

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1383 (Delegate Mosby, *et al.*)
 Judiciary

**Criminal Procedure - Expungement - Expansion (Maryland Record
 Expungement Designed to Enhance Employment (REDEEM) Act of 2018)**

This bill makes several changes to the expungement statutes, including (1) requiring the automatic expungement of records associated with specified types of dispositions and (2) expanding eligibility to file a petition for expungement of records pertaining to a conviction for a felony other than a crime of violence and any other statutory or common law prohibition that carries a maximum penalty of imprisonment for three years or less.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from filing fees in the District Court. General fund expenditures increase by at least \$816,800 in FY 2019. Future years reflect annualization and the elimination of one-time costs.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	-	-	-	-	-
GF Expenditure	\$816,800	\$554,200	\$565,100	\$588,300	\$612,400
Net Effect	(\$816,800)	(\$554,200)	(\$565,100)	(\$588,300)	(\$612,400)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Minimal increase in local revenues from filing fees in the circuit courts. Local expenditures increase for local agencies to implement the bill. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Expungement of Warrants

The bill (1) redefines a “police record” to include an arrest warrant, invalidated warrant, and a fugitive warrant and (2) authorizes a person who is the subject of an invalidated warrant or a fugitive warrant to file a petition for expungement of the applicable records if the warrant is dismissed or otherwise invalidated.

Automatic Expungements

A person who, on or after October 1, 2018, has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, who has been charged with a civil offense or infraction (except a juvenile offense), or who is the subject of an invalidated warrant or a fugitive warrant is entitled to *automatic expungement* of all police records, court records, and other records maintained by the State or a political subdivision of the State relating to the matter if (1) the person is acquitted; (2) the charge or warrant is dismissed or invalidated; (3) a probation before judgment is entered, unless the person is charged with a violation of § 21-902 of the Transportation Article or Title 2, Subtitle 5 or § 3-211 of the Criminal Law Article; (4) a *nolle prosequi* other than a *nolle prosequi* with the requirement of drug or alcohol treatment is entered; or (5) the court indefinitely postpones trial of the charge by marking the charge “stet” on the docket, without a requirement of drug or alcohol treatment.

Automatic expungement must occur immediately on disposition for an acquittal, dismissal, or a *nolle prosequi* other than a *nolle prosequi* with the requirement of drug or alcohol treatment. A probation before judgment is eligible for automatic expungement after satisfactory completion of any probationary conditions imposed in connection with the probation before judgment disposition.

A stet other than a stet with the requirement of drug or alcohol treatment is eligible for automatic expungement three years after the entry of stet. A court or police record may not be expunged by obliteration until three years after the disposition of the charge. During this time, the records must be moved to a separate secure area to which persons who do not have a legitimate reason for access are denied access. A legitimate reason for accessing the records includes using the records for purposes of proceedings relating to the arrest or charge.

The bill establishes timelines for the court, law enforcement units, and other entities to expunge applicable records. If a court, a law enforcement unit, a booking facility, or the

Central Repository fails to expunge a record as specified, the person entitled to expungement may seek redress by means of any appropriate legal remedy and recover court costs.

A person entitled to automatic expungement may not be required to pay any fee or costs in connection with the expungement. At the time of making a disposition eligible for automatic expungement, the court must inform the defendant that all police records, court records, and other records relating to the matter will be automatically expunged unless the defendant opts out of the expungement. A person entitled to automatic expungement may opt out of the automatic expungement by notifying the court at the time of disposition. However, opting out of expungement of a particular charge does not bar expungement of other eligible charges.

Petitions for Expungement of a Conviction

The bill expands eligibility for expungement of records related to a conviction by authorizing a person to file a petition for expungement of a court record, police record, or other record if the person is convicted of (1) any statutory or common law prohibition that carries a maximum penalty of imprisonment for three years or less or (2) a felony other than a crime of violence.

The bill reduces the waiting period for expungement of a conviction for specified crimes, other than convictions for those crimes specifically excluded, from 10 years to 3 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. A petition for expungement of a felony other than a crime of violence is subject to a five-year waiting period. The bill retains the existing 15-year waiting period to file a petition to expunge a conviction for misdemeanor second-degree assault, common law battery, or for an offense classified as a domestically related crime.

Current Law:

Expungement of Records

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 (JRA), 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.

