

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 710
(Senator Patterson)
Judicial Proceedings

Criminal Procedure - Expungement of Records - Modifications

This bill expands eligibility to petition for an expungement under §§ 10-105 and 10-110 of the Criminal Procedure Article. Among other things, the bill (1) authorizes a person to petition to expunge records related to a conviction for any misdemeanor or any felony (other than felonies specifically excluded under the bill) and (2) alters various waiting periods for filing a petition for expungement.

Fiscal Summary

State Effect: Significant increase in general fund expenditures for implementation and compliance with the bill, as discussed below. Minimal increase in general fund revenues from filing fees.

Local Effect: Potential increase in expenditures for affected entities to process expungements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Automatic Expungements – § 10-105.1 of the Criminal Procedure Article (Not Amended by the Bill)

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 (1) the 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 – § 10-105.2 of the Criminal Procedure Article (Not Amended by the Bill)

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.

Petition-based Expungement of a Court or Police Record

Under current law, other than the automatic expungements described above, 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.

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.

The bill expands the definition of “police record” (which is applicable to the entire subtitle) to include an arrest warrant and a fugitive warrant.

Section 10-105 of the Criminal Procedure Article

Eligibility Under § 10-105: 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.

The bill adds a person who is the subject of an arrest warrant or a fugitive warrant that is invalidated to the list of individuals eligible for expungement under § 10-105.

Waiting Periods Under § 10-105: 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 general waiver and release of all tort claims arising from the charge.

The bill authorizes a person to file for expungement of these dispositions *immediately without having to file a general waiver and release of all tort claims arising from the charge*. However, a police or court record expunged under these circumstances may not be expunged by obliteration until three years after the date of the disposition of the charge. During this three-year period, the records must be removed to a separate secure area to which persons who do not have a legitimate reason for access are denied access. A legitimate reason for accessing the records includes the use of the records for purposes of proceedings relating to the arrest or charge.

Under current law, a petition based on a 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 for expungement based on a *nolle prosequi* with the requirement of drug or alcohol treatment may not be filed until the completion of the required treatment.

Under the bill, a petition for expungement based on a *nolle prosequi*, probation before judgment, or a stet with the requirement of drug or alcohol treatment may not be filed until the completion of the required treatment. The bill does not appear to address when a probation before judgment without required drug or alcohol treatment may be filed.

Under current law, a petition based on stet or a compromise may not be filed within *three years* after the stet or compromise. The bill shortens this waiting period to *one year* after the stet or compromise.

Under current law, a petition for expungement based on a conviction of a public nuisance crime may not be filed within *three years* after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later. The bill shortens this waiting period to *one year* after the conviction or satisfactory completion of the sentence, whichever is later.

Under current law, a petition based on a finding of not criminally responsible for a public nuisance crime or specified misdemeanors may not be filed within *three years* after the court's finding of not criminally responsible. The bill shortens this waiting period to *one year* after the court's finding of not criminally responsible.

Under current law, a petition to expunge a conviction for possession of marijuana under § 5-601 of the Criminal Law Article may not be filed within *four years* after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction. The bill shortens this waiting period to *one year* after the conviction or satisfactory completion of the sentence, whichever is later.

Persons Not Entitled to Expungement Under § 10-105: 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 removes the three-year time restriction for subsequent convictions under this provision. Thus, under the bill, 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 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

Offenses Eligible Under § 10-110: Section 10-110 of the Criminal Procedure Article authorizes an individual convicted of any of a list of approximately 100 specified offenses 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.

The bill repeals the list of specified offenses under § 10-110. Instead, the bill establishes that a person may file a petition to expunge a conviction for *any misdemeanor or a felony other than* a crime of violence (under § 14-101 of the Criminal Law Article); a hate crime under Title 10, Subtitle 3 of the Criminal Law Article; a crime of animal cruelty under Title 10, Subtitle 6 of the Criminal Law Article; or a crime requiring the person to register as a sex offender under Title 11, Subtitle 3 of the Criminal Law Article. It should be noted that (1) not all of the offenses listed under some of these cited subtitles are felonies and (2) Title 11, Subtitle 7 of the Criminal Procedure Article addresses sex offender registration.

