

Maryland-Charles Belk Tesimony - Support of SB0016

Uploaded by: Charles Belk

Position: FAV



Honorable William C. (Will) Smith, Jr.
Chair, Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St., Annapolis, MD 21401

January 28, 2022

Dear Chairman Smith,

I wanted to share with you and the members of the Senate Judicial Proceedings Committee, my personal testimony in support of SB0016 (Criminal Procedure - Expungement - Mistaken Identity).

On Friday afternoon, August 22, 2014, around 5:20pm, while innocently walking by myself, my freedom was taken away from by a local police department.

Within seconds, I was detained and told to sit on the curb of a very busy street during rush hour traffic.

Within minutes, I was surrounded by six police officers, handcuffed very tightly, fully searched for weapons, and placed back on the curb.

Within an hour, I was transported to the police headquarters, photographed, finger printed and put under a \$100,000 bail and accused of armed bank robbery and accessory to robbery.

Within an evening, I was publically humiliated, wrongly arrested, locked up, denied a phone call, denied an explanation of charges, denied being read my rights, and denied being able to speak to my lawyer in a reasonable time, all because I was mis-identified as the wrong "tall, bald, black male," fitting the description.

Coincidentally, just seconds before I was stopped, I was actually jogging because I was trying to get to my car to feed a parking meter, so that I would not get a ticket. If it had not been for a text message that I received, which slowed me down to a walk, I could have very well been running at the time the officer was making his way to me. We can only imagine how things may have turned out if that would have been the case.

In the normal course of law enforcement during their job, mistakes are sometimes made. However, when those mistakes occur, it should not be incumbent upon the innocent person to have to bear the burden associated with those mistakes.

Currently, when someone is wrongfully arrested for mistaken identity, an arrest record is created, and will remain even if the person is released as innocent just hours later, as was the case in my particular situation.

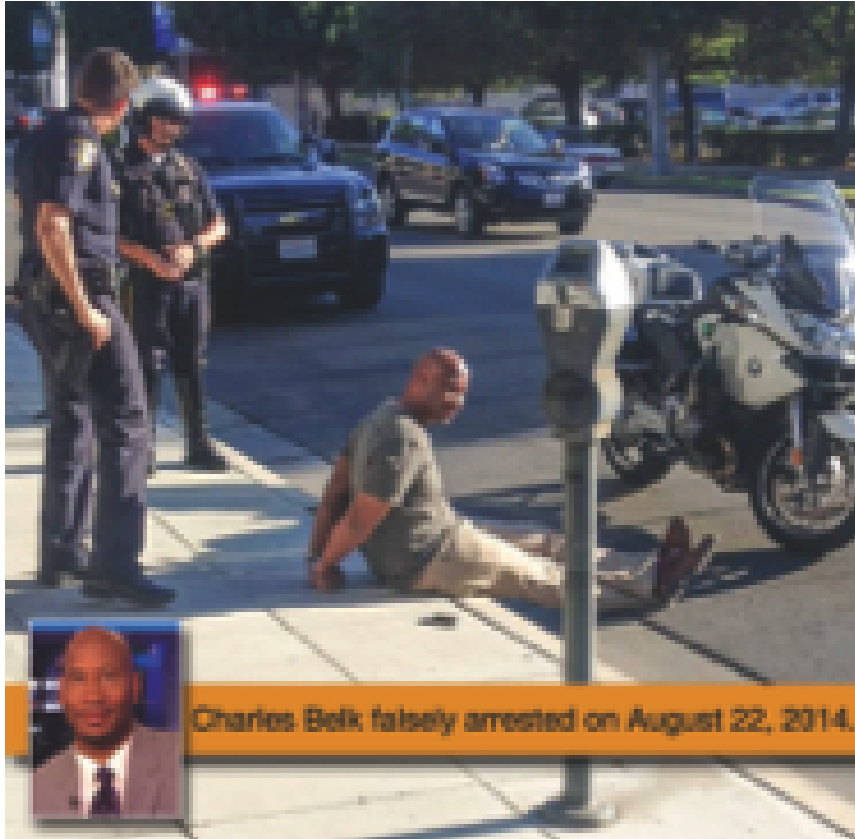


That arrest record can impact a person's ability to get a job, secure a loan, a gun permit, a teaching license, sit for the bar exam, or a host of other items that could create long lasting problems in a person's life, all because they were mistakenly identified and mistakenly arrested. Additionally, the indirect result of an arrest record could impede a person's ability to provide for themselves or their families.

