

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 73
Judiciary

(Delegate Bartlett)

Judicial Proceedings

Criminal Procedure - Expungement - Completion of Sentence

This bill alters various statutory provisions relating to waiting periods for the filing of a petition to expunge a conviction under §§ 10-105 or 10-110 of the Criminal Procedure Article. The bill authorizes the filing of such a petition after “completion of the sentence.” “Completion of the sentence” is defined as the time when a sentence has expired, including any period of probation, parole, or mandatory supervision. Current law in the affected provisions refers to “*satisfies* the sentence” or “*satisfactory* completion of the sentence.” Additionally, the bill requires a court, prior to ordering an expungement under § 10-110 following a hearing, to make specified findings and state on the record that a petitioner has paid any court-ordered restitution or does not have the ability to pay the restitution.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Eligibility for Expungements – Waiting Periods

With some exceptions, 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.

Sections 10-105 and 10-110 contain waiting periods for filing a petition for expungement. With respect to § 10-105, the bill makes the following changes:

- Conviction for specified public nuisance crimes:
 - *Current Waiting Period:* Three years after the conviction or *satisfactory* completion of the sentence, including probation, that was imposed for the conviction, whichever is later.
 - *Under the bill:* Three years after the “completion of the sentence.”
- Conviction for possession of cannabis under § 5-601 of the Criminal Law Article:
 - *Current Waiting Period:* After the *satisfactory* completion of the sentence, including probation, that was imposed for the conviction.
 - *Under the Bill:* After the “completion of the sentence.”

Under current law, the waiting periods under § 10-110 begin after the petitioner *satisfies* the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. Under the bill, these waiting periods begin after “completion of the sentence.”

2022 Court Decision

In 2022, the Court of Special Appeals (now the Appellate Court of Maryland), held that the Circuit Court for Montgomery County properly denied a petition to expunge a 2008 conviction for theft under \$500 when the petitioner was sentenced to supervised probation for his conviction, subsequently violated his probation, and then served a four-day sentence for the probation violation. According to the Court of Special Appeals, even though the petitioner completed his sentence for the probation violation, because the petitioner was originally sentenced to probation and violated that probation (resulting in an unsatisfactory closing of the probation), the petitioner did not *satisfy* his original sentence. *In re Expungement Petition of Abhishek I.*, 255 Md. App. 464 (2022).

Expungement Hearings – Section 10-110 of the Criminal Procedure Article

Under current law, if the State’s Attorney or a victim files a timely objection to a petition filed under § 10-110 , the court must hold a hearing. The court must order the expungement of all police records and court records about the charge after a hearing, if the court finds and states on the record (1) that the conviction is on the list of convictions eligible for expungement under § 10-110 and the petitioner meets other specified eligibility requirements; (2) that giving due regard to the nature of the crime, the history and character of the person, and the petitioner’s success at rehabilitation, the petitioner is not a risk to

public safety; and (3) that an expungement would be in the interest of justice. The bill adds to this list by requiring a court to find and state on the record that the person (petitioner) has paid any monetary restitution ordered by the court in the original proceeding or does not have the ability to pay the restitution.

Under current law, if at a hearing the court finds that a petitioner is not entitled to expungement, the court must deny the petition. The State's Attorney is a party to the proceeding, and a party aggrieved by the decision of the court is entitled to appellate review as provided in statute.

State Fiscal Impact: The Judiciary advises that the bill may increase the number of expungement hearings to determine satisfaction of restitution or inability to pay restitution. According to the Judiciary, the court is not normally notified if payment of restitution was completed; notification typically occurs when a person fails to pay. Petitioners may need to provide proof of satisfaction of restitution in order to proceed with an expungement. The Department of Legislative Services advises that any potential fiscal or operational impact from additional hearings is not anticipated to be material.

Additional Information

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

Designated Cross File: SB 454 (Senator Carter) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, and Frederick counties; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; 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

Fiscal Note History: First Reader - February 9, 2024
rh/jkb Third Reader - March 28, 2024
Revised - Amendment(s) - March 28, 2024

Analysis by: Amy A. Devadas

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