

Bill Number: HB 658
Maryland State's Attorneys' Association
Opposed

**WRITTEN TESTIMONY OF THE MARYLAND STATE'S ATTORNEYS' ASSOCIATION IN
OPPOSITION TO HOUSE BILL 658-CRIMINAL PROCEDURE-AUTOMATED
EXPUNGEMENT, WAITING PERIODS, AND ADVERSE ACTIONS
(CLEAN SLATE ACT OF 2024)**

The Maryland State's Attorneys' Association is opposed to House Bill 658- Criminal Procedure-Automated Expungement, Waiting Periods, and Adverse Actions (Clean Slate Act of 2024) and asks for an unfavorable report.

In 2016, the Maryland General Assembly embarked on and completed a major renovation to the criminal justice system known as the Justice Reinvestment Act. Of the many aims of that mission, there was a strong emphasis on restorative justice. This was to restore justice for society, the criminally charged person but also for the victims of crime. Included within the Justice Reinvestment Act was a substantial and groundbreaking change to the expungement process and its' availability. Primarily, the change was to allow expungement for many cases resulting in guilty findings in a large number of crimes including some felonies when previously expungement was permitted primarily only for non-convictions. Little has been done to change that structure within the Justice Reinvestment Act other than to add a few crimes which had been missed and to shorten some time frames required for eligibility to expunge a conviction. The changes have greatly increased the number of expungements addressed and granted to individuals. Senate Bill 602 takes the concept of expungement for convictions and eviscerates its' true function and totally excludes victims from their right to input and on many occasions will prevent the victims from being restored to some semblance of justice.

The Bill removes the requirement in any case (PBJ's or guilty findings) that the person who is eligible for expungement be required to be successful in the completion of their sentence. Section 1 of this Bill would allow expungement even if the offender has totally disregarded their sentence and the conditions of probation if conditions were imposed. For example, if a defendant refused to even try to make the victim whole by paying required restitution, they could still have their conviction expunged after the probation is over and the time frame has passed for expungement. This would leave the victim with no recourse and the judgment of restitution (if one existed) would disappear. The victim would have no record left of the case to pursue justice on their own.

Section 2 of the Bill is of even greater concern for the citizens of this State, all of the partners in the criminal justice system and the victims of crime. The Bill would create a system to make every potential offense eligible for expungement to become "clean slate eligible" at a certain point. The Department would then somehow be required to monthly review all cases in the State of Maryland to see if an offense has become eligible to be automatically expunged. The Department would then be required to notify the Administrative Office of the Courts and "all applicable criminal justice units" of those offenses the Department has

determined to be clean slate eligible. At that point, only a prosecuting agency is allowed to respond to contest eligibility. This is despite the fact that the victim is allowed to oppose an expungement under the current process in Criminal Procedure §10-110. In addition, the prosecuting agency can only contest the expungement if the offender has since been convicted or the prosecuting agency believes that the person is still engaged in criminal activity. This process has many flaws, pitfalls and potential for injustice.

First, it is very unclear how the Department is able to determine if the offense is clean slate eligible. Is the Department conducting a record check nationwide? Is the Department inquiring of every law enforcement agency if anyone suspects the individual is still engaged in criminal activity? In addition, it would seem that the logistical burden of finding every clean slate eligible offense would be overwhelming and financially prohibitive.

Next, the burden on the prosecuting agency would be significant and concerning. It would require the agency to review every case forwarded not only for any subsequent offenses but then to inquire of any law enforcement agency anywhere if the person is still engaged in criminal activity. We would be given 30 days to accomplish this for likely a very large number of cases. Most importantly, the Bill would gut a very key part of the 10-110 expungement capability for guilty findings. Currently, if an application for expungement on a guilty finding is filed, the State or the victim can contest the requested expungement. In addition to addressing whether the individual has been convicted of another offense, the Judge is also to address and find "that giving due regard to the nature of the crime, the history and character of the person, and the person's success at rehabilitation, the person is not a risk to public safety" and "that an expungement would be in the interest of justice". Those findings have been totally removed under this process. Therefore, an individual can be convicted of an infamous crime, totally disregard their probation, continue to be a danger to public safety and no one can stop this expungement.

There are crimes which should never be erased from the public memory or access. With this legislation, those crimes will be erased. For example, a corporate CEO or a powerful elected official steals millions of dollars from their shareholders or citizens. That person is convicted of Felony Theft and never pays the victims back. If the individual manages to not be convicted of another crime, that offense will be automatically expunged. An individual disregards probation and absconds, a Judge issues a bench warrant which is never served, the probation term ends (albeit not satisfactorily). It appears under this legislation the conviction will be expunged automatically. The defendant doesn't have to do anything.

This is clearly not what the General Assembly intended when they elected to allow some offenders to expunge a conviction through the Justice Reinvestment Act. The idea was to allow those who successfully paid their debt to society and demonstrated that they have rehabilitated themselves, made society and victims as whole as can be accomplished, to remove any record of their conviction from access in any manner to the public. It should not be extended to mandate expungement for anyone who accomplishes the one requirement of not being caught or convicted of another offense after the one now being considered for expungement. This will do an injustice to the State and to the victims of crime. The victims were intended to be an integral part of the restorative process. This cuts them out of a significant element of restorative justice.

We ask for an unfavorable report.