



## **TESTIMONY IN SUPPORT OF SENATE BILL 11**

### **Criminal Procedure - Partial Expungement**

TO: Hon. Luke Clippinger, Chair, and Members of the House Judiciary Committee

DATE: March 28th, 2024

FROM: Christopher Dews, Policy Consultant

#### **Crossover Testimony**

The Center for Urban Families (CFUF) fully supports Senate Bill 11, including the sponsor amendments which define the definition of partial expungement for the Procurement that the vendors for the Judiciary and DPSCS shall produce.

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#### **Original Testimony**

The Center for Urban Families (CFUF) advocates for legislative initiatives to strengthen urban communities by helping fathers and families achieve stability and economic success. CFUF supports Senate Bill 11 to repeal the “Unit Rule,” which has stood as a permanent roadblock to criminal record expungement.

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 record](#) (pg.26). Every year, approximately 15,000 Marylanders are released from state prisons and struggle to secure a job, find a place to live and reenter society. Demographically, [71% of Maryland's prison population is black](#) (pg.20), the highest in the nation, and [one out of three](#) Marylanders returning from incarceration return to Baltimore City, where CFUF is stationed. The Department of Justice has [found](#) high recidivism rates among returning citizens, with half of all returning citizens recidivating within three (3) years and 60 percent recidivating within five (5) years. One of the primary drivers of high recidivism rates is the inability of returning citizens to find a job: [over 60 percent of formerly incarcerated persons remain unemployed](#) one year after their release. This is mainly because more than [85% of employers perform background checks on all their job applicants](#) and deny employment to many returning citizens based on a record. A past criminal conviction of any sort reduces job offers by half. Thus, the ability to expunge a criminal record is vital for the economic viability of returning citizens *after* they have served their full sentence and completed mandatory supervision.



Under current Maryland law [Criminal Procedure §10–107](#), charges that arise from the same incident, transaction, or set of facts are considered a ‘unit of charges’. If a person is not entitled to the expungement of one charge or conviction within a unit, the person is not entitled to the expungement of any other charge within the unit. This prevents charges that would be eligible for expungement from actually being expunged. Even if the charges resulted in acquittals, dismissals, or *nolle prosequi* (i.e. “not guilty” verdicts), they would still be available via the Criminal Justice Information System (CJIS) and the Central Repository hosted within the Department of Public Safety and Correctional Services. If a potential employer, institution of higher education, department of licensure, or housing provider seeks to do a fingerprint background check, the full record (including non-convictions) within a unit would become available to them. Most individuals seeking background checks can not accurately distinguish between a conviction and a non-conviction, let alone understand the circumstances that led to a “guilty” verdict in the first place.

Law enforcement often takes a shotgun approach, charging individuals with a litany of crimes, estimating that at least one will stick or push a defendant to take a plea deal to lessen the penalty or incarceration length. Thus, there is no real way to know if the individual committed the crimes on the record, yet the litany of charges remains in CJIS for public view via a background check.

During the 2020 Legislative Session, the Maryland General Assembly passed [HB1336 \(Chapter 31 of 2021\)](#), limiting the Maryland Judiciary Case Search from referring to certain non-convictions but *not allowing* expungement for eligible charges within a unit. Thus, the unit rule remains the strongest barrier to criminal record expungement, ensuring that any involvement with the criminal legal system will scar them permanently, even if proven innocent of most charges.

For more than a decade, the courts have often argued that the repeal of the unit rule isn't possible due to the limitations of technology, yet have worked with savvy attorneys to manipulate non-expungeable dockets as was reported in [Deputy Winkler's Case](#) in 2020, where the deputy ‘disappeared’ a rape charge against him that was part of a unit. Brian Thompson, his attorney, told [The Daily Record](#) that he has worked out similar plea agreements in previous cases involving sexual offenses [which are not expungeable]. He said he developed the idea of using plea deals to wipe out entire dockets 10 to 15 years ago to combat the “unfair nature of the expungement statute” because it does not allow for the removal of individual charges. If this can be done for law enforcement, which should be held to a higher standard as agents of justice, there must be a way for Maryland to allow for partial expungement for its citizenry.

Senate Bill 11 addresses the challenges associated with the ‘unit rule’ by providing for the ‘partial expungement’ of eligible charges within a unit of charges. CFUF fully supports efforts to remove barriers to employment, education, housing, and more for Marylanders saddled with arrests and overcharging. For these reasons, we respectfully urge a favorable report.