



TESTIMONY IN SUPPORT OF SENATE BILL 602

TO: Members of the Senate Judicial Proceedings Committee

FROM: Center for Criminal Justice Reform, University of Baltimore School of Law

DATE: February 20, 2024

The University of Baltimore School of Law’s Center for Criminal Justice Reform (“the Center”) is dedicated to supporting community-driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system.

Senate Bill 602 will clarify certain eligibility criteria and automate clearing of expungement-eligible charges. Senate Bill 602 will ensure people are no longer defined by their criminal records, have the opportunity to contribute to their communities, and get a fair chance to work, seek an education, and achieve their full potential. The Center urges a favorable report on Senate Bill 602 for three reasons. First, Senate Bill 602 will afford actual expungement relief to the significant portion of the expungement-eligible population that does not currently obtain relief for a broad variety of reasons. Second, Senate Bill 602 will reduce the collateral consequences associated with having a criminal record. Third, Senate Bill 602 does not pose an unreasonable public safety risk and instead will promote public safety.

I. Automated record-clearing is necessary because of the documented low uptake rates for petition-based expungement processes.

The research shows that relying solely on petition-based expungement mechanisms results in an uptake gap whereby a large portion of people eligible for expungement do not receive relief. Low uptake rates prevent the broad public policy benefits of expungement from being fully realized. One national analysis concerning the expungement of conviction records found estimated uptake rates across states ranged from 0.2% to 11%.¹ That study found that there were 300,000 to 2 million people in each of the states examined with convictions that were eligible for expungement who did not receive those expungements.² Another study focused on Michigan concluded that only 6.5% of eligible individuals received expungements in that state within the first five years of being eligible.³ Such low uptake rates are particularly troubling considering given that the majority of people who receive expungements do so in the first five years after becoming eligible. Accordingly, the study in Michigan projected a *lifetime* expungement uptake

¹ Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 Mich. L. Rev. 519, 556-58 (2020).

² *Id.*

³ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2466 (2020).

rate of less than 12% of those who were not sentenced to a period of incarceration and an even lower lifetime expungement uptake rate for those who were sentenced to incarceration.⁴

Removing the administrative burden from those eligible for expungement will reduce the expungement uptake gap. Automating expungement through Senate Bill 602 can avoid the need for applicant awareness and wherewithal to determine eligibility and apply for relief, mitigating the daunting barriers associated with navigating the bureaucratic and judicial processes. At the same time, Senate Bill 602 will mitigate harms and promote public safety as discussed further below.

II. Expanding expungement through Senate Bill 602 will reduce collateral consequences associated with having a criminal record.

A criminal record can be both the cause and consequence of poverty and has detrimental effects on the employment, housing, and educational prospects for the estimated 25% of working-age Marylanders with a criminal record.⁵ Every year, approximately 4,000 Marylanders are released from state prisons and struggle to secure a job, find a place to live and reenter society.

The impact of an arrest or conviction record on individuals, families and communities is staggering, including the extensive list of collateral consequences that can follow a justice-involved individual for years, well after a case or period of incarceration concludes. These impacts span numerous areas central to a person's ability to survive and thrive, impeding access to stable housing, education, healthcare, voting, occupational licensing, rights related to the parent-child relationship and more.⁶

Background checks are being used increasingly for non-criminal justice purposes.⁷ More than 92% of employers perform background checks for job applicants⁸ and deny employment to many returning citizens based on a criminal record. Unsurprisingly, expungement recipients exhibit much better employment outcomes.⁹ Thus, automating the expungement of criminal record is

⁴ *Id.* at 2493.

⁵ Bureau of Justice Statistics, U.S. Department of Justice, Survey of State Criminal History Information Systems, 2012, 26 https://drive.google.com/file/d/1hUGVpwIl6Z_GN4KOK6gV1eNkiyYbjbJI/view.

⁶ Chien, *supra* note 1, 554 (“Because a criminal record can substantially limit a person’s opportunity to obtain employment, housing, public benefits, and student loans; to qualify for certain professions; and to gain entrance into higher education, having a record has been called ‘a civil death.’”)

⁷ Becki Goggins, *New Blog Series Takes Closer Look at Findings of SEARCH/BJS Survey of State Criminal History Information Systems, 2016*, SEARCH (Mar. 29, 2018) (From 2006 to 2016, “the number of fingerprints processed for noncriminal justice purposes increased by 89.6% . . . while the number processed for criminal justice purposes actually decreased by 6.6%.”)

⁸ Society for Human Resource Management, *Conducting Background Investigations and Reference Checks*, [https://www.shrm.org/topics-tools/tools/toolkits/conducting-background-investigations-reference-checks#:~:text=A%20survey%20by%20SHRM%20found.cycle%20\(see%20chart%20below\)..](https://www.shrm.org/topics-tools/tools/toolkits/conducting-background-investigations-reference-checks#:~:text=A%20survey%20by%20SHRM%20found.cycle%20(see%20chart%20below)..)

⁹ Prescott & Starr, *supra* note 3, at 2528.

vital for the economic viability of returning citizens *after* they have served their full sentence and completed mandatory supervision.

III. The mitigation of collateral consequences does not pose a public safety risk and instead will likely result in public health and safety benefits.

Expanding actual relief for individuals who are already eligible for expungement does not pose a public safety risk. An empirical analysis of Michigan's expungement practices found that recipients of expungement posed a lower crime risk than the general population of Michigan as a whole, suggesting there is at least a strong correlation between expungement and lower recidivism.¹⁰ There is no empirical evidence that expungement undermines public safety.¹¹ Therefore, purported safety risks from Senate Bill 602's opponents are misplaced.

Beyond the absence of a public safety risk, Senate Bill 602 may affirmatively promote public safety and reduce crime. There is ample research that demonstrates the criminogenic effects associated with the collateral consequences having a criminal record.¹² It follows that alleviating the burden of these collateral consequences would reduce illegal behavior among expungement recipients.

By automating components of the expungement process, Senate Bill 602 addresses gaps and challenges in the current expungement landscape. The Center fully supports this important bill as part of a broader set of efforts to remove barriers to employment, education, housing, and more for Marylanders with criminal records who have paid their debt to society. For these reasons, we respectfully urge a favorable report on SB 602.

¹⁰ *Id.* at 2512–14.

¹¹ Sonja B. Starr, "Expungement Reform in Arizona: The Empirical Case for a Clean Slate," 52 *Arizona State Law Journal* 1059, 1076 (2020).

¹² J.J. Prescott & Sonja B. Starr, *The Power of a Clean Slate*, <https://www.cato.org/regulation/summer-2020/power-clean-slate>.