

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 854
Judiciary

(Delegate Attar)

Criminal Procedure – Expungement of Records – Revisions

This bill makes several changes to expungements and related procedures, including the types of records eligible for expungement, the handling of records ordered to be expunged, and access to expunged records. The bill does not alter an individual’s eligibility to file a petition for expungement.

Fiscal Summary

State Effect: Potential increase in special fund expenditures for the State Insurance Trust Fund (SITF) and general fund expenditures for SITF assessments, as discussed below. Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS). Other agencies involved in expungement may experience operational effects and increased expenditures. Revenues are not affected.

Local Effect: Expenditures increase for local agencies involved in expungements to implement the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Definition of “Expunge”: In general, under current law, an expungement of a court or police 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; or

- 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.

The bill redefines “expunge” as the extraction and isolation of all records on file within any court, detention or correctional facility, and law enforcement or criminal justice agency concerning a person’s detection, apprehension, detention, trial, or disposition of an offense within the criminal justice system.

Under the bill, an expungement is, with respect to a court record or police record, the extraction and isolation of all records on file by (1) obliteration or (2) 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. Thus, the bill no longer authorizes the removal of records to a separate secure area to which persons who do not have a legitimate reason are denied access as an acceptable form of expungement.

Records Eligible for Expungement: The bill expands the definition of a “police record” to include specified records maintained by a detention or correctional facility about a person and alters the definition of a “law enforcement unit” to include a detention or correctional facility. The bill also removes police investigatory files and police/law enforcement work product from the list of records not subject to expungement.

Treatment of Expunged Records and Access to Expunged Records: The bill establishes that an expunged police record or court record may not be used for any purpose and must be treated as if it never existed. The bill also removes from § 10-108 of the Criminal Procedure Article the process for courts to grant an order allowing access to an expunged record. Thus, under the bill, a person may not open or review an expunged record or disclose to another person any information from that record. The bill retains the existing criminal penalty for prohibited disclosures of expunged information and the potential removal or dismissal from public service of a public employee who makes a prohibited disclosure.

State Expenditures: The bill may have an operational impact on the State Treasurer’s Office (STO) and may increase special fund expenditures for the State Insurance Trust Fund (SITF) and general fund expenditures for agency assessments, as discussed below. The bill has an operational effect and may increase expenditures for other affected State agencies, including a potentially significant increase in general fund expenditures for DPSCS. This estimate assumes that (1) the bill applies prospectively to records associated with petitions for expungements *granted on or after* the bill’s October 1, 2023 effective date and (2) the bill does not require the obliteration of expunged records currently being stored.

The total effect of the bill, including the operational effect on applicable agencies, depends on interpretation of the bill's provisions, which are unclear. For example, while the bill refers to the "extraction and isolation" of records, it also requires obliteration of records and removes isolation of records as a method of expungement.

State Treasurer's Office

The bill (1) prohibits a police record or court record that has been expunged from being used for any purpose and (2) requires an expunged police record or court record to be treated as if the record never existed.

The bill does not affect overall claims filed under the Maryland Tort Claims Act (MTCA) and does not alter waiting periods for filing a petition for expungement, many of which are related to the civil statute of limitations. However, should the bill's provisions prevent STO's access to or ability to use records that are the subject of claims brought against the State under MTCA, that inhibited access could affect the State's ability to investigate and defend MTCA claims. Thus, SITF expenditures may increase for litigation and payment of claims and general fund expenditures may increase for SITF assessments for affected State agencies.

Judiciary

The Judiciary advises that the impact of changing the definition of "expunge" to "extraction and isolation of all records on file within any court..." is unclear. According to the Judiciary, if those changes are intended to create new or additional obligations on court personnel to search for records beyond the case records at issue, then it could lead to an increased operational burden on courts.

Department of Public Safety and Correctional Services

DPSCS advises that in addition to the bill's potential effect on its ability to defend against lawsuits filed against the department, the bill necessitates extensive modifications to its computer systems at a significant cost. Because of the lack of clarity in the bill, DPSCS reports that while significant, the exact costs of the required modifications cannot be determined at this time. However, DPSCS estimates minimum costs of approximately \$570,600 in fiscal 2024, which includes costs associated with hiring three analysts and one-time contractual services of \$250,000. Future year expenditures, which represent personnel costs, range from approximately \$390,000 in fiscal 2025 to approximately \$447,200 by fiscal 2028.

However, DPSCS did not provide additional information on the nature of these modifications and the need for personnel. Thus, the Department of Legislative Services

advises that the bill results in a potentially significant increase in general fund expenditures for DPSCS.

The bill's expansion of "police record" to include a record maintained by a detention facility or correctional facility also affects DPSCS operations and may result in the need for additional resources or personnel, which cannot be reliably determined at this time.

Department of State Police

The Department of State Police (DSP) advises that the bill's provisions affect its ability to defend against lawsuits. To the extent the bill's removal of the exemption from expungement for police investigatory files and police/law enforcement work product affects (DSP) investigations, the bill may have an operational effect on the department. In *Mora v. State*, 123 Md. App. 699 (1998), the then Maryland Court of Special Appeals determined that police records were not used illegally when police used investigatory files and work product from one investigation in another investigation even though the records regarding the case from the original investigation were expunged.

Local Expenditures: For the reasons stated above, the bill has an operational effect and likely results in increases in expenditures for local government entities to process expungements and potential increases in local expenditures to litigate and/or pay claims associated with expunged records. Law enforcement operations may be affected by the bill's removal of the exemption from expungement for police investigatory files and police/law enforcement work product.

Frederick County advises that its State's Attorney's office requires an additional investigator to process, manage, and regulate expungements; the approximate associated personnel costs range from \$116,000 in fiscal 2024 to \$129,400 by fiscal 2028.

Montgomery County Police Department advises that it needs a coordinator to assist with implementation of the bill, at an estimated cost of \$82,600 in fiscal 2024 and \$84,000 by fiscal 2028.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Frederick and Montgomery counties; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of General 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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