



**Testimony for the House Judiciary Committee
March 10, 2020**

HB 1335 Criminal Procedure - Automatic Expungement

FAVORABLE

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The ACLU of Maryland urges a favorable report on HB 1335, which would require the automatic expungement of records associated with specified types of dispositions and expand eligibility for expungement for felonies that are not crimes of violence.

Studies show that employment opportunities can reduce recidivism rates.¹ Yet, for far too many Marylanders, a criminal record—regardless of how minor the offense, can be a bar to opportunities for success. The collateral consequences reach far beyond employment—a criminal record may compromise one’s eligibility for tuition assistance and stable housing. Moreover, these collateral consequences are particularly stark for communities of color.

Criminal records exclude individuals from employment, educational opportunities, public benefits, and stable housing

The existence of a criminal record can and does create a barrier to employment for many Marylanders. More than 80 percent of U.S. employers perform criminal background checks on prospective employees.² Under current regulations, a misdemeanor conviction in Maryland may result in the denial, suspension, or revocation of myriad business licenses, including: a barber license,³ a cosmetology license,⁴ an electrician license,⁵ professional engineer license,⁶ a landscape architect license,⁷ an interior designer certificate,⁸ and countless others.

¹ See for example Nally, Lockwood, Taiping, and Knutson, *The Post-Release Employment and Recidivism Among Different Types of Offenders With A Different Level of Education: A 5-Year Follow-Up Study in Indiana* (noting that recidivist offenders were likely to be unemployed or under-educated)

² Burke, M.E., 2004 *Reference and Background Checking Survey Report: A Study by the Society for Human Resource Management, Alexandria, Va.: Society for Human Resource Management, 2006.*

³ Md. Business Occupations and Professions, Code Ann. § 4-314

⁴ Md. Business Occupations and Professions, Code Ann. § 5-314

⁵ Md. Business Occupations and Professions, Code Ann. § 6-316.

⁶ Md. Business Occupations and Professions, Code Ann. § 14-317.

⁷ Md. Business Occupations and Professions, Code Ann. § 9-310.

⁸ Md. Business Occupations and Professions, Code Ann. § 8-310.



Criminal convictions also serve to exclude persons from educational opportunities. A recent study found that a majority (66%) of colleges collect criminal justice information as part of the admissions process.⁹

A criminal conviction also hinders an individual's access to stable housing and a range of public benefits. Even a misdemeanor conviction record may bar individuals from residing at certain homes,¹⁰ and exclude individuals from low-income utility payment plans¹¹ as well as food stamps.¹²

HB 1335 will allow individuals with certain criminal convictions to access a broader range of services and opportunities, including but not limited to, employment, schooling, public benefits, and housing, and thereby contribute productively to the state's economy. By increasing access to this broad range of services, HB 1335 can reasonably be expected to generate greater socioeconomic stability and productivity in Maryland's communities.

Criminal convictions disparately disadvantage individuals, families, and communities of color

The over-criminalization of communities of color – due in large part to the 'war on drugs'—has produced the startling result that one in three Black men born today can expect to go to prison in their lifetime, compared with one in six Latino men, and one in seventeen White men.¹³ In addition to facing higher imprisonment rates, racial minorities, once arrested, are more likely to be convicted, and once convicted, are more likely to face longer sentences than their White counterparts.¹⁴

With higher conviction rates, persons of color necessarily bear the brunt of collateral consequences stemming from criminal convictions. Exclusion from the job market, stable housing, and countless other crucial services perpetuates the cycle of imprisonment plaguing communities of color—without gainful employment and stable housing, individuals are forced to return to livelihoods of criminality.

⁹ Center for Community Alternatives—Innovative Solutions for Justice, *The Use of Criminal Records in College Admissions, Reconsidered* (available at <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>).

¹⁰ *See for example*, COMAR 35.04.01.04.

¹¹ COMAR 20.31.01.08.

¹² Md. Human Services Code Ann. § 5-601.

¹³ Saki Knafo, 1 In 3 Black Males Will Go To Prison In Their Lifetime, Report Warns (HUFFINGTON POST, Oct. 4, 2013).

¹⁴ *Id.*



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Amendment to allow Individuals to Opt Out of the Automatic Expungement

Some individuals may need to retain their criminal records, particularly non-citizens who intend to apply for naturalization and who may need to declare the result of all entanglement with the criminal legal system. To accommodate this, we request an amendment to allow individuals to opt out of the automatic expungement and instead permit them to manually process their expungement at a later date, when they no longer need access to the record.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB 1335 with the aforementioned amendments.