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## Editorial Advisory Board: Time to review Maryland's expungement laws

By: Editorial Advisory Board ○ October 25, 2018

Since 2015, the Maryland General Assembly has made substantial changes to the criminal record expungement laws. We commend them for this effort, as any record of criminal involvement can serve as a tremendous barrier for obtaining employment and housing. We recognize that legislators are working hard to strike a balance between providing those that have criminal involvement with a second chance and maintaining a system that holds individuals accountable for their criminal activities.

In 2015, the expungement law was greatly expanded by removing any future convictions as a bar to expunging non-convictions. Some may not realize that nearly every interaction someone has with the judicial system is found on Maryland Judiciary Case Search and ends up in third-party employment background checks regardless of the disposition of the case. The average employer is not likely to thoroughly review the interactions to determine in which cases someone was actually found guilty and in which cases they weren't convicted of anything. This update to the law was a sea change, permitting thousands of individuals to finally remove non-conviction items from their record regardless of any other potential convictions.

The General Assembly returned to expungements within the Justice Reinvestment Act (JRA) and added several convictions that could be expunged, with a variety of limitations including very long waiting periods (10 or 15 years depending on the crime) and requiring no subsequent convictions. While the law was sweeping, the impact of this expansion, which took effect October 2016, has been minimal because of these limitations.

Most recently, the JRA was expanded one more time, and earlier this month, three more convictions were added to the expungement list – felony theft, burglary (first, second and third), and controlled dangerous substance possession with intent to distribute.

### Addressing 2 key barriers

With the next General Assembly session less than three months away, we encourage legislators to pause and review what is and isn't working with the current matrix of additions to the expungement. From our vantage point, there are two limitations to helping Marylanders get back on their feet that need to be discussed and weighed by state lawmakers.

First, there are several illogical results that are coming to light based on the expungement changes over the past few years. For instance, first-, second- and third-degree burglary convictions are potentially expungable, but fourth-degree burglary, the lesser charge, is not expungable under our current expungement laws. Similarly, if an individual receives a guilty for a CDS marijuana charge, it is expungable after four years even if that person receives a subsequent conviction. If that same individual receives a probation before judgement (a lesser finding, not considered a conviction) and then receives a conviction for anything else within three years, however, the CDS charge is not expungable.

Second, the legislative goal has been to make reasonable expansions in the law so that an individual can remove these items from their record to increase employability while protecting the community. However, because of a piecemeal expansion in the law, which has failed to include some of the common charges on the list of expungable convictions, the law has had the perverse effect to expunge less than what our legislators deemed an appropriate balance between safety and second chances.

For example, the new laws don't include commonly charged items that prevent more serious convictions from being expunged. It does not make sense the legislature intended to offer a path to expungement for serious crimes like theft or second-degree assault but leave lesser crimes off the expungement list. Under the current iteration of expungement laws, an individual could have an expungable item, such as felony theft, if they meet the 15-year



waiting period, but it isn't expungable because they also had a malicious destruction guilty within the same conviction.

### **Traffic citations**

Similarly, the General Assembly has not addressed that some traffic citations are considered under criminal record expungement because they are potentially incarcerable crimes, and often bar individuals from expunging the types of convictions that the General Assembly included in the JRA. The two biggest bars are driving on a suspended license and driving an uninsured vehicle. Neither of these activities should be included in an analysis of whether someone's criminal record can be expunged. The nexus between these traffic violations and ongoing criminal involvement is extraordinarily weak at best. These kinds of traffic-related charges particularly impact low-income individuals who can easily get caught up with various fines and fees either through the Motor Vehicle Administration or unpaid fees through Maryland's Central Collection Unit. As a result, it is common for someone that received a probation before judgement for any criminal charge that would otherwise be expungable be denied that relief because they received a guilty on one of these traffic charges within three years of their PBJ because any guilty conviction within three years blocks an expungement. The same holds true for someone with a conviction that requires a 10- or 15-year waiting period because these traffic "guiltys" are considered a subsequent conviction.

The legislative intent with waiting periods and looking at subsequent convictions was to make sure the individual was not demonstrating a pattern of repeated criminal activity. Barring otherwise expungable items because someone has had trouble paying their MVA and other state-imposed fines and fees is not an appropriate or accurate measure of whether someone has continued to engage in criminal activities.

As the General Assembly prepares to gather in Annapolis in January, we encourage them to consider these adjustments to Maryland's expungement law, both to correct the errors identified above but also to better reflect the intent of the legislation and remove substantial barriers in the expungement process.

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