

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 229

(Chair, Judicial Proceedings Committee)(By Request -
Maryland Judicial Conference)

Judicial Proceedings

Courts - Juveniles - Expungement of Records

This bill authorizes and establishes procedures for a person to file a petition to expunge the person's "juvenile delinquency record."

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts or State's Attorneys' offices.

Small Business Effect: None.

Analysis

Bill Summary: "Expungement" is the physical destruction of a record and obliteration of a person's name from any other official index or public record, or both.

A "juvenile delinquency record" includes a court record, police record, and State's Attorney's record.

A person may file a petition for expungement of the person's juvenile delinquency record in the court where the delinquency petition was filed. The court must have a copy of the petition for expungement served on the State's Attorney. The court may order a juvenile delinquency record expunged if (1) the person has obtained the age of 18 and at least two years have elapsed since the last official action in the person's juvenile delinquency

record; (2) the person has not subsequently been adjudicated or convicted of any offense; (3) no delinquency petition or criminal charge is pending against the person; (4) the person has not been adjudicated of an offense which, if committed by an adult, would constitute a “crime of violence”; and (5) the person has fully paid any monetary restitution ordered by the court.

The court must consider the best interests of the person, the person’s stability in the community, and the safety of the public. If no objection is filed, the court may grant the expungement petition without a hearing. If the court finds that a petition fails to meet the requirements as outlined above, it may deny the petition without a hearing.

If the State’s Attorney files an objection to the petition within 30 days after the petition is served, the court must hold a hearing. It may also hold a hearing on its own initiative. If, after a hearing, the court finds that a person is entitled to expungement, the court must order the expungement of all court records, police records, and State’s Attorney records relating to the delinquency proceedings. If the court finds, after a hearing, that the person is not entitled to expungement, it must deny the petition.

The person who filed the petition or the State’s Attorney may appeal an order granting or denying the expungement petition. Unless an order is stayed pending an appeal, each custodian of police and court records subject to the order of expungement must advise, in writing, the court, the petitioner, and all parties to the petition for expungement proceeding of compliance with the order within 60 days after entry of the order.

The bill’s provisions are not applicable to records maintained as part of the sexual offender registry.

Current Law:

Juvenile Records

In general, a court record concerning a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or in certain circumstances relating to notification of a local superintendent or nonpublic school principal upon the arrest of a child for specified offenses. This prohibition does not restrict access to and the use of court records or fingerprints in court proceedings involving the child by personnel of the court, the State’s Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of the Department of Juvenile Services (DJS). Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of the court record or fingerprints of a child by DJS or in an investigation and prosecution by a law enforcement agency.

The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed. After a child has reached 21 years of age, on its own motion or on petition, the court must order them sealed. Once sealed, the court records of a child may not be opened for any purpose, except by order of the court upon good cause shown.

In general, police records concerning a child are confidential and maintained separately from adult records. The contents of these records may not be divulged except by court order for good cause shown or specific situations in which police notify school superintendents of the arrest of a student. However, records may still be accessed by DJS or by any law enforcement agency involved in the investigation and prosecution of a child and under specific situations related to writs of attachment to apprehend a child named in the writ.

Expungement

A person may file and a court must grant a petition for expungement of a criminal charge that was transferred to the juvenile court under reverse waiver provisions or that was transferred for disposition at sentencing.

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.

Crimes of Violence

“Crime of violence” means (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) an attempt to commit any of these crimes; or (17) assault with the intent to commit any of these crimes or a crime punishable by imprisonment for more than one year.

Additional Comments: DJS advises that the expungement of juvenile records under the bill will prohibit it from being able to submit an annual report to the General Assembly on recidivism rates as required by § 9-204(i) of the Human Services Article.

Additional Information

Prior Introductions: None.

Cross File: HB 282 (Chair, Judicial Proceedings Committee)(By Request – Maryland Judicial Conference) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, State’s Attorneys’ Association, Anne Arundel and Montgomery counties, Baltimore City, Department of Legislative Services

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