

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 680
Judiciary

(Delegate Carter, *et al.*)

Juvenile Proceedings - Expungement of Records

This bill requires the expungement of juvenile records for individuals who are detained or confined by a law enforcement unit for the suspected commission of a delinquent act if the person is released without the filing of a delinquency petition or peace order or in accordance with an informal adjustment procedure. The bill establishes a process by which juveniles who are detained or confined by law enforcement prior to the bill's effective date may request the expungement of juvenile records. The bill expands current provisions of law relating to expungement to include certain juvenile records.

Fiscal Summary

State Effect: General fund expenditures increase by \$385,200 in FY 2011 for additional staff within the Department of Juvenile Services (DJS). Future year estimates reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	385,200	506,300	530,600	556,100	583,000
Net Effect	(\$385,200)	(\$506,300)	(\$530,600)	(\$556,100)	(\$583,000)

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

Local Effect: Potential minimal increase in expenditures for local law enforcement agencies and the circuit courts to handle expungement requests. The extent of the increase will depend on the volume of juvenile crime in and requests received by each jurisdiction. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that, for detentions or confinements in a juvenile proceeding occurring on or after October 1, 2010, a person who as a minor is detained or confined by law enforcement for the suspected commission of a delinquent act is entitled to expungement of all juvenile records, including photographs and fingerprints, relating to the matter if the person is released without the filing of a delinquency petition or peace order or in accordance with an informal adjustment procedure. Juvenile records are defined as official records that the central repository, a booking facility, a law enforcement unit, or DJS maintains about the arrest and detention of, or further proceeding against, a person for a suspected delinquent act.

Within 60 days after release of the person entitled to expungement of a juvenile record, the law enforcement unit or DJS must search diligently for and expunge each juvenile record about the detention or confinement of the person. Law enforcement or DJS is also required to send a notice of expungement containing all relevant facts about the expungement and underlying detention or confinement to the central repository, each booking facility or law enforcement unit believed to have a relevant juvenile record and the person entitled to the expungement. Within 60 days after receipt of the notice, the central repository, a booking facility, and any other law enforcement unit or DJS must search for and expunge each juvenile record and provide written notification of compliance to the person entitled to the expungement.

A juvenile record expunged in accordance with the bill's provisions may not be expunged by obliteration until three years after the date of expungement. During the three-year period, the record must be removed to a separate secure area to which access is denied for persons who do not have a legitimate reason for access. A legitimate reason for accessing the records includes using the records for purposes or proceedings relating to the detention or confinement.

A person entitled to expungement of a police record may seek redress by means of any appropriate legal remedy and recover court costs if a law enforcement unit, booking facility, or the central repository fails to expunge a juvenile record as required. A person who is entitled to expungement of a juvenile record may not be required to pay any fees or costs in connection with the expungement.

For detentions or confinements in a juvenile proceeding occurring before October 1, 2010, a person who, as a minor, is detained or confined by law enforcement for the suspected commission of a delinquent act may request the expungement of the juvenile record if the person is released without the filing of a delinquency petition or peace order or in accordance with an informal adjustment procedure.

After receiving a timely filed request, the law enforcement unit or DJS must promptly investigate and try to verify the facts stated in the request. If the facts are found to be true, the law enforcement unit or DJS must search diligently for each juvenile record about the detention or confinement of the person and expunge each record within 60 days after receipt of the request. A copy of the request and DJS's or the law enforcement unit's verification of the facts in the request must be sent to the central repository, each booking facility, law enforcement unit, or DJS unit believed to have a relevant juvenile record and to the person requesting the expungement. Within 60 days after receipt of the request, the central repository, booking facility, DJS, and any other law enforcement unit must search diligently for and expunge any relevant juvenile records.

If DJS or a law enforcement unit to which a person has sent a request for expungement finds that the person is not entitled to an expungement, DJS or the unit must, within 60 days after receiving the request, advise the person in writing of the denial and the reasons for the denial. A person who is denied may apply for an order of expungement in the District Court that has proper venue against the law enforcement unit or DJS. Such application must be filed within 30 days after the written denial is mailed or delivered.