Waiting Periods Under § 10-110: In general, a petition to expunge a misdemeanor conviction under § 10-110 cannot be filed earlier than 10 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. A petition to expunge a conviction for second-degree assault, common law battery, a “domestically related crime,” or a felony may not be filed earlier than 15 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

The bill establishes the following waiting periods under § 10-110:

- *Felonies, assault in the second degree (§ 3-203 of the Criminal Law Article), common law battery, or a “domestically related crime” under § 6-233 of the Criminal Procedure Article* – the later of five years after the date of the conviction or the date the person satisfies the sentence(s) imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision; and
- *Misdemeanors (other than those listed above)* – the later of three years after the date of the conviction or the date the person satisfies the sentence(s) imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

Subsequent Convictions: If the person is convicted of a new crime during the applicable waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement. The bill does not alter this provision.

Pending Criminal Proceeding and Unit Rule: A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding. 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. The bill does not alter these provisions.

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. The bill does not alter these provisions.

Crimes of Violence

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Revenues: General fund revenues increase minimally from filing fees for petitions for expungement. The courts charge a \$30 filing fee for a petition to expunge a guilty disposition (conviction), though fee waivers are available.

State Expenditures: General fund expenditures increase significantly for the Judiciary to expunge records in accordance with the bill. The bill results in additional expenditures and operational impacts for additional agencies, as discussed below.

Judiciary

General fund expenditures for the Judiciary increase significantly to comply with the bill's provisions, including the Judiciary's estimate of \$145,065 in fiscal 2023 for computer programming and significant expenditures for additional personnel, as discussed below. The bill also likely results in additional court time for hearings on petitions.

The bill (1) expands convictions eligible for expungement under § 10-110 and (2) alters the waiting periods for expungements under §§ 10-105 and 10-110. **Exhibit 1** contains information on the number of petitions for expungement filed in the trial courts in fiscal 2019 through 2021 under §§ 10-105 and 10-110.

Exhibit 1 **Petitions for Expungement** **Fiscal 2019-2021**

	<u>District Court</u>	<u>Circuit Courts</u>
Fiscal 2019	74,508	10,951
Fiscal 2020*	55,105	8,642
Fiscal 2021*	39,061	5,940

*Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

Exhibits 2 and 3 contain information on the number of cases in the District Court and the circuit courts during fiscal 2019 through 2021 that contained a single misdemeanor violation, cases that contained multiple charges but only misdemeanors, and cases that contained both misdemeanors and felonies. The data excludes crimes of violence under § 14-101 of the Criminal Law Article, crimes which require a defendant to register on the sex offender registry under Title 11, Subtitle 7 of the Criminal Procedure Article, hate crimes listed under Title 10, Subtitle 3 of the Criminal Law Article, and crimes of animal cruelty listed under Title 10, Subtitle 6 of the Criminal Law Article.

Exhibit 2
District Court Cases – Misdemeanors and Felonies with Exclusions
Fiscal 2019-2021

Fiscal Year	Number of Cases with Misdemeanor Charge**	Number of Cases with at Least One Felony Charge**	Totals
2019	87,826	14,492	102,318
2020*	67,956	11,841	79,797
2021*	65,746	12,147	77,893

* Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

** Excludes crimes of violence under § 14-101 of the Criminal Law Article, crimes which require a defendant to register on the sex offender registry under Title 11, Subtitle 7 of the Criminal Procedure Article, hate crimes listed under Title 10, Subtitle 3 of the Criminal Law Article, and crimes of animal cruelty listed under Title 10, Subtitle 6 of the Criminal Law Article.

Source: Maryland Judiciary

Exhibit 3
Circuit Court Cases – Misdemeanors and Felonies with Exclusions
Fiscal 2019-2021

Fiscal Year	Number of cases with Misdemeanor Charge (with exclusions)**	Number of Cases with at Least One Felony Charge (with exclusions)**	Totals
2019	16,244	11,016	27,260
2020*	12,148	7,680	19,828
2021*	7,486	6,217	13,703

* Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

** Excludes crimes of violence under § 14-101 of the Criminal Law Article, crimes which require a defendant to register on the sex offender registry under Title 11, Subtitle 7 of the Criminal Procedure Article, hate crimes listed under Title 10, Subtitle 3 of the Criminal Law Article, and crimes of animal cruelty listed under Title 10, Subtitle 6 of the Criminal Law Article.

