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## POSITION ON PROPOSED LEGISLATION

### **BILLS:**

- **HB0113 – Criminal Procedure - Expungement of Records - Resisting Arrest and Making a False Statement to a Law Enforcement Officer;**
- **HB0362 - Criminal Procedure - Expungement – Effect;**
- **HB0397 - Criminal Procedure - Expungement - Failure to Obey a Court Order to Report to Confinement;**
- **HB0824 - Criminal Procedure - Expungement - Conviction of Distribution of Controlled Dangerous Substance**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable with Amendments**

**DATE: February 27, 2026**

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The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on the four above-listed bills, all of which address expungement.

Expungement broadens opportunities for education, employment, licensing, and housing, which helps individuals reintegrate into society and ultimately reduces recidivism. It also reduces the systemic barriers that arise from racial disparities in the criminal legal system and perpetuate cycles of poverty and marginalization. However, ambiguity over the legislative intent and scope of Maryland’s expungement laws currently limits its impact, especially regarding federal benefit eligibility. OPD supports these four measures, which will clarify the effect of expungement and provide more individuals with an opportunity to move beyond a conviction after they have served their time and proven themselves rehabilitated.

For over a decade, Maryland law has recognized the benefits to individuals and society at large in allowing people to clear the stigma of a criminal charge and conviction off their record. According to 2022 data in a federally-funded study by SEARCH, The National Consortium for Justice Information and Statistics, over 25% of Maryland adults – nearly 1.7 million people – had some type

of arrest or conviction record. However, according to the Clean Slate Maryland coalition, only 407,000 adults are presently eligible for a full record clearance. These numbers highlight that – while the existing system benefits many individuals – room for growth remains. The current expungement framework has been assembled in piecemeal fashion, requiring specific legislation like these bills to deem an offense eligible for expungement consideration. That list of eligible offenses in Criminal Procedure Section 10-110 currently lacks many low-level and non-violent offenses – not because they were specifically deemed inappropriate, but simply because they have not been specifically added to the list. These arbitrary designations have left holes in the process, creating unequal outcomes for similarly-situated offenders by expunging some convictions while leaving others permanently on an individual’s record.

Three bills before this committee (HB 113, HB 397, and HB 824) are reasonable, if incremental, expansions to the list of eligible offenses. In total, these bills would add five (5) subsections of criminal code violations to the eligible convictions in Section 10-110: Resisting Arrest, False Statement (two separate sections – statements made to an officer and when under arrest; the related crime of making a false report to a public official is already expungable), Failure to Obey Court Order to Report to Place of Confinement, and Distribution of a Controlled Dangerous Substance. All but one of these are misdemeanor offenses; none of them are crimes of violence under state law. To be clear, these bills will not create a tidal wave of expungement petitions, nor will they let anyone avoid accountability. All of the standard requirements will still apply – each petitioner must not only have completed their full sentence of incarceration, parole, and probation; they must also demonstrate that they have remained free of other ineligibility triggers (including new convictions) wait for an additional period of years – longer for some offenses than others.

The only felony offense in this group is Distribution of a Controlled Dangerous Substance under 5-602(a). HB 824 remedies a discrepancy in the law that presently allows individuals to expunge a conviction for Possession with Intent to Distribute under 5-602 but *denies* all expungement relief for Distribution under the same statute. It makes little sense to continue differentiating the rights available to someone convicted of possession and apparent intent – but not the completed act – covered by a single non-violent statute. And by cabining eligibility to 5-602, this bill sweeps in only the least culpable set of offenders; convictions for more aggravated offenses in the code – such as illegal manufacturing of CDS, larger-scale drug trafficking, and distribution with a nexus to a firearm – are all not included and will remain unexpungable. It is also notable that, in recognition of its

felony status, individuals must demonstrate at least seven years of perfect behavior (in addition to the years of probation and any incarceration included in the original sentence) before becoming expungement eligible; this is longer than the 5-year waiting period for most misdemeanor offenses. In my experience as a public defender, individuals who are convicted under 5-602 are typically trapped in their own cycle of dependence and desperation, and this conviction stemmed from sharing or low-level dealing to support that addiction. These are individuals who need treatment and resources, and who have much to offer the community, especially once they have received help. However, a felony conviction carries strong prejudice in public opinion, making their re-entry into the community especially taxing as they navigate barriers to employment, licensing, and housing. Someone who has completed their sentence, been rehabilitated, and remained expungement eligible for 7 additional years has clearly demonstrated their commitment to changed behavior – so this bill recognizes their humanity and rewards their clean break from the past.

The clarifying language proposed in HB 362 is distinct from the other expungement bills before this Committee – but no less critical. Confoundingly, the Maryland Code currently lays out multiple sections of procedure and eligibility regulations without ever explicitly defining the intended effect of expunging a state charge. This has left individuals, businesses, state agencies, courts, and even the federal government in some confusion over the precise benefit of an expungement under Maryland law – is it a shield or an eraser? Due to this ambiguity, an expunged Maryland offense is still regularly interpreted as a “conviction” in federal law contexts, constraining thousands of Maryland residents’ eligibility for federal employment, licenses, and benefits. By enacting this bill’s language, the General Assembly will affirm the liberty interest that it conveys upon an individual through expungement. Expungement was intended not only as a recordkeeping function (shielding records from most public view), but as a full erasure of the underlying arrest, charge, and/or conviction for all relevant purposes. This bill clears up lingering questions over the legislative intent and scope of expungement to ensure that Marylanders receive the full benefits of this vital legal remedy.

While OPD supports all four of these bills on their own terms, the agency advocates for amending the state’s underlying expungement process to eliminate the issues caused by permitting the “obliteration” of records. Presently, Section 10-101 of the Criminal Procedure Article (which is unaffected by HB 169) defines “expungement” as removal from public inspection by any of 3 possible methods: obliteration, removal to a separate secure area, or partial access. Unfortunately, after expungement under the current system, individuals are still flagged by third-party background

checks or federal law enforcement systems (including immigration databases) with unfortunate regularity – these reports often list the case and charges as “no result,” and create an incorrect impression that it remains a pending matter, rather than accurately deducing that the matter was concluded and expunged (and thus should not be included in the report at all). Impacted individuals can attempt to correct this error and remove themselves from this frustrating purgatory by obtaining a certified record of the case file from the court – however, this becomes impossible in instances of “obliteration.” Until the legislature ends this unintentionally damaging obliteration option, expanding the availability of expungement will also expand the number of individuals who are harmed by having their court records obliterated, rather than sealed and removed from public access.

Additionally, OPD encourages the legislature to explicitly codify a regulation allowing any defendant to make a request to courthouse clerks for certified copies of court records in a case charged against him or her, even after expungement, as backstop protection for residents trying to prove that status in the face of incorrect reporting. This proposal can still protect individuals from unauthorized intrusions into their privacy, without burdening petitioners or judges with the present requirements for a separate judicial hearing, “good cause” showing, and court order to receive one’s own records.

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These four bills offer clarity of purpose and some important, if modest, expansions to Maryland’s expungement scheme. In addition to improving lives by clearing barriers to jobs, education, housing, and benefits, these expungement improvements will also benefit the broader community – strengthening families, increasing economic productivity, and boosting equity by removing a source of biased assumptions tied to old convictions. These bills offer a much-deserved return for those who have repaid their debt to society and earned a second chance.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments on House Bill 113, House Bill 362, House Bill 397, and House Bill 824.**

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.  
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