



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

House Bill 73
Criminal Procedure- Expungement- Completion of Sentence
In the Judiciary Committee
Hearing on March 5, 2024
Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on HB 73 in response to a request from Delegate Sandy Bartlett.

MLA testifies in support of HB 73. This bill 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 simply 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.

Maryland's robust expungement legislation is a testament to the power of second chances, and acknowledges the real harm done by overcharging and overincarceration. 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 expungement and shortened the waiting periods for expungement of convictions.

Unfortunately, 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 Prior to this decision, "satisfying" a sentence was viewed as synonymous with completing a sentence. The *Abhishek* interpretation means that a Marylander who has served their time and met all other statutory expungement requirements cannot receive an expungement if they violate probation, have their probation closed unsatisfactorily, and are then sentenced to incarceration for the remainder of their sentence.

This bill does not expand expungement; it is simply a technical fix that clarifies legislative intent.

Passing HB 73 will not increase expungement filings in the courts, nor does it erode judicial or prosecutorial discretion. Prior to the September 2022

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

Abhishek decision, expungement petitions were regularly filed for charges that had probation violations. Some of these were granted with no issue; for others, the State objected and a hearing was set before a judge who decided the matter. The expungement statute gives the State discretion to file an objection based on the interest of justice. For crimes with a victim, the statute requires the court serve the expungement petition on the victim, so they too, can object to the expungement and be heard. None of these guardrails will shift because of HB 73.

Linking expungement eligibility to probation violations disproportionately impacts Marylanders recovering from substance abuse and is antithetical to the rehabilitative purpose of expungement.

The opioid epidemic devastated low-income communities across Maryland. The impacts are still deeply felt and ongoing in every Maryland county, but especially so in historically underserved communities, like the rural pockets of Western Maryland and the Eastern Shore, and the historically Black neighborhoods of Baltimore City.

Probation violations occur for many reasons, but MLA sees clients violating probation most often because they were arrested and sentenced during a time then they were using drugs. These clients received probation terms requiring negative drug tests. However, without resources, therapy, and time, it was virtually impossible for them to stay clean and meet their probation requirements. Many accepted an unsatisfactory probation closure to avoid further violations that could result in reinstatement of their sentence and jail time. These clients then went on to successful rehabilitation and sobriety; only to be denied expungement 15 or 20 years later because of an old probation violation.

A criminal record expungement is often one of the last steps on the path for someone to fully reenter their community and participate in family life by obtaining work and stable housing. The *Abhishek* case has taken away that possibility for our clients, and many other Marylanders who want nothing more than a fresh start.

Linking expungement eligibility to probation violations disproportionately impacts low-income Marylanders.

MLA clients also violate probation simply because their low-income status makes it more difficult, and sometimes impossible, to meet technical conditions of probation, such as in-person check-ins. Those check-ins may seem basic, but they often require childcare, transportation, time off work, and other concerns that make compliance nearly impossible. When faced with the possibility of remaining on probation, violating again, and receiving jail time, many clients choose to unsatisfactorily close out their probation.

Expungement legislation supports survivors.

MLA is in the business of advocating for survivors; we only choose to support bills that advance the rights of our clients. MLA staffs a victim's assistance project, holds the contract for Children in Need of Assistance in almost every jurisdiction in the state, and regularly litigates divorce and custody cases for individuals living with or escaping violence. Many survivors of violence were victimized because they were otherwise vulnerable; they were using drugs, they were living in destabilized communities, and/or they were being trafficked and may therefore have criminal records related to their victimization. Domestic violence survivors are regularly arrested and charged alongside their abusers when they are forced to physically fight back. Thus, victims themselves often have criminal records and seek the rehabilitative power of expungement.

MLA urges passage of HB 73, 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@mdlaborg