

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 398

(Senator McKay)

Judicial Proceedings

Criminal Procedure - Automated Expungement

This bill requires the Department of Public Safety and Correctional Services (DPSCS) and the Judiciary to “expunge” specified cases by July 1, 2027, and expunge cases meeting other specified criteria on a monthly basis beginning August 1, 2027. Under the bill, “expunge” means to remove all references to a specified case from the Central Repository and remove from public view all electronic court records relating to the case. Expungement does not require physical obliteration of records or redaction of physical or electronic documents, media, or recordings. The bill also removes an obsolete statutory requirement regarding removal of references to specified cannabis cases from the Central Repository.

Fiscal Summary

State Effect: General fund expenditures increase by \$46,500 in FY 2026 for one-time programming and printing costs. General fund expenditures may further increase, potentially significantly, for the Judiciary and DPSCS, as discussed below. The bill is not anticipated to materially affect State revenues.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: By July 1, 2027, the Judiciary and DPSCS must expunge all cases in which all charges in the case are (1) eligible for expungement under § 10-105 of the Criminal Procedure Article, if at least three years have passed since the disposition of the

case or (2) eligible for expungement under § 10-110 of the Criminal Procedure Article, if at least seven years have passed since disposition of the case and the charge is a misdemeanor other than a domestically related crime under § 6-233 of the Criminal Procedure Article or second-degree assault.

Beginning August 1, 2027, the Judiciary must, on a monthly basis, identify all cases that are newly eligible for expungement based on the criteria listed above and promptly notify DPSCS of the newly eligible cases. The Judiciary and DPSCS must expunge the newly eligible cases within 30 days after the notification.

Current Law:

Expungements

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. With some exceptions, § 10-105 applies to dispositions other than a conviction, and § 10-110 applies to expungements of convictions.

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.

Units of Charges

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. With specified exceptions, 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.

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. A petition based on a probation before judgment may not be filed before the petitioner's discharge from probation or three years after the probation was granted, whichever is later. A petition based on a *stet* with the requirement of drug or alcohol abuse treatment may not be filed before the petitioner's completion of treatment or three years after the *stet* was entered on the docket, whichever is later. Otherwise, a petition based on a *stet* or a compromise may not be filed within three years after the *stet* or compromise.

Unless the State's Attorney files an objection to the petition for expungement within 30 days after the petition is served, the court must pass an order requiring the expungement of all police records and court records about the charge. If the State's Attorney files a timely objection to the petition, the court must hold a hearing. If the court at the hearing finds that the person is entitled to expungement, the court must order the expungement of all police records and court records about the charge.

If the court finds that the person is not entitled to expungement, the court must deny the petition. 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.

Except for court initiated expungements under § 10-105.1 and unless an order is stayed pending an appeal, within 60 days after entry of the order, every custodian of the police

records and court records that are subject to the order of expungement must advise in writing the court and the person who is seeking expungement of compliance with the order.

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. An itemized list of convictions eligible for expungement under § 10-110 is shown in the **Appendix – Convictions Eligible for Expungement**.

Petitions for expungements under § 10-110 are subject to the waiting periods listed below. These waiting periods begin after the petitioner satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision:

- Misdemeanor (general): 5 years;
- Felony (general), Second-degree Assault, or Common Law Battery: 7 years;
- Domestically Related Crime (§ 6-233 of the Criminal Procedure Article): 15 years;
- Possession with Intent to Distribute Cannabis: 3 years; and
- Burglary in the First Degree (Breaking and Entering – Theft), Burglary in the Second Degree, or Felony General Theft: 10 years.

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.

Unless the State’s Attorney or a victim files an objection to the petition for expungement within 30 days after the petition is served, the court must pass an order requiring the expungement of all police records and court records about the charge.

If the State’s Attorney or a victim files a timely objection to the petition, the court must hold a hearing. The court must order the expungement of all police records and court records about the charge after a hearing, if the court finds and states on the record:

- that the conviction is eligible for expungement under specified provisions of § 10-110;

- that giving due regard to the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety; and
- that an expungement would be in the interest of justice.

