

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 1363 (Delegate Carter, *et al.*)
 Judiciary

Criminal Procedure - Expungement - Automatic

This bill makes several alterations to the expungement statutes for arrests, detentions, or confinements that occur on or after October 1, 2006. The bill also prohibits a court from assessing any fees for expungements.

Fiscal Summary

State Effect: Decrease in general fund revenues of at least \$516,200 annually. General fund expenditures could increase by at least \$2.6 million in FY 2007 accounting for the bill's October 1 effective date. Significant increase in Judiciary general fund expenditures for computer reprogramming and administrative costs to implement the changes in the bill.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	(\$516,200)	(\$521,300)	(\$526,500)	(\$531,800)	(\$537,100)
GF Expenditure	2,644,500	3,119,200	3,313,100	3,521,600	3,746,200
Net Effect	(\$3,160,700)	(\$3,640,500)	(\$3,839,600)	(\$4,053,400)	(\$4,283,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Significant decrease in local revenues and significant increase in local expenditures.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that a person who is arrested, detained, or confined by a law enforcement unit on or after October 1, 2006 and then is released without being

charged with the commission of a crime is entitled to the expungement of all police records relating to the matter.

The bill requires a law enforcement unit, within 30 days after the individual's release, to: (1) search diligently for and expunge each police record about the arrest, detention, or confinement of the person; and (2) send a notice of expungement containing all relevant facts about the matter to the person entitled to expungement, the Central Repository, and each booking facility or law enforcement unit believed to have a police record about the matter. Within 30 days after the receipt of the notice, the Central Repository and the law enforcement units shall search diligently for and expunge each of the individual's police records relating to the matter and advise the individual entitled to the expungement, in writing, of compliance with the order. If a law enforcement unit, booking facility, or the Central Repository fails to expunge the police record, the individual may apply to the appropriate District Court for an order of expungement. Following a hearing, the District Court may order expungement or deny the application.

If a person is charged with the commission of a crime on or after October 1, 2006, and the charges resulted in acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, or gubernatorial pardon, the court effecting the disposition shall immediately pass an order requiring the expungement of all police records and court records about the charge. Each custodian of the police records or court records shall, within 30 days, expunge all records relating to the charge, and notify the court and the person entitled to expungement that it has done so.

A person is entitled to expungement of records relating to a criminal charge that is transferred to the juvenile court:

- after the date of the decision not to file a delinquency petition;
- after the decision on the delinquency petition of facts-not-sustained; or
- when the person becomes 21 years old, if the charge resulted in the adjudication of the person as a delinquent child.

Immediately after the triggering event, the juvenile court shall pass an order requiring the expungement of all police records and court records about the charge. Each custodian of the police records or court records shall, within 30 days, expunge all records relating to the charge, and notify the juvenile court and the person entitled to expungement that it has done so.

The bill repeals provisions prohibiting entitlement to expungement of more than one charge in a unit of multiple charges arising from the same incident, transaction, or set of

facts. The bill provides that the right to expungement of one charge in the unit does not affect the right to expungement of other charges in the unit.

Current Law: A person who is arrested, detained, or confined by a law enforcement unit for the suspected commission of a crime, and then is released without being charged with the commission of a crime can have police records relating to the matter expunged by request. In order to have the police records expunged, the person must send a written notice of facts relating to the matter to a law enforcement unit the person believes may have a police record about the matter. The person cannot give this notice before the statute of limitations expires on all tort claims the person may have arising from the incident, unless the person attaches to the notice a written general waiver and release, in legal form, of all tort claims that the person has arising from the incident. The notice and waiver are not expungable, and the law enforcement unit is required to keep the notice and waiver until all applicable statutes of limitation expire. The person requesting expungement must provide the notice within eight years after the date of the underlying incident.

Law enforcement units that receive timely notices are required to promptly investigate and verify the facts in the notice. If the law enforcement unit finds that the facts are true, they have 60 days after receipt of the notice to search diligently for and expunge police records they have on the person pertaining to the underlying incident. The law enforcement unit then has to send a copy of the notice and its verification of the facts in the notice to: (1) the Central Repository; (2) each booking facility or law enforcement unit they believe may have a police record about the arrest, detention, or confinement of the person; and (3) the person requesting expungement. Entities contacted by the original law enforcement unit have 30 days to search diligently for and expunge police records they have about the underlying matter.

If the law enforcement unit that received the original notice believes the person is not entitled to expungement, the unit must inform the person in writing of the denial of the expungement request and the reasons behind the denial within 60 days after receipt of the notice. A person denied expungement can apply for an order of expungement in the District Court that has proper venue against the law enforcement unit within 30 days after written notice of the denial is mailed or delivered to the person. The District Court then notifies the law enforcement unit of the application and holds a hearing, to which the law enforcement unit is a party. The District Court can order expungement or deny the application. Each party to the proceeding is entitled to appellate review provided for civil cases from the District Court.

Unless the State objects and shows cause why a record should not be expunged, if the State enters a *nolle prosequi* as to all charges in a criminal case within the jurisdiction of the District Court with which a defendant has not been served, the District Court may

order expungement of each record that the State or a political subdivision of the State keeps as to the charges. The defendant may not be charged for expungement of these records.

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement 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.

A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or the grant of a pardon by the Governor, if the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding. A petition based on an acquittal, a *nolle prosequi*, or a dismissal may not be filed within three years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.

