

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 138

(Senator Patterson)

Judicial Proceedings

Criminal Procedure - Expungement of Records - Expansion

This bill expands the application of provisions enacted pursuant to Chapter 680 of 2021 (§ 10-105.1 of the Criminal Procedure Article), which requires the expungement of charges in cases meeting specified criteria (automatic expungements). The bill applies the requirements of § 10-105.1 to charges disposed of on or after October 1, 2018, and adds probations before judgment (all court-ordered conditions satisfied) and stets (all court-ordered conditions satisfied) to the list of eligible dispositions of charges. The bill makes corresponding changes to the existing notice requirements.

Fiscal Summary

State Effect: General fund expenditure increase, likely significantly, for the Judiciary to comply with the bill's requirements, as discussed below. Expenditures for other agencies may also increase. Revenues are not affected.

Local Effect: Potential increase in local expenditures for affected local agencies to comply with the bill's requirements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Automatic Expungements – § 10-105.1 of the Criminal Procedure Article

Under current law, *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.

Under the bill, for a charge disposed of on or after October 1, 2018, 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; *nolle prosequi*, other than *nolle prosequi* with a requirement of drug or alcohol treatment; *probation before judgment (if all court-ordered conditions of the probation before judgment have been satisfied)*; or *stet (if all court-ordered conditions of the stet have been satisfied)*.

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. The bill does not alter these requirements.

Notice to Defendant of Availability of Petition-based Expungement – § 10-105.2 of the Criminal Procedure Article

After disposition of all charges of a case eligible for an expungement 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.

The bill alters these provisions to reflect the addition of specified probations before judgments and stets to the list of eligible dispositions of charges.

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.

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. A petition based on a probation before judgment may not be filed before the petitioner’s discharge from probation or *three years* after the probation was granted, whichever is later. A petition based on a *stet* with the requirement of drug or alcohol abuse treatment may not be filed before the petitioner’s completion of treatment or *three years* after the *stet* was entered on the docket, whichever is later. Otherwise, a petition based on *stet* or a compromise may not be filed within *three years* after the *stet* or compromise.

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.

State Expenditures: General fund expenditures likely increase significantly for the Judiciary to expunge records in accordance with the bill. Other affected State agencies may incur increased expenditures to comply with the bill's requirements, as discussed below.

Judiciary

General fund expenditures for the Judiciary likely increase significantly to comply with the bill's provisions, including the Judiciary's estimate of at least \$500,000 in fiscal 2023 for computer programming and significant expenditures for additional personnel, as discussed below. Additional general fund expenditures are incurred for the Judiciary to mail notices of expungement eligibility to defendants as required under the bill. This estimate assumes that the Judiciary and relevant agencies can use existing budgeted resources to develop a system to notify the courts that a defendant has completed all of the court-ordered conditions of a probation before judgment or stet.

The bill (1) expands the required automatic expungement of court records in cases involving specified dispositions, as opposed to the current petition-based process and (2) requires automatic expungements in cases involving specified dispositions (as expanded under the bill) for charges disposed of on or after October 1, 2018. The current statute applies to dispositions on or after October 1, 2021.

Exhibit 1 contains information on the number of petitions for expungement filed in the trial courts in fiscal 2019 through 2021 under §§ 10-105 and 10-110.

**Exhibit 1
Petitions for Expungement
Fiscal 2019-2021**

	<u>District Court</u>	<u>Circuit Courts</u>
Fiscal 2019	74,508	10,951
Fiscal 2020*	55,105	8,642
Fiscal 2021*	39,061	5,940

*Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

Exhibit 2 contains information on the number of cases in fiscal 2019 and 2020 that were disposed of entirely by (1) acquittal; (2) dismissal; (3) not guilty; or (4) *nolle prosequi*, except *nolle prosequi* with a requirement of drug or alcohol treatment. These are cases with the types of dispositions eligible for automatic expungement *under existing statute*.

**Exhibit 2
Cases with the Types of Dispositions Eligible for Automatic Expungement Under
Existing Statute
Fiscal 2019 and 2020**

	<u>District Court Criminal</u>	<u>District Court Must Appear Traffic</u>	<u>Civil – Possession of Less Than 10 Grams of Marijuana</u>	<u>Circuit Court Cases</u>
Fiscal 2019	95,294	217,396	17,127	9,102
Fiscal 2020*	74,666	159,060	11,840	7,604

*Fiscal 2020 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

Exhibit 3 contains information on the number of cases during fiscal 2019 through 2021 that were disposed of entirely by acquittal; dismissal; not guilty; *nolle prosequi*, except *nolle prosequi* with a requirement of drug or alcohol treatment; probation before judgment; or stet. These are cases with the types of dispositions eligible for automatic expungement under § 10-105.1 *as amended by the bill* (if disposed of on or after October 1, 2018).