If at a hearing the court finds that a person is not entitled to expungement, the court must deny the petition.

Unless an order is stayed pending appeal, within 60 days after entry of the order, every custodian of the police records and court records that are subject to the order of expungement must advise in writing the court and the person who is seeking expungement of compliance with the order.

Automatic Expungements – § 10-105.1 of the Criminal Procedure Article

Pursuant to Chapter 680 of 2021, 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 civil offense under § 5-601(c)(2)(ii) (related to possession of cannabis) of the Criminal Law Article or a crime other than a violation of the Transportation Article for which the defendant is not required to appear, 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.

State Revenues: The Judiciary charges a \$30 filing fee for petitions to expunge a conviction. Fee waivers for financial hardship are available. While the bill may decrease demand for traditional expungements, any reduction in collected filing fees is not anticipated to materially affect State revenues.

State Expenditures:

Judiciary

General fund expenditures for the Judiciary increase by \$46,516 in fiscal 2026 only for computer programming (\$34,776) and revisions and reprinting of expungement materials (\$11,740 – *e.g.*, brochures, forms, and instructional videos). The Judiciary may incur additional (potentially significant) expenditures for staffing to implement the bill. Depending on workloads generated by the bill, costs for additional staffing may extend past the July 1, 2027 deadline for completion of the first phase of required expungements. To the extent that the bill reduces demand for traditional expungements, any additional staffing costs to implement the bill may be offset.

According to the Judiciary, while some of the reporting and identifying of potentially eligible cases needed to implement the bill can be done through developed programming, the programming can only find eligible *dispositions*. A manual review of each case is still necessary to evaluate other eligibility criteria, including whether there was a satisfactory completion of a sentence, which is a required component of expungement eligibility. The Judiciary notes that clerks are not responsible for determining whether or not something is eligible for expungement, as only a judge can make that final eligibility determination.

The identification process for eligible charges is complex and nuanced based on the requirements under existing statute. Accordingly, there is a significant operational impact on clerks' offices to manually review eligible cases to make sure all eligibility criteria is met prior to an eligibility determination. There is also a significant operational impact on judges to make final eligibility determinations to be able to produce the required monthly report. These operational impacts may require significant additional clerical staffing resources, the extent to which cannot be reliably determined without experience under the bill. *For illustrative purposes only*, the cost associated with employing a court clerk is approximately \$73,000 annually.

Department of Public Safety and Correctional Services

Chapter 940 of 2024 requires DPSCS to include system upgrades necessary to allow for the automated expungement of charges and partial expungement of charges in any vendor contracts being negotiated at the time of the bill's October 1, 2024 effective date. The Act does not define "partial expungement" or "automated expungement," nor does it specify any parameters or requirements for these types of expungements or alter statutory requirements regarding eligibility for expungement.

The Criminal Justice Information System (CJIS), which houses the Central Repository, is located within DPSCS. At the time of that legislation, DPSCS advised that compliance with Chapter 940 requires a rebuild of its systems (the Computerized Criminal History System and the CJIS-Central Repository system). DPSCS noted that it only uses vendors for its major information technology (IT) projects, and estimated costs for the project at \$26.0 million over the course of five years (the department's estimate of the time needed for the system upgrade). Additional annual expenditures are incurred beyond this five-year timeline for vendor development staff to perform ongoing operation and management functions of the systems. DPSCS could not provide an estimate on when the project will commence and costs will be incurred.

Based on the information DPSCS provided in response to this legislation, DPSCS is in the assessment phase of this IT project. DPSCS appears to indicate that without IT upgrades, there are significant costs to implement the bill through a manual process. However, DPSCS appears to indicate that implementation of the bill requires, over two years,

\$5.6 million for IT contractual services *beyond* the cost of the planned CJIS rebuild discussed above. DPSCS further notes that a manual process will *also* be required and advises generally that CJIS requires one additional administrative employee for every 2,500 additional expungements. DPSCS did not respond to requests for additional information and further explanation and clarification of its fiscal estimate.

