CHAPTER 712

(House Bill 1227)

AN ACT concerning

Juvenile Proceedings – Expungement of ~~Police Records~~ Criminal Charge Transferred to Juvenile Court

FOR the purpose of ~~requiring the expungement of certain police records in connection with juvenile proceedings relating to a delinquent act if certain procedures are met; establishing that for certain detentions or confinements in a juvenile proceeding occurring on or after a certain date, the person detained or confined is entitled to expungement of certain police records; requiring a certain law enforcement unit to take certain actions within a certain amount of time after release of a certain person entitled to expungement of a certain police record; requiring certain entities to take certain actions within a certain amount of time after receipt of a certain notice of expungement; establishing that a police record that is expunged under certain circumstances may not be expunged by obliteration for a certain period of time; providing for the circumstances under which certain records can be accessed; authorizing a person entitled to expungement of a police record to use a certain legal remedy and recover certain costs under certain circumstances; providing that a person is entitled to expungement of a criminal charge under certain circumstances; repealing certain procedures and time requirements for the expungement of a certain criminal charge; prohibiting a person who is entitled to expungement of certain police records under certain circumstances from being required to pay any fees or costs in connection with the expungement; defining certain terms; and generally relating to juvenile proceedings and expungement of police records~~ altering provisions relating to the expungement of certain criminal records to require a court to grant a petition for expungement of a criminal charge transferred to the juvenile court; repealing provisions limiting the circumstances under which a person may file, and a court is required or authorized to grant, a petition for expungement of a criminal charge transferred to the juvenile court; and generally relating to the expungement of criminal charges transferred to the juvenile court.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section ~~10–101, 10–105, and~~ 10–106
Annotated Code of Maryland
(2008 Replacement Volume)

~~BY adding to~~
~~Article – Criminal Procedure~~

~~Section 10–103.2 and 10–103.3~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume)~~

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

Article – Criminal Procedure

~~10–101.~~

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

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

~~(c) (1) "Court record" means an official record of a court that the clerk of a court or other court personnel keeps about:~~

~~(i) a criminal proceeding; [or]~~

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

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

~~(2) "Court record" includes:~~

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

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

~~**(D) "DELINQUENCY PETITION" MEANS A PETITION FILED UNDER § 3–8A–10 OF THE COURTS ARTICLE ALLEGING THAT A CHILD IS A DELINQUENT CHILD.**~~

~~**(E) "DELINQUENT ACT" MEANS AN ACT WHICH WOULD BE A CRIME IF COMMITTED BY AN ADULT.**~~

~~[(d)] **(F)** "Expunge" means to remove information from public inspection in accordance with this subtitle.~~

~~[(e)] (G) "Expungement" with respect to a court record or a police record means removal from public inspection:~~

~~(1) by obliteration;~~

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

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

~~[(f)] (H) (1) "Law enforcement unit" means a State, county, or municipal police department or unit, the office of a sheriff, the office of a State's Attorney, the Office of the State Prosecutor, or the Office of the Attorney General of the State.~~

~~(2) "LAW ENFORCEMENT UNIT" INCLUDES THE DEPARTMENT OF JUVENILE SERVICES FOR A JUVENILE PROCEEDING.~~

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

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

~~(1) a criminal charge;~~

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

~~(3) A SUSPECTED DELINQUENT ACT;~~

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

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

~~10–103.2.~~

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

~~(1) WITHOUT THE FILING OF A DELINQUENCY PETITION OR PEACE ORDER; OR~~

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

~~(B) (1) ON RECEIPT OF A TIMELY FILED REQUEST, THE LAW ENFORCEMENT UNIT PROMPTLY SHALL INVESTIGATE AND TRY TO VERIFY THE FACTS STATED IN THE REQUEST.~~

~~(2) IF THE LAW ENFORCEMENT UNIT FINDS THE FACTS ARE TRUE, THE LAW ENFORCEMENT UNIT SHALL:~~

~~(I) SEARCH DILIGENTLY FOR EACH POLICE RECORD ABOUT THE DETENTION OR CONFINEMENT OF THE PERSON;~~

~~(II) EXPUNGE EACH POLICE RECORD IT HAS ABOUT THE DETENTION OR CONFINEMENT WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST; AND~~

~~(III) SEND A COPY OF THE REQUEST AND THE LAW ENFORCEMENT UNIT'S VERIFICATION OF THE FACTS IN THE REQUEST TO:~~

~~1. THE CENTRAL REPOSITORY;~~

~~2. EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE DETENTION OR CONFINEMENT; AND~~

~~3. THE PERSON REQUESTING THE EXPUNGEMENT.~~

~~(C) WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST, THE CENTRAL REPOSITORY, BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL SEARCH DILIGENTLY FOR AND EXPUNGE A POLICE RECORD ABOUT THE DETENTION OR CONFINEMENT.~~

~~(D) IF THE LAW ENFORCEMENT UNIT TO WHICH THE PERSON HAS SENT A REQUEST FINDS THAT THE PERSON IS NOT ENTITLED TO AN EXPUNGEMENT OF THE POLICE RECORD, THE LAW ENFORCEMENT UNIT, WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST, SHALL ADVISE THE PERSON IN WRITING OF:~~

~~(1) THE DENIAL OF THE REQUEST FOR EXPUNGEMENT; AND~~

~~(2) THE REASONS FOR THE DENIAL.~~

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

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

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

~~(3) IF THE COURT FINDS THAT THE PERSON IS ENTITLED TO EXPUNGEMENT OF THE POLICE RECORD, THE COURT SHALL ORDER THE LAW ENFORCEMENT UNIT TO EXPUNGE THE POLICE RECORD.~~

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

~~(5) (I) THE LAW ENFORCEMENT UNIT IS A PARTY TO THE PROCEEDING.~~

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

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

~~10–103.3.~~

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

~~(1) WITHOUT THE FILING OF A DELINQUENCY PETITION OR PEACE ORDER; OR~~

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

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

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

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

~~(I) THE CENTRAL REPOSITORY;~~

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

~~(III) THE PERSON ENTITLED TO THE EXPUNGEMENT.~~

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

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

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

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

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

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

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

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

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

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

~~10–105.~~

~~(a) 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, or who has been charged with a civil offense or infraction**[**, except a juvenile offense,**]** as a substitute for a criminal charge **OR A JUVENILE OFFENSE** 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) the person is acquitted;~~

~~(2) the charge is otherwise dismissed;~~

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

~~(5) the court indefinitely postpones trial of a criminal charge by marking the criminal charge "stet" or stet with the requirement of drug or alcohol abuse treatment on the docket;~~

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

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

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

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

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

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

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

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

~~(ii) panhandling or soliciting money;~~

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

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

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

~~(vi) loitering;~~

~~(vii) vagrancy;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(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 pass an order requiring the expungement of all police records and court records about the charge.~~

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

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

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

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

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

~~(ii) the person:~~

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

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

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

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

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

~~10–106.~~

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

~~(b)]~~ ~~A person [may file a petition for] IS ENTITLED TO expungement of a criminal charge transferred to the juvenile court under § 4–202 of this article[:~~

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

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

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

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

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

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

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

10–106.

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

(b) A person may file**, AND A COURT SHALL GRANT,** a petition for expungement of a criminal charge transferred to the juvenile court under § 4–202 of this article**[**:

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

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

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

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

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

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

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

Approved by the Governor, May 19, 2009.