING IS ENTITLED**
16 **TO APPELLATE REVIEW ON THE RECORD, AS PROVIDED IN THE COURTS**
17 **ARTICLE FOR APPEALS IN CIVIL CASES FROM THE DISTRICT COURT.**

18 **(C) (1) FOR DETENTIONS OR CONFINEMENTS IN A JUVENILE**
19 **PROCEEDING OCCURRING ON OR AFTER OCTOBER 1, 2010, A PERSON WHO AS A**
20 **MINOR IS DETAINED OR CONFINED BY A LAW ENFORCEMENT UNIT OR THE**
21 **DEPARTMENT FOR THE SUSPECTED COMMISSION OF A DELINQUENT ACT IS**
22 **ENTITLED TO EXPUNGEMENT OF ALL JUVENILE RECORDS, INCLUDING**
23 **PHOTOGRAPHS AND FINGERPRINTS, RELATING TO THE MATTER IF THE PERSON**
24 **IS RELEASED:**

25 **(I) WITHOUT THE FILING OF A DELINQUENCY PETITION OR**
26 **PEACE ORDER; OR**

27 **(II) IN ACCORDANCE WITH AN INFORMAL ADJUSTMENT**
28 **PROCEDURE UNDER § 3-8A-10 OF THE COURTS ARTICLE.**

29 **(2) WITHIN 60 DAYS AFTER RELEASE OF THE PERSON ENTITLED**
30 **TO EXPUNGEMENT OF A JUVENILE RECORD UNDER PARAGRAPH (1) OF THIS**
31 **SUBSECTION, THE LAW ENFORCEMENT UNIT OR THE DEPARTMENT SHALL:**

1 **(I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH**
2 **JUVENILE RECORD ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON;**
3 **AND**

4 **(II) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL**
5 **RELEVANT FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING DETENTION OR**
6 **CONFINEMENT TO:**

7 **1. THE CENTRAL REPOSITORY;**

8 **2. EACH BOOKING FACILITY, LAW ENFORCEMENT**
9 **UNIT, AND DEPARTMENTAL UNIT THAT THE LAW ENFORCEMENT UNIT OR THE**
10 **DEPARTMENT BELIEVES MAY HAVE A JUVENILE RECORD CONCERNING THE**
11 **DETENTION AND CONFINEMENT; AND**

12 **3. THE PERSON ENTITLED TO THE EXPUNGEMENT.**

13 **(3) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE**
14 **CENTRAL REPOSITORY, A BOOKING FACILITY, ANY OTHER LAW ENFORCEMENT**
15 **UNIT, OR THE DEPARTMENT SHALL:**

16 **(I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH**
17 **JUVENILE RECORD ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON;**
18 **AND**

19 **(II) ADVISE IN WRITING THE PERSON ENTITLED TO**
20 **EXPUNGEMENT OF A JUVENILE RECORD THAT THE CENTRAL REPOSITORY,**
21 **BOOKING FACILITY, LAW ENFORCEMENT UNIT, OR THE DEPARTMENT IS IN**
22 **COMPLIANCE WITH THE COURT'S ORDER TO EXPUNGE A JUVENILE RECORD.**

23 **(4) (I) A JUVENILE RECORD EXPUNGED UNDER THIS SECTION**
24 **MAY NOT BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DATE OF**
25 **EXPUNGEMENT.**

26 **(II) DURING THE 3-YEAR PERIOD DESCRIBED IN**
27 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE RECORDS SHALL BE REMOVED TO**
28 **A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE LEGITIMATE**
29 **REASON FOR ACCESS ARE DENIED ACCESS.**

30 **(III) FOR PURPOSES OF THIS PARAGRAPH, A LEGITIMATE**
31 **REASON FOR ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR**
32 **THE PURPOSES OF PROCEEDINGS RELATING TO THE DETENTION OR**
33 **CONFINEMENT.**

1 **(5) IF THE CENTRAL REPOSITORY, A BOOKING FACILITY, A LAW**
2 **ENFORCEMENT UNIT, OR THE DEPARTMENT FAILS TO EXPUNGE A JUVENILE**
3 **RECORD AS REQUIRED UNDER PARAGRAPH (2) OR (3) OF THIS SUBSECTION,**
4 **THE PERSON ENTITLED TO EXPUNGEMENT OF A JUVENILE RECORD MAY:**

5 **(I) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL**
6 **REMEDY; AND**

7 **(II) RECOVER COURT COSTS.**

8 **(D) A PERSON WHO IS ENTITLED TO EXPUNGEMENT OF A JUVENILE**
9 **RECORD UNDER THIS SECTION MAY NOT BE REQUIRED TO PAY ANY FEES OR**
10 **COSTS IN CONNECTION WITH THE EXPUNGEMENT.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2010.