

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 142
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement of Records

This bill modifies a provision that prohibits expungement of a police, court, or other record if: (1) the petition is based on the entry of probation before judgment, a *nolle prosequi*, or a stet, or the grant of a pardon; and (2) the person has subsequently been convicted of a crime.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues and expenditures, if the bill results in a substantial number of requests for expungement.

Local Effect: Potential increase in local revenues and expenditures, if the bill results in a substantial number of requests for expungement.

Small Business Effect: None.

Analysis

Bill Summary: A person may expunge a charge that is currently not expungeable due to a subsequent conviction of another charge, unless:

- the petition for expungement is based on the entry of probation before judgment, a *nolle prosequi*, or a stet, or the grant of a pardon by the Governor, for a charge of child abuse or sexual abuse of a minor, and since the entry or pardon, the person has been convicted of child abuse or sexual abuse of a minor;

- the petition for expungement is based on the entry of probation before judgment, a *nolle prosequi*, or a stet, or the grant of a pardon by the Governor, for a crime of violence, and since the entry or pardon, the person has been convicted of a crime of violence; or
- the petition for expungement is based on the entry of probation before judgment, a *nolle prosequi*, or stet, or the grant of a pardon by the Governor, and the person is a defendant in a criminal proceeding.

Current Law: A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon.

A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or the grant of a pardon by the Governor, if the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding.

The State's Attorney is served with a copy of each petition for expungement. If the State's Attorney objects to the petition within 30 days, the court holds a hearing to determine whether the person is entitled to expungement.

A petition for expungement costs \$30, except for those cases with a verdict of acquittal. "Expungement" with regard to a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of that record, or the part of it that provides access.

"Crime of violence" means:

- abduction;
- arson in the first degree;

- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- carjacking;
- armed carjacking;
- sexual offense in the first degree;
- sexual offense in the second degree;
- use of a handgun in the commission of a felony or other crime of violence;
- an attempt to commit any of the above crimes;
- assault in the first degree;
- assault with intent to murder;
- assault with intent to rape;
- assault with intent to rob;
- assault with intent to commit a first degree sexual offense; and
- assault with intent to commit a second degree sexual offense.

Background: Forty-one states currently allow the sealing or expungement of arrest records that do not result in convictions.

State Revenues: Except for cases that result in an acquittal, a petition for expungement filed with the courts costs \$30.

The District Court disposed of 197,593 cases in fiscal 2003. Of these, 117,680, or 60% resulted in an acquittal, dismissal, probation before judgment, *nolle prosequi*, or stet. The District Court processed approximately 16,506 petitions for expungement in fiscal 2003. While it cannot be predicted with certainty how many additional petitions would be submitted as a result of this bill, for illustrative purposes only, if an additional 10,000 defendants sought expungement, that would result in additional general fund revenues of \$300,000.

State Expenditures: If the bill results in a substantial number of additional petitions for expungement, additional staff could be required. The Department of Public Safety and Correctional Services uses contractual employees, at a salary of \$25,620 per employee to process expungements. Each employee processes approximately 1,350 expungements per month. The District Court hires GS8 clerk courts to process expungements, at a cost (including fringe benefits and operating costs) of \$32,300 per year. Related printing, postage, and copying costs would also increase.

Local Fiscal Effect: Local jurisdictions would receive additional revenue from the \$30 fee for petitions filed with a circuit court. Local expenditures would also increase, if the bill results in additional requests for expungements.

Additional Information

Prior Introductions: HB 372 of 2003 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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