



Report of the Workgroup to Study Partial Expungement

*Senate Bill 874/Chapter 377, 2021; House Bill
882/Chapter 376, 2021*

Submitted by:
Governor's Office of Crime Prevention, Youth, and Victim Services

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Acknowledgements

This *Report of the Workgroup to Study Partial Expungement* is the result of hard work, valuable input, and dedication from numerous criminal justice stakeholders. Members of the Workgroup to Study Partial Expungement were generous with their time and supportive feedback. Their participation, feedback, and suggestions were invaluable for this report which outlines recommendations and considerations related to partial expungement.

Roster of Members

The Workgroup to Study Partial Expungement is composed of various members, and a Chair and Co-Chair chosen by the workgroup.

Mary Denise Davis, Chair
Public Defender's Designee

John Cox, Co-Chair
President's Designee, Maryland State's
Attorneys' Association

Christopher Dews
Appointed by Governor

Senator John D. (Jack) Bailey
Appointed by Senate President

Senator Michael A. Jackson
Appointed by Senate President

Delegate David Moon
Appointed by House Speaker

Delegate Haven Shoemaker
Appointed by House Speaker

Faye Gaskin
Appointed by Chief Judge, Court of Appeals

Executive Summary

House Bill 1336, 2020/Chapter 31(Section 3), 2021 established a Partial Expungement Workgroup to study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement under the “unit rule” (pursuant to § 10–107 of the Criminal Procedure Article).¹ It also required the Governor’s Office of Crime Prevention, Youth, and Victim Services (Office) to staff the workgroup, and required the workgroup to report its plan and legislative recommendations to the General Assembly by January 5, 2021. Furthermore, and with no further action required by the General Assembly, Section 3 of Chapter 31 would terminate on June 30, 2021.

House Bill 882/Chapter 376, 2021 and Senate Bill 874/Chapter 377, 2021 repealed and reenacted, with amendments, Section 3 of Chapter 31 (2021) which renamed the workgroup as the Workgroup to Study Partial Expungement, altered the composition of the workgroup, changed the method of selection for the chair of the workgroup, modified the workgroup’s reporting deadline, and altered the termination date of the workgroup.² Specifically, the Act altered the reporting deadline to January 5, 2022, and established a termination date of June 30, 2022.

Pursuant to House Bill 1336, 2020/Chapter 31(Section 3), 2021 as amended by House Bill 882/Chapter 376, 2021 and Senate Bill 874/Chapter 377, 2021, this *Report of the Workgroup to Study Partial Expungement* details the issues pertaining to partial expungement, and provides legislative recommendations to address these issues.

Workgroup to Study Partial Expungement

In accordance with House Bill 1336, 2020/Chapter 31(Section 3), 2021 as amended by House Bill 882/Chapter 376, 2021 and Senate Bill 874/Chapter 377, 2021, the Workgroup to Study Partial Expungement (Workgroup) must include the following members: two members of the Senate of Maryland, appointed by the President of the Senate; two members of the House of Delegates, appointed by the Speaker of the House; the Public Defender, or the Public Defender’s designee; one representative from the judiciary, appointed by the Chief Judge of the Court of Appeals; the President of the Maryland State’s Attorneys’ Association, or the President’s designee; and one representative of the Job Opportunities Task Force, appointed by the Governor.

¹ Maryland General Assembly. [*House Bill 1336, 2020/Chapter 31\(3\), 2021, Criminal Procedure – Partial Expungement, Maryland Judiciary Case Search, and Expungement of Misdemeanor Conviction*](#).

² Maryland General Assembly. [*House Bill 882/Chapter 376, 2021, Workgroup to Study Partial Expungement; Senate Bill 874/Chapter 377, 2021, Workgroup to Study Partial Expungement*](#).

Under the leadership of Chairwoman Davis and Co-Chairman Cox, and staffed by the Office, the Workgroup convened for the first time in September 2021. The overarching goal of the Workgroup was to study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article (also known as the “unit rule”).

The Workgroup met over the course of several months to discuss a wide range of issues related to partial expungement, from technology and eligibility to timelines and unintended consequences (*please see [Appendix](#) for more information*). One of the primary challenges that the Workgroup faced was identifying recommendations to further partial expungement opportunities possible within the current technological infrastructure and staffing levels throughout partnering criminal justice agencies in the State of Maryland.