Regardless, the bill results in a potential increase in expenditures for DPSCS. The Department of Legislative Services notes that CJIS has been routinely accommodating workloads beyond the 2,500-caseload standard. Any additional clerical resources that may be needed cannot be reliably determined at this time and depend on additional CJIS workloads generated by the bill; however, any potential additional staffing needs may be significant. *For illustrative purposes only*, the cost associated with hiring one administrative employee is approximately \$61,300 in fiscal 2026 and \$80,600 in fiscal 2030. Depending on workloads generated by the bill, costs for additional staffing may extend past the July 1, 2027 deadline for completion of the first phase of required expungements. To the extent that the bill reduces demand for traditional expungements, staffing costs may be mitigated.

Additional Information

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

Designated Cross File: HB 545 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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rh/jkb

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Appendix – Convictions Eligible for Expungement

Convictions Eligible for Expungement under Section 10-110 of the Criminal Procedure Article

Misdemeanors Eligible for Expungement

Alcoholic Beverages and Cannabis Article

AB, § 6-320 – Disorderly Intoxication

Business Occupations and Professions Article

BOP, § 17-613(a): Crimes relating to real estate brokers and agents (*e.g.*, failure to deposit money in trust accounts, engaging in discriminatory real estate practices, acting as a dual agent, providing brokerage services without a license, etc.)

Business Regulation Article

BR, § 5-610: Violation of Business Regulation Article, Title 5, Subtitle 6 (perpetual care of cemeteries)

BR, § 5-712: Failure to deposit money received under or in connection with a preneed burial contract

BR, § 5-904: Violation of any provision of Title 5, Subtitle 9 of the Business Regulation Article (cemetery-related violations – failure to register as operator, operating a cemetery without the proper form of business entity, and unauthorized representations)

BR, § 19-304: Violations of laws relating to returnable containers and returnable textiles (improper use, improper registration, defacing, etc.)

BR, § 19-308: Violations of laws relating to plastic secondary packaging

Courts and Judicial Proceedings Article

CJ, § 3-1508: Failure to comply with a peace order

CJ, § 10-402: Divulging contents of communications (subsection (d))

Commercial Law Article

CL, § 14-1915: Violations of the Maryland Credit Services Businesses Act

CL, § 14-2902: False and fraudulent advertising

CL, § 14-2903: Bait and switch

Criminal Procedure Article

CP, § 5-211: Failure to surrender after forfeiture of bail or recognizance

Criminal Law Article

CR, § 3-203: Assault in the second degree (misdemeanor)

CR, § 3-808: Filing a fraudulent lien or encumbrance

CR, § 5-601: Possession or administration of a controlled dangerous substance (not involving use or possession of cannabis)

CR, § 5-602(b)(1): Possession with intent to distribute cannabis

CR, § 5-618: Possession or purchase of noncontrolled substance that the person reasonably believes is a controlled substance

CR, § 5-619: Use or possession of drug paraphernalia

CR, § 5-620: Obtaining, possessing, or distributing controlled paraphernalia

CR, § 5-703: Unsolicited mailing of a controlled dangerous substance, prescription drug, or medicine

CR, § 5-708: Smelling or inhaling harmful substances

CR, § 5-902: Omitting, removing, altering, or obliterating a symbol required by federal law for a substance governed by Title 5 of the Criminal Law Article (controlled dangerous substance prescriptions, and other substances); refusal or failure to maintain specified documentation required under Title 5; refusing entry into a premises or inspection of a premises authorized under Title 5), maintaining a place resorted to by others for illegal use of controlled dangerous substance or for the keeping or selling of a controlled dangerous substance; unauthorized manufacturing, dispensing, or distribution of controlled dangerous substance by a registrant; controlled dangerous substance/paraphernalia-related violations by authorized provider; and contraband

CR, § 6-105: Malicious burning of personal property in the second degree

CR, § 6-108: Willful and malicious burning of a trash container

CR, § 6-205: Fourth-degree burglary

CR, § 6-206: Breaking and entering a motor vehicle – rogue and vagabond

CR, § 6-301: Malicious destruction of property

CR, § 6-303: Public utility interference – electrical equipment

CR, § 6-306: Alteration of manufacturer's serial number or sale of good with altered serial number

