

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 601
Judiciary

(Delegate Stukes, *et al.*)

Criminal Procedure - Explanation of Expungement Provisions Relating to
Proposed Disposition of Charge

This bill requires that prior to disposing of a charge against a criminal defendant, a court must provide a detailed explanation to the defendant of the expungement provisions contained in Title 10, Subtitle 1 of the Criminal Procedure Article and Title 2, Subtitle 5 of the Public Safety Article relating to the proposed disposition of the charge. After providing the explanation, the court must give the defendant the opportunity to reject a disposition of probation before judgment, *nolle prosequi*, plea of guilty, or *stet*. Failure of a court to comply with the notice requirement does not affect the legality or efficacy of the sentence or disposition of the case.

Fiscal Summary

State Effect: None. While the bill may result in operational delays for the District Court, the bill is procedural and is not expected to materially affect State finances.

Local Effect: None. While the bill may result in operational delays for the circuit courts, the bill is procedural and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: When all of the charges against the defendant in a criminal case are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*, the court must advise the defendant that the defendant may be entitled to expunge the records and any DNA sample and DNA record relating to the charge or charges against the

defendant in accordance with Title 10, Subtitle 1 of the Criminal Procedure Article and Title 2, Subtitle 5 of the Public Safety Article. The failure of a court to comply with the notice requirements does not affect the legality or efficacy of the sentence or disposition of the case.

Expungement – Generally

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.

DNA Expungement

Under the Public Safety Article, any DNA samples and records generated as part of a criminal investigation or prosecution must be destroyed or expunged automatically from the State DNA database if (1) a criminal action begun against the individual relating to the crime does not result in a conviction of the individual; (2) the conviction is finally reversed or vacated and no new trial is permitted; or (3) the individual is granted an unconditional pardon. A DNA sample or DNA record may not be destroyed or expunged automatically from the State DNA database if the criminal action is put on the *stet* docket or the individual receives probation before judgment.

If the DNA sample or DNA record was obtained or generated only in connection with a case in which eligibility for expungement has been established, the DNA sample must be destroyed and the DNA record must be expunged. The DNA record must be expunged from every database into which it has been entered, including local, State, and federal databases within 60 days of the event qualifying the DNA sample for expungement. A letter documenting expungement of the DNA record and destruction of the DNA sample must be sent by the Director of the Forensics Sciences Division of the Department of State Police (director) to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

A record or sample that qualifies for expungement or destruction and is matched concurrent with or subsequent to the date of qualification for expungement (1) may not be utilized for a determination of probable cause regardless of whether it is expunged or destroyed timely and (2) is not admissible in any proceeding for any purpose.

Pursuant to Chapter 337 of 2008, effective January 1, 2009, an individual whose DNA record or profile is included in the statewide DNA database system and whose DNA sample is stored in the statewide DNA repository may request that his/her information be expunged on the grounds that the conviction that facilitated the sample's inclusion meets the expungement criteria under the Criminal Procedure Article. The expungement proceedings for a DNA record or profile must be conducted in accordance with the expungement requirements under the Criminal Procedure Article. On receipt of an order of expungement, the director must purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database system and the statewide DNA repository.

State Expenditures: The bill may result in operational/procedural delays for the District Court.

Currently, the State's Attorney may enter a *nolle prosequi* without the defendant's consent and/or when the defendant is not present. According to the Judiciary, in fiscal 2013, there were 43,915 criminal cases tried and 7,892 cases with at least one disposition of *nolle prosequi* in the circuit courts; during this same time period, there were 67,816 criminal cases tried and 92,191 criminal cases *nolle prosequied* by the State's Attorney in the District Court. Information is not available as to how many of these *nolle prosequis* occurred without the consent or presence of the defendant.

The Judiciary advises that it is unclear whether this practice could continue under the bill's provisions and that additional court time may be needed in each case to permit the judge to explain expungement provisions, answer any questions, and allow the defendant to reconsider the aforementioned dispositions. While the Judiciary estimates that the legislation could potentially result in a significant amount of additional court time, the

extent of that increase and the associated operational and fiscal impact cannot be reliably determined at this time. The Department of Legislative Services advises that while the bill may result in operational delays in the courts, it is assumed that the bill's requirements are incorporated into courtroom practice.

Local Expenditures: For the same reasons discussed above, the bill may result in operational delays for the circuit courts.

Additional Information

Prior Introductions: HB 480 of 2013, HB 237 of 2012, and HB 878 of 2011, all similar bills, received unfavorable reports from the House Judiciary Committee.

Cross File: None.

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, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2014
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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510