

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1368
Judiciary

(Delegate McConkey)

**Criminal Procedure - Expungement of Court and Police Records - Prohibition for
Embezzlement**

This bill establishes that a court or police record related to a charge of, conviction of, or granting of probation before judgment for embezzlement may not be expunged.

Fiscal Summary

State Effect: None. The bill does not materially affect the workload of the Maryland Criminal Justice Information System, the State Police, or the District Court.

Local Effect: None. The bill does not materially affect the workload of the circuit courts or local law enforcement agencies.

Small Business Effect: None.

Analysis

Current Law:

Expungement: 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.

If two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge in a unit, the person is not entitled to expungement of any other charge in the unit.

Expungement of 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; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Embezzlement: A fiduciary is a position of trust and has a duty, created by his or her undertaking of a specific assignment or function, to act primarily for the benefit of another in connection with the undertaking. A fiduciary is prohibited from (1) fraudulently and willfully appropriating money or a thing of value that the fiduciary holds in a fiduciary capacity contrary to the requirements of the fiduciary's trust responsibility; or (2) secreting money or a thing of value that the fiduciary holds in a fiduciary capacity with a fraudulent intent to use the money or thing of value contrary to the requirements of the fiduciary's trust responsibility. Violators are guilty of embezzlement, a misdemeanor punishable by imprisonment for at least one year but no more than five years.

Background: The Division of Correction conducted intake on one person for embezzlement in fiscal 2009. The Division of Parole and Probation conducted intake on 37 individuals for embezzlement. According to the Maryland Sentencing Guidelines database, there were six convictions for embezzlement in circuit courts from 2007 to 2009.

In 2008, the Criminal Justice Information System processed 33,944 expungements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Commission on Criminal Sentencing Policy, Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2010
mlm/kdm

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