Exhibit 3
Cases with the Types of Dispositions Eligible for Automatic Expungement
Under § 10-105.1 of the Criminal Procedure Article As Expanded by the Bill
Fiscal 2019-2021

	<u>District Court Criminal</u>	<u>District Court Must Appear Traffic</u>	Civil – Possession of Less Than 10 Grams of Marijuana	<u>Circuit Court Cases</u>
Fiscal 2019	119,129	263,239	17,738	14,270
Fiscal 2020*	94,379	191,877	12,116	11,425
Fiscal 2021*	94,641	110,571	4,595	9,140

*Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

The Judiciary assumes that an automatic expungement process requires 0.25 hours (15 minutes) to complete, compared to the 1.5 hours (90 minutes) required to process a traditional petition-based expungement. Previously cited contributors to this difference include the elimination of procedural requirements for automatic expungements, such as verification of compliance by applicable custodians of records, the review of and hearings on petitions, as well as the anticipated statewide implementation of the Maryland Electronic Courts system.

Applying this assumption to the number of eligible cases cited in Exhibit 3, the Judiciary advises that it requires 83 clerks in the District Court and 3 clerks in the circuit courts to implement the bill, at a cost of \$5.0 million in fiscal 2023, increasing to \$6.4 million by fiscal 2027.

However, the Department of Legislative Services (DLS) advises that the need for additional court personnel can only be determined with actual experience under the bill and is dependent on (1) the need for resources to address retroactive dispositions and (2) the

bill's overall effect on the number of expungement petitions filed and automatic expungements required. Some of the past cases eligible for automatic expungements under the bill may have already been the subject of previous petitions for expungements under existing statute and may continue to be the subject of a petition for expungement under the bill if a defendant (especially after receiving direct notice from the court) decides to sign a waiver and release of tort claims and petition for expungement earlier than three years after disposition of charges free of charge, since the Judiciary does not charge a fee to file a petition to expunge the dispositions affected by the bill. Also, if the Judiciary's assumption of the amount of time required to process an automatic expungement is accurate, six automatic expungements can be processed in the amount of time needed for one petition-based expungement.

DLS advises that the Judiciary's estimate appears to be based on automatic expungements required under § 10-105.1 *in its entirety* as amended by the bill. As noted above, the Judiciary is required under current law to automatically expunge records associated with specified dispositions, with actual expungement of records to begin October 1, 2024. Based on fiscal 2019 data, the bill *in isolation*, adds the following automatic expungements to the Judiciary's workload each year for dispositions on or after October 1, 2022: 70,289 cases in the District Court and 5,168 cases in the circuit courts. Using the Judiciary estimates, this workload requires 15 additional clerks in the District Court and 1 clerk in the circuit courts, at a cost of \$937,100 in fiscal 2023, increasing to \$1.2 million by fiscal 2027.

However, it should also be noted that (1) the Judiciary has not received additional personnel in response to the 2021 legislation (automatic expungements for those cases will not begin until October 1, 2024) and (2) the bill's *expanded and retroactive* provisions may necessitate the need for immediate resources. Under the bill, one year of eligible disposed cases (October 1, 2018, through October 1, 2019) will need to be expunged on the bill's October 1, 2022 effective date. Using fiscal 2019 data, this amounts to more than 400,000 cases. The Judiciary will have to catch up with subsequent older cases for an extended amount of time.

Exhibit 4 contains information on automatic expungements that are added to the Judiciary's workload under the bill, based on data from fiscal 2019 through 2021, as specified below.

Exhibit 4
Automatic Expungements Added to the Judiciary’s Workload Under the Bill

	<u>District Court</u>	<u>Circuit Courts</u>	<u>Annual Total</u>	<u>Overall Total</u>
Retroactive Expungements Under the Bill (October 2018 - October 2021)*	908,285	34,835	N/A	943,120
Additional Annual Cases (after October 1, 2022 – based on fiscal 2019 data)**	70,289	5,168	75,457	N/A

* These figures assume that fiscal 2019 through 2021 data represent the three years of dispositions in this group.

