

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 840
Judiciary

(Delegate Barron, *et al.*)

Criminal Procedure - Partial Expungement

This bill requires the Administrative Office of the Courts (AOC), in collaboration with the Information Technology Team of the Central Repository, to submit annual reports during specified years to the General Assembly on the estimated cost for implementation of partial expungements. The reporting provisions terminate September 30, 2021.

Effective October 1, 2021, the bill (1) repeals the prohibition on expungement of a charge within a “unit” of charges unless all of the charges in the unit are eligible for expungement and authorizes a person to file a petition for partial expungement of eligible charges when two or more charges arise from the same incident, transaction, or set of facts, and one or more of the charges are not eligible for expungement and (2) requires the court to order that a police or court record regarding the charges eligible for partial expungement be removed from the public website maintained by the Maryland Judiciary. Only a police or court record that is maintained electronically on the public website of the Maryland Judiciary is eligible for partial expungement.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues beginning in FY 2022 from filing fees in the District Court. Significant increase in general fund expenditures beginning in fiscal 2020 to enable the Judiciary to comply with the bill’s requirements relating to partial expungements.

Local Effect: Potential significant increase in local revenues beginning in FY 2022 from filing fees in the circuit courts. Local expenditures may increase for State’s Attorneys’ offices to review and object to petitions for partial expungement.

Small Business Effect: None.

Analysis

Bill Summary: On or before October 1, 2018, and every October 1 until October 1, 2021, AOC, in collaboration with the Information Technology Team of the Central Repository, must provide a report to the General Assembly detailing the estimated cost for the implementation of partial expungements, including (1) required additional staff and required investment in technology; (2) challenges identified in the potential implementation of partial expungements; and (3) a plan to implement partial expungements beginning October 1, 2021. These reporting provisions take effect October 1, 2017, and remain in effect through September 30, 2021.

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 by the part of it that provides access.

Chapter 515 of 2016, also known as the Justice Reinvestment Act, expanded eligibility for expungements by authorizing individuals convicted of specified misdemeanors contained in a list of approximately 100 offenses to file petitions for expungements.

Effective October 1, 2017, a person may file a petition listing relevant facts for expungement of a police, court, or other record if the person is convicted of specified misdemeanors. In general, a petition for expungement may not be filed earlier than 10 years after the person satisfied the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. For specified crimes, a minimum waiting period of 15 years is required. If the person is convicted of a new crime during the waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible. A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding or if one conviction in a unit of convictions is not eligible for expungement. In general, a person must file a petition for expungement in the court in which the proceeding began. However, Chapter 515 specifies procedures for situations involving transfers to another court or the juvenile court. In addition, the law specifies procedural requirements regarding objections to a petition, hearings, and appeals.

Background: **Exhibit 1** contains information on the number of expungement petitions filed in the District Court and the circuit courts from fiscal 2014 through 2016.

Exhibit 1
Expungement Petitions Filed in the District Court and the Circuit Courts
Fiscal 2014 through 2016

<u>Year</u>	<u>District Court</u> <u>Expungement Petitions Filed</u>	<u>Circuit Courts</u> <u>Expungement Petitions Filed</u>
2014	35,737	4,025
2015	32,726	2,448
2016	39,706	4,706

Source: Maryland Judiciary

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services 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 2 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 2
CJIS Expungements
Calendar 2004-2016**

<u>Year</u>	<u>CJIS Expungements¹</u>	<u>Year</u>	<u>CJIS Expungements¹</u>
2004	15,769	2011	20,492
2005	16,760	2012	30,654
2006	20,612	2013	34,207
2007	21,772	2014	33,801
2008	24,200	2015	36,412
2009	25,146	2016	41,854
2010	27,199		

CJIS: Maryland Criminal Justice Information System

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 beginning in fiscal 2022 from filing fees for expungement petitions in the District Court or appellate courts. The District Court charges a \$30 filing fee for expungement petitions that are not based on acquittal.

