

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 16 (Senator Conway)
Judicial Proceedings

Criminal Procedure - Expungement - Misdemeanor and Felony Convictions

This bill authorizes a person convicted of a misdemeanor or felony, other than specified offenses, 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. A petition for expungement of a misdemeanor conviction under the bill may not be filed until at least seven years have passed since the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later. A person seeking expungement of a felony conviction under the bill must wait at least 12 years after these events before filing a petition.

Fiscal Summary

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

Local Effect: Potential significant increase in local expenditures if the bill generates a significant increase in requests for expungement of local law enforcement and circuit court records.

Small Business Effect: None.

Analysis

Bill Summary: The bill's provisions apply to a person convicted of (1) a misdemeanor, other than specified public nuisance crimes or (2) a felony other than murder, rape,

first- or second-degree sexual offense, sexual abuse of a minor, kidnapping, or continuing course of conduct with a child.

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.

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 for the Judiciary may increase significantly due to a potential significant increase in petitions for expungement. 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 increase significantly if the bill generates enough additional expungements to require additional expungement clerks at CJIS and additional personnel at the District Court. Given the number of offenses to which the bill applies, and given the potential for a marked increase in the number of individuals eligible for expungement as a result of the bill, the bill has the potential to generate a significant number of additional expungements.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. According to CJIS, the bill may increase expungement requests significantly. 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. CJIS does not charge a fee for expungements.

The bill may also significantly increase petitions for expungement filed with the courts, as well as any resultant hearings, appeals, and compliance. The Judiciary advises that the expungement process is a labor intensive and manual process and that the potentially significant increase in court expungements under the bill could put a significant strain on clerical staff and resources, resulting in the need to hire additional staff.

Local Expenditures: The bill may have a significant impact on local resources if expungement requests for local law enforcement and circuit courts increase significantly as a result of the bill.

Baltimore City advises that the bill significantly impacts the expungement caseload of the Office of the State's Attorney for Baltimore City by significantly expanding the number of individuals eligible to apply for expungement. 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 his time to this task.

The Office of the State's Attorney for Baltimore City estimates that it needs to hire at least four new employees (two assistant State's Attorneys, a paralegal, and an office administrator) to process the increase in petitions at an annual cost of \$305,669.

The Circuit Court for Montgomery County advises that the bill significantly increases the number of petitions for expungement filed, but the magnitude of the increase cannot be quantified at this time. This increase in petitions requires the docketing of additional pleadings, notifications to the State's Attorney and victims, scheduling and holding additional hearings before judges, issuing orders granting and denying expungements, and the docketing of compliance notices.

The Montgomery County Police Department advises that it needs three additional police aide positions to comply with the bill's requirements, at a cost of at least \$240,000 per year.

Howard County advises that the bill may have a fiscal impact on the county if it results in a significant increase in expungement requests. Depending on the level of increase, the county may incur additional personnel expenditures and expenditures associated with retrieving archived records needing expungement.

Prince George's County advises that the bill has minimal or no fiscal impact on the county.

The State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown at this time.

Additional Information

Prior Introductions: SB 139 of 2014 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore City; Caroline, Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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