

HOUSE BILL 645

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E2

1998 Regular Session  
(8r1614)

**ENROLLED BILL**  
-- Judiciary/Judicial Proceedings --

Introduced by **Delegate Dewberry**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Records - Expungement**

3 FOR the purpose of making certain provisions relating to expungement of criminal  
4 records applicable to records that pertain to motor vehicle violations ~~and certain~~  
5 ~~other traffic laws, ordinances, and regulations~~ for which a term of imprisonment  
6 may be imposed; providing for expungement of certain records relating to  
7 certain motor vehicle violations for which a term of imprisonment may be  
8 imposed even if certain nonincarcerable violations of certain vehicle laws arise  
9 out of the same incident or transaction; establishing an exemption from the  
10 expungement of certain records for a judgment of probation before judgment for  
11 certain offenses; providing for the construction of this Act; and generally  
12 relating to criminal records, motor vehicles, and expungement.

13 BY repealing and reenacting, with amendments,  
14 Article 27 - Crimes and Punishments  
15 Section ~~735 and 736~~, 736, 737(a), and 738(b)  
16 Annotated Code of Maryland

1 (1996 Replacement Volume and 1997 Supplement)

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

4 **Article 27 - Crimes and Punishments**

5 735.

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

7 (b) "Court records" means all official records maintained by the clerk of a  
8 court or other court personnel pertaining to a criminal proceeding INCLUDING  
9 RECORDS OF VIOLATIONS OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF  
10 IMPRISONMENT MAY BE IMPOSED. It includes indices, docket entries, charging  
11 documents, pleadings, memoranda, transcriptions of proceedings, electronic  
12 recordings, orders, judgments, and decrees. It does not include:

13 (1) ~~Records~~ pertaining to NONINCARCERABLE violations of the vehicle  
14 laws of the State or of any other traffic law, ordinance, or regulation;

15 (2) ~~Written opinions of a court that have been published;~~

16 (3) ~~Cash receipt and disbursement records necessary for audit~~  
17 purposes; or

18 (4) ~~A court reporter's transcript of proceedings in multiple~~  
19 defendant cases.

20 (c) "Expungement", with respect to court records or police records, means the  
21 effective removal of these records from public inspection:

22 (1) By obliteration;

23 (2) By removal to a separate secure area to which the public and other  
24 persons having no legitimate reason for being there are denied access; or

25 (3) If effective access to a record can be obtained only by reference to  
26 other records, by the expungement of the other records, or the part of them providing  
27 the access.

28 (d) "Law enforcement agency" includes any State, county, and municipal police  
29 department or agency, sheriff's offices, the State's Attorney's offices, and the Attorney  
30 General's office.

31 (e) "Police records" means all official records maintained by a law enforcement  
32 agency or the Central Repository pertaining to the arrest and detention of or further  
33 proceeding against a person on a criminal charge or for a suspected violation of a  
34 criminal law, INCLUDING RECORDS OF VIOLATIONS OF THE TRANSPORTATION  
35 ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED. It does not

1 include investigatory files, police work-product records used solely for police  
2 investigation purposes, or records pertaining to NONINCARCERABLE violations of the  
3 vehicle laws of the State or of any other traffic law, ordinance, or regulation.

4 (f) "Crime of violence" has the meaning stated in § 643B(a) of this article.

5 (g) "Central Repository" means the Criminal Justice Information System  
6 Central Repository of the Department of Public Safety and Correctional Services.

7 736.

8 (a) If a person is arrested, detained, or confined by a law enforcement agency  
9 for a suspected violation of a criminal law {other than a NONINCARCERABLE  
10 violation of the vehicle laws of the State or any other traffic law, ordinance, or  
11 regulation,} and is released without being charged with the commission of a crime, he  
12 may give written notice of these facts to any law enforcement agency which he  
13 believes may have police records concerning that arrest, detention, or confinement,  
14 and request the expungement of those police records.

15 (b) This notice may not be given prior to the expiration of the statute of  
16 limitations for tort actions arising from the incident unless the person attaches to the  
17 notice a written general waiver and release, in proper legal form, of all claim he may  
18 have against any person for tortious conduct arising from the incident. The notice and  
19 waiver are not subject to expungement, but shall be maintained by the law  
20 enforcement agency at least until the expiration of any applicable statute of  
21 limitations. The notice must be given within eight years after the date of the incident.

