

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

Senate Bill 847 (Senator Conway)
 Judicial Proceedings

Baltimore City - Criminal Procedure - Automatic Expungement of Records

This bill provides that a person who is arrested, detained, or confined in Baltimore City for the suspected commission of a crime and then is released from the Centralized Booking Intake Facility (CBIF) without being charged with the commission of a crime is entitled to the expungement of all police records relating to the matter.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues to the extent that filing fees currently charged by the Baltimore City District Court for expungement of *nolle prosequi* before service cases are not charged as a result of the bill. Potential increase in Baltimore City District Court expenditures. General fund expenditures would increase by \$112,700 in FY 2007, accounting for the bill's October 1 effective date. Future years reflect annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	112,700	135,600	144,000	153,100	162,900
Net Effect	(\$112,700)	(\$135,600)	(\$144,000)	(\$153,100)	(\$162,900)

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

Local Effect: Potential increase in expenditures for the Baltimore City State's Attorney's Office to review all cases in Baltimore City District Court that resulted in a *nolle prosequi* before service.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a law enforcement unit, within 30 days after an individual is released without charge, to: (1) search diligently for and expunge each police record about the arrest, detention, or confinement of the person; and (2) send a notice of expungement containing all relevant facts about the matter to the person entitled to expungement, the Central Repository, CBIF, and each law enforcement unit believed to have a police record about the matter. Within 30 days after the receipt of the notice, the Central Repository, CBIF, and each law enforcement unit or booking facility contacted shall search diligently for and expunge each of the individual's police records relating to the matter and send notice in writing of completion of the expungement to the individual entitled to the expungement.

The bill also provides that unless the State objects and shows cause why a record should not be expunged, if the State enters a *nolle prosequi* as to all charges in a criminal case within the jurisdiction of the Baltimore City District Court with which a defendant has not been served, the court must order expungement of each court record, police record, or other record that the State or a political subdivision of the State keeps as to the charges.

Current Law: A person who is arrested, detained, or confined by a law enforcement unit for the suspected commission of a crime, and then is released without being charged with the commission of a crime can have police records relating to the matter expunged by request. In order to have the police records expunged, the person must send a written notice of facts relating to the matter to a law enforcement unit the person believes may have a police record about the matter. The person cannot give this notice before the statute of limitations expires on all tort claims the person may have arising from the incident, unless the person attaches to the notice a written general waiver and release, in legal form, of all tort claims that the person has arising from the incident. The notice and waiver are not expungable, and the law enforcement unit is required to keep the notice and waiver until all applicable statutes of limitation expire. The person requesting expungement must provide the notice within eight years after the date of the underlying incident.

Law enforcement units that receive timely notices are required to promptly investigate and verify the facts in the notice. If the law enforcement unit finds that the facts are true, they have 60 days after receipt of the notice to search diligently for and expunge police records they have on the person pertaining to the underlying incident. The law enforcement unit then has to send a copy of the notice and its verification of the facts in the notice to: (1) the Central Repository; (2) each booking facility or law enforcement unit they believe may have a police record about the arrest, detention, or confinement of the person; and (3) the person requesting expungement. Entities contacted by the original

law enforcement unit have 30 days to search diligently for and expunge police records they have about the underlying matter.

If the law enforcement unit that received the original notice believes the person is not entitled to expungement, the unit must inform the person in writing of the denial of the expungement request and the reasons behind the denial within 60 days after receipt of the notice. A person denied expungement can apply for an order of expungement in the District Court that has proper venue against the law enforcement unit within 30 days after written notice of the denial is mailed or delivered to the person. The District Court then notifies the law enforcement unit of the application and holds a hearing, to which the law enforcement unit is a party. The District Court can order expungement or deny the application. Each party to the proceeding is entitled to appellate review provided for civil cases from the District Court.

The District Court of Maryland generally requires individuals petitioning for expungement of court records to pay a \$30 filing fee. However, if a person is released without charge, courts will not have a record of the arrest. Persons who are released without charge must contact law enforcement units to request expungement and are not subject to the \$30 District Court fee. However, if a person applies to the District Court for an order of expungement following the denial of an expungement request by a law enforcement unit, District Court fees may apply.

Unless the State objects and shows cause why a record should not be expunged, if the State enters a *nolle prosequi* as to all charges in a criminal case within the jurisdiction of the District Court with which a defendant has not been served, the District Court may order expungement of each record that the State or a political subdivision of the State keeps as to the charges. The defendant may not be charged for expungement of these records, as is the case under the bill.

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.

