

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 79

(Chair, Judiciary Committee)(By Request - Maryland
Judicial Conference)

Judiciary

Judicial Proceedings

Courts - Juveniles - Expungement of Records

This bill authorizes and establishes procedures for a person to file a petition to expunge the person's "juvenile record."

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts or State's Attorneys' offices.

Small Business Effect: None.

Analysis

Bill Summary: "Expungement" means removal from public inspection (1) by obliteration; (2) by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or (3) if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of it or the part of it that provides access.

A "juvenile record" means a court record and police record concerning a child alleged or adjudicated delinquent or in need of supervision of who has received a citation for a violation.

“Victim” means a person against whom a delinquent act has been committed or attempted.

A person may file a petition for expungement of the person’s juvenile record in the court where the petition or citation was filed. The court must have a copy of the petition for expungement served on (1) the State’s Attorney; (2) all listed victims in the case in which the person is seeking expungement at the address listed in the court file; and (3) all family members of a victim who are listed in the court file as having attended the adjudication for the case in which the person is seeking expungement. The court may order a juvenile record expunged if (1) the State’s Attorney enters a *nolle prosequi*; (2) the petition is dismissed; (3) the court, in an adjudicatory hearing, does not find that the allegations in the petition are true; (4) the adjudicatory hearing is not held within two years after a petition is filed; or (5) the court, in a disposition hearing, finds that the person does or does not require guidance, treatment or rehabilitation. In addition, the following conditions must also be met: (1) the person has attained the age of 18 and at least two years have elapsed since the last official action in the person’s juvenile record; (2) the person has not been adjudicated delinquent more than once; (3) the person has not subsequently been convicted of any offense; (4) no delinquency petition or criminal charge is pending against the person; (5) the person has not been adjudicated delinquent for an offense which, if committed by an adult, would constitute a “crime of violence,” a fourth degree sexual offense, or a felony; (6) the person was not required to register as a sex offender under specified statutory provisions; (7) the person has not been adjudicated delinquent for an offense involving the use of a firearm, as defined in specified statutory provisions, in the commission of a “crime of violence”; and (8) the person has fully paid any monetary restitution ordered by the court.

The court must consider the best interests of the person, the person’s stability in the community, and the safety of the public. The bill authorizes the following persons to file an objection to a petition: (1) a listed victim in the case in which the person is seeking expungement; (2) a family member of a victim, as specified; and (3) the State’s Attorney. If an objection is filed within 30 days after the petition is served, the court must hold a hearing. The court may hold a hearing on its own initiative or grant the petition without a hearing if no objection is filed. However, the court may deny the petition without a hearing if the petition fails to meet the above requirements.

If, after a hearing, the court finds that the person is entitled to expungement, the court must order the expungement of all court records and police records relating to the delinquency or child in need of supervision petition or the citation. If, after a hearing, the court finds that the person is not entitled to expungement, the court must deny the petition. The person who filed the petition for expungement or the State’s Attorney may appeal an order granting or denying the petition. Unless an order is stayed pending an appeal, each custodian of juvenile records subject to the order of expungement must

advise, in writing, the court the petitioner, and all parties to the petition for expungement proceeding of compliance with the order within 60 days after entry of the order.

The bill's provisions are not applicable to records maintained as part of the sexual offender registry or records maintained by a law enforcement agency for the sole purpose of collecting statistical information concerning juvenile delinquency and that do not contain any information that would reveal the identity of a person.

Current Law:

Juvenile Records

In general, a court record concerning a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or in certain circumstances relating to notification of a local superintendent or nonpublic school principal upon the arrest of a child for specified offenses. This prohibition does not restrict access to and the use of court records or fingerprints in court proceedings involving the child by personnel of the court, the State's Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of the Department of Juvenile Services (DJS). Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of the court record or fingerprints of a child by DJS or in an investigation and prosecution by a law enforcement agency.

The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed. After a child has reached 21 years of age, on its own motion or on petition, the court must order them sealed. Once sealed, the court records of a child may not be opened for any purpose, except by order of the court upon good cause shown.