I am pleased that Maryland has joined the other states, since my wrongful arrest, that are considering this piece of "#AutoErase" criminal justice reform legislation. Hopefully, with your and the support of the Committee, it will join the eight other states (North Carolina, Illinois, Colorado, Rhode Island, Kansas, Missouri, Vermont, and Kentucky) that have already signed a #AutoErase Bill into law.

Respectfully submitted,

Charles Belk
Founder and Executive Director
Fitting The Description
Wrongfully Arrested for Mistaken Identity, 8/22/14
(213) 632-6390
charlesbelk@fittingthedescription.org



Charles Belk, falsely arrested on August 22, 2014.

SB16_FAV_JOTF.pdf

Uploaded by: Christopher Dews

Position: FAV

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

TESTIMONY IN SUPPORT OF SENATE BILL 16:

Criminal Procedure - Expungement - Mistaken Identity

TO: Hon. William Smith, Chair, and members of the Senate Judicial Proceedings Committee

FROM: Christopher Dews, Senior Policy Advocate

DATE: February 1, 2022

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. We support Senate Bill 16 as a means of expanding access to expungements for those not found guilty of a charge.

A criminal record can be both the cause and consequence of poverty and has detrimental effects on the employment prospects for the 25% of working-age Marylanders with a record. The Collateral Consequences Resource Center estimates that there are over 1100 consequences of having a criminal record, including barriers to employment, housing, education, public assistance, and occupational licensing. Worse yet, in the state of Maryland, a criminal record is acquired upon arrest, *whether or not a person is ever convicted of a crime*. Anything that occurs after an arrest is documented on an individual's criminal record and, in Maryland, will remain publicly visible via Maryland Case Search until the charges and dispositions are expunged. 70% of employers in Maryland will conduct a background check on *all* of their job applicants and will deny employment on the basis of the appearance of a record, regardless if the individual was found guilty or not. For this reason, if we desire to ensure solid access to employment for all workers- especially for those who *have not* been convicted of a crime, automatic expungement of *all* non-convictions is necessary.

There is currently no expressed statute in Maryland law that automatically expunges charges that arose from a case of mistaken identity. As such, it is nearly impossible for an individual who was falsely targeted by law enforcement for a crime to have that record expunged. This is an oversight, that the legislature would be most gracious in correcting by simply adding this circumstance to the [recently created automatic expungement statute](#). A criminal record for charges of mistaken identity or that have been voided in the court system should not hang over anyone's head. JOTF fully supports any legislation that eliminates barriers to employment for low-income workers and job seekers in the state of Maryland. Senate Bill 16 does just that- it removes another unnecessarily punitive barrier to employment. For these reasons, we respectfully urge a favorable report of Senate Bill 16.

Testimony - SB 16 (1).pdf

Uploaded by: Elizabeth Hilliard

Position: FAV



PAUL DeWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: SB 016

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 1/28/2022

Testimony in Support of SB 16

TO: Members of the Senate Judiciary Committees
From: Mary Denise Davis, Chief Attorney, Central Booking Bail Unit
Date: Jan 28, 2022

The Office of the Public Defender supports SB 16.

Our Office established a weekly expungement clinic over a decade ago. I have worked with numerous clients who find themselves with a “criminal record” of a case that is not even theirs.

The person who is alleged to have committed a crime provides a different name. Or, a person goes to the Commissioner providing an incorrect name and/or information when they are pressing charges. This could be a simple error or it can be intentional. When the case is called by the State’s Attorney and our client is in the courtroom, the mistake is realized. A discussion is held and once it is verified, the matter is usually dismissed. A simple solution that seems to end the problem, but it does not.

Our client who was charged will find themselves in a Catch 22 situation when they try to file for expungement. One group is saying it is not theirs and one group is saying it is theirs. The client files for expungement for the case where they are named but the Judge denies the expungement request if there’s an objection by the State’s Attorney. The Judge says you are not the “proper” defendant to file this expungement petition. Or, the client applies for a job and the case appears on their own background check but they have no way to “prove” that the case was never theirs.

A criminal record is not just what is on a person’s RAP sheet but it must also be considered what is available on Maryland Judiciary Case Search and the information that has been

obtained and disseminated by private databases. Private databases are using publicly accessible information that supports a 2+ billion dollar industry, according to an article published by IBIS World in November 2020. However, there is no regulation of these private databases.

