

Testimony of the Human Trafficking Prevention Project

BILL NO: House Bill 867
TITLE: Criminal Procedure – Expungement and Shielding – Probation Before Judgment for Driving While Impaired or Under the Influence
COMMITTEE: Judiciary
HEARING DATE: March 5, 2024
POSITION: SUPPORT

House Bill 867 would allow a person to file a petition for expungement of a probation before judgment (“PBJ”) for driving while impaired or driving under the influence after a 10-year waiting period, and to petition the court to shield that PBJ from public view after a 5-year waiting period. [The Human Trafficking Prevention Project](#) supports this bill because it will allow those who have completed their probation after an arrest for driving under the influence to petition for criminal record relief of their non-conviction after a substantial waiting period. This will allow these individuals, including sex workers and survivors of human trafficking, many of whom have used drugs and alcohol to cope with trauma, to access opportunities to better their lives.

It is important to note that substance use problems are both a predictor *and* the result of exposure to trauma, including human trafficking,¹ interpersonal violence,² sexual abuse and assault,³ and war-related trauma,⁴ meaning that those who struggle with substance use disorders are more likely to experience trauma than those without substance use disorders, *and* that those who have experienced traumatic events are more likely to self-medicate using drugs and alcohol to cope with the trauma symptoms they commonly experience in response to these events.⁵ Given that the most recent National Roadside Survey of Alcohol and Drug Use by Drivers found that 20% of surveyed drivers had drugs or alcohol in their system,⁶ it is clear that the vicious cycle of substance abuse and trauma also commonly results in exposure to law enforcement as a result of impaired driving.

A key element of recovering from any traumatic experience is the ability to regain control over one’s own life.⁷ While this often involves finding a safe place to live, accessing programs that provide mental health services, and

¹ Noël Crowley, *Intersectionality between Substance Use and Human Trafficking* 1-2, <https://freedomnetworkusa.org/2022/07/12/intersectionality-between-substance-use-and-human-trafficking/#:~:text=Individuals%20that%20have%20struggled%20with,substances%20or%20money%20by%20traffickers> (citing the findings of a US survey that 84.3% of trafficking survivors used substances during the time they were exploited, as well as the fact that those who are struggling with substance use disorders are put at higher risk of exploitation by traffickers given that “[t]hey may be targeted due to their dependence through the enticement of a promise of substances or money by traffickers,” and therefore controlled due to the ease with which a trafficker can “withhold the drugs to coerce the survivor into engaging in trafficking activities to get their next high or prevent a painful withdrawal.”).

² Jacqueline B. Mehr, et. al., *Intimate Partner Violence Substance Use, and Health Comorbidities Among Women: A Narrative Review* 1-2 (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9912846/> (citing that up to 75% of women seeking treatment for substance use disorders have experienced interpersonal violence, have greater symptom severity, *and* that “substance misuse and [substance use disorder] has been shown to also place IPV-EW at an increased risk for future [intimate partner violence] victimization.”).

³ International Society for Traumatic Stress Studies, *Traumatic Stress and Substance Use Problems* 2, https://istss.org/ISTSS_Main/media/Documents/ISTSS_TraumaStressandSubstanceAbuseProb_English_FNL.pdf (highlighting that people reporting sexual abuse have higher rates of substance use, particularly adolescent survivors of sexual violence, who are “4.5 times more likely to experience alcohol abuse or dependence, 4 times more likely to experience marijuana abuse or dependence, and 9 times more likely to experience hard drug abuse or dependence.”).

⁴ *Id.* (citing that “up to 80% of Vietnam veterans seeking PTSD treatment have alcohol use disorders.”).

⁵ *Id.* at 3-4 (highlighting that “[t]he use of alcohol or drugs can provide a temporary distraction and relief for traumatized people who may be suffering from very serious and even debilitating problems across multiple areas of their lives.”).

⁶ Amy Berning, Richard Compton, & Kathryn Wochinger, *Results of the 2013-14 National Roadside Survey of Alcohol and Drug Use by Drivers* (2015), https://www.nhtsa.gov/sites/nhtsa.gov/files/812118-roadside_survey_2014.pdf.

