

# **NCADD\_FAV\_SB 589**

Uploaded by: Ciekot, Ann

Position: FAV



**Senate Judicial Proceedings Committee**

**February 19, 2020**

**Senate Bill 589**

**Criminal Procedure - Partial Expungement**

**Support**

NCADD-Maryland strongly supports Senate Bill 589. NCADD-Maryland has long advocated for policies that help people involved with the criminal justice system avoid some of the unintended collateral damage caused by our drug policies. When people who struggle with substance use disorders get treatment and start the recovery process, criminal records are often huge barriers to success. Obtaining employment and housing is difficult, and sometimes impossible. Without a place to live or a reliable income, some people are much more likely to re-offend and/or return to alcohol and drug use.

Senate Bill 589 will allow people who have more than one charge or conviction to have each evaluated and processed on its own in attempts to expunge them from a person's record. Treating the charges or convictions individually may allow some people to reduce the number of items on their records, reducing the discrimination that so often follows those who have been incarcerated.

These kinds of policy changes are a necessary component to significantly improving our communities. When people have served their time, they should have the opportunities and supports needed to ensure they are able maintain productive lives and livelihoods with their families. Removing some of the barriers to success will also help people with substance use disorders maintain their recovery.

**We urge your support of Senate Bill 589.**

*The Maryland Affiliate of the National Council on Alcoholism and Drug Dependence (NCADD-Maryland) is a statewide organization that works to influence public and private policies on addiction, treatment, and recovery, reduce the stigma associated with the disease, and improve the understanding of addictions and the recovery process. We advocate for and with individuals and families who are affected by alcoholism and drug addiction.*

# **HCH\_FAV\_SB 589**

Uploaded by: diamond, Joanna

Position: FAV

**HEALTH CARE FOR THE HOMELESS  
TESTIMONY IN SUPPORT OF SB 589  
Criminal Procedure – Partial Expungement**

**Senate Judicial Proceedings Committee  
February 19, 2020**



**Health Care for the Homeless strongly supports SB 589**, which would repeal the punitive ‘unit rule’ provision for non-conviction charges by allowing individuals to request the ‘partial expungement’ of eligible charges within a unit.

**SB 589 helps end homelessness by reducing barriers to employment and housing.** Criminal records, including records of non-convictions, create almost insurmountable barriers to obtaining employment, housing, education, and other critical resources like social safety net programs.<sup>1</sup> In a 2011 Health Care for the Homeless study, which surveyed 429 people who had been released from jail or prison within the past 10 years, respondents most frequently cited the inability to find work (57%) and a criminal record (56%) as the barriers preventing them from accessing stable housing.<sup>2</sup> As a supportive housing services provider, we see the direct impact that a criminal record can have on an individual’s ability to obtain housing. SB 238 serves to directly eliminate such barriers to housing.

Many individuals have lengthy records with charges that would be eligible for expungement if not for the unit rule. This bill ensures that individuals are not permanently burdened by lengthy records – many times for charges that they did not commit. This challenge falls disproportionately on Black and brown communities, the poor, and the homeless.<sup>3</sup>

SB 589 rightly recognizes that individuals should not be penalized or stigmatized for charges that should be expunged but are unable to be removed from a person’s record simply because the charges – including non-convictions-- allegedly arose from the same incident.

**Health Care for the Homeless strongly supports SB 589 because it reduces barriers to employment and housing – and so is an important measure that will help reduce the incidence of homelessness.** We urge a favorable report by the committee.

*Health Care for the Homeless is Maryland’s leading provider of integrated health services and supportive housing for individuals and families experiencing homelessness. We work to prevent and end homelessness for vulnerable individuals and families by providing quality, integrated health care and promoting access to affordable housing and sustainable incomes through direct service, advocacy, and community engagement. We deliver integrated medical care, mental health services, state-certified addiction treatment, dental care, social services, and housing support services for over 10,000 Marylanders annually at sites in Baltimore City, and in Harford, and Baltimore Counties. For more information, visit [www.hchmd.org](http://www.hchmd.org).*

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<sup>1</sup> See American Public Health Association, *Housing and Homelessness as a Public Health Issue* (Nov. 2017), available at <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>.

<sup>2</sup> Health Care for the Homeless, Inc., *Still serving time: struggling with homelessness, incarceration & re-entry in Baltimore* (October 2011), available at <http://www.hchmd.org/research.shtml>.

<sup>3</sup> See The White House, *Economic Perspectives on Incarceration and the Criminal Justice System* (April 2016), available at [https://www.whitehouse.gov/sites/default/files/page/files/20160423\\_cea\\_incarceration\\_criminal\\_justice.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf).

**JOTF\_FAV\_SB589**

Uploaded by: GLOVER, TRACEY

Position: FAV



*Advocating better skills, jobs, and incomes*

**TESTIMONY IN SUPPORT OF SENATE BILL 589:**

**Criminal Procedure - Partial Expungement**

TO: Hon. William Smith., Chair, and Members of the Judicial Proceedings Committee

FROM: Tracey Glover

DATE: February 19, 2020

My name is Tracey Glover and I was invited by the Job Opportunities Task Force to testify in support of repealing the Unit Rule.

I worked for the State of Maryland for over 20 years in multiple capacities; I was a pretrial investigator for Pretrial Services, an office clerk for Foster Care, an intake reviewer for Parole and Probation, and a case manager for the Department of Social Services. I have never had any criminal trouble in my entire life but thanks to the Unit Rule I'm caught in a situation that has ruined my career.

