

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 904
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement of Court and Police Records - Acquittal,
Dismissal, or Nolle Prosequi

This bill establishes that a person who is entitled to expungement based on an acquittal, a dismissal, a *nolle prosequi*, or a *nolle prosequi* with the requirement of drug or alcohol treatment may not be required to pay any fee or costs in connection with the expungement.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues from expungement fees in the District Court. Expenditures are not affected.

Local Effect: Minimal decrease in local revenues from expungement fees in the circuit courts. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: For arrests, detentions, or confinements occurring before October 1, 2007, a person who is arrested, detained, or confined by a law enforcement unit for the suspected commission of a crime and then is released without being charged with the commission of a crime may request the expungement of the police record. The request must be made within eight years after the incident, and if found to be eligible, the person is entitled to expungement of the applicable records related to the arrest. Individuals who are entitled to this type of expungement are not required to pay any fee or costs in connection with the expungement.

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 Fiscal Effect: General fund revenues decrease, perhaps significantly, from the bill’s prohibition on the imposition of expungement fees on an individual entitled to an expungement based on an acquittal, a dismissal, a *nolle prosequi*, or a *nolle prosequi* with the requirement of drug or alcohol treatment.

The Judiciary advises that it does not maintain data on (1) the dispositions on which a petition for expungement is based or (2) revenues from expungement fees or the number of fee waivers granted. 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 previously stated, there were 35,737 petitions for expungement filed in the District Court during fiscal 2014. According to the Judiciary, based on anecdotal evidence, approximately 70% of the expungement petitions filed in the District Court are based on *nolle prosequi* dispositions. Applying this percentage to the fiscal 2014 data results in 25,016 expungement petitions filed based on *nolle prosequi* dispositions each year.

For illustrative purposes only, if 50% of the 25,016 expungement petitions based on a *nolle prosequi* are subject to the \$30 fee (and 50% receive fee waivers), elimination of the

\$30 fee results in a \$281,430 reduction in general fund revenues in fiscal 2016 and a \$375,240 reduction in general fund revenues on an annual basis.

Due to the availability of fee waivers under current law, it is assumed that the bill does not result in a significant increase in expungement petition filings. Thus, expenditures are not materially affected.

Local Revenues: Local revenues decrease minimally due to the elimination of fees for specified expungement petitions. As previously stated, 1,646 petitions were filed in the circuit courts during fiscal 2014.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Department of State Police; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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