

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 494

(Senator Gladden, *et al.*)

Judicial Proceedings

Criminal Procedure - Retention of Right to Expungement

This bill establishes that whether a person is entitled to expungement of any one *charge or conviction in a unit* does not affect the person's right to expungement of another charge or conviction in the unit. If two or more charges or convictions arise from the same incident, transaction, or set of facts, they are considered to be a unit.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues and expenditures if a substantial number of individuals choose to have covered records expunged. General fund expenditures for the Judiciary to reprogram circuit court computers increase by \$61,500 in FY 2013.

Local Effect: Potential significant increase in local revenues and expenditures if a substantial number of individuals choose to have covered records expunged. **This bill may impose a mandate on local governments.**

Small Business Effect: None.

Analysis

Current Law: Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts 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. Individuals convicted of

specified public nuisance crimes are also eligible for expungement of the associated criminal records under certain circumstances.

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 or nuisance conviction 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.

Background: The number of expungement petitions received by the Maryland Criminal Justice Information System (CJIS) has steadily increased over recent years. CJIS advises that this increase is due to recent legislation expanding eligibility for expungements (including expungements for individuals arrested and released without being charged) and an increase in the number of occupations and employers requiring background checks. The numbers shown below do not include expungements for individuals released without being charged with a crime. Those expungements are handled through a fairly automated process and involve significantly less work than other types of expungements.

<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199

State Fiscal Effect: The District Court processed 32,618 petitions for expungement in fiscal 2010, an increase of 2,560 over fiscal 2009. The bill could lead to a significant increase in the number of petitions. The District Court charges a \$30 fee for expungements unless all of the records to be expunged relate to a charge of which the petitioner has been acquitted. As a result, general fund revenues increase by \$30 for each petition filed. Depending on the number of petitions, the increase could be fairly

significant. *For illustrative purposes only*, for every additional 1,000 petitions, general fund revenues increase by \$30,000.

The District Court anticipates an increase in costs in direct relation to the higher number of expungements. This includes an increase in clerical staff and significant operational expenditures relating to manually redacting expungement-eligible information from paper files while retaining ineligible information. The Administrative Office of the Courts also advises that the bill's retroactive application will require retrieval of records prior to 1981 from the State Archives. There is a \$2.50 charge incurred for every record requested from the State Archives.

The bill will also result in increased costs for printing new forms, postage for mailing petitions and orders, storage for expunged records, and copying. There may also have to be two or more files maintained for those records that contain a unit that is sought to be expunged.

While the District Court does not maintain statistics on the number of "unit" cases, this number is thought to be substantial. The District Court advises that, as their computers are currently programmed, it is impossible to expunge one charge from a unit in criminal cases, because all charges on docket sheets and other items are integrated into a single record that cannot be modified. The District Court may have to maintain multiple sets of records (depending on how many charges in a unit were expunged at different times). The Department of Public Safety and Correctional Services (DPSCS) has advised that, while they would not have to create additional sets of records, expunging single charges from a unit could be extremely burdensome because of the large number of records that are potentially involved.

The Administrative Office of the Courts (AOC) is responsible for the computer programming of the circuit court expungement systems. AOC advises that reprogramming the Unified Court System and the systems used in Montgomery and Prince George's counties will cost approximately \$61,500 in fiscal 2013. However, the cost may be slightly lower to the extent that Montgomery County's circuit court system can accommodate the expungement of individual charges.

CJIS advises that it would need to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. In 2011, the expungement unit at CJIS reported that it had lost one supervisory position and had two vacancies for expungement clerks, both of which had been frozen. The cost of hiring one additional expungement clerk in fiscal 2013 is \$38,560, which accounts for the bill's October 1, 2012 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures for one additional clerk would total over \$50,000.

Local Fiscal Effect: Excluding Montgomery and Prince George’s counties, the circuit courts processed 7,523 expungements in fiscal 2010. The circuit courts of multiple counties have historically advised that the elimination of the “unit rule” for expungements will likely result in a substantially higher number of expungement petitions. Circuit courts would also incur increased operational expenditures associated with reviewing individual files and redacting eligible information while maintaining ineligible information. The circuit courts currently charge a \$30 fee for expungements unless all of the records to be expunged relate to a charge of which the petitioner has been acquitted.

Additional Information

Prior Introductions: HB 1279 of 2011, a similar bill, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 1292 (Delegates Carter and Oaks) - Rules and Executive Nominations.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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