



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

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

In the Judiciary Committee
Hearing on March 5, 2024

Position: FAVORABLE WITH AMENDMENTS

Maryland Legal Aid (MLA) submits its written and oral testimony on HB 658 in response to a request from Delegate Simpson.

MLA testifies in support of HB 658. By allowing for automatic expungement of already qualified criminal records, this bill expands access to justice for many Marylanders. The bill also provides the same language contained in House Bill 73 that clarifies that a person may apply for an expungement when their sentence is complete, subject of course to other criteria such as timing, subsequent convictions, and disposition. HB 658 also codifies protections against collateral consequences by requiring that certain entities cannot use expunged records to deny permits, licenses, and entrance to educational institutions.

Maryland's robust expungement legislation is a testament to the power of second chances, and acknowledges the real harm done by overcharging and overincarceration, particularly in Black and Brown communities. Over the past several years, the Maryland General Assembly has increased expungement opportunities for Marylanders. Just last year, the REDEEM Act of 2023 expanded the universe of case types eligible for expungements and shortened the waiting periods for expungement of convictions.

Automated expungement will allow more individuals to expunge their already eligible records, reducing the strain on legal service providers and court resources.

Despite expanded expungement opportunities, there are many Marylanders who have not taken advantage of criminal record expungement, and its resulting lifechanging impacts, such as better access to housing and employment. The expungement statute has many qualifiers, and it can be confusing for individuals to understand if their criminal record is eligible. Working with an attorney helps, of course, but the need for legal services in expungement, like all legal areas, far outweighs the ability MLA and other legal services providers have to provide legal representation.

Expungement uses a lot of resources. MLA dedicates 17 full-time staff almost entirely to expungements and also utilizes pro bono volunteers and other staff resources to provide them. If expungements were automated, MLA staff could focus on the many other legal needs of our clients, like housing, family law, and more.

Certainly, our colleagues in the courts are kept just as busy managing dockets and the accompanying paperwork. Though automated expungement will still require considerable court resources, they can at least be redirected from active court dockets into a more streamlined administrative process.

MLA agrees with the concept of automatic expungement because of its many positive outcomes; however, MLA suggests friendly amendments to three subsections of HB 658.

Proposed Amendment 1: HB 658 should retain the current, more complete definition of expungement already present in Criminal Procedure 10-101.

HB 658 changes the definition of expungement in proposed Section 10-113(A)(6) by only requiring the removal of records from the Central Repository and from Maryland Judiciary Case Search.

Currently, the statute defines expungement as obliteration or removal of police and court records, meaning these records are also removed from law enforcement agencies, Judicial Information Systems, paper court files, and the Maryland Electronic Courts filing system.

The changes proposed in HB 658 mean that Marylanders who receive an automated expungement will still have records in the court systems. Those records could be used against clients in subsequent criminal proceedings. MLA also worries about the security of records in the database.

MLA suggests that the bill maintain the current definitions in Criminal Procedure 10-101, which requires a full expungement of all court and police records, not just removal from the Central Repository and Case Search.

Proposed Amendment 2: HB 658 should not allow for objections from the prosecuting agency, as it defeats the purpose of automatic expungement.

MLA also suggests removal of Subsections (C) and (D) in Clean Slate's proposed statute under 10-113. These subsections allow the prosecuting agency to object to the expungement, without a hearing.

Allowing the State to object is antithetical to the purpose of automatic expungement. As mentioned previously in this testimony, automated expungement is a positive because it allows more people to access the judicial system and because it streamlines the expungement process. Allowing the State to object to automated expungement defeats this purpose.

Proposed Amendment 3: HB 658 should not seek to create yet another depository that contains Marylanders' criminal records.

MLA also suggests removal of Subsection J under proposed Title 10-113. This subsection reads, in part, "The Department shall provide a digital service that (1) allows individuals to confidentially determine whether their charges have been expunged by automated expungement...".

MLA is wary of creating yet another depository containing our clients' criminal records. The point of expungement is to obliterate criminal records.

MLA does not see the practical difference between this service and an individual simply confirming with the court that their records have been expunged.

In addition to automated expungement, HB 658 contains a fix for the "Abhishek problem" and prohibits some types of discriminatory behavior towards individuals with criminal histories.

HB 658 modifies the expungement statute language to clarify that expungement is available when someone's sentence ends, even if they violated probation while their sentence was active.

HB 658 provides clarity regarding the definition of sentence completion in Maryland Criminal Procedure Title 10, the portion of the code which governs criminal record expungement. The bill does not expand the expungement statute but clarifies that a person may apply for an expungement when their sentence is complete, subject to other criteria such as timing, subsequent convictions, and disposition.

This is the same fix contained in Hb 73 sponsored by Delegate Sandy Bartlett, which MLA supports.

A recent Appellate Court decision dealt a decisive blow to expungement, by finding that probation violations preclude a person from receiving an

expungement. In *Abhishek*, the Court held that the appellant was not entitled to an expungement of an otherwise eligible theft because his probation for that case was closed as unsatisfactory when he was convicted of marijuana possession, now a decriminalized offense, during his probationary period.¹

Linking expungement eligibility to probation violations disproportionately impacts low-income people, as well as Marylanders recovering from substance abuse. It is contradictory to the rehabilitative purpose of expungement.

HB 658 will help limit the impact of collateral consequences resulting from criminal records.

HB 658 adds specific language that codifies protections against the collateral consequences of criminal records by precluding certain governmental actors and educational institutions from discriminating against people who have expunged records.

MLA clients are often denied occupational licenses or are required to go through additional administrative processes to prove they should be eligible for licensing. Denying people access to licenses or to educational opportunities because of expunged charges makes little sense. Expungement exists to give individuals a second chance; if their expunged records can be considered when they apply for a license or for schooling, they may as well not apply for an expungement in the first place. Codifying these prohibitions gives the expungement statute teeth.

MLA urges the passage of HB 658, with the suggested amendments contained herein, to preserve expungement opportunities for all Marylanders.

If you would like additional information on this bill or the underlying issues it addresses, please contact Meaghan McDermott, Chief Attorney for Community Lawyering at Maryland Legal Aid, at mmcdermott@mdlal.org

¹ *In re Expungement Petition of Abhishek I.*, 255 Md.App. 464, 282 A.3d 318, 2022).