

HOUSE BILL 10

E2
HB 64/06 – JUD

(PRE-FILED)

71r0496

By: **Delegate Haynes**
Requested: October 30, 2006
Introduced and read first time: January 10, 2007
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 1, 2007

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Police Records – Arrest Without**
3 **Charge – Automatic**

4 FOR the purpose of altering a provision of law so as to make certain procedures
5 relating to expungement of certain police records applicable only to certain
6 arrests, detentions, or confinements occurring before a certain date; requiring
7 the expungement of certain police records if certain procedures are met;
8 repealing certain provisions relating to a request for expungement of a certain
9 police record that require written notice to be provided to a law enforcement
10 unit; repealing certain provisions prohibiting a person from giving a certain
11 notice before a certain statute of limitations expires; making a certain
12 conforming change; repealing certain provisions that allow for a certain
13 expungement to occur before a certain date if a certain waiver is filed;
14 establishing that for certain arrests, ~~detentions,~~ or confinements occurring on or
15 after a certain date, the person arrested, ~~detained,~~ or confined is entitled to
16 expungement of certain police records; requiring a certain law enforcement unit
17 to take certain actions within a certain amount of time after release of a certain
18 person entitled to expungement of a certain police record; requiring certain
19 entities to take certain actions within a certain amount of time after receipt of a
20 certain notice of expungement; establishing that a police record that is

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 expunged under certain circumstances may not be expunged by obliteration for
 2 a certain period of time; providing the method by which certain records are to be
 3 expunged for a certain period of time and the circumstances under which the
 4 records can be accessed; authorizing a certain person to use a certain legal
 5 remedy and recover certain ~~fees~~ and costs under certain circumstances;
 6 prohibiting a person who is entitled to expungement of certain police records
 7 under certain circumstances from being required to pay a certain fee or costs;
 8 and generally relating to expungement of police records.

9 BY repealing and reenacting, without amendments,

10 Article – Criminal Procedure

11 Section 10–101(e)

12 Annotated Code of Maryland

13 (2001 Volume and 2006 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Criminal Procedure

16 Section 10–102(a) ~~and (b)(3)~~ and 10–103

17 Annotated Code of Maryland

18 (2001 Volume and 2006 Supplement)

19 BY adding to

20 Article – Criminal Procedure

21 Section 10–103.1

22 Annotated Code of Maryland

23 (2001 Volume and 2006 Supplement)

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

26 **Article – Criminal Procedure**

27 10–101.

28 (e) “Expungement” with respect to a court record or a police record means
 29 removal from public inspection:

30 (1) by obliteration;

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

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

4 10-102.

5 (a) A police record or a court record [may be expunged] **IS SUBJECT TO**
6 **EXPUNGEMENT** under this subtitle.

7 (b) (3) The limitation periods provided in [§§ 10-103 and 10-105] §
8 **10-105** of this subtitle begin when the person becomes entitled to expungement of a
9 court record or a police record that existed before July 1, 1975.

10 10-103.

11 (a) **[A] FOR ARRESTS, DETENTIONS, OR CONFINEMENTS OCCURRING**
12 **BEFORE OCTOBER 1, 2007,** A person who is arrested, detained, or confined by a law
13 enforcement unit for the suspected commission of a crime and then is released without
14 being charged with the commission of a crime may:

15 ~~(1) give written notice of these facts to a law enforcement unit that the~~
16 ~~person believes may have a police record about the matter; and~~

17 ~~(2) request the expungement of the police record.~~

18 (b) ~~(1) Except as provided in paragraph (2) of this subsection, a person~~
19 ~~may not give notice under this subtitle before the statute of limitations expires for all~~
20 ~~tort claims that arise from the incident.~~

21 ~~(2) (i) A person may give notice before the statute of limitations~~
22 ~~expires if the person attaches to the notice a written general waiver and release, in~~
23 ~~legal form, of all tort claims that the person has arising from the incident.~~

24 ~~(ii) The notice and waiver are not subject to expungement.~~

25 ~~(3) The law enforcement unit shall keep the notice and waiver at least~~
26 ~~until any applicable statute of limitations expires.~~

27 ~~(4) The person shall give the notice~~ **REQUEST EXPUNGEMENT** within
28 8 years after the date of the incident.

