

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 943
Judiciary

(Delegate Embry)

Judicial Proceedings

Courts – Expunged Cases and Judicial Actions – Disclosure and Public Access

This bill specifies that statutory provisions regarding access to expunged records do not prohibit the disclosure of any record that (1) contains information that is also contained in an expunged record; (2) is formatted to facilitate research; and (3) contains de-identified case data. In addition, the bill (1) specifies in the Maryland Public Information Act (PIA) a finding of the General Assembly that research into judicial actions ensures evidence-based assessments of outcomes and serves the public interest and (2) requires, in furtherance of the finding, for PIA to be construed in favor of allowing public access to information about the judicial actions of Maryland courts, subject to other laws or court order.

Fiscal Summary

State Effect: Any *potential* minimal increase in expenditures for the Judiciary to handle additional disclosures that may be generated by the bill is not anticipated to materially affect State finances. No material effect on revenues.

Local Effect: The bill is not anticipated to materially affect local government operations or finances, including in the circuit courts.

Small Business Effect: Minimal.

Analysis

Current Law:

Expungement of Records

In general, §§ 10-105 and 10-110 of the Criminal Procedure Article establish 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; and
- 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.

Accessibility of Expunged Records

A person may not open (or review) an expunged record – or disclose to another person any information from that record – without a court order from (1) the court that ordered the record expunged or (2) the District Court that has venue in the case of a police record expunged under § 10-103 of the Criminal Procedure Article (pertaining to an arrest, detention, or confinement occurring prior to October 1, 2007, in which a person was released without being charged).

A court may order the opening (or review) of an expunged record, or the disclosure of information from that record (1) after notice to the person whom the record concerns, a hearing, and the showing of good cause or (2) without notice to the person who is the subject of the expunged record, on an *ex parte* order, as specified.

A person who violates these provisions is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000 and/or imprisonment of up to one year. In addition, an official or employee of the State (or a political subdivision of the State) who is convicted of a violation may be removed or dismissed from public service.

Maryland's Public Information Act

In General: PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a

member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

Duties of Custodians: Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record. Chapter 658 of 2021, effective July 1, 2022, requires each official custodian to adopt a policy of proactive disclosure of public records that are available for inspection under PIA, as specified.

Required Denials: A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also requires denial of inspection for specified personal and confidential records and information, including, for example, personnel and student records, hospital records, specified medical and financial information, and shielded criminal and police records. Chapter 62 of 2021 specifies that a record relating to an administrative or criminal investigation of misconduct by a police officer is not a protected personnel record under PIA and requires a custodian to allow access to such records by federal and State prosecutors.

Discretionary Denials: Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. PIA specifies the types of records and information that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

Procedure for Denial: A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies.

Additional Information

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

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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