

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

House Bill 956
Judiciary

(Delegate Carter)

Criminal Procedure - Expungement

This bill expands eligibility for expungement to persons convicted of a misdemeanor, alters specified timelines for the filing of a petition for expungement of a probation before judgment, entitles specified individuals to expungement of arrest warrants under specified circumstances, and prohibits a person from selling information relating to expunged records.

The bill also creates a civil cause of action for a person who is aggrieved by a failure to comply with statutes requiring the destruction or expungement of a DNA sample or DNA record. An aggrieved person may seek redress by means of any appropriate legal remedy and recover court costs.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from filing fees in the District Court. Significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to comply with the bill's requirements. Increase in special fund expenditures for the State Insurance Trust Fund (SITF) if the alteration of the waiting period for expungement of a probation before judgment or the civil cause of action created by the bill increases payments for claims under the Maryland Tort Claims Act (MTCA). General fund expenditures increase for State agencies subject to higher SITF assessments if SITF incurs losses from MTCA payments as a result of the bill's provisions. The magnitude of the increase depends on the number of MTCA cases affected by the bill and the amount of the claims in those cases, which cannot be reliably estimated at this time.

Local Effect: Potential significant increase in local revenues from filing fees in the circuit courts. Potential significant increase in local expenditures for local entities to comply with

the bill's requirements and for payment of claims involving expunged probations before judgement and for damages under the civil cause of action created by the bill.

Small Business Effect: Potential meaningful impact on small businesses that sell information relating to expunged records.

Analysis

Bill Summary: The bill expands eligibility for an expungement to a person convicted of a misdemeanor other than a conviction for the public nuisance crimes already eligible for expungement under existing statute. A person whose misdemeanor conviction is eligible for expungement under the bill may not file a petition for expungement of the conviction within 10 years after the conviction.

Except for probations before judgement issued for specified alcohol- and/or drug-related driving offenses, which are ineligible, the bill removes the waiting period to file a petition for expungement of a probation before judgment and, instead, requires that a petition for expungement based on a probation before judgment may not be filed earlier than the date the petitioner was discharged from probation.

The bill establishes that a person for whom an arrest warrant was issued is entitled to expungement of the warrant if the warrant is issued but is subsequently invalidated before being served. The person is also entitled to expungement of all other police records relating to the matter. The bill also establishes procedures for this expungement process. A person who is entitled to this expungement may not be required to pay any fee or costs in connection with the expungement.

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 of a crime that is no longer a crime 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.

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.

A petition for expungement based on a probation before judgment may not be filed before the date the petitioner was discharged from probation or three years after the probation was granted, whichever is later.

Expungement of DNA Record: Any DNA samples and records generated as part of a criminal investigation or prosecution must be destroyed or expunged automatically from the State DNA database within 60 days if a criminal action begun against the individual relating to the crime does not result in a conviction, is finally reversed or vacated and no new trial is permitted, or results in the granting of an unconditional pardon. A DNA sample or record may not be automatically destroyed or expunged if the criminal action is placed on the *stet* docket or the individual receives probation before judgment. A letter documenting the expungement must be sent to the defendant and the defendant's attorney.

Invalidation and Destruction of Warrant: A law enforcement agency may make a written request for the State's Attorney within the appropriate jurisdiction to have a warrant, summons, or other criminal process for a misdemeanor offense in the possession of the law enforcement agency invalidated and destroyed due to the age of the document, unavailability of the defendant, or other special circumstances if specified criteria are met.

The warrant, summons, or other criminal process must have remained unexecuted for at least five years and must have been issued for (1) the arrest of a defendant in order that the defendant might stand for trial; (2) failure of the defendant to make a deferred payment of a fine or costs as ordered by the court; (3) a violation of probation; or (4) a defendant's failure to appear in court, so long as the defendant was not released on bail posted by a private surety. If any of these documents has remained unexecuted for at least seven years, then the State's Attorney must petition the administrative judge of the district for the

invalidation and destruction of the applicable document after receiving a request from a law enforcement agency. If any of these documents has remained unexecuted for at least five years but less than seven years, the State's Attorney is authorized to petition the administrative judge of the district, but is not required to do so.

In the case of a warrant issued for a defendant's failure to appear in court after the defendant was released on bail secured by a private surety, the statute applies so long as the warrant has remained unexecuted for at least 10 years. A State's Attorney is required to petition the administrative judge of the district for the invalidation and destruction of a warrant in this category after receiving a request from a law enforcement agency.

Even though a State's Attorney is required to petition the administrative judge of the district for the invalidation and destruction of an applicable document under certain circumstances, a State's Attorney may still argue against the invalidation and destruction of the document due to a justifiable continuing active investigation of the case.

Unless the court determines that preservation of the document is justifiable, the court must order the invalidation and destruction of an unexecuted warrant for a misdemeanor offense, summons, or other criminal process. At the time of the order, the State's Attorney may enter a *nolle prosequi* or place the applicable case on the *stet* docket. An arrest cannot be made based on a warrant or other criminal process that has been ordered invalidated and destroyed.

