

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 652

(Senator Muse, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Expungement of Records

This bill establishes that a person is not entitled to an expungement of a police, court, or other record if the person's petition for expungement is based on the entry of probation before judgment, other than a probation before judgment for a crime where the act on which the conviction is based is no longer a crime and (1) the person has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime within three years of the entry of the probation before judgment or (2) the person is a defendant in a pending criminal proceeding.

The bill repeals the prohibition on expungement of a police, court, or other record if the petition for expungement is based on the entry of a *nolle prosequi*, a stet, including a *nolle prosequi* with the requirement of drug or alcohol treatment or a stet with the requirement of drug or alcohol abuse treatment, a conviction for one of a list of specified crimes, a finding of not criminally responsible, or the grant of a pardon by the Governor and (1) the person has subsequently been convicted of a crime (other than a minor traffic violation) or (2) the person is a defendant in a pending criminal proceeding.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from expungement fees in the District Court. Potential significant increase in expenditures for the District Court and the Department of Public Safety and Correctional Services (DPSCS) to process additional expungements under the bill.

Local Effect: Potential significant increase in local revenues from expungement fees in the circuit courts. Potential significant increase in expenditures for local law enforcement and the circuit courts to process additional expungements.

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 or found not criminally responsible 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 conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

A person is not entitled to expungement if he/she is a defendant in a pending criminal proceeding or has been convicted of a crime (other than a minor traffic violation) since the disposition on which the expungement petition is based.

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 Judiciary advises that during fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit court, of which 987 were filed in Baltimore City, 379 in Prince George's County, and 207 in Montgomery County.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within DPSCS has steadily increased over the years. CJIS advises that this increase is due to 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 in **Exhibit 1** (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.

Exhibit 1
CJIS Expungements
2004-2014

<u>Calendar Year</u>	<u>CJIS Expungements</u> <u>(Excluding Released without Charge)</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199
2011	20,492
2012	30,654
2013	34,207
2014	33,801

Source: Maryland Criminal Justice Information System – Department of Public Safety and Correctional Services

State Revenues: General fund revenues increase, perhaps significantly, from fees for petitions for expungement in the District Court.

State Expenditures: General fund expenditures may increase significantly for the District Court and CJIS to process additional expungements as a result of the bill if the bill results in a significant increase in petitions and orders for expungement. The magnitude of the increase depends on the number of individuals who file petitions for expungement *solely* because the provisions of the bill render them eligible for an expungement and who do not have any other disqualifying factors for expungement. Data is not readily available on the number of individuals who will be eligible for expungement as a result of the bill.

The bill repeals statutory provisions that prohibit expungement of a police, court, or other record if the petition for expungement is based on specified dispositions (including a *nolle prosequi*) and (1) the person has subsequently been convicted of a crime (other than a minor traffic violation) or (2) the person is a defendant in a pending criminal proceeding. The bill retains the application of these disqualifying factors to a petition based on the entry of probation before judgment (other than a probation before judgment for a crime where the act on which the conviction is based is no longer a crime) but limits the subsequent conviction disqualification to a conviction for a crime within three years of the entry of

probation before judgment (other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime).

While data is not available on the number of individuals eligible for an expungement as a result of the bill, the Judiciary advises that based on anecdotal evidence, approximately 70% of the petitions for expungement filed in the District Court are based on *nolle prosequi* dispositions.

The expungement process is extensive and labor intensive. Court clerks who receive expungement petitions must review the petitions to ensure that they are complete and accurate (which can be problematic, since most petitions are filed *pro se*), review court records for relevant information, and make sure that all law enforcement and other related agencies relevant to the petition are contacted. Following the granting of a petition for expungement by the court, court staff must verify that all agencies have complied with the order. Though courts do charge a fee for expungement, the Judiciary advises that the fee does not cover the amount of labor and expense involved with processing a petition for expungement.

The Judiciary advises that the bill has the potential to significantly increase the universe of potential expungements but is unable to predict the magnitude of the increase due to a lack of data. Regardless, the Judiciary advises the bill may have a significant fiscal and operational impact and, at the very least, requires additional clerks in the counties with the largest amount of filings.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost of hiring one additional expungement clerk in fiscal 2016 is \$39,721, which accounts for the bill's October 1, 2015 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.

Local Revenues: Local revenues increase, perhaps significantly, from expungement fees in the circuit courts.

Local Expenditures: Local expenditures may increase significantly for local law enforcement and circuit courts to comply with the bill's provisions. However, the extent of the increase depends on the number of petitions filed and existing staffing levels in the relevant jurisdiction.

Montgomery County advises that it does not anticipate a fiscal impact from the bill. Howard County advises that it does not anticipate a significant fiscal impact from the bill.

The State's Attorneys' Association advises that the bill has no effect on prosecutors.

If the bill significantly expands the number of individuals eligible to apply for expungement, then the bill may significantly impact the expungement caseload of the Office of the State's Attorney for Baltimore City. The office is responsible for reviewing all petitions for expungement to determine if the expungement should be allowed or if an objection to the petition should be submitted. The office currently receives approximately 40 to 50 petitions for expungement each month and processes these requests with one State's Attorney who devotes 25% of staff time to this task.

Additional Information

Prior Introductions: HB 372 of 2003, a similar bill, received an unfavorable report from the House Judiciary Committee. HB 542 of 2001, a similar bill, also received an unfavorable report from the House Judiciary Committee.

Cross File: HB 304 (Delegate Carter, *et al.*) - Judiciary.

Information Source(s): Baltimore City, Howard and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Health and Mental Hygiene, Department of State Police, Department of Legislative Services

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