

SB 702.pdf

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Bill Number: SB 702
Maryland States Attorneys Association
Support

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION
IN SUPPORT OF SENATE BILL 702
CRIMINAL PROCEDURE – EXPUNGEMENT – ENTITLEMENT

The Maryland States Attorneys Association supports Senate Bill 702, Criminal Procedure – Expungement – Entitlement as a common sense bill to address two issues with regard to expungements in limited circumstances.

Criminal Procedure Article §10-105 addresses entitlements to expungement of many different criminal case dispositions including but not limited to the entry of a nolle prosequi, acquittal, dismissal, stet and probation before judgement. With regard to a probation before judgement, the Court “shall” grant the expungement if the defendant is entitled to the expungement. The statute then addresses when a person is not entitled to expungement. Currently, those circumstances are limited to if (1) the offense is a DUI or causing a life threatening injury by motor vehicle while under the influence of alcohol, (2) the time period has not yet expired, (3) the defendant has been convicted of a crime in the interim, or (4) the defendant is pending a criminal charge. If one of these exclusions is not present the expungement must be granted.

The mandatory nature of the statute has caused problems with regard to some unique circumstances which this Bill then addresses. First, in some circumstances an individual could have received a probation before judgement and also be on the sex offender registry for that offense. Under Title 11, Subtitle 7 of the Criminal Procedure Article if an individual receives a probation before judgement for a Fourth Degree Sexual Offense, the sentencing judge has the discretion to determine whether or not the person should be required to register as a sexual offender. If ordered to do so, the time period would be fifteen years as a Tier 1 Sexual Offender. The expungement statute, however, creates the probability that the defendant can petition for and receive an expungement within three years of the time that the Judge has ordered that the person register as a sexual offender. This would remove all evidence of the adjudication and therefore the order that the person register.

Next, the current expungement statute does not take into consideration if the defendant has satisfied his or her obligations to the Court and to the victim of their crime financially. If a Judge has granted an individual probation before judgement and ordered the defendant to pay a fine, court costs or restitution to the victim, it would make sense that if the person is financially able they should follow that direction. Under the current law, an individual could have all record of the adjudication removed after three years and make restitution collection through a judgement practically impossible from that point forward. There are often occasions, in less serious cases, that a Judge

may impose a fine and/or court costs without probation supervision. In that scenario, an individual could just ignore the payment requirement and then expunge the record of it several years later. This doesn't make sense.

Adding the restrictions on expungement to circumstances where a person is a registered sexual offender or has not met his burden to make the victim or the Court whole is important and this Bill would accomplish those goals. We ask for a Favorable report.

Expungement - restrictions - testimony - senate -

Uploaded by: Jordan, Lisae C

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting House Bill 702 and 617
Lisae C. Jordan, Executive Director & Counsel
February 23, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault, including for survivors of child sexual abuse. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on House Bill 702 and 617.

House Bill 702 and 617 – Restrictions on Expungement

This bill would prohibit expungement in cases where either:

- 1) the convicted offender was sentenced to be on the sex offender registry, or
- 2) an order of restitution against the convicted offender has not been satisfied.

Permitting an offender to expunge a record while on the sex offender registry is illogical, providing the public with information in one venue but restricting it in another. For cases where the offender is no longer on the registry, allowing expungement would deprive courts of important information, including in family law matters. (MCASA would not oppose shielding in these cases.)

Regarding expungement of cases where there is an unsatisfied judgement of restitution, MCASA appreciates the challenges facing low income defendants who have otherwise met their obligations to society, however, restitution is important to crime victims. We respectfully suggest that any changes to restitution orders – particularly a change that effectively vacates the order – should go through the process to modify sentences and include notice to the victim.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to report favorably on
House Bill 702 and 617**

MCPA-MSA_SB 617-SB 702 _Expungement-Entitlement-Su

Uploaded by: Mansfield, Andrea

Position: FAV



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: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 23, 2021

RE: **SB 617 and SB 702 Criminal Procedure – Expungement -Entitlement**

POSITION: SUPPORT

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 617 and SB 702. These bills would prohibit the granting of an expungement to a convicted defendant that is placed on the sex offender registry.

The sex offender registry is, in part, designed to help protect potential future victims from convicted sexual predators by requiring the offender to register - thereby providing notice to communities. In allowing these offenders to be removed from the registry due to an expungement we are simply placing communities in harm's way and potentially creating more victims of these horrific crimes.

Prohibiting the granting of an expungement in these matters protects communities and future victims from potential harm these offenders. For these reasons MCPA and MSA SUPPORT SB 617 and 702 and urge a FAVORABLE Report.

Senator West-SB702-FAV.pdf

Uploaded by: West, Christopher

Position: FAV

CHRIS WEST
Legislative District 42
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County
Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3648 • 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville -Timonium, MD 21093
410-823-7087

February 23, 2021

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 702 – Criminal Procedure – Expungement - Entitlement

Dear Chairman Smith and Members of the Committee:

In many situations, a person is eligible to have all police records and court records of an offense expunged, but in there are exceptions. Senate Bill 702 creates two additional exceptions.

First, under Senate Bill 702, a person would NOT be entitled to an expungement if the court ordered the person to register as a sex offender under Title 11, Subtitle 7 of the Criminal Law Article in connection with the disposition of the charge on which the petition to expunge is based.

Second, a person would NOT be entitled to an expungement if the person has not satisfied an obligation to pay court costs, fines or restitution that the court imposed in connection with the disposition of the charge on which the petition to expunge is based.

So if the petitioner for an expungement had been ordered to register as a sex offender or if the petitioner has not yet paid the court costs, fines or restitution ordered by the court, the petitioner will NOT be entitled to expungement.

I hope the Committee will issue a favorable report on this bill.