

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1317

(Delegate Anderson, *et al.*)

Judiciary

Criminal Procedure - Expungement - Acquittal, Dismissal, and Nolle Prosequi

This bill establishes that a person who has been charged with a crime or a civil offense or infraction, except a juvenile offense, as a substitute for a criminal charge, is entitled to automatic expungement of all police records, court records, and other records maintained by the State or a political subdivision of the State relating to the matter if (1) the person is acquitted; (2) the charge is dismissed; or (3) a *nolle prosequi* other than a *nolle prosequi* with the requirement of drug or alcohol treatment is entered.

A person who is entitled to expungement under the bill may not be required to pay any fee or costs in connection with the expungement.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues from expungement filing fees in the District Court. General fund expenditures increase by an estimated \$751,900 in FY 2017 for the Judiciary to comply with the bill’s requirements, as discussed below. Out-years reflect annualization and inflation. Potential significant increase in expenditures for the Department of Public Safety and Correctional Services (DPSCS) to process additional expungements. Increase in special fund expenditures for the State Insurance Trust Fund (SITF) if the civil cause of action created by the bill increases payments for claims under the Maryland Tort Claims Act (MTCA). General fund expenditures increase for State agencies subject to higher SITF assessments if SITF incurs losses from MTCA payments as a result of the bill’s provisions.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$751,900	\$631,600	\$658,400	\$686,600	\$716,000
SF Expenditure	-	-	-	-	-
Net Effect	(\$751,900)	(\$631,600)	(\$658,400)	(\$686,600)	(\$716,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal decrease in local revenues from filing fees in the circuit courts. Potential significant increase in expenditures for local entities to comply with the bill's requirements and pay damages in claims filed under the civil cause of action created by the bill.

Small Business Effect: None.

Analysis

Bill Summary: Within 60 days after disposition of a charge via acquittal, dismissal, or *nolle prosequi* (other than a *nolle prosequi* with the requirement of drug or alcohol treatment), the court with jurisdiction over the matter must (1) search diligently for and expunge each court record about the charge and (2) send a notice of expungement containing all relevant facts about the expungement and underlying charge to the Central Repository, the person entitled to expungement, and each booking facility or law enforcement unit that the court believes may have a police record about the arrest, confinement, or charge.

Within 60 days after receipt of the notice, the Central Repository, a booking facility, and any other law enforcement unit must (1) search diligently for and expunge each police and court record about the arrest, confinement, or charging of the person and (2) advise in writing the person who is entitled to expungement of compliance with the order.

A police or court record expunged under this section may not be expunged by obliteration until three years after the date of expungement. During this time, the records must be removed to a separate secure area to which persons who do not have a legitimate reason for access are denied access. For purposes of the bill, a legitimate reason for accessing the records includes using the records for purposes of proceedings relating to the arrest or charge.

If a court, law enforcement unit, booking facility, or the Central Repository fails to expunge a police or court record as required under the bill, the person entitled to expungement may (1) seek redress by means of any appropriate legal remedy and (2) recover court costs.

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

State Revenues: General fund revenues decrease, potentially significantly, from filing fees in the District Court. Individuals entitled to automatic expungements under the bill may not be required to pay any fee or costs in connection with the expungement. The District Court charges a \$30 filing fee for expungements.

State Expenditures: General fund expenditures increase by \$751,898 in fiscal 2017, which accounts for the bill’s October 1, 2016 effective date. This estimate reflects the cost of hiring eight District Court clerks and five circuit court clerks to assist with processing expungements under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- According to the *Maryland Judiciary Annual Statistical Abstract Fiscal Year 2014*, there were 79,616 charges in the District Court during fiscal 2014 that were disposed of via acquittal, dismissal, or *nolle prosequi*. Information is not readily available on the number of defendants represented in this group of dispositions and the number of defendants from this group who already petition for expungements under current

law. While one defendant may represent multiple charges/dispositions and some defendants may already be filing petitions for expungement under current law, this analysis assumes that approximately 40% of the fiscal 2014 eligible dispositions, or about 32,000, need to be processed for automatic expungement in the District Court each year under the bill. Information is not readily available on the number of applicable dispositions in the circuit courts. However, there were 82,701 criminal terminations in the circuit courts during fiscal 2014, compared with 186,673 criminal cases terminated in the District Court during fiscal 2014.

