

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 836
Judiciary

(Delegate Folden, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement - Common Law Battery

This bill expands the list of convictions eligible for expungement under Chapter 515 of 2016 (the Justice Reinvestment Act) to include a misdemeanor conviction for common law battery. A petition for expungement based on a conviction of common law battery may not be filed earlier than 15 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested under the provisions of Chapter 515 of 2016, including parole, probation, or mandatory supervision.

The bill takes effect October 1, 2017, which is the effective date of Section 2 of Chapter 515 of 2016. However, if the effective date of Section 2 of Chapter 515 of 2016 is amended, the bill takes effect when Section 2 of Chapter 515 of 2016 takes effect.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from District Court expungement filing fees. Minimal increase in special fund revenues for the Maryland State Archives from fees assessed the Judiciary to retrieve archived files. Minimal increase in general fund expenditures for the Judiciary to process expungements generated by the bill and pay any fees to the Maryland State Archives to retrieve archived files.

Local Effect: Minimal increase in local revenues from circuit court expungement filing fees. Minimal increase in local expenditures for local jurisdictions to process additional expungements.

Small Business Effect: None.

Analysis

Current Law: Battery is a common law offense, and as such, its definition and penalty are not contained within statute. Maryland courts have traditionally defined battery as the unlawful beating of another. *Kellum v. State*, 223 Md. 80, 85 (1959). However, courts have also noted that any unlawful force used against another person, even slight force, is considered battery. *Kellum* at 85.

Chapter 632 of 1996 established the existing statutory offenses of first- and second-degree assault. In *Robinson v. State*, 353 Md. 683 (1999), the Maryland Court of Appeals held that the General Assembly repealed the common law crimes of assault and battery with the enactment of Chapter 632 and replaced them with the existing statutory assault offenses. Thus, common law battery was no longer a cognizable offense in Maryland as of October 1, 1996 (the effective date of Chapter 632).

The assault statutes define “assault” as the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings. Convictions for these offenses are not eligible for expungement.

Expungements: 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.

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. Misdemeanor second-degree assault under § 3-203 of the Criminal Law Article is one of the eligible offenses.

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 (including misdemeanor second-degree assault), 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 increase minimally from filing fees for expungement petitions in the District Court. The District Court charges a \$30 filing 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, with an annual limit of \$150,000. Given the ages of the convictions affected by the bill, the Archives may collect fees to retrieve files as a result of the bill. Thus, special fund revenues for the Maryland State Archives increase minimally from fees to retrieve archived files.

State Expenditures: General fund expenditures increase minimally for the Judiciary to process expungements under the bill.

The Judiciary advises that it cannot determine the precise impact of the bill since it cannot ascertain the number of convictions for common law battery prior to 1996 that are eligible for expungement as a result of the bill.

The Department of Legislative Services (DLS) advises that the bill is unlikely to result in a significant number of expungements given the amount of time (at least 20 years) that has passed since the convictions expungeable under the bill were incurred. Many of the individuals affected by the bill may have died, moved away from the area, or may not feel that it is worth their time and effort to expunge an old conviction.

Given the ages of the files for convictions affected by the bill, the Administrative Office of the Courts is likely to incur general fund expenditures to request files from the Archives, as discussed above.

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.

CJIS has historically advised that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by legislation. Given the number of orders for expungements likely to be issued as a result of the bill, it is unlikely that this bill necessitates the hiring of additional CJIS personnel. An individual convicted of common law battery may have another conviction within a unit of convictions that is ineligible for expungement under Chapter 515 of 2016, thus rendering the battery conviction ineligible for expungement.

Local Revenues: Local revenues increase minimally from filing fees in the circuit courts.

Local Expenditures: Overall, local expenditures are anticipated to increase minimally for local jurisdictions to process additional expungements under the bill.

The Montgomery County Police Department does not anticipate a significant fiscal impact from the bill. Baltimore County expects minimal fiscal impact from the bill. The City of College Park does not expect a fiscal impact from the bill.

Additional Comments: While the expungement statute authorizes a person to petition for expungement if the person was convicted of a crime and the act on which the crime is based is no longer a crime, this provision does not apply to convictions for common law battery. The acts that constituted common law battery are incorporated into the first- and second-degree assault statutes and are crimes under existing statute.

Additional Information

Prior Introductions: HB 1436 of 2016 received a hearing in the House Judiciary Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore, Charles, and Montgomery counties; City of College Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; 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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