

Bill Number: HB 754
Scott D. Shellenberger, State's Attorney for Baltimore County
Support with Amendments

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT WITH AMENDMENTS OF HOUSE BILL 754
CRIMINAL PROCEDURE – EXPUNGEMENT – ENTITLEMENT

I write in support with amendments of House Bill 754, Criminal Procedure – Expungement – Entitlement as a common sense bill to address two issues with regard to expungements in limited circumstances.

Criminal Procedure Article §10-105 addresses entitlements to expungement of many different criminal case dispositions including but not limited to the entry of a nolle prosequi, acquittal, dismissal, stet and probation before judgement. With regard to a probation before judgement, the Court “shall” grant the expungement if the defendant is entitled to the expungement. The statute then addresses when a person is not entitled to expungement. Currently, those circumstances are limited to if (1) the offense is a DUI or causing a life threatening injury by motor vehicle while under the influence of alcohol, (2) the time period has not yet expired, (3) the defendant has been convicted of a crime in the interim, or (4) the defendant is pending a criminal charge. If one of these exclusions is not present the expungement must be granted.

The mandatory nature of the statute has caused problems with regard to some unique circumstances which this Bill then addresses. First, in some circumstances an individual could have received a probation before judgement and also be on the sex offender registry for that offense. Under Title 11, Subtitle 7 of the Criminal Procedure Article if an individual receives a probation before judgement for a Fourth Degree Sexual Offense, the sentencing judge has the discretion to determine whether or not the person should be required to register as a sexual offender. If ordered to do so, the time period would be fifteen years as a Tier 1 Sexual Offender. The expungement statute, however, creates the probability that the defendant can petition for and receive an expungement within three years of the time that the Judge has ordered that the person register as a sexual offender. This would remove all evidence of the adjudication and therefore the order that the person register.

Next, the current expungement statute does not take into consideration if the defendant has satisfied his or her obligations to the Court and to the victim of their crime financially. If a Judge has granted an individual probation before judgement and ordered the defendant to pay a fine, court costs or restitution to the victim, it would make sense that if the person is financially able they should follow that direction. Under the current law, an individual could have all record of the adjudication removed after three years and make restitution collection through a judgement practically impossible

from that point forward. There are often occasions, in less serious cases, that a Judge may impose a fine and/or court costs without probation supervision. In that scenario, an individual could just ignore the payment requirement and then expunge the record of it several years later. This doesn't make sense.

Adding the restrictions on expungement to circumstances where a person is a registered sexual offender or has not met his burden to make the victim or the Court whole is important and this Bill would accomplish those goals. I ask for a favorable report.