

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 867 (Delegate Alston, *et al.*)
 Judiciary

**Criminal Procedure - Expungement and Shielding - Probation Before Judgment
 for Driving While Impaired or Under the Influence**

This bill authorizes a person to file a petition for expungement under § 10-105 of the Criminal Procedure Article if the person received a probation before judgment for a charge of violating § 21-902 of the Transportation Article (driving while under the influence or driving while impaired). The petition may not be filed within 10 years after the date the petitioner was discharged from probation. The bill also authorizes these individuals to petition to shield a police or court record for these dispositions under § 10-303 of the Criminal Procedure Article no earlier than five years after the person was discharged from probation for the offense. The bill makes corresponding technical changes.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by *as much as* \$1.1 million in FY 2025. Future year expenditures reflect annualization and inflation. Additional general fund expenditures may be incurred by affected State agencies, as discussed below. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,116,000	1,292,000	1,349,900	1,409,100	1,471,100
Net Effect	(\$1,116,000)	(\$1,292,000)	(\$1,349,900)	(\$1,409,100)	(\$1,471,100)

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

Local Effect: Local expenditures may increase for local entities to process expungement and shielding orders issued by courts, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Expungements

In general, a person seeking expungement of records pertaining to a criminal charge must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article. With some exceptions, § 10-105 applies to dispositions other than a conviction, and § 10-110 applies to expungements of convictions.

Expungement of a court or police 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; or
- 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.

Under § 10-105 of the Criminal Procedure Article, a person who has been charged with the commission of a crime for which a term of imprisonment may be imposed or who has been charged with a civil offense or infraction, except a juvenile offense, may 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, 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, convicted of possession of cannabis under § 5-601 of the Criminal Law Article, convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors, or who had a conviction vacated due to being a victim of human trafficking (as defined in statute), are also eligible for expungement of the associated criminal records under certain circumstances.

In general, a petition for expungement under § 10-105 based on an acquittal, a *nolle prosequi*, or a dismissal may not be filed within three years after the disposition, unless the petitioner files a written waiver and release of all tort claims arising from the charge. A petition based on a probation before judgment may not be filed before the petitioner's discharge from probation or three years after the probation was granted, whichever is later. A petition based on a *stet* with the requirement of drug or alcohol abuse treatment may not be filed before the petitioner's completion of treatment or three years after the *stet* was entered on the docket, whichever is later. Otherwise, a petition based on

stet or a compromise may not be filed within three years after the *stet* or compromise. A person is not entitled to expungement if (1) subject to a specified exception, the petition is based on the entry of probation before judgment 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.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the 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 or conviction in the unit.

Shielding

Section 10-303 of the Criminal Procedure Article authorizes a person to petition a court to shield the person's court records and police records relating to one or more "shieldable convictions" of the person entered in the circuit court or the District Court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. If a person is not eligible for shielding of one conviction in a "unit," the person is not eligible for shielding of any other conviction in the unit. A person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding petition for good cause.

"Shield" means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. Also, the Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the aforementioned authorization. "Shieldable conviction" means a conviction of 1 of a list of 12 specified crimes. A "unit" means two or more convictions that arise from the same incident, transaction, or set of facts. If the person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for shielding unless the new conviction becomes eligible for shielding. A person who is a defendant in a pending criminal proceeding is not eligible for shielding. A shielded conviction may not be considered a conviction for specified expungement provisions. Section 10-303 also contains provisions regarding continued access to shielded information by specified individuals and entities, prohibited disclosures of shielded information, and prohibited inquiries into a person's shielded information.

State Expenditures:

Judiciary

General fund expenditures for the Judiciary increase by *as much as* \$1.1 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring 19 clerks among the District Court and the circuit courts to process expungements under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	19.0
Salaries and Fringe Benefits	\$978,105
Operating Expenses	<u>137,864</u>
Maximum FY 2024 Judiciary Expenditures	\$1,115,969

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

According to the Judiciary, the following probations before judgment for violations of § 21-902 of the Transportation Article were entered in the District Court and the circuit courts:

- in fiscal 2022: 6,126 in the District Court and 858 in the circuit courts; and
- in fiscal 2023: 6,922 in the District Court and 1,140 in the circuit courts.

