

# HOUSE BILL 1227

E3, E2

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

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Proceedings – Expungement of Police Records**

3 FOR the purpose of requiring the expungement of certain police records in connection  
4 with juvenile proceedings relating to a delinquent act if certain procedures are  
5 met; establishing that for certain detentions or confinements in a juvenile  
6 proceeding occurring on or after a certain date, the person detained or confined  
7 is entitled to expungement of certain police records; requiring a certain law  
8 enforcement unit to take certain actions within a certain amount of time after  
9 release of a certain person entitled to expungement of a certain police record;  
10 requiring certain entities to take certain actions within a certain amount of time  
11 after receipt of a certain notice of expungement; establishing that a police record  
12 that is expunged under certain circumstances may not be expunged by  
13 obliteration for a certain period of time; providing for the circumstances under  
14 which certain records can be accessed; authorizing a person entitled to  
15 expungement of a police record to use a certain legal remedy and recover certain  
16 costs under certain circumstances; providing that a person is entitled to  
17 expungement of a criminal charge under certain circumstances; repealing  
18 certain procedures and time requirements for the expungement of a certain  
19 criminal charge; prohibiting a person who is entitled to expungement of certain  
20 police records under certain circumstances from being required to pay any fees  
21 or costs in connection with the expungement; defining certain terms; and  
22 generally relating to juvenile proceedings and expungement of police records.

23 BY repealing and reenacting, with amendments,

24 Article – Criminal Procedure

25 Section 10–101, 10–105, and 10–106

26 Annotated Code of Maryland

27 (2008 Replacement Volume)

28 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure  
2 Section 10–103.2 and 10–103.3  
3 Annotated Code of Maryland  
4 (2008 Replacement Volume)

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

7 **Article – Criminal Procedure**

8 10–101.

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

10 (b) “Central Repository” means the Criminal Justice Information System  
11 Central Repository in the Department.

12 (c) (1) “Court record” means an official record of a court that the clerk of a  
13 court or other court personnel keeps about:

14 (i) a criminal proceeding; [or]

15 (ii) **A JUVENILE PROCEEDING; OR**

16 **(III)** any other proceeding[, except a juvenile proceeding,]  
17 concerning a civil offense or infraction enacted under State or local law as a substitute  
18 for a criminal charge.

19 (2) “Court record” includes:

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

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

24 **(D) “DELINQUENCY PETITION” MEANS A PETITION FILED UNDER §**  
25 **3–8A–10 OF THE COURTS ARTICLE ALLEGING THAT A CHILD IS A DELINQUENT**  
26 **CHILD.**

27 **(E) “DELINQUENT ACT” MEANS AN ACT WHICH WOULD BE A CRIME IF**  
28 **COMMITTED BY AN ADULT.**

29 [(d)] **(F)** “Expunge” means to remove information from public inspection in  
30 accordance with this subtitle.

1            [(e)] (G)      “Expungement” with respect to a court record or a police record  
2 means removal from public inspection:

3                    (1)      by obliteration;

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

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

9            [(f)] (H)      (1)      “Law enforcement unit” means a State, county, or municipal  
10 police department or unit, the office of a sheriff, the office of a State’s Attorney, the  
11 Office of the State Prosecutor, or the Office of the Attorney General of the State.

12                    (2)      **“LAW ENFORCEMENT UNIT” INCLUDES THE DEPARTMENT OF**  
13 **JUVENILE SERVICES FOR A JUVENILE PROCEEDING.**

14            [(g)] (I)      “Minor traffic violation” means a nonincarcerable violation of the  
15 Maryland Vehicle Law or any other traffic law, ordinance, or regulation.

16            [(h)] (J)      “Police record” means an official record that a law enforcement  
17 unit, booking facility, or the Central Repository maintains about the arrest and  
18 detention of, or further proceeding against, a person for:

19                    (1)      a criminal charge;

20                    (2)      a suspected violation of a criminal law;

21                    (3)      **A SUSPECTED DELINQUENT ACT;**

22                    (4)      a violation of the Transportation Article for which a term of  
23 imprisonment may be imposed; or

24                    [(4)] (5)      a civil offense or infraction[, except a juvenile offense,]  
25 enacted under State or local law as a substitute for a criminal charge.

26 **10-103.2.**

27            (A)      **FOR DETENTIONS OR CONFINEMENTS IN A JUVENILE PROCEEDING**  
28 **OCCURRING BEFORE OCTOBER 1, 2009, A PERSON WHO AS A MINOR IS**  
29 **DETAINED OR CONFINED BY A LAW ENFORCEMENT UNIT FOR THE SUSPECTED**  
30 **COMMISSION OF A DELINQUENT ACT MAY REQUEST THE EXPUNGEMENT OF THE**  
31 **POLICE RECORD IF THE PERSON IS RELEASED:**



1           **(E) (1) (I) IF A REQUEST BY THE PERSON FOR EXPUNGEMENT OF A**  
2 **POLICE RECORD IS DENIED UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE**  
3 **PERSON MAY APPLY FOR AN ORDER OF EXPUNGEMENT IN THE DISTRICT COURT**  
4 **THAT HAS PROPER VENUE AGAINST THE LAW ENFORCEMENT UNIT.**

5                           **(II) THE PERSON SHALL FILE THE APPLICATION WITHIN 30**  
6 **DAYS AFTER THE WRITTEN NOTICE OF THE DENIAL IS MAILED OR DELIVERED**  
7 **TO THE PERSON.**

