

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

House Bill 357
Judiciary

(Delegate Conaway)

Expungement - Fee - Baltimore City Consent Decree

This bill prohibits a court from charging a fee or costs in connection with an expungement if the charge or disposition underlying the records sought to be expunged was vacated as a result of the consent decree relating to police reform entered into by the United States, the Mayor and City Council of Baltimore, and the Police Department of Baltimore City on or about January 12, 2017.

Fiscal Summary

State Effect: The bill does not materially affect State finances, as discussed below.

Local Effect: The bill does not materially affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law: The District Court and the circuit courts charge a \$30 filing fee for expungement petitions. Individuals who cannot afford the fee may apply for a fee waiver. Police records for individuals who are arrested and released without being charged with the commission of a crime are expunged within specified time periods without the filing of a petition or a request by the individual and are not subject to any fees.

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 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.

A court is only required to hold a hearing on a petition for expungement if the State's Attorney files a timely objection to the petition.

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.

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 10-year 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: Following the death of Freddie Gray while in police custody and the subsequent civil unrest, the leadership of Baltimore City requested that the U.S. Department of Justice Civil Rights Division (DOJ) conduct an investigation of the Baltimore Police Department (BPD). DOJ interviewed hundreds of individuals, including city leaders, community members, and current and former law enforcement personnel. DOJ also reviewed hundreds of thousands of pages of documents, including all relevant policies and training materials used by BPD beginning in 2010; BPD's database of internal affairs files from January 2010 through March 2016; BPD's data on pedestrian stops, vehicle stops, and arrests from January 2010 to May 2015; incident reports describing stops, searches, arrests, and officers' use of nondeadly force from 2010 to 2015; all files on deadly force incidents since 2010 that BPD was able to produce through May 1, 2016; and investigative files on sexual assault cases from 2013 to 2015. On August 10, 2016, DOJ released the results of its investigation.

DOJ determined that BPD engages in a pattern or practice of:

- making unconstitutional stops, searches, and arrests;
- using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches, and arrests of African Americans;
- using excessive force; and
- retaliating against people engaging in constitutionally protected expression.

DOJ concluded that this pattern or practice is at least partly the result of past zero tolerance policies, and continues to be driven by systemic deficiencies in BPD's policies, training, supervision, and accountability structures that fail to equip officers with the tools they need to police effectively and within legal bounds.

Prior to the release of the report, DOJ and Baltimore City entered into an agreement in principle in an effort to avoid litigation against the city and to begin the process of instituting meaningful reforms to BPD. In the agreement, both parties committed to complete negotiations, with input from the community, for a court-enforceable consent decree by November 1, 2016. In late October, Mayor Stephanie Rawlings-Blake announced that negotiations were continuing but would not be completed by the November 1 deadline. In January 2017, Baltimore City and DOJ announced that they reached an agreement on a court-enforceable consent decree. Among other things, the

decree (1) requires observation of BPD by an independent federal monitor; (2) creates a community oversight task force; (3) requires more officer supervision and training of officers on the use of de-escalation tactics; and (4) requires specified procedural changes to officer interactions with the public.

Expungements: 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. According to the Judiciary, the number of petitions filed in Baltimore City is significantly higher than in any other jurisdiction.

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 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
Calendar 2004-2016

<u>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
2016	41,854

¹Does not include expungements for individuals released without being charged.

Source: Maryland Criminal Justice Information System – Department of Public Safety and Correctional Services

State Fiscal Effect: While DOJ's initial investigation into BPD included an analysis of past BPD arrests, the consent decree entered into between DOJ, Baltimore City, and BPD addresses prospective police reforms, not whether specific individuals should have been arrested and/or charged with the commission of a crime (and the subsequent vacating of those charges/dispositions). Therefore, the bill's requirement of a fee waiver for petitions for expungement of records for a charge or disposition vacated *as a result of the consent decree* does not materially affect State finances.

The Judiciary advises that the bill may increase the number of petitions for expungement filed in the District Court in Baltimore City and has a significant fiscal and operational impact due to computer reprogramming, revision and reprinting of materials, and personnel resources for processing additional petitions. However, the Department of Legislative Services advises that it is unclear how any petitioner would be able to connect his/her case to the consent decree before or at the time of filing a petition given the lack of applicable provisions in the decree itself.

Local Fiscal Effect: For the reasons stated above under the State Fiscal Effect section of this fiscal and policy note, the bill does not materially affect local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; National Public Radio; *The Baltimore Sun*; Department of Legislative Services

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