



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2024 Session
HB0867

Criminal Procedure - Expungement and Shielding - Probation Before Judgment for Driving While Impaired or Under the Influence

Bill Summary

This bill authorizes a person to file a petition for expungement under § 10-105 of the Criminal Procedure Article if the person received a probation before judgment for a charge of violating § 21-902 of the Transportation Article (driving under the influence or driving while impaired). The petition may not be filed within 10 years after the date the petitioner was discharged from probation. The bill also authorizes these individuals to petition to shield a police or court record for these dispositions under § 10-303 of the Criminal Procedure Article no earlier than 5 years after the person was discharged from probation for the offense.

Racial Equity Impact Statement

The bill authorizes expungement and shielding for individuals who receive probation before judgment for specified driving under the influence (DUI) or driving while impaired (DWI) offenses. These provisions will generally benefit individuals experiencing the adverse consequences of a criminal traffic record, especially in the areas of employment and economic security. Demographic data on drivers who received probation before judgment, expungement applications, and completed expungements was not available to measure specific impacts related to the bill. While not directly related to drivers receiving probation before judgment for DUI or DWI offenses, limited data from the Administrative Office of the Courts (AOC) indicates no meaningful racial disparities for the individuals *convicted* of a DUI or DWI offense in fiscal 2022 or 2023.

Analysis

The bill authorizes petitions for expungement to be filed by individuals who received probation before judgment for a charge of driving under the influence or impaired driving after 10 years have passed from the date the probation was successfully discharged. Under current law, eligibility for expungement of these offenses is limited to circumstances where a court finds good cause. The bill also authorizes these individuals to petition to shield a police or court record for these dispositions under § 10-303 of the Criminal Procedure Article no earlier than 5 years after the person was discharged from probation for the offense.

Expungements Generally

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 statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, *stet* of charge, and gubernatorial pardon.

Shielding

Section 10-303 of the Criminal Procedure Article authorizes a person to petition a court to shield the person's court records and police records relating to one or more "shieldable convictions" of the person entered in the circuit court or district court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. If a person is not eligible for shielding of one conviction in a "unit," the person is not eligible for shielding of any other conviction in the unit. A person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding petition for good cause.

"Shield" means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. The Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with an aforementioned authorization. "Shieldable conviction" means a conviction of 1 of a list of 12 specified crimes.

Impacts of the Bill

According to AOC data, there was a total of 46,251 petitions for expungement in the district and circuit courts for fiscal 2023. There is no demographic data available that indicates the racial and ethnic composition of expungement applicants. While there is no data available regarding individuals who were granted probation before judgment for the offenses covered under the bill, circuit and district court conviction data for DUI and DWI offenses shows that the distribution of convictions for fiscal 2022 and 2023 by race was not meaningfully different from the racial demographics of the State's overall population. The AOC data shows that white drivers accounted for 50% of total convictions for DUI and DWI offenses, slightly higher than their 47% share of the State's overall population. Black drivers accounted for 33% of total DUI and DWI convictions,

which was also slightly higher than their 29% share of the overall State population. Asian drivers were less likely to receive a conviction compared to their 7% share of the State's population – Asians comprised 1% of convictions during this time period.

Despite the lack of available data regarding drivers who received probation before judgment for DUI and DWI offenses, the bill's provisions would be expected to yield positive outcomes for those who are able to expunge their criminal records. Those individuals are more likely to be successful at finding gainful employment and have higher wages than those who are not. While a record of a DUI or DWI in many circumstances may not be as problematic as a record for other crimes, it may still hinder access to some employment positions and other opportunities that may directly or indirectly affect economic, social, and housing status.

Conclusion

Allowing expungement and shielding of records for those who received probation before judgment for offenses specified under the bill could alleviate some of the negative consequences of having a criminal record. While conviction data for these offenses do not suggest inequities between various racial groups, analyzing the group of drivers who receive probation before judgment would allow for a more precise impact analysis. The demographic data of individuals who historically file for expungement would also help to measure the impacts. The aforementioned data was not available for review, so there is no way to measure the specific impacts of the bill or the magnitude of any impact. Despite limited data, however, the bill will benefit those individuals who receive probation before judgment for the offenses under the bill to the extent that they successfully apply for and receive expungement and/or shielding of their charges.

Information Sources: Pew Charitable Trusts; Administrative Office of the Courts; Governor's Office of Crime Prevention and Policy; Department of Legislative Services

Analysis by: Dr. Mikaela Zimmerman

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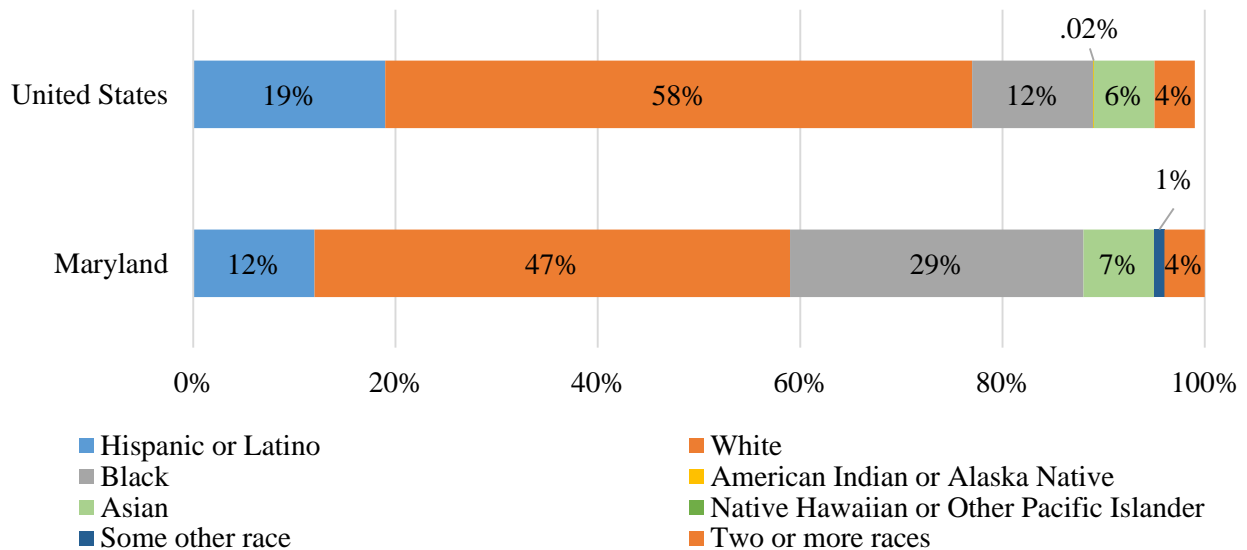
Appendix – Maryland Demographics

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 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



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.