Crimes of Violence

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes 1 through 15; (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

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

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

<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
2017	47,697	6,811

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 (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.

Exhibit 2
CJIS Expungements
Calendar 2004-2017

<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	2017	48,211

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 petitions for expungement of convictions filed in the District Court under the bill. The District Court charges a \$30 filing fee for a petition for expungement of a conviction. The bill's prohibition on the imposition of a fee for automatic expungements does not affect District Court revenues. The District Court does not charge a filing fee for a petition for expungement of a disposition other than a conviction.

State Expenditures: General fund expenditures increase by at least \$816,773 in fiscal 2019 for the Judiciary and DPSCS to process expungements. Future year expenditures are annualized and reflect ongoing costs.

Judiciary

General fund expenditures for the Judiciary increase by \$650,413 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring 17 District Court clerks (1 additional clerk in seven districts and 2 additional clerks in the five districts with the highest case volume (Baltimore City and Anne Arundel, Baltimore, Prince George's, and Montgomery counties)) and 5 circuit court clerks (1 additional clerk in the five jurisdictions with the highest case volume) to process expungements in accordance with the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs (including computer reprogramming costs), and ongoing operating expenses

Positions	22
Salaries and Fringe Benefits	\$243,260
Computer Reprogramming	289,260
Operating Expenses	407,153
Total FY 2019 Judiciary Expenditures	\$650,413

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The Judiciary advises that the bill requires a total of 41 additional clerks (17 clerks in the District Court and 24 clerks in the circuit courts) to assist with processing expungements. This includes sending orders for expungement of records to applicable agencies, tracking compliance with expungement orders by other affected agencies, retrieval of records, and review of records.

The Department of Legislative Services advises that while the bill increases court workloads the level of case activity in many of the smaller jurisdictions does not necessitate an immediate need for additional personnel. The Judiciary advises that expungements currently take 1.5 hours for non-Maryland Electronic Courts (MDEC) records and 1.0 hour

for a MDEC record. While 70% of the State’s courts are on MDEC, several larger jurisdictions (Baltimore City and Baltimore, Montgomery, and Prince George’s counties) are not on MDEC. According to the current timeline, all courts will be on MDEC by 2021. Should a more automated process be developed, personnel needs may decrease. However, personnel needs for the Judiciary may increase if actual workloads to comply with the bill’s provisions (including timelines for expungement prescribed in the bill) exceed these parameters. Actual experience is needed to assess personnel needs given the ongoing implementation of MDEC and the expansion of expungement that occurs under the bill.

Exhibit 3 contains fiscal 2017 statistics from the Judiciary on some of the types of dispositions eligible for automatic expungement or expanded eligibility to file a petition for expungement under the bill

Exhibit 3
Dispositions Eligible for Expungement Under the Bill
Fiscal 2017

<u>Disposition</u>	<u>District Court</u>	<u>Circuit Courts</u>	<u>Total</u>
Automatic Expungements			
<i>Nolle Prosequi</i> (upon disposition)	278,789	10,225	289,014
Probation after judgment (after satisfactory completion of any sentence and probationary conditions imposed)	44,447	5,781	50,228
Stet* Three years after the entry of stet	58,642	4,374	63,016
Fugitive warrants	2,257	N/A	2,257
Acquittals and dismissals (upon disposition)	Unavailable	Unavailable	Unavailable
Petition-Based Expungements			
Convictions for crimes punishable by imprisonment for less than 3 years**	8,526	7,353	15,879
Convictions for felonies that are not crimes of violence	409	12,730	13,139
TOTAL			433,533

*Does not distinguish between current cases that have the requirement of drug or alcohol treatment for stet dispositions that would make the individual ineligible for automatic expungement.

**The bill specifies that crimes with a *sentence of 3 years* or less qualify for expungement.

Source: Maryland Judiciary

The Judiciary received 7 expungement clerk positions in fiscal 2018 to assist with JRA expungements. The Judiciary's fiscal 2019 budget request includes 17 positions for District Court clerks to process expungements under JRA.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by at least \$166,360 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring three administrative specialists and one office clerk to process expungement orders in accordance with the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$144,925
Operating Expenses	21,435
Total FY 2019 DPSCS Expenditures	\$166,360

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

CJIS advises that it needs five employees (three administrative specialists, one office services clerk, and a supervisor for the unit). However, based on the information provided, the need for an additional supervisor remains unclear.

