

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1255
Judiciary

(Delegates Anderson and Glenn)

Police and Court Records - Felony Theft - Expungement

This bill authorizes a person convicted of felony theft of property or of services with a value of \$300 or more to petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State. A person is only eligible if (1) the person only has one criminal conviction and that conviction is for felony theft of property/services valued at \$300 or more; and (2) the petition for expungement is filed at least 10 years after the conviction, so long as the 10-year period includes the satisfactory completion of the sentence that was imposed for the conviction and the completion of any period of probation that was granted as part of the sentence.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) to enforce the bill's provisions.

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

Current Law: A person convicted of theft of property or services valued at less than \$100 is guilty of a misdemeanor and is subject to maximum penalties of imprisonment of 90 days and/or a \$500 fine. A person convicted of theft of property with a value of less

than \$1,000 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500.

Chapter 655 of 2009 increased the maximum property value for misdemeanor theft from \$500 to \$1,000 and created the three tiers of felony theft listed below:

| <u>Value of Property and/or Services</u> | <u>Maximum Penalty</u> |
|---|--|
| Between \$1,000 and \$10,000 | 10 years imprisonment and/or a \$10,000 fine |
| Between \$10,000 and \$100,000 | 15 years imprisonment and/or a \$15,000 fine |
| \$100,000 or more | 25 years imprisonment and/or a \$25,000 fine |

A person who has two or more theft convictions who is convicted of theft of property or services valued at less than \$1,000 is guilty of misdemeanor theft and subject to enhanced maximum penalties of five years imprisonment and/or a \$5,000 fine. Regardless of value, a person convicted of theft must restore the owner's property or pay the owner for the value of the property.

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.

Background: Chapter 288 of 2000 increased the minimum property value for felony theft from \$300 to \$500. Chapter 655 of 2009 increased the minimum value for felony theft from \$500 to \$1,000.

According to the State Commission on Criminal Sentencing Policy, there were 698 convictions for felony theft in fiscal 2010.

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 expenditures for DPSCS may increase minimally under the provisions of this bill. Since the bill applies to felony theft of property or services valued at \$300 or more and the current minimum amount needed to qualify for felony theft is \$1,000, this estimate assumes that the classification of a theft offense as a felony, rather than the value of the property stolen, will determine eligibility for expungement under the bill. As a result, individuals currently convicted of misdemeanor theft will remain ineligible for expungement even if the value of the stolen property is \$300 or more. If, however, it is the value of the property stolen rather than the offense classification that determines eligibility, expungement petitions could increase significantly more than accounted for in this estimate.

While the number of annual felony theft convictions is significant, the bill limits expungement eligibility to individuals with only one criminal conviction who file a petition for expungement at least 10 years after the conviction, so long as the 10-year period includes the satisfactory completion of the imposed sentence. Given the

limitations on eligibility imposed by the bill, it is unlikely that a large number of felony theft convictions will be eligible for expungement each year.

CJIS advises that it would need to hire one additional expungement clerk for every additional 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. The cost of hiring one additional expungement clerk in fiscal 2012 is \$40,150, which accounts for the bill's October 1, 2011 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures for one additional clerk would total over \$50,000.

Local Fiscal Effect: Local revenues increase minimally from circuit court expungement fees paid by individuals eligible under the bill. Circuit courts currently charge a \$30 fee for expungements unless all of the records to be expunged relate to a charge of which the petitioner has been acquitted. Circuit court expenditures increase minimally to process additional expungements. The amount of the increased revenues and expenditures will vary by jurisdiction.

Harford and Montgomery counties do not anticipate that the bill will result in a fiscal impact. Baltimore City advises that it cannot predict the number of individuals affected by the bill, but suspects that thousands of people could be eligible for expungement as a result of the bill. Legislative Services advises that given the constraints imposed by the bill, it is unlikely that the number of eligible individuals will be that high.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mc/kdm

Analysis by: Amy A. Devadas

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