

(PRE-FILED)

By: **Delegate Haynes**
Requested: November 8, 2005
Introduced and read first time: January 11, 2006
Assigned to: Judiciary

A BILL ENTITLED

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; establishing
7 that for certain arrests, detentions, or confinements occurring on or after a
8 certain date, the person arrested, detained, or confined is entitled to
9 expungement of certain police records; requiring a certain law enforcement unit
10 to take certain actions within a certain amount of time after release of a certain
11 person entitled to expungement of a certain police record; requiring certain
12 entities to take certain actions within a certain amount of time after receipt of a
13 certain notice of expungement; authorizing a certain person to use a certain
14 legal remedy and recover certain fees and costs under certain circumstances;
15 prohibiting a person who is entitled to expungement of certain police records
16 under certain circumstances from being required to pay a certain fee or costs;
17 and generally relating to expungement of police records.

18 BY repealing and reenacting, with amendments,
19 Article - Criminal Procedure
20 Section 10-102(a) and 10-103
21 Annotated Code of Maryland
22 (2001 Volume and 2005 Supplement)

23 BY adding to
24 Article - Criminal Procedure
25 Section 10-103.1
26 Annotated Code of Maryland
27 (2001 Volume and 2005 Supplement)

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

1

Article - Criminal Procedure

2 10-102.

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

5 10-103.

6 (a) [A] FOR ARRESTS, DETENTIONS, OR CONFINEMENTS OCCURRING
7 BEFORE OCTOBER 1, 2006, A person who is arrested, detained, or confined by a law
8 enforcement unit for the suspected commission of a crime and then is released
9 without being charged with the commission of a crime may:

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

12 (2) request the expungement of the police record.

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

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

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

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

22 (4) The person shall give the notice within 8 years after the date of the
23 incident.

24 (c) (1) On receipt of a timely filed notice, the law enforcement unit promptly
25 shall investigate and try to verify the facts stated in the notice.

26 (2) If the law enforcement unit finds the facts are true, the law
27 enforcement unit shall:

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

30 (ii) expunge each police record it has about the arrest, detention, or
31 confinement within 60 days after receipt of the notice; and

32 (iii) send a copy of the notice and the law enforcement unit's
33 verification of the facts in the notice to:

34 1. the Central Repository;

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

4 3. the person requesting expungement.

5 (d) Within 30 days after receipt of the notice, the Central Repository, booking
6 facility, and any other law enforcement unit shall search diligently for and expunge a
7 police record about the arrest, detention, or confinement.

8 (e) If the law enforcement unit to which the person has sent notice finds that
9 the person is not entitled to an expungement of the police record, the law enforcement
10 unit, within 60 days after receipt of the notice, shall advise the person in writing of:

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

12 (2) the reasons for the denial.

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

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

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

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

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

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

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

29 10-103.1.

30 (A) FOR ARRESTS, DETENTIONS, OR CONFINEMENTS OCCURRING ON OR
31 AFTER OCTOBER 1, 2006, A PERSON WHO IS ARRESTED, DETAINED, OR CONFINED BY
32 A LAW ENFORCEMENT UNIT AND THEN IS RELEASED WITHOUT BEING CHARGED
33 WITH THE COMMISSION OF A CRIME IS ENTITLED TO EXPUNGEMENT OF ALL POLICE
34 RECORDS, INCLUDING PHOTOGRAPHS AND FINGERPRINTS, RELATING TO THE
35 MATTER.

1 (B) WITHIN 30 DAYS AFTER RELEASE OF A PERSON ENTITLED TO
2 EXPUNGEMENT OF A POLICE RECORD UNDER SUBSECTION (A) OF THIS SECTION, THE
3 LAW ENFORCEMENT UNIT SHALL:

4 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD
5 ABOUT THE ARREST, DETENTION, OR CONFINEMENT OF THE PERSON; AND

6 (2) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL RELEVANT
7 FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING ARREST, DETENTION, OR
8 CONFINEMENT TO:

9 (I) THE CENTRAL REPOSITORY;

10 (II) EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT
11 THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE
12 ARREST, DETENTION, OR CONFINEMENT; AND

13 (III) THE PERSON ENTITLED TO EXPUNGEMENT.

14 (C) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL
15 REPOSITORY, BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL:

16 (1) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE RECORD
17 ABOUT THE ARREST, DETENTION, OR CONFINEMENT OF THE PERSON; AND

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

20 (D) IF A LAW ENFORCEMENT UNIT, BOOKING FACILITY, OR THE CENTRAL
21 REPOSITORY FAILS TO EXPUNGE A POLICE RECORD AS REQUIRED UNDER
22 SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON:

23 (1) MAY SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL
24 REMEDY; AND

25 (2) IS ENTITLED TO RECOVER COURT COSTS AND REASONABLE
26 ATTORNEY'S FEES.

27 (E) A PERSON WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS SECTION
28 SHALL NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH THE
29 EXPUNGEMENT.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2006.