In 2009, I took in my godson who was homeless and receiving a lead check. As the check was in an annuity fund, he needed to use me as a payee for his account. He consistently requested large withdrawals of \$300 from M&T and I purchased supplies for him like food and clothing. I made sure to keep receipts from the transactions as I noticed his behavior turned erratic. Years later in late 2015, I was contacted by a detective who stated that my godson claimed falsely to his case manager that I stole money from him. I ended up with a warrant for my arrest as the paperwork for the indictment and bail hearings were sent to an old address.

Without any evidence, the charges layered against me included three felonies and a misdemeanor; namely, Theft over \$500, Theft over \$100,000, Obtaining Property from a Vulnerable Adult, and Embezzlement and Misappropriation, respectively. While I wanted to face the false claims in court, my lawyer advised me to take a plea deal and accept the embezzlement misdemeanor charge. This would spare me a possible 25-year sentence if the case went awry and I reluctantly accepted the deal. I was, of course, infuriated since I was innocent and fell into this for simply helping my lost godson get back on his feet.

I ended up spending 6 months in MCIW, another 9 months on home detention and am currently on parole for a crime I did not commit. To make matters worse, I can't find employment since every time employers conduct a background check, the three non-conviction felonies remain since they are part of the "Unit of Charges." I have applied for 132 positions on Indeed and was denied by all but one because of the unexpungable non-conviction charges in the unit.

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

The one temporary position I did get shut down due to changes in management and now I am both jobless and penniless. My daughter's collegiate opportunity was dependant upon my state position and now she has had to drop out of school altogether. I live on \$215 monthly from governmental assistance and I worry daily about my fiscal wellbeing.

Repealing the Unit Rule would go a long way in helping to repair the damage the court system has done to my life. I would be able to return to the workforce and live my life the way it was supposed to be lived. For these reasons, I request a favorable report on Senate Bill 589.

**Holness\_ACLU\_FAV\_SB 589**

Uploaded by: Holness, Toni

Position: FAV





## Testimony for the Senate Judicial Proceedings Committee

February 19, 2020

### SB 589 Criminal Procedure - Partial Expungement

TONI HOLNESS  
PUBLIC POLICY DIRECTOR

#### FAVORABLE

AMERICAN CIVIL  
LIBERTIES UNION  
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MARYLAND

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OFFICERS AND DIRECTORS  
JOHN HENDERSON  
PRESIDENT

The ACLU of Maryland supports SB 589, which would allow Marylanders to petition for partial expungement by allowing for the expungement of a charge even if one charge or conviction in the unit is not eligible for expungement.

Studies show that employment opportunities can reduce recidivism rates.<sup>1</sup> Yet, for far too many Marylanders, a criminal record—regardless of how minor the offense, such as minor possession of marijuana, which this body decriminalized in 2014—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**

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

<sup>1</sup> 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)

<sup>2</sup> 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.

<sup>3</sup> Md. Business Occupations and Professions, Code Ann. § 4-314

<sup>4</sup> Md. Business Occupations and Professions, Code Ann. § 5-314

<sup>5</sup> Md. Business Occupations and Professions, Code Ann. § 6-316.

<sup>6</sup> Md. Business Occupations and Professions, Code Ann. § 14-317.

<sup>7</sup> Md. Business Occupations and Professions, Code Ann. § 9-310.

<sup>8</sup> Md. Business Occupations and Professions, Code Ann. § 8-310.



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Maryland

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.<sup>9</sup> Convictions also hinder an individual's access to stable housing and a range of public benefits. A criminal record may bar individuals from residing at certain homes,<sup>10</sup> and exclude individuals from low-income utility payment plans.<sup>11</sup>

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 589.

<sup>9</sup> 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>).

<sup>10</sup> See for example, COMAR 35.04.01.04.

<sup>11</sup> COMAR 20.31.01.08.

# **Abigail Mansfield UBalt\_FAV\_SB589**

Uploaded by: Mansfield, Abigail

Position: FAV

## Testimony of the Human Trafficking Prevention Project The University of Baltimore School of Law

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**BILL NO:** Senate Bill 589  
**TITLE:** Criminal Procedure – Partial Expungement  
**COMMITTEE:** Judiciary  
**HEARING DATE:** February 19, 2020  
**POSITION:** **SUPPORT**

Senate Bill 589 would repeal Maryland’s overly punitive ‘unit rule’ provision by amending the state’s expungement law to allow the expungement of eligible non-conviction charges within a unit of criminal charges. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it will enhance the effectiveness of Maryland’s expungement framework by providing improved access to criminal record relief for all Marylanders, including survivors of human trafficking.

Currently, Maryland’s “unit rule” prohibits the expungement of otherwise eligible charges such as acquittals and other favorable dispositions if any other charge within that same “unit” of criminal charges is ineligible for expungement. This means that many individuals struggle with the collateral consequences of a lengthy criminal record, despite the fact that they may not have been convicted of the majority of the offenses they were charged with. Senate Bill 589 drastically reduces the electronic visibility of non-convictions, which would increase the probability that people will be hired, receive loans and obtain housing because many employers and others generally only look to the electronic record and do not go to the courthouse to review the paper file. The paper file in the courthouse however, would still list all of the charges and be available for public viewing and/or in a subsequent criminal prosecution.

It is also important to note that criminal records are both a predictor and the result of exposure to human trafficking. Data recently obtained from a national survey of both sex and labor trafficking survivors echoes the need for access to broader criminal record relief, with 91% of survivors reporting having been arrested at some point in their lives. Of those 91%, over 40% reported being arrested over nine times or more, while over 50% stated that every single arrest on their record was a direct result of their trafficking experience. Like all individuals with a criminal record, criminalized survivors of trafficking similarly struggle to obtain safe housing and gainful employment. For this population however, these consequences carry with them the additional risk of continued exploitation by a trafficker.

