

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 890

(Senator Zirkin)

Judicial Proceedings

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Expungement - Misdemeanor Convictions

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This bill expands eligibility for expungements to include convictions for misdemeanors under specified circumstances. The bill also contains provisions establishing procedures for the filing of petitions for expungement, hearings on petitions, granting or denying petitions, and appeals from judicial orders on petitions for expungement.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund revenues from filing fees in the District Court or appellate courts. Significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to comply with the bill's requirements.

**Local Effect:** Potential significant increase in local revenues from filing fees in the circuit courts. Potential significant increase in local expenditures for State's Attorneys, law enforcement, and other affected entities to implement the bill's provisions.

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Eligibility for Expungement:* The bill authorizes a person to file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if the person is convicted of a misdemeanor.

*Excluded Misdemeanors:* A conviction of a misdemeanor is not eligible for expungement if it is a violation of:

- Title 2, Subtitle 2 of the Criminal Law Article (manslaughter);
- Title 3, Subtitle 2 (assault, reckless endangerment), 3 (sexual crimes), 6 (abuse and other offensive conduct), or 7 (extortion and other threats) of the Criminal Law Article, except for a violation of § 3-203 (second-degree assault);
- Title 4, Subtitle 1 (weapon crimes), 2 (handguns), 3 (assault pistols and detachable magazines), or 4 (Uniform Machine Gun Act) of the Criminal Law Article;
- Title 10, Subtitle 3 of the Criminal Law Article (hate crimes);
- Title 11, Subtitle 2 (obscene matter) or 3 (prostitution and related crimes) of the Criminal Law Article, except for a violation of § 11-306 (prostitution);
- Title 11, Subtitle 7 of the Criminal Procedure Article (registration of sex offenders);
- Title 5, Subtitle 1 or 2 of the Public Safety Article (firearms, rifles, and shotguns);
- § 3-828 (contributing to Child in Need of Assistance) or § 3-8A-30 (contributing to delinquency or other conditions of child) of the Courts and Judicial Proceedings Article;
- § 10-439 (stem cells – donated material) of the Economic Development Article;
- § 4-509 (household violence), § 5-705.2 (preventing or interfering with report of suspected child abuse or neglect), § 9-304 (child custody), or § 10-203 (nonsupport/desertion of minor) of the Family Law Article;
- § 7-1102 (developmental disabilities – interference with rights), § 18-601 (exposure to infectious disease), § 18-601.1 (exposure to HIV), or § 18-907(a) (failure to comply with quarantine) of the Health General Article;
- § 4-1201(d)(2) (fish and fisheries) or § 10-426 (hunting via internet) of the Natural Resources Article;
- § 5-314 (carrying, wearing, or transporting handgun while under the influence of alcohol or drugs) or § 11-114 (explosives) of the Public Safety Article;
- § 20-102 (duty to remain at accident), § 21-902 (driving while under the influence or impaired, etc.), § 21-904(d) or (e) (fleeing or eluding police), or § 21-1124.3 (texting or using handheld phone while driving – accident resulting in death or serious bodily injury) of the Transportation Article;
- § 3-802 (stalking), § 3-803 (harassment), § 3-805 (misuse of communication or interactive computer service), § 3-807 (misuse of laser pointer aimed at aircraft), § 3-809 (revenge porn), § 3-902 (visual surveillance with prurient interest), § 3-903 (camera surveillance), or § 3-1001 (threat of mass violence) of the Criminal Law Article;
- § 5-624 (drug-induced conduct), § 5-701 (dispensing prescription drug), § 5-702 (sale of drug different from that ordered), or § 5-709 (distribution of inhalant) of the Criminal Law Article;

- § 6-106 (burning with intent to defraud) or § 6-107 (threat of arson) of the Criminal Law Article;
- § 7-301 (code grabbing device) or § 7-302(c)(1) (unauthorized access to computers) of the Criminal Law Article;
- § 8-801(c)(2) (exploitation of vulnerable adults) of the Criminal Law Article;
- § 9-302 (inducing false testimony/avoiding subpoena), § 9-303(a) (retaliation for testimony), § 9-305 (intimidating or corrupting juror), § 9-402 (harboring fugitive), § 9-403 (harboring escaped inmate), § 9-802 (criminal gang), or § 9-803 (criminal gang – schools) of the Criminal Law Article;
- § 10-604 (abuse or neglect of animal) or § 10-605 (dogfighting or cockfighting) of the Criminal Law Article;
- the common law offenses of solicitation, conspiracy, or attempt to commit a felony or a violation of one of the aforementioned offenses; or
- the common law offense of false imprisonment.

*Exception for Excluded Misdemeanors:* On conviction for an excluded misdemeanor listed above, the sentencing court may order that the person will be eligible to petition for expungement in accordance with the bill’s requirements and any conditions the sentencing court finds appropriate.

*Procedures for Filing Petition, etc.:* In general, a person must file a petition for expungement in the court in which the proceeding began. However, the bill specifies procedures for situations involving transfers to another court or the juvenile court and appeals.

