

SENATE BILL 74

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1999 Regular Session
9r0070

(PRE-FILED)

By: **Chairman, Judicial Proceedings Committee (Departmental - Public
Safety and Correctional Services)**

Requested: July 27, 1998

Introduced and read first time: January 13, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Expungement of Police Records - Required Notification**

3 FOR the purpose of expanding the definition of "police records" to include analogous
4 records maintained by a booking facility; requiring a law enforcement agency to
5 forward certain information to a booking facility under certain circumstances;
6 making stylistic and clarifying changes; and generally relating to the
7 expungement of police records.

8 BY repealing and reenacting, with amendments,
9 Article 27 - Crimes and Punishments
10 Section 735 and 736
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1998 Supplement)

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

15 **Article 27 - Crimes and Punishments**

16 735.

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

18 (b) (1) "Court records" means all official records maintained by the clerk of a
19 court or other court personnel pertaining to a criminal proceeding including records of
20 violations of the Transportation Article for which a term of imprisonment may be
21 imposed.

22 (2) [It] "COURT RECORDS" includes indices, docket entries, charging
23 documents, pleadings, memoranda, transcriptions of proceedings, electronic
24 recordings, orders, judgments, and decrees.

25 (3) [It] "COURT RECORDS" does not include:

1 [(1)] (I) Records pertaining to nonincarcerable violations of the vehicle
2 laws of the State or of any other traffic law, ordinance, or regulation;

3 [(2)] (II) Written opinions of a court that have been published;

4 [(3)] (III) Cash receipt and disbursement records necessary for audit
5 purposes; or

6 [(4)] (IV) A court reporter's transcript of proceedings in multiple
7 defendant cases.

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

10 (1) By obliteration;

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

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

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

19 (e) (1) "Police records" means all official records maintained by a law
20 enforcement agency, A BOOKING FACILITY, or the central repository pertaining to the
21 arrest and detention of or further proceeding against [a person on] AN INDIVIDUAL
22 FOR:

23 (I) [a] A criminal charge;

24 (II) [or for a] A suspected violation of a criminal law; OR

25 (III) [, including records of violations] A VIOLATION of the
26 Transportation Article for which a term of imprisonment may be imposed.

27 (2) [It] "POLICE RECORDS" does not include:

28 (I) [investigatory] INVESTIGATORY files;

29 (II) [, police] POLICE work-product records used solely for police
30 investigation purposes; OR

31 (III) [, or records] RECORDS pertaining to nonincarcerable
32 violations of the vehicle laws of the State or of any other traffic law, ordinance, or
33 regulation.

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

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

3 736.

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

12 (b) (1) This notice may not be given prior to the expiration of the statute of
13 limitations for tort actions arising from the incident unless the [person] INDIVIDUAL
14 attaches to the notice a written general waiver and release, in proper legal form, of all
15 claim he may have against any person for tortious conduct arising from the incident.

16 (2) The notice and waiver are not subject to expungement, but shall be
17 maintained by the law enforcement agency at least until the expiration of any
18 applicable statute of limitations.

19 (3) The notice must be given within eight years after the date of the
20 incident.

21 (c) (1) The law enforcement agency shall, upon receipt of a timely filed
22 notice, promptly investigate and attempt to verify the facts stated in the notice.

23 (2) If [it] THE LAW ENFORCEMENT AGENCY finds the facts to be
24 verified, it shall:

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

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

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

33 (III) SEND A COPY OF THE NOTICE AND THE LAW ENFORCEMENT
34 AGENCY'S VERIFICATION OF THE FACTS CONTAINED IN THE NOTICE TO:

35 1. THE CENTRAL REPOSITORY;

1 2. ANY OTHER LAW ENFORCEMENT AGENCY OR BOOKING
 2 FACILITY THE LAW ENFORCEMENT AGENCY BELIEVES MAY HAVE POLICE RECORDS
 3 CONCERNING THAT ARREST, DETENTION, OR CONFINEMENT; AND

4 3. THE INDIVIDUAL REQUESTING EXPUNGEMENT.

5 (d) The other law enforcement agency, BOOKING FACILITY, and the central
 6 repository shall, within 30 days after receipt of the notice provided for in subsection
 7 [(c)(3)] (C)(2)(III) OF THIS SECTION:

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

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

12 (e) If the law enforcement agency to which the [person has] INDIVIDUAL
 13 addressed [his] THE notice finds that the [person] INDIVIDUAL is not entitled to an
 14 expungement of the police records, [it] THE LAW ENFORCEMENT AGENCY shall,
 15 within 60 days after receipt of the notice, advise the [person] INDIVIDUAL in writing
 16 of its denial of the request for expungement and of the reasons for its denial.

17 (f) (1) [A person] AN INDIVIDUAL whose request for expungement is denied
 18 in accordance with subsection (e) OF THIS SECTION may, within 30 days after written
 19 notice of the denial is mailed or otherwise delivered to [him] THE INDIVIDUAL, file an
 20 application in the District Court having proper venue against the law enforcement
 21 agency for an order of expungement.

22 (2) If the court finds, after a hearing held upon proper notice to the
 23 agency, that the [person] INDIVIDUAL is entitled to expungement, [it] THE COURT
 24 shall enter an order requiring the agency to comply with subsection (c) OF THIS
 25 SECTION. Otherwise, [it] THE COURT shall deny the application. The agency is
 26 deemed to be a party to the proceeding. All parties to the proceeding have the right of
 27 appellate review on the record provided for in the Courts and Judicial Proceedings
 28 Article with respect to appeals in civil cases from the District Court.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 30 October 1, 1999.