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FISCAL AND POLICY NOTE
First Reader

House Bill 770
Judiciary

(Delegate D. Barnes, *et al.*)

Criminal Procedure - Nonviolent Felonies - Stet, Shielding, and Expungement

This bill requires a court to dispose of a charge for a “nonviolent felony” by stet under Maryland Rule 4-248 if the court finds that the disposition is in the interest of justice. The court may reschedule such a steted charge within one year for any reason or at any time for good cause. The bill defines a “nonviolent felony” as a felony other than a “crime of violence,” as defined under § 14-101 of the Criminal Law Article.

In accordance with existing statute, a person may petition to shield a conviction for a nonviolent felony no earlier than three years after the person (1) satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision and (2) pays all required restitution, fees, and fines. In accordance with existing statute, a person may file a petition to expunge a shielded conviction for a nonviolent felony no earlier than three years after the conviction is shielded.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from filing fees in the District Court, which may be offset by a reduction in general fund revenues to the extent that the bill’s stet provisions reduce the amount of fines imposed in nonviolent felony cases in the District Court. Significant increase in general fund expenditures for the Judiciary to implement the bill’s provisions. Potential significant decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if the bill’s stet provisions reduce incarcerations for nonviolent felonies, offset in part by a potential significant increase in general fund expenditures, beginning in fiscal 2020, for DPSCS to process expungements under the bill.

Local Effect: Local revenues decrease to the extent the bill’s stet provisions reduce the number of fines imposed in circuit court cases. Local revenues increase, perhaps

significantly, from filing fees in the circuit courts. Local expenditures decrease to the extent the bill's stet provisions reduce local incarcerations for nonviolent felonies. Local expenditures increase for affected local entities to implement the bill's provisions.

Small Business Effect: None.

Analysis

Current Law: Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Stet/Maryland Rule 4-248: Under Maryland Rule 4-248, on motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant does not need not be present when a charge is steted, but if neither the defendant nor the defendant's attorney is present, the clerk must send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. A charge may not be steted over the objection of the defendant. A steted charge may be rescheduled for trial at the request of either party within one year or thereafter only by order of court for good cause shown.

When a charge is steted, the clerk must take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders any warrant or detainer to remain outstanding.

Shielding: Chapter 313 of 2015 authorizes the shielding of specified types of records under certain circumstances. "Shield" means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. "Shieldable conviction" means a conviction of 1 of a list of 12 specified crimes. A "unit" means two or more convictions that arise from the same incident, transaction, or set of facts.

Chapter 313 of 2015 authorizes a person to petition a court to shield the person's court records and police records relating to one or more "shieldable convictions" of the person

entered in the circuit court or the District Court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. This authorization does not apply to a conviction for a domestically related crime. If a person is not eligible for shielding of one conviction in a “unit,” the person is not eligible for shielding of any other conviction in the unit. A person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding petition for good cause.

If the person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for shielding unless the new conviction becomes eligible for shielding. A person who is a defendant in a pending criminal proceeding is not eligible for shielding. A shielded conviction may not be considered a conviction for specified expungement provisions. Chapter 313 also contains provisions regarding victim notification, hearings on petitions, continued access to shielded information by specified individuals and entities, prohibited disclosures of shielded information, and prohibited inquiries into a person’s shielded information.

The Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the provisions of Chapter 313.

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 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 32,276 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 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** 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</u> <u>Year</u>	<u>CJIS</u> <u>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: A potential significant increase in general fund revenues from filing fees for shielding and expungements in the District Court may be offset by a reduction in general fund revenues from fines to the extent that the bill’s stet provisions reduce the number of fines imposed in the District Court for nonviolent felonies. The net impact on general fund revenues is unknown. The District Court charges a \$30 filing fee for shielding and expungement petitions.

State Expenditures: General fund expenditures decrease, perhaps significantly, if the bill’s stet provisions reduce the number of incarcerations for nonviolent felonies. General fund expenditures increase significantly for the Judiciary to reprogram computers and employ additional personnel to implement the bill’s provisions. General fund expenditures increase, perhaps significantly, beginning in fiscal 2020, for DPSCS to implement the bill’s provisions. The extent of personnel expenditures for the Judiciary and DPSCS depend on the volume and timing of petitions filed with the Judiciary and expungement orders, which cannot be reliably determined at this time, as discussed below.

Under the bill, a person may file a petition to shield a conviction for a nonviolent felony (defined as a felony not defined as a “crime of violence” under § 14-101 of the Criminal Law Article) in accordance with shielding provisions under existing statute. Pursuant to Chapter 313 of 2015, which established the shielding of specified convictions, a person may petition to shield his/her “shieldable convictions” entered in the circuit court or District Court of one county and may be granted only one shielding petition over the lifetime of the person.

