

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 13  
Judiciary

(Delegate Barron)

Judicial Proceedings

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**Criminal Procedure – Partial Expungement and Expungement of Misdemeanor Conviction**

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This bill establishes procedures for the “partial expungement” of eligible charges when two or more charges arise from the same incident, transaction, or set of facts, and one or more of the charges are not eligible for expungement. “Partial expungement” means the removal of an individual criminal charge from the Maryland Judiciary public Case Search website. The bill also authorizes the filing of a petition for expungement of a conviction for fourth-degree burglary. The bill is contingent on a determination by the State Court Administrator that the technical capabilities of the Judicial Information System and Case Search 2.0 are sufficient to comply with the bill’s requirements and funding for the required technical improvements is available in the State budget.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues beginning in FY 2022 from filing fees for petitions of expungement filed in the District Court. Potential significant increase in general fund expenditures beginning in FY 2022.

**Local Effect:** Potential minimal increase in local revenues beginning in FY 2022 from filing fees for petitions for expungement filed in the circuit courts. Workloads for State’s Attorneys may increase.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** For the most part, the procedures for a partial expungement under the bill mirror the procedures for a traditional expungement under § 10-105 of the Criminal Procedure Article. However, under the bill, a petition for partial expungement based on an acquittal, a *nolle prosequi*, or a dismissal, may be filed immediately, with specified exceptions. Under § 10-105, a petition for a traditional expungement based on these dispositions may not be filed within three years after the disposition, unless the petitioner files with the petition a general waiver and release of all the petitioner's tort claims arising from the charge.

As with a petition for a traditional expungement under § 10-105, a person is not entitled to partial 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.

As previously noted, the bill is contingent on a specified determination by the State Court Administrator concerning the technical capabilities of the Judicial Information System and Case Search 2.0 and the availability of funding for the required technical improvements in the State budget. The State Court Administrator must notify the Department of Legislative Services (DLS), the Senate Judicial Proceedings Committee, and the House Judiciary Committee within five days after determining that the contingencies have been satisfied. If that notification is not made by October 1, 2021, the State Court Administrator must issue a status report on October 1 and every six months thereafter until the contingencies have been satisfied.

**Current Law:** In general, §§ 10-105 and 10-110 of the Criminal Procedure Article establish eligibility for the expungement of records pertaining to a criminal charge or conviction. 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; 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.

### *Section 10-105 of the Criminal Procedure Article*

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 marijuana under § 5-601 of the Criminal Procedure Article, or convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors 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.

### *Section 10-110 of the Criminal Procedure Article*

Chapter 515 of 2016, also known as the Justice Reinvestment Act, established the availability of and procedures for expungements under § 10-110 of the Criminal Procedure Article. Chapter 515 expanded eligibility for expungements by authorizing an individual convicted of any of a list of approximately 100 specified misdemeanor offenses and the felony of bigamy (or an attempt, a conspiracy, or a solicitation of any of these offenses) to file a petition for expungement of the conviction, subject to specified procedures and requirements. Chapter 143 of 2018 further expanded eligibility for expungement to include convictions for the following felonies: theft under § 7-104 of the Criminal Law Article, possession with intent to distribute a controlled dangerous substance under § 5-602(2) of the Criminal Law Article, and burglary under §§ 6-202(a), 6-203, or 6-204 of the Criminal Law Article. **Appendix 1** contains an itemized list of convictions eligible for expungement under Chapter 515 of 2016 and Chapter 143 of 2018. If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

In general, a petition for expungement of these convictions is subject to a 10-year waiting period from when the petitioner completed the sentences imposed for all convictions for which expungement is sought, including parole, probation, or mandatory supervision. However, a petition for expungement of a felony or a conviction for misdemeanor second-degree assault, common law battery, or for an offense classified as a domestically related crime under § 6-233 of the Criminal Procedure Article is subject to a 15-year waiting period.

**Background:** As shown in **Exhibit 1**, the Judiciary advises that during fiscal 2018, there were 62,631 petitions for expungement filed in the District Court (53,771 cases expunged) and 7,909 petitions filed in the circuit courts (6,361 cases expunged).

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**Exhibit 1**  
**Expungement Petitions Filed in the District Court and the Circuit Courts**  
**Fiscal 2014-2018**

<u>Year</u>	<u>District Court</u> <u>Expungement Petitions Filed</u>	<u>Circuit Courts</u> <u>Expungement Petitions Filed</u>
2014	35,737	4,025
2015	32,726	2,448
2016	39,706	4,706
2017	47,697	6,811
2018	62,631	7,909

Source: Maryland Judiciary

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In general, the number of expungements received by the Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (DPSCS) has steadily increased over the years, as shown in **Exhibit 2**. CJIS advises that this increase is due to legislation expanding eligibility for expungements and an increase in the number of occupations and employers requiring background checks. The numbers shown in the exhibit 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.

