

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1294
Judiciary

(Delegate Carter)

Criminal Procedure - Expungement - Nonviolent Convictions

This bill authorizes a person who was convicted of a nonviolent crime 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 filing fees in the District Court. 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. Minimal increase in special fund revenues for the Maryland State Archives from fees assessed the Judiciary to pull archived files.

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 comply with the bill's provisions.

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) 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.

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

Although the bill does not define “nonviolent crime” and leaves such determinations to judicial discretion, § 14-101(a) 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 may increase significantly from filing fees for expungement petitions in the District Court. The District Court charges a \$30 fee for expungement petitions.

The Maryland State Archives has court records prior to 1981. The Archives advises that per a memorandum of understanding with the Judiciary, it charges the Administrative Office of the Courts \$10 per file pulled. Given the ages of the convictions affected by the bill, the Archives may collect fees to pull files as a result of the bill. Thus, special fund revenues for the Maryland State Archives increase minimally from fees to pull archived files.

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. 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.

Given the scope of convictions eligible for expungement under the bill, including felonies, individuals with older convictions may feel motivated to petition for expungement as a result of the bill. Thus, the Administrative Office of the Courts is likely to incur general fund expenditures to request files from the Archives, as discussed above.

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.

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. Most local jurisdictions that responded to a request for information regarding the impact of the bill indicated that the bill could result in significant costs:

- The Office of the State's Attorney for Baltimore City advises that the bill has a significant impact on the office. The office notes that it has 359 total cases (246 felony cases and 113 misdemeanor cases) scheduled for trial in the Circuit Court for Baltimore City next week, and this volume represents a typical week for

the office. Because the bill does not define a “nonviolent crime” and leaves this determination to the court, the office believes that attempts may be made to expunge all nonhomicide cases, resulting in a significant caseload for the office. As a result, the office advises that it needs to hire at least two full-time assistant State’s Attorneys and two full-time support staff, at an annual cost of \$350,000, to handle the increased caseload.

The office advises that its Conviction Integrity Unit, which reviews expungement petitions, is currently staffed by a division chief, three assistant State’s Attorneys and three support staff. While the unit’s caseload increased significantly in October 2015 when the new expungement and shielding laws passed during the 2015 legislative session took effect, the unit did not receive any funds for additional staff at that time. According to the office, all unit staff are currently operating at or above capacity.

- Prince George’s County advises that while it cannot determine the actual fiscal impact of the bill at this time, the bill may have a significant impact on county resources if there are a significant number of expungement petitions filed. The county advises that it plans to use existing resources to implement the bill until the potential workload calls for additional resources.
- The Montgomery County Police Department advises that it needs one additional staff member, at a cost of \$67,872 per year, to handle the anticipated additional workload under the bill.
- Howard County does not anticipate a material fiscal impact from the bill.

Additional Information

Prior Introductions: HB 1058 of 2015 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City; Howard, Montgomery, and Prince George’s 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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