

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1220

(Delegate Swain, *et al.*)

Judiciary

Judicial Proceedings

Invalidation and Destruction of Unexecuted Warrant, Summons, or Other
Criminal Process - Failure to Appear Designation

This bill clarifies that the provision of law relating to invalidation and destruction of an unexecuted warrant, summons, or other criminal process may not be construed to nullify or remove a failure to appear designation that has been placed on an individual's driving record by the Motor Vehicle Administration. The bill limits the circumstances under which a State's Attorney may argue against the invalidation and destruction of warrant, summons, or other criminal process to include only those for which the State's Attorney has petitioned the court for invalidation and destruction due to a justifiable continuing active investigation in the case.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: The bill is technical/procedural and is not expected to materially affect State finances.

Local Effect: The bill is technical/procedural and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: A law enforcement agency may 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 warrant, summons, or other criminal process must have remained unexecuted for at least five years and must have been 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 statute applies 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 a State's Attorney is required or authorized to petition the administrative judge of the district for the invalidation and destruction of an applicable document, a State's Attorney may also 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.

The statute does 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.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Maryland Department of Transportation, Department of Legislative Services

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