In recent years, Maryland has shown its strong support for remedying the impact a deeply flawed criminal legal system has on the ability of its citizens to escape poverty and lead productive lives. SB 589 would further this goal by expanding the availability of expungement in the state, which would significantly lessen the trafficking risk faced by sex workers and survivors of human trafficking alike. For these reasons, the Human Trafficking Prevention Project supports SB 589, and respectfully urges a favorable report.

**For more information, please contact:**  
**Jessica Emerson, LMSW, Esq.**  
[jemerson@ubalt.edu](mailto:jemerson@ubalt.edu)

**Mosby\_FAV\_SB589**

Uploaded by: Mosby, Marilyn

Position: FAV



February 19, 2020

Senator Will Smith  
Chair, Judicial Proceedings  
Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

**Re: Support for – Criminal Procedure – Partial Expungement**

Dear Chairman Smith and Committee Members:

As the State's Attorney for Baltimore City, I strongly support SB589 which authorizes a person to file a petition for a partial expungement of certain criminal records under certain circumstances; requiring a court to order that certain records may not be included on the public website maintained by the Maryland Judiciary or within records submitted to the Central Repository; repealing a provision of law establishing that, if a person is not entitled to expungement of one charge or conviction in a certain unit, the person is not entitled to expungement of any other charge or conviction in the unit.

The number of Americans with a criminal history is on the rise. Nearly one-third of the adult working-age population has a criminal record. According to the National Employment Law Project, 1 in 3 Americans (70 million) have an arrest record that will appear in a routine criminal background check in hiring. This means, nearly 1.5 MILLION Marylanders struggle to secure employment with a criminal record. Criminal records can serve as both the cause and consequence of poverty. Citizens with a criminal background apply for jobs for which they are well qualified, but are not considered due to a non-conviction record. These non-convictions create almost insurmountable barriers to obtaining employment, housing, education, and other critical resources. Technological advances have made access to criminal background information easier, and Marylanders are finding themselves shut out of the job market due to online criminal background databases, such as Maryland Judiciary Case Search.

Under current Maryland law, 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 expungement of one charge or conviction within a unit, the person is not entitled to expungement of any other charge within the unit. **Simply put, in order to expunge any eligible charges within a unit, all charges within the unit must be eligible.**

The notorious 'unit rule' significantly limits expungement for eligible charges that did not result in a conviction. This means that individuals are permanently saddled with lengthy records – many times for charges that they did not commit. **This challenge falls disproportionately on disadvantaged communities, the poor, and the homeless.** Partial expungement restricts public access to non-convictions while maintaining public access to convictions within the unit of charges. Eliminating the unit rule to reduce the likelihood that non-convictions are used against

STATE'S ATTORNEY  
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY  
120 East Baltimore Street | Baltimore, Maryland 21202

citizens attempting to improve their lives. For these reasons we urge you to favorably recommend SB589.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn J. Mosby". The signature is fluid and cursive, with the first name and last name clearly legible.

Marilyn J. Mosby  
State's Attorney for Baltimore City

**Jill Carter\_FAV\_SB0589**

Uploaded by: Senator Carter, Senator Carter

Position: FAV





THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter  
In Favor of SB0589 - Criminal Procedure - Partial Expungement  
Before the Judicial Proceedings Committee  
on February 19, 2020**

**Mr. Chairman, Mr. Vice Chairman and Members of the Committee:**

**Senate Bill 589 allows defendants to file for expungement for charges that did not result in a guilty finding, whether at trial or by way of a plea negotiation.**

**Plea negotiations make the criminal justice system work. Multiple count charging documents are commonplace. A first degree burglary case, for instance, can include several different crimes such as trespassing, destruction of property, and theft. It is routine to charge all of these crimes instead of only the broader, first degree burglary, by itself. Charging these other crimes, referred to as lesser-included offenses, is like prosecutorial insurance. These counts have fewer elements and are much easier to prove than the flagship count - the burglary. This practice also allows for greater flexibility in the sausage-making that is plea negotiation. By working a plea to a lesser-included offense, the attorneys can limit the exposure of the defendant, reduce the cost and risk for the prosecution at trial, and more carefully tailor an acceptable sentence. The problem is what's left on the criminal record in the wake of the plea. The flotsam of the**

**dropped, or nolle prossed, counts remains. Let us call them the zombie counts.**

**The way the law stands now, if someone charged with first degree burglary, trespass, theft, and destruction of property, takes a plea to theft only, all of the charges, including the first degree burglary, will remain on the record for public view. The theft may be expungeable at some time in the future, but until that happens, the burglary charge will be the first thing an employer sees on a background check. The stigma of the allegation itself remains. Zombie-like. It's dead, but it still looms large.**

**Under this bill, however, the defendant is able file for expungement of all the counts that were dropped. The destruction of property can be removed. The trespass can be stricken. The first degree burglary can be erased. This makes the criminal record simply more accurate.**

**For these reasons, I urge a favorable report on Senate Bill 589 from this committee.**

**Very Truly Yours,**

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

**Jill P. Carter**

**MLA\_FAV\_SB589**

Uploaded by: Shutinya, Mariel

Position: FAV

February 19, 2020

The Honorable William C. Smith  
Chairman, Judicial Proceedings Committee  
The Maryland Senate  
Miller Senate Office Building, 2 East Wing  
11 Bladen Street  
Annapolis, MD 21401

RE: Testimony Supporting Senate Bill 589 – Criminal Procedure – Partial Expungement

Dear Chairman Smith and Members of the Committee:

Thank you for your invitation to present testimony on SB 589. The Legal Aid Bureau, Inc. (“Maryland Legal Aid”) is a private, non-profit law firm that represents low-income persons in civil matters throughout Maryland. Maryland Legal Aid assists individuals and families with a wide array of civil legal issues, including criminal record expungement. Since July 2016, Maryland Legal Aid has represented over 10,000 Marylanders with record expungement, totaling over 40,000 case records, creating greater access to jobs, employment, and other opportunities for these residents and their families. It is based on this work that Maryland Legal Aid supports the proposed bill.