The State's Attorney is served with a copy of each petition for expungement. If the State's Attorney objects to the petition within 30 days, the court holds a hearing to determine whether the person is entitled to expungement.

A person may file a petition for expungement of records relating to a criminal charge that is transferred to the juvenile court: (1) after the date of the decision not to file a delinquency petition; (2) after the decision on the delinquency petition of facts-not-sustained; or (3) when the person becomes 21 years old, if the charge resulted in adjudication of the person as a delinquent child. The court is required to grant petitions filed pursuant to (1) and (2) but may exercise judicial discretion as to petitions filed pursuant to (3).

Background: The Maryland Criminal Justice Information System (CJIS) reports that on average, 12,000 people are arrested and released without charge in the State per year. In 2005, CJIS processed approximately 200,000 arrests. According to the *2004 Uniform Crime Report*, 309,777 arrests were made in Maryland in 2004.

State Expenditures: This bill requires automatic expungement of court and police records for a release without charge, acquittal, dismissal, probation before judgment, *nolle prosequi*, or stet. These provisions have a significant effect on State finances.

Criminal Justice Information System

Released without Charge: CJIS reports that on average, 12,000 people annually are arrested and released without charge in the State per year. A breakdown by jurisdiction was not made available to the Department of Legislative Services (DLS). The Centralized Booking Intake Facility (CBIF) in Baltimore City reports that 98,845 bookings took place at CBIF in 2005. Of this group, 23,606 were released without charge. Possible reasons for this discrepancy are: (1) incomplete reporting of release without charge incidents at CBIF to CJIS; and (2) the CBIF figure includes events that are not “reportable events” to CJIS.

Other Arrests Entitled to Expungement (acquittals, dismissal of charges, nolle prosequi, stet, etc.): CJIS reports that it processed approximately 200,000 arrests in 2005. CJIS estimates that 133,333 of these arrests fall into this category.

Expenditures to Process Expungements under this Bill: In 2005, CJIS received approximately 16,753 expungement orders. CJIS processes these orders with an eight-member staff. Accordingly, each CJIS expungement clerk processes 2,094 expungements per year. CJIS estimates 145,333 additional expungements would have to be processed per year under this bill. In order to process these additional expungements, CJIS would have to hire approximately 69 additional expungement clerks.

General fund expenditures for CJIS could increase by an estimated \$2,644,477 in fiscal 2007, which accounts for the bill’s October 1, 2006 effective date. This estimate reflects the cost of hiring 69 expungement clerks to perform 109,000 additional expungements in fiscal 2007. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	69
Salaries and Fringe Benefits	\$2,248,762
Operating Expenses	<u>395,715</u>
Total CJIS State Expenditures	\$2,644,477

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Centralized Intake Booking Facility

Since the State operates CBIF, there could be a one-time increase in State expenditures to reprogram CBIF computers. There are insufficient data at this time to reliably estimate this reprogramming cost.

District Court

The bill requires courts to automatically expunge court records within 30 days, thus increasing the number of expungements significantly. Generally, under current law these records may not be expunged until three years after the disposition of the case and are only expunged at the request of the petitioner. While additional clerical staff would be needed, there are insufficient data at this time to reliably estimate the costs of additional District Court personnel.

The bill repeals the disqualification from expungement eligibility if one charge in a unit of charges is ineligible for expungement. The District Court advises that since all charges are looped in a record, attempting to expunge one of the charges would destroy the record of the other charges that the court is required to maintain, unless extensive changes are made to the court's computer systems. Also, individuals previously ineligible for expungement could petition for expungement under the bill.

State Revenues:

District Court

With the exception of acquittals, the District Court of Maryland requires individuals petitioning for expungement of court records to pay a \$30 filing fee. Individuals who are released without charge do not apply to the District Court for expungement, since courts do not have records on individuals not charged with the commission of a crime.

In fiscal 2005, the District Court processed approximately 18,705 petitions for expungement and received \$516,150 in filing fees from petitions. The District Court estimates that in fiscal 2005, it processed 138,542 cases resulting in acquittals, dismissals, probations before judgment, *nolle prosequi*, and stet. The bill does not apply to these cases. However, assuming the same number of cases are processed in fiscal 2007, the repeal of the \$30 fee for this group alone represents foregone revenue of \$4,156,260 if the entire group would have requested expungements three years after disposition of the case as under current law. Accordingly, general fund revenues are expected to decrease by at least \$516,150 annually.

If an individual appeals an expungement decision from the circuit court, a \$25 surcharge is assessed. Revenue from this surcharge goes to the Maryland Legal Services Corporation. This revenue could also be lost under this bill.

Local Revenues: Circuit courts also receive petitions for expungement. According to the Uniform Court System (UCS) database, 256 petitions for expungement were processed in circuit courts in fiscal 2005. However, UCS does not include Baltimore City, Baltimore County, Montgomery County, or Prince George's County. In fiscal 2005, Baltimore County processed 180 petitions and Prince George's County processed 463 petitions. Since circuit courts also charge a \$30 petition for expungement fee, local revenues could be significantly decreased.

Local Expenditures: As with the District Court, the provisions involving a "unit" of charges would also affect circuit court computer systems. Elimination of the expungement waiting period and fee could also have an effect on circuit court expenditures by increasing the number of petitions for expungement. This could result in significant local expenditures.

Additional Information

Prior Introductions: HB 624 of 2004, as introduced, was identical to this bill; it passed the General Assembly in a substantially altered form.

Cross File: None.

Information Source(s): Prince George's County, Caroline County, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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