



## **TESTIMONY IN SUPPORT OF SENATE BILL 432**

### **Criminal Records – Expungement and Maryland Judiciary Case Search Expungement Reform Act of 2025**

**TO:** Members of the House Judiciary Committee

**FROM:** Criminal Defense and Advocacy Clinic, University of Baltimore School of Law

**DATE:** February 5, 2025

The Criminal Defense and Advocacy Clinic directly represents indigent clients through various stages of their criminal cases, including post-conviction litigation. Through our work on expungement cases, we have the unique experience of representing clients in an academic setting. We are committed to ensuring equitable outcomes for individuals in our justice system, and Senate Bill 432 remedies the injustices stemming from *In re Abhishek*, 255 Md. App. 464 (2022). Senate Bill 432 restores the original goal of Maryland’s expungement system at no cost to the administration of justice. We strongly urge the Judicial Proceedings Committee to provide a favorable report on Senate Bill 432.

#### **I. Senate Bill 432 remedies the injustices stemming from the *Abhishek* decision.**

Senate Bill 432 directly responds to the Appellate Court of Maryland’s decision in *Abhishek*. *Abhishek* categorically denies expungements to individuals who violate their probation and have their probation closed “unsatisfactorily.”<sup>1</sup> The court reached this conclusion by narrowly interpreting the phrase “satisfactory completion of the sentence” in Criminal Procedure [§ 10–105](#) and “satisfies” in [§ 10–110](#).<sup>2</sup> This interpretation perpetuates injustice by failing to appropriately account for the wide variety of probation violations, critically weakening the preexisting individualized expungement process, and undermining this Legislature’s goal to expand access to expungements under the REDEEM Act of 2023. Senate Bill 432 rightfully overturns this interpretation by removing all references to the “satisfactory completion of the sentence” standard in favor of the broader “completion of the sentence” language and definition. These changes remove *Abhishek*’s categorical bar to expungement and restore the importance of individualized hearings and judicial discretion.

#### **II. *Abhishek* inequitably treats all probation violations the same regardless of the violation’s severity and the individual circumstances.**

Probation violations usually fall into two broad categories, technical violations and non-technical violations.<sup>3</sup> Technical violations occur when someone violates the conditions of

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<sup>1</sup> *In re Abhishek*, 255 Md. App. at 476-77.

<sup>2</sup> *Id.* at 473-77.

<sup>3</sup> See Correctional Services § 6-101(m).

probation not including new violations of the law, absconding, and violating a protective order.<sup>4</sup> According to the Maryland Division of Parole and Probation (DPP) Operations Manual, the average individual on probation has 12 standard conditions and could be subject to additional special conditions.<sup>5</sup> A person on probation could receive a technical violation for missing a day of work or submitting their new address to their probation officer a few days late. Under *Abhishek*, these technical violations could prevent the individual from getting an expungement indefinitely. SB 432 would change this inequitable reality and restore the fair and just individualized process.

### III. *Abhishek* could categorically bar expungements to thousands of people each year.

*Abhishek* categorically denies expungements to individuals who violated their probation and had their probation closed “unsatisfactorily.”<sup>6</sup> According to the Maryland DPP Annual Data Dashboard, thousands of case closures could be subject to *Abhishek*’s holding.<sup>7</sup> For example, in fiscal year 2023 alone, 3,371 probation cases were revoked due to technical violations or closed as “unsatisfactory.”<sup>8</sup> The “unsatisfactory” closures occur without a court finding a person guilty of a probation violation.<sup>9</sup> Under these conditions and regardless of the seriousness of the individual’s conduct, “unsatisfactory” closures forever deny expungements to a significant number of people each year.

### IV. Barring expungements leads to significant economic and collateral consequences for individuals, particularly individuals of color.

