

Department of Legislative Services

Maryland General Assembly

2021 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

House Bill 238

(Delegate Wells)

Judiciary

Judicial Proceedings

Criminal Procedure - Expungement of Records

This bill establishes that beginning October 1, 2021, any records maintained by the State or a political subdivision of the State relating to the charging of a crime or a specified civil offense that resulted in specified dispositions must be expunged three years after disposition of the charge. The bill also requires a court to provide a defendant with notice of the defendant's right to expungement under specified circumstances.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for State agencies to comply with the bill's requirements, as discussed below. Revenues are not affected.

Local Effect: Potential increase in local expenditures for affected local agencies to comply with the bill's requirements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill essentially establishes automatic expungements for cases resulting in specified dispositions and requires a court to notify a defendant eligible for an automatic expungement of the defendant's right to a petition-based expungement under existing statute.

Automatic Expungement

Beginning October 1, 2021, any police record, court record or other record maintained by the State or a political subdivision of the State relating to the charging of a crime or a civil offense under § 5-601 (c)(2)(ii) of the Criminal Law Article (possession of less than 10 grams of marijuana), including a must-appear violation of the Transportation Article, must be expunged three years after a disposition of the charge if no charge in the case resulted in a disposition other than acquittal; dismissal; not guilty; or *nolle prosequi*, other than *nolle prosequi* with a requirement of drug or alcohol treatment.

For a case eligible for expungement under these conditions, the court must send notice of the disposition of each charge in the case and the date on which expungement is required to the (1) Central Repository; (2) each booking facility, law enforcement unit, and other unit of the State and political subdivision of the State that the court believes may have a record subject to expungement under these conditions; and (3) the person entitled to expungement.

Notice to Defendant of Availability of Petition-based Expungement

After disposition of all charges of a case eligible for an expungement described above, the court must notify the defendant of the defendant's right to expungement under § 10-105 of the Criminal Procedure Article (petition-based expungement). The court must notify the defendant by mail if the defendant is not present in court for the disposition. The notice the court must provide must include a written form for general waiver and release of all tort claims relating to the charge or charges eligible for expungement.

Current Law: To begin the process of expungement, a petitioner must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article, which establishes eligibility for the expungement of records pertaining to a criminal charge or conviction. In general, § 10-110 applies to expungements of convictions, and § 10-105 applies to the expungement of criminal charges that resulted in a disposition other than a 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; 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.

Pursuant to § 10-107 of the Criminal Procedure Article, 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. This “unit rule” applies to expungements under §§ 10-105 and 10-110.

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 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 3 years after the disposition, unless the petitioner files a written waiver and release of all tort claims arising from the charge.

The following waiting periods also apply:

- a petition based on probation before judgment or a *stet* with the requirement of drug or alcohol abuse treatment may not be filed before the later of (1) the petitioner’s discharge from probation or completion of treatment or (2) 3 years after the probation was granted or the *stet* was entered on the docket;
- a petition based on stet or a compromise may not be filed within 3 years after the stet or compromise;
- a petition for expungement based on a conviction of a public nuisance crime or a finding of not criminally responsible for a public nuisance crime or specified misdemeanors may not be filed within 3 years after the conviction or satisfactory completion of the sentence or the court’s finding of not criminally responsible;
- a petition based on a *nolle prosequi* with the requirement of drug or alcohol treatment may not be filed before the completion of treatment;

- a petition for expungement of a conviction for possession of marijuana may not be filed within 4 years after the conviction or the satisfactory completion of the sentence, whichever is later;
- a petition for expungement based on a full and unconditional gubernatorial pardon must be filed within 10 years after the pardon was signed by the Governor;
- a petition for expungement based on a conviction of a crime based on an act that is no longer a crime may be filed at any time; and
- a person may petition the court for expungement at any time based on a showing of good cause.

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.