8           **(2) AFTER NOTICE TO THE LAW ENFORCEMENT UNIT, THE COURT**  
9 **SHALL HOLD A HEARING.**

10           **(3) IF THE COURT FINDS THAT THE PERSON IS ENTITLED TO**  
11 **EXPUNGEMENT OF THE POLICE RECORD, THE COURT SHALL ORDER THE LAW**  
12 **ENFORCEMENT UNIT TO EXPUNGE THE 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           **(5) (I) THE LAW ENFORCEMENT UNIT IS A PARTY TO THE**  
17 **PROCEEDING.**

18                           **(II) EACH PARTY TO THE PROCEEDING IS ENTITLED TO**  
19 **APPELLATE REVIEW ON THE RECORD, AS PROVIDED IN THE COURTS ARTICLE**  
20 **FOR APPEALS IN CIVIL CASES FROM THE DISTRICT COURT.**

21           **(F) A PERSON WHO IS ENTITLED TO EXPUNGEMENT OF THE POLICE**  
22 **RECORD UNDER THIS SECTION MAY NOT BE REQUIRED TO PAY ANY FEES OR**  
23 **COSTS IN CONNECTION WITH THE EXPUNGEMENT.**

24 **10-103.3.**

25           **(A) FOR DETENTIONS OR CONFINEMENTS IN A JUVENILE PROCEEDING**  
26 **OCCURRING ON OR AFTER OCTOBER 1, 2009, A PERSON WHO AS A MINOR IS**  
27 **DETAINED OR CONFINED BY A LAW ENFORCEMENT UNIT FOR THE SUSPECTED**  
28 **COMMISSION OF A DELINQUENT ACT IS ENTITLED TO EXPUNGEMENT OF ALL**  
29 **POLICE RECORDS, INCLUDING PHOTOGRAPHS AND FINGERPRINTS, RELATING**  
30 **TO THE MATTER IF THE PERSON IS RELEASED:**

31           **(1) WITHOUT THE FILING OF A DELINQUENCY PETITION OR**  
32 **PEACE ORDER; OR**

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

3           **(B) WITHIN 60 DAYS AFTER RELEASE OF THE PERSON ENTITLED TO**  
4 **EXPUNGEMENT OF A POLICE RECORD UNDER SUBSECTION (A) OF THIS SECTION,**  
5 **THE LAW ENFORCEMENT UNIT SHALL:**

6           **(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE**  
7 **RECORD ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON; AND**

8           **(2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL**  
9 **RELEVANT FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING DETENTION OR**  
10 **CONFINEMENT TO:**

11                   **(I) THE CENTRAL REPOSITORY;**

12                   **(II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT**  
13 **THAT THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD**  
14 **ABOUT THE DETENTION OR CONFINEMENT; AND**

15                   **(III) THE PERSON ENTITLED TO THE EXPUNGEMENT.**

16           **(C) WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL**  
17 **REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT**  
18 **SHALL:**

19           **(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE**  
20 **RECORD ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON; AND**

21           **(2) ADVISE IN WRITING THE PERSON ENTITLED TO**  
22 **EXPUNGEMENT OF A POLICE RECORD THAT THE CENTRAL REPOSITORY,**  
23 **BOOKING FACILITY, OR OTHER LAW ENFORCEMENT UNIT IS IN COMPLIANCE**  
24 **WITH THE COURT'S ORDER TO EXPUNGE A POLICE RECORD.**

25           **(D) (1) A POLICE RECORD EXPUNGED UNDER THIS SECTION MAY NOT**  
26 **BE EXPUNGED BY OBLITERATION UNTIL 3 YEARS AFTER THE DATE OF**  
27 **EXPUNGEMENT.**

28           **(2) DURING THE 3-YEAR PERIOD DESCRIBED IN PARAGRAPH (1)**  
29 **OF THIS SUBSECTION, THE RECORDS SHALL BE REMOVED TO A SEPARATE**  
30 **SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON**  
31 **FOR ACCESS ARE DENIED ACCESS.**

1           **(3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON**  
2 **FOR ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES**  
3 **OF PROCEEDINGS RELATING TO THE DETENTION OR CONFINEMENT.**

4           **(E) IF A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE**  
5 **CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE RECORD AS REQUIRED**  
6 **UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON ENTITLED TO**  
7 **EXPUNGEMENT OF A POLICE RECORD MAY:**

8                   **(1) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL**  
9 **REMEDY; AND**

10                   **(2) RECOVER COURT COSTS.**

11           **(F) A PERSON WHO IS ENTITLED TO EXPUNGEMENT OF A POLICE**  
12 **RECORD UNDER THIS SECTION MAY NOT BE REQUIRED TO PAY ANY FEES OR**  
13 **COSTS IN CONNECTION WITH THE EXPUNGEMENT.**

14 10–105.

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

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

3 (8) THE DECISION ON THE DELINQUENCY PETITION WAS THAT  
4 THERE WAS A FINDING OF FACTS-NOT-SUSTAINED;

5 [(8)] (9) the person:

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

8 (ii) is granted a full and unconditional pardon by the Governor;  
9 or

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

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

13 (ii) panhandling or soliciting money;

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

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

17 (v) sleeping on or in park structures, such as benches or  
18 doorways;

19 (vi) loitering;

20 (vii) vagrancy;

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

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

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

29 (2) If the proceeding began in one court and was transferred to  
30 another court, the person shall file the petition in the court to which the proceeding  
31 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 a petition for] **IS ENTITLED TO** expungement of a  
32 criminal charge transferred to the juvenile court under § 4-202 of this article[:

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

2 (2) after the decision on the delinquency petition of  
3 facts–not–sustained].

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

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

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

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

14 (2) the decision on the delinquency petition was that there was a  
15 finding of facts–not–sustained.]

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2009.