Under current Maryland law, almost all criminal records that did not result in a conviction are eligible for expungement. However, the “unit rule” prevents expungement of eligible charges if one or more charges in the unit, i.e. charges stemming from the same incident, resulted in a conviction that is ineligible for expungement. Therefore, many individuals are barred from clearing their record of crimes for which they were never convicted, solely because they were convicted of a lesser crime in the same unit.

Maryland Legal Aid conducts clinics in almost all of the Maryland counties and we represent clients every day who cannot gain employment, housing, or educational opportunities, despite never having been convicted of certain crimes. As employers and other entities often utilize the public case search system maintained by the Maryland Judiciary to screen individuals, SB 589 would remove much of the stigma and barriers faced by our clients by eliminating records of charges that did not result in a conviction. Maryland Legal Aid’s clients report that employers do not always give much deference to the dispositions for each charge, but instead base hiring solely on the list of criminal charges. With current Maryland law enforcing the unit rule, many criminal records appear deceptively lengthy, listing numerous offenses for which an individual was never convicted. If not for the existence of the unit rule, these charges not resulting in a conviction would be eligible for expungement under existing Maryland law.

Partial expungement would increase the ability of individuals to successfully re-enter society and obtain gainful employment. Clients consistently convey a sense of hopelessness and discouragement at facing a list of charges permanently locked on their

records despite never being convicted of the majority of them. The proposed legislation would encourage and empower these individuals who have little to no employment prospects to re-enter society and compete in the workforce. SB 589 would grant thousands of Marylanders a second chance and increase their opportunity to become productive members of the community.

Thank you for providing Maryland Legal Aid the opportunity to comment on this important piece of legislation. Legal Aid supports SB 589 and asks that this committee give it a favorable report.

**Legal Aid supports SB589 and asks that this committee give it a favorable report.**

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Amy Petkovsek, Director of Advocacy, Training and Pro Bono  
Maryland Legal Aid

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Mariel Shutinya, Staff Attorney, Community Lawyering Initiative  
Maryland Legal Aid

# **Albert Turner\_FAV\_SB 589**

Uploaded by: Turner, Albert

Position: FAV

# SB 589 - Support

## Criminal Procedure – Expungement – Partial Expungement

Testimony of Albert Turner, Attorney  
Homeless Persons Representation Project, Inc.  
Senate Judicial Proceedings Committee, February 19, 2020

*Homeless Persons Representation Project, Inc. (HPRP) is a non-profit legal services provider that provides free legal representation to people who are homeless or at risk of homelessness 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.*

### **SB 589 will permit expungement of all favorable dispositions**

The Homeless Persons Representation Project strongly supports SB 589 which provides for a partial expungement of certain charges in a unit. Currently, Maryland law provides that charges that arise from the same incident, transaction or set of facts are considered a unit, and in order to expunge any charges in a unit all charges in the unit must be eligible. An individual who has been convicted of a lesser misdemeanor charge cannot expunge a felony charge in the same unit even if that felony charge resulted in a favorable disposition like an acquittal, dismissal, or nolle prosequi. Unfortunately, many landlords and employers do not distinguish between convictions and favorable dispositions, leaving individuals judged as if they were convicted of all the charges in the unit, regardless of truth.

Under SB 589 the charges eligible for partial expungement will be removed from electronic records like Maryland Judiciary Case Search and the Central Repository database. However, other police and court records such as the Court's paper file will not be affected and will remain available for inspection by law enforcement. In addition, if the unit contains a conviction that is not eligible for expungement that conviction will remain on the individual's record including Case Search and the Central Repository. This is a reasonable approach to expanding Maryland's expungement law by allowing all favorable dispositions to be expunged.

### **SB 0589 will allow homeless individuals to have greater access to housing and employment.**

The burden of criminal records falls disproportionately on black and brown communities, the poor, and people experiencing homelessness. The number of Americans caught in the revolving door between homelessness and the criminal justice system are in the tens of thousands.<sup>1</sup> Roughly 48,000 people exit jail/prison into homelessness each year.<sup>2</sup> In Baltimore City, a recent report found that 48% of homeless adults have at least 1 criminal charge, and 43% have at least 1 expungeable criminal charge.<sup>3</sup> Further,

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<sup>1</sup> U.S. Interagency Council on Homelessness, *Criminal Justice Reform*, August 4, 2017, available at <https://www.usich.gov/solutions/criminal-justice>.

<sup>2</sup> Id.

<sup>3</sup> Journey to Jobs: Understanding and Eliminating Barriers Imposed on Homeless Jobseekers, available at <https://www.journeyhomebaltimore.org/journey-to-jobs/>



Black individuals are disproportionately represented and negatively impacted. While Black individuals represent 64% of Baltimore City residents, they comprise 82% of homeless individuals with criminal charges.<sup>4</sup>

The more charges an individual can expunge the easier it is for that individual to end their homelessness. Criminal records are readily available to employers, landlords and other housing providers through public, internet-based sources. Employers and landlords often discriminate against anyone with a criminal record regardless of its content, age or direct relationship to employment or housing. A 2015 national report on criminal record barriers to federally subsidized housing found that housing providers treat criminal *arrests* the same as criminal *activity* even if the applicant was never convicted of the charged offense.<sup>5</sup> This results in the denial of housing to those with minimal criminal records including records of non-convictions. Permitting partial expungements will increase access of individuals experiencing homelessness to the critical permanent housing resources and employment opportunities needed to end their homelessness and enhance their quality of life.

