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POSITION ON PROPOSED LEGISLATION

**BILL: HB 658 Criminal Procedure - Automated Expungement,
Waiting Periods, and Adverse Actions (Clean Slate Act of 2024)**

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: March 1, 2024

The Office of the Public Defender respectfully requests that the Committee issues a favorable report, but with amendments suggested for House Bill 658.

The Office of the Public Defender has been working with expungement clients for over two decades through our weekly expungement clinics and an annual “Back to the Neighborhood: How to Succeed with a Criminal Record” event. The Office has been pushing for reforming the expungement statute since 2007 when legislation created the first automatic expungement statute in Maryland. This allowed automatic expungement of arrest records of a person who was detained yet no formal charges were ultimately filed by the State. The Office continued to advocate for automatic expungement of favorable dispositions. It took several years, but finally in October 2021, automatic expungement became a reality for favorable dispositions – *nolle prosequi*, acquittal, dismissal, and not guilty dispositions became automatically expunged from both court and police records after three years. §10-105.1.

The Office continues to support all expungement bills that will allow our clients to remove the barriers of a criminal record. House Bill 658 is a great step in allowing the automatic expungement of criminal convictions under §10-105, §10-107, and §10-110. It recognizes that the passing of time is a key motivator for rehabilitation. House Bill 658 allows a misdemeanor conviction to be eligible after 10 years - except for certain domestically related convictions, which would be eligible after 20 years - and a felony conviction to be eligible after 20 years as well.

House Bill 658 is not expanding the lists of eligible convictions. House Bill 658, however, will allow expungements for these eligible convictions to be processed with no paper filing after the lapsed time period.

House Bill 658 incorporates the language of several other bills that are currently pending in the 2024 Session. The Office of the Public Defender is in support of each of these bills.

- Senate Bill 11 - Senator Carter's bill that would remove the barrier that says an otherwise eligible favorable disposition or eligible conviction is not barred from expungement due to the unit rule as defined by § 10-107.
- Senate Bill 454 - Senator Carter's bill that would change the definition of "completion of sentence" to give a person who violated probation the ability to file for an expungement and demonstrate to the Courts that rehabilitation has occurred. § 10-101, § 10-105, and § 10-110.
- House Bill 269 - Delegate Grammer's bill that would modify § 10-109 which would provide additional protections for the individual regarding disclosure of an expunged case and prevent it from being available to public inspection.

The Office of the Public Defender supports the passing of House Bill 658 because: 1) it allows eligible convictions to be expunged without a paper filing; and 2) it includes language of expungement bills that the Office has provided support for, or will support passage of, this year.

The Office of the Public Defender is asking for the following amendments:

1. Include the additional language in Senate Bill 454 regarding the definition of a "completion of sentence" under § 10-101. It is important that the legal impact of the *In Re Expungement Petition of Abhishek I.* case be modified so impacted individuals at minimum have the ability to ASK the courts to grant an expungement.
2. Given that Clean Slate Record Removal is not a complete expungement as defined by the § 10-101, the Office suggests a better definition would be akin to the process of non-disclosure of records as defined in § 10-401. The reason that Clean Slate Record Removal is not complete expungement is because the language of the bill solely requires that the record be cleared from the criminal justice units' systems generally and does not specifically require removal from the courts databases including case search, secured case search, J-Portal or MDEC. While § 10-113 (6) of the proposed bill makes reference to Maryland Judiciary Case Search, our clients and the advocates have learned that this may not be sufficient language to ensure an actual expungement. A lesson learned when § 10-401 became law - this non disclosure did not include other databases. The public still could access it through MDEC and Lexis/Nexis websites because the language of that bill was not thought to include anything beyond Maryland Judiciary Case Search.

The Public Defender thinks it is very important that our clients are properly informed. If a matter is referred to as being expunged, it should hold the same

expectation as any other expungement where both the court and law enforcement records are expunged and there is no access to that record except through a court order.

3. The Clean Slate Bill envisions a portal system by which only the individual can obtain access to the status of the expunged case. The Public Defender Office is very hesitant about creating access to matters once they are expunged without a court order. The Office is concerned how this information will be available if the record itself has been expunged. The Clean State Initiative is a national organization who are promoting this legislation throughout the country. In Maryland, we have been persistent in our efforts to prevent the continuing information of expunged cases to remain available in any format without a court order.
4. Automation should mean that once the period of time has expired, the eligible matter will be expunged. The Clean Slate bill will allow the prosecuting agency to object and place the burden on the prosecutors to determine eligibility. The eligibility, if truly automation, should be determined just by the charge, disposition and time passing. The bill places the task on the Department of Public Safety. This task should begin and end there.

The Clean Slate bill has the ability to help so many impacted individuals. It's an important piece of legislation, and consideration of the proposed amendments could help with clarifying the purpose of the bill. Paper filing should not be needed if an otherwise conviction is eligible to be expunged. Expungement should be automated if the case is otherwise eligible. The police and court records should be expunged as defined by statute and access to any expunged case should only happen with a court order.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report, with amendments on HB 658.

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

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