

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 914
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement - Acquittal, Dismissal, and Nolle Prosequi

This bill establishes that a person who is 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 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 filing fees in the District Court. Assuming that the bill does not significantly increase the number of expungement petitions filed, the bill is not expected to significantly affect State expenditures.

Local Effect: Minimal decrease in local revenues from filing fees in the circuit courts. The bill is not expected to materially affect local expenditures.

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.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (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: General fund revenues decrease, potentially significantly, from filing fees in the District Court. The District Court charges a \$30 filing fee for expungements. However, the District Court does not charge a fee for expungement of an acquittal. Petitioners who cannot afford the expungement filing fee may request that the court waive the fee.

The bill exempts individuals filing petitions for expungement based on specified dispositions, including *nolle prosequi* dispositions, from being charged any fee or costs for the expungement. The Judiciary does not have reliable data on the amount of expungement fees collected in fiscal 2015. New cash registers capable of tracking this amount have been installed, but were not installed statewide in fiscal 2015. The Judiciary does not have data on the number of petitions for which a fee waiver was granted.

However, *for illustrative purposes only*, the Judiciary advises that approximately 65% of petitions for expungement are based on *nolle prosequi* dispositions. Applying this percentage to the 32,726 petitions filed in the District Court during fiscal 2015 results in 21,272 petitions filed based on *nolle prosequi* dispositions. Assuming that 30% of these petitions were granted fee waivers, there were 14,890 petitions based on *nolle prosequi* dispositions for which the \$30 filing fee was paid in fiscal 2015. Under the bill, the elimination of the fee for 14,890 petitions results in a general fund revenue decrease of \$335,025 in fiscal 2017 and \$446,700 on an annual basis.

State Expenditures: Although the bill's impact on State expenditures is not anticipated to be significant, general fund expenditures for the Judiciary and CJIS (located within DPSCS) may increase to the extent that the elimination of fees and costs for expungements based on specified disposition increases the number of expungement petitions filed. The extent to which this occurs cannot be reliably determined at this time. However, this estimate assumes that this bill alone does not significantly increase the number of petitions filed considering (1) the filing fee is currently \$30; (2) the District Court does not charge a fee for expungement of an acquittal (one of the types of dispositions affected by the bill); and (3) that individuals may already apply for waiver of the expungement fee.

The cost of hiring one court clerk is \$45,300 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$56,017 in fiscal 2018.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The cost associated with hiring one expungement clerk is \$41,750 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$51,319 in fiscal 2018. CJIS does not charge a fee for expungements.

The Judiciary advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures to revise expungement 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 decrease minimally due to the bill's elimination of expungement filing fees for dispositions currently eligible for expungement by petition in the circuit courts. The circuit courts charge a \$30 filing fee for expungements.

Local Expenditures: Assuming that the bill does not significantly increase the number of expungement orders with which local entities must comply, the bill does not significantly affect local expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Montgomery, Queen Anne's, and St. Mary's counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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