

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

Senate Bill 598 (Senator Hughes, *et al.*)  
Judicial Proceedings

**Criminal Procedure - Expungement of Police Records - Arrest Without Charge - Automatic**

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, including photographs and fingerprints, relating to the matter and is not required to pay any fee or costs in connection with the expungement.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by at least \$262,900 in FY 2007 accounting for the bill's October 1 effective date. Future years reflect annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	262,900	316,400	336,100	357,300	380,000
Net Effect	(\$262,900)	(\$316,400)	(\$336,100)	(\$357,300)	(\$380,000)

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

**Local Effect:** Any increase in expungements of local police records from this bill could be handled with existing resources.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill requires a law enforcement unit, within 30 days after the release of individuals meeting the above-mentioned criteria, 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 of compliance with the order. If a law enforcement unit, booking facility, or the Central Repository fails to expunge the police record, the individual entitled to the expungement may seek legal redress and is entitled to recover court costs and reasonable attorney's fees.

**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.

The District Court of Maryland generally requires individuals petitioning for expungement of police records to pay a \$30 filing fee. However, if a person is released without charge, courts will not have a record of the arrest. Persons who are released without charge must contact law enforcement units to request expungement and are not subject to the \$30 District Court fee. However, if a person applies to the District Court for an order of expungement following the denial of an expungement request by a law enforcement unit, District Court fees may apply.

**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.

**State Expenditures:** State expenditures would increase depending on the number of individuals released without charge. CJIS reports that on average, 12,000 people are arrested and released without charge in the State per year. 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. A breakdown by jurisdiction was not made available to the Department of Legislative Services (DLS). 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.

CJIS currently processes 16,000-17,000 expungements per year with an eight-member staff. CJIS does not receive any fees for expungements.

Using the CJIS figure, general fund expenditures could increase by an estimated \$262,925 in fiscal 2007, which accounts for the bill’s October 1, 2006 effective date. This estimate reflects the cost of hiring seven expungement clerks to perform 9,000 additional expungements in fiscal 2007. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$228,135
Operating Expenses	<u>34,790</u>
<b>Total FY 2007 State Expenditures</b>	<b>\$262,925</b>

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.

**Local Expenditures:** Any increase in expungements of local police records required by this bill could be handled with existing resources.

Montgomery County advises that it will need two additional police administrative assistants to handle the additional expungements of police records required by this bill. DLS disagrees with this assessment and believes that any additional expungements could be handled with existing resources and staff.

**Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 64 (Delegate Haynes) – Judiciary.

**Information Source(s):** Somerset County, Montgomery County, Prince George’s County, Judiciary (Administrative Office of the Courts), Department of State Police, Frederick County, Department of Public Safety and Correctional Services, Department of Legislative Services

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