

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 636
Judiciary

(Delegate Levi, *et al.*)

Police and Court Records - Nonviolent Crimes - Expungement

This bill authorizes a person convicted of only one nonviolent crime, other than certain specified offenses, to petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State. The bill imposes procedural requirements that must be satisfied for a person to be eligible to petition for expungement.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services to enforce the bill's provisions. Potential significant increase in general fund revenues from District Court filing fees for expungements.

Local Effect: Potential minimal increase in local expenditures for circuit courts and local law enforcement agencies to process additional expungements, depending on the increase in expungement orders in each jurisdiction. Potential minimal increase in local revenues from circuit court filing fees for expungements.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person convicted of the following crimes from petitioning for expungement: any crime of violence, as defined in the Criminal Law Article, creating or distributing child pornography, human trafficking of a minor, or specified sexual offenses involving a victim who is a minor age 13 years or older. The

specified sexual offenses are: (1) third or fourth degree sexual offenses; (2) unnatural or perverted sexual practice; (3) sexual conduct between a correctional officer or Department of Juvenile Services employee and an inmate or confined child; and (4) sexual solicitation of a minor.

If a person commits an offense that qualifies for expungement under the bill, he/she may not petition for expungement until four years after the conviction or the satisfactory completion of the sentence (including probation) that was imposed for the conviction, whichever is later. In addition, a person petitioning for expungement under the bill's provisions must include documentation of at least 18 months of consecutive work history since the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction.

Current Law:

Expungement: 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.

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.

Expungement of 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; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Third Degree Sexual Offenses: In general, the following are considered sexual offenses in the third degree:

- engaging in nonconsensual sexual contact with an individual while:
(1) employing or displaying a dangerous weapon; (2) inflicting serious physical

injury on the victim or another while committing the crime; (3) threatening or placing the victim in fear that someone known to the victim will be imminently subject to death, strangulation, kidnapping, or serious physical injury; or (4) being aided and abetted by another while committing the aforementioned acts;

- engaging in sexual contact with an individual who is mentally defective, mentally incapacitated, or physically helpless and the person performing the act knew or reasonably should have known of the individual's status;
- engaging in sexual contact with another if the victim is younger than age 14 and the person performing the sexual contact is at least four years older than the victim; and
- engaging in a sexual act or vaginal intercourse with another if the victim is age 14 or 15 and the person performing the sexual act is at least age 21.

Violators are guilty of a felony, subject to a maximum penalty of 10 years imprisonment.

Fourth Degree Sexual Offenses: In general, the following are considered sexual offenses in the fourth degree:

- engaging in nonconsensual sexual contact with another;
- engaging in a sexual act with another if the victim is 14 or 15 years old and the person performing the sexual act is at least four years older than the victim, but younger than 21 years of age;
- engaging in vaginal intercourse with another if the victim is 14 or 15 years old and the person performing the sexual act is at least four years older than the victim, but younger than 21 years of age;
- engaging in a sexual act or sexual contact with a minor if the person performing the act or contact is a person of authority (a full-time school employee who is at least 21 years old and exercises supervision over a minor who attends a school by nature of his/her position or occupation) and the victim is a student enrolled at the school where the person of authority is employed.

Violators are guilty of a misdemeanor, subject to maximum penalties of one year imprisonment and/or a \$1,000 fine.

Sexual Conduct between a Correctional or Department of Juvenile Services Employee and an Inmate or Confined Child: A correctional employee may not engage in sexual contact, vaginal intercourse, or a sexual act with an inmate. An employee of the Department of Juvenile Services may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual confined in a child care institution licensed by the department, a detention center for juveniles, or specified facilities for juveniles.

Violators are guilty of a misdemeanor, subject to maximum penalties of three years imprisonment and/or a \$3,000 fine.