A criminal record substantially impacts an individual’s wages and job opportunities. For starters, about 90% of employers ask job applicants about their criminal background.<sup>10</sup> Moreover, in one study, researchers found that a criminal record decreases the probability of receiving a job offer or callback interview for young men by approximately 50%.<sup>11</sup> This decrease is even more pronounced for Black job applicants where a conviction reduces their chances of getting a job offer by 60%.<sup>12</sup> Individuals with convictions also earn less than their peers. For example, Michiganders who received expungements saw their average wages increase by 23% within one year of the

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<sup>4</sup> *Id.*

<sup>5</sup> Div. of Parole & Prob., DPP.300.0701, Operations Manual: Ch. 7 Supervision and Monitoring, sec. 1, p. 5–6 (2023), <https://itcd.dpscs.state.md.us/PIA/ShowFile?fileID=4571>. Standard conditions include (1) reporting to and obeying your probation officer, (2) work or attend school, (3) get permission from your probation officer before moving homes, (4) obtain permission before changing your job, (5) obtain permission before leaving Maryland, (6) obtain permission before owning, using, or possessing a dangerous weapon or firearm, (7) obey the law, (8) promptly notify your probation officer if you are charged with a criminal offense, (9) permit any home visits by your probation officer, (10) do not use, sell, or possess illegal controlled dangerous substances or paraphernalia, (11) appear at court when told to do so, and (12) pay all fines, costs, restitution, and fees ordered by the Court.

<sup>6</sup> *In re Abhishek*, 255 Md. App. at 476-77.

<sup>7</sup> Dep’t of Pub. Safety & Corr. Servs., Division of Parole and Probation Annual Data Dashboard, at p. 6, [https://www.dpscs.state.md.us/community\\_releases/DPP-Annual-Data-Dashboard.shtml](https://www.dpscs.state.md.us/community_releases/DPP-Annual-Data-Dashboard.shtml)

<sup>8</sup> *Id.*

<sup>9</sup> This applies to both technical and non-technical violations. Dep’t of Pub. Safety & Corr. Servs., Division of Parole and Probation Annual Caseload Report, at p. 19 (Sept. 15, 2024), [https://dlslibrary.state.md.us/publications/JCR/2024/2024\\_175\\_2024.pdf](https://dlslibrary.state.md.us/publications/JCR/2024/2024_175_2024.pdf)

<sup>10</sup> The Sorenson Impact Institute, *Driving Impact And Equity Through Criminal Record Expungement*, (Nov. 2023), <https://www.forbes.com/sites/sorensonimpact/2023/11/29/driving-impact-and-equity-through-criminal-record-expungement/>.

<sup>11</sup> Devah Pager, Bruce Western, and Naomi Sugie, *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, *The Annals of the American Academy*, at pg. 199 (2009).

<sup>12</sup> *Id.*

expungement.<sup>13</sup> Beyond wages and employment opportunities, a conviction can also impact an individual's ability to find adequate housing, obtain licenses, receive loans, and so much more.<sup>14</sup>

## V. Expanding the right to expungement would also benefit Maryland's economy.

Overturing *Abhishek* and expanding individuals' opportunities to receive an expungement could significantly increase Maryland's GDP and tax revenue. For example, one study determined that the legal restrictions on individuals with felony convictions cost the national economy \$78 to \$87 billion in GDP in 2014.<sup>15</sup> Moreover, a cost-benefit analysis focusing on expungements in Santa Clara County, California found the benefits of expungement outweighed the costs by \$5,760 per person.<sup>16</sup> That government's GDP and tax revenue also increased by an estimated \$1,153 and \$750 per person respectively.<sup>17</sup> By eliminating *Abhishek's* categorical ban, Maryland could see a significant increase in its revenue each year.

## VI. *Abhishek* undermines the preexisting expungement process, which appropriately considers each person's unique situation.

