

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 658 (Delegate Moon, *et al.*)
 Judiciary

Criminal Procedure – Automated Expungement, Waiting Periods, and Adverse Actions (Clean Slate Act of 2024)

This bill (1) alters statutory provisions relating to waiting periods for the filing of specified petitions for expungement; (2) prohibits the refusal of a person to disclose information about expunged criminal charges to be the sole reason for specified decisions by a unit, official, or an employee of the State or a political subdivision of the State or an educational institution; and (3) establishes procedures for and requirements relating to the automated expungement of “clean slate eligible” charges, including requirements for the Department of Public Safety and Correctional Services (DPSCS) and the courts. **Provisions concerning automated expungement and related procedures take effect January 1, 2027.**

Fiscal Summary

State Effect: General fund expenditures increase by \$5.2 million in FY 2025 for DPSCS to implement the bill. Future years reflect ongoing costs for DPSCS and one-time programming costs for the Judiciary (assumed in FY 2026). Potential minimal decrease in general fund revenues from filing fees.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5.2	5.9	5.2	5.2	5.2
Net Effect	(\$5.2)	(\$5.9)	(\$5.2)	(\$5.2)	(\$5.2)

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

Local Effect: The bill may affect the workloads and finances of State’s Attorneys’ offices. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Eligibility for Expungements – Waiting Periods – Effective October 1, 2024

The bill alters statutory provisions under § 10-105 and § 10-110 of the Criminal Procedure Article – which generally establish eligibility for the expungement of records pertaining to a criminal charge or conviction – by altering specified waiting periods.

With respect to § 10-105, the bill makes the following changes:

- Conviction for specified public nuisance crimes:
 - *Current Waiting Period:* Three years after the conviction or *satisfactory* completion of the sentence, including probation, that was imposed for the conviction, whichever is later.
 - *Under the Bill:* Three years after the “completion of the sentence.”
- Conviction for possession of cannabis under § 5-601 of the Criminal Law Article:
 - *Current Waiting Period:* After the *satisfactory* completion of the sentence, including probation, that was imposed for the conviction.
 - *Under the Bill:* After the “completion of the sentence.”

The bill similarly alters the waiting periods under § 10-110 to begin after the “completion of the sentence,” rather than after the petitioner *satisfies* the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

Disclosure of Information – Effective October 1, 2024

The bill expands an existing prohibition to prohibit a unit, official, or employee of the State or a political subdivision of the State from denying a person’s application for a license, permit, registration, or governmental service solely because the person refused to disclose information about criminal charges that have been expunged. The bill also prohibits an educational institution from expelling or refusing to admit a person solely because the person refused to disclose information about criminal charges that have been expunged. Violations are a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine for each violation.

Clean Slate Automated Expungements – Effective January 1, 2027

The bill establishes a process for automated expungements where “clean slate eligible” charges are expunged without requiring the filing of petitions by the individuals who are

the subject of the charges. For purposes of these provisions, “expunge” means to remove all references to a specified charge from the Central Repository and the Maryland Judiciary Case Search.

Clean Slate Eligibility

“Clean slate eligible” means that a charge is eligible for expungement according to the requirements listed below.

- § 10-105 of the Criminal Procedure Article:
 - the person satisfies the statutory waiting periods;
 - the charge is eligible under the “unit rule”;
 - 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 not 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;
 - the person is not a defendant in a pending criminal proceeding; and
 - at least three years have passed since the date of the disposition of the charge.
- § 10-110 of the Criminal Procedure Article:
 - the person satisfies the statutory waiting periods;
 - the charge is eligible under the “unit rule”;
 - the person was not convicted of a new crime during the waiting period, unless the new conviction is also eligible for expungement under statute;
 - the person is not a defendant in a pending criminal proceeding;
 - misdemeanor – the charge is not a “domestically related crime” and at least 7 years have passed since the date of the conviction; and
 - felony – the charge is not a “domestically related crime” and at least 20 years have passed since the date of the conviction.

Clean Slate Process

On a monthly basis, DPSCS must review the criminal history record information contained in the Central Repository and identify all “clean slate eligible” charges.

Promptly after completing this task, DPSCS must notify the Administrative Office of the Courts (AOC) and all applicable criminal justice units of the charges that are clean slate eligible. This notification may be made as a collective listing, electronically, or both. Within 30 days after DPSCS transmits this notice, a prosecuting agency may object to the expungement of a charge that is specified in the notice. An objection must be filed with the court, be transmitted to all parties, and state with specificity the basis for the objection. A prosecuting agency may make an objection on the basis that (1) the prosecuting agency

believes that the charge is not clean slate eligible or (2) the prosecuting agency has reasonable belief, grounded in supporting facts, that the individual who is the subject of the charge is continuing to engage in criminal activity, whether charged or not charged, within or outside the State.

