Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 565   (Delegate Carter, *et al.*)

Judiciary

Criminal Procedure - Expungement - Nonjailable Offenses

This bill authorizes a person to file a petition for expungement of a police, court, or other record if: (1) the charge is not punishable by a term of imprisonment; and (2) five years have passed since the disposition of the charge.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues and expenditures if a substantial number of individuals choose to have covered records expunged.

Local Effect: Potentially significant increase in expenditures if a substantial number of individuals choose to have covered records expunged. **This bill may impose a mandate on a unit of local government.**

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.

A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or the grant of a pardon by the Governor, if the

person has subsequently been convicted of a crime or is a defendant in a criminal proceeding.

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 in a unit, the person is not entitled to expungement of any other charge in the unit.

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.

"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.

There are relatively few State statutes that impose only a monetary penalty, with no possible sentence of imprisonment. These include use of drug paraphernalia (first offense), distributing tobacco products to minors, removing or encapsulating asbestos without a license, and certain wetlands violations.

However, some counties and municipalities make much greater use of this approach. For example, Baltimore City imposes fines, but not jail terms, for such offenses as issuing or using inaccurate identification cards, scavenging in recyclable materials, not paying a restaurant bill or taxi fare, providing spray paint to a minor, holding a street parade without a permit, and scalping tickets.

Background: Destitute and homeless persons may be cited for nonjailable offenses in an effort to discourage their presence and activities. Expungement will allow such individuals to escape the collateral consequences or civil disabilities of such convictions.

State Fiscal Effect: A petition for expungement in the Maryland courts costs $30. The Department of Public Safety and Correctional Services (DPSCS) does not charge the

petitioner and has determined that each expungement costs approximately $41 to process. Costs to other agencies and in the District Court and circuit courts may vary.

The District Court processed 16,506 petitions for expungement in fiscal 2003. The bill is expected to lead to additional petitions for expungement, although the precise number cannot be determined. General fund revenues would increase by $30 for each petition filed. Depending on the number of petitions, the increase could be significant. For illustrative purposes only, for every additional 1,000 petitions, general fund revenues would increase by $30,000.

The District Court anticipates an increase in costs in direct relation to the higher number of expungements. This could include an increase in clerical staff, as well as increased costs for printing new forms, postage for mailing petitions and orders, storage for expunged records, and copying. For illustrative purposes, one GS8 clerk position, including fringe benefits and operating costs, costs approximately $32,300 per year.

As of February 9, 2004, there are 72,482 nonjailable criminal charges reported to the DPSCS' Criminal Justice Information System (CJIS) Central Repository. Under this bill, there would be approximately 6,600 additional charges eligible each year for expungement, at a potential cost of $270,492 (assuming constant costs). In 2003, CJIS processed 14,500 expungements with a staff of seven persons. Additional clerical staff could be required to deal with this increased workload.

It is possible that some of these charges are part of a unit and so would not be eligible for expungement. Also, it cannot be predicted with certainty how many persons would take advantage of this new opportunity.

Local Fiscal Effect: The circuit courts do not track the number of expungements, but, as with the District Court, this bill is expected to lead to a higher number of petitions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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

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