### **Please support SB 0589 and issue a favorable report.**

If you have any questions, please contact Albert Turner, Attorney, Homeless Persons Representation Project at 410-685-6589, ext. 21; [aturner@hprplaw.org](mailto:aturner@hprplaw.org)

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<sup>4</sup> Id.  
<sup>5</sup> When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing, February 2015, available at <http://povertylaw.org/sites/default/files/images//publications/WDMD-final.pdf>





**JOTF\_FAV\_SB589**

Uploaded by: YORK, CARYN

Position: FAV

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

## **TESTIMONY IN SUPPORT OF SENATE BILL 589:** **Criminal Procedure – Partial Expungement**

TO: Hon. William Smith, Chair, and Members of the Senate Judicial Proceedings Committee  
FROM: Christopher Dews, Policy Advocate  
DATE: February 19, 2020

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that advocates for better jobs, skills training, and wages for low-income workers and job seekers in Maryland. We strongly support Senate Bill 589 as a means of increasing the employability of job seekers with criminal records that do not result in a guilty conviction.

Many employers often refuse to hire applicants with criminal records, even if they have never been convicted of a crime. With some state court systems – including Maryland – allowing criminal record information to be posted online, an individual’s criminal history is no longer strictly used for law enforcement purposes or sentencing, but hiring decisions. As advances in technology have made criminal background checks easier than ever to perform, more Marylanders are finding themselves shut out of the job market. Many people with a criminal background apply for jobs for which they are well-qualified but do not have their applications even considered because of a non-conviction record.

During the 2015 legislative session, the Maryland legislature adopted a number of laws that would restrict public access to certain criminal records. More specifically, the legislature repealed the ‘subsequent conviction rule’, allowing for the expungement of non-conviction records regardless of a subsequent, unrelated conviction. Adopting this law was a huge step in eliminating the negative impacts that a non-conviction record can have on a worker’s ability to secure employment.

Unfortunately, current law also prohibits the expungement of eligible charges within a unit if there is an ineligible charge – a conviction - that also falls within the unit. This so-called ‘unit rule’ significantly limits expungement for those individuals seeking to restrict public access to those charges that did not result in a conviction.

Fortunately, on occasion, the Maryland Judiciary may order a “partial expungement” for a case to remove specific charges from a unit; instead of the removal of the complete unit of charges. According to the Department of Public Safety and Correctional Services, requests for partial case expungements require the Expungement Unit within the Criminal Justice Information Repository System (CJIS) to send correspondence back to the Maryland Judiciary indicating that the specific charge being requested cannot be removed due to the ‘unit rule’. Once the Maryland Judiciary receives the correspondence from

the Expungement Unit, they in turn “amend” their court records, essentially removing the specific requested charge and then resending the information back to the Criminal Justice Information System-Central Repository. This process results in the information not being available for public inspection via ‘partial expungement’.

Senate Bill 589 seeks to address the challenges associated with the ‘unit rule’ by providing for the ‘partial expungement’ of eligible non-convictions within a unit of charges. In order to ensure effective implementation in a timely manner, Senate Bill 589 would delay the bill’s effective date and provides for annual reports detailing the estimated costs and plans for implementation by 2021.

JOTF fully supports efforts to remove barriers to employment for Marylanders saddled with arrests and charges that did not result in a guilty conviction. As employment barriers increase for people with criminal records, so too does their likelihood of recidivism. Senate Bill 589 seeks to eliminate procedural obstacles that make it difficult for workers to seek expungement of eligible charges within a unit of charges. For these reasons, we respectfully urge a favorable report.

**MCPA-MSA\_UNF\_SB 589**

Uploaded by: Mansfield, Andrea

Position: UNF



# Maryland Chiefs of Police Association Maryland Sheriffs' Association



## MEMORANDUM

TO: The Honorable William C. Smith Jr., Chairman and  
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee  
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 19, 2020

RE: **SB 589 Criminal Procedure – Partial Expungement**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE SB 589. This bill provides for the partial expungement of charges under specific circumstances.

MCPA and MSA, while understanding the desire to provide a second chance for persons in certain circumstances, generally oppose legislation that increases the categories for expungement because it could interfere with the necessary access to prior criminal information. In some instances, this could be a safety factor for law enforcement personnel in carrying out their official duties.

Each year, several pieces of legislation are introduced that seek to adjust the considerations and time frames under which expungement, pardons or shielding can be sought. MCPA and MSA believe such changes require participation and input from the judiciary, prosecutors and law enforcement and, rather than being dealt with in a piecemeal manner, should be addressed comprehensively in a process that involves all stakeholders and in a setting that is conducive to reasonable solutions while, at the same time, not effecting public safety.

For these reasons, MCPA and MSA OPPOSE SB 589 and urge an UNFAVORABLE Committee report.

