

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 187
Judiciary

(Delegates K. Kelly and Simmons)

Judicial Proceedings

Criminal Procedure - Expungement - Filing on Behalf of Deceased Person

This bill authorizes a person's attorney or personal representative to file a petition for expungement if the person died before disposition of the charge by *nolle prosequi* or dismissal.

The bill applies retroactively to charges filed against a person before the bill's October 1, 2012 effective date.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing State resources.

Local Effect: None. The bill's requirements can be met with existing local resources.

Small Business Effect: None.

Analysis

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.

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: Under the bill, a person who died *before* disposition of the charge by *nolle prosequi* or dismissal would be eligible for expungement. Given the small population affected by the bill and the fact that most of the adverse effects of a criminal record are experienced while a person is alive, it is unlikely that this bill will generate sufficient requests for expungements to necessitate the hiring of additional expungement clerks. Historically, CJIS has advised that it requires one expungement clerk for every additional 2,500 expungements.

The Judiciary advises that the bill's retroactive application will result in additional expenditures to obtain archived records and that the addition of this population to the eligibility list for expungements will require the reprinting of forms at a cost of \$7,300. However, given the small population that is likely to apply for expungement under the bill and the routine reprinting of forms throughout the year, the Department of Legislative Services advises that it is likely that the bill's requirements can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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ncs/kdm

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