SB 16 will end the confusion when it comes to who can file and who can be granted an expungement if filed by a person who was charged with a crime but that person's information was used by mistake. The Public Defender's Office supports SB 16. . Clients should never have to explain a criminal case that was not theirs. The impact of having these erroneous charges on their record can be devastating.

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

Written by: Mary Denise Davis, Chief Attorney of the Central Booking and Bail Unit at the Maryland Office of the Public Defender.

SB 16 Testimony.pdf

Uploaded by: Maryland Legal Aid

Position: FAV



MARYLAND LEGAL AID

Advancing
**Human Rights and
Justice for All**

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February 1, 2022

Senator William C. Smith, Jr.
Chairman, Judiciary Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Testimony Supporting Senate Bill 16 – Criminal Procedure – Expungement – Mistaken Identity

Dear Senator Smith and Members of the Senate Judicial Proceedings Committee:

Thank you for the opportunity to present testimony in support of Senate Bill 16. Maryland Legal Aid (“MLA”) is a private, non-profit law firm representing low-income persons throughout Maryland. MLA handles civil legal cases involving a wide range of issues, including family law, housing, public benefits, consumer law, and criminal record expungements to remove barriers to obtaining child custody, housing, a driver’s license, and employment. MLA supports Senate Bill 16 and asks that this committee give it a favorable report.

Charlotte Ahearn, Esq. will testify on behalf of MLA in support of SB16. Ms. Ahearn is part of MLA’s Community Lawyering Initiative, which brings legal services into communities to ensure that the most marginalized citizens have access to advocacy within our justice system. Since July 2016, MLA has represented over 10,000 Marylanders with criminal record expungement, totaling over 50,000 case records, creating greater access to jobs, employment, and other opportunities for residents and families. Additionally, MLA has saved clients almost one million dollars in expungement filing fees since 2016.

A criminal record affects the most critical aspects of people’s lives. Many Marylanders have lost jobs or been overlooked during the hiring process because of their record. It is difficult to volunteer for various organizations while having a criminal record. Similarly, landlords often reject potential tenants when background checks or the Maryland Judiciary Case Search cases appear. There are also restrictions on federal housing benefits for those touched by the criminal justice system.

SB16 will benefit many Marylanders, especially those in communities subject to over-policing and other manifestations of systemic oppression. Unfortunately, MLA’s clients suffer from their identities being stolen more often than one might think. Routinely, individuals’ names and identities are used as aliases for the

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04.2021



actions of another individual. There is no legal remedy or mechanism in that situation to expunge those criminal records, even though the underlying case is eligible for expungement. MLA's clients then suffer the consequences and collateral damage of having a criminal record because of the actions of another person. This outcome is the antithesis of our judicial system. Individuals should not be penalized when their identity is mistaken.

SB16 will allow law-abiding Marylanders the opportunity to better themselves, their families, and their communities. This bill alleviates a burden that is insurmountable for thousands of Marylanders. MLA thanks you for the opportunity to provide testimony and strongly urges the committee to give SB16 a favorable report.

/s/ Charlotte Ahearn

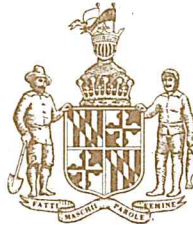
Charlotte Ahearn, Esq.
Community Lawyering Initiative
Maryland Legal Aid

JacksonSB16Testimony.pdf

Uploaded by: Michael Jackson

Position: FAV

MICHAEL A. JACKSON
Legislative District 27
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Budget and Taxation Committee

Subcommittees

Pensions

Public Safety, Transportation, and
Environment

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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250 Merrimac Court
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TESTIMONY - SENATE BILL 16
CRIMINAL PROCEDURE
EXPUNGEMENT –MISTAKEN IDENTITY

JUDICIAL PROCEEDINGS COMMITTEE
FEBRUARY 1, 2022

Chair Smith, Vice Chair Waldstreicher and Committee Members:

Senate Bill 16 is a very straightforward piece of legislation. This legislation would require the automatic expungement of records relating to charges of those arrested as a result of mistaken identity. Once the court makes a determination that an individual was charged as a result of mistaken identity (and enters a related order), every custodian of police and court records would be required to expunge said records and provide written notice to that effect within 60 days of the court order.

The aim of this legislation is very simple – To make individuals whole who have been wrongly arrested due to mistaken identity. Having charges on your record for any reason, or any amount of time, can create serious and dire professional and personal consequences. Expediting and efficiently removing these charges would be a small step toward remedying the hardships faced by those arrested through no fault of their own.

