

Bill Number: SB 710
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION
IN OPPOSITION TO SENATE BILL 710
CRIMINAL PROCEDURE - EXPUNGEMENT OF RECORDS - MODIFICATIONS

The Maryland States Attorneys Association is opposed to Senate Bill 710, Criminal Procedure-Expungement of Records- Modifications and asks for an unfavorable report. The Bill contains both what are presumed to be drafting errors which would cause significantly serious harm and in the balance of the proposed legislation creates a system well beyond that which is appropriate if the effort of the Legislature is to still require some accountability for crimes against the citizens of this State.

In 2016, the Maryland Legislature embarked on a mission and project which became the Justice Reinvestment Act. Included within this extensive package aimed at addressing the criminal justice system, as it existed, was a major change and expansion of expungement availability for those intent on first paying their debt to society but then intent on making a future for themselves without the constraint of a criminal record. In doing so, however, the Legislature was cognizant of and created statutes which still required some accountability and protection of society. This Bill will take us well beyond consideration for some accountability and provide little ability to protect society from those who choose to repeatedly commit offenses.

The first major area of concern in the bill is in regard to the removal of Criminal Procedure Article, §10-105(c)(2). We can only hope that this was a drafting error. This subsection, as it currently exists, places a time barrier for the expungement of a Probation Before Judgment(PBJ). Currently, a person cannot petition to expunge a PBJ until the later of (1) discharge from probation, or (2) three years after the PBJ was granted. With the subsections removal, the proposed legislation does not place a time frame anywhere else for PBJ's unless the PBJ included drug or alcohol treatment. This means that an expungement would be required if requested immediately upon the imposition of the PBJ. This would obviously, therefore, include a person having been just been placed on probation. A Judge could grant a person a PBJ with a term of supervised probation with the aim of getting a person domestic violence education, restitution to a victim, home detention, prohibition of contact with a victim and so many other things and all of it would be obliterated from all records within minutes after being directed. This clearly could not be what the drafter intended but it is what would happen with this legislation.

The next disturbing effect of the legislation is to change the time period in which an individual may expunge a stet from three years to one year. Stets are often utilized

to accomplish an aim such as preventing contact between the individual charged and the victim, or to gain restitution or to assure an individual undergoes domestic violence education or anger management counseling. Most commonly, an individual is given the opportunity to show they can be law abiding for an appreciable period of time. A stet can be reopened on request of a party for no reason for the first year of the stet and for good cause after that. It has become a logical time period that three years has been the time period in which a charged individual can demonstrate their ability to remain law abiding or successfully complete other terms of a stet such as pay restitution or have no contact with the victim. This change would permit the effort to achieve such an aim to be obliterated after one year. Practically, it would very likely result in a significant decrease in the times in which a prosecutor is willing to stet a case.

The bill's proposed changes to Criminal Procedure §10-110 are also of grave concern. The bill would first permit the expungement of every conviction for a misdemeanor. Currently, there is a lengthy list of convictions of misdemeanors which are permitted expungement. This list was created with the hard work of the legislators of this body in 2016. The legislators knew that there were certain misdemeanors which should not be permitted expungement. This bill would open up expungement to all of those misdemeanors. A list of just some examples of convictions which would be permitted expungement is at the end of this written testimony. A few examples, however, are very telling. First, this legislation would permit expungement of a DUI. It is particularly ironic to note that a person could not expunge a PBJ for a DUI but could expunge a tenth conviction for a DUI as soon as the person might be released from a three year sentence for that DUI. In addition, the Judge may never have known of the nine prior convictions for DUI because the defendant would be able to expunge them. Take another example, an individual is convicted of violation of a protective order, stalking and second degree assault and sentenced to three years in prison. That person misbehaves so badly in prison that they are not given any credit while incarcerated and not paroled early. That individual can then expunge those convictions the day he or she is released from prison. The Legislature properly considered the offenses for which convictions are entitled to expungement six years ago. That should not change now.

