

SENATE BILL 74

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1999 Regular Session
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(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

Committee Report: Favorable

Senate action: Adopted

Read second time: February 2, 1999

CHAPTER _____

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

1 violations of the Transportation Article for which a term of imprisonment may be
2 imposed.

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

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

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

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

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

12 [(4)] (IV) 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] OTHERS 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) (1) "Police records" means all official records maintained by a law
26 enforcement agency, A BOOKING FACILITY, or the central repository pertaining to the
27 arrest and detention of or further proceeding against [a person on] AN INDIVIDUAL
28 FOR:

29 (I) [a] A criminal charge;

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

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

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

34 (I) [investigatory] INVESTIGATORY files;

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

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

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

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

9 736.

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

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

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

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

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

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

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

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

35 [(3)] (III) Notify any other law enforcement agency and the central repository it
36 believes may have police records concerning that arrest, detention, or confinement of

1 the notice and its verification of the facts contained in it. A copy of this notice shall be
2 sent to the person requesting expungement.]

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

- 5 1. THE CENTRAL REPOSITORY;
- 6 2. ANY OTHER LAW ENFORCEMENT AGENCY OR BOOKING
7 FACILITY THE LAW ENFORCEMENT AGENCY BELIEVES MAY HAVE POLICE RECORDS
8 CONCERNING THAT ARREST, DETENTION, OR CONFINEMENT; AND
- 9 3. THE INDIVIDUAL REQUESTING EXPUNGEMENT.

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

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

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

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

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

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

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