RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES

MARYLAND ▪ GENERAL ▪ ASSEMBLY

2024 Session
HB0658

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

Bill Summary

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. Provisions concerning automated expungement and related procedures take effect January 1, 2027.

Racial Equity Impact Statement

The bill will (1) likely increase the number of ex-offenders eligible for expungement of all or part of their criminal record following the expiration of their sentence; (2) increase the overall number of expungements for various misdemeanors and felonies as specified under the bill's automated expungement provisions; and (3) generally mitigate some adverse consequences regarding disclosure of expungements when affected individuals apply for various government services or to educational institutions. Overall, the bill's provisions increase access to expungements for various offenses and strengthen protections surrounding disclosure of expungements. This will be helpful to impacted individuals in obtaining employment and other related benefits. National and State data show significant negative effects of a criminal record on employment outcomes, and while data is not available to measure the specific extent of these impacts, Black individuals could benefit the most from the bill as they are significantly overrepresented in the criminal justice system.

Analysis

The bill (1) allows individuals who have violated probation or other terms of their sentence for specified offenses to still be eligible for expungement; (2) prohibits denial of access to occupational licenses, permits, registrations or government services based solely on one's refusal to disclose information regarding an expunged criminal record; and (3) establishes an automated expungement process for specified misdemeanors and felonies.

Eligibility for Expungement

The bill clarifies that expungements for specified convictions are allowed after the sentence has expired, without further requirements regarding how successfully the sentence was completed. In November 2022, the Appellate Court of Maryland upheld a lower court ruling that if an individual violates their terms of probation, it does not satisfy the requirement in the expungement statute that allows expungement only after the person "satisfies" the sentence imposed for the conviction sought to be expunged, including parole, probation, or mandatory supervision. Thus, under the court's ruling, a parole violation renders the underlying conviction indefinitely ineligible for expungement.

According to the Administrative Office of the Courts, there were 38,448 petitions for expungement in Maryland's circuit courts and District Court in fiscal 2022 and 46,251 petitions in fiscal 2023. There is currently no demographic data available that indicates the racial and ethnic composition of individuals impacted by expungement.

The provisions of the bill will likely impact Black individuals to a greater extent as these individuals are incarcerated at disproportionately high rates in Maryland. The Department of Public Safety and Correctional Services (DPSCS) reports that, for fiscal 2023, Black individuals made up 71% of Maryland's prison population contrasted with their 29% share of the State's overall population. It should also be noted that 43% of the population under general supervision in 2022 did not successfully complete the terms of their supervision. Unsuccessful completion included technical parole violations, commission of new offenses, and other unsatisfactory behavior.

Assuming trends for expungement applications mimic trends for charges, convictions and incarceration in the State, there would be both a significant number and percentage of Black individuals who would benefit under the bill. Representing a disproportionate share of the charged, arrested, convicted, and incarcerated population, it is a reasonable assumption that Black individuals comprise a meaningful portion of the population with expungement eligible records.

Protections for Refusal to Disclose Information about Expunged Criminal Charges

The bill's provisions prohibit a unit, official, or employee of the State or a political subdivision of the State to deny a person's application for a license, permit, registration, or governmental service on the sole basis of that person's refusal to disclose information about criminal charges that have been expunged. This prohibition also extends to educational institutions regarding expulsions and refusal of admittance.

No reliable data exists to indicate significant denial activity by governmental and/or educational entities related to individuals that have criminal records. Chapter 796 of 2018 required specified departments to report information related to the denial of licenses or certificates for the preceding five years based on an applicant's criminal history. While some of the departments covered under Chapter 796 reported little to no data, the Maryland Department of Labor and Maryland Department of Health reported that less than 1% of the applicants for various licenses were individuals with criminal histories.

There is even less data regarding denials due to an applicant's refusal to disclose information on an expunged criminal record. There is also no data on admittance denials and/or expulsions from educational institutions. Despite the absence of meaningful data documenting actual adverse impacts under existing law, the bill's provisions could potentially encourage more individuals with a criminal record to apply for government or educational services.

Automated Expungement Process

In addition to granting individuals the opportunity to remove certain eligible charges from a criminal record, the bill introduces "automated expungement," which refers to a process by which DPSCS could expunge eligible charges without requiring the filing of a petition by an individual who is the subject of the charges. Under the bill, this eligibility is considered part of "clean slate" provisions where specified nonviolent charges are automatically expunged if at least 3 years have passed since the date of the disposition of the charge, at least 7 years have passed since the date of an eligible misdemeanor conviction, or at least 20 years have passed since the date of an eligible felony conviction.

Other provisions in the bill outline the administrative procedures for automatic expungement of the defined "clean slate" offenses, a digital disposition service to determine expungement status, and an annual report detailing the number of charges expunged, challenges encountered, and the demographic information of affected individuals.

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 the legal process and can include the denial of civil opportunities and benefits available to a person due to their record. 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 an individual'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.

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 individuals. As shown in **Exhibit 1**, in 2022, the unemployment rate in Maryland was highest among Black job seekers and over twice the rate of white job seekers in the State.

The bill's expungement provisions will likely impact Black individuals to a greater extent as these individuals are overrepresented in both charges and arrests for many crimes at a disproportionately high rate.

