

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 31
Judiciary

(Delegate J. Lewis)

Criminal Procedure - Charges Disposed of by Nolle Prosequi, Dismissal, or
Acquittal - Case Search

This bill prohibits the Maryland Judiciary Case Search from referring in any way to the existence of a specific criminal charge more than five years after the criminal charge has been disposed of by *nolle prosequi*, dismissal, or acquittal.

Fiscal Summary

State Effect: The bill does not directly affect State expenditures due to the planned redesign of the Case Search system, which has been included in the Information Technology Master Plan (ITMP) submitted by the Judiciary. However, the rebuilding of the system that is required to comply with the bill cannot be accomplished by the bill's effective date, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: The Maryland Judiciary Case Search is a website maintained by the Maryland Judiciary that provides Internet-based access to various Maryland case records. Accessible records include District Court traffic, criminal, and civil case records and criminal and civil case records for the circuit courts. Information is removed from view on Maryland Judiciary Case Search through expungement and shielding only. Shielding applies to records relating to specified convictions. The types of dispositions to which the bill applies are eligible for 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, convicted of possession of marijuana under § 5-601 of the Criminal Law Article, 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. 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. Petitions for expungements may be subject to various waiting periods, based on the type of disposition involved.

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.

State Expenditures: The Judiciary advises that a complete redesign of Case Search is required to comply with the provisions of the bill. However, the bill does not directly affect State expenditures due to the improvements to the Judiciary's information technology systems that are already planned. Under the ITMP submitted by the Judiciary in December 2017, a complete redesign of the Case Search system is in the planning stages and is scheduled for completion in 2021. According to ITMP, the development of Case Search Version 2.0 is estimated to cost at least \$1.1 million (\$693,600 in fiscal 2019

and \$442,680 in fiscal 2020), and will enable the removal of information at the charge level, among other things. However, the Judiciary advises that any such programming cannot be completed by the effective date of the bill.

Case Search is a web-based inquiry system that contains a central case-based index that is created from various case management systems. The index is comprised of cases, so a case can be removed from the index and from appearance on Case Search, but details within the case (*e.g.*, an individual charge) cannot be removed in isolation. According to the Judiciary, Case Search in its current form does not contain the programmatic functionality to remove records or the existence of records within a case, nor does it have the functionality to build programmatic relationships contained within the Judiciary's case management systems to process information at the granular level needed to remove specific details within a case.

The Judiciary advises that Case Search serves as a repository for information within and transmitted from the Judiciary's various case management systems in order to provide remote access to case information. The system was never intended or designed to include functionality for detailed programmatic commands.

The Judiciary anticipates that the implementation of Case Search Version 2.0 will parallel the final rollout of the Maryland Electronic Courts System in 2021 as all eight of the Judiciary's case management systems, including the six systems that process criminal information, are decommissioned. According to the Judiciary, until this occurs, the Judiciary cannot implement removal of information from Case Search at the charge level, as required under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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