Timeline for Expungement

Maryland's expungement process for removing an eligible record takes a minimum of 90 days. If a State's Attorney or victim, as applicable, objects, the court must hold a hearing on the petition. If an objection is not filed within 30 days, as specified, the court must pass an order requiring the expungement of all police and court records concerning the charges. After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

State Expenditures: General fund expenditures may increase significantly for State agencies to expunge records in accordance with the bill. This analysis assumes that the bill applies only to applicable dispositions of charges occurring on or after the bill's October 1, 2021 effective date.

Judiciary

General fund expenditures for the Judiciary may increase significantly to comply with the bill's provisions, including by as much as \$350,000 in fiscal 2022 for computer programming and significant expenditures for additional personnel, as discussed below. Additional general fund expenditures are incurred for the Judiciary to mail notices of expungement eligibility to defendants as required under the bill.

The bill requires the automatic expungement of court records in cases involving specified dispositions, as opposed to the current petition-based process for most expungements.

Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts in fiscal 2019 and 2020.

Exhibit 1
Petitions for Expungement
Fiscal 2019 and 2020

	<u>District Court</u>	<u>Circuit Court</u>
Fiscal 2019	74,508	10,951
Fiscal 2020	55,105	8,642

Source: Maryland Judiciary

Exhibit 2 contains information on the number of cases in fiscal 2019 and 2020 that were disposed of entirely by (1) acquittal; (2) dismissal; (3) not guilty; or (4) *nolle prosequi*, except *nolle prosequi* with a requirement of drug or alcohol treatment.

Exhibit 2
Cases Eligible for Automatic Expungement Under the Bill
Fiscal 2019 and 2020

	<u>District Court Criminal</u>	<u>District Court Must Appear Traffic</u>	<u>Civil – Possession of Less Than 10 Grams of Marijuana</u>	<u>Circuit Court Cases</u>
Fiscal 2019	95,294	217,396	17,127	9,102
Fiscal 2020*	74,666	159,060	11,840	7,604

*Fiscal 2020 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

The Judiciary assumes that an automatic expungement process requires 0.25 hours (15 minutes) to complete, compared to the 1.5 hours (90 minutes) required to process a traditional petition-based expungement. Contributors to this difference include the elimination of procedural requirements for automatic expungements, such as verification of compliance by applicable custodians of records, the review of and hearings on petitions,

as well as the anticipated statewide implementation of the Maryland Electronic Courts system.

Applying this assumption to the number of eligible cases cited in Exhibit 2, the Judiciary advises that it requires 68 clerks in the District Court and 2 clerks in the circuit courts to implement the bill, at a cost of \$4.0 million in fiscal 2022, increasing to \$5.1 million by fiscal 2026.

However, the Department of Legislative Services (DLS) advises that the actual need for additional court personnel can only be determined with actual experience under the bill and is dependent on (1) the bill's overall effect on the number of expungement petitions filed and automatic expungements required and (2) the distribution of expungements between these categories. Some of the cases eligible for automatic expungements under the bill may be the subject of current petitions for expungements under existing statute and may continue to be the subject of a petition for expungement under the bill if a defendant (especially after receiving direct notice from the court) decides to sign a waiver and release of tort claims and petition for expungement earlier than three years after disposition of charges free of charge, since the Judiciary does not charge a fee to file a petition to expunge the dispositions affected by the bill. Also, if the Judiciary's assumption of the amount of time required to process an automatic expungement is accurate, six automatic expungements can be processed in the amount of time needed for one petition-based expungement.

Regardless, personnel-related expenditures for the Judiciary may be significant. *For illustrative purposes only*, the cost associated with one clerk is approximately \$57,200 in fiscal 2022 and increases to \$73,400 by fiscal 2026; costs associated with adding one clerk in *each* District Court location are approximately \$1.9 million in fiscal 2022 and a minimum of \$2.2 million annually thereafter. Furthermore, the timing of the need for additional personnel is also affected, since the initial phases of the bill's implementation include notification to defendants and applicable custodians of records and expungement of records in response to an anticipated increase in petitions; the final phase of implementation, which begins three years after the bill's effective date, includes expungement of court records eligible for an automatic expungement.

