

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1335
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Automatic Expungement

This bill requires the automatic expungement of records related to charges filed on or after October 1, 2020, that result in specified nonconviction dispositions. The bill also requires the automatic expungement of an invalidated or fugitive warrant under specified circumstances. A person entitled to automatic expungement may opt out of the automatic expungement, as specified, and is entitled to seek redress by means of any appropriate legal remedy against and recover court costs from an entity that fails to expunge a police or court record as required.

Fiscal Summary

State Effect: Significant increase in general fund expenditures for State agencies to comply with the bill's requirements, as discussed below. Revenues are not affected.

Local Effect: Local expenditures, which vary by jurisdiction, may increase significantly for affected local agencies to comply with the bill's requirements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A person who, on or after October 1, 2020, has been charged with the commission of a crime, including a violation of the Transportation Article for which a term of imprisonment may be imposed, who has been charged with a civil offense or infraction (except a juvenile offense), or who is the subject of an invalidated warrant or a fugitive warrant is entitled to *automatic expungement* of all police records, court records, and other records maintained by the State or a political subdivision of the State relating to the matter if (1) the person is acquitted; (2) the charge or warrant is dismissed or invalidated; (3) a probation before judgment (PBJ) is entered, unless the person is charged with specified violations regarding driving while impaired or under the influence of alcohol and/or a controlled dangerous substance, including causing death or life-threatening injury as a result; (4) a *nolle prosequi* other than a *nolle prosequi* with the requirement of drug or alcohol treatment; or (5) the court indefinitely postpones trial of the charge by marking the charge “stet” on the docket, without a requirement of drug or alcohol treatment.

Automatic expungement must occur immediately on disposition for an acquittal, dismissal, or a *nolle prosequi* other than a *nolle prosequi* with the requirement of drug or alcohol treatment. A PBJ is eligible for automatic expungement after satisfactory completion of any sentence and probationary conditions imposed in connection with the PBJ disposition. A stet other than one with the requirement of drug or alcohol treatment is eligible for automatic expungement three years after the entry of the stet.

A court or police record may not be expunged by obliteration until three years after the disposition of the charge. During this time, the records must be moved to a separate secure area to which persons who do not have a legitimate reason for access are denied access. A legitimate reason for accessing the records includes using the records for purposes of proceedings relating to the arrest or charge.

The bill establishes timelines for the court, law enforcement units, and other entities to expunge applicable records. If a court, a law enforcement unit, a booking facility, or the Central Repository fails to expunge a record as required, the person entitled to expungement may seek redress by means of any appropriate legal remedy and recover court costs.

A person entitled to automatic expungement may not be required to pay any fee or costs in connection with the expungement. At the time of making a disposition eligible for automatic expungement, the court must inform the defendant that all police records, court records, and other records relating to the matter will be automatically expunged unless the defendant opts out of the expungement. A person entitled to automatic expungement may opt out of the automatic expungement by notifying the court at the time of disposition.

However, opting out of expungement of a particular charge does not bar expungement of other eligible charges.

Current Law: The expungement of the disposition of a charge is not automatic. 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 Law Article, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a 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 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 PBJ, 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 marijuana under § 5-601 of the Criminal Law Article, or convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors are also eligible for expungement of the associated criminal records under certain circumstances.

In general, a petition for expungement under § 10-105 may not be filed until three years after the disposition, unless the petitioner files a written waiver and release of all tort claims arising from the charge.

A person is not entitled to expungement if (1) subject to a specified exception, the petition is based on the entry of PBJ and the person, within three years of the entry of the PBJ, 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.

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**.

In general, a petition for expungement of these convictions is subject to a 10-year waiting period from when the petitioner completed the sentences imposed for all convictions for which expungement is sought, including parole, probation, or mandatory supervision. However, a petition for expungement of a felony or a conviction for misdemeanor second-degree assault, common law battery, or for an offense classified as a domestically related crime under § 6-233 of the Criminal Procedure Article is subject to a 15-year waiting period.

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.

Background: Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts from fiscal 2015 through 2019.

Exhibit 1
Petitions for Expungement
Fiscal 2015-2019

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
District Court	32,726	39,706	47,697	62,631	74,508
Circuit Courts	2,448	4,706	6,811	7,909	10,951

Source: Maryland Judiciary

State Expenditures: General fund expenditures increase *significantly* for State agencies to expunge records in accordance with the bill, as discussed below.

Judiciary

General fund expenditures for the Judiciary increase significantly to comply with the bill's provisions, including \$294,700 in fiscal 2021 for computer reprogramming and *significant* expenditures for additional personnel, as discussed below.

The bill requires automatic expungements of specified dispositions and authorizes the expungement of a charge within a unit of charges (partial expungement) if a defendant opts out of the automatic expungement of specific charge(s) within the unit. The unit rule under § 10-107 applies to the entire subtitle, and it does not appear that the bill's language would override application of that rule. However, the bill's "opt out" provision appears to authorize the partial expungement of a charge within a unit of charges that are all eligible for automatic expungement. Also, a defendant may have a unit of charges comprised of charges eligible for automatic expungement under the bill and a conviction that may become eligible for a petition-based expungement under § 10-110. Under that scenario, the defendant may have to wait until the § 10-110 conviction is eligible for expungement and then petition to have the entire unit expunged. Partial expungements typically involve the removal of part, but not all, of a record, which significantly increases the level of effort needed to process expungements.

