

**Department of Legislative Services
Maryland General Assembly
2007 Session**

**FISCAL AND POLICY NOTE
Revised**

House Bill 10
Judiciary

(Delegate Haynes)

Judicial Proceedings

Criminal Procedure - Expungement of Police Records - Arrest Without Charge - Automatic

This bill provides that a person who is arrested or confined by a law enforcement unit on or after October 1, 2007 and then is released without being charged with the commission of a crime is entitled to the expungement of all police records, including photographs and fingerprints, relating to the matter and is not required to pay any fee or costs in connection with the expungement.

Fiscal Summary

State Effect: General fund expenditures could increase by \$350,700 in FY 2008 accounting for the bill's October 1 effective date. Future years reflect annualization and inflation.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	350,700	429,400	453,600	479,300	506,800
Net Effect	(\$350,700)	(\$429,400)	(\$453,600)	(\$479,300)	(\$506,800)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Expenditures could increase in some larger counties, such as Montgomery and Baltimore City, to pay for the hiring of up to two new staff to process expungements.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a law enforcement unit, within 60 days after the release of individuals meeting the above-mentioned criteria, to: (1) search diligently for and expunge each police record about the arrest or confinement of the person; and (2) send a notice of expungement containing all relevant facts about the matter to the person entitled to expungement, the Central Repository, and each booking facility or law enforcement unit believed to have a police record about the matter. Within 60 days after the receipt of the notice, the Central Repository and the law enforcement units must search diligently for and expunge each of the individual's police records relating to the matter and advise the individual entitled to the expungement of compliance with the order. If a law enforcement unit, booking facility, or the Central Repository fails to expunge the police record, the individual entitled to the expungement may seek legal redress and is entitled to recover court costs.

A police record may not be expunged by obliteration until three years after the date of expungement; during those three years, the records must be removed to a separate secure area to which persons who do not have a legitimate reason for access are denied access.

Current Law: A person who is arrested, detained, or confined by a law enforcement unit for the suspected commission of a crime, and then is released without being charged with the commission of a crime can have police records relating to the matter expunged by request. In order to have the police records expunged, the person must send a written notice of facts relating to the matter to a law enforcement unit the person believes may have a police record about the matter. The person cannot give this notice before the statute of limitations expires on all tort claims the person may have arising from the incident, unless the person attaches to the notice a written general waiver and release, in legal form, of all tort claims that the person has arising from the incident. The notice and waiver are not expungable, and the law enforcement unit is required to keep the notice and waiver until all applicable statutes of limitation expire. The person requesting expungement must provide the notice within eight years after the date of the underlying incident.

Law enforcement units that receive timely notices are required to promptly investigate and verify the facts in the notice. If the law enforcement unit finds that the facts are true, it has 60 days after receipt of the notice to search diligently for and expunge police records it has on the person pertaining to the underlying incident. The law enforcement unit then has to send a copy of the notice and its verification of the facts in the notice to: (1) the Central Repository; (2) each booking facility or law enforcement unit they believe may have a police record about the arrest, detention, or confinement of the person; and (3) the person requesting expungement. Entities contacted by the original law

enforcement unit have 30 days to search diligently for and expunge police records they have about the underlying matter.

If the law enforcement unit that received the original notice believes the person is not entitled to expungement, the unit must inform the person in writing of the denial of the expungement request and the reasons behind the denial within 60 days after receipt of the notice. A person denied expungement can apply for an order of expungement in the District Court that has proper venue against the law enforcement unit within 30 days after written notice of the denial is mailed or delivered to the person. The District Court then notifies the law enforcement unit of the application and holds a hearing, to which the law enforcement unit is a party. The District Court can order expungement or deny the application. Each party to the proceeding is entitled to appellate review provided for civil cases from the District Court.

The District Court of Maryland generally requires individuals petitioning for expungement of police records to pay a \$30 filing fee. However, if a person is released without charge, courts will not have a record of the arrest. Persons who are released without charge must contact law enforcement units to request expungement and are not subject to the \$30 District Court fee. However, if a person applies to the District Court for an order of expungement following the denial of an expungement request by a law enforcement unit, District Court fees may apply.

Expungement of court and police records may be done by (1) obliteration; (2) removal to a separate secured area with restricted access; or (3) expungement of another court or police record, if access to the original record can only be obtained through reference to other record.

Background: The Maryland Criminal Justice Information System (CJIS) reports that 21,000 people were arrested and released without charge in the State in 2006.

State Expenditures: State expenditures would increase depending on the number of individuals released without charge. CJIS reports that 21,000 people were arrested and released without charge in the State in 2006 and that it received approximately 19,000 requests for expungements, which were processed by a nine-and-one-half member staff. CJIS advises that only a small minority of people currently requesting expungement would be eligible for automatic expungement under this bill. CJIS does not receive any fees for expungements.

Using the CJIS figure, general fund expenditures could increase by an estimated \$350,654 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of hiring 10 expungement clerks to perform 15,750

additional expungements in fiscal 2008. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$312,779
Operating Expenses	<u>37,875</u>
Total FY 2007 State Expenditures	\$350,654

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) 21,000 additional expungements annually.

The Maryland State Police advises that it could handle the notice requirements in this bill with existing resources.

Central Intake and Booking Facility (CBIF)

Since the State operates CBIF, there could be a one-time increase in State expenditures to reprogram CBIF computers. There are insufficient data at this time to reliably estimate this reprogramming cost.

Local Expenditures: Expenditures in some counties could increase resulting from additional staff required to process additional expungements. Baltimore City advises that it will need two additional crime recording technicians to handle the additional expungements of police records required by this bill. Montgomery County advises that it will need three additional police administrative assistants to handle expungements. The Department of Legislative Services disagrees with this assessment and believes that any additional expungements could be handled with one additional staff. Other jurisdictions report that any additional workload could be handled with existing resources.

Additional Information

Prior Introductions: HB 64 of 2006, a similar bill, received an unfavorable report in the House Judiciary Committee.

Cross File: None.

Information Source(s): City of Havre de Grace, Allegany County, Montgomery County, Prince George's County, Judiciary (Administrative Office of the Courts), Department of State Police, City of Frederick, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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