Human Trafficking of a Minor: In general, the knowing commission of the following acts constitutes human trafficking:

- taking or causing another person to be taken to any place for prostitution;
- placing, causing to be placed, or harboring another person in any place for prostitution;
- persuading or encouraging by threat or promise another person to be taken to or placed in any place for prostitution;
- unlawfully taking or detaining another person with the intent to use force, threat, or persuasion to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse; or
- receiving consideration to procure for or place in a house of prostitution or elsewhere another person with the intent of causing the other person to engage in prostitution or assignment.

While human trafficking of an adult is a misdemeanor, human trafficking of a minor is a felony. Violators are subject to maximum penalties of 25 years imprisonment and/or a \$15,000 fine.

Sexual Solicitation of a Minor: A person may not, with the intent to commit a violation of specified sexual offenses or prostitution-related offenses, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under provisions regarding those offenses.

Violators are guilty of a felony and subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine.

Child Pornography: A person may not (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct; (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct; (4) knowingly promote, distribute, or possess with intent to distribute a depiction of a minor engaged in sadomasochistic abuse or sexual conduct; or (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive

or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

Violators are guilty of a felony and subject to maximum penalties of a fine of \$25,000 and/or imprisonment for 10 years for a first violation. Second and subsequent violations subject the person, for each violation, to maximum penalties of a fine of \$50,000 and/or imprisonment for 20 years.

The terms “sexual act” and “sexual contact” have specific definitions which are in State law. (*See* Criminal Law Article §§ 3-301 and 3-307.)

Background: The number of expungements processed by the Maryland Criminal Justice Information System (CJIS) has steadily increased over recent years. CJIS advises that this increase is due to recent legislation expanding eligibility for expungements (including expungements for individuals arrested and released without being charged) and an increase in the number of occupations and employers requiring background checks.

<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769
2005	16,760
2006	20,612
2007	25,206
2008	33,944

State Fiscal Effect: General fund revenues and expenditures for the District Court and general fund expenditures for the Department of Public Safety and Correctional Services may increase significantly under the provisions of this bill.

Given the requirements a person needs to fulfill to qualify for an expungement under the bill, including evidence of 18 months of consecutive work history, the number of people who may pursue expungement because of the bill cannot be reliably determined at this time. However, this number is expected to be significant. According to CJIS, which conducted a random sampling of criminal history records, an estimated 5% of the records currently in the system may be eligible for expungement as a result of the bill. This equates to 169,250 additional expungements. The fiscal impact of the bill depends on: (1) the number of newly eligible individuals who petition for and are granted expungement orders; and (2) the number of years over which the increase in demand for expungements is distributed, neither of which can be reliably predicted.

Legislative Services advises that the estimate of significant fiscal impact assumes that: (1) 20% of the newly eligible expungements are pursued and granted expungement orders; and (2) the increased demand is evenly distributed over four years. These assumptions equate to an additional 8,463 expungements per year.

District Court: The District Court of Maryland generally requires individuals petitioning for expungement to pay a \$30 filing fee. *For illustrative purposes only*, if 8,463 petitions for expungement are filed in the District Court, general fund revenues may increase by \$253,890 annually.

Since the District Court generally handles misdemeanors and the circuit courts handle felonies, it is likely that the majority of offenses newly eligible for expungement will be District Court cases. The District Court advises that it processed 28,479 expungements in fiscal 2008. The District Court may incur significant increases in expenditures to process an additional 8,463 expungements per year. These expenses include additional staff, training, computer reprogramming costs, updating expungement brochures and forms, postage costs to mail petitions to State's Attorneys, costs to request older records from the State Archives, and costs to store additional expungement records.

Department of Public Safety and Correctional Services/Maryland Criminal Justice Information System (CJIS): If the bill results in an additional 8,463 expungements per year, as noted above, CJIS will need additional staff. CJIS advises that the average workload for an expungement clerk is 2,000 expungements per year. *For illustrative purposes only*, general fund expenditures increase by at least \$140,000 per year for CJIS to hire four additional expungement clerks.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 904 is not identical.

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

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