

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 896
Judiciary

(Delegate Rosenberg, *et al.*)

Criminal Procedure - Expungement - Convictions

This bill authorizes a person who was convicted of a crime, other than specified public nuisance crimes or a crime of violence, to file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State. The petitioner must have been younger than age 35 at the time of his/her conviction and may not file a petition until at least 10 years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for conviction, whichever is later.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from District Court expungement fees. Potential significant increase in general fund expenditures for additional personnel for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: Potential significant increase in local expenditures if the bill generates a significant increase in requests for expungement of local law enforcement and circuit court records.

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 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 nuisance conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

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.

The following offenses are crimes of violence under § 14-101 of the Criminal Law Article:

- abduction;
- arson in the first degree;
- kidnapping;
- manslaughter, other than involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- carjacking;
- armed carjacking;
- sexual offense in the first or second degree;
- use of a handgun in the commission of a felony or other crime of violence;
- child abuse in the first degree;
- specified instances of sexual abuse of a minor;
- an attempt to commit any of the crimes listed above;
- continuing course of conduct with a child;
- assault in the first degree;

- assault with intent to murder;
- assault with intent to rape;
- assault with intent to rob; and
- assault with intent to commit a sexual offense in the first or second degree.

Background: The Judiciary advises that in fiscal 2013, there were 40,168 expungements filed in the District Court and 2,750 in the circuit court, of which 1,149 were in Baltimore City. The aforementioned numbers do not include Prince George’s and Montgomery counties. Montgomery County reports that it processed 208 expungements in fiscal 2013.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within DPSCS 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 1** (which are the latest data provided by CJIS) 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 1
CJIS Expungements
2004-2013**

<u>Calendar Year</u>	<u>CJIS Expungements (Excluding Released Without Charge)</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199
2011	20,492
2012	30,654
2013	42,665*

*As of November 22, 2013.

Source: Maryland Criminal Justice Information System – Department of Public Safety and Correctional Services

State Fiscal Effect: The bill's extension of expungement eligibility to individuals convicted of a crime other than specified public nuisance crimes or crimes of violence may significantly expand the expungement population. However, it is unclear what effect the bill's age restriction, operating in conjunction with the restriction on when a petition may be filed, as well as other existing restrictions, will have on reducing this expansion. However, to the extent that the bill's provisions generate a marked increase in the number of expungement petitions filed, the bill could result in a significant impact on State finances, as discussed below.

General fund revenues for the Judiciary may increase significantly due to a potential significant increase in petitions for expungement. The District Court charges a \$30 fee for expungements unless all of the records to be expunged relate to a charge of which the petitioner has been acquitted. As a result, general fund revenues increase by \$30 for each petition filed.

General fund expenditures increase significantly if the bill generates enough additional expungements to require additional expungement clerks at CJIS and additional personnel at the District Court. Given the number of offenses to which the bill applies, and given the potential for a marked increase in the number of individuals eligible for expungement as a result of the bill, the bill has the potential to generate a significant number of additional expungements.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. A total of four positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost of hiring one additional expungement clerk in fiscal 2015 is \$35,698, which accounts for the bill's October 1, 2014 effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures for one additional clerk total over \$50,000.

The bill may also significantly increase petitions for expungement filed with the courts, as well as any resultant hearings, appeals, and compliance. The Judiciary advises that the expungement process is a labor-intensive and manual process and that the potentially significant increase in court expungements under the bill could put a significant strain on clerical staff and resources, resulting in the need to hire additional staff.

Local Fiscal Effect: The bill may have a significant impact on local resources if expungement requests for local law enforcement increase significantly as a result of the bill. The bill may also have an impact on the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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