Exhibit 1
Unemployment Rate in Maryland
by Race and Ethnicity
2022
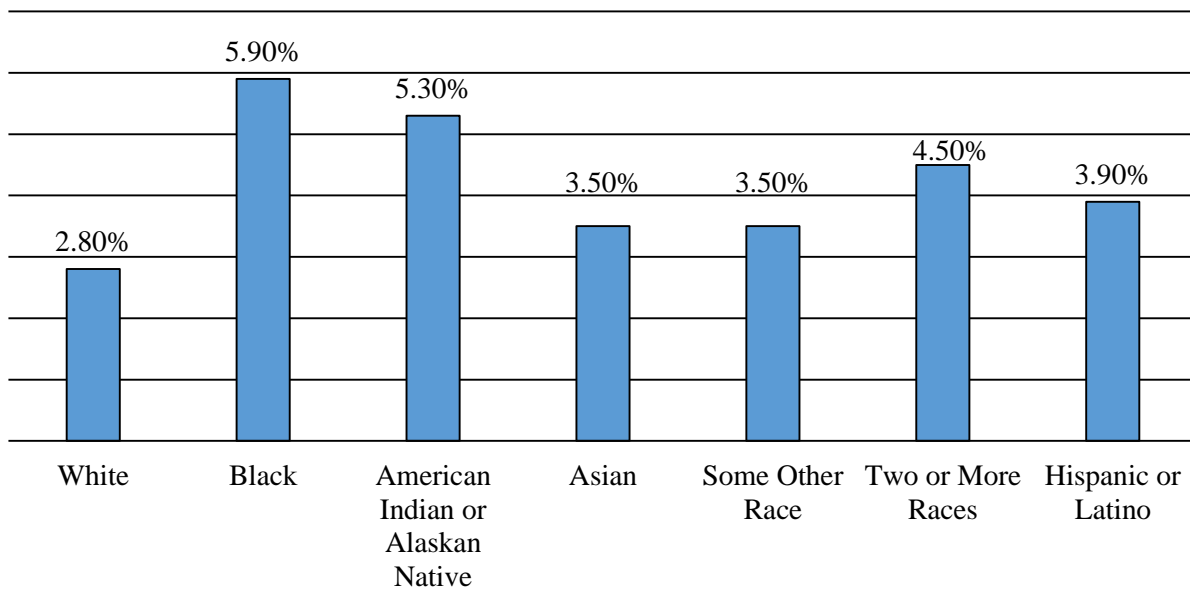
Source: U.S. Census Bureau

Conclusion

The bill's provisions will generally encourage all the ancillary benefits and opportunities that come with expungement of court records, such as increased access to employment, housing, and health care opportunities. The bill will potentially impact Black individuals to a greater extent given the

disproportionate number of Black individuals arrested, charged, and convicted in the State's criminal justice system. The exact equity impacts of the bill cannot be estimated, however, without additional historical demographic data on expungement applicants, individuals eligible for expungement under the bill, prospective employment data for individuals with expunged records, data regarding applicants to the governmental and educational entities covered by the bill, and recent data relating to the reasons for denial of applications by governmental entities and/or educational institutions. However, the bill's reporting requirements regarding demographic automated expungement data would aid in future racial equity analyses.
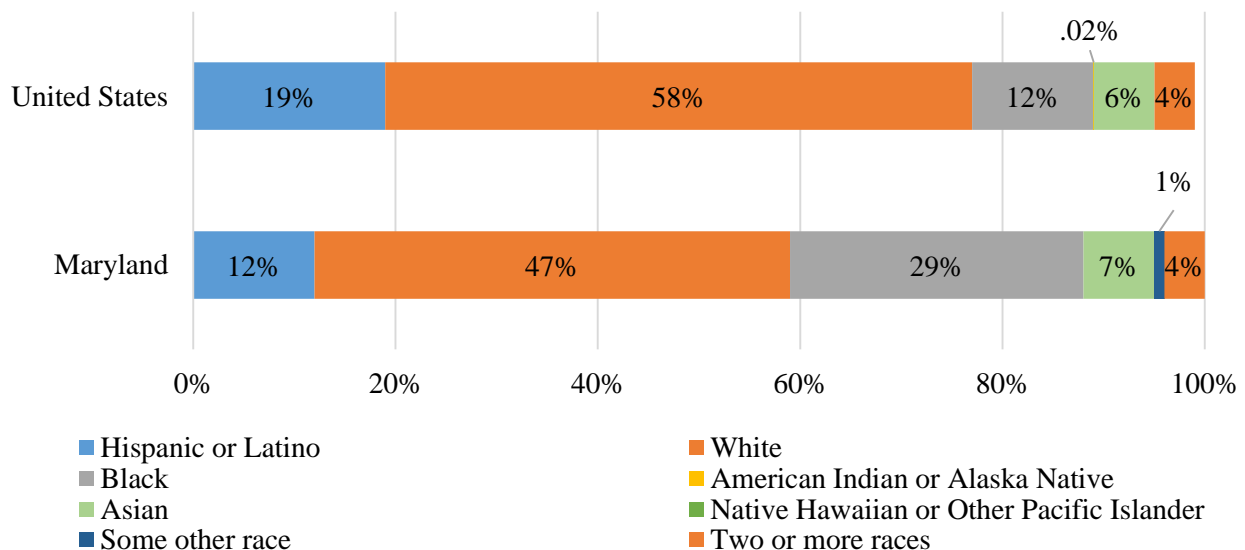
Appendix – Maryland Demographics

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 race demographic group in the State at 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 populations, the largest shares of the non-white population are individuals who are Black, with 29% of the State population identifying only as Black 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

Legend:
- Hispanic or Latino
- White
- Black
- American Indian or Alaska Native
- Asian
- Native Hawaiian or Other Pacific Islander
- Some other race
- Two or more races

United States: Hispanic or Latino 19%, White 58%, Black 12%, Asian 6%, Two or more races 4%, .02%
Maryland: Hispanic or Latino 12%, White 47%, Black 29%, Asian 7%, Some other race 1%, Two or more races 4%