

# **MCPA-MSA\_SB 356 \_Expungement-Entitlement-Support.p**

Uploaded by: Andrea Mansfield

Position: FAV



# Maryland Chiefs of Police Association Maryland Sheriffs' Association



## MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and  
Members of the Judicial Proceedings Committee

FROM: Chief of Staff David Morris, Co-Chair, MCPA, Joint Legislative Committee  
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 10, 2022

RE: **SB 356 Criminal Procedure – Expungement – Entitlement**

POSITION: **SUPPORT**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 356. These bills would prohibit the granting of an expungement to a convicted defendant that is placed on the sex offender registry.

The sex offender registry is, in part, designed to help protect potential future victims from convicted sexual predators by requiring the offender to register - thereby providing notice to communities. In allowing these offenders to be removed from the registry due to an expungement we are simply placing communities in harm's way and potentially creating more victims of these horrific crimes.

Prohibiting the granting of an expungement in these matters protects communities and future victims from potential harm these offenders. For these reasons MCPA and MSA SUPPORT SB 356 and urge a FAVORABLE Report.

# **Senator West - SB 356 - Expungment FAV.pdf**

Uploaded by: Christopher West

Position: FAV

CHRIS WEST  
Legislative District 42  
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Judicial Proceedings Committee

Vice Chair, Baltimore County  
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THE SENATE OF MARYLAND  
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February 10, 2022

Senate Judicial Proceedings Committee

The Honorable William C. Smith Jr.

2 East Miller Senate Building

Annapolis, Maryland 21401

**RE: SB 356 – Criminal Procedure – Expungement – Entitlement**

Dear Chairman Smith and Members of the Committee,

In many situations, a person is eligible to have all police records and court records of an offense expunged, but in there are exceptions. Senate Bill 356 creates two additional exceptions.

First, a person would NOT be entitled to an expungement if the court ordered the person to register as a sex offender under Title 11, Subtitle 7 of the Criminal Law Article in connection with the disposition of the charge on which the petition to expunge is based.

Second, a person would NOT be entitled to an expungement if the person has not satisfied an obligation to pay court costs, fines or restitution that the court imposed in connection with the disposition of the charge on which the petition to expunge is based.

So if the petitioner for an expungement had been ordered to register as a sex offender or if the petitioner has not yet paid the court costs, fines or restitution ordered by the court, the petitioner will NOT be entitled to expungement.

I appreciate the Committee's consideration of Senate Bill 356 and will be happy to answer any follow-up questions the Committee mat have.

# **SB 356 - Expungement - Entitlement.pdf**

Uploaded by: John Cox

Position: FAV

**Bill Number: SB 356**  
**Maryland States Attorneys Association**  
**Support**

**WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION**  
**IN SUPPORT OF SENATE BILL 356**  
**CRIMINAL PROCEDURE – EXPUNGEMENT – ENTITLEMENT**

The Maryland States Attorneys Association supports Senate Bill 356, Criminal Procedure – Expungement – Entitlement as a common sense bill to address two issues with regard to expungements in limited circumstances.

Criminal Procedure Article §10-105 addresses entitlements to expungement of many different criminal case dispositions including but not limited to the entry of a nolle prosequi, acquittal, dismissal, stet and probation before judgement. With regard to a probation before judgement, the Court “shall” grant the expungement if the defendant is entitled to the expungement. The statute then addresses when a person is not entitled to expungement. Currently, those circumstances are limited to if (1) the offense is a DUI or causing a life threatening injury by motor vehicle while under the influence of alcohol, (2) the time period has not yet expired, (3) the defendant has been convicted of a crime in the interim, or (4) the defendant is pending a criminal charge. If one of these exclusions is not present the expungement must be granted.

The mandatory nature of the statute has caused problems with regard to some unique circumstances which this Bill then addresses. First, in some circumstances an individual could have received a probation before judgement and also be on the sex offender registry for that offense. Under Title 11, Subtitle 7 of the Criminal Procedure Article if an individual receives a probation before judgement for a Fourth Degree Sexual Offense, the sentencing judge has the discretion to determine whether or not the person should be required to register as a sexual offender. If ordered to do so, the time period would be fifteen years as a Tier 1 Sexual Offender. The expungement statute, however, creates the probability that the defendant can petition for and receive an expungement within three years of the time that the Judge has ordered that the person register as a sexual offender. This would remove all evidence of the adjudication and therefore the order that the person register.