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**Exhibit 2**  
**CJIS Expungements**  
**Calendar 2004-2018**

<u>Year</u>	<u>CJIS Expungements</u>	<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769	2012	30,654
2005	16,760	2013	34,207
2006	20,612	2014	33,801
2007	21,772	2015	36,412
2008	24,200	2016	41,854
2009	25,146	2017	48,211
2010	27,199	2018	59,026
2011	20,492		

CJIS: Criminal Justice Information System

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

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**State Revenues:** General fund revenues may increase minimally from filing fees for petitions for expungement of convictions for fourth-degree burglary filed in the District Court. Because the entire bill is contingent on a certification of technical capabilities by the State Court Administrator and notification of this compliance, this estimate assumes that expungements of convictions for fourth-degree burglary are not available until late 2021 (fiscal 2022).

Filing fees for partial expungement petitions filed in the District Court are not expected to materially affect State revenues. A petitioner for a partial expungement is most likely to be a person who has a unit of charges comprised of nonconviction dispositions that are eligible for expungement and a conviction that is not eligible for expungement. The Judiciary does not charge a fee for expungements, except for expungements of guilty dispositions (convictions), which are charged a \$30 filing fee.

**State Expenditures:** General fund expenditures for the Judiciary may increase significantly beginning in fiscal 2022 to employ additional staff, as discussed below. Workloads for the Maryland State Archives (MSA) may also increase.

### *Judiciary*

The Judiciary advises that in addition to the costs associated with Case Search 2.0, which is already in the planning stages, general fund expenditures increase by \$131,000 in fiscal 2021 only for computer reprogramming to accommodate partial expungements under

the bill. However, based on the contingency language of the bill, it appears that these expenditures and the funding associated with them occur outside of the bill and are the prerequisite for the bill's partial expungement provisions to take effect. Accordingly, this estimate does not reflect those costs.

However, general fund expenditures may increase significantly beginning in fiscal 2022 for the Judiciary to employ additional staff to process partial expungements. The Judiciary advises that while its Case Search system cannot remove data at the charge level, its new system, Case Search 2.0, will have this functionality. Case Search 2.0 is expected to debut in 2021 and cannot be deployed until the Maryland Electronic Courts System (MDEC) is fully operational statewide (also slated for 2021).

Assuming that both systems are fully deployed by October 1, 2021, additional staffing may be needed beginning in fiscal 2022. The Judiciary estimates that the bill will greatly increase the number of charges eligible for expungement, which has the potential to result in a tremendous number of petitions filed, requiring the addition of 16 clerks (4 in the District Court and 12 in the circuit courts), at a cost of \$805,591 in fiscal 2022 and \$1,003,121 in fiscal 2023. The Judiciary anticipates that the larger jurisdictions with the highest number of expungement petitions will need additional staff. According to the Judiciary, the circuit courts cannot share resources, and each circuit needs a clerk to process petitions filed under the bill.

DLS advises, however, that 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. While data exists on the types of dispositions of charges in criminal cases, barring examination of individual files, there is no correlation data for how many individuals have a unit of charges consisting of a nonconviction disposition eligible for expungement and a conviction that is not eligible for expungement under existing law. While the initial volume of petitions filed under the bill is likely to be significant and filed within a compressed time period, it is also probable that the volume and timing of petitions stabilize over time. Furthermore, once MDEC and Case Search 2.0 become fully operational in 2021, additional efficiencies may occur which could further mitigate the need for additional staff to complete the partial expungements required by the bill.

While the recipient of a partial expungement under the bill would have a partially redacted record on the Judiciary's Case Search website, the recipient may still have a conviction on the website and the recipient's actual records would remain intact. However, individuals eligible for a partial expungement under the bill may take advantage of the opportunity to expunge a portion of their criminal histories from the website, especially if there is no cost involved with the process.

While the bill is not limited to prospective dispositions, individuals with older convictions may decide not to pursue a partial expungement if their information is not on Case Search. According to the Judiciary's website, Case Search currently contains information on District Court cases dating back to late 1991; information on circuit court criminal cases vary by jurisdiction based on when the jurisdiction implemented an automated case management system and the evolution of the system in the jurisdiction. While Case Search contains information on Montgomery County circuit court criminal cases dating back to 1979, most jurisdictions have circuit court criminal case information dating back to 1999 or 2000, with circuit court information from Somerset County dating back to December 11, 2000.

