

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 791
Judiciary

(Delegate McComas, *et al.*)

Criminal Procedure - Expungement - Restorative Justice Programs

This bill adds the following to the list of dispositions for which expungement is available: (1) a *nolle prosequi* with the requirement of community conferencing, community mediation, or similar agreement; and (2) stet of charge with the requirement of community conferencing, community mediation, or similar agreement.

A petition for expungement based on a *nolle prosequi* with the requirement of community conferencing, community mediation, or similar agreement may not be filed until the completion of the program requirements. A petition for expungement based on stet with the requirement of community conferencing, community mediation, or similar agreement may not be filed earlier than the date the petitioner completed the requirements of the community conferencing, community mediation, or similar agreement, or three years after the stet was entered on the docket, whichever is later.

The bill also incorporates these dispositions into the prohibition on expungement for a person who is a defendant in a pending criminal proceeding or who has been convicted of a subsequent crime (other than a minor traffic violation) following the disposition on which the petition is based.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from expungement fees. Minimal increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to process additional expungements.

Local Effect: Minimal increase in local revenues from expungement fees in the circuit courts. Minimal increase in local expenditures for local law enforcement and circuit court staff to process expungements.

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 or found not criminally responsible of specified public nuisance crimes are also eligible for expungement of the associated criminal records under certain circumstances.

The entry of a *nolle prosequi* or stet of charge with the requirement of drug or alcohol treatment are eligible for expungement. A petition for expungement based on a *nolle prosequi* with the requirement of drug or alcohol treatment may not be filed until the completion of the treatment. A person filing a petition for expungement based on this type of stet of charge may file his/her petition on the date the petitioner completed the requirement of drug or alcohol treatment or three years after the stet was entered on the docket, whichever is later.

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 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 Judiciary advises that during fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit court, of which

987 were filed in Baltimore City, 379 in Prince George's County, and 207 in Montgomery County.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within DPSCS has steadily increased over the years. CJIS advises that this increase is due to 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 in **Exhibit 1** (which are the latest data provided by CJIS) 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.

Exhibit 1
CJIS Expungements
2004-2014

<u>Calendar Year</u>	<u>CJIS Expungements</u> <u>(Excluding Released without Charge)</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199
2011	20,492
2012	30,654
2013	34,207
2014	33,801

Source: Maryland Criminal Justice Information System – Department of Public Safety and Correctional Services

State Revenues: General fund revenues increase minimally from expungement fees in the District Court. The District Court charges a \$30 fee for expungements unless all of

the records to be expunged relate to a charge for which the petitioner has been acquitted. As a result, general fund revenues increase by \$30 for each petition filed.

State Expenditures: General fund expenditures increase minimally for the District Court and CJIS to process additional expungements as a result of the bill. The magnitude of the increase depends on the number of individuals who file petitions for expungement *solely* because the provisions of the bill render them eligible for an expungement and who do not have any other disqualifying factors for expungement. Data is not readily available on the number of individuals who will be eligible for expungement as a result of the bill.

The Administrative Office of the Courts advises that the expungement process is an extensive, expensive, and labor intensive one. Court clerks who receive expungement petitions must review the petitions to ensure that they are complete and accurate (which can be problematic, since most petitions are filed *pro se*), review court records for relevant information, and make sure that all law enforcement and other related agencies relevant to the petition are contacted. Following the granting of a petition for expungement by the court, court staff must verify that all agencies have complied with the order. Expunged records are stored accordingly. Though courts do charge a fee for expungement, the Judiciary advises that the fee does not cover the amount of labor and expense involved with processing a petition for expungement.

The Judiciary advises that it does not anticipate a significant fiscal or operational impact on the trial courts as a result of the bill.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost of hiring one additional expungement clerk in fiscal 2016 is \$39,721, which accounts for the bill's October 1, 2015 effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures for one additional clerk total more than \$50,000.

According to CJIS, the expanded categories of dispositions eligible for expungement results in a significant increase in expenditures, but CJIS does not have data to quantify how significant the increase would be. However, the Department of Legislative Services advises that given the narrow range of individuals who will be eligible for expungements solely because of this bill, it is not likely that the bill generates a significant increase in personnel and other expenditures for CJIS.

CJIS does not charge a fee for expungements.

Local Revenues: Local revenues increase minimally from expungement fees in the circuit courts.

Local Expenditures: Local expenditures increase minimally for local law enforcement and circuit courts to comply with the bill's provisions.

The State's Attorneys' Association advises that it cannot determine the bill's impact on prosecutors at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 388 (Senator Hough, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 17, 2015
ncs/kdm

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