In November 2021, the Workgroup heard testimony from representatives of the judiciary and the Department of Public Safety and Correctional Services (DPSCS). The testimony provided a foundation of information that the Workgroup required in order to facilitate further discussion around possible recommendations related to partial expungement. Specifically, the testimony provided insight on the capabilities and limitations of various data systems, to include the Maryland Electronic Courts (MDEC) case management system and the Criminal Justice Information System (CJIS). In addition, and while MDEC, a single judiciary-wide integrated case management system, represents some of the most advanced judicial case management technology in the nation, the Workgroup encountered challenges related to current technological limitations within systems that are currently unable to fully process a “partial expungement,” or the complete eradication of a charge within a case, specifically within the documents contained within a case file without significant intervention by court staff as well as within audio recordings. For example, to process partial expungements, the Judiciary has estimated the need for 219 additional clerks in the trial courts, for a cost of approximately \$14 million dollars in the first full year. It is estimated that it will require three hours in the District Court and five hours in the circuit courts because of the size of the files. Programming costs could approximate \$300,000 to remove (shield) the charges from Case Search and the public kiosks within court houses. Because of this, the recommendations outlined in this report intend to provide an opportunity for shielding or removal from various criminal justice systems rather than a partial expungement at this time.

Recommendations

For the purpose of this *Report of the Workgroup to Study Partial Expungement*, and to account for the current capabilities within the State of Maryland, the Workgroup identified the following recommendations:

1. The Workgroup acknowledges and understands the limitations of existing technology and therefore recommends that rather than a partial expungement, an option should exist for removal or shielding from Case Search, which is the primary public portal for case record information, as well as CJIS, given that neither the judiciary nor DPSCS are currently able to fully process or guarantee obliteration of record at this time. As stated by the judiciary during a November meeting, the process of expunging or partially expunging a record represents a complex process due to the way case records are and have been recorded. Even with the use of redaction software, which is not 100% effective, court personnel would have to manually search each document (statement of charges, statement of probable cause, and other relevant documents) to ensure there is no reference to the charge. Additionally, many court cases still exist in paper format, which would require court staff to manually review each document to redact any reference to the expunged charge.
 - a. *Process*: This process of removal or shielding from Case Search and CJIS should occur through an application, only, which does not guarantee the removal or shielding. The State's Attorney's Office (SAO) would have the ability to object, similar to other expungement proceedings.
 - b. *Eligibility*: An individual cannot have charges pending while applying for shielding or removal of charges from Case Search and CJIS. Members of the Workgroup discussed additional eligibility criteria in reference to court fees and restitution fees; however, due to philosophical differences, members could not reach a consensus on whether or not the option of removal or shielding from Case Search and CJIS should only be available when all fees are resolved. If these recommendations are implemented, the eligibility criteria for this process should be further discussed.
2. The Workgroup recommends that criminal justice stakeholders, including the judiciary, DPSCS, and local and state law enforcement agencies, explore technological functionality that will allow flexibility and capability to facilitate partial expungement under the unit rule in the future.
3. The Workgroup recommends that stakeholders responsible for processing partial expungement requests, including the judiciary, SAO, and DPSCS, should receive adequate funding and staffing for existing and anticipated expungement volume due to policies adopted in future years. While it is difficult to anticipate the volume of applications, the overwhelming majority of cases include multiple charges which would therefore result in a high volume of interest in opportunities expanded upon by recommendations of the Workgroup. As stated by DPSCS in a November meeting, the historical number of orders for expungement in CJIS are: 50,000 in 2017; 70,000 in 2018; 73,000 in 2019; and 51,000 in 2020. The decline in orders for expungement in 2020 can be attributed to the decrease in filing activity during the COVID-19 Pandemic. In the

event the process for a partial expungement, or in this case shielding or removal from systems, is enabled, DPSCS anticipates an increased volume of requests that will require additional staffing resources.