The bill then proposes to permit expungement of all felonies other than the ones listed to be excepted from potential for expungement. The first category for which expungement would not be permitted is a crime of violence. Crime of violence is not defined nor is there reference to other parts of the code which define crime of violence. The next category excepted from expungement is a hate crime under Title 10, Subtitle 3. However, most of the hate crimes under Title 10, Subtitle 3 are misdemeanors and, therefore, subject to expungement. A person cannot expunge a felony Cruelty to an Animal and cannot expunge a felony crime which requires the person to register as a sex offender. It would appear, therefore, that one could expunge a Third Degree Sexual offense if they committed the crime before the requirement of registration. Attached to this testimony is also a list of felonies which could now be expunged. Again, particular

examples are very telling. With this legislation, an individual could be convicted of being a drug kingpin or second degree child abuse or extortion or being an accessory after the fact to a first degree murder, get five years in prison, get no credits because of bad behavior in prison and get the conviction or convictions expunged the day the individual steps out of prison. This is a disservice to the law abiding citizens of Maryland. Years ago this Legislature carefully considered what felonies can be expunged after considering all of the options. The list of those which currently can be expunged ought to be the limit on removing all record of such a serious crime.

The bill also changes significantly the time frame an individual can have all record of a conviction erased from public access or even an ability of the criminal justice system to consider when and if the person commits another crime. This bill would require only three years to wait to expunge a misdemeanor if they have completed their sentence rather than ten years. It would reduce the length of time to show that the person can be law abiding and not again assault their significant other from fifteen years to five years for a crime which is domestically related. It would reduce the time to expunge a felony from fifteen years to five years.

The public deserves to be able to know of a serious crime committed by a person for longer than three years or five years. An individual convicted ought to be able to show for longer than three years that they can be law abiding in the future particularly if they may not have even been free in society for any of that time.

In another part of the bill, it provides that an arrest warrant or fugitive warrant is a part of the police record and then permits the expungement if an arrest warrant or fugitive warrant "is invalidated". The Bill, however, does not define what "invalidated" means. It is a common occurrence that a charging document is issued and an arrest warrant is issued. It is also common that a defendant, usually through counsel, will ask a judge to quash the warrant and substitute it with a summons to appear to face the charge or charges. Does this mean the warrant has been invalidated? Does that action create an opportunity for the case or the warrant which had been issued to be expunged from an ongoing case?

This bill would defeat the trust the public should have in a criminal justice system which should hold a person accountable for their acts for at least an appreciable period of time in order to assure the public's safety from those who choose to commit crime. We urge an unfavorable report.

Some of the misdemeanors convictions which would be added to eligibility for expungement:

DUI

Attempted Sexual Abuse of a Minor

Attempted Distribution of Fentanyl

Conspiracy to Distribute Fentanyl

Possession of Child Pornography

Fourth Degree Sexual Offense

Indecent Exposure

Embezzlement

Identity Theft

Perjury

Subornation of Perjury

Hate Crimes

Stalking

Witness Intimidation

Obstruction of Justice

Possession of Contraband in a Place of Confinement

Animal Abuse

Visual Surveillance with Prurient Intent

Threat of Mass Violence

Wear, Carry or Transport a Handgun

Threat of Arson

Violation of a Protective Order

Some of the felonies which would be added to eligibility for expungement:

Second Degree Child Abuse

Abuse of a Vulnerable Adult

Exploitation of a Vulnerable Adult

Accessory after the Fact to First Degree Murder

Second Degree Arson

Drug Kingpin

Attempted Poisoning

Counterfeiting

Extortion

Identity Fraud

Automobile Manslaughter

Participation in a Criminal Organization

Sale of a Minor

Medicaid Fraud

Labor Trafficking

First Degree Escape

Delivering a Weapon into a Place of Confinement

Third Degree Sexual Offense (if the crime occurred prior to registration requirements)

Production or Distribution of Child Pornography (if the crime occurred before registration requirements)