

SUPPORT

SB1030 – Criminal Procedure-Expungement of Records-Good Cause

Testimony of
Kirsten Gettys Downs, Executive Director
Homeless Persons Representation Project
Friday, March 1, 2024
Senate Judicial Proceedings Committee

Homeless Persons Representation Project, Inc. (HPRP) is a non-profit legal services organization providing free legal representation to people who are housing insecure on legal issues that will lead to an end to homelessness. HPRP has provided free criminal record expungement services to thousands of low-income Marylanders.

SB1030: Allow expungement of certain convictions at any time for good cause.

The Homeless Persons Representation Project (HPRP) supports SB1030. SB1030 allows individuals the opportunity of expungement of records of certain convictions after a showing of good cause. Currently, apart from certain cannabis-related offenses, Maryland law provides no recourse for circumventing the five, seven, ten, or fifteen years of mandatory waiting periods to obtain expungement relief for most types of criminal convictions.¹ For example, trespassing offenses are written into law as requiring a five-year abeyance period before an individual can apply to have the case expunged from their record. While the REDEEM Act of 2023 reduced waiting periods for the expungement

¹Zimmerman, M. (2023, February 1). Criminal Procedure - Automatic Expungement - Pardoned Conviction of Possession of Cannabis (Pardons for Simple Possession of Cannabis Act of 2023).

of many categories of convictions,² these mandatory waiting periods preclude an individual from obtaining any court-ordered expungement prior to those specified periods, regardless of an individual's circumstances.

The "good cause" exception proposed by SB1030 allows the judge to consider mitigating circumstances and individual factors that may not be captured by rigid eligibility criteria for expungements. This promotes fairness and equity in the criminal justice system by recognizing the complexity of individuals' experiences and the potential for positive change over time. Granting expungements based on good cause can streamline the legal process by focusing resources on cases where expungement is most warranted. By avoiding unnecessary bureaucratic hurdles and allowing judges to exercise discretion, the justice system can allocate resources more efficiently while still ensuring that expungements are granted in appropriate cases.

Criminal records disproportionately impact Black & Brown communities.

Criminal records exert a disproportionate and enduring impact on Black and Brown communities, perpetuating systemic inequalities and hindering socioeconomic advancement. Studies have consistently revealed racial disparities in arrests, convictions, and sentencing, with Black and Hispanic individuals more likely to be stopped by police, charged, and sentenced to incarceration compared to their White counterparts. Research indicates that individuals from these communities are more likely to be arrested, convicted, and sentenced harshly compared to their white counterparts for similar offenses. According to the Sentencing Project, Black Americans are incarcerated at more than five times the rate of white Americans.³ Similarly, Black people are 3.64 times more likely to be arrested for marijuana possession than white people⁴, despite White

² Moore, W. (2023, May 16). Criminal Procedure – Expungement of Records (REDEEM Act of 2023).

³ Nellis, A. (2021, October). *Racial and ethnic disparity in state prisons*. The Color of Justice: Racial and Ethnic Disparity in State Prisons. <https://cdn.cnn.com/cnn/2021/images/10/13/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons.pdf>

⁴ Nellis, A. (2021, October). *Racial and ethnic disparity in state prisons*. The Color of Justice: Racial and Ethnic Disparity in State Prisons. <https://cdn.cnn.com/cnn/2021/images/10/13/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons.pdf>

individuals having a higher percentage of using marijuana than any other race over their lifetime.⁵ These disparities not only result in higher rates of incarceration but also contribute to the proliferation of criminal records within these communities, hindering and limiting opportunities and exacerbates the challenges already faced by Black and Brown individuals.

