

Bill Number: HB 1269
John P. Cox, Deputy State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF JOHN P. COX,
DEPUTY STATE'S ATTORNEY FOR BALTIMORE COUNTY, IN
OPPOSITION TO HOUSE BILL 1269
EXPUNGEMENT OF RECORDS – WAITING PERIOD

The Maryland State's Attorneys' Association opposes House Bill 1269 as drafted which will greatly shorten the amount of time one needs to wait to obtain an expungement.

Currently, there is a three year time period for many circumstances in which an individual may obtain an expungement. That time period is a well reasoned one with several logical justifications. First, with regard to an acquittal, a nolle prosequi, or a dismissal the time period is there to protect a party (police or alleged victim) from an inability to defend themselves in a civil suit. If the person who received the acquittal, nolle prosequi or dismissal sues someone after they have had the case expunged, the person sued will be greatly hampered in gathering the records and information they need to defend themselves. Normally, the statute of limitations for a civil suit is three years. The drafters of the legislation when the three year time limit was determined to be appropriate also took a shorter time period into consideration. If the person seeking the expungement for an acquittal, nolle prosequi or dismissal signs a waiver of tort claims then they can get the expungement immediately. They don't have to wait three years.

Next, with regard to a stet, the three year time limit makes complete sense. A stet can be reopened for any reason within one year of the stet. It can be reopened within three years of the stet if there is good cause. Commonly, good cause would include conditions placed on the stet. If the stet is expunged before those three years then it would be impossible to try to reopen the case. As an example, stets are utilized on some occasions in domestic violence cases. There may be a condition to the stet that the defendant have no contact with the victim and/or that the defendant receive domestic violence counseling. Expunging the stet within eighteen months would totally destroy the ability of the State to protect that victim for the remainder of the normal term of the stet.

Further, with regard to a Probation Before Judgment, the current three year time period makes sense as a reasonable time period for the defendant to show they deserve a cleansing of their record with regard to the case. In the proposed legislation, an individual could receive a Probation Before Judgment and within eighteen months have all record of the offense removed. They could then be caught a day later committing the same offense. A Judge would then never know about the prior incident and would then likely grant another Probation Before Judgment which would then be wiped out again eighteen months later. The cycle could continue after that. The same

would be true for the offenses in CP Section 10-105 for which a guilty verdict could be expunged. Three years makes much more sense to show that an individual has shown that expungement is appropriate.

The Maryland States Attorneys Association requests an unfavorable report.