CR, § 6-307: Sale or possession of stolen serial number or vehicle identification plate or possession of a manufactured serial number or vehicle identification plate with intent to affix to stolen property or use for fraudulent purposes

CR, § 6-402: Trespass on posted property

CR, § 6-503: Unauthorized riding on railroad vehicle or unauthorized entry onto railroad property

CR, § 7-104: General theft (less than \$100 and at least \$100 but less than \$1,500)

CR, § 7-203: Unauthorized removal of property
CR, § 7-205: Abandonment of or failure to return leased or rented motor vehicle
CR, § 7-304: Obtaining telephone records without authorization
CR, § 7-308: Prohibited transfer of recorded sounds or images (penalty contained in
CR, § 7-309)
CR, § 8-103: Obtaining property or services by bad check (less than \$100 and at least \$100
but less than \$1,500)
CR, § 8-206: Misdemeanor credit card crimes (less than \$100 and at least \$100 but less
than \$1,500)
CR, § 8-401: Fraudulent conversion of partnership assets
CR, § 8-402: Fraudulent misrepresentation by corporate officer or agent
CR, § 8-404: Pyramid promotional schemes
CR, § 8-406: Misuse of documents of title
CR, § 8-408: Unlawful subleasing of motor vehicle
CR, § 8-503: Public assistance fraud – generally
CR, § 8-521: Fraudulently obtaining legal representation from the Office of the Public
Defender
CR, § 8-523: Housing assistance fraud, making false statements
CR, § 8-904: Racing a horse under a name other than its registered name
CR, § 9-204: Bribing a person participating in or connected with an athletic contest
CR, § 9-205: Acceptance of a bribe by a person participating in or connected with an
athletic contest
CR, § 9-503: Making a false statement to a State or local official/agency concerning a
crime or hazard
CR, § 9-506: Making a false statement on an application for funds from the
Maryland Higher Education Commission
CR, § 10-110: Illegal Dumping and Violation of Litter Control Law
CR, § 10-201: Disturbing the peace and disorderly conduct
CR, § 10-402: Unlawful removing or attempting to remove human remains from burial site
CR, § 10-404: Removal or destruction of funerary objects, graveyard plants, disorderly
conduct in graveyards
CR, § 10-502: Bigamy (listed as a misdemeanor but is a felony)
CR, § 11-303: Engaging in prostitution
CR, § 11-306: Procuring or solicitation of prostitution or assignation
CR, § 11-307: Using a building, structure, or conveyance for prostitution or assignation
CR, § 12-102: Betting, wagering, gambling, etc.; pool on races/contests
CR, § 12-103: Playing specified games for money (*e.g.*, craps, thimbles, etc.)
CR, § 12-104: Keeping a gaming device or a place for gambling
CR, § 12-105: Offshore gambling
CR, § 12-109: Prearrangement or predetermination of horse race results
CR, § 12-203: Holding a lottery or selling a lottery device
CR, § 12-204: Keeping a location for the sale or barter of lottery devices

CR, § 12-205: Importing a lottery device or possession of lottery records or money
CR, § 12-302: Unlawful possession or operation of a slot machine

Election Law Article

EL, § 13-401: Failure to comply with authority line requirements in campaign material
EL, § 13-602: Specified campaign finance/election-related violations (*e.g.*, providing money/aid or a thing of value to induce or procure a vote, influence by employer of employee's vote, etc.)

EL, § 16-201: Voting-related offenses (*e.g.*, impersonation of another in order to vote, voting under a false name, etc.)

