



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith Jr., Chairman and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 1, 2024

RE: **SB 11 Criminal Procedure – Partial Expungement**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE SB 11**. This bill provides for the partial expungement of charges under specific circumstances.

MCPA and MSA, while understanding the desire to provide a second chance for persons in certain circumstances, generally oppose legislation that increases the categories for expungement because it could interfere with the necessary access to prior criminal information.

Under SB 11, a person may apply for a partial expungement in situations where two (or more) charges arise from the same incident, transaction, or set of facts if one of the charges is eligible for expungement but the other is not. If it is impracticable for a partial expungement due to the narrative of the charges, the bill requires the court to remove the official record of the charges from its public website and from within records maintained by the Central Repository. It also allows the state or local governments to maintain the written record without change and to limit inspection of the written record to criminal justice units for criminal justice purposes. Under current law, if one of two (or more charges) arising from the same incident, transaction, or set of facts is ineligible for expungement, none of the other charges may be expunged.

The bill is problematic as it tends to erode judicial transparency in cases where the narrative of expungable and inexpungeable charges are heavily intertwined. “The public’s right of access to judicial proceedings is fundamental.” *Le v. Exeter Fin. Corp.*, 990 F.3d 410, 418 (5th Cir. 2021). Marylanders have traditionally enjoyed the right to access court records. “An important common law principle provides that court proceedings and records are presumptively open to the public.” *Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 95 (2022). “All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code Ann., Gen. Prov. §4-103. Removing records of criminal

prosecutions is inconsistent with the need for openness. As the Fifth Circuit recently observed in the context of sealing orders:

The Judicial Branch belongs to the American people. And our processes should facilitate public scrutiny rather than frustrate it. Excessive secrecy...undercuts the public's right of access and thus undermines the public's faith in our justice system. *Le*, 990 F.3d at 421.

Each year, several pieces of legislation are introduced that seek to adjust the considerations and time frames under which expungement, pardons, or shielding can be sought. MCPA and MSA believe such changes require participation and input from the judiciary, prosecutors, and law enforcement and, rather than being dealt with in a piecemeal manner, should be addressed comprehensively in a process that involves all stakeholders and in a setting that is conducive to reasonable solutions while, at the same time, not affecting public safety.

For these reasons, MCPA and MSA **OPPOSE SB 11** and urge an **UNFAVORABLE** Committee report.