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Bill Number: HB 360

Position: Unfavorable

WRITTEN TESTIMONY OF THE MARYLAND STATE'S ATTORNEYS'
ASSOCIATION IN OPPOSITION TO HOUSE BILL 360
CRIMINAL PROCEDURE – AUTOMATED EXPUNGEMENT

The Maryland State's Attorney's Association is opposed to House Bill 360 – 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 completely circumvent the expungement statutes as they exist.

House Bill 360 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 an expungement in a particular case would pose a risk to public safety and/or would not be in the interest of justice. The victim is also given an opportunity for input.

House Bill 360 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. For example, if circumstances required that the State permit a guilty plea to a misdemeanor eligible for expungement but that the facts of the case were incredibly serious and the public should be entitled to continue to know of the crime. With this proposed legislation, the State and the victim would not be permitted to do anything to attempt to prevent the automatic expungement of the offense.

As disconcerting, the time period for automated expungement runs from the time of "disposition". Disposition is defined to include the time of a guilty plea or guilty finding and is not a reference to the outcome of the sentence. This creates a scenario where cases will be automatically expunged while an individual could be still on probation or still in jail. For example, if an individual was found guilty of a series of misdemeanor thefts and received substantial incarceration with probation and restitution upon release. Seven years after the person was found guilty, all of the offenses would disappear even if the person was still incarcerated and certainly before the probation and restitution could be addressed. This cannot be the intent.

Further, although maybe unusual, there will be circumstances where a criminal defendant may not want their case expunged. Perhaps they are involved in a civil suit or they utilize the existence of their conviction as a demonstration of the ability to reform. This bill would even remove that option.

In summary, this proposed legislation is impossible to carry out, creates very real circumstances where an injustice will occur and completely removes the State and the victims of crime from their rights to properly assert opposition to an expungement when doing so is appropriate.

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.