When mistakes are made, wrongs need to be righted and I wholeheartedly believe that this is a means to that end.

For the reasons listed above, I ask for a favorable report of Senate Bill 16.

SB16 Written Testimony.pdf

Uploaded by: Christopher Sweeney

Position: FWA

MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE
**IN SUPPORT WITH AMENDMENT OF SB16: CRIMINAL PROCEDURE –
EXPUNGEMENT – MISTAKEN IDENTITY**
FEBRUARY 1, 2022

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Chairman Smith and distinguished members of the Committee, thank you for the opportunity to testify in support of Senate Bill 16. My name is Chris Sweeney, and I am a staff attorney at Maryland Volunteer Lawyers Service (MVLS), where I manage our Workforce Development Project. MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders throughout the state. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. Through our Workforce Development project, we represent many clients seeking sustainable, fulfilling employment. One of the major barriers to employment is a criminal record, and we have represented over 750 clients in expungement proceedings. For the reasons explained below, MVLS respectfully requests the committee return a favorable report, with amendments, on SB16.

Our Workforce Development Project provides 'wrap-around' services – supplementing job trainees' social services with legal services. The goal of the program is to make participants more job-ready by reducing barriers to employment. Each of the clients we serve through the Workforce Development Project is enrolled in courses to receive job skills training and certification in welding, machine operation, nursing, pharmacy tech, construction, and weatherization. These non-profit programs are free to students and aim to provide re-entry opportunities for the previously incarcerated or those who lacked educational and employment opportunities due to poverty. Criminal record expungement is my primary practice area through this project. Having met hundreds of clients seeking expungement, I have come across many people who have cases on their record as the result of mistaken identity. And shockingly, the process for correcting this is unclear at best and nonexistent at worst. If properly amended, SB16 would provide a process for rectifying mistakes that can have a significant impact on a person's life.

One issue that SB16 can address is best explained through a real-life example. The following story has happened to dozens of clients I have worked with. James is arrested and gives the police the name of Joseph, possibly the name of a friend or relative. Lacking identification, the police identify the suspect as Joseph. The courts process the case and mark down the defendant's name as Joseph. The case is disposed of one way or another, often getting dropped by prosecutors; however, the name attached to the case is never corrected. Years later, the real Joseph seeks to review his record for expungement eligibility, and finds this case. Joseph files to expunge the case, which triggers a fingerprint search by the police, who return a result showing that Joseph was not the person arrested in this case. Because Joseph is not actually the defendant, he does not have the right to file expungement. But the case remains on his record because no formal process exists to correct the defendant's name. I have

personally heard from judges, during court proceedings, that no legal remedy exists for this error.

Because the events described above clearly produce an unjust outcome, we at MVLS believe a formal process should exist for removing a false defendant from a criminal case. We recognize that SB16 is primarily aimed at remedying convictions where a person was falsely identified by witnesses, law enforcement, or other parties. We support this aim of the bill, but respectfully suggest amendments to codify a remedy for people whose name became attached to a criminal proceeding without their knowledge.

We suggest an amendment to SB16 that would add a process by which a person could file a petition or motion asking the court to find that their name is listed as a criminal defendant in error, and to have that name cleared from the case records.

Applying for a job only to have the employer confront you with a criminal case you did not know existed and that did not actually happen to you is a terrible scenario to face. Because SB16 aims to correct issues of mistaken identity, we believe that the addition of a remedy for such a scenario would be just and pertinent.

MVLS has been fighting to even the playing field for low-income Marylanders for decades, and we know that these members of our community face significant financial obstacles when trying to put their lives back on track. The need for our volunteer attorneys is pressing, but legislation like SB16 would lessen that burden. We support SB16 because it would help many Marylanders who have charges due to mistaken identity move their lives forward. If more people have access to quality jobs, we are on our way to a better Maryland and a better society. Expungement helps more people across Maryland obtain gainful employment, boosting our economy, and strengthening our community. We at MVLS respectfully request that you return a favorable report, with amendments, on SB16.

Mister Chairman and members of the Committee, thank you again for the opportunity to testify.

SB 16 - Expungement Mistaken Identity.pdf

Uploaded by: John Cox

Position: UNF

Bill Number: SB 16
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS
ASSOCIATION IN OPPOSITION TO SENATE
BILL 16 – CRIMINAL PROCEDURE –
EXPUNGEMENT – MISTAKEN IDENTITY

The Maryland States Attorney’s Association is opposed to Senate Bill 16 as an unnecessary addition to expungement opportunities which would cause a number of adverse effects on the judicial system.

