



Senate Bill 0432
Criminal Records – Expungement and Maryland Judiciary Case Search
(Expungement Reform Act of 2025)
In the Judicial Proceedings Committee
Committee Hearing on February 5, 2025
Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on Senate Bill 0432 in response to a request from the Office of Governor Wes Moore.

MLA testifies in support of SB 0432. MLA is a private, nonprofit law firm that provides free legal services to low-income Maryland residents in civil matters. Last year, we advised or represented close to 2,000 clients on expungement. Unfortunately, many of those clients were unable to apply for expungement because of old probation violations. To ensure that probation violations do not limit expungement opportunities, SB 0432 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 also expands the list of expungable offenses and requires shielding for pardoned cannabis offenses and stet dispositions.

SB 0432 clarifies that a person may apply for an expungement when their sentence is complete, even if they have violated probation, subject 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.

Unfortunately, a 2022 Appellate Court decision dealt a decisive blow to expungement by finding that probation violations preclude a person from receiving an expungement. In *Abhishek*¹, the Court held that the appellant was not entitled to an expungement of an otherwise eligible theft conviction 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.

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 violated probation, even if that violation occurred decades ago, was a technical violation, or even if the judge reinstated their sentence after closing probation by sending them to jail or prison.

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

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 when they were struggling with substance abuse. 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 obstacles 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.

SB 0432 provides a simple fix regarding sentence completion that clarifies legislative intent without eroding judicial or prosecutorial discretion.

Prior to the September 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 current version of 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. The statute also grants the Judiciary discretion when determining if a conviction can be expunged, by allowing the judge to make a factor-based analysis. The current factors include the nature of the crime, the history and

character of the person, the person's success at rehabilitation, whether the person is a risk to public safety, and whether the expungement would be in the interest of justice. None of these guardrails will disappear because of SB 0432.

In fact, SB 0432 clarifies, with specificity, that restitution and probation violations may be taken into consideration by a judge when considering whether a conviction is eligible for expungement during an expungement hearing.

Expungement expansion creates economic opportunity for Marylanders.

SB 0432 expands the universe of expungable charges to include writing bad checks, credit card theft, obtaining a prescription by fraud, resisting arrest, false report to an officer, false statement to an officer, and driving without a license. Adding these low-level, common charges will remove barriers to employment and housing for many MLA clients.

SB 0432 also ensures that Marylanders with old cannabis convictions do not face barriers to work or housing because of publicly available criminal records viewable on Maryland Judiciary Case Search. In June 2024, Governor Wes Moore pardoned Marylanders with low-level cannabis offenses. Pardons and expungements are not synonymous, and even though there are expungement laws for cannabis, the paper trail for criminal convictions can be lengthy and complicated. Prohibiting reference to pardoned charges on Maryland Judiciary Case Search protects Marylanders from being discriminated against for those charges.

SB 0432 also corrects a current inconsistency within expungement law by requiring automatic shielding of stet dispositions, after completion of a three-year waiting period. This is consistent with current expungement law, which requires automatic shielding of other favorable dispositions, such as dismissal, nolle prosequi, and not guilty.

Stet dispositions are not shielded under current law, and are available for view by anyone via Maryland Judiciary Case Search. Cases are placed on the stet docket when the State has decided not to move forward with the case, but is reserving the right to reopen it in the future. No finding of fact is made. After a year has passed, the disposition can be reopened only for good cause, and the charge is eligible for expungement after three years.

When a case is shielded, the case is still on the person's criminal record; however, shielding the case from the public helps prevent prejudicial outcomes. Many people have no understanding of legal terms and would not know that a stet or nolle prosequi was different than a conviction. A landlord or employer could search a person's name on Maryland Judiciary Case Search, see the associated charges, and make decisions about housing or job placement without realizing the person was never convicted of the offense.

MLA urges passage of SB 0432, 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, Maryland Legal Aid's Advocacy Director for Community Lawyering and Development, at mmcdermott@mdlaborg.