
By: **Delegate Dewberry**
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Assigned to: Judiciary

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House action: Adopted
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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; providing for the construction of this
10 Act; and generally relating to criminal records, motor vehicles, and
11 expungement.

12 BY repealing and reenacting, with amendments,
13 Article 27 - Crimes and Punishments
14 Section ~~735 and 736, 736, 737(a), and 738(b)~~
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 1997 Supplement)

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

19 **Article 27 - Crimes and Punishments**

20 735.

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

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

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

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

10 ~~{(3)}~~ ~~(2)~~ Cash receipt and disbursement records necessary for audit
11 purposes; or

12 ~~{(4)}~~ ~~(3)~~ A court reporter's transcript of proceedings in multiple
13 defendant cases.

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

16 (1) By obliteration;

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

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

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

25 (e) "Police records" means all official records maintained by a law enforcement
26 agency or the Central Repository pertaining to the arrest and detention of or further
27 proceeding against a person on a criminal charge or for a suspected violation of a
28 criminal law, INCLUDING RECORDS OF VIOLATIONS OF THE TRANSPORTATION
29 ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED. It does not
30 include investigatory files, police work-product records used solely for police
31 investigation purposes, or records pertaining to NONINCARCERABLE violations of the
32 vehicle laws of the State or of any other traffic law, ordinance, or regulation.

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

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

1 736.

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

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

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

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

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

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

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

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

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

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

37 (f) A person whose request for expungement is denied in accordance with
38 subsection (e) may, within 30 days after written notice of the denial is mailed or
39 otherwise delivered to him, file an application in the District Court having proper

1 venue against the law enforcement agency for an order of expungement. If the court
2 finds, after a hearing held upon proper notice to the agency, that the person is
3 entitled to expungement, it shall enter an order requiring the agency to comply with
4 subsection (c). Otherwise, it shall deny the application. The agency is deemed to be a
5 party to the proceeding. All parties to the proceeding have the right of appellate
6 review on the record provided for in the Courts and Judicial Proceedings Article with
7 respect to appeals in civil cases from the District Court.

8 737.

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

14 (1) The person is acquitted;

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

16 (3) A judgment of probation before judgment is entered;

17 (4) A nolle prosequi is entered;

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

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

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

23 (8) The charge was transferred to juvenile court jurisdiction under §
24 594A of this article.

25 738.

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

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

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

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

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