

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 19
Judiciary

(Delegate Glenn)

Criminal Procedure - Expungement - Nonviolent Convictions

This bill expands eligibility for expungement under § 10-110 of the Criminal Procedure Article by authorizing a person who has been convicted of a nonviolent crime that is not specifically designated as eligible in statute or an attempt, a conspiracy, or a solicitation of a nonviolent crime to file a petition for expungement of the conviction. Determination of a petitioner's eligibility for expungement, including whether the conviction is for a nonviolent crime, is within the court's discretion. However, the court must consider the specific circumstances of the petitioner when making such a determination.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues beginning in FY 2020 from filing fees in the District Court. Significant increase in general fund expenditures beginning in FY 2020.

Local Effect: Potential significant increase in local revenues from filing fees in the circuit courts. Potential increase in expenditures for local law enforcement and State's Attorneys' offices.

Small Business Effect: None.

Analysis

Current Law: In general, §§ 10-105 and 10-110 of the Criminal Procedure Article establish 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; and
- 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.

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 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 marijuana under § 5-601 of the Criminal Procedure 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.

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.

A person is not entitled to expungement if (1) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, 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.

Section 10-110 of the Criminal Procedure Article

Chapter 515 of 2016, also known as the Justice Reinvestment Act, established the availability of and procedures for expungements under § 10-110 of the Criminal Procedure Article. Chapter 515 expanded eligibility for expungements by authorizing an individual convicted of any of a list of approximately 100 specified misdemeanor offenses and the felony of bigamy (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. Chapter 143 of 2018 further expanded eligibility for expungement to include

convictions for the following felonies: theft under § 7-104 of the Criminal Law Article; possession with intent to distribute a controlled dangerous substance under § 5-602(2) of the Criminal Law Article; and burglary under §§ 6-202(a), 6-203, or 6-204 of the Criminal Law Article. **Appendix 1** contains an itemized list of convictions eligible for expungement under Chapter 515 of 2016 and Chapter 143 of 2018. If a person is not eligible for expungement of one conviction in a unit, the person is not eligible for expungement of any other conviction in the unit.

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.

Background: As shown in **Exhibit 1**, the Judiciary advises that during fiscal 2018, there were 62,631 petitions for expungement filed in the District Court (53,771 cases expunged) and 7,909 petitions filed in the circuit courts (6,361 cases expunged).

Exhibit 1
Expungement Petitions Filed in the District Court and the Circuit Courts
Fiscal 2014-2018

<u>Year</u>	<u>District Court</u> <u>Expungement Petitions Filed</u>	<u>Circuit Courts</u> <u>Expungement Petitions Filed</u>
2014	35,737	4,025
2015	32,726	2,448
2016	39,706	4,706
2017	47,697	6,811
2018	62,631	7,909

Source: Judiciary

In general, the number of expungements received by the Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (DPSCS) has steadily increased over the years, as shown in **Exhibit 2**. CJIS advises that this increase is due to legislation expanding eligibility for expungements and an increase in the number of occupations and employers requiring background checks. The numbers shown in the exhibit do not include expungements for individuals released without being charged with

a crime. Those expungements are handled through a fairly automated process and involve significantly less work than other types of expungements.

Exhibit 2
CJIS Expungements
Calendar 2004-2018

<u>Year</u>	<u>CJIS Expungements</u>	<u>Year</u>	<u>CJIS Expungements</u>
2004	15,769	2012	30,654
2005	16,760	2013	34,207
2006	20,612	2014	33,801
2007	21,772	2015	36,412
2008	24,200	2016	41,854
2009	25,146	2017	48,211
2010	27,199	2018	59,026
2011	20,492		

CJIS: Criminal Justice Information System

Source: Criminal Justice Information System; Department of Public Safety and Correctional Services

State Revenues: General fund revenues may increase significantly from filing fees in the District Court. The District Court charges a \$30 fee to file a petition for expungement of a guilty disposition.

State Expenditures: General fund expenditures increase significantly for the Judiciary and DPSCS to implement the bill. Workloads for the Office of the Attorney General (OAG) and the Maryland State Archives (MSA) also increase as a result of the bill.

Judiciary

General fund expenditures for the Judiciary increase significantly, perhaps by as much as \$1.04 million in fiscal 2024, for the Judiciary to implement the bill. The expungement process is labor intensive. The burden is on the petitioner to provide the correct information, and expungement clerks can sometimes spend hours trying to locate case files. According to the Judiciary, while the Maryland Electronic Courts System (MDEC) has reduced some processing time and storage expenses, the average time to complete the expungement process has only decreased from almost two hours to one hour. MDEC has been implemented in 80% of the jurisdictions but has yet to be implemented in some of the State's largest jurisdictions, including Baltimore City.

As noted in Exhibit 1, the number of expungements filed in the courts increased from 54,508 in fiscal 2017 to 70,540 in fiscal 2018, an increase of 29.4%. Much of this increase is attributable to the expungement provisions in the Justice Reinvestment Act. The bill expands on those provisions.

