

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 774

(Senator Bates)

Judicial Proceedings

Criminal Procedure - Petition for Expungement

This bill modifies expungement provisions contained in the Justice Reinvestment Act (Chapter 515 of 2016) by prohibiting a person from expunging a conviction for misdemeanor second degree assault if the victim of the offense was (1) disabled, as defined in § 7-101 of the Human Services Article; (2) a vulnerable adult, as defined in § 14-101 of the Family Law Article; or (3) a minor. The bill repeals the authorization to expunge a conviction for specified prostitution offenses under § 11-306(a) of the Criminal Law Article but authorizes the expungement of a conviction for engaging in prostitution or assignation so long as the assignation did not involve a minor.

The bill takes effect October 1, 2017, which is the effective date of Section 2 of Chapter 515 of 2016. However, if the effective date of Section 2 of Chapter 515 is amended, the bill takes effect on the new effective date.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from filing fees in the District Court due to individuals who would have been eligible to file petitions for expungement no longer being eligible to do so as a result of the bill. The bill is not expected to materially affect State expenditures.

Local Effect: Minimal decrease in local revenues from filing fees in the circuit courts due to individuals who would have been eligible to file petitions for expungement no longer being eligible to do so as a result of the bill. 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.

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. Misdemeanor second-degree assault under § 3-203 of the Criminal Law Article and prostitution offenses under § 11-306(a) of the Criminal Law Article are some of the eligible offenses.

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 (including misdemeanor second-degree assault), 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.

Under § 11-306 of the Criminal Law Article, a person may not knowingly (1) engage in prostitution or assignation by any means; (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation; (3) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation; (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procure or solicit, or offer to procure or solicit, for prostitution or assignation. A person who violates any of those prohibitions is guilty of prostitution, a misdemeanor punishable by imprisonment for up to one year and/or a \$500 maximum fine.

State Revenues: General fund revenues from District Court filing fees decrease minimally compared to what would otherwise occur under the Justice Reinvestment Act because the bill decreases the pool of individuals eligible to file a petition for expungement of specified misdemeanor convictions under that Act. The statutory provisions authorizing these expungements take effect October 1, 2017, the same day as the effective date of the bill. The number of individuals who would be disqualified from expungement of convictions as a result of the bill cannot be reliably estimated at this time but is expected to be minimal. The District Court charges a \$30 filing fee for expungement petitions (other than acquittals).

Local Revenues: For the reasons stated above in the State Revenues section of this fiscal and policy note, local revenues from filing fees in the circuit courts decrease minimally compared to what would otherwise occur in the absence of the bill. The circuit courts charge a \$30 filing fee for expungement petitions (other than acquittals).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles and Montgomery counties; cities of Frederick and Havre de Grace; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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