



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 23, 2023

RE: **HB 664 – Criminal Procedure – Expungement of Records - Good Cause**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 664**. This bill would allow individuals who have been convicted of certain crimes, including serious misdemeanors and felonies, to have records relating to their convictions expunged “at any time on a showing of good cause.” “Good cause” is not defined.

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.” Three years covers the statute of limitations for most civil claims that could be filed against law enforcement – or a complainant or 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.

The same considerations should apply to a person seeking an expungement based on a conviction, where the person has either pled guilty or been found guilty of a crime beyond a reasonable doubt. Under HB 664, a person or entity defending a suit would be prevented from retaining and using relevant and admissible evidence relating to the litigation.

Additionally, HB 664 tends to erode judicial transparency. “The public’s right of access to judicial proceedings is fundamental.” *Le v. Exeter Fin. Corp.*, 990 F.3d 410, 418 (5th Cir. 2021). “All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code Ann., Gen. Prov. §4-103. Removing records of criminal prosecutions is inconsistent with the need for openness. As the Fifth Circuit recently observed in the context of sealing orders,

The Judicial Branch belongs to the American people. And our processes should facilitate public scrutiny rather than frustrate it. Excessive secrecy...undercuts the public’s right of access and thus undermines the public’s faith in our justice system. *Le*, 990 F.3d at 421.

For these reasons, MCPA and MSA **OPPOSE HB 664** and request an **UNFAVORABLE** committee report.

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