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Bill Number: HB 362

Position: Unfavorable

WRITTEN TESTIMONY OF THE MARYLAND STATE'S ATTORNEYS'
ASSOCIATION IN OPPOSITION TO HOUSE BILL 362
CRIMINAL PROCEDURE –EXPUNGEMENT - EFFECT

The Maryland State's Attorney's Association is opposed to House Bill 362 Criminal Procedure – Expungement – Effect as legislation which is unrealistic, contrary to the purpose and direction of the expungement statutes and would direct that an untruth be statutorily ordered.

The expungement statutes in the Criminal Procedure Article and as set forth by the General Assembly are designed to prevent public access to records of arrests, charges and dispositions of cases when an individual is deserving of such protection. When expungement is directed, the agency with such information must either physically obliterate the record or remove the record “to a separate secure area to which persons who do not have a legitimate reason for access are denied access”. Expunge is defined as removing information from public inspection.

The law permits the opening or access to records if a party follows the procedure set out in Criminal Procedure Section 10-108 and a Judge determines there is good cause to do so. There are many circumstances where such action is appropriate. For example, if an individual had been charged with a crime and the case was dismissed or even resulted in a conviction which was expunged and then someone else was charged with the same crime. A prosecutor would be ethically obligated to disclose the information to the next charged person as potentially exculpatory evidence. This legislation would require the prosecutor to violate their ethical obligation and effectively lie.

This bill would require and very generically directs that with an expungement the individual was “for all purposes” never arrested or charged with an offense. This requires that everyone endorse an untruth. There is a big difference between not allowing any access to a record and denying that the act ever happened.

MSAA asks for an unfavorable report for House Bill 362