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Owner/Manager

## TESTIMONY IN OPPOSITION TO <sup>1</sup>

House Bill No. 8082

(Attorney General)

BY Serpa

### **ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT OF CRIMINAL RECORDS {LC5621/1} (Amends existing expungement laws to be consistent with the new 10-year lookback period required for DUI charges.)**

- Upon information and belief, this legislation is purportedly necessary in order in to make expungement law “consistent” with the recent expansion of the “Look Back” provisions from five (5) to ten (10) years. “Look Back” provisions allow for charge and penalty enhancements for repeat offenders in cases of DWI and refusal to submit to a chemical test. As such the legislation is unnecessary as current law relative to expungement is already entirely consistent with the new ten (10) year “Look Back” provisions.
- **The Legislation Is Unnecessary.**
  - Expungement does not undue a prior conviction of a criminal charge. Nor does an order of expungement require the destruction of criminal records that are ordered expunged by the court as is the case with sealing. Instead, it merely takes the expunged material out of public view and access. <sup>2</sup>

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<sup>1</sup> Specifically, opposition is to SECTION 1 of the legislation and the amendments it makes to *RIGL Sections 12-1.3-2. Motion for expungement* and *12-1.3-3. Motion for expungement — Notice — Hearing — Criteria for granting*. No position is taken on the balance of the legislation as currently written.

<sup>2</sup> In contrast to expungement which provides relief from prior criminal convictions, “sealing” is the available remedy when someone has been exonerated. Sealing requires that most records relating to the criminal offense of which the defendant has been exonerated of be destroyed. *E.g. see, § 12-1-12. (a)(1)* “Any fingerprint, photograph, physical measurements, or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town, or any other officer authorized by this chapter to take them, of a person under arrest, prior to the final conviction of the person for the offense then charged, shall be destroyed by all offices or departments having the custody or possession within sixty (60) days after there has been an acquittal, dismissal, no true bill, no information, or the person has been otherwise exonerated from the offense with which he or she is charged, and the clerk of court where the exoneration has taken place shall, consistent with § 12-1-12.1, place under seal all

- The relevant portion of the definitional section of the expungement law § 12-1.3-1(a)(2) defines “Expungement of records and records of conviction” as “the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation”.
- The expungement law currently contains provisions that allow for liberal and robust access to expunged material in the following situations:
- While RIGL Sec. 12-1.3-4(a), (b) allows a person whose conviction of a crime has been expunged to state that he/she has never been convicted of the crime there are also EXCEPTIONS that require disclosure about the expunged case if the person is an applicant for:
  - a law enforcement agency position
  - admission to the bar of any court
  - a teaching certificate, under chapter 11 of title 16
  - a coaching certificate under § 16-11.1-1
  - the operator or employee of an early childhood education facility pursuant to chapter 48.1 of title 16

In these instances, the person, party, or agency receiving the application may properly inquire into the applicant’s prior criminal record and the applicant must respond truthfully.

- The custodians of the records of expunged material are allowed to make disclosures in a number of situations. Indeed, while RIGL Sec. 12-1.3-4(c), (d) prohibits the custodian of records that have been expunged from disclosing the existence of the records there are also EXCEPTIONS that require the custodian to disclose when the inquiry is that of:

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records of the person in the case including all records of the division of criminal identification established by § 12-1-4” (emphasis added)

- the individual whose record was expunged
  - a sentencing court following the conviction of the individual for the commission of a crime
  - a bar admission, character and fitness, or disciplinary committee, board, or agency, or court which is considering a bar admission, character and fitness, or disciplinary matter
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- the commissioner of elementary and secondary education
  - any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense
  - pursuant to an order of a court in order to effectuate the aforementioned provisions

The language of § 12-1.3-4(c) plainly and clearly contemplates and allows for the disclosure of expunged material necessary for charge and penalty enhancement for repeat offenders, stating that in pertinent part that:

(c) Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of the records upon inquiry from any source unless the inquiry is that of the individual whose record was expunged, that of a sentencing court following the conviction of the individual for the commission of a crime, or that of a bar admission, character and fitness, or disciplinary committee, board, or agency, or court which is considering a bar admission, character and fitness, or disciplinary matter, or that of the commissioner of elementary and secondary education, or that of any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense. (emphasis added)

Therefore, disclosure of an expunged criminal record is permitted in the following circumstances:

- to the court in connection with sentencing in a subsequent case
- to law enforcement when it makes the initial charging decision e.g. first, second, third, and subsequent DWI, domestic violence, and certain drug offenses provide for an increase in both charge (from a misdemeanor to a felony) and penalty (mandatory jail)

In short there are already ample procedures and methods available for accessing the expunged material necessary to effectuate the ten (10) year “Look Back” provisions.

- **The Legislation is Overbroad.**
- Even assuming *arguendo* that the legislation is necessary, it is overbroad in that doubles the time necessary in order to be eligible for expungement consideration in certain cases, a remedy that doesn’t address the problem as posed by the proponents of the legislation. Thus, an unintended negative consequence of the legislation if enacted would be to delay expungement consideration of otherwise eligible and arguably deserving individuals without making changes to the ways in which expunged material can be accessed in the situations envisioned by the proponents of the legislation.
- Expungement is a powerful tool that can enhance opportunities for rehabilitation (such as access to education, employment, and professional licensing) and a successful re-entry into society long after an individual with a criminal record has paid their debt to that same society. The legislature should therefore not look favorably upon legislation such as this that not only fails to address the problem claimed by its proponents but also damages an otherwise deserving individual’s opportunity for rehabilitation and successful re-entry into society.

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