The Judiciary advises that the bill requires approximately \$6,000 in additional expenditures to revise and restock the expungement form and brochures. DLS advises that the revision of forms in response to statutory changes is a routine function of the Judiciary and can be incorporated into regular printing orders.

Department of Public Safety and Correctional Services

The Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (DPSCS) is the Central Repository for criminal record history information in Maryland. CJIS may experience increased volume in expungements since eligible individuals do not need to petition for expungement.

DPSCS advises that it can comply with the bill's requirements using existing budgeted resources so long as it receives notification from the courts of eligible cases/records. However, DPSCS did not provide adequate clarification and explanation of this assessment. DPSCS has traditionally advised that CJIS requires one additional administrative employee for every 2,500 additional orders for expungement it receives. Depending on the overall effect of the bill on CJIS workloads, CJIS may require additional personnel. It should be noted that a traffic law violation is not a "reportable event" to CJIS. Also, use and possession of less than 10 grams of marijuana is a civil offense, not a criminal offense; DPSCS did not provide information on what, if any, information CJIS receives regarding those civil violations.

The cost associated with each additional administrative position is approximately \$61,500 in fiscal 2022 and increases to \$79,400 by fiscal 2026. As noted above, any need for additional personnel may not materialize until future years, once the first cohort of automatic expungements need to be processed.

DPSCS advises that CJIS has received the following number of expungement orders from courts in recent years: 48,848 in fiscal 2017; 69,771 in fiscal 2018; and 72,925 in fiscal 2019. While the workload for CJIS has increased in recent years, the unit has not experienced a corresponding increase in staffing, and CJIS has been accommodating workloads beyond the 2,500 caseload standard.

Department of State Police

Depending on the workload generated by the bill, general fund expenditures for the Department of State Police (DSP) increase by *as much as* \$290,000 in fiscal 2022 *if* DSP has to hire three administrative personnel and create a computerized tracking system to log court notifications of eligible automatic expungements and internally document compliance with expungements; fiscal 2026 expenditures total approximately \$162,500. These costs may be mitigated depending on actual changes to DSP workloads under the bill and the notification system implemented by the courts. As with other affected entities, the potential need for additional personnel due to the bill may not completely materialize until future years, once the automatic expungement process is fully implemented.

Motor Vehicle Administration

While the bill refers to must-appear violations of State traffic laws, the bill is not anticipated to affect the Motor Vehicle Administration (MVA). The bill alters provisions of the Criminal Procedure Article; MVA advises that it retains and expunges driving records in accordance with the provisions of the Transportation Article. The Transportation Article requires MVA to automatically expunge a driving record depending on specified factors, such as the length of time since the individual's most recent conviction for a moving violation or a "criminal offense" involving a motor vehicle and administrative actions taken on the individual's driver's license. However, MVA is also statutorily prohibited from expunging specified driving record entries.

Other Agencies

Additional State agencies (*e.g.*, the Department of Natural Resources) may also incur additional expenditures should they experience a demonstrable increase in workload under the bill. However, these agencies tend to have fewer interactions with expungement-eligible records than the agencies mentioned above.

Local Expenditures: Local expenditures may increase for local law enforcement agencies to expunge records in accordance with the bill. State's Attorneys' offices may initially experience increased workloads if they have to expunge additional records under the bill or respond to additional petitions for expungement; however, this increased workload may eventually be partially or completely offset by a decrease in workload for expungements processed automatically that would otherwise be the subject of a petition under existing procedures. Automatic expungements under the bill are not subject to an objection by a State's Attorney or a hearing. This analysis assumes that should State's Attorneys' offices experience an overall reduction in workload, those resources will be directed toward other prosecutorial responsibilities.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Carroll and Harford counties; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Maryland State Archives; Maryland State Treasurer's Office;

Local Government Insurance Trust; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2021
an/jkb Third Reader - April 12, 2021
Revised - Amendment(s) - April 12, 2021

Analysis by: Amy A. Devadas

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