To overcome the injustices and costs described above, an individualized expungement process that evaluates each person's unique situation is the appropriate solution. Luckily, this process already exists, was endorsed by the REDEEM Act, and was the norm for people with probation violations before *Abhishek*. When an individual petitions for an expungement pursuant to [Criminal Procedure § 10-110](#), the State's Attorney and any victims are given notice and opportunity to object to the petition. If the State's Attorney or a victim files an objection, the court will hold a hearing.<sup>18</sup> After hearing from both sides, the court takes into account "the nature of the crime, the history and character of the person, and the person's success at rehabilitation."<sup>19</sup> If the individual and the conviction are both eligible for expungement and the court finds that an expungement would be in the interest of justice and that the person is not a public safety risk, then the court will grant the expungement.<sup>20</sup> But the judge still has the authority to deny the expungement at this stage as well, even if the person is eligible for an expungement.<sup>21</sup> The removal of the "satisfactorily completed" requirement will restore this individualized process rather than unfairly cutting off any possibility of expungement forever.

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<sup>13</sup> J.J. Prescott and Sonja B. Starr, *The Power of a Clean Slate*, at pg. 29, 34 (Summer 2020), <https://www.cato.org/sites/cato.org/files/2020-06/regulation-v43n2-3.pdf>.

<sup>14</sup> *Id.* at 30.

<sup>15</sup> Cherrie Bucknor and Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research, at pg. 3 (June 2016), <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.

<sup>16</sup> Meyli Chapin, Alon Elhanan, Matthew Rillera, Audrey K. Solomon, and Tyler L. Woods, *A Cost-Benefit Analysis of Criminal Record Expungement in Santa Clara County*, at pg. 6 (March 2014), <https://www.sjsu.edu/rcp/docs/legal-services/Cost-Benefit%20Analysis%20of%20Expungement.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Criminal Procedure § 10-110(f).

<sup>19</sup> Criminal Procedure § 10-110(f)(2)(iii).

<sup>20</sup> Criminal Procedure § 10-110(f)(2).

<sup>21</sup> Criminal Procedure § 10-110(g).

**VII. SB 432 will provide significant benefits to individuals and Maryland at no cost to the administration of justice, victims, or public safety.**

**A. SB 432 will not enable expungements while a violation of probation is pending.**

An individual's sentence cannot expire while a violation of probation is pending; thus, a person **cannot** seek an expungement before a probation violation issue is resolved because the sentence is not complete.<sup>22</sup> Senate Bill 432 still requires that a person complete their sentence and wait 5-10 years before petitioning for an expungement.<sup>23</sup> Furthermore, in DPP's Operations Manual, "an agent may not close a case" "that reaches its legal expiration date, if a violation proceeding is pending."<sup>24</sup>

**B. SB 432 will not affect restitution orders and the *Abhishek* decision does not affect whether a victim receives restitution.**

*Abhishek* and SB 432 do not affect a victim's ability to receive restitution as paying restitution is required before a sentence expires or is completed. Paying restitution is often a condition of probation, and failing to pay restitution can lead to a probation violation. DPP's Operations Manual prevents an agent from closing a case "with unpaid fines, costs, or restitution unless the unpaid monies are: (i) Waived by a court; or (ii) referred to the Central Collection Unit."<sup>25</sup> The Maryland Code also permits probation to be extended by 3-5 years solely for the purpose of making restitution.<sup>26</sup> A restitution order can also be enforced as a money judgment in a civil action,<sup>27</sup> so even if a person's probation record is expunged, the record of that restitution can still exist as a civil judgment.<sup>28</sup> Additionally, SB 432 would require a judge to consider whether or not an individual had fully paid any restitution in order to grant the expungement. These are adequate safeguards to ensure that the victim receives what they are entitled to.

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<sup>22</sup> *But see* Written Testimony in Opposition to 2024 House Bill 73 from the Maryland Chiefs of Police Association and the Maryland Sheriffs' Association to the House Judiciary Committee (Mar. 5, 2024), 5, 2024), [https://mgaleg.maryland.gov/cmte\\_testimony/2024/jud/1eL6dfGNj98ANBqVPcXswZR1xLH0ERRUM.pdf](https://mgaleg.maryland.gov/cmte_testimony/2024/jud/1eL6dfGNj98ANBqVPcXswZR1xLH0ERRUM.pdf) (asserting the presence of a nonexistent loophole in which that a person could petition for an expungement while a violation of probation is pending before a judge is able to revoke probation).

