

Bill Number: SB 16
Maryland States Attorneys Association
Opposed

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS
ASSOCIATION IN OPPOSITION TO SENATE
BILL 16 – CRIMINAL PROCEDURE –
EXPUNGEMENT – MISTAKEN IDENTITY

The Maryland States Attorney’s Association is opposed to Senate Bill 16 as an unnecessary addition to expungement opportunities which would cause a number of adverse effects on the judicial system.

Senate Bill 16 proposes to create a new section within the expungement statutes to provide for automatic expungement of a dismissal or acquittal in a case where the States Attorney has determined or a judge finds that an individual was charged as a result of “mistaken identity”. Mistaken identity is defined to include misidentification, confusion, misinformation or a mistake by a witness or law enforcement in identifying the alleged perpetrator of the crime. It would also include a circumstance where another has assumed the identity of the individual who ends up being charged. The proposed legislation would then direct the court to “pass an order” requiring expungement “of all police records and court records about the charge” upon dismissal or acquittal if there has been a determination of mistaken identity.

The proposed legislation creates a number of issues in a circumstance where the proposed remedy is unnecessary. Currently, Criminal Procedure § 10-105 mandates expungement of an acquittal, dismissal or nolle pros of a case if requested by the person charged. The time period for eligibility can be immediate if the individual signs a general waiver and release of any tort claim. If this bill becomes law, the expungement would be automatic and required even if the person charged did not want it to happen. That circumstance could easily exist. An individual may wish to sue someone or have an individual charged and prosecuted for assuming their identity. If all records of the charge are expunged, the individual could be easily hampered in their legal action. At the very least, the originally charged individual should be permitted to say that they don’t want something expunged.

In addition, the legislation would direct expungement of all police records about the charge. Dependent on how a law enforcement agency interprets “about the charge,” this may result in the removal of reports or information which would aid in apprehending the person who actually committed the crime. In addition, such expungement of police records would hinder prosecutors in their ethical obligations in the prosecution of a potential future case. If someone else is later charged with the offense for which someone was mistakenly identified, the prosecutor is obligated to disclose to the next

person charged that a witness or law enforcement at some point previously had identified another individual as the perpetrator of the crime. This is potentially exculpatory information. Expungement, removal or obliteration of that information would greatly hinder our ability to comply with our obligations. We would be faced with the option of ignoring our ethical obligation or committing the crime of disclosure of an expunged record under § 10-108.

Even if the bill were limited to expungement of the court record, there could be significant issues. For example, if the victim of a crime testified that the person charged is the individual who committed the crime and the Judge finds that the witness is mistaken in identifying the person charged, then the charged person is acquitted and the record is immediately expunged. If another person were to later be charged with that crime, the testimony of the witness would be expunged and the State's Attorney (assuming he or she has personal knowledge of what happened) would be obligated to pass that testimony on to the attorney for the next person charged. That could not happen if the record has been removed.

In summary, this legislation creates issues which can create significant problems for both the police and prosecutors and may be contrary to the wishes of the person mistakenly charged. Other than the need to fill out a request for expungement, the remedy for the individual charged already exists in the law.