- Regardless of the bill's provisions (1) the Judiciary has to investigate the eligibility for expungement for each defendant with an eligible disposition for compliance with the unit rule and (2) eligibility for expungement may not be determined and expungement of records may not occur until all charges in a unit have been disposed of by the court. Although under the bill, a person is entitled to an automatic expungement under specified circumstances/dispositions, the bill maintains the "unit rule." Under this rule, a person is not entitled to an expungement of one charge in a unit of charges unless all of the charges in the unit are eligible for expungement.
- In order to process expungements under the bill, clerks need to investigate a defendant's eligibility for expungement, notify relevant custodians of an expungement order, expunge files, and verify compliance with the order.
- Each automatic expungement, therefore, requires, on average, an additional 30 minutes of clerical time to process.
- Individuals with eligible dispositions entered prior to the bill's effective date must file a petition for expungement to have their records expunged in accordance with the bill's provisions.
- While not specified in the bill, entities ordered by a court to expunge records need to notify the court of compliance with the court's order, as they are required to do under current law.
- This estimate does not address situations in which a person has a unit of charges that is eligible for expungement, but some of the charges are eligible for automatic expungement under the bill and some of the charges are eligible for expungement via petition.

Positions	13
Salaries and Fringe Benefits	\$460,902
Computer Reprogramming	236,025
Operating Expenses	<u>54,971</u>
Total FY 2017 Judiciary Expenditures	\$751,898

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The Judiciary advises that it needs 8 District Court clerks and 10 circuit court clerks to comply with the bill's provisions, at a cost of \$825,866 in fiscal 2017. According to the Judiciary, because of the centralized nature of the District Court, clerks in one location may be able to assist other locations as needed. The Judiciary's estimated personnel need for the circuit courts was determined after consultation with the circuit courts and accounts for the decentralized/independent nature of the circuit courts. The Administrative Office of the Courts did not provide information, however, on the way in which the additional personnel requested for the circuit courts would be allocated among the 24 jurisdictions.

As noted above, the Department of Legislative Services (DLS) advises that, instead, the Judiciary likely needs eight District Court clerks and five circuit court clerks given the significant difference in criminal case terminations between the District Court and the circuit courts (the circuit courts had 44% of the criminal case termination volume of the District Court), and the dramatic difference in case volume between the five largest jurisdictions and smaller jurisdictions. However, should staffing levels in smaller jurisdictions become insufficient to address the work demands generated by the bill, additional personnel may be needed. 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 advises that in order to automatically expunge an eligible charge under the bill, its computer systems need to be reprogrammed, requiring 2,785.2 hours of reprogramming at an estimated cost of \$236,025 in fiscal 2017 only. Computer programming changes are intended to identify eligible dispositions and remove electronic records from public access. These computer changes do not account for required notifications to custodians of record, which still require a manual process to implement 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, DLS 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 1 additional expungement clerk for every additional 2,500 expungements generated by 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 1 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.

SITF

Special fund expenditures increase to the extent that the civil cause of action created by the bill for failure to expunge a police or court record in accordance with the bill increases payments for claims under MTCA. General fund expenditures increase for agencies subject to higher premium assessments only if the increase in MTCA claims payments under the bill results in a significant increase in claims paid. The extent of this increase cannot be reliably estimated at this time.

In general, there is a three-year statute of limitations for civil causes of action. This estimate assumes that investigation of MTCA claims by the Treasurer's Office is a "legitimate reason" for access to expunged records under the bill.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. The Treasurer's Insurance Division handles approximately 5,000 MTCA claims each year. SITF paid the following amounts in tort claims under MTCA: \$5.8 million in fiscal 2014, \$7.3 million in fiscal 2015, \$8.5 million in fiscal 2016 (estimated), and \$9.0 million in fiscal 2017 (projected). The Governor's proposed fiscal 2017 budget includes a \$10.5 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF.

Local Revenues: Local revenues decrease minimally due to the bill's elimination of expungement filing fees for dispositions currently eligible for expungement by petition in the circuit courts. The circuit courts charge a \$30 filing fee for expungements.

Local Expenditures: Local expenditures increase, potentially significantly, for local entities to comply with expungement orders and for State's Attorneys to review expungements. The magnitude of this increase varies by jurisdiction., as reported by the various local government entities surveyed about the potential impact of the bill:

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

- The State’s Attorney’s Office for Baltimore City advises that the bill effectively eliminates the State’s Attorney’s office from the expungement proceeding, which is in direct conflict with existing statute. The office advises that its most prominent concern is the unit rule and its inability to object because the process occurs automatically and the court must make these determinations. The office advises that in order to retain its ability to object, it needs to incorporate an expungement hearing into all circumstances for which it has a split verdict or partial dismissals. According to the office, a prosecutor who agrees to a *nolle prosequi* disposition certain charges should then, on the record, raise the expungement issue to argue against an expungement based on the unit rule. Thus, the office advises that it needs two additional employees, at a cost of \$126,000 per year, to assist with the increased workload under the bill.
- The Montgomery County Police Department advises that it need two additional full-time employees, at a cost of \$135,431 in fiscal 2018, to comply with the bill’s requirements.
- Harford and Talbot counties do not foresee a fiscal impact from the bill.

Local governments may also incur additional costs to pay any claims filed under the Local Government Tort Claims Act that arise out of the civil cause of action created by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Allegany, Harford, Montgomery and Talbot counties; Comptroller’s Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State’s Attorneys’ Association; Department of General 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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