State Expenditures: General fund expenditures increase significantly for the Judiciary to comply with the bill's requirements. While the bill does not require implementation of partial expungements until October 1, 2021, expenditures are likely incurred beginning in fiscal 2020 (at the latest) in anticipation of the implementation deadline.

According to the Judiciary, implementation of the bill requires substantial technology costs and redevelopment of the CaseSearch system. The Judiciary cannot reliably predict the precise level of effort required and cannot do so until a more thorough cost analysis is conducted. While past estimates have involved removal of a charge from a unit without renumbering of charges, the Judiciary advises that renumbering of charges is one of the obstacles to effective implementation of partial expungement.

The numbering of charges in court records is linked and corresponds with tracking information in CJIS's system. Thus, if a petitioner has three charges and the second charge

is the only charge eligible for expungement, the post-expungement record will still show Charge #1 and Charge #3, thereby implying that Charge #2 existed at one point but is missing from the record. The current system cannot achieve renumbering even with computer reprogramming. Thus, in order to be able to renumber charges, the CaseSearch system needs to be redeveloped, which results in significant expenditures. The redevelopment includes changes to current programs that extract data from seven case management systems, a new program to determine which charges should not be shown on CaseSearch, the renumbering of charges on CaseSearch, and the modification, if required, of charge numbering for public safety interoperability, such as the CJIS interface.

The Judiciary may also incur potentially significant expenditures as of fiscal 2022 to hire additional personnel to handle the anticipated increase in the volume of petitions for partial expungement. The Judiciary advises that it needs at least two District Court clerks and five circuit court clerks for the larger circuits to handle petitions for partial expungements and redaction of court records available to the public through electronic portals at each courthouse.

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. 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. Also, it is unclear from the bill's language whether information available to the public electronically at a courthouse is a "court record that is maintained electronically on the public Web site of the Maryland Judiciary." 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 \$58,612 in fiscal 2022, which reflects the October 1, 2021 effective date for the bill's provisions relating to partial expungements.

The Judiciary advises that if paper brochures are still being used in 2021, it 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 can comply with the reporting requirements under the bill with existing budgeted resources. Since the only records eligible for expungement under the bill are records available on the Judiciary's public website, CJIS does not need to expunge records under the bill.

The Office of the Attorney General advises that it anticipates an increased workload to defend appeals from refusals to partially expunge a record but cannot reliably estimate its

staffing needs at this time.

The Maryland State Archives advises that the bill can be implemented with existing resources. The expansion of what can be expunged may increase the number of requests that come from the Judiciary, but that expansion does not cause a direct fiscal impact. The State Archives provides entire case files on request of the Judiciary and that function is not altered under this bill.

Local Revenues: Local revenues from expungement petition filing fees may increase significantly beginning in fiscal 2022. The circuit courts charge a \$30 filing fee for expungement petitions that are not based on acquittal.

Local Expenditures: Expenditures for State's Attorneys' offices may increase beginning in fiscal 2022 to review and possibly object to petitions for expungement filed as a result of the bill. The magnitude of this effect depends on the number of petitions for expungement filed under the bill, current staffing levels, and what, if any, effect the bill's limitation of expungement to the Maryland Judiciary's public website affects the frequency with which prosecutors object to a petition for partial expungement.

Baltimore County advises that, according to its State's Attorney's Office, the expansion of expungements over recent years has increased office workloads to the point that additional staff is likely needed. The office estimates that it needs one paralegal to assist with partial expungements. The salary and fringe benefits for a paralegal in the county are \$58,335 per year.

Additional Information

Prior Introductions: HB 220 of 2016, a similar bill, passed the House with amendments and passed the Senate with amendments. A conference committee was appointed, but no further action was taken. Its cross file, SB 328, passed the Senate with amendments and was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and St. Mary's counties; City of Bowie; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Maryland State Archives; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2017
mm/kdm

Analysis by: Amy A. Devadas

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