

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 16 (Senator Jackson)
 Judicial Proceedings

Criminal Procedure - Expungement - Mistaken Identity

This bill establishes that if a person is charged with a crime and that charge is dismissed due to “mistaken identity,” the person is entitled to expungement of specified records related to the charge, in accordance with procedures specified in the bill.

Fiscal Summary

State Effect: General fund expenditures increase by \$62,700 in FY 2023 only. Potential minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF), as discussed below. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	62,700	0	0	0	0
Net Effect	(\$62,700)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in local expenditures for compliance with the bill’s expungement provisions and payment of claims involving expunged records. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: “Mistaken identity” means the erroneous charging of a person for a crime as a result of (1) misidentification by or confusion on the part of a witness or law

enforcement; (2) misinformation provided to law enforcement as to the identity of the person who committed the crime; (3) a mistake by a witness or law enforcement as to the identity of the person who committed the crime; or (4) another person assuming the person's identity in violation of § 8-301 of the Criminal Law Article (identity fraud).

If a State's Attorney seeks to dismiss a criminal charge due to "mistaken identity," the State's Attorney must notify the court. A person who is charged with a crime is entitled to the expungement of any police record, court record, or other record maintained by the State related to the charge if (1) the State's Attorney dismisses the charge and provides the required notice to the court or (2) the charge is dismissed or the person is acquitted and the court determines that the person was charged as a result of mistaken identity. Upon receiving notice from a State's Attorney or making a mistaken identity determination, the court must pass an order requiring the expungement of all police and court records about the charge. Within 60 days after the order is entered, each custodian of affected records must, in writing, advise the court and the person who is the subject of the expunged records of the custodian's compliance with the order.

Current Law:

Petition-based 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.

Waiting Period for Expungement of Dismissed Charges

In general, a petition for expungement under § 10-105 based on an acquittal, a *nolle prosequi*, or a dismissal may not be filed within *three years* after the disposition, unless the petitioner files a written waiver and release of all tort claims arising from the charge.

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.

Automatic Expungements – Sections 10-105.1 and 10-105.2 of the Criminal Procedure Article

Pursuant to Chapter 680 of 2021, beginning October 1, 2021, any police record, court record, or other record maintained by the State or a political subdivision of the State relating to the charging of a crime or a civil offense under § 5-601 (c)(2)(ii) of the Criminal Law Article (possession of less than 10 grams of marijuana), including a must-appear violation of the Transportation Article, must be expunged three years after a disposition of the charge if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or *nolle prosequi*, other than *nolle prosequi* with a requirement of drug or alcohol treatment.

For a case eligible for expungement under these conditions, the court must send notice of the disposition of each charge in the case and the date on which expungement is required to the (1) Central Repository; (2) each booking facility, law enforcement unit, and other unit of the State and political subdivision of the State that the court believes may have a record subject to expungement under these conditions; and (3) the person entitled to expungement.

After disposition of all charges of a case eligible for an automatic expungement, as described above, the court must notify the defendant of the defendant's right to expungement under § 10-105 of the Criminal Procedure Article (petition-based expungement). The court must notify the defendant by mail if the defendant is not present in court for the disposition. The notice the court must provide must include a written form for general waiver and release of all tort claims relating to the charge or charges eligible for expungement.

State Expenditures: While statistics regarding dismissals of charges due to mistaken identity are not readily available, this estimate assumes that dismissals due to mistaken identity are rare, and the bill applies to a select number of cases. Accordingly, it is generally assumed that any additional workload associated with processing expungements under the bill can be accomplished with existing State resources. However, general fund expenditures for the Judiciary increase by \$62,680 in fiscal 2023 only for computer programming.

The State Treasurer's Office (STO) advises that special fund expenditures for SITF may increase minimally to the extent that the process for expungement under the bill hinders investigations and increases payments for claims under the Maryland Tort Claims Act (MTCA). As noted above, petitions to expunge records associated with the dismissal of a criminal charge are subject to a three-year waiting period, unless the petitioner files a

written waiver and release of all tort claims arising from the charge. Automatic expungement of dismissals does not occur until three years after the charge. This three-year period for expungements is related to the three-year statute of limitations for civil causes of action. If a police and/or court record is expunged prior to receipt or notification of a claim under MTCA by the STO, then the STO may encounter difficulties in investigating claims or may have to pay higher amounts for these claims as a result of hindered investigations. False imprisonment by law enforcement is an example of the type of MTCA claim that may be related to an expunged record under the bill.

Local Expenditures: Local expenditures may increase for compliance with expungement orders and if the bill affects the ability of local governments to investigate and address tort claims.

While Baltimore and Charles counties advise that their jurisdictions can implement the bill with existing budgeted resources, Frederick County indicates that it needs to hire an additional investigator to process expungements, at a cost of more than \$55,000 per year.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; cities of Frederick and Havre de Grace; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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