

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 889  
Judiciary

(Delegate Carter, *et al.*)

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Criminal Procedure - Expungement of Records - Waiting Period for Acquittal,  
Nolle Prosequi, or Dismissal

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This bill repeals the requirement that a person wait three years before filing a petition for expungement based on an acquittal, a *nolle prosequi*, or a dismissal unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues from expungement fees in the District Court. Minimal increase in general fund expenditures for the Judiciary to process an increased volume of expungement petitions.

**Local Effect:** Minimal increase in local revenues from expungement fees in the circuit courts. Minimal increase in local expenditures for the circuit courts to process an increased volume of expungement petitions.

**Small Business Effect:** None.

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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.

A petition for expungement based on an acquittal, a *nolle prosequi*, or a dismissal may not be filed within three years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.

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 probation before judgment or a stet of charge with the requirement of drug or alcohol abuse treatment may file his/her petition on the date the petitioner was discharged from probation or completed the requirements of drug or alcohol abuse treatment or three years after the probation was granted or stet with the requirement of drug or alcohol abuse treatment was entered on the docket, whichever is later.

**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 the Department of Public Safety and Correctional Services 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.

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**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

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**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 Judiciary to handle the increase in expungement petitions resulting from the bill.

The Judiciary advises that the bill has the potential to have a significant fiscal and operational impact due to a substantial initial increase in filings for petitions for expungement. While it is likely that there is an increase in expungement petitions soon

after the bill takes effect, it seems unlikely that the increase is significant enough to have a significant fiscal and operational impact on the Judiciary as a whole. Given that under current statute, an individual who wishes to expunge an acquittal, a *nolle prosequi*, or a dismissal may do so before the expiration of the three-year waiting period so long as the petitioner files a written general waiver and release of all the petitioner's tort claims arising from the charge, a significant portion of the population affected by the bill is already eligible to file a petition for expungement before three years have passed.

However, there are procedural issues related to the elimination of the waiver requirement. According to the Judiciary, "The removal of the requirement of the filing of a general waiver and release with the petition for expungement would result in removing the protection for officers, agents, and any and all other persons from any and all claims which may be made for conduct by reason of the defendant's arrest, detention, or confinement. Thus, if a tort claim arises from a charge that is ultimately expunged, there will be no case record available on the original case."

Since CJIS responds to expungement *orders* and not expungement *petitions*, the bill is unlikely to have an appreciable effect on CJIS operations. Though it is likely that there is an initial increase in expungement orders, it is not likely that the increase is sufficient to warrant additional staff. CJIS has consistently advised that it requires an additional expungement clerk for every additional 2,500 expungement orders generated.

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

**Local Expenditures:** Local expenditures increase minimally for the circuit courts to process additional expungement petitions filed as a result of the bill.

The State's Attorneys' Association advises that the bill does not have an effect on prosecutors.

Frederick County advises that in order to accommodate the bill's requirements, it needs an additional part-time staff position in its State's Attorney's office, at a cost of \$15,000 per year.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Frederick County, cities of Frederick and Havre de Grace, 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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