⁷ Susan Wyatt, *What is ‘Agency’ in Torture and Trauma Recovery? An Inquiry into the Properties and Explanations of the Concept of Agency and its Impacts* 22 (2023), https://www.researchgate.net/publication/372994759_What_is_'agency'_in_torture_and_trauma_recovery_An_inquiry_into_the_properties_and_explanations_of_the_concept_of_agency_and_its_impacts (detailing how “agency is a causal pathway to facilitating social and emotional wellbeing, [which] flows from a sense of control over one’s own life.”).

developing improved life skills, the economic stability provided by access to employment is of utmost importance to a trauma survivor's stability and independence.⁸ Given that employers routinely conduct criminal background checks on job candidates,⁹ and that the job market has trended towards requiring professional licenses, especially when the job includes providing assistance to vulnerable populations like nursing and child care,¹⁰ it is essential that any state-based remedy allow for the broadest possible relief, rather than impose additional hurdles that prevent trauma survivors from moving forward with their lives.

Thankfully, Maryland has consistently recognized the right of former criminal defendants to expunge PBJ's from their records subject to a subsequent conviction prohibition¹¹ and a three-year waiting period,¹² given that a PBJ is *not* considered a conviction under Maryland law.¹³ While it is understandable to want to treat PBJ's for driving while impaired or driving under the influence as more serious than an "average" PBJ given the grave safety risks involved in impaired driving, prohibiting someone from *ever* expunging a PBJ for this offense is not consistent with the ameliorative intent of Maryland's expungement scheme, especially considering how many of those struggling with substance use disorders are using drugs and alcohol to cope with histories of trauma.

In addition to the pre-existing subsequent conviction prohibition referenced above, HB 867 would also require that a defendant seeking to expunge a PBJ for driving while impaired or under the influence to wait 10 years prior to becoming eligible. This significant waiting period, coupled with the requirements¹⁴ and limitations¹⁵ already in place with regard to PBJ's for this offense, ensures that HB 867 strikes the appropriate balance of recognizing the seriousness of driving under the influence with the opportunity for people to move on with their lives.

For these reasons, the Human Trafficking Prevention Project supports House Bill 867, and respectfully urges a favorable report.

The Human Trafficking Prevention Project is dedicated to ending the criminalization of sex workers, survivors of human trafficking, and those populations put at highest risk of exploitation through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief.

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⁸ Mindful Musings, *Addressing Mental Health & Trauma: The Power of Economic Stability* (2023), <https://medium.com/@MindfulMusingsPsychology/addressing-mental-health-trauma-the-power-of-economic-stability-8faafa1393f7> (highlighting that, "[w]hen basic needs like food, shelter, and safety are not secured, individuals are more likely to remain in a heightened state of anxiety, impeding their ability to confront and work through traumatic memories,").

⁹ Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, Brennan Center for Justice (Jun. 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment> (reporting that, as of 2018, 80 percent of employers conduct background screening on candidates for full-time positions).

¹⁰ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. Commission on Civil Rights 1, 49 (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> (citing that about 30 percent of U.S. workers now need licenses, which is a five-fold increase since the 1950's); see also, *FAQs Criminal History Record Checks*, Maryland Board of Nursing, <https://mbon.maryland.gov/Documents/FAQs%20CHRC%2012.16.pdf> (noting that Maryland requires criminal history checks for all RN, LPN, and CNA applicants).

¹¹ MD CRIM. PRO. ANN. § 10-105(e)(4)(i) (West, 2023).

¹² MD CRIM. PRO. ANN. § 10-105(a)(3), (c)(1) (West, 2023).

¹³ MD CRIM. PRO. ANN. § 6-220(i)(3) (West, 2023) (describing how, after the fulfillment of the probation conditions ordered by the court, the defendant "shall be without judgment of conviction and is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime,").

¹⁴ MD CRIM. PRO. ANN. § 6-220(e)(1)(iii) (West, 2023) (requiring the court to impose participation in a drug and alcohol treatment program on anyone for whom the court has stayed the entry of judgment and placed on probation before judgment).

¹⁵ MD CRIM. PRO. ANN. § 6-220(f)(1) (West, 2023) (prohibiting the court from placing a defendant to do so again if, within the preceding 10 years, the defendant has been convicted of driving while impaired or driving under the influence or has received a previous PBJ for this offense).