Senate Bill 16 proposes to create a new section within the expungement statutes to provide for automatic expungement of a dismissal or acquittal in a case where the States Attorney has determined or a judge finds that an individual was charged as a result of “mistaken identity”. Mistaken identity is defined to include misidentification, confusion, misinformation or a mistake by a witness or law enforcement in identifying the alleged perpetrator of the crime. It would also include a circumstance where another has assumed the identity of the individual who ends up being charged. The proposed legislation would then direct the court to “pass an order” requiring expungement “of all police records and court records about the charge” upon dismissal or acquittal if there has been a determination of mistaken identity.

The proposed legislation creates a number of issues in a circumstance where the proposed remedy is unnecessary. Currently, Criminal Procedure § 10-105 mandates expungement of an acquittal, dismissal or nolle pros of a case if requested by the person charged. The time period for eligibility can be immediate if the individual signs a general waiver and release of any tort claim. If this bill becomes law, the expungement would be automatic and required even if the person charged did not want it to happen. That circumstance could easily exist. An individual may wish to sue someone or have an individual charged and prosecuted for assuming their identity. If all records of the charge are expunged, the individual could be easily hampered in their legal action. At the very least, the originally charged individual should be permitted to say that they don’t want something expunged.

In addition, the legislation would direct expungement of all police records about the charge. Dependent on how a law enforcement agency interprets “about the charge,” this may result in the removal of reports or information which would aid in apprehending the person who actually committed the crime. In addition, such expungement of police records would hinder prosecutors in their ethical obligations in the prosecution of a potential future case. If someone else is later charged with the offense for which someone was mistakenly identified, the prosecutor is obligated to disclose to the next

person charged that a witness or law enforcement at some point previously had identified another individual as the perpetrator of the crime. This is potentially exculpatory information. Expungement, removal or obliteration of that information would greatly hinder our ability to comply with our obligations. We would be faced with the option of ignoring our ethical obligation or committing the crime of disclosure of an expunged record under § 10-108.

Even if the bill were limited to expungement of the court record, there could be significant issues. For example, if the victim of a crime testified that the person charged is the individual who committed the crime and the Judge finds that the witness is mistaken in identifying the person charged, then the charged person is acquitted and the record is immediately expunged. If another person were to later be charged with that crime, the testimony of the witness would be expunged and the State's Attorney (assuming he or she has personal knowledge of what happened) would be obligated to pass that testimony on to the attorney for the next person charged. That could not happen if the record has been removed.

In summary, this legislation creates issues which can create significant problems for both the police and prosecutors and may be contrary to the wishes of the person mistakenly charged. Other than the need to fill out a request for expungement, the remedy for the individual charged already exists in the law.

sb16.pdf

Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 16
Criminal Procedure – Expungement – Mistaken Identity
DATE: January 12, 2022
(2/1)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 16. Senate Bill 16 states that a person who is charged with a crime is entitled to the expungement of any police record, court record, or other record maintained by the state related to the charge if: 1) the State’s Attorney dismisses the charge and gives notice to the court that the dismissal is due to a charge relating to a mistaken identity; or 2) the charge is dismissed, or the person is acquitted, and the court makes a determination that the person was charged as a result of mistaken identity.

The legislation, though well-intentioned, does not explain how the court shall make a determination that the person was charged as a result of mistaken identity. For example, there may be any number of jury trials in which defendants are acquitted of a charge because of mistaken identity, and the court would have no way of determining that. These are not determinations that the court can make reliably. There is also no legal standard for the court to make a determination that the person was charged as a result of mistaken identity.

In addition, requiring the court to make a finding that puts it in the position of questioning the State’s Attorney’s discretionary charging decisions and/or acquittals by juries creates an operations problem and potentially violates separation of powers. Further, the bill does not specify what form of notice state’s attorneys must provide to the court in a case of mistaken identity. The bill also could also have the unintended consequence of requiring that a police investigative report be expunged, rather than requiring that the identity of person wrongly charged be redacted.

Finally, this bill is unnecessary as an individual could expunge these cases under current law if the case was dismissed or there was an acquittal due to mistaken identity.

cc. Hon. Michael Jackson
Judicial Council
Legislative Committee
Kelley O'Connor