If the prosecuting agency timely files an objection to the expungement of a charge, the charge in question must be removed from the pending list of clean slate eligible charges. If the prosecuting agency objected to the expungement of a charge because of the individual's continued criminal activity, after a period of one year, the charge may again be identified as clean slate eligible if the prosecuting agency has taken no further action against the individual that would otherwise render the charge not clean slate eligible. However, a prosecuting agency may not object more than once to the expungement of any one charge based on the individual's continued criminal activity.

On the forty-sixth day after DPSCS transmits its notice to AOC and all applicable criminal justice units, DPSCS must provide to AOC a list of all charges contained in the notice for which a prosecuting agency *did not* file an objection. For each charge on this list, the Chief Justice of the Supreme Court of Maryland or the Chief Justice's designee must transmit a signed expungement order to all criminal justice units that have criminal history records relating to the case and DPSCS must expunge the charge.

Any unpaid fines, court fees, or court ordered restitution does not preclude expungement of a clean slate eligible charge. An automated expungement under the bill does not preclude the court's jurisdiction over any subsequently filed motion to amend the record, postconviction relief motion or petition, or other future collateral attack on an expunged record.

The availability of a clean slate automated expungement does not preclude an individual from filing a petition for expungement of a charge, regardless of whether the record is clean slate eligible, may become clean slate eligible, or has been shielded.

Digital Service for Individuals with Potentially Eligible Charges

DPSCS must provide a digital service that (1) allows individuals to confidentially determine whether their charges have been expunged by automated expungement and (2) provides information on the rights and privileges pertaining to expunged records.

Publicity Campaigns

DPSCS must conduct publicity campaigns and disseminate information on an ongoing basis to inform the public about automated expungements and checking the status of their criminal records by way of a digital service, as specified.

Continued Access to Records

An individual whose records have been expunged through clean slate may access information contained in the records without first obtaining a court order.

Reporting Requirements and Allocation of Funds

On or before January 1 and July 1 annually, DPSCS must submit a report to the General Assembly detailing the progress and outcomes of the automated expungement process during the previous six-month period, including the number of charges expunged, demographic information of affected individuals, and any challenges encountered.

The necessary funds for conducting automated expungement must be allocated from the department's budget or any grants or appropriations made available for conducting automated expungement.

Court Notifications

In a criminal case, when all or some of the charges against the defendant may become clean slate eligible, the court must (1) advise the defendant that the defendant may in the future be entitled to automated expungement of the records and (2) provide a written explanation of the digital service. Failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence or disposition of the case.

Subsequent or Postsentencing Proceedings

Automated expungement of a clean slate eligible charge does not constitute a subsequent proceeding or postsentencing proceeding under Title 11, Subtitle 5 of the Criminal Procedure Article (victim's rights/notification).

Current Law:

Petition-based Expungement of a Court or Police Record

Other than specified court initiated expungements under § 10-105.1 of the Criminal Procedure Article, 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 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. 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 cannabis 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. Petitions under § 10-105 are subject to specified waiting periods.

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.

A State’s Attorney may file a timely objection to a petition for expungement, as specified.

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.

Petitions for expungement under § 10-110 are subject to specified waiting periods. 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.

A State's Attorney may file a timely objection to the petition for expungement, as specified.

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.

Domestically Related Crime

Section 6-233 of the Criminal Procedure Article defines a "domestically related crime" as a crime committed by a defendant against a victim who is a person eligible for relief under a domestic violence protective order or who had a sexual relationship with the defendant within 12 months before the commission of the crime.

Eligibility for Expungement – Violation of Probation – 2022 Court Decision

In 2022, the Court of Special Appeals (now the Appellate Court of Maryland), held that the Circuit Court for Montgomery County properly denied a petition to expunge a 2008 conviction for theft under \$500 when the petitioner was sentenced to supervised probation for his conviction, subsequently violated his probation, and then served a four-day sentence for the probation violation. According to the Court of Special Appeals, even though the petitioner completed his sentence for the probation violation, because the petitioner was originally sentenced to probation and violated that probation (resulting in an unsatisfactory closing of the probation), the petitioner did not *satisfy* his original sentence. *In re Expungement Petition of Abhishek I.*, 255 Md. App. 464 (2022).

Disclosure of Information

The following entities may not require the disclosure of expunged information about criminal charges in an application, interview, or other means:

- an employer or educational institution of a person who applies for employment or admission; or
- a unit, official, or employee of the State or a political subdivision of the State of a person who applies for a license, permit, registration, or governmental service.