22 (c) The law enforcement agency shall, upon receipt of a timely filed notice,  
23 promptly investigate and attempt to verify the facts stated in the notice. If it finds the  
24 facts to be verified, it shall:

25 (1) Make a diligent search for any police records concerning that arrest,  
26 detention, or confinement of the person;

27 (2) Within 60 days after receipt of the notice, expunge the police records  
28 it has concerning that arrest, detention, or confinement; and

29 (3) Notify any other law enforcement agency and the Central Repository  
30 it believes may have police records concerning that arrest, detention, or confinement  
31 of the notice and its verification of the facts contained in it. A copy of this notice shall  
32 be sent to the person requesting expungement.

33 (d) The other law enforcement agency and the Central Repository shall,  
34 within 30 days after receipt of the notice provided for in subsection (c)(3):

35 (1) Make a diligent search for any police records concerning the arrest,  
36 detention, or confinement; and

37 (2) Expunge the police records it has concerning that arrest, detention,  
38 or confinement.

1 (e) If the law enforcement agency to which the person has addressed his notice  
2 finds that the person is not entitled to an expungement of the police records, it shall,  
3 within 60 days after receipt of the notice, advise the person in writing of its denial of  
4 the request for expungement and of the reasons for its denial.

5 (f) A person whose request for expungement is denied in accordance with  
6 subsection (e) may, within 30 days after written notice of the denial is mailed or  
7 otherwise delivered to him, file an application in the District Court having proper  
8 venue against the law enforcement agency for an order of expungement. If the court  
9 finds, after a hearing held upon proper notice to the agency, that the person is  
10 entitled to expungement, it shall enter an order requiring the agency to comply with  
11 subsection (c). Otherwise, it shall deny the application. The agency is deemed to be a  
12 party to the proceeding. All parties to the proceeding have the right of appellate  
13 review on the record provided for in the Courts and Judicial Proceedings Article with  
14 respect to appeals in civil cases from the District Court.

15 737.

16 (a) A person charged with the commission of a crime, INCLUDING A  
17 VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF  
18 IMPRISONMENT MAY BE IMPOSED, may file a petition setting forth the relevant facts  
19 and requesting expungement of the police records, court records, and other records  
20 maintained by the State of Maryland and its subdivisions, pertaining to the charge if:

21 (1) The person is acquitted;

22 (2) The charge is otherwise dismissed or quashed;

23 (3) ~~A~~ EXCEPT IF CHARGED WITH A VIOLATION OF § 21-902 OF THE  
24 TRANSPORTATION ARTICLE, A judgment of probation before judgment is entered;

25 (4) A nolle prosequi is entered;

26 (5) The proceeding is placed on the stet docket;

27 (6) The case is compromised pursuant to Article 27, § 766 of this Code;

28 (7) The person is convicted of only one criminal act, which is not a crime  
29 of violence, and is subsequently granted a full and unconditional pardon by the  
30 Governor; or

31 (8) The charge was transferred to juvenile court jurisdiction under §  
32 594A of this article.

33 738.

34 (b) If a person is charged with a violation of any provision of the Maryland  
35 Vehicle Law FOR WHICH A TERM OF IMPRISONMENT MAY NOT BE IMPOSED or any  
36 other traffic law, ordinance, or regulation;

1           (1)     The violation may not be considered as part of a unit under  
2 subsection (a) of this section; and

3           (2)     The disposition entered on the violation may not preclude  
4 expungement of any criminal charge, INCLUDING A VIOLATION OF THE MARYLAND  
5 VEHICLE LAW FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED, that arises  
6 from the same incident, transaction, or set of facts if the person is otherwise entitled  
7 to an expungement of the charge.

8     SECTION 2. AND BE IT FURTHER ENACTED, That an expungement under  
9 this Act of a criminal record relating to a violation of the Transportation Article for  
10 which a term of imprisonment may be imposed may not be construed to require the  
11 Motor Vehicle Administration to expunge a driving record.

12     ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
13 effect October 1, 1998.