

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 382  
Judiciary

(Delegate Dumais)

Judicial Proceedings

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Criminal Procedure - Expungement - Civil Offense

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This bill clarifies that a person may petition for expungement of any civil offense or infraction, except a juvenile offense. The bill repeals the requirement that the civil offense or infraction be a substitute for a criminal charge.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues from expungement fees. Minimal increase in general fund expenditures to process additional expungements.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under the Criminal Procedure Article, a person who has been charged with the commission of a crime, including a crime under the Transportation Article for which a term of imprisonment may be imposed, or who has been charged with a civil offense or infraction, except a juvenile offense, as a substitute for a criminal charge 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, convicted of possession of marijuana under § 5-601 of the Criminal Procedure Article, convicted of other specified misdemeanors, 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, subject to specified procedures and requirements.

**Background:** According to the Judiciary, there were approximately 23,202 civil citations filed in the District Court during fiscal 2017. The Judiciary advises that is unable to determine the total number of civil citations issued for civil offenses that substituted for a criminal charge.

**Exhibit 1** contains information on the number of expungement petitions filed in the District Court and the circuit courts from fiscal 2014 through 2017.

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**Exhibit 1**  
**Expungement Petitions Filed in the District Court and the Circuit Courts**  
**Fiscal 2014 through 2017**

<b><u>Year</u></b>	<b><u>District Court</u> <u>Expungement Petitions Filed</u></b>	<b><u>Circuit Courts</u> <u>Expungement Petitions Filed</u></b>
2014	35,737	4,025
2015	32,726	2,448
2016	39,706	4,706
2017	47,697	6,811

Source: Maryland Judiciary

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In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (DPSCS) has steadily increased over the years. CJIS advises that this increase is due to legislation expanding eligibility for expungements 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.

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**Exhibit 2**  
**CJIS Expungements**  
**Calendar 2004-2017**

<u>Year</u>	<u>CJIS Expungements<sup>1</sup></u>	<u>Year</u>	<u>CJIS Expungements<sup>1</sup></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	2017	48,211

CJIS: Maryland Criminal Justice Information System

<sup>1</sup>Does not include expungements for individuals released without being charged.

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

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**State Revenues:** General fund revenues increase minimally from expungement fees in the District Court. A \$30 fee is charged for petitions for expungements in cases other than those resulting in acquittal, dismissal, probation before judgment, *nolle prosequi*, stet, or not criminally responsible.

**State Expenditures:** General fund expenditures increase minimally for the District Court to process additional expungements. The Judiciary advises that given the volume of civil citations issued each year and the retroactive applicability of the bill (and the need to retrieve older files from the Maryland Archives), the bill has the potential to have a significant fiscal and operational impact on the Judiciary, including the need for additional clerical positions.

However, the Department of Legislative Services (DLS) advises that given the range of behavior classified as civil offenses and the fact that civil offenses and infractions do not carry the same collateral consequences or stigma as a criminal conviction or disposition, a sizeable portion of individuals eligible for expungements under the bill may not elect to petition for expungement.

A civil citation for possession of less than 10 grams of marijuana may be one example of a civil offense or infraction for which a person may pursue expungement. It is unclear how

a citation for this civil offense can be considered a substitute for a criminal charge when the act itself is not considered a crime. If the basis for these determinations is whether the act *was ever* considered a crime, then these civil citations are eligible for expungement under existing statute. According to the Judiciary, a judge reviews petitions for expungement and from experience, determines whether a civil offense is a “substitute for a criminal charge.” District Court commissioner databases are queried when there are questions about eligibility of the civil offense for expungement.

The Judiciary advises that in fiscal 2017, there were 11,521 civil citations and 7,504 guilty dispositions involving the possession of less than 10 grams of marijuana. According to the Judiciary, there were 61 expungements for possession of less than 10 grams of marijuana during fiscal 2017 and 350 civil citation expungements (excluding municipal infractions and offenses related to the Department of Natural Resources) during that same time period.

However, these citations are not reported to CJIS. They are also not featured on Maryland Judiciary Case Search if certain criteria are met. Given the limited access already in place, a number of these individuals may choose not to pursue expungement of their civil citations.

Under current statute, a citation involving the use or possession of less than 10 grams of marijuana and the official record of a court regarding the citation are not subject to public inspection and may not be included on the public web site maintained by the Maryland Judiciary if:

- the defendant has prepaid the fine;
- the defendant has pled guilty to or been found guilty of the Code violation and has fully paid the fine and costs imposed for the violation;
- the defendant has received a probation before judgment and has fully paid the fine and completed any terms imposed by the court;
- the case has been removed from the stet docket after the defendant fully paid the fine and completed any terms imposed by the court;
- the State has entered a *nolle prosequi*;
- the defendant has been found not guilty of the charge; or
- the charge has been dismissed.

The Judiciary advises that the bill necessitates revision and printing of existing forms and brochures at a cost of \$10,000 in fiscal 2019, as well as 9.6 hours of computer reprogramming at a cost of \$860 in fiscal 2019. DLS advises that the revision and printing of brochures to account for changes in statute are a routine occurrence and function and can be handled with existing budgeted resources, along with the computer reprogramming.

DPSCS advises that the bill does not have a fiscal or operational impact on CJIS. CJIS advises that it only receives information about a civil offense if it is associated with a criminal event, such as an arrest or detention. According to CJIS, the number of situations to which this scenario applies for expungements authorized under the bill is negligible.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County; cities of Bowie and Takoma Park; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2018  
mm/kdm Third Reader - March 9, 2018

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