The Judiciary advises that implementation of the bill requires an additional 16 clerical positions (6 in the District Court and 10 in the circuit courts) at a cost of \$780,813 in fiscal 2019 and increasing to \$1,037,598 in fiscal 2024, due to the vast number of charges eligible for expungement under the bill. The District Court estimate reflects the need for one clerk in each of the large- and medium-sized districts. The estimate for circuit courts is based on one clerk per circuit with two additional clerks for the largest circuits. Because it is a unified system, the District Court can share resources; the circuit courts cannot share resources.

The Department of Legislative Services (DLS) advises that the actual need for personnel depends on (1) the volume, timing, and geographical distribution of petitions filed under the bill; (2) the number of commonly occurring convictions that may be considered “nonviolent crimes” and are not already included in the expungement statutes; and (3) the ability of existing personnel to absorb some of the additional workload. The absence of a standardized definition of “nonviolent crime” for the courts to apply and the resulting opportunity for an individualized determination of eligibility may entice more individuals to petition for expungement. Eligibility for and granting of an expungement are typically technical matters, dependent on whether a person meets specified requirements. The bill incorporates a consideration of individual circumstances that is not available to other petitioners. Due to the broad discretion to determine expungement eligibility that is provided to the Judiciary, DLS advises that, beyond an anticipated significant increase in expenditures, the data is unavailable to reliably estimate the staffing needs and expenditures that are likely required by the bill.

For reference, the Judiciary received 18 clerk positions to implement the expungement provisions of the Justice Reinvestment Act, which greatly expanded the ability to expunge a criminal conviction. All of these positions have been filled. *For illustrative purposes only*, the cost associated with hiring one expungement clerk in the courts is \$48,801 in fiscal 2020 (which reflects the bill’s October 1, 2019 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses) and ranges from \$58,670 in fiscal 2021 to \$64,850 in fiscal 2024.

The Judiciary also advises that it incurs increased expenditures of \$8,256 to revise and restock expungement brochures and forms. However, DLS advises that the revision and reprinting of forms and brochures to reflect statutory and procedural changes is a routine function of the Judiciary and can be incorporated into existing plans.

Department of Public Safety and Correctional Services

CJIS advises that it needs one additional expungement clerk for every 2,500 additional expungements generated by the bill. However, DLS notes that based on calendar 2018 data, each of CJIS's 10 employees in the expungement unit has an average workload of 5,903 expungements per employee. CJIS stands by its assessment and advises that the calendar 2018 average workload figures do not account for overtime and reassignment of CJIS staff from other units to address the expungement backlog generated by the increases in court orders for expungements due to the enactment of expungement legislation without corresponding increases in CJIS personnel.

DLS acknowledges that the bill requires additional CJIS personnel but also doubts whether the difference between an average workload of 2,500 expungements and 6,000 expungements can be entirely explained by these two factors. Thus, DLS advises that perhaps the need for an additional clerk for every 4,000 expungements generated by the bill is more realistic.

CJIS responds to court orders for expungement. However, given the broad judicial discretion authorized for ordering expungements under the bill and the potential for disparate application, reliable information is not available to estimate the staffing needs and expenditures required under the bill. *For illustrative purposes only*, CJIS processed 10,815 additional expungements in calendar 2018 than it did in calendar 2017. Assuming that the bill produces a similar result, CJIS would require an additional 3 clerks, at a cost of \$118,964 in fiscal 2020 (which reflects the bill's October 1, 2019 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses), increasing to \$154,402 by fiscal 2024.

Office of the Attorney General

OAG represents the State in appeals from denials of petitions for expungement. Due to the lack of a definition of a "nonviolent crime" and the potential for disparate outcomes across the State based on the requirement of individualized considerations of eligibility under the bill, workloads for OAG may increase under the bill. OAG advises that it requires two attorneys and one support staff to address this increased workload. OAG did not provide any additional information as to how it determined the need for this complement of personnel. DLS advises that a specific estimate of staffing and expenditures is not available due to the aforementioned potential for disparate outcomes.

Maryland State Archives

MSA advises that based on its experience of the last 20 years, each time the parameters for cases eligible for expungement have been expanded, the number of expungement orders

MSA receives increases significantly. MSA is unable to estimate the impact the bill will have on the number of expungement orders for records in its custody. According to MSA, a modest increase in expungements would not create a fiscal impact; however, a significant increase in expungements would require operational adjustments to staff allocations to absorb the workload and may require additional staff resources in the future.

Local Revenues: Local revenues may increase significantly from filing fees for expungement petitions in the circuit courts. The circuit courts charge a \$30 filing fee for a petition for expungement of a guilty disposition.

Local Expenditures: Local expenditures may increase for police departments and State's Attorneys to implement the bill.

The Maryland Association of Counties advises that it does not have specific information on how this legislation may or may not affect county governments.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Archives; Maryland State's Attorneys' Association; Maryland Municipal League; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; 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, § 11-306(a): Prostitution

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

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