Source: Maryland Judiciary

The bill authorizes the expungement of convictions previously ineligible due to the offense and the expungement of nonconviction dispositions that were previously ineligible because

SB 710/ Page 8

they were contained in a unit of charges that included an ineligible conviction. The bill's shortening of waiting periods may also expand eligibility for expungement, since petitioners need to meet certain requirements during the statutory waiting period and some petitioners may be waiting for subsequent convictions to become eligible for expungement. Furthermore, the bill's alteration of waiting periods and elimination of the waiver and release of tort claims likely result in a high volume of petitions being filed soon after the bill's October 1, 2022 effective date.

Accordingly, the Judiciary advises that the bill requires significant additional resources, which could be as many as 113 additional clerks (89 District Court and 24 circuit court), at a cost of approximately \$6.7 million in fiscal 2023 (and averaging \$8.1 million per year for fiscal 2024 through 2027), based on the fiscal 2019 statistics cited above and the following assumptions and information: (1) it takes 1.5 hours to process an expungement; (2) 70% of eligible cases will result in a petition; and (3) each clerk has 1,207 hours per year to devote to expungements.

However, the Department of Legislative Services (DLS) advises that while the need for additional court personnel is likely significant, the exact personnel needs solely attributable to the bill can only be determined with actual experience. DLS notes that some of the cases listed above may already be eligible for expungement. Furthermore, while the Judiciary may initially experience an influx of petitions soon after the bill's effective date, petition volume may eventually stabilize. *For illustrative purposes only*, the costs associated with adding 58 clerks (one circuit court clerk in Baltimore City and each county and one clerk for each District Court location) is \$3.4 million in fiscal 2023 and averages \$4.2 million per year from fiscal 2024 through 2027.

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 likely experiences an increased volume in expungements under the bill.

According to DPSCS, CJIS received the following number of expungement orders from courts in recent years: 48,848 in 2017; 69,771 in 2018; 72,925 in 2019; approximately 50,747 in 2020; and 47,005 in 2021. Data from 2020 and 2021 reflect the impact of the COVID-19 pandemic on the courts and related agencies.

DPSCS advises that CJIS requires one additional administrative employee for every 2,500 additional orders for expungement it receives. CJIS likely requires additional personnel to process expungements generated by the bill. The cost associated with each additional administrative position is approximately \$64,800 in fiscal 2023 and increases to

\$82,700 by fiscal 2027. DLS also notes that while the workload for CJIS has generally 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; the current caseload is 6,426.

Department of State Police

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

Maryland State Archives

The Maryland State Archives (MSA) is the repository for older court records. MSA has historically advised that it processes between 300 and 400 expungement orders every month and that a significant increase in this number requires additional staff, resulting in increased general fund expenditures. Any potential minimal costs cannot be reliably estimated without actual experience under the bill, but are most likely to occur in the earlier years of implementation of the bill when petitions involving previously ineligible older convictions are most likely to be filed.

State Insurance Trust Fund

The bill alters waiting periods and eliminates the requirement to file a waiver and release of tort claims prior to filing petitions in specified circumstances. While the bill may have an operational impact on the State Treasurer's Office's ability to investigate claims, the office advises that it is still possible to obtain the necessary information through discovery and/or notice of claim requirements within the Maryland Tort Claim Act (MTCA). Thus, the bill is not expected to materially affect the State Insurance Trust Fund.

Local Expenditures: Local expenditures may increase for affected entities (*e.g.*, law enforcement agencies and State's Attorneys' office) to expunge records and address filed petitions. The magnitude of any such increase depends on the volume of expungements received and existing workloads and resources.

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 has previously advised 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 may affect LGIT's (and a local government's) ability to investigate and defend against claims.

Additional Comments: The Judiciary advises that use of the term "invalidated" with respect to warrants is no longer common practice.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1442 (Delegate Anderson, *et al.*) - Judiciary.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; cities of Frederick and Havre de Grace; Comptroller's Office; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Labor; 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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