

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 746
Judiciary

Criminal Procedure - Expungement of Records - Waiting Period

This bill establishes that a petition for expungement under § 10-105 of the Criminal Procedure Article based on a not guilty verdict, an acquittal, a *nolle prosequi*, or a dismissal may be filed immediately after the disposition of the charge. The bill repeals the existing three-year waiting period for the filing of these expungement petitions and the requirement that a petitioner who wishes to file a petition prior to the expiration of the waiting period file a written general waiver and release of all the petitioner's tort claims arising from the charge. A police or court record expunged under the bill must be stored in accordance with specified provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures to implement the bill's provisions; any potential impact is likely limited to the initial years of implementation. Potential increase in special fund expenditures for the State Insurance Trust Fund (SITF) and general fund expenditures for SITF assessments, as discussed below. Revenues are not affected.

Local Effect: Potential increase in local expenditures to implement the bill, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A police or court record expunged under the bill may not be expunged by obliteration until three years after the date of disposition of the charge. During this time,

the records must be removed to a separate secure area to which persons who do not have a legitimate reason for access must be denied access. A legitimate reason for accessing these records includes the use of the records for purposes of proceedings relating to the arrest or charge.

Current Law: With some exceptions, 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.

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;
- 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;
- 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 cannabis may not be filed before satisfactory completion of the sentence, including probation, that was imposed for the conviction;
- 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.

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.

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.

Automatic Expungements

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 (civil offense for possession of cannabis), 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.

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.

State Expenditures: General fund expenditures may increase minimally to implement the bill's provisions, depending on existing agency resources. While the bill may create an initial influx of expungement petitions filed in the courts and orders for expungement received by applicable custodians of records, the bill does not expand eligibility for expungement, and petition volume is expected to stabilize eventually. Thus, the bill is not expected to affect overall expungement volume. The bill may have an operational impact on the State Treasurer's Office (STO) and may increase special fund expenditures for SITF and general fund expenditures for agency assessments, as discussed below.

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

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

Source: Maryland Judiciary

The Judiciary is not able to track the number of petitions by disposition but estimates that *nolle prosequi* dispositions represent 60% to 70% of all petitions for expungement filed. While the bill may cause an initial increase in filings for petitions for expungement, the Judiciary does not anticipate a significant fiscal or operational impact to process expungements under the bill. However, the Judiciary notes additional expenditures of \$11,740 to update and restock brochures and forms and update an instructional video. The Department of Legislative Services (DLS) advises that given the frequency of changes to State expungement laws, these are routine functions and can be accommodated with existing budgeted resources.

Other State agencies involved in expungements, such as the Department of State Police (DSP) and the Department of Public Safety and Correctional Services (DPSCS) are likely to experience similar initial increases in the volume of expungement orders received. However, as noted above, this volume will eventually stabilize. DSP advises that it can implement the bill with existing budgeted resources. While it cannot estimate projected changes in expungement volume under the bill, DPSCS advises generally that the Criminal Justice Information System (CJIS) requires one additional administrative employee (at a cost of approximately \$68,500 and gradually increasing to \$92,800 by fiscal 2028) for every 2,500 additional orders for expungement it receives. However, DLS notes that CJIS has been routinely accommodating workloads beyond the 2,500-caseload standard. As previously noted, the bill primarily impacts the timing of expungement petitions and not the overall volume. Accordingly, while DPSCS may incur minimal expenditures to accommodate an initial influx of expungement petitions, the bill's isolated impact on the workload for CJIS is not anticipated to necessitate additional permanent staff.

While the bill does not affect overall claims filed under the Maryland Tort Claims Act (MTCA), special fund expenditures for SITF may increase to the extent that the process for expungement under the bill hinders investigations and litigation and increases payments for claims under MTCA. As noted above, petitions to expunge records associated with specified dispositions of criminal charges are subject to a three-year waiting period, unless the petitioner files a written waiver and release of all tort claims arising from the charge. This 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 STO, then STO may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations. Should any of these payments affect SITF assessments for affected agencies, general fund expenditures for those agencies increase.

Local Expenditures: Depending on expungement volume and existing resources, local expenditures may increase to comply with the bill. As noted above, the bill is likely to produce an initial influx of additional expungement petitions and orders, but petition volume will eventually stabilize.

Worcester County advises that prosecutors may have to respond to more petitions and respond more quickly to petitions for expungement under the bill. Washington County does not anticipate a fiscal impact from the bill.

The Baltimore Police Department (BPD) advises that it anticipates a substantial increase in the Records Management Unit's workload as a result of the bill. BPD advises that its expungement unit has seen an overwhelming amount of time sensitive requests due to recent changes in State expungement laws. According to BPD, between processing new requests for expungements under the bill within prescribed statutory timeframes and

addressing existing backlogs, the department requires 10 administrative employees, with costs ranging from approximately \$548,300 in fiscal 2024 to \$612,500 in fiscal 2028.

Additional Information

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

Designated Cross File: SB 544 (Senator Muse, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Washington and Worcester counties; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; 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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