Based on data regarding dispositions eligible for expungement under the bill (including older dispositions) and estimated processing times for expungements, the Judiciary anticipates the need for at least 16 clerks in the District Court and 3 clerks in the circuit courts. While data is not available on the projected number of petitions that will be filed under the bill, given the cumulative number of eligible dispositions, the Department of Legislative Services (DLS) agrees that there may be a need for additional personnel. To the extent that fewer petitions than anticipated are filed or personnel can process expungements more efficiently than currently projected, expenditures for the Judiciary are less.

DLS also notes that the fiscal 2023 budget included 41 positions and \$3.0 million for the Judiciary to process cannabis expungements. The Judiciary advises that 33 of these positions have been filled – 12 in the District Court (3 in jurisdictions with a high volume of expungements overall and a 9-person expungement center to address potential filings from cannabis legalization) and 21 in the circuit courts. While the number of expungement petitions filed in the District Court increased in fiscal 2023 compared to fiscal 2022, it is still lower than previous years. Because the volume of cannabis expungement petition

filings has been lower than expected, the staff in the expungement center have been preparing for expungements required under Chapter 680 of 2021, which essentially established automatic expungements for cases resulting in specified dispositions and will commence beginning October 1, 2024. Given the additional clerical resources recently provided to the Judiciary and the lower than anticipated volume for cannabis expungements, existing personnel *may* be able to absorb some of the extra workload anticipated under the bill, which may further reduce expenditures.

The Judiciary notes that additional personnel beyond the positions discussed above are needed depending on the number of shielding petitions received, which cannot be reliably predicted at this time. However, DLS advises that the additional personnel accounted for in the estimate above can likely allow the Judiciary to accommodate any additional shielding petitions received due to the bill.

Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts in fiscal 2020 through 2022.

Exhibit 1
Petitions for Expungement
Fiscal 2021-2023

	<u>District Court</u>	<u>Circuit Court</u>
Fiscal 2021	39,061	5,940
Fiscal 2022	32,874	5,574
Fiscal 2023	38,563	7,688

Source: Maryland Judiciary

The Judiciary further advises that the bill requires changes to forms, brochures, and an instructional video, at a cost of \$11,740 (including restocking costs). DLS advises that given the frequency of changes to the expungement statutes in recent years, these are routine expenditures and can be implemented with existing budgeted resources.

Department of Public Safety and Correctional Services

General fund expenditures may increase for the Department of Public Safety and Correctional Services (DPSCS) to process expungement (or shielding) orders under the bill. DPSCS advises generally that the Criminal Justice Information System (CJIS) requires one additional administrative employee for every 2,500 additional orders for expungement it receives. However, DLS notes that CJIS has been routinely accommodating workloads

beyond the 2,500-caseload standard. The number of additional clerks needed cannot be reliably determined at this time and depends on the number of expungement orders issued by courts under the bill. *For illustrative purposes only*, the cost associated with hiring one administrative employee is approximately \$58,735 in fiscal 2025 and \$77,426 in fiscal 2029.

Department of State Police

The Department of State Police advises that it can implement the bill with existing budgeted resources.

Local Expenditures: The bill has an operational effect on local police departments and other entities that are custodians of records eligible for expungement or shielding under the bill. Depending on the volume of expungement and shielding orders received from the courts and the capacity to absorb this additional workload with existing resources, the bill may require local entities to employ additional personnel. However, Anne Arundel, Baltimore, and Frederick counties do not anticipate a fiscal impact.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 505 of 2023.

Designated Cross File: SB 118 (Senators Muse and Hettleman) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, and Frederick counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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