For reference, the Judiciary received 18 clerk positions to implement the expungement provisions of the Justice Reinvestment Act, which greatly expanded the ability to (traditionally) expunge a criminal conviction as of October 1, 2017. All of these positions have been filled. Some of the existing clerks may be able to absorb the workload generated by the bill, especially as expungements of convictions start to stabilize and MDEC efficiencies are experienced. Under the bill, partial expungements will not be available until late 2021 at the earliest.

Assisting members of the public with their expungement petitions and processing those petitions is a time-consuming process, especially with respect to petitioners who arrive at courthouses with insufficient information about their criminal records. While the process of assisting a petitioner and evaluating a petition for partial expungement is similar to the process for a traditional expungement, a traditional expungement involves a lengthier process after an order for expungement is granted.

Under a traditional expungement, court records are moved or destroyed, and clerks must verify which local and State entities have relevant records, send notices of the expungement order to those entities, and track whether those entities complied with the expungement order within the statutorily prescribed timeline. None of those events occur with a partial expungement.

*For illustrative purposes only*, the cost associated with hiring one clerk is \$50,350 in fiscal 2022 (which accounts for the anticipated October 1, 2021 implementation date for partial expungements and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses), increasing to \$64,850 by fiscal 2024. Adding one clerk to the five jurisdictions with the highest case volume alone results in increased expenditures of \$251,747 in fiscal 2022, increasing to \$324,249 by fiscal 2024.

## *Maryland State Archives*

The bill may increase workloads for MSA. MSA maintains older court records. While a partial expungement does not involve the alteration or destruction of court records, the Judiciary advises that it may have to request older records from MSA in order to evaluate a petition for and process a partial expungement. MSA has historically advised that a modest increase in expungements does not create a fiscal impact; however, a significant increase in expungements requires operational adjustments to staff allocations to absorb the workload and may require additional staff resources in the future.

## *Treasurer's Office*

As previously noted, the bill authorizes a petition for a partial expungement based on an acquittal, a *nolle prosequi*, or a dismissal, to be filed immediately, with specified exceptions. However, under § 10-105, a petition for a traditional expungement based on these dispositions may not be filed within three years after the disposition, unless the petitioner files with the petition a general waiver and release of all the petitioner's tort claims arising from the charge. The three-year waiting period for expungements for acquittal, *nolle prosequi*, and dismissal dispositions under existing statute is related to the three-year statute of limitations for civil causes of action. Since a partial expungement does not involve denial of access to police and court records and does not involve the destruction of a record, the bill may result in the Treasurer's Office having to engage in additional work to obtain criminal history information (*e.g.*, pursuing information through CJIS) but does not prevent the office from investigating and defending claims against the State under the Maryland Tort Claims Act.

**Local Expenditures:** Workloads for State's Attorneys to review and respond to petitions for partial expungements may increase beginning in fiscal 2022. The extent of any correlating increase in expenditures depends on existing staffing and capacity, the geographical distribution of petitions for partial expungement, and whether State's Attorneys respond to petitions for partial expungements at the same rate and in the same manner as traditional expungement.

Many local governments are insured through the Local Government Insurance Trust (LGIT). LGIT advises that the bill's timelines for partial expungement partially limit its ability to investigate and defend claims, since LGIT often relies on Case Search to obtain information about a claimant's criminal history. LGIT advises that if it cannot access complete information on Case Search, it may have to start submitting subpoenas to CJIS to get criminal history information that is complete.



## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 238 (Senator Carter, *et al.*) - Judicial Proceedings.

**Information Source(s):** Worcester County; City of Westminster; Town of Leonardtown; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Public Safety and Correctional Services; Maryland State Archives; Office of the Attorney General; Maryland State's Attorneys' Association; Treasurer's Office; Local Government Insurance Trust; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

# Appendix – Convictions Eligible for Expungement

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## Convictions Eligible for Expungement under Section 10-110 of the Criminal Procedure Article

### Misdemeanors Eligible for Expungement

#### Alcoholic Beverages Article

AB, § 6-320 – Disorderly Intoxication

#### Business Occupations and Professions Article

BOP, § 17-613(a): Crimes relating to real estate brokers and agents (*e.g.*, failure to deposit money in trust accounts, engaging in discriminatory real estate practices, acting as a dual agent, providing brokerage services without a license, etc.)

