

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 16
Criminal Procedure – Expungement – Mistaken Identity
DATE: January 12, 2022
(2/1)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 16. Senate Bill 16 states that a person who is charged with a crime is entitled to the expungement of any police record, court record, or other record maintained by the state related to the charge if: 1) the State’s Attorney dismisses the charge and gives notice to the court that the dismissal is due to a charge relating to a mistaken identity; or 2) the charge is dismissed, or the person is acquitted, and the court makes a determination that the person was charged as a result of mistaken identity.

The legislation, though well-intentioned, does not explain how the court shall make a determination that the person was charged as a result of mistaken identity. For example, there may be any number of jury trials in which defendants are acquitted of a charge because of mistaken identity, and the court would have no way of determining that. These are not determinations that the court can make reliably. There is also no legal standard for the court to make a determination that the person was charged as a result of mistaken identity.

In addition, requiring the court to make a finding that puts it in the position of questioning the State’s Attorney’s discretionary charging decisions and/or acquittals by juries creates an operations problem and potentially violates separation of powers. Further, the bill does not specify what form of notice state’s attorneys must provide to the court in a case of mistaken identity. The bill also could also have the unintended consequence of requiring that a police investigative report be expunged, rather than requiring that the identity of person wrongly charged be redacted.

Finally, this bill is unnecessary as an individual could expunge these cases under current law if the case was dismissed or there was an acquittal due to mistaken identity.

cc. Hon. Michael Jackson
Judicial Council
Legislative Committee
Kelley O'Connor