

Bill Number: SB 398
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEY'S ASSOCIATION
IN OPPOSITION TO SENATE BILL 398
CRIMINAL PROCEDURE-AUTOMATED EXPUNGEMENT

The Maryland State's Attorney's Association is opposed to Senate Bill 398 – Criminal Procedure – Automated Expungement and asks for an unfavorable report. This proposed legislation would create an undue and unworkable burden on the Judiciary and would be contrary to the current intent of the Expungement statutes as they exist.

Senate Bill 398 attempts to direct the automatic expungement of crimes under both Criminal Procedure Sections 10-105 and 10-110 when the charge is “eligible” and sets a time frame from the time of “disposition” of the charge.

CP Section 10-105 has existed in substantively its current form for decades and provides for the expungement of non-convictions including Probation Before Judgment (PBJ). Three years are generally required to pass before an expungement can be granted for a PBJ. Although “eligible” the charged person would not be “entitled” to the expungement if the individual was subsequently convicted of another offense or is at the time a defendant in a pending case.

Through the Justice Reinvestment Act in 2016, the General Assembly extended expungement opportunity to guilty findings in a large number of misdemeanors and some felonies. The Legislature set time frames for eligibility from the conclusion of the sentence and despite eligibility, the Legislature also provided the State the opportunity to oppose an expungement if doing so in a particular case would pose a risk to public safety and/or would not be in the interest of justice.

Senate Bill 398 eliminates the ability of anyone to assess actual entitlement to expungement beyond eligibility. The Judiciary is not equipped or able to assess whether the individual has subsequently been convicted or is pending charges in this or any other State. If they could do so, the burden would be oppressive. In addition, there is no provision for the Judiciary to be deciding any issue regarding a risk to public safety or the interests of justice without holding a hearing in each case and hearing from advocates.

Under the current statutory structure, the respective State's Attorney's Office is given the opportunity to look into a request for expungement to determine if the individual should not be granted an expungement. Sometimes that is easy in finding subsequent offenses but also includes an opportunity to look at the individual circumstances of the case. CP 10-110 has a wise requirement that the expungement request be given an assessment “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". There are unquestionably some convictions which would be "eligible" for expungement where expungement would be contrary to public safety or the interest of justice. That is why the Legislature wisely inserted this possibility within the expungement statutes.

In addition, the revisions to Section 10-110 set time limits from "disposition". Although disposition is not defined in the Bill, the word is commonly used in the criminal justice field as the time of sentencing. It is unclear if the legislation will change the time period for expungement from what currently starts to run at the satisfactory conclusion of the sentence. If it does, it could create a scenario where the individual would have their conviction expunged while they are still serving the sentence for the now expunged case. This cannot be the intent.

Expungement of eligible convictions for those who have demonstrated they have changed their lives and will benefit from a clean record to move on with their lives is a worthy aim which the Legislature has already put in place. We ask for an unfavorable report.