

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 1181  
Judiciary

(Delegate Simmons)

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Domestic Violence - Expungement of Records

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This bill requires a court to order the expungement of court records relating to domestic violence protective order proceedings if: (1) both parties appeared before the court at a temporary or final protective order hearing; and (2) the court finds by clear and convincing evidence that the alleged abuse did not occur and the petition for relief from abuse was filed in bad faith or without substantial justification. The bill also establishes a process by which a respondent may file a petition to expunge court records relating to protective order proceedings.

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Fiscal Summary

**State Effect:** Any increase in the workload of the District Court can be handled with existing budgeted resources.

**Local Effect:** Any increase in the workload of the circuit courts can be handled with existing budgeted resources.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill requires a court, after a temporary or final protective order hearing, to order the expungement of all court records about the proceeding if: (1) both parties appeared before the court at the hearing; and (2) the court finds by clear and convincing evidence that the alleged abuse did not occur and the petition for relief from abuse was filed in bad faith or without substantial justification. Information about the proceeding may not be removed from the domestic violence central repository.

Unless a temporary or final protective order was entered after a hearing at which the respondent had the opportunity to be heard, the respondent may file a petition to expunge all court records relating to the proceeding. The petition must generally be filed in the court in which the proceeding began, however, if the proceeding was transferred to another court, the petition must be filed in the court to which the proceeding was transferred.

A copy of a petition for expungement must be served in accordance with the Maryland Rules governing service of process in a civil action on the person who filed the petition for a protective order and, if applicable, the person's attorney. If an objection to the petition for expungement is filed within the time required under the Maryland Rules for filing an answer to an original pleading in a civil action, the court must hold a hearing.

If a court finds by clear and convincing evidence that abuse did not occur and that the petition for relief from abuse was filed in bad faith or without substantial justification, the court must order the expungement of all court records about the proceeding. Information about the proceeding may not be removed from the domestic violence central repository.

Within 60 days after entry of an order of expungement, each custodian of court records subject to the order of expungement must advise the court and the person who is seeking expungement of compliance with the order in writing.

A court record is an official record of the court about a proceeding that the clerk of a court or other court personnel keeps. A court record includes: (1) an index, docket entry, petition, memorandum, transcription of proceedings, electronic recording, order, and judgment; and (2) any electronic information about a proceeding on the web site maintained by the Maryland Judiciary.

“Expunge” is defined as removing information from public inspection. “Expungement” means:

- with respect to a record kept in a court house, removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- with respect to electronic information about a proceeding on the web site maintained by the Maryland Judiciary, removal of the information from the web site.

**Current Law:** Court records, including those relating to a domestic violence proceeding, that are maintained by a court are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person, upon personal appearance in the custodian's office during normal business hours, to inspect the record. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that the record is open to inspection in paper form. (*See* Maryland Rules 16-1002 and 16-1008.)

Police and court records in criminal cases may be expunged if a person is charged with a crime and:

- the person is acquitted;
- the charge is dismissed;
- a probation before judgment is entered;
- a *nolle prosequi* is entered;
- the trial is indefinitely postponed by marking the charge “stet” on the docket;
- the person is pardoned for a nonviolent crime; or
- the crime is an enumerated “nuisance” crime.

(See Criminal Procedure Article § 10-105.)

**Background:** The domestic violence central repository is a database kept by the Maryland Judiciary that includes all protective and peace orders issued by Maryland District and circuit court judges and District Court commissioners. This secure database is available for use by courts and law enforcement.

The Judiciary’s web site includes a link to “CaseSearch.” CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and Maryland circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except for a court-ordered expungement.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 467 (Senators Stone and Miller) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State’s Attorneys’ Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2009  
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