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POSITION ON PROPOSED LEGISLATION

BILL: HB 854 – Criminal Procedure – Expungement of Records – Revisions

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/7/23

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on House Bill 854. House Bill 854 makes much-needed alterations to the current expungement laws, which will ensure that the laws are applied in a manner that comports with their original purpose.

House Bill 854 alters the definition of “expunge” by clarifying that an expunged record is to be extracted and isolated, rather than simply removed from public inspection. Under the bill, all records on file within any court, detention or correctional facility, and law enforcement or criminal justice agency concerning a person’s interaction with the criminal justice system would be expunged. In addition, the bill repeals the exception for investigatory files and police work-product records used solely for investigation purposes and provides that a police or court record that has been expunged may not be used for any purpose and shall be treated as if it never existed. The bill also repeals a court’s authority to order the opening or review of an expunged record and its authority to allow the State’s Attorney to access those records on an *ex parte* order.

In the years since Maryland’s expungement laws have been enacted, the application of those laws in particular situations have strayed from their original purpose. That purpose was to provide a statutory procedure for expunging police or court records related to criminal charges to protect individuals from the social and professional stigma and other collateral consequences that flow from recorded interactions with the criminal justice system. In addition, expungement is one of the avenues for individuals to restore their rights that have been affected by their interactions

with the criminal justice system. This purpose and outcome are not realized for every individual who has successfully expunged a record.

For example, expunged records have been used against individuals to gain convictions in subsequent proceedings. This issue arises from two exceptions in the current laws. “Investigatory files” and police “work product” are not subject to expungement. Similarly, State’s attorneys can obtain an *ex parte* order from the court to access expunged records. In a case where charges were dismissed and expunged, an officer may return to their investigatory files and work product to investigate the alleged crime(s) further and prosecutors who can access expunged records may use those records to finally obtain a conviction.¹ This works a substantial injustice against the person who believed they were absolved of the criminal charges that were dismissed and expunged.

Furthermore, anyone can obtain a court order to review expunged records upon a showing of “good cause.” This demonstrates that the expungement laws are not providing the privacy protections that were originally intended.

If the expungement laws are not altered to conform with this body’s original intent, individuals with expunged records will not be freed from the stigma of their past interactions with the criminal justice system. House Bill 854 seeks to make those much-needed alterations. **For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a FAVORABLE report on House Bill 854.**

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

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¹ See generally *Mora v. State*, 123 Md. App. 699 (1998), *aff’d but criticized*, 355 Md. 639 (1999).