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Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 124
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Procedure - Expungement - Conviction of a Crime That Is No Longer a Crime

This bill expands eligibility for expungements to persons convicted of a crime that is no longer a crime.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from expungement fees in the District Court. Potential significant increase in general fund expenditures for the District Court and the Department of Public Safety and Correctional Services (DPSCS) to process additional expungements if the bill generates a significant increase in the number of expungement petitions filed.

Local Effect: Minimal increase in local revenues from expungement fees in the circuit courts. Potential significant increase in local expenditures for local law enforcement units to process expungement orders, depending on the number of orders in the jurisdiction and existing staffing levels.

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 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.

While there are several acts that were once but are no longer crimes, the most likely former crime to which the bill applies is the use or possession of less than 10 grams of marijuana. Prior to 2012, except in cases of medical necessity, possession of marijuana was generally a misdemeanor, punishable by imprisonment for up to one year and/or a fine of up to \$1,000. However, Chapters 193 and 194 of 2012 (effective October 1, 2012) established a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500 for possession of less than 10 grams of marijuana.

Chapter 158 of 2014 (effective October 1, 2014) reclassifies the use or possession of less than 10 grams of marijuana from a criminal offense to a civil offense (decriminalization), subject to a fine of up to \$100 for a first offense, \$250 for a second offense, and \$500 for a third or subsequent offense. On a third or subsequent offense, a court must order the offender to attend a drug education program approved by the Department of Health and Mental Hygiene (DHMH), refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary. A police officer must issue a citation if the officer has probable cause to believe that the offense has or is being committed. A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary.

Background: The Judiciary advises that during fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit court, of which 987 were filed in Baltimore City, 379 in Prince George's County, and 207 in Montgomery County.

Between October 1, 2012 (the effective date of Chapters 193 and 194 of 2012) and September 30, 2014 (the day before Chapter 158 of 2014 took effect), there were 23,548 charges for possessing less than 10 grams of marijuana in the District Court. There were 3,979 *convictions* for this offense in the District Court during that same time period.

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
2004-2014

<u>Calendar Year</u>	<u>CJIS Expungements</u> <u>(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	34,207
2014	33,801

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

State Revenues: General fund revenues increase, perhaps significantly, from fees for expungement petitions in the District Court. The District Court charges a \$30 fee for expungements unless all of the records to be expunged relate to a charge for which the

petitioner has been acquitted. As a result, general fund revenues increase by \$30 for each petition filed.

State Expenditures: General fund expenditures increase, perhaps significantly, for the District Court and CJIS to process additional expungements. The extent of the increase depends on the number of petitions received and the interpretation of the bill's provisions.

As previously stated, there were 3,979 *convictions* for possessing less than 10 grams of marijuana in the District Court, between October 1, 2012, and September 30, 2014, which is the time period during which this activity was a unique criminal offense. However, individuals in this group may be ineligible for expungement due to disqualifying factors under existing statute (*e.g.*, unit exclusion, subsequent conviction, *etc.*).

If the bill is interpreted as authorizing expungement of a conviction for use or possession of marijuana under the statute that existed before Chapters 193 and 194 of 2012 took effect when the facts of the case indicate that the petitioner was using or in possession of less than 10 grams of marijuana, then the universe of potential expungements under the bill is much larger.

Assuming that the bill authorizes expungement under both of these scenarios, general fund expenditures may increase significantly for the District Court and CJIS to process additional expungements.

The expungement process is extensive and labor intensive. Court clerks who receive expungement petitions must review the petitions to ensure that they are complete and accurate (which can be problematic, since most petitions are filed *pro se*), review court records for relevant information, and make sure that all law enforcement and other related agencies relevant to the petition are contacted. Following the granting of a petition for expungement by the court, court staff must verify that all agencies have complied with the order. Though courts do charge a fee for expungement, the Judiciary advises that the fee does not cover the amount of labor and expense involved with processing a petition for expungement. The Judiciary advises that the bill has the potential to have a significant fiscal and operational effect on the District Court and requires additional personnel expenditures, the extent of which is unknown at this time.

CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. Several 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 2016 is \$39,721, which accounts for the bill's October 1, 2015 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 more than \$50,000. CJIS does not charge a fee for expungements.

Local Revenues: Given that it is likely that most of the cases affected by the bill are related to possession of small amounts of marijuana, they were heard in the District Court. Thus, local revenues increase minimally from expungement fees in the circuit courts. However, revenues may increase significantly depending on future legalization activity.

Local Expenditures: Local expenditures increase, perhaps significantly, for local law enforcement agencies to process expungement orders. The extent of this increase depends on the number of expungement orders in the jurisdiction and existing staffing levels.

Harford County advises that the bill impacts personnel and communication costs. The county advises that 673 of the 791 cases in the county for use or possession of less than 10 grams of marijuana during the time that it was a unique criminal offense may be eligible for expungement under the bill.

The Montgomery County Sheriff's Office advises that the bill may have a significant impact on the office that cannot be reliably quantified at this time. The Circuit Court for Montgomery County advises that the bill may have a significant impact, especially if marijuana is legalized in the future and offenses other than use or possession of less than 10 grams of marijuana are no longer considered crimes.

The State's Attorneys' Association advises that the impact of the bill on prosecutors is unknown at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 651 (Senator Muse, *et al.*) - Judicial Proceedings.

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

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