

Bill Number: SB 138
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES
ATTORNEYS ASSOCIATION IN OPPOSITION TO SENATE BILL
138 – CRIMINAL PROCEDURE – EXPUNGEMENT OF
RECORDS – EXPANSION

The Maryland States Attorneys Association is opposed to Senate Bill 138, Expungement of Records Expansion as a step beyond that which is appropriate for expungement with no safeguards to assure compliance with the law.

In the last legislative session, the Legislature enacted Criminal Procedure § 10-501.1 to provide for the automatic expungement of certain criminal cases. The section provides that an acquittal, dismissal, not guilty or nolle prosequi of a case in its' entirety would be automatically expunged from an individual's record after three years without the requirement that an individual request expungement. Under an already existing statute (§10-105) this could be accomplished almost immediately on request of the acquitted individual if the person requested and signed a waiver and release of any tort claim.

This bill proposes to add Probation Before Judgement (PBJ) and Stet dispositions to those which must be automatically expunged after three years from disposition. The Bill would require the automatic expungement without request and without the ability of the State to object "if all court ordered conditions" of the PBJ or stet "have been satisfied". There is no indication in the proposed legislation which helps to show how and whom will be determining if the conditions of probation or the stet have been satisfied. There doesn't appear to be any circumstance other than this which would prevent expungement.

A process already exists in §10-105 to properly assess eligibility for expungement of a PBJ or a stet. In §10-105, the States Attorney is permitted to respond to a request for expungement and object if it is not permitted under the law. The clearest example of an ability to object is if the person has been convicted of another crime within three years of the probation. Another is if the person is pending another criminal charge at the time of eligibility for expungement. These are important and valid factors which should be considered in determining the appropriateness of expungement.

If, for example, an individual is on probation for a PBJ for a year and then commits multiple offenses for which he or she is convicted well within the three years from the PBJ disposition, this legislation would appear to require that the PBJ be expunged with no ability of the States Attorney to express an objection. In addition, if a

Circuit Court Judge generously grants a person a PBJ but then deems it appropriate to put them on probation for five years, this bill would require the disposition to be expunged two years before the person's probation is over.

As noted earlier, there is no mechanism in the automatic expungement statute of 10-105.1 with this proposed amendments for determining if an individual has satisfied all of the court ordered conditions of probation. With JRA and the graduated sanctions through Parole and Probation and the reality that often Judges will not go through a formal process to violate probation if the violations are not significant, there is no process to evaluate compliance.

All of the issues regarding compliance with probation or a stet can be easily assessed through the process already in place in §10-105. This legislation is both unnecessary, unworkable and inappropriate for those who choose to continue to commit crimes.

The Maryland States Attorneys Association asks for an unfavorable report.