**MDJudiciary\_UNF\_SB589**

Uploaded by: Morrissey, Chief Judge

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 589  
Criminal Procedure - Partial Expungement  
**DATE:** February 5, 2020  
(2/19)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 589. Find attached, the Fiscal Note representing the impact on the Maryland Judiciary.

cc. Hon. Jill P. Carter  
Judicial Council  
Legislative Committee  
Kelley O'Connor

**Department of Legislative Services**  
**2020 Session**  
*Agency Explanation of Impact*

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**Bill number:** SB0589

**Cross file:**

**Bill title:** Criminal Procedure - Partial Expungement

**Agency:** Judiciary (Administrative Office of the Courts) - (jdy / 292)

**Prepared by:** Roberta L. Warnken and Dominique Johnigan

**Title:** Chief Clerk of District Court and Senior Researcher

**Phone number:** (410) 260-1235 and (410) 260-3509

**Email address:** [Roberta.Warnken@mdcourts.gov](mailto:Roberta.Warnken@mdcourts.gov) and  
[Dominique.Johnigan@mdcourts.gov](mailto:Dominique.Johnigan@mdcourts.gov)

**Date:** February 6, 2020

To assist our department in preparing a fiscal and policy note for this proposed legislation, please provide detailed responses to the questions below.

If you have additional information that cannot be included in either this Word document or the provided Excel file, please send that information **in a separate email** to [fnotes@mlis.state.md.us](mailto:fnotes@mlis.state.md.us) **with the bill number included in the document and the email subject line.**

**1. Will this legislation have a fiscal and/or operational impact on your agency?**

YES  NO

*If yes*, please proceed to question #2 on page 2.

*If no*, please briefly indicate **why** below and then proceed to question #6 on page 4.



**2. General Operational/Fiscal Impact on Your Agency – Please describe the operational and/or fiscal impact of the proposed legislation on your agency.**

The legislation proposes to remove the current prohibition on partial expungements found in Criminal Procedure Article § 10-107, commonly referred to as the “unit rule” and permits a person to file a petition for partial expungement when two or more charges arise from the same incident, transaction, or set of facts, and not all of them are eligible for expungement for a police or court record. If the partial expungement of a charge is impracticable due to its inclusion in the statement of charges, the court must order that the official record of the court not be included on the Judiciary’s public website, within records submitted to the Central Repository, and may authorize the State or a political subdivision to maintain the written record without change and limit inspection to a criminal justice unit for legitimate criminal justice purposes.

Although it is difficult to estimate the number of additional petitions for expungement the Judiciary would receive, the Judiciary believes this legislation would exponentially increase the number of charges that would be eligible and has the potential to result in a tremendous number of petitions for expungement. If this bill passes, tens of thousands of charges that historically have not qualified for expungement – because there was a conviction or because the charge was one of a unit of charges and all do not qualify for expungement – would now qualify for expungement. The bill appears to be retroactive and could include any charge since the District Court was established in 1971, as well as circuit court expungements going back even further. All District Court records prior to 1981 are archived and having to retrieve them would be burdensome for both the Judiciary and the State Archives. The process varies for the circuit courts. While some circuit courts have older records (approximately 1986 and older) with State Archives, others have maintained all their court records on-site or in warehouses. In addition to the paper files, many older circuit court files are on microfilm or microfiche with no obvious way to expunge a case or charge within a case. In courts where the paper record was lost due to flood or fire, the microfilm may be the only record remaining of cases for a given timeframe.

For illustrative purposes, over the past five fiscal years (2015-2019), the following number of cases were filed with multiple charges in the District Court and the circuit courts:

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>District Court</b>	63,115	62,764	62,081	59,754	60,518
<b>Circuit Courts</b>	39,820	39,263	36,085	34,643	32,862

This legislation creates separate tracks for case records that can and cannot be redacted. Based on the legislation as written, there are two possible paths for implementation and two different outcomes for petitioners.

**For case files that can be redacted to remove a charge reference**, the eligible charge(s) under this bill would be completely “expunged” from court records and the Criminal Justice Information System (CJIS). Court records that need to be redacted include all official records maintained by the clerk or other personnel pertaining to any criminal action or proceeding for expungement, including indices, docket entries, charging documents, pleadings, orders, memoranda, assignment schedules, disposition sheets, transcriptions of proceedings, electronic

recordings, orders, judgments, exhibits, and decrees. Some circuit courts do not have indexes of old cases.

The clerk would need to review the file, page by page to remove any information pertaining to the expunged charge. Charge information is repeated throughout the case many times and the charging document outlines the alleged events that occurred. There may not be a clear way to obliterate all information in a charging document related to a specific charge.

The average time to complete the more complex process of expunging a single charge from a case with multiple charges, which requires reading through all documents and docket entries, has been estimated to be 3 hours for District Court and 5 hours for circuit court due to the size of case files. The Administrative Office of the Courts is in the process of analyzing clerk workload and the amount of time required to effectively and efficiently process the same, which will result in the development of a sound methodology by which to determine clerk need, like how judgeship need is determined. The estimated number of clerks needed to perform expungements indicated above was derived from that preliminary analysis, using the number of hours clerks have available to perform their duties and responsibilities. The time a clerk has available to perform their duties accounts for weekends, holidays, leave, judicial support, training, and general office work.

Additional staff will be necessary in the District Court and circuit courts to accomplish the increase in workload and be prepared for the initial increase in filings as the public becomes aware they would now be able to expunge one or more charges that previously stopped them from having their case expunged.

Using a five-year average of eligible cases as the baseline and given the average time of 3 hours in the District Court and 5 hours in the circuit courts to process an expungement from beginning to end, it is estimated that an additional 110 clerks will be needed in the District Court and 109 clerks in the circuit courts at a cost of \$14,205,192 in the first full fiscal year.

