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POSITION ON PROPOSED LEGISLATION

**BILL: HB0499 Criminal Records – Expungement and Maryland Judiciary Case Search
(Expungement Reform Act of 2025)**

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/28/2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 499. Expungement of a criminal record is an important component of ensuring that a person who has served time on a criminal conviction and is pursuing a productive law-abiding life in the community has access to housing, employment, professional licensures, and other basic needs. It also reduces the systemic barriers that arise from the racial disparities in the criminal legal system and perpetuate cycles of poverty and marginalization.

House Bill 499 provides two important measures to further the goals of expungement: (i) it restores eligibility based on the completion of the sentence, with probation or parole violations as a factor for judicial review rather than automatic ineligibility; and (ii) it expands the charges eligible for expungement to include misdemeanor offenses that are currently omitted from Criminal Procedure Law 10-110.

Amending CPL 10-101 to Define Completion of a Sentence

Since 2015, Maryland law has recognized that providing people with a criminal conviction with the opportunity to clear their criminal record is an important safety component so that people who have been convicted of a crime can thrive and grow beyond their mistakes. In that year, the

Second Chance Law provided for a limited list of misdemeanors to be eligible for shielding after three years. 2015 CH 313. With the Justice Reinvestment Act of 2016, the General Assembly extended this approach by authorizing the expungement of enumerated misdemeanors after a 10-year waiting period without subsequent convictions. 2016 CH 515 (codifying Crim. Proc. L. § 10-110). Since then, expungement law has incrementally expanded nearly every year, through the introduction of additional offenses eligible for consideration and/or a decrease in the waiting period for expungement to be granted. As recently as 2023, the General Assembly passed the REDEEM Act, which reduced the waiting period for criminal record expungement by one-half. 2023 CH 683.

Despite the consistent legislative intent to expand the opportunity for second chances, in 2022, the Appellate Court of Maryland drastically curtailed access to expungement. *In Re Expungement Petition of Abhishek I.*, 255 Md. App 464 (2022) held that a violation of probation prevents an otherwise eligible conviction from ever being expunged because the individual has not “satisfactorily completed the sentence.” This decision – which did not distinguish between the types of violations nor provide for any judicial discretion – has counteracted the ongoing efforts to make expungement more available for individuals who have served their time and seek pathways to work, housing, and family stability.

Violations of probation vary greatly. Serious violations typically result in a new criminal charge, which even prior to *Abishek I.*, would preclude expungement unless and until that charge is also able to be expunged. Technical violations vary widely and can be the result of missing a single call or meeting with one’s probation officer, being terminated from court-ordered employment, or failing a drug test. These setbacks, which often the result of a substance use disorder, are a common part of the rehabilitation and recovery process that should not indefinitely preclude a person from moving forward in their reentry journey.

House Bill 499 will restore the law as interpreted prior to *Abishek I.* It will allow for expungement consideration after the completion of the sentence and the applicable waiting period. The requirements and restrictions currently in place – including no pending criminal matters, no subsequent ineligible convictions, and judicial consideration of any risk to public safety and the interests of justice – remain. Crim. Proc. L. § 10-110(d), (f)(2). In addition, the State’s Attorney or a victim may still file an objection and require a hearing to determine if expungement should be granted. Crim. Proc. L. § 10-110(f)(1). Public policy regarding expungement is better served by allowing the court to assess the appropriateness of expungement after the waiting periods by

considering the person's character, probation or parole history, overall rehabilitation, and whether the expungement as a whole would be in the best interest of justice.

Expanding Eligibility for Additional Misdemeanor Offenses

Expungement availability promotes a more successful law-abiding lifestyle. As noted above, OPD clients generally seek expungement to help with basic fundamental needs, such as securing a job, a professional license, or certain types of housing. Currently, this relief is permanently denied to individuals convicted of driving without a license, counterfeiting prescriptions, stolen credit card, obtaining services by bad check, resisting arrest, and false statement to an officer. The bulk of these charges are tied to substance use disorder and/or poverty, and concern individuals who desperately need the opportunities barred by their criminal history and who pose a low risk to public safety. Where harm has occurred, the charges listed here are generally part of a unit with more serious offenses – such as theft for credit card and bad check offenses; and assault for resisting arresting. Moreover, the judicial review and objections by a State's Attorney or victim provided by Crim. Proc. Law § 10-110(d) will still apply. There is no reason for these misdemeanor offenses to be differentiated from those that already provide for expungement.

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The opportunity for expungement is an important mechanism for people to move beyond their mistakes and have the economic and familial stability that promotes a law-abiding life. While the sentencing process looks backwards at prior actions to determine punishment, expungement is forward looking to encourage a more successful law-abiding lifestyle in the future. It restores access to work, housing, and other basic needs after someone has served their time without a new conviction after the designated waiting period. House Bill 499 is a measured response that recognizes that a technical violation of probation should not indefinitely preclude employment opportunities, and that more misdemeanor charges should be eligible for consideration.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on House Bill 499.

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