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## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB0356 Criminal Procedure - Expungement - Entitlement**

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

**POSITION: Unfavorable**

**DATE: 2/8/2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 356. This bill will deny expungement to individuals who cannot afford to pay a fine or fee and to individuals who are required to register as a sex offender.

Over the past several years, there has been increased recognition that costs imposed on criminal defendants result in widespread injustices for impoverished Marylanders, and create a disparate impact on Maryland's poor communities of color. Both the Legislature and the Judiciary have instituted pretrial reform measures to reduce the front end reliance on money, in recognition of the two-tiered criminal justice system created by financial requirements. *See* 2021 Ch. 507 (establishing workgroup and appropriating funds to pay for home detention costs for indigent defendants); Ct. Rule 4-216.1 (stating that financial conditions should be imposed as a last resort and requiring any financial condition imposed to be affordable based on the specific circumstances of the individual defendant). However, there is no codified protection against unaffordable fines and fees.<sup>1</sup> In fact, most costs are automatically imposed without regard for the individual's indigency or the financial instability of their family. Restricting expungement based on the payment of costs, will heighten disparities based solely on income.

Expungement is an important tool in promoting a successful law abiding lifestyle for justice involved individuals. OPD clients generally seek expungement to help secure a job, a professional license, or certain types of housing. These are fundamental needs in any effort to lift an individual or family out of poverty. Individuals who cannot afford to pay certain costs are the most in need of these stability measures, and a ban on expungement will deny them access to the means to pay any debts.

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<sup>1</sup> OPD repealed its application fees in 2017.

SB 356's other provision, precluding expungement for any charge where someone is required to register as a sex offender, will have no impact on individuals who have been convicted of a sex offense; expungement is already prohibited for those cases. Rather, it will preclude expungement for people who received a probation before judgement (PBJs). PBJs are intended to have lesser penalties than a conviction, and expungement of a PBJ already requires waiting three years without any convictions in that three year period. Further limitations on PBJ expungements are neither needed nor appropriate.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 356.**

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