To be able to expunge a charge or charges that are eligible for expungement from a unit of criminal charges that are not expungable, the Judicial Information Systems department estimates that implementing the necessary programming changes will require 1392 hours at an approximate cost of \$155,300.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	418	\$100.00	\$41,800.00
Programming	424	\$125.00	\$53,000.00
Testing	318	\$110.00	\$34,980.00
Project Management	232	\$110.00	\$25,520.00
TOTAL	1392		\$155,300.00

**The bill includes a different track for records where redaction is impracticable.** Case files that cannot be successfully redacted to remove references to the eligible charge will be removed from the court's website and records that are submitted to CJIS. Special handling will be necessary to limit inspection of the case file to criminal justice units for legitimate criminal

justice purposes only. Law enforcement will have to motion the court for access. Processing these motions will involve additional clerical and judge time to determine if the access is for a legitimate criminal justice purpose.

Eligible charges would be “shielded” on the Judiciary’s website and not completely “expunged” from all records. The bill only mentions the shielding on the Judiciary’s website’ however, the Judiciary also maintains public kiosks in the courthouses where the public can access the same case information that can be requested from a court clerk. Attorneys and other parties who are registered in MDEC also have docket-level remote access to all cases in MDEC, as well as access to documents in their case(s). If charges are removed from the kiosks, documents would also have to be shielded, otherwise, the charge would be removed but the documents in a case would still be available to view.

To be able to remove a charges or charges in a unit of criminal charges from CaseSearch only or put security on the case so it is not viewable on CaseSearch or a public kiosk, the Judicial Information Systems department estimates that implementing the necessary programming changes will require 468 hours at an approximate cost of \$52,560.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	138	\$100.00	\$13,800.00
Programming	164	\$125.00	\$20,500.00
Testing	88	\$110.00	\$9,680.00
Project Management	78	\$110.00	\$8,580.00
TOTAL	468		\$52,560.00

Please note this level of effort includes the removal of charges from the public kiosks as it is unclear whether this is required by the bill.

Clerks will still have to process petitions, notify CJIS and state or political subdivisions that the written record can be maintained without change and of the requirement to limit inspection of the written record to a criminal justice unit for legitimate criminal justice purposes. The processing of motions to inspect will require more clerical and judicial time.

Although not as labor intensive, the shielding of court records will also require additional staff in the District Court and the circuit courts. The time estimated to complete the shielding of a charge(s) is 1.5 hours for District and circuit courts. The District Court can share some resources since it is a unified court system; however, circuit courts would need at least one person in each circuit since resources cannot be shared between the circuits. Based on the cases that would be eligible in the last 5 years alone, with an estimated yearly workload, and the 1.5 hours to complete the shielding of charges, 88 additional clerks (55 for District Court and 33 for circuit court) will be needed at a cost of **\$5,708,022** in the first full fiscal year. (See spreadsheet 2 of 2.)

**NOTE: Resources in the circuit courts are not shared within a circuit.**

In either scenario, there is currently no functionality to build programmatic relationships between CaseSearch and the six case management systems that process criminal information to remove

any reference to the existence of specific charges that may exist in any of the various components within those systems as required by the proposed legislation. As explained in the current and prior legislative sessions, the Judiciary anticipates that the implementation of CaseSearch Version 2 will provide the needed functionality to enable the removal of case information at a more granular level such as individual charges and will parallel the final rollout of MDEC. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million.**

The Judiciary maintains we are not able to effectively expunge one charge in a unit. There is no functionality currently within CaseSearch to remove records at the charge level without displaying a space for a missing charge(s). When a person is charged with multiple offenses, the charges are numbered and reported to CJIS in the order presented on the charging document. For instance, if there are three charges, and charge 2 is expunged, the system will still reflect charges 1 and 3. They are not and cannot be renumbered because the case information reported to CJIS must align with the same charge numbers initially reported. A missing numbered charge may raise questions and red flags, thereby, nullifying the purpose of the expungement.

In Fiscal Year 2019, there were approximately 74,508 expungement petitions filed in the District Court and approximately 10,951 petitions filed in the circuit courts. Any increase in the court's caseload and the additional hearings and motions that may be necessary will result in additional clerical and court time. Costs will increase in direct relation to the higher number of expungements.

The Judiciary is currently researching redaction software. There may be additional costs if a decision is made to purchase the software to assist the clerks with the time-consuming searching and redaction of records or case information within the records. Cost estimates are not available at this time.

Other expenditures include the printing and restocking of new carbonized forms and brochures, website revisions, postage for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants and their attorneys, storage for expunged records, and copying. To revise and restock the Expungement Brochure (CC-DC-CR-072BR) will be approximately \$6,000.00. Clerks will need additional training to distinguish the multiple tracks, eligibility of charges, and the requirements of any special processing.

<b>SB0589 Initial Cost of Implementation</b>		
	<b>EXPUNGEMENT</b>	<b>SHIELDING</b>
<b>Programming Costs</b>	\$155,300	\$52,560
<b>Operational Costs and Additional Staff (1<sup>st</sup> Full Year)</b>	\$14,205,192	\$5,708,022
<b>Brochure</b>	\$6,000	\$6,000
<b>Case Search 2.0</b>	\$1,140,000	\$1,140,000
<b>TOTALS:</b>	<b>\$ 15,506,492</b>	<b>\$ 6,906,582</b>

If passed, this legislation would have a significant fiscal and operational impact on the Judiciary.

- 3. Impact on Revenues** – Please estimate any increase or decrease in revenues (general, special, federal, or other funds) in each of the next five fiscal years. Enter the estimated amounts in the *Revenues* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause revenue increases/decreases to begin in later years.
  - Please explain the cause(s) of the revenue increase(s)/decrease(s), any assumptions and/or calculations used, and any variations if the revenue impact(s) are not constant.
  - If federal funds are affected, please describe how (*e.g.*, loss of funds for noncompliance, availability of new funds, etc.)