<sup>23</sup> Furthermore, if an individual is convicted of a new crime within this waiting period, the clock starts over. (Criminal Procedure § 10–110(c)(2)). An individual could be one day away from being able to file a petition to expunge their conviction and because they incurred a new conviction, they will have to complete their new sentence and then wait another 5-10 years before being able to file a petition for expungement for both of those convictions.

<sup>24</sup> Div. of Parole & Prob., DPP.300.0701, Operations Manual: Ch. 7 Supervision and Monitoring, sec. 1, p. 33-34 (2023), <https://itcd.dpscs.state.md.us/PIA/ShowFile?fileID=4571>.

<sup>25</sup> *Id.* at p. 34.

<sup>26</sup> Criminal Procedure § 6-222(b)(1). Probation may be extended by 3 years if the probation was originally ordered by the District Court or 5 years if probation was originally ordered by the Circuit Court.

<sup>27</sup> Criminal Procedure § 11-608.

<sup>28</sup> Criminal Procedure §§ 11-609–610. The judgement of restitution from the Circuit Court is automatically indexed as a civil judgement, however, this does not apply in the District Court where the person being paid restitution must request that the judgement be indexed as a civil judgement. If the District Court terminates an individual's probation then the District Court has the judgement of restitution recorded and indexed as a money judgement of its own accord. Criminal Procedure § 11-612; *but see* Written Testimony in Opposition to 2024 House Bill 73 from the Maryland State's Attorneys' Association to the House Judiciary Committee (Mar. 5, 2024), [https://mgaleg.maryland.gov/cmte\\_testimony/2024/jud/1spSZEqBMcxrybqL0tTJKhgoVUQL-6Ap7.pdf](https://mgaleg.maryland.gov/cmte_testimony/2024/jud/1spSZEqBMcxrybqL0tTJKhgoVUQL-6Ap7.pdf) (claiming that a defendant who receives an expungement no longer has "any obligation to the victim" with regards to unpaid restitution).

**C. *SB 432 does not diminish the importance of an individual's behavior while on probation.***

Even with SB 432's changes, probation violations still result in significant consequences for individuals such as the revocation of probation, incarceration, increased conditions, and more. With technical violations, for example, the court can incarcerate an individual for 15, 30, or 45 days depending on the number of prior violations.<sup>29</sup> In addition, the court could sentence the person to a longer period if certain statutory factors are met.<sup>30</sup> Lastly, as described above, the State and victim have an opportunity to object and argue against an individual's expungement petition.<sup>31</sup> As such, an individual's prior conduct could influence the court to deny the expungement

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SB 432 remedies injustice and provides tremendous benefits to individuals and Maryland. By restoring the individualized expungement process, SB 432 eliminates *Abhishek's* inequitable categorical ban, expands access to expungement to thousands of people, reduces the economic consequences of a conviction for individuals, and spurs economic growth in Maryland without cost to the administration of justice, victims, or public safety. **For these reasons, the Criminal Defense and Advocacy Clinic urges this Committee to issue a favorable report for SB 432.**

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<sup>29</sup> Criminal Procedure § 6-223(d)(2); *but see* Written Testimony in Opposition to 2024 House Bill 73 from the Maryland State's Attorneys' Association to the House Judiciary Committee (Mar. 5, 2024), [https://mgaleg.maryland.gov/cmte\\_testimony/2024/jud/1spSZEqBMexyrbqL0tTJKhgoVUQL-6Ap7.pdf](https://mgaleg.maryland.gov/cmte_testimony/2024/jud/1spSZEqBMexyrbqL0tTJKhgoVUQL-6Ap7.pdf) (stating that many Judges don't bother to find a violation because "the most a Judge could do is put the person in jail for 15 days.").

<sup>30</sup> Criminal Procedure § 6-223(e).

<sup>31</sup> Criminal Procedure § 10-110.