

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 660
 Judiciary

(Delegate Alston, *et al.*)

Criminal Procedure - Expungement - 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 misdemeanor that is a violation of § 21-902 of the Transportation Article (drunk and drugged driving) or 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 expenditures for the Judiciary increase by \$816,500 in FY 2024. Future year expenditures reflect annualization and inflation. Additional general fund and Transportation Trust Fund (TTF) expenditures may be incurred by affected State agencies, as discussed below. Potential significant increase in general fund revenues from filing fees.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF Revenue	-	-	-	-	-
GF Expenditure	\$816,500	\$955,200	\$997,600	\$1,042,400	\$1,097,900
Net Effect	(\$816,500)	(\$955,200)	(\$997,600)	(\$1,042,400)	(\$1,097,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures increase for local entities to process expungement orders issued by courts, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: In general, a person seeking expungement of records pertaining to a criminal charge must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article. With some exceptions, § 10-105 applies to dispositions other than a conviction, and § 10-110 applies to expungements of convictions.

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. A person who is convicted of possession with the intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article may file a petition for expungement of the conviction three years after satisfaction of the sentence(s) 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.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the 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 or conviction in the unit.

State Revenues: Potential significant increase in general fund revenues 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:

Judiciary

General fund expenditures for the Judiciary increase by \$816,493 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring 13 clerks among the District Court and the circuit courts to process expungements under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	13.0
Salaries and Fringe Benefits	\$720,176
Operating Expenses	<u>96,317</u>
Total FY 2024 State Expenditures	\$816,493

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Based on fiscal 2021 and fiscal 2022 data for convictions eligible for expungement under the bill and estimated processing times for expungements, the Judiciary anticipates the need for at least eight expungement clerks in the District Court and five expungement clerks in the circuit courts. While data is not available on the projected number of petitions that will be filed under the bill, given the cumulative number of eligible convictions (particularly drunk and drugged driving convictions), the need for additional personnel is justified.

Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts in fiscal 2020 through 2022.

Exhibit 1
Petitions for Expungement
Fiscal 2020-2022

	<u>District Court</u>	<u>Circuit Court</u>
Fiscal 2020	55,105	8,642
Fiscal 2021	39,061	5,940
Fiscal 2022	32,874	5,574

Source: Maryland Judiciary

Exhibit 2 contains information on guilty dispositions (convictions) in the District Court and the circuit courts that would be eligible for expungement under the bill.

Exhibit 2
Convictions Eligible for Expungement Under the Bill
Fiscal 2021 and 2022

<u>District Court Charge</u>	Guilty Dispositions Fiscal 2021	Guilty Dispositions Fiscal 2022
Transportation Article § 21-902 <i>Driving while under the influence of alcohol or while impaired by alcohol, drugs, or a controlled dangerous subject</i>	2,985	3,582
<u>Circuit Courts Charge</u>	Guilty Dispositions Fiscal 2021	Guilty Dispositions Fiscal 2022
Criminal Law Article § 3-202 <i>Assault in the first degree</i>	313	615
Criminal Law Article § 3-403 <i>Armed robbery</i>	281	396
Criminal Law Article § 3-405(c)(1) <i>Armed carjacking</i>	5	58
Criminal Law Article § 3-405(b)(1) <i>Carjacking</i>	10	58
Transportation Article § 21-902 <i>Driving while under the influence of alcohol or while impaired by alcohol, drugs, or a controlled dangerous substance</i>	985	1,570
Circuit Court Total	1,594	2,697
Total – District Court and Circuit Courts	4,579	6,279

Source: Maryland Judiciary

Department of Public Safety and Correctional Services

General fund expenditures may increase for the Department of Public Safety and Correctional Services (DPSCS) to process expungement orders under the bill. DPSCS advises generally that the Criminal Justice Information System (CJIS) requires one additional administrative employee for every 2,500 additional orders for expungement it receives. However, the Department of Legislative Services notes that CJIS has been routinely accommodating workloads beyond the 2,500-caseload standard. The number of additional clerks needed cannot be reliably determined at this time and depends on the number of expungement orders issued by courts under the bill. *For illustrative purposes only*, the cost associated with hiring one administrative employee is approximately \$68,500 in fiscal 2024 and \$92,800 in fiscal 2028.

Department of Transportation

The Department of Transportation (MDOT) advises that the bill necessitates the hiring of an administrative employee within MDOT Maryland Transit Administration (MTA) Police to process expungements and complete correspondence regarding compliance with expungement orders, at a cost of approximately \$61,400 in fiscal 2024 and increasing to \$78,800 by fiscal 2028. MDOT advises that these duties are an extra burden on staff and do not currently exist within the unit. However, MDOT did not provide information on how frequently MDOT-MTA Police, who provide law enforcement services on public transportation, are involved in drunk and drugged driving infractions (and are likely to have associated records to expunge). To the extent administrative support services are needed, TTF expenditures increase.

The Maryland Transportation Authority can meet the requirements of the bill with existing resources.

Department of State Police

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

Local Expenditures: The bill has an operational effect on local police departments and other entities that are custodians of records eligible for expungement under the bill. Depending on the volume of expungement orders received from the courts and the capacity to absorb this additional workload with existing resources, the bill may require local entities to employ additional personnel.

Queen Anne's and St. Mary's counties do not anticipate a fiscal impact from the bill. The Carroll County State's Attorney's Office advises that implementation of the bill requires

an additional administrative employee, with costs ranging from approximately \$84,600 in fiscal 2024 to \$95,700 by fiscal 2028.

Additional Comments: The bill authorizes the expungement of records associated with a *conviction* under § 21-902 of the Transportation Article (drunk and drugged driving). However, a *probation before judgment* entered for a violation of § 21-902 is not eligible for expungement under § 10-105 of the Criminal Procedure Article.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 505 (Senator Muse) - Judicial Proceedings.

Information Source(s): Carroll, Harford, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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