

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 37

(Senator Waldstreicher)

Judicial Proceedings

Judiciary

Criminal Procedure - Expungement of Records (REDEEM Act of 2023)

This bill shortens some of the waiting periods for filing a petition to expunge records related to a conviction eligible for expungement under § 10-110 of the Criminal Procedure Article. The bill establishes the following new waiting periods for filing an expungement petition following the petitioner's satisfaction of the sentence(s) imposed for all convictions for which expungement is sought, including parole, probation, or mandatory supervision: 5 years for a listed misdemeanor in general (currently 10 years); 7 years for a listed felony in general (currently 15 years); 7 years for second-degree assault under § 3-203 of the Criminal Law Article or common law battery (currently 15 years); and 10 years for first-degree burglary under § 6-202(a) of the Criminal Law Article, second-degree burglary under § 6-203 of the Criminal Law Article, or felony theft under § 7-104 of the Criminal Law Article (currently 15 years). The bill retains the existing 15-year waiting period for an offense classified as a domestically related crime under § 6-233 of the Criminal Procedure Article and the 3-year waiting period for possession with intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article. The bill also authorizes expungement of a conviction of malicious destruction of property (a misdemeanor) after 5 years. In addition, the bill specifies that any unpaid court fees or costs are not a bar to expungement and requires that, when ordering or effecting an expungement, a court must waive any court fees and costs associated with the charge being expunged.

Fiscal Summary

State Effect: Minimal decrease in special fund revenues from court costs that are waived under the bill. Overall, the bill is not expected to materially affect general fund revenues. Potential minimal increase in general fund expenditures to implement the bill's provisions; any potential impact is most likely limited to the initial years of implementation.

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

Small Business Effect: None.

Analysis

Current Law: 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.

In general, a petition to expunge a misdemeanor conviction under § 10-110 cannot be filed earlier than 10 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. A petition to expunge a conviction for second-degree assault, common law battery, a “domestically related crime,” or a felony may not be filed earlier than 15 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. A person who is convicted of possession with the intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article may file a petition for expungement of the conviction three years after satisfaction of the sentence(s) imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

If the person is convicted of a new crime during the applicable waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.

A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the 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 or conviction in the unit.

Court Costs and Fees

In general, the court costs/fees that may be imposed on a defendant are set forth in the Judiciary's fee schedule and statute; the costs/fees collected are deposited into the general fund and various special funds, as specified in statute. For example, pursuant to § 7-409(b) and (c) of the Courts and Judicial Proceedings Article, in addition to any other costs required by law, court costs are imposed on a defendant convicted of a crime in the amount of \$45 for the circuit court and \$35 for the District Court; a court may not waive these costs unless a defendant proves indigency, as provided in the Maryland Rules. The Comptroller deposits proceeds from these costs into the Victim and Witness Protection and Relocation Fund, the State Victims of Crime Fund, and the Criminal Injuries Compensation Fund, as specified in statute.

State Revenues: While general fund revenues increase minimally from filing fees for petitions for expungement of a conviction for malicious destruction of property, general fund revenues decrease minimally from waived court costs and fees. However, overall, the bill is not anticipated to materially affect general fund revenues. The courts currently charge a \$30 filing fee for petitions to expunge a guilty disposition (conviction), but fee waivers for financial hardship are available. The Judiciary advises that there were 472 convictions in the trial courts during 2021, and 718 convictions in the trial courts during 2022 for malicious destruction of property. In fiscal 2022, there were 32,874 petitions for expungement filed in the District Court and 5,574 petitions for expungement filed in the circuit courts. The bill's timeline/waiting period provisions alter the pace, but not the overall amount, of filing fee revenues. Special fund revenues from court costs and fees waived under the bill also decrease minimally.

The Judiciary advises that all outstanding costs and fees must be paid to be eligible for an expungement. According to the Judiciary, the Maryland Electronic Courts System (MDEC) has programming that will not allow the expungement to be processed if there is a financial balance. Clerks will send a status notice to petitioners advising them of the requirement. Fees and costs can also be ordered to be paid through Division of Parole and Probation, which will show up in MDEC as outstanding until collected and sent to the court. The Judiciary does not have data on projected waived costs and fees for expungement petitioners.

State Expenditures: General fund expenditures may increase minimally to implement the bill's provisions, depending on existing agency resources. While the bill's timeline/waiting period provisions may create an initial influx of expungement petitions filed in the courts and orders for expungement received by applicable custodians of records, the bill does not expand eligibility for expungement, and petition volume is expected to stabilize eventually. Thus, the timeline/waiting period provisions in the bill are not expected to affect overall expungement volume.

Given the conviction data for malicious destruction of property cited above and how that offense is primarily adjudicated in the District Court, the Judiciary can likely handle additional expungement petitions due to this provision with existing budgeted resources, assuming that a significant volume of petitions are not filed for older convictions for malicious destruction of property initially. The Judiciary previously advised that compared to the circuit courts, resources in the District Court are more centralized and can be deployed to meet demand as needed within the entire system. The Department of Legislative Services (DLS) assumes that minimal costs associated with revisions to expungement brochures (and related material) are generally absorbable within existing budgeted resources.

Other State agencies involved in expungements, such as the Department of State Police (DSP) and the Department of Public Safety and Correctional Services (DPSCS) are likely to experience similar initial increases in the volume of expungement orders received. However, as noted above, this volume will eventually stabilize. DSP advises that it can implement the bill with existing budgeted resources. While it cannot estimate projected changes in expungement volume under the bill, DPSCS advises generally that the Criminal Justice Information System (CJIS) requires one additional administrative employee (at a cost of approximately \$68,500 and gradually increasing to \$92,800 by fiscal 2028) for every 2,500 additional orders for expungement it receives. However, DLS notes that CJIS has been routinely accommodating workloads beyond the 2,500-caseload standard. As previously noted, other than the malicious destruction of property provision, the bill primarily impacts the timing of expungement petitions and not the overall volume. Accordingly, while DPSCS may incur minimal expenditures to accommodate an initial influx of expungement petitions, the bill's isolated impact on the workload for CJIS is not anticipated to necessitate additional permanent staff.

The bill is not expected to materially affect the operations of the Central Collection Unit (CCU). The Judiciary currently initiates collection efforts with CCU if any court ordered fines/fees/costs (which total \$30 or more) have not been satisfied after 45 days. After monies are referred to CCU the court does not pursue any further efforts to collect. Once CCU collects the monies (whether via voluntary payment or garnishment of tax refund), the money is sent to the court to apply to the case and satisfy the monies owed. Unpaid court costs and fees do not expire.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 97 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Charles, Garrett, and Howard counties; City of Havre de Grace; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; 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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