

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 854
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement of Records - Not Criminally Responsible

This bill authorizes a person found not criminally responsible (NCR) of specified crimes to file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State. Under the bill, a person may not file a petition for expungement based on an NCR finding within three years after the NCR finding was made. Also, a person is not entitled to expungement if, since the finding of NCR, the person was convicted of a crime other than a minor traffic violation or is a defendant in a pending criminal proceeding.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from expungement fees. Potential minimal increase in general fund expenditures only if the bill generates enough additional expungements to require additional expungement clerks. Expungement of District Court and State Police records can be handled with existing resources.

Local Effect: Potential minimal increase in local revenues from expungement fees. Expungement of circuit court and local police records can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to individuals found NCR for specified public nuisance crimes and specified misdemeanors.

The public nuisance crimes are: urination or defecation in a public place; panhandling or soliciting money; drinking an alcoholic beverage in a public place; obstructing the free passage of another in a public place or a public conveyance; sleeping on or in park structures, such as benches or doorways; loitering; vagrancy; riding a transit vehicle without paying the applicable fare or exhibiting proof of payment; and specified transportation-related offenses.

The bill also authorizes expungement for a person found NCR under any State or local law that prohibits misdemeanor trespass, disturbing the peace, or telephone misuse.

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 the 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 (which are the latest data provided by CJIS) 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 Revenues: The District Court charges a \$30 fee for expungements unless all of the records to be expunged relate to a charge of which the petitioner has been acquitted. As a result, general fund revenues increase by \$30 for each petition filed.

State Expenditures: General fund expenditures may increase minimally if the bill generates enough additional expungements to require additional expungement clerks at CJIS. However, it is unlikely that the bill will generate a significant number of additional expungements given (1) the eligible charges are not likely to be disposed of by finding an individual NCR; (2) that an individual who had been found NCR for an eligible offense would also need to qualify for expungement for every charge in a unit of charges; and (3) the individual would have to proactively file for expungement and go through the expungement process.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The expungement unit at CJIS has lost one supervisory position and has two vacancies for expungement clerks, both of which are frozen. The cost of hiring one additional expungement clerk in fiscal 2014 is \$40,014, which accounts for the bill's October 1, 2013 effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures for one additional clerk total over \$50,000.

This bill may result in increased petitions for expungement filed with the courts, as well as any resultant hearings. Although any increase in expungement petitions, hearings, appeals, and compliance resulting from this bill requires more court time and resources, and there may be administrative costs associated with making changes to the expungement forms and training clerks on the new law, the bill is not expected to have a significant impact on the Judiciary.

Local Expenditures: Montgomery County advises that the bill does not have a fiscal impact on the county's circuit court.

Additional Information

Prior Introductions: None.

Cross File: SB 479 (Senators Gladden and Forehand) - Judicial Proceedings.

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

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