** Fiscal 2019 is the most recent fiscal year not affected by the COVID-19 pandemic.

Source: Maryland Judiciary; Department of Legislative Services

The Judiciary advises that it is very likely that the bill increases petitions for expungement. However, DLS advises that while that may apply to some past dispositions made eligible for automatic expungement under the bill, given the general three-year waiting period for petitions to expunge a probation before judgment or stet (which may not be avoided or waived), it is likely that the bill converts prospective petitions for expungements for those dispositions under existing statute into automatic expungements. The Judiciary was not able to determine how many petitions for expungement involved a probation before judgment or stet. However, *for illustrative purposes only*, if 20% (or 15,000) of the approximately 75,000 petitions for expungement filed in the District Court during fiscal 2019 involved a probation before judgment or stet, and those petitions are converted to automatic expungements as a result of the bill, the Judiciary saves 18,750 hours of work on expungements per year (for prospective dispositions) in the District Court, which amounts to the time needed to process 75,000 automatic expungements and the automatic expungement-related work of 16 clerks.

Department of Public Safety and Correctional Services

The Criminal Justice Information System (CJIS) within the Department of Public Safety and Correctional Services (DPSCS) is the Central Repository for criminal record history information in Maryland. CJIS may experience increased volume in expungements since eligible individuals do not need to petition for expungement.

DLS notes that the statistics shown above regarding the Judiciary's caseload do not fully correspond with what is ultimately reported to CJIS. For example, DPSCS advises that a traffic law violation is not a "reportable event" and CJIS only receives information about traffic violations that are associated with a criminal event. Also, use and possession of less than 10 grams of marijuana is a civil offense, not a criminal offense; DPSCS advises that unless there is a CJIS code associated with a civil offense of possession of less than 10 grams of marijuana, CJIS does not receive information about that offense.

According to DPSCS, CJIS received the following number of expungement orders from courts in recent years: 48,848 in 2017; 69,771 in 2018; 72,925 in 2019; approximately 50,747 in 2020; and 47,005 in 2021. Data from 2020 and 2021 reflect the impact of the COVID-19 pandemic on the courts and related agencies.

DPSCS advises that CJIS requires one additional administrative employee for every 2,500 additional orders for expungement it receives. Depending on the overall effect of the bill on CJIS workloads, CJIS may require additional personnel. The cost associated with each additional administrative position is approximately \$64,800 in fiscal 2023 and increases to \$82,700 by fiscal 2027. As noted above, the bill may necessitate immediate assistance to address its retroactive application; workloads will likely stabilize over time. DLS also notes that while the workload for CJIS has generally increased in recent years, the unit has not experienced a corresponding increase in staffing, and CJIS has been accommodating workloads beyond the 2,500 caseload standard; the current caseload is 6,426.

Department of State Police

The Department of State Police (DSP) advises that if DSP only has to expunge a record in response to a notification by a court to do so, it can handle the bill's requirements with existing budgeted resources. However, if DSP has to independently track and expunge records to ensure compliance with the bill, then DSP requires significant additional resources.

Other State Law Enforcement Agencies

The Maryland Transportation Authority advises that it can implement the bill using existing budgeted resources. The Maryland Capital Police does not anticipate a fiscal impact from the bill.

Local Fiscal Effect: Local expenditures may increase for local law enforcement agencies to expunge records in accordance with the bill. State's Attorneys' offices may initially experience increased workloads if they have to expunge additional records under the bill; however, this increased workload may eventually be partially or completely offset by a

decrease in workload for expungements processed automatically that would otherwise be the subject of a petition under existing procedures. Automatic expungements under the bill are not subject to an objection by a State's Attorney or a hearing. This analysis assumes that should State's Attorneys' offices experience an overall reduction in workload, those resources will be directed toward other prosecutorial responsibilities.

The Prince George's County Police Department advises that it has a limited number of staff available to expunge records and cannot assess the extent of the bill's fiscal impact at this time. However, the department advises it is highly possible that additional staff may be required to handle the caseload if the increase is significant.

Montgomery County advises that it requires an additional employee, at a cost of at least \$80,000 per year, to comply with the bill.

Some jurisdictions, such as Howard and Caroline counties, do not anticipate a fiscal impact from the bill.

Additional Comments: Section 10-105 of the Criminal Procedure Article prohibits the filing of a petition to expunge a probation before judgment if the person is charged with a violation of § 21-902 of the Transportation Article (driving while under the influence or driving while impaired) or Title 2, Subtitle 5 (homicide by motor vehicle or vessel while under the influence or impaired) or § 3-211 of the Criminal Law Article (life threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes). Also, as noted above, § 10-105 establishes that 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. The bill does not incorporate these exceptions, and it appears these dispositions would be eligible for automatic expungement under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 122 (Delegate W. Fisher) - Judiciary.

Information Source(s): Baltimore City; Caroline, Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of General Services; 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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