According to the Judiciary, hundreds of thousands of cases will be eligible for automatic expungement under the bill. The Judiciary estimates that it takes 3 hours to process a partial expungement in the District Court, 5 hours to process a partial expungement in the circuit courts, and 1.5 hours to process a traditional expungement in either court. Based on its preliminary estimates, the Judiciary advises that it will need 219 clerks, (110 District and 109 circuit) at a cost of \$12.1 million in fiscal 2021, increasing to \$15.6 million by

fiscal 2025. However, this estimate approximates previous estimates authorizing systemwide partial expungements.

Finally, the Judiciary advises that even with computer reprogramming, full functionality of the bill's requirements will not be available until the deployment of CaseSearch 2.0, which is set for implementation in fiscal 2022.

Department of Public Safety and Correctional Services

The Department of Public Safety and Correctional Services advises that it requires one additional administrative employee for every 2,500 additional orders for expungement it receives. The cost associated with two additional administrative positions is \$113,500 in fiscal 2021 and increases to \$146,200 by fiscal 2025. However, this estimate does not appear to contemplate the possibility of partial expungements under the bill. With respect to legislation authorizing partial expungements systemwide (and not limited to defendants electing to "opt out," as authorized in the bill), the Criminal Justice Information System has noted estimated expenditures in the realm of \$462,000 in fiscal 2021 for computer reprogramming, hardware and software procurement, and *significant* expenditures for additional personnel, including the creation of a new unit.

Department of State Police

The Department of State Police (DSP) advises that the bulk of cases it deals with result in PBJ or stet dispositions, and the office does maintain written reports on civil citations for drugs and alcohol. DSP advises that while the storage and destruction of paper records in accordance with the timelines under the bill can be met with existing resources, case references will have to be electronically removed from view and flagged to send reminders to destroy the case after three years, letters will have to be generated to notify the defendant of compliance, and DSP's information technology unit will have to ensure that the case is removed from the system. DSP advises of the following costs associated with this level of effort: one-time programming costs of \$300,000 in fiscal 2021 and personnel expenditures of approximately \$159,000 in fiscal 2021, increasing to \$199,000 by fiscal 2025.

Department of Natural Resources

The Records Section of the Department of Natural Resources (DNR) currently processes an average of 200 expungements per year. DNR anticipates that under the bill, it will have to process 2,000 expungements per year, requiring additional personnel at a cost of approximately \$60,000 annually.

The Department of Legislative Services (DLS) agrees that implementation and compliance costs are significant for the above agencies. However, based on the information available at the time of publication of this fiscal and policy note, DLS is unable to independently verify the specific staffing needs and associated costs of the affected agencies. While the significant increase in costs cannot be quantified at this time, costs may total several million dollars annually.

State Insurance Trust Fund

Assuming that the bill's provisions regarding legitimate access do not hinder the ability of the State to access relevant expunged records that are connected to a lawsuit against the State, the bill does not have a material effect on special fund expenditures from the State Insurance Trust Fund and general fund expenditures for agencies that are the subject of applicable tort claims. However, if a police and/or court record is expunged prior to receipt or notification of a claim under the Maryland Tort Claims Act by the Treasurer's Office, then the Treasurer's Office may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations, if it is not permitted to access the expunged records.

Local Expenditures: Local expenditures, which vary by jurisdiction, may increase significantly for affected local agencies to comply with the bill's requirements.

For instance, Anne Arundel County advises that while it cannot quantify anticipated costs at this time, the bill has a significant impact on county expenditures and operations, and implementation requires additional workspace and personnel to review cases and expunge bookings and reports. Charles County advises that the level of effort associated with the bill is \$659,300 in fiscal 2021 and \$459,300 each year thereafter, which accounts for additional personnel and renovation costs. Frederick County advises that it requires three investigators to review and process automatic expungements, at a cost of at least \$200,000 each year. The Prince George's County Police Department estimates the need for four additional administrative personnel, with costs increasing to approximately \$450,000 by fiscal 2025. However, the Maryland Municipal League advises that municipal police departments can likely implement the bill with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery and Prince George's counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; Morgan State University; Department of Budget and Management; Department of General Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of State Police; Department of Natural Resources; Maryland Department of Transportation; Maryland State Archives; Treasurer's Office; Department of Legislative Services

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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 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 marijuana)

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 (CDS), 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 CDS or for the keeping or selling of a CDS; unauthorized manufacturing, dispensing, or distribution of CDS by a registrant; CDS/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, § 6-206: Breaking and entering a motor vehicle – rogue and vagabond

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 (DHCD) for Rental Housing Program loan

HCD, § 4-2005: Making a false statement or report to DHCD 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

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

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(2): 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