#### Business Regulation Article

BR, § 5-610: Violation of Business Regulation Article, Title 5, Subtitle 6 (perpetual care of cemeteries)

BR, § 5-712: Failure to deposit money received under or in connection with a preneed burial contract

BR, § 5-904: Violation of any provision of Title 5, Subtitle 9 of the Business Regulation Article (cemetery-related violations – failure to register as operator, operating a cemetery without the proper form of business entity, and unauthorized representations)

BR, § 19-304: Violations of laws relating to returnable containers and returnable textiles (improper use, improper registration, defacing, etc.)

BR, § 19-308: Violations of laws relating to plastic secondary packaging

#### Courts and Judicial Proceedings Article

CJ, § 3-1508: Failure to comply with a peace order

CJ, § 10-402: Divulging contents of communications (subsection (d))

#### Commercial Law Article

CL, § 14-1915: Violations of the Maryland Credit Services Businesses Act

CL, § 14-2902: False and fraudulent advertising

CL, § 14-2903: Bait and switch

## Criminal Procedure Article

CP, § 5-211: Failure to surrender after forfeiture of bail or recognizance

## Criminal Law Article

CR, § 3-203: Assault in the second degree (misdemeanor)

CR, § 3-808: Filing a fraudulent lien or encumbrance

CR, § 5-601: Possession or administration of a controlled dangerous substance (not involving use or possession of marijuana)

CR, § 5-618: Possession or purchase of noncontrolled substance that the person reasonably believes is a controlled substance

CR, § 5-619: Use or possession of drug paraphernalia

CR, § 5-620: Obtaining, possessing, or distributing controlled paraphernalia

CR, § 5-703: Unsolicited mailing of a controlled dangerous substance, prescription drug, or medicine

CR, § 5-708: Smelling or inhaling harmful substances

CR, § 5-902: Omitting, removing, altering, or obliterating a symbol required by federal law for a substance governed by Title 5 of the Criminal Law Article (controlled dangerous substance (CDS), prescriptions, and other substances); refusal or failure to maintain specified documentation required under Title 5; refusing entry into a premises or inspection of a premises authorized under Title 5), maintaining a place resorted to by others for illegal use of CDS or for the keeping or selling of a CDS; unauthorized manufacturing, dispensing, or distribution of CDS by a registrant; CDS/paraphernalia-related violations by authorized provider; and contraband

CR, § 6-105: Malicious burning of personal property in the second degree

CR, § 6-108: Willful and malicious burning of a trash container

CR, § 6-206: Breaking and entering a motor vehicle – rogue and vagabond

CR, § 6-303: Public utility interference – electrical equipment

CR, § 6-306: Alteration of manufacturer's serial number or sale of good with altered serial number

CR, § 6-307: Sale or possession of stolen serial number or vehicle identification plate or possession of a manufactured serial number or vehicle identification plate with intent to affix to stolen property or use for fraudulent purposes.

CR, § 6-402: Trespass on posted property

CR, § 6-503: Unauthorized riding on railroad vehicle or unauthorized entry onto railroad property

CR, § 7-104: General theft (less than \$100 and at least \$100 but less than \$1,500)

CR, § 7-203: Unauthorized removal of property

CR, § 7-205: Abandonment of or failure to return leased or rented motor vehicle

CR, § 7-304: Obtaining telephone records without authorization

CR, § 7-308: Prohibited transfer of recorded sounds or images (penalty contained in CR, § 7-309)

CR, § 8-103: Obtaining property or services by bad check (less than \$100 and at least \$100 but less than \$1,500)

CR, § 8-206: Misdemeanor credit card crimes (less than \$100 and at least \$100 but less than \$1,500)

CR, § 8-401: Fraudulent conversion of partnership assets

CR, § 8-402: Fraudulent misrepresentation by corporate officer or agent

CR, § 8-404: Pyramid promotional schemes

CR, § 8-406: Misuse of documents of title

CR, § 8-408: Unlawful subleasing of motor vehicle

CR, § 8-503: Public assistance fraud – generally

CR, § 8-521: Fraudulently obtaining legal representation from the Office of the Public Defender

CR, § 8-523: Housing assistance fraud, making false statements

CR, § 8-904: Racing a horse under a name other than its registered name

CR, § 9-204: Bribing a person participating in or connected with an athletic contest

CR, § 9-205: Acceptance of a bribe by a person participating in or connected with an athletic contest

