

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 702

(Senator West)

Judicial Proceedings

Criminal Procedure - Expungement - Entitlement

This bill establishes that a person is not entitled to expungement of certain records under § 10-105 of the Criminal Procedure Article if (1) the court ordered the person to register as a sex offender under Title 11, Subtitle 7 of the Criminal Procedure Article in connection with the disposition of the charge on which the petition for expungement is based or (2) the person has not satisfied an obligation to pay court costs, fines, or restitution imposed by the court in connection with the disposition of the charge on which the petition is based.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Expungement of a Court or Police Record

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 Procedure 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 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 Law Article, convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors, or who had a conviction vacated due to being a victim of human trafficking (as defined in statute), are also eligible for expungement of the associated criminal records under certain circumstances.

A person is not entitled to expungement if (1) subject to a specified exception, the petition is based on the entry of probation before judgment 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

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.

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.

Sex Offender Registry

Generally, a person *convicted of* a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. However, for purposes of sex offender registration, a person is "convicted" when the person (1) is found guilty of a crime by a jury or judicial officer; (2) enters a plea of guilty or *nolo contendere*; (3) is granted a probation before judgment after a finding of guilt for a crime if the court, as a condition of probation, orders compliance with the requirements of the sex offender registration statutes; or (4) is found not criminally responsible for a crime.

Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. The registry is maintained by the Department of Public Safety and Correctional Services (DPSCS).

A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

State Expenditures: The Judiciary advises that it may have to revise various forms, brochures, and web pages, at a cost of \$6,000. The Department of Legislative Services advises that revision of the forms can be incorporated into annual revision and printing procedures using existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2021
an/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510