

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 1058
Judiciary

(Delegate Carter, *et al.*)

Criminal Procedure - Expungement - Nonviolent Convictions

This bill authorizes a person who was convicted of a nonviolent crime other than specified misdemeanors to petition for expungement of police and court records related to the conviction. A petition for expungement based on a conviction for a nonviolent crime may not be filed before satisfactory completion of the sentence, including probation, that was imposed for the conviction.

It is within the discretion of the court to determine whether a person who has filed a petition based on the conviction of a nonviolent crime is entitled to expungement, including whether the conviction qualifies as nonviolent. In making this determination, the court must take into consideration the specific circumstances of the case and of the petitioner.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from District Court expungement fees. Potential significant increase in general fund expenditures for additional personnel for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to process additional expungement petitions.

Local Effect: Potential significant increase in local revenues from expungement fees in the circuit courts. Potential significant increase in local expenditures if the bill generates a significant increase in requests for expungement of local law enforcement and circuit court records.

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.

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.

A person is not entitled to expungement if he/she is a defendant in a pending criminal proceeding or has been convicted of a crime (other than a minor traffic violation) since the disposition on which the expungement petition is based.

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

Though the bill does not define “nonviolent crime” and leaves such determinations to judicial discretion, § 14-101 of the Criminal Law Article defines a “crime of violence” as (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 younger than age 13 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.

State Revenues: General fund revenues for the Judiciary may increase significantly due to a potential significant increase in petitions for expungement. 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.

State Expenditures: General fund expenditures increase significantly if the bill generates enough additional expungements to require additional expungement clerks at CJIS and

additional personnel at the District Court. Given the number of offenses to which the bill applies, and given the potential for a marked increase in the number of individuals eligible for expungement as a result of the bill, the bill has the potential to generate a significant number of additional expungements.

The expungement process is extensive and labor intensive. 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. 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.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. According to CJIS, the bill may increase expungement requests significantly. 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. CJIS does not charge a fee for expungements.

The bill may also significantly increase petitions for expungement filed with the courts, as well as any resultant hearings, appeals, and compliance. The Judiciary advises that the potentially significant increase in court expungements under the bill could put a significant strain on clerical staff and resources, resulting in the need to hire additional staff. The Judiciary may also incur significant additional expenditures to reprogram computers to comply with the bill's requirements.

Local Revenues: Local revenues may increase significantly from expungement fees in the circuit courts if the bill generates a significant increase in the number of expungement petitions filed in the circuit courts.

Local Expenditures: The bill may have a significant impact on local expenditures if expungement requests for local law enforcement and circuit courts increase significantly as a result of the bill.

Frederick County advises that it needs to employ one part-time administrative position in its State's Attorney's office, at an annual cost of \$15,000, to comply with the requirements of the bill.

The Montgomery County Police Department advises that it needs two additional police aide positions to comply with the bill's requirements, at a cost of at least \$150,000 per year.

The State's Attorneys' Association advises that the bill has no effect on prosecutors.

Anne Arundel and Charles counties do not foresee a fiscal impact from the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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Analysis by: Amy A. Devadas

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