CR, § 9-503: Making a false statement to a State or local official/agency concerning a crime or hazard

CR, § 9-506: Making a false statement on an application for funds from the Maryland Higher Education Commission

CR, § 10-110: Illegal Dumping and Violation of Litter Control Law

CR, § 10-201: Disturbing the peace and disorderly conduct

CR, § 10-402: Unlawful removing or attempting to remove human remains from burial site

CR, § 10-404: Removal or destruction of funerary objects, graveyard plants, disorderly conduct in graveyards

CR, § 10-502: Bigamy (listed as a misdemeanor but is a felony)

CR, § 11-306(a): Prostitution

CR, § 12-102: Betting, wagering, gambling, etc.; pool on races/contests

CR, § 12-103: Playing specified games for money (*e.g.*, craps, thimbles, etc.)

CR, § 12-104: Keeping a gaming device or a place for gambling

CR, § 12-105: Offshore gambling

CR, § 12-109: Prearrangement or predetermination of horse race results

CR, § 12-203: Holding a lottery or selling a lottery device

CR, § 12-204: Keeping a location for the sale or barter of lottery devices

CR, § 12-205: Importing a lottery device or possession of lottery records or money

CR, § 12-302: Unlawful possession or operation of a slot machine

## Election Law Article

EL, § 13-401: Failure to comply with authority line requirements in campaign material

EL, § 13-602: Specified campaign finance/election-related violations (*e.g.*, providing money/aid or a thing of value to induce or procure a vote, influence by employer of employee's vote, etc.)

EL, § 16-201: Voting-related offenses (*e.g.*, impersonation of another in order to vote, voting under a false name, etc.)

## Family Law Article

FL, § 4-509: Failure to comply with protective order

## Health General Article

HG, § 18-215: Violations relating to infectious or contagious disease reports

## Housing and Community Development Article

HCD, § 4-411: Making a false statement or report to the Department of Housing and Community Development (DHCD) for Rental Housing Program loan

HCD, § 4-2005: Making a false statement or report to DHCD for Energy-Efficient Homes Construction Loan Program loan

## Insurance Article (fraudulent insurance acts)

IN, § 27-403: Failure to return premiums, making false or misleading claims to an insurer

IN, § 27-404: Insurer doing business with unlicensed persons

IN, § 27-405: Representations to public by unlicensed persons

IN, § 27-406: False applications and statements; unregulated insurers

IN § 27-406.1: Fraudulent insurance acts of individual sureties

IN, § 27-407: Solicitation of injured persons; solicitation of clients for lawyer or health care practitioner

IN, § 27-407.1: Organizing, planning, or knowingly participating in an intentional motor vehicle accident

IN, § 27-407.2: Compensation for insurance deductible

## Public Safety Article

PS, § 5-307: Scope of handgun permit (listed in statute but is not a crime)

PS, § 5-308: Possession of handgun permit required

PS, § 6-602: Interference or obstruction of fire marshal, false representation as a fire marshal

PS, § 7-402: Interference, obstruction of fire or emergency services personnel

PS, § 14-114: Violation of order, rule, or regulation issued under Maryland Emergency Management Agency Act

### Real Property Article

RP, § 7-318.1: Failure of foreclosure consultant to obtain a real estate broker's license or violation by foreclosure consultant of Maryland Real Estate Brokers Act

RP, § 7-509: Does not refer to a prohibited act – penalty provision for violations of provisions of Maryland Mortgage Assistance Relief Services Act

RP, § 10-507: Violation of Custom Home Protection Act (subsection (b)(3))

### State Government Article

SG, § 9-124: Prohibited acts relating to State lottery

### Tax General

TG, § 13-1001: Willful failure to file tax return

TG, § 13-1004: Income tax preparer – false return, false claim for refund, or attempted tax evasion

TG, § 13-1007: Violations of income tax withholding requirements

TG, § 13-1024: Failure to provide information with intent to evade taxes

### Common Law Offenses

Affray

Battery

Criminal contempt

Hindering a law enforcement officer

Rioting

### **Felonies Eligible for Expungement**

#### Criminal Law Article

CR, § 7–104: General Theft (at least \$1,500)

CR, § 5-602(2): Possession with intent to distribute a controlled dangerous substance

CR, § 6-202(a): Burglary in the first degree – breaking and entering with intent to commit theft

CR, § 6-203: Burglary in the second degree

CR, § 6-204: Burglary in the third degree

An attempt, conspiracy, or solicitation of any offense listed above is also eligible for expungement under CP, § 10-110