

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 957
Judiciary

(Delegates Williams and Toles)

Criminal Procedure - Expungement - Felony Convictions

This bill authorizes a person to file a petition for expungement under § 10-110 of the Criminal Procedure Article if the person has been convicted of a felony that is a violation of § 3-202 (first-degree assault – if the crime did not involve domestic violence and the person has no other convictions); § 3-403 (robbery with a dangerous weapon); or § 3-405 (carjacking/armed carjacking) of the Criminal Law Article.

Fiscal Summary

State Effect: General fund revenues increase minimally from filing fees for expungement petitions. The bill is not expected to materially affect State expenditures or operations, as discussed below.

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

Current Law:

Petition-based Expungement of a Court or Police Record

Other than specified dispositions eligible for automatic expungement under Chapter 680 of 2021, 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.

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.

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.

Section 10-110 of the Criminal Procedure Article

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.

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. 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.

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.

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 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: The bill is not expected to materially affect State expenditures, including expenditures for the Judiciary, the Department of Public Safety and Correctional Services (DPSCS), and the Department of State Police (DSP). This estimate is based on (1) the existing expungement workload for the Judiciary, including overall petitions filed (see Exhibit 1); (2) the number of annual guilty dispositions for the offenses specified in the bill (see Exhibit 2); (3) the procedural and eligibility requirements for obtaining an expungement under § 10-110, including waiting periods and the effect of subsequent convictions; and (4) the likelihood that a person convicted of first-degree assault, carjacking/armed carjacking, or armed robbery has a disposition of a charge on the person’s record that would still render them ineligible for expungement.

The Judiciary advises that it does not anticipate a significant fiscal or operational effect from the bill.

The Criminal Justice Information System (CJIS) within DPSCS is the Central Repository for criminal record history information in Maryland. DPSCS has previously advised that CJIS requires one additional administrative employee for every 2,500 additional orders for expungement it receives. However, due to changes in workload and staffing levels in recent years, CJIS has been accommodating workloads beyond the 2,500-caseload standard; the current caseload is 6,426. Given the likely number of expungement orders issued by the court under the bill, however, the bill is not expected to necessitate additional CJIS staff.

DSP advises that while the bill does not have a fiscal or operational impact on the department, it may affect the evaluation of applications for firearms and security-related employment (*e.g.*, security systems technicians and security guards) by individuals whose convictions for first-degree assault, carjacking/armed carjacking, and armed robbery are expunged under the bill.

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

Exhibit 2 contains information on guilty dispositions (convictions) for the offenses eligible for expungement under the bill during fiscal 2020 and 2021.

Exhibit 2
Guilty Dispositions (Convictions) for the Offenses Specified in the Bill
Fiscal 2020 and 2021

	<u>FY 2020*</u>	<u>FY 2021*</u>
First-Degree Assault (Criminal Law Article § 3-202)**	338	331
Armed Robbery (Criminal Law Article § 3-403)	307	281
Armed Carjacking (Criminal Law Article § 3-405(c)(1))	16	5
Carjacking (Criminal Law Article § 3-405(b)(1))	<u>14</u>	<u>10</u>
Total	675	627

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

**Represents all first-degree assaults. Information is not available on first-degree assaults that meet the criteria specified in the bill.

Source: Maryland Judiciary

Local Expenditures: The bill may affect the workloads and operations of State's Attorneys' offices and law enforcement units. Depending on existing workloads and resources, local expenditures may increase.

For example, Howard County and the Montgomery County State's Attorney's Office do not anticipate a fiscal impact from the bill. However, the Prince George's County Police Department advises that based on the current expungement workload of two employees, it needs to hire an additional three employees, at a cost of approximately \$330,000 in fiscal 2023, increasing to approximately \$400,000 by fiscal 2027.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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