

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1237
 Judiciary

(Delegate C. Wilson, *et al.*)

Criminal Procedure - Expungement of Court and Police Records - Acquittal, Dismissal, or Nolle Prosequi

This bill establishes that a person who is entitled to 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. The bill codifies the policy of the Maryland Judiciary to not charge a fee to process an expungement based on acquittal.

Fiscal Summary

State Effect: General fund revenues decrease by at least \$364,800 in FY 2018 and by at least \$486,400 each year thereafter due to the bill’s elimination of specified filing fees in the District Court. The bill’s changes can be handled with existing resources.

| (in dollars) | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|--------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | (\$364,800) | (\$486,400) | (\$486,400) | (\$486,400) | (\$486,400) |
| Expenditure | 0 | 0 | 0 | 0 | 0 |
| Net Effect | (\$364,800) | (\$486,400) | (\$486,400) | (\$486,400) | (\$486,400) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues decrease by at least \$51,400 in FY 2018 and by \$68,500 each year thereafter due to the bill’s elimination of specified filing fees in the circuit courts. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: A *nolle prosequi* is a formal motion by a State's Attorney indicating that a charge or charges will not be prosecuted.

In general, a person must file a civil cause of action within three years after the cause of action accrues.

Petitions for expungements are subject to various waiting periods, based on the type of disposition involved. Generally, a petition for expungement for a *nolle prosequi* may not be filed within three years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge. However, a petition for expungement based on a *nolle prosequi* with the requirement of drug or alcohol treatment may not be filed until the completion of the required treatment.

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 by 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 District Court and the circuit courts charge a \$30 filing fee for petitions for expungement. Petitions based on acquittals are not subject to the fee. Individuals who are unable to pay the fee may apply for a fee waiver.

Exhibit 1 contains information on the number of expungement petitions filed in the District Court and the circuit courts from fiscal 2014 through 2016. According to District Court clerks, *nolle prosequi* dispositions form the basis of between 60% and 70% of all petitions for expungement filed.

Exhibit 1
Expungement Petitions Filed in the District Court and the Circuit Courts
Fiscal 2014 through 2016

| <u>Year</u> | <u>District Court</u> <u>Expungement Petitions Filed</u> | <u>Circuit Courts</u> <u>Expungement Petitions Filed</u> |
|-------------|---|---|
| 2014 | 35,737 | 4,025 |
| 2015 | 32,726 | 2,448 |
| 2016 | 39,706 | 4,706 |

Source: Maryland Judiciary

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 below in **Exhibit 2** 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 2
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 | | |

CJIS: Maryland Criminal Justice Information System

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 by at least \$364,809 in fiscal 2018, which reflects the bill’s October 1, 2017 effective date, and by at least \$486,412 each year thereafter due to the elimination of filing fees for specified expungement petitions. This estimate assumes that:

- filing fees remain constant;
- the volume of petitions filed for expungements of dismissals, *nolle prosequi* dispositions, or *nolle prosequi* with the requirement of drug or alcohol treatment dispositions remains constant;
- expungement fees collected by the District Court between September 1, 2015, and September 1, 2016, are representative of expungement fees collected in a typical fiscal year; and

- 65% of all petitions for expungement filed are based on *nolle prosequi* dispositions (the midpoint between the Judiciary's estimated range).

As previously noted, a petition for expungement of an acquittal is not currently subject to the \$30 filing fee. Thus, for petitions based on acquittal, the bill codifies current practice.

According to the Judiciary, the District Court collected \$748,326.50 in filing fees for petitions for expungement between September 1, 2015, and September 1, 2016. The District Court does not have historical data for expungement fees, and this data was collected by a new cashiering system, which was completely installed throughout the District Court in 2015.

State Expenditures: 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 with existing budgeted resources.

Local Revenues: According to the Judiciary, the circuit courts collected \$105,337.50 in expungement fees during fiscal 2016. Assuming that 65% of these expungements were for *nolle prosequi* dispositions, local revenues decrease by at least \$51,352 in fiscal 2018, which reflects the bill's October 1, 2017 effective date, and by at least \$68,469 each year thereafter.

Additional Information

Prior Introductions: HB 904 of 2015 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Baltimore City; Harford, Montgomery, and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of General Services; Department of Health and Mental Hygiene; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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