Additional personnel (beyond those included in the estimate above) may be needed to process expungement orders from the courts. The extent of this need cannot be reliably determined at this time and can only be determined with actual experience under the bill. CJIS advises that it cannot determine the number of additional expungement orders at this time, but believes that the bill could generate 7,000 court orders per month. CJIS has historically advised that it needs an additional clerk for every 2,500 expungements generated. *For illustrative purposes only*, the cost associated with hiring one expungement clerk is \$39,134 in fiscal 2019 and \$46,258 in fiscal 2020.

State Insurance Trust Fund

The bill specifies that (1) a police or court record expunged under the automatic expungement provisions may not be expunged by obliteration until three years after the disposition of the charge; (2) during this three-year period, the records must be removed to a separate secure area to which persons who do not have legitimate reason for access are denied access; and (3) a legitimate reason for access includes using the records for purposes of proceedings relating to the arrest or charge. This language is similar to the language in § 10-103.1 of the Criminal Procedure Article for expungements of police records after a

person is released without being charged with the commission of a crime. Assuming that these provisions do not hinder the ability of the State to access relevant expunged records that are connected to a lawsuit against the State, the bill does not have a material effect on special fund expenditures from the State Insurance Trust Fund (SITF) and general fund expenditures for agencies that are the subject of applicable tort claims.

The three-year waiting period for expungements for acquittal, *nolle prosequi*, and dismissal dispositions under existing statute is related to the three-year statute of limitations for civil causes of action. If a police and/or court record is expunged prior to receipt or notification of a claim under the Maryland Tort Claims Act (MTCA) by the Treasurer's Office, then the Treasurer's Office may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations, if it is not permitted to access the expunged records. False imprisonment by law enforcement is an example of the type of MTCA claim that may be related to an expunged record. Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees.

Local Revenues: Depending on the number of petitions filed for expungement of a conviction, the bill may result in a minimal increase in local revenues. According to the Judiciary, the circuit courts charge a \$30 filing fee for all petitions for expungement. While the bill prohibits a circuit court from charging a fee for expungement of dispositions eligible for automatic expungement, the loss of local revenues from those filing fees may be offset by an increase in filing fees collected for petitions for expungement of a conviction. The extent to which this occurs cannot be reliably determined at this time.

According to Exhibit 1, 6,811 petitions for expungement were filed in the circuit courts in fiscal 2011. This does not include petitions filed under JRA, which were available beginning October 1, 2017. According to Exhibit 3, there were approximately 20,000 convictions in the circuit courts during fiscal 2017 for the types of offenses eligible for expungement under the bill. It is unclear at this time if any of the convictions listed in Exhibit 3 are already eligible for expungement under JRA and how many petitions for expungement are filed in connection with these convictions.

Local Expenditures: Local expenditures increase depending on the need for personnel in affected local agencies (*e.g.*, police departments). Circuit court expungement clerks are funded with State general funds. However, other locally funded programmatic resources may be needed in the circuit courts. The following information was gleaned from local jurisdictions regarding the potential fiscal effects of the bill:

- The Montgomery County Police Department advises that the large number of automatic expungements generated by the bill requires an additional four employees

at an annual cost of \$280,860. The department also incurs a one-time cost of \$20,000 for additional software/hardware.

- The Circuit Court for Montgomery County advises that the bill requires alteration of the court's case management system, at a one-time cost of \$12,500.
- Prince George's County advises that the bill may have a significant impact on the resources of the circuit court but cannot determine the magnitude of the impact at this time.
- Baltimore County does not anticipate much impact on its circuit court or its State's Attorney's office.
- Baltimore City advises that the bill does not have a negative fiscal impact on Baltimore City. Baltimore City did not respond to a follow-up request for information on the bill's impact on the Baltimore City Police Department.

Assuming that the bill does not hinder the ability of local governments to access relevant court records in connection with litigation against the jurisdiction, the bill does not affect local expenditures for higher payments for claims under the Local Government Tort Claims Act and insurance premiums.

Additional Information

Prior Introductions: None.

Cross File: SB 1212 (Senator Ramirez, *et al.*) - Rules.

Information Source(s): Baltimore City; Baltimore, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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