The statute does not (1) prevent the reissuance of a warrant, summons, or other criminal process; (2) affect the time within which a prosecution for a misdemeanor may be commenced; (3) nullify or remove a failure to appear designation that has been placed on an individual's driving record by the Motor Vehicle Administration; or (4) affect any pending criminal charge.

Background: The Judiciary advises that during fiscal 2015, there were 32,276 petitions for expungement filed in the District Court and 2,448 petitions filed in the circuit courts. During fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit courts. Legislation expanding eligibility for expungements enacted in 2015 took effect on October 1, 2015. According to the District Court, the percentage of petitions filed in the District Court increased by 50.55% during October through December 2015 compared to the number of petitions filed during the same time period in 2014.

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** 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
2004-2015

<u>Calendar Year</u>	<u>CJIS Expungements¹</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
2015	36,412

¹Does not include expungements for individuals released without being charged.

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

State Revenues: General fund revenues may increase significantly from filing fees for expungement petitions in the District Court or appellate courts. The District Court charges a \$30 filing fee for expungement petitions.

State Expenditures: General fund expenditures increase significantly for the Judiciary and DPSCS to comply with the bill’s provisions.

Judiciary

The Judiciary advises that it needs 4 District Court clerks (1 for each of the larger districts) and 10 circuit court clerks (1 for each circuit and 2 “floater” positions) to implement the bill’s requirements, at a cost of \$642,341 in fiscal 2017 and \$784,155 in fiscal 2018.

However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, which can only be determined with actual experience under the bill.

The bill significantly expands eligibility for expungements. Initial demand for expungements under the bill involves individuals with older convictions, since the bill contains a 10-year waiting period. While initial demand is likely significant and occurs within a compressed time period, it is also probable that the volume and timing of petitions stabilizes over time. Hence, while the Judiciary needs additional personnel to address initial petition volume, the Judiciary may also be able to reevaluate and adjust its personnel needs at a future date to account for this stabilized volume and timing. The cost associated with hiring one clerk is \$39,683 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$48,583 in fiscal 2018.

The Judiciary further advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$9,571 to create and revise expungement and shielding forms and brochures. However, the Department of Legislative Services advises that revising printed materials to reflect changes to statute is a routine function of the Judiciary and can be incorporated into annual revisions of forms and brochures.

DPSCS

General fund expenditures for DPSCS may increase significantly as a result of additional expungement orders generated by the bill. CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The number of additional clerks needed cannot be reliably determined at this time and depends on the number of expungement orders granted by courts under the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost associated with hiring one expungement clerk is \$41,750 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$51,319 in fiscal 2018. CJIS does not charge a fee for expungements.

SITF

Special fund expenditures increase to the extent that the bill's alteration of the waiting period to file a petition to expunge a probation before judgment disposition and/or the civil cause of action created by the bill for failure to destroy or expunge a DNA sample or DNA record increase payments for claims under MTCA. General fund expenditures increase for agencies subject to higher premium assessments only if the increase in MTCA claims payments under the bill results in a significant increase in claims paid. The extent of this increase cannot be reliably estimated at this time.

The three-year waiting period for expungements of probation before judgment dispositions is related to the three-year statute of limitations for civil causes of action. If a police and/or court record is expunged prior to receipt or notification of a claim under MTCA by the Treasurer's Office, then the Treasurer's Office may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations.

Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. The Treasurer's Insurance Division handles approximately 5,000 MTCA claims each year. SITF paid the following amounts in tort claims under MTCA: \$5.8 million in fiscal 2014, \$7.3 million in fiscal 2015, \$8.5 million in fiscal 2016 (estimated), and \$9.0 million in fiscal 2017 (projected). The Governor's proposed fiscal 2017 budget includes a \$10.5 million appropriation for tort claims (including motor vehicle torts) under MTCA. The funds are to be transferred to SITF.

Department of State Police

The Department of State Police advises that the bill has no fiscal or operational impact on the department.

Local Revenues: Local revenues from expungement petition filing fees may increase significantly. The circuit courts charge a \$30 filing fee for expungement petitions.

Local Expenditures: Local expenditures increase for affected entities to comply with the bill's requirements, handle additional petitions for expungement, and pay claims in cases involving expunged probations before judgment and lawsuits filed under the civil cause of action created by the bill for failure to comply with DNA expungement procedures.

The Montgomery County Police Department (MCPD) advises that it needs two additional full-time positions, at an estimated annual cost of \$135,743, to address the additional workload under the bill. According to MCPD, in addition to expungement of warrants, the bill dramatically expands the number of misdemeanors eligible for expungement after conviction. MCPD notes that the civil redress portion of the bill may result in additional costs.

The police department for the City of Frederick advises that the bill has a marginal impact on its operations.

Additional Information

Prior Introductions: None.

Cross File: SB 741 (Senator Muse) - Judicial Proceedings.

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

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