After notice to law enforcement, the court must hold a hearing and may either deny the application or order DJS or the law enforcement unit to expunge the juvenile record. The bill specifies that DJS or the law enforcement unit is a party to the proceeding. Each party to the proceeding is entitled to appellate review on the record. A person who is entitled to expungement may not be required to pay any fees or costs in connection with the expungement.

The bill expands current provisions of law relating to expungement by permitting a person who was found involved in a juvenile proceeding involving specified "nuisance" crimes to file for expungement. The bill also authorizes a person to file for expungement if a decision on a delinquency petition was that there was a finding of "facts not sustained."

The bill clarifies that a person is entitled to expungement of a criminal charge transferred to the juvenile court under reverse waiver provisions.

Current Law: For arrests or confinements occurring on or after October 1, 2007, a person who is arrested or confined by a law enforcement unit and then is released without being charged with the commission of a crime is entitled to expungement of all police records, including photographs and fingerprints, relating to the matter. This process is required to take place within 60 days after the person's release, and law enforcement is required to notify the person of its compliance with the order. A police record expunged under these circumstances may not be expunged by obliteration until three years after the date of the expungement, during which time the record must be removed to a separate

secure area and may only be accessed for legitimate reasons. A person who is entitled to expungement under these circumstances may pursue legal remedies if law enforcement fails to expunge the police record.

A person who has been charged with the commission of a crime or who has been charged with a civil offense or infraction (except a juvenile offense as a substitute for a criminal charge) may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a local government if:

- the person is acquitted;
- the charge is dismissed;
- a probation before judgment is entered;
- a *nolle prosequi* is entered;
- the trial is indefinitely postponed by marking the charge “stet” on the docket;
- the charge was transferred to the juvenile court;
- the person is pardoned for a nonviolent crime; or
- the crime is an enumerated “nuisance” crime.

In general, juvenile records are confidential and maintained separately from adult records. The contents of these records may not be divulged except by court order for good cause shown or specific situations in which police notify school superintendents of the arrest of a student. However, records may still be accessed by DJS or by any law enforcement agency involved in the investigation and prosecution of a child and under specific situations related to writs of attachment to apprehend a child named in the writ.

State Fiscal Effect: General fund expenditures increase by \$385,200 in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring six case managers (one for each of DJS’s regional offices) and one administrator/supervisor to respond to each expungement request, investigate the paper file and the juvenile record through the department’s database system to determine the record’s eligibility for expungement, and provide any necessary follow up. The estimate also reflects the cost of hiring one additional Assistant Attorney General to address legal proceedings.

Positions	8
Salaries and Fringe Benefits	\$357,272
Operating Expenses	27,898
Total FY 2011 State Expenditures	\$385,170

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

DJS maintains records with case managers in its six regional offices as well as records in the department's centralized case management system/database. The bill authorizes a person to file for expungement if a decision on a delinquency petition was a finding of facts not sustained. These findings are made by a court after a petition is filed and at adjudication. According to DJS's annual report, in fiscal 2009, courts dismissed 3,346 formalized DJS cases. Assuming that 50% of the juveniles involved in these cases pursue expungement every year and this number remains constant, DJS will need to handle 1,673 requests annually from this group alone.

The bill, as written, also authorizes expungement for juveniles who are detained or confined by DJS and for whom a petition of delinquency is not filed or whose case is disposed of through an informal adjustment process. DJS has previously advised that it is very rare for juveniles in these categories to be "detained" or "confined" in the first place.

Furthermore, due to the variety of dispositions available in the juvenile justice system, it is possible that DJS will receive requests for expungements from individuals who are not eligible. DJS will still need to investigate these requests before making a determination. If DJS denies a request, the person is eligible to pursue legal remedies, which may result in an increased workload for the four assistant attorney generals at DJS. Thus, an additional assistant attorney general is needed to address any court challenges to denials of expungement.

Local Fiscal Effect: The bill may result in a minimal increase in local expenditures for local law enforcement units and circuit courts to handle expungement requests. Local law enforcement units that receive requests for expungements under the bill may need to conduct investigations to determine where the juvenile case was referred and follow up with the appropriate entities to ensure that the request was addressed in a timely manner. Since juvenile courts are located in the circuit court of each county, circuit courts may receive additional requests for expungement of court records under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2010
mpc/kdm

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510