

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 328

(Senator Conway, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Criminal Procedure - Expungement

This bill expands eligibility for expungements to include convictions for several specified misdemeanors. 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.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from filing fees in the District Court. Potential 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 affected local entities to expunge records or review and respond to expungement petitions.

Small Business Effect: None.

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 specified

misdemeanor violations or an attempt, conspiracy, or solicitation of any of the misdemeanors specified in the bill.

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.

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: 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.

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: Unless the State's Attorney or a victim files an objection to the expungement petition within 30 days after the petition is served, the court must pass an order requiring the expungement of all police records and court records about the charge.

If the State's Attorney or a victim files a timely objection to the petition, the court must hold a hearing on the petition. The court must order the expungement of all police records and court records about the charge after a hearing, if the court finds and states on the record that (1) the conviction is for a misdemeanor offense eligible for expungement under the bill; (2) the person meets additional eligibility factors (not convicted of a new crime during the waiting period, not a defendant in a pending criminal proceeding, and the unit rule); (3) giving due regard to the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety; and (4) that an expungement would be in the interest of justice.

If the court finds at the hearing 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 set forth in 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 person seeking expungement 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 32,726 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. Also, 754 requests for shielding were filed in the District Court between October 1, 2015 (the first day on which shielding was available), and December 31, 2015.

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 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 Year</u>	<u>CJIS 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 may increase significantly from filing fees for expungement petitions in the District Court. The District Court charges a \$30 filing fee for expungement petitions.

State Expenditures: General fund expenditures may 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 \$45,300 per clerk in fiscal 2017 (which reflects the bill's October 1, 2016 effective date) and \$56,017 per clerk in fiscal 2018. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, as well as the impact of the extensive redaction of paper files on workflow and workloads. While the initial volume of petitions filed under the bill is likely to be significant and filed within a compressed time period, it is also probable that the volume and timing of petitions stabilize 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.

District Court expenditures may increase depending on the amount of victim notification and hearings that occur as a result of the bill.

The Judiciary advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$7,700 to create and revise expungement 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 affected local entities (*e.g.*, State's Attorneys and law enforcement) to comply with the bill's requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 220 (Delegate Barron, *et al.*) - Judiciary.

Information Source(s): Dorchester, Garrett, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Juvenile Services; Office of the Attorney General; Office of the Public Defender; Maryland State Commission on Criminal Sentencing Policy; Maryland State Archives; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510