

Department of Legislative Services  
 Maryland General Assembly  
 2012 Session

FISCAL AND POLICY NOTE

House Bill 624  
 Judiciary

(Delegate Simmons, *et al.*)

Judicial Proceedings

Criminal Procedure - Notice of Eligibility for Expungement

This bill requires a court to provide a criminal defendant with a brochure containing detailed, comprehensive, and current information about State expungement laws when all of the charges against the defendant are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$26,000 in FY 2013 for the Judiciary to print additional expungement brochures for distribution in accordance with the bill’s requirements. Future year expenditures reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	26,000	35,000	35,400	35,700	36,100
Net Effect	(\$26,000)	(\$35,000)	(\$35,400)	(\$35,700)	(\$36,100)

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

**Local Effect:** Minimal increase in local expenditures for the circuit courts to print and distribute additional brochures. Revenues are not affected.

**Small Business Effect:** None.

## Analysis

### Current Law:

#### *Expungement – Generally*

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.

#### *DNA Expungement*

Any DNA samples and records generated as part of a criminal investigation or prosecution must be destroyed or expunged automatically from the State DNA database if (1) a criminal action begun against the individual relating to the crime does not result in a conviction of the individual; (2) the conviction is finally reversed or vacated and no new trial is permitted; or (3) the individual is granted an unconditional pardon. A DNA sample or DNA record may not be destroyed or expunged automatically from the State DNA database if the criminal action is put on the *stet* docket or the individual receives probation before judgment.

When all of the charges against the defendant in a criminal case are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*, the court must advise the defendant that the defendant may be entitled to expunge the records and any

DNA sample and DNA record relating to the charge or charges against the defendant in accordance with Title 10, Subtitle 1 of the Criminal Procedure Article and Title 2, Subtitle 5 of the Public Safety Article. The failure of a court to comply with the notice requirements does not affect the legality or efficacy of the sentence or disposition of the case.

If the DNA sample or DNA record was obtained or generated only in connection with a case in which eligibility for expungement has been established, the DNA sample must be destroyed and the DNA record must be expunged. The DNA record must be expunged from every database into which it has been entered, including local, State, and federal databases within 60 days of the event qualifying the DNA sample for expungement. A letter documenting expungement of the DNA record and destruction of the DNA sample must be sent by the Director of the Forensics Sciences Division of the Maryland State Police (director) to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

A record or sample that qualifies for expungement or destruction and is matched concurrent with or subsequent to the date of qualification for expungement (1) may not be utilized for a determination of probable cause regardless of whether it is expunged or destroyed timely; and (2) is not admissible in any proceeding for any purpose.

Pursuant to Chapter 337 of 2008, effective January 1, 2014, an individual whose DNA record or profile is included in the statewide DNA database system and whose DNA sample is stored in the statewide DNA repository may request that his/her information be expunged on the grounds that the conviction that facilitated the sample's inclusion meets the expungement criteria under the Criminal Procedure Article. The expungement proceedings for a DNA record or profile must be conducted in accordance with the expungement requirements under the Criminal Procedure Article. On receipt of an order of expungement, the director must purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database system and the statewide DNA repository.

**Background:** The Judiciary advises that courts currently have a detailed, comprehensive, and current expungement brochure (CC-DC/CR 72 BR) available online on the Maryland Judiciary's website and in courthouses for public consumption. Also, in July 2011, the following notice was added to the defendant's copy of the trial summary for dispositions of *nolle prosequi*, *stet*, and dismissal:

You may be entitled to expunge this record and any DNA Sample and DNA Record relating to the charge or charges against you if you meet certain conditions. Further information on expungement is contained in a

brochure available at the Clerk's Office or on our website at <http://www.courts.state.md.us/district>.

**State Expenditures:** General fund expenditures would increase by \$26,000 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost for the Judiciary to print additional expungement brochures to comply with the bill's requirements. Future year expenditures reflect annualization, inflation, and no change in the number of brochures printed.

According to the Judiciary, in fiscal 2011, the District Court had 6,644 not guilty dispositions, 17,789 probation before judgment dispositions, 76,868 *nolle prosequi* dispositions, 23,778 *stet* dispositions, and 2,406 dismissed dispositions. This data is for individual charges and does not take into account defendants who faced multiple charges. Data is not available on the number of criminal defendants who had every charge against them disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*.

Based on this information, there were 127,485 dispositions that would be affected by the bill. Although the number of *individuals* affected by the bill may be significantly less due to individuals facing multiple charges and disqualifying dispositions of those charges, it is assumed that the District Court will have to provide every defendant with at least one qualifying disposition with an expungement brochure in order to fully comply with the bill's requirements while maintaining current rates of case processing.

The Judiciary advises that the most recent order of the expungement brochure was for 20,000 brochures at a cost of \$5,438.

**Local Expenditures:** Though data is not available on the number of circuit court defendants or dispositions that would be affected by the bill's provisions, local expenditures would increase minimally for circuit courts to print and distribute additional brochures.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

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ncs/kdm

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