



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
HB0854

Criminal Procedure – Expungement of Records – Revisions

Bill Summary

This bill makes several changes to expungements and related procedures, including the types of records eligible for expungement, the handling of records ordered to be expunged, and access to expunged records. The bill does not alter an individual’s eligibility to file a petition for expungement.

Racial Equity Impact Statement

The bill’s provisions would make expunged records significantly less attainable, and expungement can be helpful to impacted individuals in obtaining employment and other related benefits. National data shows significant negative effects of a criminal record on employment outcomes, and these negative effects appear to be substantially larger for Black or African American individuals. In Maryland, Black or African American individuals are significantly overrepresented in the criminal justice system. Accordingly, the bill will potentially impact Black or African American individuals to the greatest extent. Additional data would be required to measure the overall equity impacts.

Analysis

The bill requires stricter procedures for expungement by mandating that records be “extracted and isolated” as opposed to merely being “removed from public inspection” as required under existing law. The bill also clarifies the agencies which must expunge records to include detention or correctional facilities and broadens the definition of what must be expunged to include an investigatory file and specified records of a law enforcement unit. The bill also rescinds the authority for a court to order that expunged files be opened and reviewed. In sum, expunged

records are to be treated as if they never existed and become ineligible for retrieval following expungement.

It is important to note that records eligible for expungement in Maryland include records of (1) arrest and detention; (2) criminal charges; (3) suspected violations of a criminal law; (4) violations of the Transportation Article for which a term of imprisonment may be imposed; and (5) a civil offense or infraction, with some exceptions for specified juvenile offenses.

The provisions of the bill would give individuals the opportunity to remove more definitively any and all evidence of not just a prior criminal conviction, but various other contacts with law enforcement to the extent that those contacts are eligible for expungement. According to the Governor's Office of Crime Prevention, Youth, and Victim Services, there were 73,000 orders for expungement in Maryland in 2019. There is no demographic data available that indicates the racial and ethnic composition of individuals impacted by expungement.

Collateral Consequences of a Criminal Record

Expungement is intended to help mitigate the adverse consequences of having a criminal record, which can last beyond imprisonment, fines, and legal process and can include the removal of civil opportunities and benefits available to a person due to their record. As a result, a criminal record can impede a person's ability to successfully reenter society. Specifically, having a criminal history can adversely affect employment prospects which can further influence an individual's level of income, housing opportunities, and access to quality health care.

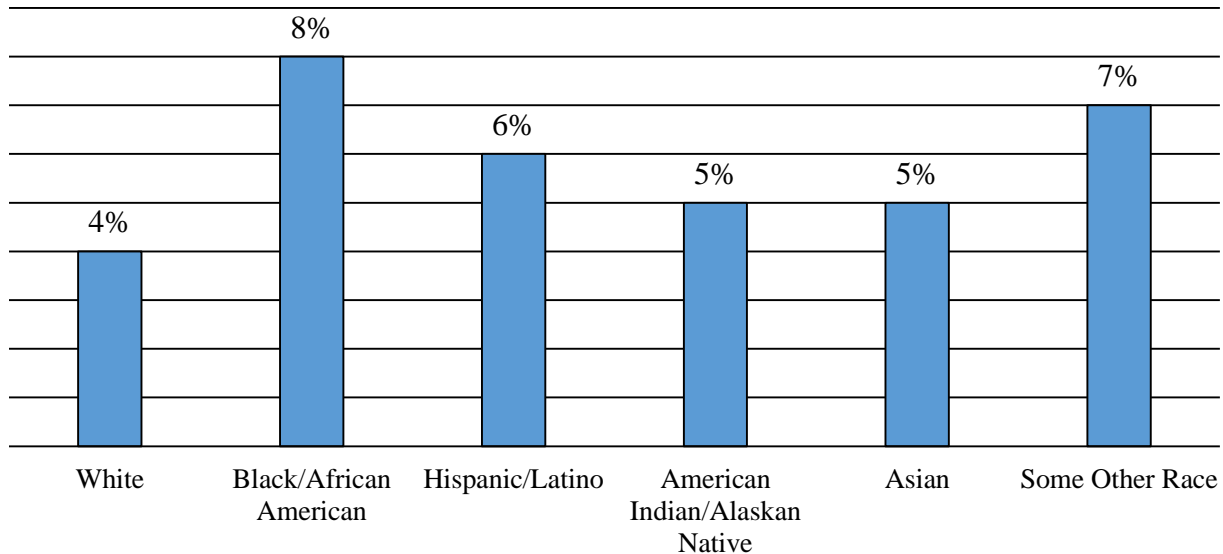
Employment is key to stable housing and homeownership and a variety of state and national data show that higher incomes can lead to the stability and consistency necessary to accumulate the various upfront resources needed to buy a home. Monetary savings for down payments and good credit scores are necessary to achieve initial homeownership and are largely driven by one's employment status and level of income. Employment also often dictates one's access to health care. Certain jobs do not offer health insurance benefits and access to jobs with such benefits may be restricted by an attachment to a criminal record. A criminal record can therefore impose significant barriers to upward socioeconomic mobility following societal reentry and even contribute to recidivism.