In general, police records concerning a child are confidential and maintained separately from adult records. The contents of these records may not be divulged except by court order for good cause shown or specific situations in which police notify school superintendents of the arrest of a student. However, records may still be accessed by DJS or by any law enforcement agency involved in the investigation and prosecution of a child and under specific situations related to writs of attachment to apprehend a child named in the writ.

Statutory provisions also specify circumstances under which designated entities within Baltimore City government may have access to and confidential use of court and police records.

Expungement

A person may file and a court must grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions or that was transferred for disposition at sentencing.

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 and individuals found not criminally responsible for specified misdemeanors 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.

Crimes of Violence

A “crime of violence” is (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first and second degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor under the age of 13 years under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Fourth Degree Sexual Offense

The crime of fourth degree sexual offense prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the defendant is at least four years older than the victim. It also prohibits, with certain exceptions, a “person in a position of authority,” as specified in statute, from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed.

Background: According to the Judiciary, there has been an increasing demand by government and private employers, including the military, educational institutions, and licensing authorities, for individuals to consent to the release of juvenile court records. Accordingly, former juvenile respondents have been waiving their rights to confidentiality and petitioning the courts to open the sealed records.

Approximately 30 states have statutory language authorizing the “expungement,” “erasure,” or “destruction” of juvenile delinquency records, either automatically once specified events occur or by petition. At least half of the states with these provisions require notice to be given the State’s Attorney’s Office prior to the records being expunged. Most states specify a duration of time that must have passed and/or a minimum age before records may be expunged. In addition to excluding certain offenses from being eligible for expungement (*e.g.*, felonies, violent crimes, and/or sexual offenses are often excluded), many states have an additional requirement that there can be no pending matters before the court and that the juvenile has no subsequent adult convictions. Although statutory language may use the term “expunge,” there is no accord among the states as to how expunged records are treated, and the effects of having a record expunged vary widely among the states that permit the practice (*e.g.*, not all of the states with provisions for expungement require that the records be physically destroyed). At least 10 states specify in statute circumstances under which expunged records may still be accessed. For example, Delaware allows expunged records to be disclosed to law enforcement officers investigating specified criminal activity or for the purpose of an employment application for a law enforcement agency.

Virginia is among the states that has an automatic process for the destruction of juvenile delinquency court records. Pursuant to statute, every January 2 (or another date designated by the court), the clerk of the juvenile and domestic relations district court must destroy its files, papers, and records, including electronic records, connected with any proceeding in the court concerning a juvenile. The juvenile must be at least 19 years of age and five years must have elapsed since the date of the last hearing in any case regarding the juvenile. If the juvenile was found guilty of specified traffic-related incidents, the juvenile must be 29 years of age. All records concerning a juvenile must also be retained if the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult.

Individuals in Delaware must file a petition to commence the expungement process, but the state has provisions for mandatory expungement. A petition for expungement must be granted in specified circumstances, including if (1) an individual has no more than one adjudication of delinquency for an offense designated as a felony or a misdemeanor (other than a violent felony or a sex offense); (2) the individual has no subsequent adult convictions or pending charges; and (3) at least three years have passed. Courts may grant an expungement in other instances, such as when a child has no more than

two adjudications of delinquency for certain misdemeanors or no more than one adjudication for certain violent felonies or sex offenses. At least three years (and up to five, depending on the adjudication) must have passed in these circumstances and notice must be provided to the Attorney General. On a finding that the continued existence and possible dissemination of information causes or may cause circumstances constituting a manifest injustice to the petitioner, the records must be expunged. Otherwise, the court must deny the petition for expungement. The court recognizes a rebuttable presumption that the records cause a manifest injustice for the petitioner, but the burden is still on the petitioner to allege specific facts supporting the allegation of manifest injustice, which must be proven by a preponderance of the evidence.

Additional Information

Prior Introductions: HB 282 of 2013, a similar bill, passed the House but received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, SB 229, also received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 68 (Chair, Judicial Proceedings Committee)(By Request - Maryland Judicial Conference) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Baltimore, Garrett, Howard, and Montgomery counties; Department of Legislative Services

Fiscal Note History: First Reader - January 10, 2014
ncs/kdm Revised - House Third Reader - March 21, 2014
Revised - Enrolled Bill - May 12, 2014

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