

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 542 (Senators Forehand and Jones)
Judicial Proceedings

Identity Theft - Victim - Expungement of False Criminal Record

This bill allows a victim of identity theft to seek expungement of any police, court, or other record resulting from the arrest of another person unlawfully using the victim's name or identity. The court that orders the expungement must note in writing that the expungement was ordered because the person was a victim of identity theft.

The court may order a person who pleads guilty or *nolo contendere*, or who is convicted of identity fraud in connection with the unauthorized use of a victim's name or identity, to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred in connection with the expungement.

Fiscal Summary

State Effect: While the number of requests for expungement could increase under this bill, it is not expected to have a significant impact on State finances.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

Current Law: A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement 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.

The State's Attorney is served with a copy of each petition for expungement. If the State's Attorney objects to the petition within 30 days, the court holds a hearing to determine whether the person is entitled to expungement.

A petition for expungement costs \$30. "Expungement" with regard to 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; or
- if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of that record, or the part of it that provides access.

Background: The Identity Theft Resource Center estimates that 7 million persons became victims of identity theft during 2002.

State Expenditures: There were approximately 16,500 petitions for expungement filed in District Court in fiscal 2003, compared with 135 charges of identity theft. The State's Attorney's Office would be unlikely to challenge a request for expungement made for this purpose. The District Court would incur minimal expenses for reprinting forms and instructions.

Local Expenditures: No statistics are kept of petitions for expungement filed at the circuit court level. In calendar 2003, there were 1,488 charges of identity theft brought in circuit court. The Judiciary advises that this number has been growing over time. However, it is impossible to determine how many of these charges could lead to a petition for expungement as contemplated by this bill, *i.e.*, where the offense resulted in a criminal record in the victim's name. Any increase in the circuit court workload could be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 190 (Delegate Petzold, *et al.*) – Judiciary.

Information Source(s): Carroll County, Montgomery County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2004
mll/jr

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