Next, the current expungement statute does not take into consideration if the defendant has satisfied his or her obligations to the Court and to the victim of their crime financially. If a Judge has granted an individual probation before judgement and ordered the defendant to pay a fine, court costs or restitution to the victim, it would make sense that if the person is financially able they should follow that direction. Under the current law, an individual could have all record of the adjudication removed after three years and make restitution collection through a judgement practically impossible from that point forward. There are often occasions, in less serious cases, that a Judge

may impose a fine and/or court costs without probation supervision. In that scenario, an individual could just ignore the payment requirement and then expunge the record of it several years later. This doesn't make sense.

Adding the restrictions on expungement to circumstances where a person is a registered sexual offender or has not met his burden to make the victim or the Court whole is important and this Bill would accomplish those goals. We ask for a Favorable report.

## **Expungement - restrictions - testimony - senate -**

Uploaded by: Lisae C Jordan

Position: FAV





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**Working to end sexual violence in Maryland**

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**Testimony Supporting Senate Bill 356**  
**Lisae C. Jordan, Executive Director & Counsel**  
February 10, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault, including for survivors of child sexual abuse. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 356.

**Senate Bill 356 – Restrictions on Expungement**

This bill would prohibit expungement in cases where either:

- 1) the convicted offender was sentenced to be on the sex offender registry, or
- 2) an order of restitution against the convicted offender has not been satisfied.

Permitting an offender to expunge a record while on the sex offender registry is illogical, providing the public with information in one venue but restricting it in another. For cases where the offender is no longer on the registry, allowing expungement would deprive courts of important information, including in family law matters. (MCASA would not oppose shielding in these cases.)

Regarding expungement of cases where there is an unsatisfied judgement of restitution, MCASA appreciates the challenges facing low income defendants who have otherwise met their obligations to society, however, restitution is important to crime victims. We respectfully suggest that any changes to restitution orders – particularly a change that effectively vacates the order – should go through the process to modify sentences and include notice to the victim.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to report favorably on  
Senate Bill 356**

# **SB356 FAIR UNFAV.pdf**

Uploaded by: Brenda Jones

Position: UNF

**Unfavorable Response to SB356  
Criminal Procedure – Expungement – Entitlement**

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies for persons accused and convicted of sexual offenses.

Maryland is striving to make reforms to the Criminal Justice System. The most recent [Maryland Sexual Offender Advisory Board Report](#) to the General Assembly recommends the Risk-Need-Responsivity management strategy as fundamental to offender rehabilitation. This broad-brush approach is the wrong way to go. Sexual offense statutes and the registry include as many acts as possible.

Most sexual offenses are already excluded from expungement because they are listed as Crimes of Violence according to Criminal statute 14-101. The only registered persons to benefit from expungement are low-risk: those with misdemeanors who are serving probation before judgement (PBJ), and persons with a single, non-violent offense.

As this law is currently enforced, the court has already determined a successful benefit to the offender and for society at large, related to characteristics of the specific person and offense. This group is assigned to a closely monitored and rigorous probationary period of 3-5 years. Any probation violation can cause their sentence to be cleared and replaced with the maximum sentence allowed.

It is unclear if this bill would be applied retroactively. If it is, this may trigger a constitutional challenge. Often persons take specific pleas with the understanding there is potential for an expungement.

FAIR is also concerned that excluding expungement due to unpaid court costs and fines could prevent a person from improved chances to become a productive citizen and PAY court costs and fines. Many on parole or probation are struggling at the most basic levels. Monetary obligations often accrue during incarceration or parole, especially child support, reentry costs for basic amenities, and treatment.

To conclude, excluding nonviolent registrants and those unable to pay costs will result in negative consequences to the former offender, to society, and to the state. We urge an unfavorable response to SB356.

Sincerely,



Brenda V. Jones, Executive Director  
Families Advocating Intelligent Registries

## **OPD Position on SB0356.pdf**

Uploaded by: Melissa Rothstein

Position: UNF



**PAUL DeWOLFE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
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**KRYSTAL WILLIAMS**  
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

**ELIZABETH HILLIARD**  
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **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.**

**Authored by: Melissa Rothstein, Director of Policy and Development,**

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