

**Department of Legislative Services**  
**2020 Session**  
*Agency Explanation of Impact*

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**Bill number:** SB0589

**Cross file:**

**Bill title:** Criminal Procedure - Partial Expungement

**Agency:** Judiciary (Administrative Office of the Courts) - (jdy / 292)

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**Date:** February 6, 2020

To assist our department in preparing a fiscal and policy note for this proposed legislation, please provide detailed responses to the questions below.

If you have additional information that cannot be included in either this Word document or the provided Excel file, please send that information **in a separate email** to [fnotes@mlis.state.md.us](mailto:fnotes@mlis.state.md.us) **with the bill number included in the document and the email subject line.**

**1. Will this legislation have a fiscal and/or operational impact on your agency?**

YES  NO

*If yes*, please proceed to question #2 on page 2.

*If no*, please briefly indicate **why** below and then proceed to question #6 on page 4.





justice purposes only. Law enforcement will have to motion the court for access. Processing these motions will involve additional clerical and judge time to determine if the access is for a legitimate criminal justice purpose.

Eligible charges would be “shielded” on the Judiciary’s website and not completely “expunged” from all records. The bill only mentions the shielding on the Judiciary’s website’ however, the Judiciary also maintains public kiosks in the courthouses where the public can access the same case information that can be requested from a court clerk. Attorneys and other parties who are registered in MDEC also have docket-level remote access to all cases in MDEC, as well as access to documents in their case(s). If charges are removed from the kiosks, documents would also have to be shielded, otherwise, the charge would be removed but the documents in a case would still be available to view.

To be able to remove a charges or charges in a unit of criminal charges from CaseSearch only or put security on the case so it is not viewable on CaseSearch or a public kiosk, the Judicial Information Systems department estimates that implementing the necessary programming changes will require 468 hours at an approximate cost of \$52,560.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	138	\$100.00	\$13,800.00
Programming	164	\$125.00	\$20,500.00
Testing	88	\$110.00	\$9,680.00
Project Management	78	\$110.00	\$8,580.00
TOTAL	468		\$52,560.00

Please note this level of effort includes the removal of charges from the public kiosks as it is unclear whether this is required by the bill.

Clerks will still have to process petitions, notify CJIS and state or political subdivisions that the written record can be maintained without change and of the requirement to limit inspection of the written record to a criminal justice unit for legitimate criminal justice purposes. The processing of motions to inspect will require more clerical and judicial time.

Although not as labor intensive, the shielding of court records will also require additional staff in the District Court and the circuit courts. The time estimated to complete the shielding of a charge(s) is 1.5 hours for District and circuit courts. The District Court can share some resources since it is a unified court system; however, circuit courts would need at least one person in each circuit since resources cannot be shared between the circuits. Based on the cases that would be eligible in the last 5 years alone, with an estimated yearly workload, and the 1.5 hours to complete the shielding of charges, 88 additional clerks (55 for District Court and 33 for circuit court) will be needed at a cost of **\$5,708,022** in the first full fiscal year. (See spreadsheet 2 of 2.)

**NOTE: Resources in the circuit courts are not shared within a circuit.**

In either scenario, there is currently no functionality to build programmatic relationships between CaseSearch and the six case management systems that process criminal information to remove

any reference to the existence of specific charges that may exist in any of the various components within those systems as required by the proposed legislation. As explained in the current and prior legislative sessions, the Judiciary anticipates that the implementation of CaseSearch Version 2 will provide the needed functionality to enable the removal of case information at a more granular level such as individual charges and will parallel the final rollout of MDEC. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million.**

The Judiciary maintains we are not able to effectively expunge one charge in a unit. There is no functionality currently within CaseSearch to remove records at the charge level without displaying a space for a missing charge(s). When a person is charged with multiple offenses, the charges are numbered and reported to CJIS in the order presented on the charging document. For instance, if there are three charges, and charge 2 is expunged, the system will still reflect charges 1 and 3. They are not and cannot be renumbered because the case information reported to CJIS must align with the same charge numbers initially reported. A missing numbered charge may raise questions and red flags, thereby, nullifying the purpose of the expungement.

In Fiscal Year 2019, there were approximately 74,508 expungement petitions filed in the District Court and approximately 10,951 petitions filed in the circuit courts. Any increase in the court's caseload and the additional hearings and motions that may be necessary will result in additional clerical and court time. Costs will increase in direct relation to the higher number of expungements.

