

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 496

(Senators Gladden and Middleton)

Judicial Proceedings

Judiciary

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**Criminal Procedure - Unexecuted Warrant, Summons, or Other Criminal Process  
- Invalidation and Destruction**

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This bill authorizes a law enforcement agency to make a written request for the State's Attorney within the appropriate jurisdiction to have a warrant, summons, or other criminal process for a misdemeanor offense in the possession of the law enforcement agency invalidated and destroyed due to the age of the document, unavailability of the defendant, or other special circumstances if specified criteria are met.

The bill's provisions do not (1) prevent the reissuance of a warrant, summons, or other criminal process; (2) affect the time within which a prosecution for a misdemeanor may be commenced; or (3) affect any pending criminal charge.

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in general fund expenditures if the bill results in fewer people being arrested and eventually incarcerated because of outstanding warrants. However, since the bill gives law enforcement agencies the discretion to decide which warrants should be recommended for destruction, it is likely that the bill will apply in very few cases.

**Local Effect:** Potential minimal decrease in local expenditures if the bill results in fewer people being arrested and eventually incarcerated because of outstanding warrants. However, since the bill gives law enforcement agencies the discretion to decide which warrants should be recommended for destruction, it is likely that the bill will apply in very few cases.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill's provisions apply to a warrant, summons, or other criminal process that has remained unexecuted for at least five years and was issued for (1) the arrest of a defendant in order that the defendant might stand for trial; (2) failure of the defendant to make a deferred payment of a fine or costs as ordered by the court; (3) a violation of probation; or (4) a defendant's failure to appear in court, so long as the defendant was not released on bail posted by a private surety. If any of these documents has remained unexecuted for at least seven years, then the State's Attorney must petition the administrative judge of the district for the invalidation and destruction of the applicable document after receiving a request from a law enforcement agency. If any of these documents has remained unexecuted for at least five years but less than seven years, the State's Attorney is authorized to petition the administrative judge of the district, but is not required to do so.

In the case of a warrant issued for a defendant's failure to appear in court after the defendant was released on bail secured by a private surety, the bill's provisions apply so long as the warrant has remained unexecuted for at least 10 years. A State's Attorney is required to petition the administrative judge of the district for the invalidation and destruction of a warrant in this category after receiving a request from a law enforcement agency.

Even though the bill requires or authorizes a State's Attorney to petition the administrative judge of the district for the invalidation and destruction of an applicable document, the bill also permits a State's Attorney to argue against the invalidation and destruction of the document due to a justifiable continuing active investigation of the case.

Unless the court determines that preservation of the document is justifiable, the court must order the invalidation and destruction of an unexecuted warrant for a misdemeanor offense, summons, or other criminal process. At the time of the order, the State's Attorney may enter a *nolle prosequi* or place the applicable case on the *stet* docket. An arrest cannot be made based on a warrant or other criminal process that has been ordered invalidated and destroyed.

**Current Law:** The Chief Judge of the District Court must, on the recommendation of the administrative judge of any district, approve in writing the invalidation and destruction of certain warrants for arrest, if the administrative judge believes that the invalidation and destruction of the arrest warrant is consistent with the ends of justice and the administrative judge certifies to the Chief Judge that:

- each of the warrants is more than three years old;
- the warrant was properly delivered to an authorized law enforcement agency for execution and service, which was not effected; and
- each of the warrants was issued by a judicial officer of the District Court for: (1) the arrest of a defendant for a misdemeanor offense; (2) the failure of a defendant to appear for trial in the District Court for a misdemeanor offense; (3) the failure of a defendant to comply with a District Court order to make a deferred payment of a fine or costs for a misdemeanor offense; or (4) a violation of a probation order of the District Court entered in a misdemeanor offense.

The clerk of a circuit court or the chief clerk of the District Court, under rules and regulations promulgated by the Court of Appeals, may authorize the destruction of pleadings, papers, and files in the clerk's custody which, because of their character, serve no useful purpose in being retained. Before any documents can be destroyed, the judge exercising the functions of administrative judge in the county in the case of circuit court records or the Chief Judge of the District Court in the case of District Court records, must issue written approval for the destruction of the records and the records must be disposed of in accordance with provisions of the State Government Article.

**Background:** A warrant is a written order by a judicial officer or a peace officer to arrest the person named in it or to search for and seize property as described in it. In an arrest warrant, a judicial officer commands a peace officer to arrest the person named in the warrant, who is accused of an offense. In a bench warrant, a court issues the order for the attachment or arrest of a person.

A criminal summons is a writ notifying the person named in the summons that an action has been filed against the person and failure to appear in court as ordered may result in a bench warrant being issued against the person and the person's arrest.

A process is any written order issued by a court to secure compliance with its commands or to require action by any person. A summons and a subpoena are examples of a process.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** Though HB 480 (Delegate Braveboy, *et al.*) – Judiciary is designated as a cross file, it is not identical.

**Information Source(s):** Carroll, Cecil, Montgomery, and St. Mary’s counties; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Department of State Police; State’s Attorneys’ Association; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2012  
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