The proposed legislation, when implemented, will result in an increase in fees collected related to petitions for expungement. The Judiciary’s filing fee for petitions for expungement is \$30 for guilty dispositions. There is no filing fee for cases resulting in acquittal, dismissal, probation before judgment (PBJ), nolle prosequi, stet, or not criminally responsible dispositions. Revenues will depend on the dispositions of the cases to be expunged.

- 4. Impact on Expenditures** – Please estimate the increase or decrease in expenditures in each of the next five fiscal years using the *Expenditures* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause expenditure increases/decreases to begin in later years.
  - Please explain the need for the number and type of personnel (both permanent and contractual), including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type of employee will be; and (3) why existing personnel cannot absorb the additional work.
  - Please describe the items included under “Other Operating Expenses” and explain any assumptions or calculations used in your estimates.
  - Please specify the fund type (general, federal, special, or other) or combination of fund types of the expenditure increases and/or decreases.

Please see answer to No. 2 and attached fiscal worksheet.

- 5. Anticipated in Proposed Operating/Capital Budget?** – Have funds been included in your agency’s proposed operating or capital budget in anticipation of this legislation? Or has your agency submitted a request for funding in a supplemental budget? If so, please indicate specific amount(s) budgeted and budget code(s).

No.

**6. Other Information** – Please provide any other information that may be helpful in determining the fiscal effect of this legislation, even if the bill does not directly affect your agency.

The Criminal Justice Information System (CJIS) should be contacted as well as law enforcement agencies, parole and probation, agencies that supervise community service, Maryland Archives, and other custodians of records.

This legislation will impact the State’s Attorneys, the Office of the Public Defender, the Maryland Department of Public Safety and Correctional Services, and law enforcement agencies.

Attorneys representing their clients will be impacted by the lack of remote access to information under this bill.

Additionally, there are potential costs related to litigation by persons or entities who might contend that this legislation intrudes on their constitutional and common law right to access courts records.

**7. Effect on Local Governments** – Will local government operations or finances (revenues or expenditures) be affected by this legislation? If yes, please describe how.

This legislation may impact local law enforcement agencies.

**8. Effect on Small Businesses** – Will existing small businesses be affected (either positively or negatively) by this legislation and/or will the legislation encourage or discourage new small business opportunities? If so, please describe.

*State law defines a small business as a corporation, partnership, sole proprietorship, or other business entity, including affiliates that: (1) is independently owned and operated; (2) is not dominant in its field; and (3) employs 50 or fewer full-time employees.*

Any business or attorney’s office that has created or purchased expungement process software to assist the public with the filing of petitions for expungement will have costs to update their software.

# **DPSCS\_INFO\_SB 589**

Uploaded by: combs, kevin

Position: INFO



## Department of Public Safety and Correctional Services

### Office of the Secretary Office of Legislative Affairs

45 Calvert Street, Suite B7A-C, Annapolis MD 21401  
410-260-6070 • Fax: 410-974-2586 • [www.dpsscs.state.md.us](http://www.dpsscs.state.md.us)

STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.  
GOVERNOR

**BILL: SENATE BILL 589**

BOYD K. RUTHERFORD  
LT. GOVERNOR

**POSITION: LETTER OF INFORMATION**

STEPHEN T. MOYER  
SECRETARY

**EXPLANATION:** The bill (1) repeals the prohibition on expungement of a charge within a “unit” of charges unless all of the charges in the unit are eligible for expungement and authorizes a person to file a petition for partial expungement of eligible charges when two or more charges arise from the same incident, transaction, or set of facts, and one or more of the charges are not eligible for expungement; and (2) requires the court to order that a police or court record regarding the charges eligible for partial expungement be removed from the public website maintained by the Maryland Judiciary and within records submitted to the Central Repository.

WILLIAM G. STEWART  
DEPUTY SECRETARY  
ADMINISTRATION

J. MICHAEL ZEIGLER  
DEPUTY SECRETARY  
OPERATIONS

RACHEL SESSA  
ASSISTANT SECRETARY

CATHERINE KAHL  
DEPUTY DIRECTOR

### **COMMENTS:**

- The Department of Public Safety and Correctional Services (DPSCS) houses the Criminal Justice Information System (CJIS) that is the repository for law enforcement to access criminal history record information, fingerprints, etc., and provides background checks to statutorily or regulatorily authorized entities.
- If a partial expungement court order were received by CJIS, extensive manual research would be required by the Department’s Information Technology and Communications Division (ITCD) to locate and determine what charges are eligible and to ensure any stipulations have been met in order for the expungement to take place according to law.
- According to the bill, if charges are not eligible for expungement, the court may order the information to remain as it is in the system and limit its inspection to criminal justice agencies. To accomplish such a task, ITCD would have to re-program its systems in order to filter out which records are limited and which records can be fully shared.
- In order to implement this bill, substantial program changes to the CJIS system would be necessary, a unit to perform the manual expungement research and work would need to be created and staff hired to ensure required records are being limited to criminal justice agencies and not otherwise shared.



- The Expungement Unit would have to search each charge because: (1) charges prior to 2004 do not have a CJIS codes; and (2) dispositions, if present have to be evaluated to determine if the unit of charges are eligible and if not present within the system must be researched and attained.
- Additionally, each charge would need to be manually searched to ensure that the correct record is being processed and responded to due to inconsistencies (demographics, tracking numbers, case numbers, and dispositions) and to determine if a 2004 eligible, conviction was present.
- Therefore, for CJIS to do partial expungements, it would cost the Department approximately \$1,042,929 in the first year and exceed \$682,226 each year thereafter.

**CONCLUSION:** For these reasons, the Department of Public Safety and Correctional Services respectfully asks this Committee to consider this information as it deliberates on Senate Bill 589.