



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chair and
Members of the Judiciary Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 28, 2023

RE: **HB 746 - Criminal Procedure – Expungement of Records – Waiting Period**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 746**. This bill would allow certain individuals to file immediately for a petition for expungement and removes the requirement to file a written waiver to release all tort claims before receiving the expedited expungement.

Under Crim. Pro. §10-105(c), an expungement based on an acquittal, a nolle prosequi, or a dismissal “may not be filed within 3 years after the disposition, unless the petitioner files with the petition a general waiver and release of all the petitioner’s tort claims arising from the charge.” HB 746 would expand the provision to include a disposition of “not guilty,” remove the prohibition against filing within 3 years of the disposition and remove the waiver provision.

Three years covers the statute of limitations for most civil claims that could be filed against law enforcement, a complainant, or a witness. Without such a waiver, a plaintiff might file a suit claiming, for example, false arrest or malicious prosecution and the defendant would not be allowed to use and disclose the records relating to the arrest or prosecution. Requiring a waiver, as current law does, protects agencies, officers, complainants, victims, and witnesses from wrongful suits and allows them to present a meaningful defense.

HB 726 does prohibit the obliteration of records before three years and allows for some level of access. However, the record may only be accessed for “purposes of proceedings related to the arrest or charge.” The language does not allow for disclosure for purposes of proceedings related to the arrest or charge. An agency or person defending a suit must be allowed to both access and disclose the records relating to the incident.

MCPA and MSA believe changes to expungements like those proposed in HB 746 require participation and input from the judiciary, prosecutors, and law enforcement and, rather than being dealt with in a piecemeal manner, should be addressed comprehensively in a process that involves all stakeholders and in a setting that is conducive to reasonable solutions while, at the same time, not affecting public safety. For these reasons, the MCPA and MSA **OPPOSE HB 746** and request an **UNFAVORABLE** committee report.