Under the bill, a person may petition to expunge a shielded conviction three years after the conviction was shielded. Given the universe of eligible convictions, the limitation on the granting of petitions for shielding under current law, and the subsequent eligibility to file a petition for expungement based on whether a petitioner was granted shielding of a conviction, the number of petitions for shielding and expungement filed and/or granted under the bill cannot be reliably determined at this time but has the potential to be significant.

Judiciary

General fund expenditures increase significantly for the Judiciary to implement the bill, including hiring additional clerks to process shieldings and expungements and, in fiscal 2017 only, \$166,050 in general fund expenditures for the Judicial Information Systems department to reprogram computers so that shielded information is taken off of Judiciary Case Search. According to the Judiciary, this task requires 1,964.4 hours of reprogramming, including analysis, testing, reprogramming, and project management.

General fund expenditures increase, perhaps significantly, for the Judiciary to hire additional clerks to handle petitions for shielding filed under the bill. Additional general fund expenditures may be incurred beginning in fiscal 2020 for the Judiciary to process additional petitions for expungements generated by the bill. However, it is also possible that the anticipated rate of increase in expungement petition filing, which cannot be filed until three years after shielding under this bill, may be mitigated. People may not follow up a successful shielding with a request for expungement beginning in fiscal 2020, either because the shielding addressed their concerns, or just due to a lack of interest. The extent to which people who receive shielding under the bill, are motivated to pursue expungement three years later, cannot be reliably determined.

The Judiciary advises that it needs four District Court clerks (one for each of the larger districts) and eight circuit court clerks (one for each circuit) to implement the bill’s requirements, at a cost of \$550,577 in fiscal 2017 and \$672,133 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.

As previously noted, the bill contains a three-year waiting period for shielding of eligible offenses. Thus, the initial filings for shielding under the bill come from individuals convicted of nonviolent felonies at least three years ago. While the initial volume of petitions filed under the bill is 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 and in light of the filing of petitions for expungement under the bill beginning in fiscal 2020. The cost associated with hiring one clerk is \$39,683 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$48,583 in fiscal 2018, and \$52,812 in fiscal 2020.

The Judiciary further advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$9,250 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.

DPSCS

General fund expenditures for DPSCS may increase significantly, beginning in fiscal 2020, as a result of additional expungement orders generated by the bill. CJIS requires one expungement clerk for every 2,500 additional expungement orders generated by the bill. The number of additional clerks needed cannot be reliably determined at this time, but depends on the number of individuals who are able to have convictions shielded under the bill and who follow up by filing a petition for expungement of the shielded conviction three years after the conviction was shielded (beginning in fiscal 2020). Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost associated with hiring one expungement clerk is \$55,738 in fiscal 2020.

Local Revenues: Local revenues decrease, perhaps significantly, from fines imposed in the circuit courts if the bill's stet provisions reduce the number of convictions for nonviolent felonies. Local revenues increase, perhaps significantly, from filing fees in the circuit courts for petitions for shielding and expungements. The circuit courts charge a \$30 filing fee for expungements and shielding.

Local Expenditures: Local expenditures decrease, perhaps significantly, for incarcerations if the bill's stet provisions reduce the number of incarcerations for

nonviolent felonies. Local expenditures increase, perhaps significantly, for affected local entities to implement the bill's provisions.

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

The Office of the State's Attorney for Baltimore City advises that while it is unclear what offenses are covered by the bill, if the bill encompasses all felonies other than those listed in § 14-101 of the Criminal Law Article, the office needs a substantial amount of resources to argue against potential stet rulings.

The Office of the State's Attorney for Harford County advises that the office needs to hire one paralegal, at a cost of approximately \$54,000 per year, to review requests for shielding and expungement and prepare the necessary documents and correspondence with defense attorneys/defendants.

The Montgomery County Police Department and the Circuit Court for Wicomico County do not anticipate additional expenditures as a result of the bill.

Additional Comments: The bill requires a court to dispose of a charge for a nonviolent felony by stet under Maryland Rule 4-248 if it is in the interest of justice. However, under Maryland Rule 4-248, a court is *authorized* (not required) to stet a charge *on motion of the State's Attorney* (not on the court's own initiative). It is unclear how the provisions of the bill operate in conjunction with Maryland Rule 4-248.

Additional Information

Prior Introductions: None.

Cross File: SB 712 (Senator Pugh, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Maryland State Archives; Department of State Police; State's Attorneys' Association; Office of the Public Defender; Harford, Montgomery, and Wicomico counties; Baltimore City; Department of Legislative Services

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