

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 590
Judiciary

(Delegate Vallario, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement - Probation Before Judgment

This bill repeals the prohibition on expungement for a person whose petition for expungement is based on the entry of probation before judgment (except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime) and the person was convicted of a crime (other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime) within three years after the entry of probation before judgment.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from expungement filing fees in the District Court. The bill is not expected to materially affect general fund expenditures.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

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 of a crime that is no longer a crime or 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 (1) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within three years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime or (2) the person is a defendant in a pending criminal proceeding.

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 2015, there were 32,726 petitions for expungement filed in the District Court and 2,448 petitions filed in the circuit courts. During fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit courts. Legislation expanding eligibility for expungements enacted in 2015 took effect on October 1, 2015. According to the District Court, the percentage of petitions filed in the District Court increased by 50.55% during October through December 2015 compared to the number of petitions filed during the same time period in 2014.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS), which is located within the Department of Public Safety and Correctional Services (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** 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
2004-2015

<u>Calendar</u> <u>Year</u>	<u>CJIS</u> <u>Expungements¹</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
2015	36,412

¹Does not include expungements for individuals released without being charged.

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

According to the *Maryland Judiciary Annual Statistical Abstract Fiscal Year 2014*, 14,162 charges were disposed of via probation before judgment in the District Court during fiscal 2014. Information is not available on the number of individuals who received probation before judgment and were convicted of another crime within three years.

State Revenues: General fund revenues increase minimally from filing fees in the District Court from petitions filed by individuals previously eligible for expungements as a result of the bill. The District Court charges a \$30 filing fee for expungements.

State Expenditures: While the number of individuals who file for expungement solely as a result of the bill cannot be reliably determined at this time, the bill is not expected to materially increase State expenditures. Many individuals who received a probation before judgment and were subsequently convicted of a crime within three years after the entry of the probation before judgment may not feel that it is worth their time and effort to petition for expungement of the probation before judgment when they will still have a conviction on their criminal records.

The Judiciary does not anticipate a significant fiscal or operational effect from the bill.

The Judiciary advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$9,571 to create and revise expungement and shielding forms and brochures. However, the Department of Legislative Services advises that revising printed materials to reflect changes to statute is a routine function of the Judiciary and can be incorporated into annual revisions of forms and brochures.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The cost associated with hiring one expungement clerk is \$41,750 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$51,319 in fiscal 2018. However, it is unlikely that the bill results in the need to hire additional staff. Thus, expenditures for DPSCS are not anticipated to be materially affected. CJIS does not charge a fee for expungements.

Local Expenditures: Given the number of individuals likely to petition for expungement solely as a result of the bill, the bill is not expected to materially affect local finances. Most local governments that responded to a request for information regarding the bill's impact do not anticipate a significant impact:

- the Maryland Association of Counties advises that it does not believe the bill has a significant fiscal or operational impact on local governments;
- Frederick County and the City of Frederick do not anticipate a fiscal impact from the bill;
- the Montgomery County Police Department does not anticipate a significant fiscal impact from the bill;
- the City of Havre de Grace advises that the bill may increase police administrative costs to process expungements; and
- the State's Attorneys' Association advises that the bill's effect on prosecutors is unknown at this time. Baltimore County advises that due to the increase in expungements over recent years, its State's Attorney's office has to hire one additional law clerk, at an estimated cost of \$62,500 per year, to assist with additional expungement workloads.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

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