

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 193

(Senator Stone, *et al.*)

Judicial Proceedings

Judiciary

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Offender Registration - Probation Before Judgment - Expungement

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This bill prohibits a person required to register with the Maryland's Crimes Against Children and Sexual Offender Registry from filing a petition to expunge a criminal record, during the period the registration is required, even if a probation before judgment has been entered for the commission of the crime. The bill also provides that a person convicted of a fourth degree sexual offense (if the victim is 14 or 15 years old and the person is at least four years older), when granted probation before judgment after a finding of guilt, is not considered convicted for purposes of registration requirements under Maryland's sexual offender registration provisions.

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Fiscal Summary

**State Effect:** None. The provisions of this bill would not measurably affect State operations or finances.

**Local Effect:** None. The provisions of this bill would not measurably affect local government operations or finances.

**Small Business Effect:** None.

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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 other than a minor traffic violation or is a defendant in a pending criminal proceeding. A petition based on an acquittal, a *nolle prosequi*, or a dismissal may not be filed within three years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.

“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.

Chapter 362 of 2004 provided that, in a criminal case, when all the charges against the defendant are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or stet, the court must advise the defendant that the defendant may be entitled to expunge the records relating to the charge(s) in accordance with State law. Failure to provide such notice does not affect the legality of the sentence or disposition of the case.

The crime of fourth degree sexual offense prohibits a person from engaging in: (1) nonconsensual sexual contact with another; (2) a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or (3) vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator. Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life, depending on the offense. A person convicted of fourth degree sexual offense is in the category of an “offender,” and must register if the victim was under 18 years old.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Prince George's County, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2005  
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