

HOUSE BILL 854

E2

3lr1778

By: **Delegate Attar**

Introduced and read first time: February 9, 2023

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Expungement of Records – Revisions**

3 FOR the purpose of expanding the scope of certain expungement provisions to include an
4 investigatory file and a certain record of the work product of a law enforcement unit;
5 providing that a police record or a court record that has been expunged may not be
6 used for any purpose and shall be treated as if the record never existed; repealing
7 certain provisions of law relating to the authority of a court to order the opening or
8 review of an expunged record or the disclosure of information from an expunged
9 record; and generally relating to expungement of records.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section 10–101, 10–102, and 10–108
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2022 Supplement)

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

17 **Article – Criminal Procedure**

18 10–101.

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

20 (b) “Central Repository” means the Criminal Justice Information System Central
21 Repository in the Department.

22 (c) (1) “Court record” means an official record of a court that the clerk of a
23 court or other court personnel keeps about:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) a criminal proceeding; or

2 (ii) any other proceeding, except a juvenile proceeding, concerning a
3 civil offense or infraction enacted under State or local law as a substitute for a criminal
4 charge.

5 (2) "Court record" includes:

6 (i) a record of a violation of the Transportation Article for which a
7 term of imprisonment may be imposed; and

8 (ii) an index, docket entry, charging document, pleading,
9 memorandum, transcription of proceedings, electronic recording, order, and judgment.

10 (d) "Expunge" means [to remove information from public inspection in accordance
11 with this subtitle] **THE EXTRACTION AND ISOLATION OF ALL RECORDS ON FILE
12 WITHIN ANY COURT, DETENTION OR CORRECTIONAL FACILITY, AND LAW
13 ENFORCEMENT OR CRIMINAL JUSTICE AGENCY CONCERNING A PERSON'S
14 DETECTION, APPREHENSION, DETENTION, TRIAL, OR DISPOSITION OF AN OFFENSE
15 WITHIN THE CRIMINAL JUSTICE SYSTEM.**

16 (e) Except as otherwise provided in this subtitle, "expungement" with respect to
17 a court record or a police record means [removal from public inspection] **THE EXTRACTION
18 AND ISOLATION OF ALL RECORDS ON FILE:**

19 (1) by obliteration; **OR**

20 (2) [by removal to a separate secure area to which persons who do not have
21 a legitimate reason for access are denied access; or

22 (3)] if access to a court record or police record can be obtained only by
23 reference to another court record or police record, by the expungement of it or the part of it
24 that provides access.

25 (f) "Law enforcement unit" means a State, county, or municipal police
26 department or unit, **DETENTION OR CORRECTIONAL FACILITY OR UNIT**, the office of a
27 sheriff, the office of a State's Attorney, the Office of the State Prosecutor, or the Office of
28 the Attorney General of the State.

29 (g) "Minor traffic violation" means a nonincarcerable violation of the Maryland
30 Vehicle Law or any other traffic law, ordinance, or regulation.

31 (h) "Police record" means an official record that a law enforcement unit, booking
32 facility, **DETENTION OR CORRECTIONAL FACILITY**, or the Central Repository maintains
33 about the arrest and detention of, or further proceeding against, a person for:

1 (1) a criminal charge;

2 (2) a suspected violation of a criminal law;

3 (3) a violation of the Transportation Article for which a term of
4 imprisonment may be imposed; or

5 (4) a civil offense or infraction, except a juvenile offense, enacted under
6 State or local law as a substitute for a criminal charge.

7 10–102.

8 (a) A police record or a court record is subject to expungement under this subtitle.

9 (b) (1) A court record or a police record that existed before July 1, 1975, and is
10 still maintained, may be expunged under this subtitle.

11 (2) A person who is entitled to the expungement of a court record or a police
12 record that existed before July 1, 1975, may use the procedures for expungement provided
13 under this subtitle.

14 (3) The limitation periods provided in § 10–105 of this subtitle begin when
15 the person becomes entitled to expungement of a court record or a police record that existed
16 before July 1, 1975.

17 (4) The custodian of court records or police records that were made before
18 July 1, 1975, and that may be expunged under this subtitle:

19 (i) shall make a reasonable search for a record requested for
20 expungement; but

21 (ii) need not expunge a court record or a police record that is not
22 found after a reasonable search.

23 (c) This subtitle does not apply to:

24 (1) a record about a minor traffic violation;

25 (2) the published opinion of a court;

26 (3) a cash receipt or disbursement record that is necessary for audit
27 purposes; **OR**

28 (4) a transcript of court proceedings made by a court reporter in a multiple
29 defendant case[;

30 (5) an investigatory file; or

1 (6) a record of the work product of a law enforcement unit that is used
2 solely for police investigation].

3 **(D) A POLICE RECORD OR A COURT RECORD THAT HAS BEEN EXPUNGED**
4 **UNDER THIS SUBTITLE:**

5 **(1) MAY NOT BE USED FOR ANY PURPOSE; AND**

6 **(2) SHALL BE TREATED AS IF THE RECORD NEVER EXISTED.**

7 10–108.

8 (a) A person may not open or review an expunged record or disclose to another
9 person any information from that record [without a court order from:

10 (1) the court that ordered the record expunged; or

11 (2) the District Court that has venue in the case of a police record expunged
12 under § 10–103 of this subtitle.

13 (b) A court may order the opening or review of an expunged record or the
14 disclosure of information from that record:

15 (1) after notice to the person whom the record concerns, a hearing, and the
16 showing of good cause; or

17 (2) on an ex parte order, as provided in subsection (c) of this section.

18 (c) (1) The court may pass an ex parte order allowing access to an expunged
19 record, without notice to the person who is the subject of that record, on a verified petition
20 filed by a State's Attorney alleging that:

21 (i) the expunged record is needed by a law enforcement unit for a
22 pending criminal investigation; and

23 (ii) the investigation will be jeopardized or life or property will be
24 endangered without immediate access to the expunged record.

25 (2) In an ex parte order, the court may not allow a copy of the expunged
26 record to be made].

27 **[(d) (B) (1) A person who violates this section is guilty of a misdemeanor and**
28 **on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year**
29 **or both.**

1 (2) In addition to the penalties provided in paragraph (1) of this subsection,
2 an official or employee of the State or a political subdivision of the State who is convicted
3 under this section may be removed or dismissed from public service.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2023.