

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1342 (Delegate Stukes, *et al.*)
Rules and Executive Nominations

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.

The petition must be filed at least five years after the conviction or the satisfactory completion of the sentence, including any period of probation that was granted as part of the sentence.

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, a second or subsequent conviction for possession of a visual representation of a child under 16 years of age engaged in certain sexual acts, or specified sexual offenses involving a victim who is a minor age 13 years or older. The specified sexual offenses are (1) third and fourth degree sexual offenses; (2) sexual conduct between a correctional employee or a Department of Juvenile Services employee and an inmate or confined child; (3) unnatural or perverted sexual practice; (4) sexual solicitation of a minor; or (5) sexual abuse of a minor.

Current Law: Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts 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. Individuals convicted of specified public nuisance crimes are also eligible for expungement of the associated criminal records under certain circumstances.

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 or nuisance conviction 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.

A “crime of violence” is: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first and second degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor under the age of 13 years under specified circumstances; (15) an attempt to commit

crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Background: The number of expungements received 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. The numbers shown below do not include expungements for individuals released without being charged with a crime. Those expungements are handled through a fairly automated process and involve significantly less work than other types of expungements.

<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199

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.

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 a random sampling of criminal history records conducted by CJIS in 2009, an estimated 5% of the records currently in the system may be eligible for expungement as a result of the bill. This equated 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 five years. These assumptions equate to an additional 8,463 expungements per year, based on 2009 figures.

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 32,618 expungements in fiscal 2010. 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 it would need an additional expungement clerk for every 2,500 expungements generated by the bill. The expungement unit at CJIS lost one supervisory position and currently has two vacancies for expungement clerks. The expungement clerk positions have been frozen. *For illustrative purposes only*, general fund expenditures increase by at least \$160,000 per year for CJIS to hire four additional expungement clerks.

Additional Information

Prior Introductions: HB 636 of 2009, a similar bill, was withdrawn after receiving a hearing in the House Judiciary Committee.

Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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