*Timing of Petition and Other Factors:* A person may not file a petition for expungement earlier than 10 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. If the person is convicted of a new crime during this 10-year waiting period, the original conviction(s) are not eligible for expungement unless the new conviction becomes eligible for expungement.

A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding.

If a person is not eligible for one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

*Service, Notice, Etc.:* The court must have a copy of a petition for expungement served on the State’s Attorney. The court must send written notice of the expungement request to all listed victims in the case in which the petitioner is seeking expungement at the address

listed in the court file, advising the victim or victims of the right to offer additional information relevant to the expungement petition to the court.

*Hearings on Petitions and Granting or Denying Petitions:* The court must hold a hearing on the petition. The court may grant the petition for expungement if the court finds and states on the record that (1) the conviction is for a misdemeanor offense eligible for expungement; (2) the conviction is for an offense ineligible for expungement but the sentencing court ordered that the person is eligible for expungement and the person has met all conditions of eligibility ordered by the sentencing court; and (3) the person has proven by a preponderance of the evidence that the person is not a risk to public safety and that an expungement is in the interest of justice.

If the court finds at the hearing that the person is entitled to expungement, the court must order the expungement of all police records and court orders about the charge. If the court finds that the person is not entitled to expungement, the court must deny the petition.

*Appeals from Orders:* A party aggrieved by the decision of the court, including the State's Attorney, is entitled to appellate review as provided under statute.

*Compliance with Expungement Order:* Unless an order is stayed pending appeal, within 60 days after entry of the order, every custodian of the police records and court records that are subject to the order of expungement must advise the court and the petitioner in writing of their compliance with the order.

**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 32,276 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) 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** 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**  
**2004-2015**

<b><u>Calendar</u></b> <b><u>Year</u></b>	<b><u>CJIS</u></b> <b><u>Expungements<sup>1</sup></u></b>
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

<sup>1</sup>Does not include expungements for individuals released without being charged.

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

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**State Revenues:** General fund revenues may increase significantly from filing fees for expungement petitions in the District Court or appellate courts. The District Court charges a \$30 filing fee for expungement petitions.

**State Expenditures:** General fund expenditures increase significantly for the Judiciary and DPSCS to comply with the bill’s provisions.

*Judiciary*

The Judiciary advises that it needs 4 District Court clerks (1 for each of the larger districts) and 10 circuit court clerks (1 for each circuit and 2 “floater” positions) to implement the bill’s requirements, at a cost of \$642,341 in fiscal 2017 and \$784,155 in fiscal 2018. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, which can only be determined with actual experience under the bill.

The bill significantly expands eligibility for expungements. Initial demand for expungements under the bill involves individuals with older convictions for eligible offenses, since the bill contains a 10-year waiting period and individuals convicted of ineligible offenses may only become eligible for expungements with an order from the sentencing court, which is not possible with a prior conviction. While initial demand is likely significant and occurs within a compressed time period, it is also probable that the volume and timing of petitions stabilizes over time. Hence, while the Judiciary needs additional personnel to address initial petition volume, the Judiciary may also be able to reevaluate and adjust its personnel needs at a future date to account for this stabilized volume and timing. The cost associated with hiring one clerk is \$39,683 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$48,583 in fiscal 2018.

The Judiciary further 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.

The bill may also have an additional operational impact on the Judiciary, since it requires victim notification and hearings on expungement petitions. Currently, victims are not notified of petitions and hearings on expungement petitions only occur if a State's Attorney files an objection to the petition.

### *DPSCS*

General fund expenditures for DPSCS may increase significantly as a result of additional expungement orders generated by the bill. CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The number of additional clerks needed cannot be reliably determined at this time and depends on the number of expungement orders granted by courts under the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. 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. CJIS does not charge a fee for expungements.

**Local Revenues:** Local revenues from expungement petition filing fees may increase significantly. The circuit courts charge a \$30 filing fee for expungement petitions.

**Local Expenditures:** Local expenditures may increase significantly for local jurisdictions to comply with the bill's requirements. For example, Baltimore City advises that the bill has a significant impact on its State's Attorney's Office. All expungement requests are processed through the office's Conviction Integrity Unit, which estimates that its caseloads

for petitions for expungement increase significantly under the bill. According to the office, the burden for screening petitions in Baltimore City falls on the State's Attorney's Office, not the court clerk's office. The office advises that the bill significantly increases the number of individuals with cases eligible for expungement as well as the filing of petitions by individuals who mistakenly believe that they are eligible, both of which require office review. As a result the office advises that it needs to hire one paralegal, at an annual cost of \$63,000.

The Montgomery County Police Department (MCPD) advises that the bill requires MCPD to hire one full-time position to assist with the additional workload, at an annual cost of \$67,782, excluding initial equipment costs.

Prince George's County advises that the impact of the bill on its circuit court depends on the volume of petitions filed.

The State's Attorneys' Association advises that the bill's effect on prosecutors is unknown at this time.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Montgomery and Prince George's counties; City of Takoma Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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