

Bill Number: SB11
Maryland State's Attorneys' Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATE'S ATTORNEYS'
ASSOCIATION IN OPPOSITION TO SENATE BILL 11- CRIMINAL PROCEDURE-
PARTIAL EXPUNGEMENT

The Maryland State's Attorneys' Association is opposed to Senate Bill 11, Criminal Procedure – Partial Expungement and asks for an unfavorable report.

In 2016, the Maryland legislature embarked on a mission and project which became the Justice Reinvestment Act. Included within this extensive package aimed at addressing the criminal justice system, as it existed, was a major change and expansion of expungement availability for those intent on first paying their debt to society but then intent on making a future for themselves without the constraint of a criminal record. In doing so, however, the legislature was cognizant of and created laws which still required some accountability and protection of society. This Bill will take us beyond accountability, require an astronomical expenditure of resources and inhibit just results for those who choose to reoffend.

Senate Bill 11 would eliminate the unit rule within the expungement laws and permit expungement of any particular count within a case even if the person was convicted of an offense or offenses involving the case being addressed. This would make almost every case ever charged in the State of Maryland subject to expungement. It is unquestionably common that if a person pleads guilty in a case, that plea would include a nolle prosequi of counts charged as part of the agreement to plead guilty. If a case goes to trial, it is unquestionably common that a prosecutor will nolle prosequi counts before the case is submitted to a jury to simplify deliberations and avoid confusion with counts which are intertwined with each other. As an example, if a person chose to plead guilty to First Degree Murder, the prosecutor is likely to agree to nolle pros the Burglary or Robbery or First Degree Assault count. If the jury is being handed a First Degree Murder case, the prosecutor is likely to nolle pros the lesser included offenses if the evidence is clear of the completed offense. (For example- the State may submit a Robbery Deadly Weapon count and not submit the Robbery count).

This means that the person who plead guilty to First Degree Murder or was found guilty by a jury of First Degree Murder is now given the authority to expunge the other counts in the case. Expungement would then excise the information regarding the case from the public record and greatly inhibit the criminal justice system from access to information and the ability to share that information. The Bill tries to address the issues raised by the impracticable ability to excise counts from an existing case. This would still unfairly inhibit justice. The Bill would restrict the inspection of the record of the case to a "Criminal Justice Unit". Presumably this means that if a convicted person commits another crime, the prosecutor cannot stand up in court and speak about the persons

prior conviction if they have chosen to have the nolle prossed counts expunged before they commit another crime. In addition, this legislation would even prohibit the provision of a case file of the police department or States Attorneys Office to the convicted person through discovery or the Public Information Act.

The primary issue which apparently is intended to be addressed (limit of public access to nolle prossed counts) has already been addressed by the Legislature through Criminal Procedure §10-301 and §10-401. The charges which are addressed in this Bill have already been directed to be shielded from Maryland Judiciary Case Search.

Finally, the burden in both manpower and financial obligation with this Bill would be astronomical and would practically swallow up the more important functions of the components of the criminal justice system. As previously mentioned, almost every criminal case which has ever existed in Maryland would be eligible. That number is incalculable. The work required in each case to review the records, determine if partial expungement is practicable in the narrative portions and the sequestering of those records (after a hearing in every single case) would be immense.

Maryland has developed to the point that substantial expungement capability and shielding of other records from the public view has been accomplished. This Bill is a step way beyond the practical ability and logic of the reasoning behind the justification for expungement rights already established.

The Maryland State's Attorneys' Association urges an unfavorable report.