Impacts of the Bill

National and state data consistently show that racial minorities experience disproportionate levels of adversity in the areas of life affected by a criminal record. National studies have found that there is a significant negative effect of having a criminal record on employment outcomes that appears substantially larger for Black or African American individuals. As shown in **Exhibit 1**, in 2021, the unemployment rate in Maryland was highest among Black or African American job seekers and twice the rate of white job seekers in the State.

The bill's broad expungement rules will likely impact Black or African American individuals to a greater extent as Maryland incarcerates these individuals at a disproportionately high rate. The Department of Public Safety and Correctional Services reports that for fiscal 2022, Black or African American individuals made up 71% of Maryland's prison population contrasted with their 29% share of the State's overall population.

Exhibit 1
Percent Unemployed in Maryland by Race and Ethnicity
2021



Source: University of Baltimore Schaefer Center for Public Policy

Conclusion

The bill's provisions would make expungement of criminal and other court or law enforcement records more complete and final. This will enable successful applicants for expungement to refrain from disclosing certain convictions and contacts that may prevent them from achieving employment and all the ancillary benefits and opportunities that come with it, such as adequate housing and health care opportunities. The bill will potentially impact Black or African American individuals to a greater extent given the disproportionate number of Black or African American individuals currently incarcerated. The exact equity impacts of the bill cannot be estimated, however, without additional data including historical demographic data on expungement applicants and eligible incarcerated individuals, and prospective employment data for individuals with expunged records.

Information Sources: University of Baltimore Schaefer Center for Public Policy; Department of Public Safety and Correctional Services; Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Legislative Services

Analysis by: Dr. Mikaela Zimmerman

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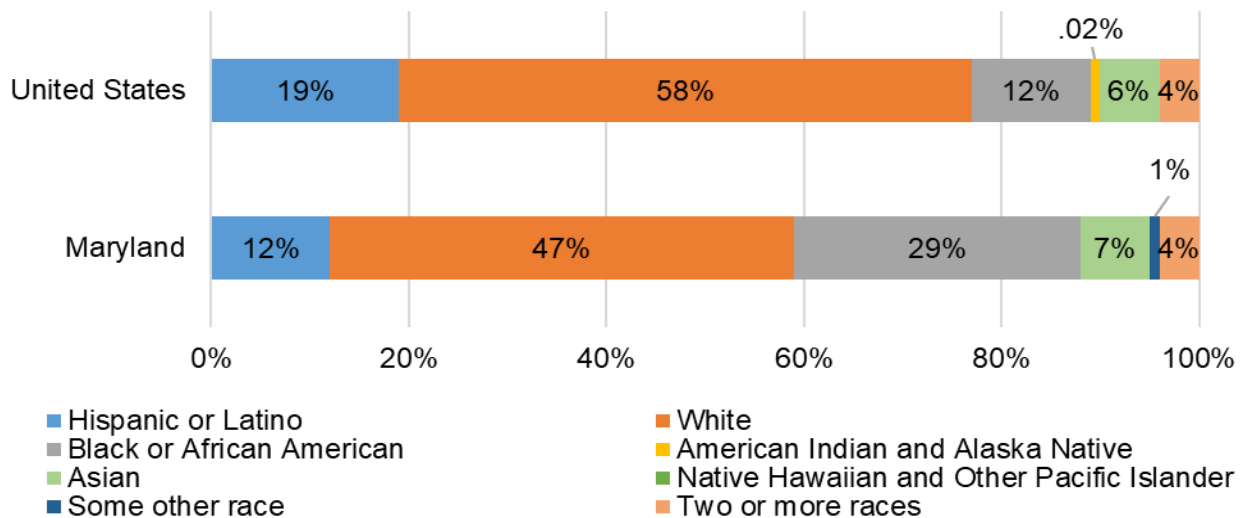
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.