



Maryland Crime Victims' Resource Center, Inc.

Continuing the Missions of the Stephanie Roper Committee and Foundation, Inc.

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## LETTER IN OPPOSITION TO HOUSE BILL 360

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The Maryland Crime Victims' Resource Center (MCVRC) urges an unfavorable vote on HB 360.

House Bill 360 will automatically remove from the public view most criminal disposition records after 7 years and eliminates the crime victims' right to be heard and participate.

There is currently a detailed expungement statute in Maryland law, Criminal Procedure Article §10-110. It lists the various crimes for which expungement is available if a court makes findings, at least 5 years after the completion of any sentence and after notice and an opportunity to comment by the State and the crime victim. The expungement must note whether the charged person has paid all monetary restitution that was ordered, is not a risk to public safety, and that expungement is in the interest of justice.

House Bill 360 proposes to do away completely with the court's case-by-case review, and makes the process automatic eliminating the State and the crime victim's opportunity to be heard.

This bill has several serious flaws. First, it redefines the legal term "expungement" as:

(3) "expunge" means to:

(i) remove all references to a specified criminal case from the central repository;  
and

(ii) remove from public view all electronic court records relating to the case, without needing to redact physical or electronic documents, recordings, or audio or visual media.

In Criminal Procedure 10-101(e) expungement is defined as "Expungement" means to remove information from public inspection in accordance with this subtitle.

This Bill giving an alternative, conflicting, and confusing definition to a legal term should not pass. The courts, lawyers and non-lawyers alike would be completely confused, and the rules would be applied differently across the State.

The language used is not expungement nor is it "shielding." Shielding is defined in CP 10-301 as rendering "a court record and police record relating to a conviction of a crime inaccessible by members of the public." HB 360 does more than shielding, HB 360 removes the conviction from the "central repository", which means it would not be seen or available to judges, prosecutors or detectives through the Criminal Justice Information System (CJIS).

Expungement under this Bill would happen automatically after a period of time. That period of time starts running at the disposition, which is poorly and confusingly defined.<sup>1</sup> The bill appears to expunge records a certain number of years after their sentencing date, regardless of when or if they finished probation or parole, or when or if they were released from incarceration. HB 360 is poised to expunge records of some offenders who had not yet completed their sentence, either because they were still serving their sentence or if released, had not finished their probationary terms. Probation is an important part of safety--- accountability for the offender, safety for the community and the victim. This bill would allow expungement if the offender had not paid their court ordered restitution. This expungement would deprive victims of the proof and details necessary to enforce restitution that was ordered and not paid, as provided by Maryland Code, Criminal Procedure Article § 11-616.

In addition, the current Maryland law gives crime victims an opportunity to be heard and object before courts act on expungement requests. This bill curtails current victims' statutory rights to be heard on any issue such as unpaid restitution, thus eliminating the ability to receive full restitution before expungement is authorized.

The Supreme Court of Maryland in *Syed v. Lee*, 488 Md. 537, 607-608 (2024) declared that victims' current statutory rights may not be narrowed by the General Assembly but only by a new Constitutional Amendment. The proposed HB 360 blatantly curtails the rights given to victims; this action is not permissible under *Syed v. Lee* and Article 47 of the Maryland Declaration of Rights.

Eliminating from the Criminal Justice Information System a large number of criminal offenses after 7 years old, will adversely affect law enforcement's efforts to assure public safety by investigating and judiciously charging offenders. Law enforcement and prosecution officials will not know if they are dealing with serial offenders who have previously presented a threat to public safety, or with true first offenders. There will also be another adverse effect on criminal prosecutions. Current law allows, in appropriate circumstances, proof of felony convictions that are up to fifteen years old to be used to impeach a witness, Maryland Rule 5-609(b). This bill would effectively reduce that period due to expungement to 7 years, and then eliminate those conviction records, including felony records, altogether, without any case-by-case judicial review for any adverse impact on public safety. Predatory offenders who have repeatedly defrauded Maryland citizens but have not yet been charged, even if that former offender was currently under investigation, would nonetheless automatically have their criminal records expunged. Many occupations (e.g., school bus drivers, bank tellers, child and senior care providers, etc.) involve fiscal responsibility or contact with vulnerable populations. Since individuals can find ways or hire others to invade and alter private electronic databases, official government records of convictions are necessary to allow employers, law enforcement professionals, crime victims, and even neighbors to learn if the individuals they regularly come in contact with have been convicted of fraudulent, dangerous, or violent activities. In addition, recidivism rates during the first decade after the release of many categories of felons approaches fifty percent, which is why current law distinguishes between offenses when setting the various waiting periods governing expungement. Therefore, this "one size fits all" automatic expungement bill will have a deleterious

effect on the administration of the criminal law, on employers in many fields of endeavor, and on the fears and protection of neighbors and the general public.

Furthermore, any deletions of any public historical records must be taken with great care and not done in an automatic ongoing wholesale fashion that does not carefully consider on a case-by-case basis if there is a good cause to make an exception to the general rule of preserving historical records. In the case of records showing offenders charged with crimes, accurately preserving history is even more important, due both to public safety and because courts regularly receive challenges to decades-old convictions. Therefore, the current case-by-case approach, supervised by a judge after notice and an opportunity to comment by the State and the crime victim, protects society as well as crime victims.

For all these reasons, the proposed bill should receive an unfavorable vote.



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<sup>1</sup> The following proposed language is on its face impossible to understand and any intended definition needs to be better articulated.

**(I) "DISPOSITION" MEANS THE OUTCOME OF A CRIMINAL CHARGE OR CASE RECORDED IN ELECTRONIC COURT RECORDS.**

(II) "DISPOSITION" INCLUDES AN ACQUITTAL, A DISMISSAL, A NOLLE PROSEQUI, A FINDING OF GUILTY, A PROBATION BEFORE JUDGMENT, A PLEA OF GUILTY, A PLEA OF NOLO CONTENDERE, MARKING THE CHARGE "STET" ON THE DOCKET, AND AN ORDER OF AN APPELLATE COURT ENDING A CRIMINAL CASE.

**"DISPOSITION" DOES NOT REFER TO THE OUTCOME OF A CRIMINAL SENTENCE.**