

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 374
Judiciary

(Delegate Sanchez, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement - Denial of Petition Without Hearing

This bill alters the hearing requirements for petitions for expungements of records. The bill repeals the requirement that a court hold a hearing if the State's Attorney files a timely objection to the petition, and instead authorizes the court to hold a hearing if an objection is filed. If a hearing is held and the court finds at the hearing that the person is entitled to expungement, the court must order the expungement of the police records and court records about the charge. If at the hearing the court finds that the person is not entitled to expungement, the court must deny the petition.

The court may deny a petition without a hearing if the court finds that the petition is barred as a matter of law. However, if the court does this, a petitioner may request a hearing within 30 days and the court must hold a hearing if such a request is made.

Fiscal Summary

State Effect: Potential minimal reduction in workload if the bill reduces the number of expungement hearings in the District Court. However, the bill is not anticipated to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

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.

A court is only required to hold a hearing on a petition for expungement if the State's Attorney files a timely objection to the petition.

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.

Chapter 515 of 2016, also known as the Justice Reinvestment Act, expanded eligibility for expungements by authorizing individuals convicted of specified misdemeanors contained in a list of approximately 100 offenses to file petitions for expungements.

Effective October 1, 2017, a person may file a petition listing relevant facts for expungement of a police, court, or other record if the person is convicted of specified misdemeanors. In general, a petition for expungement may not be filed earlier than

10 years after the person satisfied the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. For specified crimes, a minimum waiting period of 15 years is required. If the person is convicted of a new crime during the waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible. A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding or if one conviction in a unit of convictions is not eligible for expungement. In general, a person must file a petition for expungement in the court in which the proceeding began. However, Chapter 515 specifies procedures for situations involving transfers to another court or the juvenile court. In addition, the law specifies procedural requirements regarding objections to a petition, hearings, and appeals.

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.

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
Calendar 2004-2016

<u>Year</u>	<u>CJIS Expungements¹</u>	<u>Year</u>	<u>CJIS Expungements¹</u>
2004	15,769	2011	20,492
2005	16,760	2012	30,654
2006	20,612	2013	34,207
2007	21,772	2014	33,801
2008	24,200	2015	36,412
2009	25,146	2016	41,854
2010	27,199		

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

State Expenditures: The Judiciary advises that, based on information from its clerks, approximately 12% of expungement petitions are subject to a hearing. Applying this figure to the 32,726 expungement petitions filed in the District Court in fiscal 2015 results in 3,927 hearings in the District Court. Because the bill authorizes, instead of requires, a court to hold a hearing if a State's Attorney files a timely objection and allows a petitioner to request a hearing if the court denies his/her petition without a hearing because the court determined that the petition is barred as a matter of law, the precise extent to which the bill reduces the number of expungement hearings in the District Court cannot be reliably determined at this time. Regardless, while the bill may result in a minimal reduction in workload related to hearings, this analysis assumes that those resources are redirected to other court needs and do not result in a reduction in court personnel. Thus, State finances are not materially affected.

Local Expenditures: According to the Judiciary, there were 2,448 expungements filed in the circuit courts during fiscal 2015. Applying the 12% figure cited above results in approximately 294 expungement hearings in the circuit courts per year. Given that a sizeable portion of these hearings still occur under the bill, the bill is not expected to materially affect circuit court finances. This analysis assumes that prosecutors redirect resources from expungement hearings that are not conducted as a result of the bill to other needs.

The State's Attorneys' Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: HB 600 of 2016 passed the House and was heard in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2017
fn/kdm Third Reader - February 24, 2017

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510