A person need not refer to or give information concerning an expunged charge when answering a question concerning a criminal charge that did not result in a conviction or a conviction that the Governor pardoned.

Refusal by a person to disclose information about criminal charges that have been expunged may not be the sole reason for (1) an employer to discharge or refuse to hire the person or (2) a unit, official, or employee of the State or a political subdivision of the State to deny the person's application.

Violators are guilty of a misdemeanor punishable by imprisonment for up to one year and/or a \$1,000 maximum fine for each violation. In addition to these penalties, 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.

State Revenues: General fund revenues from filing fees may decrease minimally if clean slate expungements decrease petition filings. The courts currently charge a \$30 filing fee for petitions to expunge a guilty disposition (conviction), but fee waivers for financial hardship are available.

State Expenditures: General fund expenditures increase by at least \$5.2 million in fiscal 2025 through 2029 for DPSCS to implement the bill. Although the bill's provisions requiring the clean slate expungement process do not take effect until January 1, 2027, this estimate – *as provided by DPSCS* – accounts for costs incurring beginning in fiscal 2025 in order to *prepare* for implementation by the required date. General fund expenditures for the Judiciary increase by \$ 726,188 for one-time programming changes; although unclear, these expenditures are likely not incurred until fiscal 2026 at the earliest.

Assumptions

As noted above, for purposes of the automated clean slate expungements, the bill defines “expunge” to mean the removal of all references to a specified charge from the Central Repository and the Maryland Judiciary Case Search. This is a more limited
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definition than a traditional expungement. However, the bill also refers to expungement orders sent to criminal justice units, which is part of the traditional expungement process. Furthermore, the bill does not specify a timeline for criminal justice units to comply with expungements of their records, which is a feature under the traditional expungement statutes (§§ 10-105 and 10-110 of the Criminal Procedure Article). Therefore, this estimate assumes that clean slate expungements involve the removal of references from the Central Repository and the Maryland Judiciary Case Search only and do not require criminal justice units or the courts to process traditional expungements of records.

Department of Public Safety and Correctional Services

The Criminal Justice Information System (CJIS), which houses the Central Repository, is located within DPSCS. DPSCS advises that its systems (the Computerized Criminal History System and the CJIS-Central Repository system) cannot be modified to accommodate the requirements of the bill (*e.g.*, screening of the system for the identification of clean slate eligible charges, automated expungement of clean slate records from the system, and regular transmission of information to the Judiciary). Therefore, both systems need to be rebuilt.

Based on existing vendor contracts and previous experience, DPSCS estimates that the system rebuild requires \$26.0 million over the course of five years (the estimated time necessary for the complete rebuild, regardless of the bill's effective date for clean slate expungements). As a result, general fund expenditures for DPSCS increase by \$5.2 million annually from fiscal 2025 through 2029. Additional annual expenditures are incurred beyond the five-year timeline of this note for vendor development staff to perform ongoing operation and management functions of the systems.

This estimate does not include costs for developing the required digital service for individuals to check on the clean slate eligibility of their charges. DPSCS advises that the protection and dissemination of criminal history record information is the primary responsibility of DPSCS/CJIS; DPSCS is unaware of a way in which it could build a system to allow for the accessibility required by the bill while also maintaining the security of the system.

DPSCS can conduct a publicity campaign and comply with the bill's reporting requirements using existing budgeted resources. The bill's changes to waiting periods for expungements are not expected to have a material effect on DPSCS operations.

Judiciary

As noted above, the Judiciary also incurs one-time programming costs of \$726,188. It is assumed that these costs may be incurred as early as fiscal 2026.

Changes to court procedures to implement the bill can be handled with existing budgeted resources. The bill may also increase court hearings for objections to clean slate expungements. This estimate assumes that additional court hearings generated by the bill can be handled with existing budgeted resources. The bill's changes to waiting periods for traditional expungement petitions are not expected to materially affect the finances or operations of the Judiciary.

Local Expenditures: The bill may increase workloads for State's Attorneys. While existing expungements are based on the filing of petitions, the bill establishes an automated expungement procedure that is initiated by the State and occurs on a monthly basis. Prosecutors are allowed to object to expungements of clean slate eligible charges. Depending on additional workloads and existing resources, State's Attorneys' offices may require additional resources. The bill's changes to waiting periods for expungements are not expected to have a material effect on local finances or operations.

Additional Information

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

Designated Cross File: SB 602 (Senator McKay, *et al.*) - Judicial Proceedings.

Information Source(s): 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; Maryland State Archives; Maryland Department of Labor; Department of Legislative Services

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