The Judiciary is currently researching redaction software. There may be additional costs if a decision is made to purchase the software to assist the clerks with the time-consuming searching and redaction of records or case information within the records. Cost estimates are not available at this time.

Other expenditures include the printing and restocking of new carbonized forms and brochures, website revisions, postage for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants and their attorneys, storage for expunged records, and copying. To revise and restock the Expungement Brochure (CC-DC-CR-072BR) will be approximately \$6,000.00. Clerks will need additional training to distinguish the multiple tracks, eligibility of charges, and the requirements of any special processing.

<b>SB0589 Initial Cost of Implementation</b>		
	<b>EXPUNGEMENT</b>	<b>SHIELDING</b>
<b>Programming Costs</b>	\$155,300	\$52,560
<b>Operational Costs and Additional Staff (1<sup>st</sup> Full Year)</b>	\$14,205,192	\$5,708,022
<b>Brochure</b>	\$6,000	\$6,000
<b>Case Search 2.0</b>	\$1,140,000	\$1,140,000
<b>TOTALS:</b>	<b>\$ 15,506,492</b>	<b>\$ 6,906,582</b>

If passed, this legislation would have a significant fiscal and operational impact on the Judiciary.

- 3. Impact on Revenues** – Please estimate any increase or decrease in revenues (general, special, federal, or other funds) in each of the next five fiscal years. Enter the estimated amounts in the *Revenues* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause revenue increases/decreases to begin in later years.
  - Please explain the cause(s) of the revenue increase(s)/decrease(s), any assumptions and/or calculations used, and any variations if the revenue impact(s) are not constant.
  - If federal funds are affected, please describe how (*e.g.*, loss of funds for noncompliance, availability of new funds, etc.)

The proposed legislation, when implemented, will result in an increase in fees collected related to petitions for expungement. The Judiciary’s filing fee for petitions for expungement is \$30 for guilty dispositions. There is no filing fee for cases resulting in acquittal, dismissal, probation before judgment (PBJ), nolle prosequi, stet, or not criminally responsible dispositions. Revenues will depend on the dispositions of the cases to be expunged.

- 4. Impact on Expenditures** – Please estimate the increase or decrease in expenditures in each of the next five fiscal years using the *Expenditures* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause expenditure increases/decreases to begin in later years.
  - Please explain the need for the number and type of personnel (both permanent and contractual), including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type of employee will be; and (3) why existing personnel cannot absorb the additional work.
  - Please describe the items included under “Other Operating Expenses” and explain any assumptions or calculations used in your estimates.
  - Please specify the fund type (general, federal, special, or other) or combination of fund types of the expenditure increases and/or decreases.

Please see answer to No. 2 and attached fiscal worksheet.

- 5. Anticipated in Proposed Operating/Capital Budget?** – Have funds been included in your agency’s proposed operating or capital budget in anticipation of this legislation? Or has your agency submitted a request for funding in a supplemental budget? If so, please indicate specific amount(s) budgeted and budget code(s).

No.

**6. Other Information** – Please provide any other information that may be helpful in determining the fiscal effect of this legislation, even if the bill does not directly affect your agency.

The Criminal Justice Information System (CJIS) should be contacted as well as law enforcement agencies, parole and probation, agencies that supervise community service, Maryland Archives, and other custodians of records.

This legislation will impact the State’s Attorneys, the Office of the Public Defender, the Maryland Department of Public Safety and Correctional Services, and law enforcement agencies.

Attorneys representing their clients will be impacted by the lack of remote access to information under this bill.

Additionally, there are potential costs related to litigation by persons or entities who might contend that this legislation intrudes on their constitutional and common law right to access courts records.

**7. Effect on Local Governments** – Will local government operations or finances (revenues or expenditures) be affected by this legislation? If yes, please describe how.

This legislation may impact local law enforcement agencies.

**8. Effect on Small Businesses** – Will existing small businesses be affected (either positively or negatively) by this legislation and/or will the legislation encourage or discourage new small business opportunities? If so, please describe.

*State law defines a small business as a corporation, partnership, sole proprietorship, or other business entity, including affiliates that: (1) is independently owned and operated; (2) is not dominant in its field; and (3) employs 50 or fewer full-time employees.*

Any business or attorney’s office that has created or purchased expungement process software to assist the public with the filing of petitions for expungement will have costs to update their software.