

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 114 (Chairman, Judicial Proceedings Committee)
(Departmental – Public Safety and Correctional Services)

Judicial Proceedings Judiciary

Criminal Procedure - Expungement - Law Enforcement Unit

This bill adds the Office of the State Prosecutor to the definition of “law enforcement unit” as it relates to the expungement of court and police records.

Fiscal Summary

State Effect: None. Adding this additional agency to the definition of “law enforcement unit” is not expected to impact State finances.

Local Effect: None. Adding this State-funded agency to the definition of “law enforcement unit” is not expected to impact local finances.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A “law enforcement unit” is defined in the Criminal Procedure Article, for purposes of expungement of police and court records, as a State, county, or municipal police department or unit, the office of a sheriff, the office of a State’s Attorney, or the office of the Attorney General of the State.

To expunge a court or police record is essentially to remove it from public inspection. The Criminal Procedure Article identifies various means by which an individual may

have a police record or court record relating to that individual expunged; the means and ability to expunge such records vary based on the stage, type, and outcome of any criminal proceedings relating to the record. Circumstances under which an expungement can be requested include where:

- a person is arrested, detained, or confined but subsequently released without being charged;
- the State has entered a nolle prosequi (basically, a formal decision not to prosecute after charges have been filed) as to all charges in a criminal case in District Court in which the defendant has not been served;
- a person has been acquitted;
- the charge is otherwise dismissed (including a charge of assault where the victim and accused have agreed to the dismissal);
- with certain exceptions, a probation before judgment is entered;
- the court indefinitely postpones trial of a criminal charge by marking the criminal charge “stet” on the docket;
- the charge was transferred to the juvenile court; and
- a person is convicted of only one criminal act that is not considered to be a crime of violence, and the Governor has granted the person a full and unconditional pardon.

The State Prosecutor has the authority to investigate certain criminal offenses. These include: (1) State election law violations; (2) State public ethics law violations; (3) State bribery law violations involving public officials or employees; (4) misconduct in office by public officials or employees; (5) extortion, perjury, or obstruction of justice related to any of the above; and (6) alleged crimes conducted partly in Maryland and partly in another jurisdiction, or in more than one political subdivision of the State. In investigating and prosecuting such cases, the State Prosecutor has all the powers and duties of a State’s Attorney except subpoena powers and the power to offer immunity to witnesses in non-bribery cases.

The expungement subtitle of the Criminal Procedure Article defines a “police record” as “an official record that a law enforcement unit...maintains about the arrest and detention of, or further proceeding against, a person for: (1) a criminal charge; (2) a suspected violation of criminal law; or (3) a violation of the Transportation Article for which a term of imprisonment may be imposed.” By adding the Office of the State Prosecutor to the definition of law enforcement unit, the bill clarifies that official records created by the Office of the State Prosecutor -- like records created by the State’s Attorney -- for these purposes fall within the definition of police records subject to expungement.

Background: The Criminal Procedure Article Review Committee, when it recodified the expungement section into the new Criminal Procedure Article, flagged the fact that the definition of law enforcement unit did not include the State Prosecutor.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

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