

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 220
Judiciary

(Delegate Barron, *et al.*)

Judicial Proceedings

Criminal Procedure - Partial Expungement

This bill repeals the prohibition on expungement of a charge within a “unit” of charges unless all of the charges in the unit are eligible for expungement. The bill (1) authorizes a person to file a petition for partial expungement of eligible charges when two or more charges arise from the same incident, transaction, or set of facts, and one or more of the charges are not eligible for expungement and (2) requires the court to order that a police or court record regarding the charges eligible for partial expungement be removed from the public website maintained by the Maryland Judiciary. Only a police or court record that is maintained electronically on the public website of the Maryland Judiciary is eligible for partial expungement.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from filing fees in the District Court. Potential significant increase in general fund expenditures, including for additional staff, to enable the Judiciary to comply with the bill’s requirements.

Local Effect: Potential significant increase in local revenues from filing fees in the circuit courts. Local expenditures may increase for State’s Attorneys’ offices to review and object to petitions for partial expungement.

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 of a crime that is no longer a crime or 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 (1) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within three years of the entry of the probation before judgment 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 or (2) the person is a defendant in a pending criminal proceeding.

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 2015, there were 32,726 petitions for expungement filed in the District Court and 2,448 petitions filed in the circuit courts. During fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit courts. Legislation expanding eligibility for expungements enacted in 2015 took effect on October 1, 2015. According to the District Court, the percentage of petitions filed in the District Court increased by 50.55% during October through December 2015 compared to the number of petitions filed during the same time period in 2014. Also, 754 requests for shielding were filed in the District Court between October 1, 2015 (the first day on which shielding was available), and December 31, 2015.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services 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 in **Exhibit 1** 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
2004-2015

<u>Calendar Year</u>	<u>CJIS Expungements¹</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
2015	36,412

¹Does not include expungements for individuals released without being charged.

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

State Revenues: General fund revenues may increase significantly from filing fees for expungement petitions in the District Court or appellate courts. The District Court charges a \$30 filing fee for expungement petitions.

State Expenditures: General fund expenditures may increase significantly for the Judiciary to comply with the bill’s requirements. **The Judiciary did not respond to requests for information regarding the fiscal impact of the bill as amended by the House.** However, with respect to similar legislation, the Judiciary has advised that the cost to reprogram Maryland Judiciary Case Search to exclude charges eligible for partial expungement and to reprogram the case management systems (which do not appear to be

affected by the bill) is \$153,540 in fiscal 2017 only, which reflects 1,814.4 hours of computer reprogramming, including analysis, programming, testing, and project management.

The Judiciary may also incur potentially significant expenditures to hire additional personnel to handle the anticipated increase in the volume of petitions for partial expungement. With respect to legislation that would have permitted partial traditional expungements, the Judiciary advised that it needed 4 District Court clerks (one for each of the larger districts) and 12 circuit court clerks, at a cost of \$779,889 in fiscal 2017 and \$901,811 in fiscal 2018. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, which can only be determined with actual experience under the bill. While the initial volume of petitions filed under the bill is likely to be significant and filed within a compressed time period, it is also probable that the volume and timing of petitions stabilize over time. Hence, while the Judiciary needs additional personnel to address initial petition volume, the Judiciary may also be able to reevaluate and adjust its personnel needs at a future date to account for this stabilized volume and timing. The cost associated with hiring one clerk is \$45,300 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$56,017 in fiscal 2018.

The bill significantly expands eligibility for expungements but limits the type of expungement available in specified situations. According to the Judiciary, tens of thousands of charges that historically have not qualified for expungement qualify for a partial expungement under the bill.

The Judiciary advises that even with computer reprogramming, charges cannot be renumbered to reflect the removal of a charge. The numbering of charges in court records is linked and corresponds with tracking information in CJIS's system. Thus, if a petitioner has three charges, and the second charge is the only charge eligible for expungement, the post-expungement record will still show Charge #1 and Charge #3, thereby implying that Charge #2 existed at one point but is missing from the record.

The Judiciary advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$9,571 to create and revise expungement and shielding forms and brochures. However, the Department of Legislative Services advises that revising printed materials to reflect changes to statute is a routine function of the Judiciary and can be incorporated into annual revisions of forms and brochures.

Local Revenues: Local revenues from expungement petition filing fees may increase significantly. The circuit courts charge a \$30 filing fee for expungement petitions.

Local Expenditures: Expenditures for State’s Attorneys’ offices may increase to review and possibly object to petitions for expungement filed as a result of the bill. The magnitude of this effect depends on the number of petitions for expungement filed under the bill, current staffing levels, and what, if any, effect the bill’s limitation of expungement to the Maryland Judiciary’s public website affects the frequency with which prosecutors object to a petition for partial expungement.

Additional Information

Prior Introductions: None.

Cross File: SB 328 (Senator Conway) - Judicial Proceedings.

Information Source(s): Dorchester, Garrett, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Juvenile Services; Office of the Attorney General; Office of the Public Defender; Maryland State Commission on Criminal Sentencing Policy; Maryland State Archives; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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