Background: The Maryland Criminal Justice Information System (CJIS) reports that on average, 12,000 people are arrested and released without charge in the State per year.

State Revenues: With the exception of acquittals, the District Court of Maryland requires individuals petitioning for expungement of court records to pay a \$30 filing fee. Individuals who are released without charge do not apply to the District Court for expungement, since courts do not have records on individuals not charged with the commission of a crime. While the bill requires the Baltimore City District Court to order expungement of records in cases resulting in *nolle prosequi* before service, it is unclear whether the filing fee will still apply.

The District Court of Maryland advises that in fiscal 2005, 5,168 criminal cases resulted in *nolle prosequi* in the Baltimore City District Court. However, the number of *nolle prosequi* cases that went unserved cannot be reliably estimated at this time. The Baltimore City District Court advises that cases resulting in *nolle prosequi* before service represent a very small segment of the *nolle prosequi* population. Therefore, a repeal of the \$30 fee for this group would result in a minimal decrease in revenue.

Centralized Booking Intake Facility

It is assumed that since this bill requires automatic expungements for persons released from CBIF without being charged with the commission of a crime, CBIF will not charge a fee for these expungements.

State Expenditures:

Released without Charge: State expenditures would increase depending on the number of individuals released from CBIF without charge. CBIF reports 98,845 bookings in 2005. Of this group, 23,606 were released without charge. CJIS reports that on average, 12,000 people are arrested and released without charge in the State per year. A breakdown by jurisdiction was not made available to the Department of Legislative Services. Possible reasons for this discrepancy are: (1) incomplete reporting of release without charge incidents at CBIF to CJIS; and (2) the CBIF figure includes events that are not “reportable events” to CJIS.

According to the *2004 Uniform Crime Report*, 32.7% of the total arrests in Maryland occurred in Baltimore City. Extrapolating this percentage onto the statewide estimate from CJIS would result in 3,924 additional expungements for CJIS.

Arrests Resulting in Nolle Prosequi in the District Court for Baltimore City: As mentioned above, the District Court advises that in fiscal 2005, 5,168 criminal cases

resulted in *nolle prosequi* in the Baltimore City District Court. However, as mentioned before, the number of cases resulting in a *nolle prosequi* before service in the Baltimore City District Court is a small segment of this population. Therefore, any expungements for this population could be handled with existing CJIS resources.

Expenditures to Process Expungements under this Bill: CJIS currently processes 16,000-17,000 expungements per year with an eight-member staff. It is estimated that approximately 3,924 additional expungements would have to be processed per year under this bill. In order to process these additional expungements, CJIS would have to hire approximately three additional expungement clerks.

General fund expenditures for CJIS could increase by an estimated \$112,682 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring three expungement clerks to perform 2,943 additional expungements in fiscal 2007. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$97,772
Operating Expenses	<u>14,910</u>
Total CJIS State Expenditures	\$112,682

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Centralized Booking Intake Facility

Since the State operates CBIF, there could be a one-time increase in State expenditures to reprogram CBIF computers. There are insufficient data at this time to reliably estimate this reprogramming cost.

Baltimore City District Court

The Baltimore City District Court processed 4,500 expungements in fiscal 2005, using two expungement clerks. The District Court of Maryland advises that these clerks may have other duties in addition to processing expungements. The expungement process in District Court typically takes 90 days from the filing of a petition to the notification and completion period for the State's Attorney and law enforcement units. The bill requires the Baltimore City District Court to order expungement of each court record in a criminal case under its jurisdiction in which a *nolle prosequi* was entered for all of the charges,

and with which a defendant has not been served. Assuming that, as advised by the Baltimore City District Court, cases resulting in *nolle prosequi* before service represent a small segment of the *nolle prosequi* population, expungements for *nolle prosequi* before service cases in Baltimore City District Court could be handled with existing Baltimore City District Court resources.

Local Expenditures: The Baltimore City State's Attorney's Office may incur additional expenditures since the bill alters the expungement process in cases that resulted in *nolle prosequi* before service from a process initiated by the petitioner to an automatic process. As a result of this bill, the State's Attorney for Baltimore City will have to review every *nolle prosequi* case in which the defendant was not served in the Baltimore City District Court to determine if the office objects to the expungement.

Baltimore City advises that any expungements of its records required by this bill could be handled with existing resources.

Additional Comments: The Department of Legislative Services received conflicting information regarding District Court's procedures pertaining to expungements in criminal cases resulting in *nolle prosequi* before service, in particular the need to file a petition and filing fees in these cases.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/jr

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