Family Law Article

FL, § 4-509: Failure to comply with protective order

Health General Article

HG, § 18-215: Violations relating to infectious or contagious disease reports

Housing and Community Development Article

HCD, § 4-411: Making a false statement or report to the Department of Housing and Community Development for Rental Housing Program loan

HCD, § 4-2005: Making a false statement or report to the Department of Housing and Community Development for Energy-Efficient Homes Construction Loan Program loan

Insurance Article (fraudulent insurance acts)

IN, § 27-403: Failure to return premiums, making false or misleading claims to an insurer

IN, § 27-404: Insurer doing business with unlicensed persons

IN, § 27-405: Representations to public by unlicensed persons

IN, § 27-406: False applications and statements; unregulated insurers

IN § 27-406.1: Fraudulent insurance acts of individual sureties

IN, § 27-407: Solicitation of injured persons; solicitation of clients for lawyer or health care practitioner

IN, § 27-407.1: Organizing, planning, or knowingly participating in an intentional motor vehicle accident

IN, § 27-407.2: Compensation for insurance deductible

Natural Resources Article

- NR, § 8-725.4: Speed limits on the Severn River imposed on specified days from April 15, 1989, to October 15, 1989
- NR, § 8-725.5: Noise levels for vessels operated in tidal waters
- NR, § 8-725.6: Speed limit on Seneca Creek
- NR, § 8-725.7: Speed limit on certain areas of Monocacy River
- NR, § 8-726: Throwing or dumping refuse on waters of the State
- NR, § 8-726.1: Throwing specified types of waste on certain waters of the State
- NR, § 8-727.1: Use of flashing red and yellow lights or signal devices
- NR, § 8-738.2: Operating a vessel in a reckless or dangerous manner
- Any prohibited act related to speed limits for personal watercraft
- NR, § 10-301: Hunting game birds or mammals without a hunting license)
- NR, § 10-306: Duty to be in physical possession of a license while hunting and duty to present a license to law enforcement on demand while hunting)
- NR, § 10-308.1: Hunting migratory game birds without a Maryland migratory game bird stamp, etc.
- NR, § 10-413(e)(1): Training a retriever dog using artificially reared game birds without a permit)
- NR, § 10-418: Failure to wear fluorescent clothing while hunting
- NR, § 10-502: Trapping furbearers without a nonresident trapper's license
- NR, § 10-611: Hunting wild waterfowl from a blind site without a license
- NR, § 10-907(a): Engaging in specified activities without a falconry permit

Public Safety Article

- PS, § 5-307: Scope of handgun permit (listed in statute but is not a crime)
- PS, § 5-308: Possession of handgun permit required
- PS, § 6-602: Interference or obstruction of fire marshal, false representation as a fire marshal
- PS, § 7-402: Interference, obstruction of fire or emergency services personnel
- PS, § 14-114: Violation of order, rule, or regulation issued under Maryland Emergency Management Agency Act

Real Property Article

- RP, § 7-318.1: Failure of foreclosure consultant to obtain a real estate broker's license or violation by foreclosure consultant of Maryland Real Estate Brokers Act
- RP, § 7-509: Does not refer to a prohibited act – penalty provision for violations of provisions of Maryland Mortgage Assistance Relief Services Act
- RP, § 10-507: Violation of Custom Home Protection Act (subsection (b)(3))

State Government Article

SG, § 9-124: Prohibited acts relating to State lottery

Tax General

TG, § 13-1001: Willful failure to file tax return

TG, § 13-1004: Income tax preparer – false return, false claim for refund, or attempted tax evasion

TG, § 13-1007: Violations of income tax withholding requirements

TG, § 13-1024: Failure to provide information with intent to evade taxes

Transportation Article

TR, § 16-303: Driving while privilege is canceled, suspended, or revoked

Common Law Offenses

Affray

Battery

Criminal contempt

Hindering a law enforcement officer

Rioting

Felonies Eligible for Expungement

Criminal Law Article

CR, § 7-104: General Theft (at least \$1,500)

CR, § 5-602: Possession with intent to distribute a controlled dangerous substance

CR, § 6-202(a): Burglary in the first degree – breaking and entering with intent to commit theft

CR, § 6-203: Burglary in the second degree

CR, § 6-204: Burglary in the third degree

An attempt, conspiracy, or solicitation of any offense listed above is also eligible for expungement under CP, § 10-110