1 (c) (1) On receipt of a timely filed ~~notice~~ **REQUEST**, the law enforcement
2 unit promptly shall investigate and try to verify the facts stated in the ~~notice~~
3 **REQUEST**.

4 (2) If the law enforcement unit finds the facts are true, the law
5 enforcement unit shall:

6 (i) search diligently for each police record about the arrest,
7 detention, or confinement of the person;

8 (ii) expunge each police record it has about the arrest,
9 detention, or confinement within 60 days after receipt of the ~~notice~~ **REQUEST**; and

10 (iii) send a copy of the ~~notice~~ **REQUEST** and the law enforcement
11 unit's verification of the facts in the ~~notice~~ **REQUEST** to:

12 1. the Central Repository;

13 2. each booking facility or law enforcement unit that the
14 law enforcement unit believes may have a police record about the arrest, detention, or
15 confinement; and

16 3. the person requesting expungement.

17 (d) Within ~~30~~ **60** days after receipt of the ~~notice~~ **REQUEST**, the Central
18 Repository, booking facility, and any other law enforcement unit shall search
19 diligently for and expunge a police record about the arrest, detention, or confinement.

20 (e) If the law enforcement unit to which the person has sent ~~notice~~ **A**
21 **REQUEST** finds that the person is not entitled to an expungement of the police record,
22 the law enforcement unit, within 60 days after receipt of the ~~notice~~ **REQUEST**, shall
23 advise the person in writing of:

24 (1) the denial of the request for expungement; and

25 (2) the reasons for the denial.

26 (f) (1) (i) If a request by the person for expungement of a police record
27 is denied under subsection (e) of this section, the person may apply for an order of
28 expungement in the District Court that has proper venue against the law enforcement
29 unit.

1 (ii) The person shall file the application within 30 days after the
2 written notice of the denial is mailed or delivered to the person.

3 (2) After notice to the law enforcement unit, the court shall hold a
4 hearing.

5 (3) If the court finds that the person is entitled to expungement, the
6 court shall order the law enforcement unit to expunge the police record.

7 (4) If the court finds that the person is not entitled to expungement of
8 the police record, the court shall deny the application.

9 (5) (i) The law enforcement unit is a party to the proceeding.

10 (ii) Each party to the proceeding is entitled to appellate review
11 on the record, as provided in the Courts Article for appeals in civil cases from the
12 District Court.

13 **(G) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS**
14 **SECTION MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION**
15 **WITH THE EXPUNGEMENT.**

16 **10-103.1.**

17 **(A) FOR ARRESTS, ~~DETENTIONS,~~ OR CONFINEMENTS OCCURRING ON OR**
18 **AFTER OCTOBER 1, 2007, A PERSON WHO IS ARRESTED, ~~DETAINED,~~ OR**
19 **CONFINED BY A LAW ENFORCEMENT UNIT AND THEN IS RELEASED WITHOUT**
20 **BEING CHARGED WITH THE COMMISSION OF A CRIME IS ENTITLED TO**
21 **EXPUNGEMENT OF ALL POLICE RECORDS, INCLUDING PHOTOGRAPHS AND**
22 **FINGERPRINTS, RELATING TO THE MATTER.**

23 **(B) WITHIN ~~30~~ 60 DAYS AFTER RELEASE OF A PERSON ENTITLED TO**
24 **EXPUNGEMENT OF A POLICE RECORD UNDER SUBSECTION (A) OF THIS SECTION,**
25 **THE LAW ENFORCEMENT UNIT SHALL:**

26 **(1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE**
27 **RECORD ABOUT THE ARREST, ~~DETENTION,~~ OR CONFINEMENT OF THE PERSON;**
28 **AND**

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

4 (I) THE CENTRAL REPOSITORY;

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

8 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

9 (C) WITHIN ~~30~~ 60 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL
10 REPOSITORY, A BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT
11 SHALL:

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

15 (2) ADVISE IN WRITING THE PERSON ENTITLED TO
16 EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.

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

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

24 (3) FOR PURPOSES OF THIS SUBSECTION, A LEGITIMATE REASON
25 FOR ACCESSING THE RECORDS INCLUDES USING THE RECORDS FOR PURPOSES
26 OF PROCEEDINGS RELATING TO THE ARREST.

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

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

3 (2) RECOVER COURT COSTS ~~AND REASONABLE ATTORNEY'S FEES.~~

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.