4. The Workgroup discussed additional considerations once technology allows for partial expungement; however, the Workgroup did not reach a consensus on these options given the existing technological limitations. Because of this, the Workgroup agreed that the following options would require further discussion:
 - a. Repeal the unit rule under § 10-107 of the Criminal Procedure Article;
 - b. Enact legislation separately or amend § 10-105 of the Criminal Procedure Article to permit expungement of any count that is dismissed or results in acquittal, or otherwise favorable disposition;
 - c. Enact legislation or amend § 10-105 of the Criminal Procedure Article notwithstanding the unit rule;
 - d. Enact legislation or amend § 10-105 of the Criminal Procedure Article that results in an acquittal only;
 - e. Permit shielding from Case Search for any case; or
 - f. Shield a charge that is not commingled within a unit and not a crime of violence.
5. The Workgroup recommends that additional legislation be sponsored to expand the life of the Workgroup to Study Partial Expungement in order to continue tracking the issue of partial expungement and Maryland's ability to advance these efforts.

Closing

While the Workgroup did not identify recommendations that could further the process of a partial expungement, or complete eradication of a part of a case, many members expressed the desire to ensure that individuals receive the option to remove or shield certain charges from Case Search and CJIS in the immediate future, especially given the challenges many individuals face to obtain housing, education, occupational licensing, or employment as a result of previous charges.

However, some members did express opposition to the concept of partial expungement throughout the duration of these meetings given that the offenses to which a partial expungement would be subject often arises in the context of global plea negotiations (i.e., the defendant pleas to a lesser charge resulting in a nolle prosequi for the more serious charge), as well as the logistical challenges discussed throughout this report.

Appendix: Workgroup Meeting Agendas



GOVERNOR'S COORDINATING OFFICES

Community Initiatives • Service & Volunteerism • Performance Improvement
Crime Prevention, Youth, & Victim Services • Small, Minority, & Women Business Affairs
Banneker-Douglass Museum • Volunteer Maryland • Deaf & Hard of Hearing

Workgroup to Study Partial Expungement - Kickoff Meeting

Tuesday, September 28, 2021 | 2:00 p.m. - 3:00 p.m.

Virtual Meeting: meet.google.com/eqr-sood-dje

- I. Welcome and Introductions
- II. Goals and Objectives
- III. Timeline
- IV. Open Discussion
- V. Next Steps



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Workgroup to Study Partial Expungement - Kickoff Meeting

October 12, 2021 | 3:00 p.m. - 4:00 p.m.

Virtual Meeting: meet.google.com/eqr-sood-dje

- I. Opening Remarks
- II. Review and Approval of Meeting Minutes
- III. Primary Workgroup Goal
 - A. The Workgroup shall study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article.
- IV. Key Themes
 - A. Technology
 - B. Unintended Consequences
 - C. Timelines
 - D. Processes
- V. Next Steps



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Workgroup to Study Partial Expungement - Kickoff Meeting

November 9, 2021 | 1:00 p.m. - 2:00 p.m.

Virtual Meeting: meet.google.com/gdq-gdoc-kek

- I. Welcome
- II. Primary Workgroup Goal
 - A. The Workgroup shall study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article.
- III. Panel Presentation: Technology and Partial Expungement
 - A. Chief Judge Morrissey, District Court of Maryland
 - B. Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services (DPSCS), and Stanley Lofton, Chief Information Officer, DPSCS
 - C. Panel Questions and Answers
- IV. Next Steps



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Workgroup to Study Partial Expungement

November 30, 2021 | 3:00 p.m. - 4:00 p.m.

Virtual Meeting: meet.google.com/yub-aiqy-zbx

- **Welcome**
- **Primary Workgroup Goal**
 - *The Workgroup shall study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article.*
- **November 9th Panel Presentation: Thoughts and Reactions**
- **Potential Recommendations and Open Discussion**
- **Next Steps**



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Workgroup to Study Partial Expungement

December 14, 2021 | 3:00 p.m. - 4:00 p.m.

Virtual Meeting: meet.google.com/hrc-bxte-mgh

- **Welcome**
- **Primary Workgroup Goal**
 - *The Workgroup shall study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article.*
- **Follow-Up from November 30th Meeting**
- **Recommendations for Final Report**
- **Next Steps**



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Workgroup to Study Partial Expungement

January 11, 2022 | 3:00 p.m. - 4:00 p.m.

Virtual Meeting: meet.google.com/qok-iqdz-poo

- **Welcome**
- **Primary Workgroup Goal**
 - *The Workgroup shall study and develop a plan and legislative recommendations for enabling the expungement of criminal charges that are currently not eligible for expungement because of the requirements of § 10–107 of the Criminal Procedure Article.*
- **Review Recommendations for Final Report**
- **Next Steps**