

Bill Number: House Bill 268
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION
IN OPPOSITION TO HOUSE BILL 268
CRIMINAL PROCEDURE-EXPUNGEMENT OF RECORDS-DEFINITIONS

The Maryland States Attorneys Association is opposed to House Bill 268, Criminal Procedure-Expungement of Records-Definitions and asks for an unfavorable report. The revisions proposed by this bill to the expungement statutes would cause many potential adverse consequences.

House Bill 268 changes the definition of expunge and expungement by removing the phrase "from public inspection" from the definition. By doing so, arguably expunge now means, in effect, complete removal. This was never the purpose of expungement. The purpose of expungement was and still should be the denial of access or even the existence of the information to the public absent a compelling reason to require disclosure.

There are unquestionably circumstances where an expunged record must be produced or available to the law enforcement community. For example, if the police are investigating a crime which is remarkably similar to the matter which has been expunged, access to the record for the purpose of the investigation will be very helpful in the investigation of the new offense. There may be a circumstance where an individual was charged and acquitted. Expungement by obliteration will clearly hamper the efforts to continue an investigation to determine if another individual committed the offense. Related to the last example, if an individual had been identified by a victim of a crime and that person was later determined to not be the offender or acquitted if charged and another person is identified and accused of the offense, there will be a significant ethical dilemma for the prosecutor. In the prosecution of the next person identified, the prosecutor would be obligated by his ethical responsibility and the discovery rules to disclose to the attorney for the new defendant that another person has been identified by the victim. This Bill would virtually prohibit that.

Under the current law, if a case is expunged, the police and court records are not accessible to the public unless and until there comes a compelling need for the record and a Judge has determined that disclosure or opening of the record is appropriate. It is a rare but necessary avenue to assure fairness to everyone.

We ask for an unfavorable report.