Collateral consequences of criminal records

It is well established that having a criminal record creates barriers to economic and employment opportunities. The existing long waiting periods reinforce these barriers. When individuals are burdened by the stigma of a criminal record, they often face barriers to housing, employment, education, family well-being, social stigma & discrimination. Here are examples of how criminal records perpetuate harms through exclusionary policies and practices:

1. Homelessness: Is occasionally a consequence of having a criminal record. Landlords may conduct background checks on potential tenants and refuse to rent to individuals with criminal records.⁶
2. Employment Opportunities: One of the most significant impacts of a criminal record is on employment prospects. Many employers conduct background checks, and having a criminal record can result in automatic disqualification or bias against hiring the individual.⁷ Nine out of ten-time employers ask about criminal records and only 12.5% of employers say they would hire individuals with a criminal record.⁸ Due to employment discrimination against justice involved individuals our gross national

⁵ Bailey, J. (2022, February 8). Constitutional Amendment - Cannabis - Adult Use and Possession. <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2022RS-HB0001-REIN.pdf>

⁶ Thomas, C. (2023, July). *New cannabis expungement rules address systemic injustice*. New cannabis expungement rules address systemic injustice. <http://search.proquest.com/docview/1544687215/40367765D2814714PQ/8?accountid=37814>

⁷ Fair housing for people with Criminal Records. Fair Housing Center for Rights and Research. (2023, November 3). <https://www.thehousingcenter.org/resources/criminal-history/#:~:text=Denial%20Based%20on%20Criminal%20History.not%20be%20hypothetical%20or%20speculative>

⁸ Faulty FBI background checks for employment: Correcting FBI Records is key to criminal justice reform. National Employment Law Project. (2023, June 27). <https://www.nelp.org/publication/faulty-fbi-background-checks-for-employment/>

product loses about \$80 billion annually.⁹ Among the unemployed population 64% of men by the age of 35 have been arrested and 46% have at least one conviction by the age of 38.¹⁰

3. Education: Some educational institutions may also consider criminal records during the admissions process, limiting opportunities for further education and advancement.
4. Family well-being: Criminal records undermine the five pillars of family well-being (income, education, savings/assets, housing, and family stability/strength) and in turn perpetuates the cycle of poverty. One in two children have at least one parent with a criminal record.¹¹
5. Social Stigma and Discrimination: Beyond the practical barriers, individuals with criminal records often face social stigma and discrimination, which can affect their relationships, mental health, and overall well-being.

These systemic barriers perpetuate cycles of poverty and disenfranchisement, undermining efforts towards equity and social justice. As a result, individuals with criminal records are further marginalized. Implementing equitable policies, such as SB1030, are essential steps toward mitigating the enduring impact of criminal records.

Advantages of Expungements

One of the most compelling aspects of expungements is their ability to break the cycle of recidivism, thereby enhancing public safety and community well-being. By granting expungements to individuals who have demonstrated good cause, the courts can facilitate their successful reintegration into society. A study done by University of Michigan Law School found that 96% of Michigander within the last five years who had their record

⁹ Prescott, J. J., & Starr, S. B. (2020). EXPUNGEMENT OF CRIMINAL CONVICTIONS: AN EMPIRICAL STUDY, 133(8), 2513–2513.

¹⁰ Mock, B. (2017, June 15). The costs of excluding ex-offenders from the workforce. Bloomberg.com.

<https://www.bloomberg.com/news/articles/2017-06-15/the-costs-of-excluding-ex-offenders-from-the-workforce>

¹¹ Bushway, S., Cabreos, I., Welburn Paige, J., Schwam1, D., & Wenger1, J. B. (2022, February 18). Barred from employment: More than half of unemployed men in their 30s had a criminal history of arrest. RESEARCH ARTICLE. <https://www.science.org/doi/10.11>

sealed had not committed a crime.¹² Gainful employment and stable housing are crucial factors that contribute to reducing the likelihood of reoffending. This is because expungements allow for increased opportunities for employment, housing, reintegration, and rehabilitation.¹³

SB1030 seeks to promote fairness and equity in the criminal justice system by recognizing that each person's experience with the law is unique. It provides an opportunity for judges to consider the individual's progress, rehabilitation, and community involvement when making a decision about expungement. By considering these factors, judges can make informed decision that considers the complexity of each individual, and promote a fairer, more equitable criminal system.

HPRP strongly urges the Committee to issue a favorable report on SB1030. Please contact Kirsten Gettys Downs (kgettysdowns@hprplaw.org) with questions or for additional information.

¹² Lake, J. (2020, April 15). Criminal Records Create Cycles of Multigenerational Poverty

¹³ Vallas, R., & Dietrich, S. (2022, August). Americans with Criminal Records. Poverty And Opportunity Profile.
<https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>