

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1269

(Delegate W. Fisher)

Judiciary

Criminal Procedure - Expungement of Records - Waiting Period

This bill reduces, from 3 years to 18 months, the waiting period applicable to filing specified petitions for expungement of records under § 10-105 of the Criminal Procedure Article.

Fiscal Summary

State Effect: Potential increase in special fund expenditures for the State Insurance Trust Fund (SITF) and general fund expenditures for SITF assessments, as discussed below. The bill is not expected to materially affect general fund expenditures for the Judiciary. The bill is not anticipated to materially affect State revenues.

Local Effect: Potential increase in local expenditures for payment of claims involving expunged records. The bill is not expected to materially affect local revenues.

Small Business Effect: Minimal.

Analysis

Bill Summary/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.

Under current law, 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. 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) *three 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 *three years* after the stet or compromise; and

- 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 *three years* after the conviction or satisfactory completion of the sentence or the court's finding of not criminally responsible.

The bill reduces the waiting periods for these petitions from 3 years to 18 months.

The bill does not alter the following waiting periods or time-related provisions:

- 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.

Under current law, 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. The bill does not alter this provision.

State Expenditures: Special fund expenditures may increase for SITF and general fund expenditures may increase for agencies subject to higher SITF premium assessments under the bill. The bill is not expected to materially affect general fund expenditures for the Judiciary.

Judiciary

The bill is not expected to materially affect general fund expenditures for the Judiciary. While the bill may alter the pace of expungement petitions received during the first three years of implementation, petition volume will eventually stabilize as petitioners and the courts become acclimated to the waiting period under the bill. The bill is not

expected to affect the overall volume of petitions filed, since it affects the timing of petitions rather than general eligibility to file a petition for expungement.

The Judiciary advises that the bill requires approximately \$9,600 in additional expenditures to revise and restock the expungement form and brochures. The Department of Legislative Services 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.

State Insurance Trust Fund and Affected Agencies

Special fund expenditures for SITF increase to the extent that the bill's alteration of the waiting period to file specified petitions for expungement increase payments for claims under the Maryland Tort Claims Act (MTCA). General fund expenditures increase for agencies subject to higher premium assessments only if the increase in MTCA claims payments under the bill results in a significant increase in claims paid. The extent of this increase cannot be reliably estimated at this time.

The three-year waiting period for expungements is related to the three-year statute of limitations for civil causes of action. If a police and/or court record is expunged prior to receipt or notification of a claim under MTCA by the Treasurer's Office (STO), then the STO may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations. While MTCA requires a claimant to submit a claim to the Treasurer or the Treasurer's designee within one year after the injury that is the basis of the claim, STO advises that the one-year claim requirement under MTCA has been expanded to include the agency on notice of the incident. Under such situations, while the agency may be aware of the claim, STO may not be notified of the claim until three years later when a lawsuit on the claim is filed under the general statute of limitations for civil claims. False imprisonment by law enforcement is an example of the type of MTCA claim that may be related to an expunged record under the bill.

Local Expenditures: Local expenditures may increase if the bill affects the ability of local governments to investigate and address tort claims.

The Local Government Tort Claims Act (LGTCA) is the local government counterpart to MTCA. Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT advises that judicial interpretation of LGTCA's one-year notice requirement has diluted the authority of that requirement under the Act. Thus, any waiting period that is shorter than the statute of limitations for a civil claim affects LGIT's (and a local government's) ability to investigate and defend against claims.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 201 (Senators Patterson and Sydnor) - Judicial Proceedings.

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 Legislative Services

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