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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 454 Criminal Procedure - Expungement - Completion of Sentence**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: February 8, 2024**

The Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 454.

The Appellate Court of Maryland's decision, *In Re Expungement Petition of Abhishek I.*, 244 Md. App 464 (2022) turned back the progress that had been made by this legislature in opening the door for Maryland citizens impacted by convictions. Since 2007, the legislature has consistently expanded expungement eligibility because the Maryland General Assembly recognizes the importance of second chances and allowing individuals to thrive and grow beyond their mistakes.<sup>1</sup> In 2007, the Maryland General Assembly passed a bill permitting automatic expungement of arrest when no charges were filed. Just last year, the Governor signed into law the Redeem Act that shortens the waiting period for filing expungements.

The *Abhishek I.* decision has created chaos and confusion for the advocates and their clients. The decision held that a violation of probation means an otherwise eligible conviction is ineligible for expungement *indefinitely* under the assumption that any violation could mean that an individual has not "satisfactorily completed the sentence." Thus, even if a person violates their probation once, then subsequently complies with any additional consequences and completes their probation, they would not be able to expunge their conviction. This ruling does not align with Maryland's desire to be a state of second chances.

I refer to expungement as a form of legal redemption when it comes to eligible convictions. This decision slams the door on so many individuals who have made changes in their lives that could benefit from an otherwise eligible conviction being expunged.

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<sup>1</sup> <https://moco360.media/2023/10/13/redeem-act-provides-second-chances-to-moco-residents/>; see also <https://www.washingtonpost.com/dc-md-va/2023/05/16/maryland-expungements-wait-times/>

Senate Bill 454 clarifies that expungements are to be allowed after the completion of the sentence. Senate Bill 454 allows expungement eligibility determination to be made at the time that the waiting period has been reached. One of the fundamental purposes of the expungement statute is to allow an individual to clear their record to move forward after a period of time that indicates rehabilitation. An individual who makes a mistake on probation is no less redeemable than an individual who has not.

Senate Bill 454 remedies the appellate case and will bring a more realistic approach towards otherwise eligible convictions. Rehabilitation is not easy and is not quick. Court imposed probation may not be free of mistakes, but that does not mean it should preclude redemption. Time and age are often factors in moving past any criminal behavior and the expungement statute, especially with the new REDEEM Act, takes this into account by providing waiting periods. Senate Bill 454 will modify the language of the expungement statute to remove the requirements that probation must be successful within the time period of the probation. It will keep doors from slamming in the face of reformed Marylanders and ensure that we continue to be a state of second chances.

Finally, the passage of this bill will not reduce any restrictions already in place to prevent an expungement if the individual has not been rehabilitated – no pending cases and no subsequent ineligible convictions restrictions remain. The State's Attorney and the victim can still object. Public policy regarding expungement is better served allowing the courts to assess the reasons for expungement, the person's character and rehabilitation; and whether the expungement as a whole would be in the best interest of justice.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 454.**

**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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