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POSITION ON PROPOSED LEGISLATION

BILL: SB 710 -- Criminal Procedure - Expungement of Records - Modifications

FROM: Maryland Office of the Public Defender

POSITION: Favorable, with amendments

DATE: 3/7/22

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 710 with some amendments.

The Public Defender's Office established a weekly expungement clinic in the NorthWest area of Baltimore and partnered with other organizations to offer an annual event - Back to the Neighborhood: How to Succeed with a Criminal Record." During this time - there have been some major changes in the expungement law since 2007, including last year when the automatic expungement became a reality – allowing for the automatic expungement of certain favorable dispositions – acquittals, dismissals, and *nolle prosequis*. This law has the impact to change so many lives for years to come.

OPD has advocated for change to allow our clients to move forward and not be burdened with the stigma of a criminal record years after the act - including not just what is on a person's RAP sheet but what is available on Maryland Judiciary Case Search and the information that has been obtained and disseminated by private databases. I like to refer to expungement as a form of legal redemption that should be accessible to all who have changed their lives and their stories for themselves and their families.

For some clients, the past remains in the past but for many clients it will resurface when they are looking for employment or advancement in their current jobs; looking for better housing opportunities; or looking to further their education. It is this period of time of waiting that can have such a drastic impact. The changes that these clients are hoping for may not be actualized because of these favorable or conviction dispositions are remaining on their criminal record and Maryland Judiciary Case Search; and also that these dispositions remain in private databases. The easy access by employers, landlords, and the general public is a double edge sword. We like when we can obtain this access to others' records but not when others can obtain this access about us. It is vital that individuals who have rehabilitated themselves or have never been found guilty in a case be allow to file for expungement.

Suggested amendments:

1. The courts generally do not invalidate a fugitive warrant. The warrant is dismissed. In order to make sure there is no conflict when the clients file for expungement, it would be clearer to make sure a dismissal disposition is also included.
2. If there is no treatment imposed, but another type of condition is imposed on a nolle prosequi, STET, or probation before judgment, the expungement is eligible when the condition is met. If no conditions are requested, the probation before judgment should be eligible immediately.
3. The person should not be entitled to an expungement of a probation before judgment until the person is discharged from probation and is eligible as soon as they are discharged from probation.
4. Attempt, Conspiracy, or Solicitation are common law offenses and unless the offense has been codified should be eligible unless prohibited otherwise.

The Maryland Office of the Public Defender strongly supports these additional changes to the existing law with some amendments and requests a favorable report on Senate Bill 710.

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

Written by: Mary Denise Davis, Chief Attorney of the Central Booking and Bail Unit at the Maryland Office of the Public Defender.