

# HCH\_FAV\_SB 860

Uploaded by: ciekot, ann

Position: FAV

**HEALTH CARE FOR THE HOMELESS TESTIMONY**  
**IN SUPPORT OF**  
**SB 860 – Criminal Procedure – Postconviction Review – Motion to Vacate**

**Senate Judicial Proceedings Committee**  
**March 5, 2020**



**Health Care for the Homeless supports SB 860**, which would give the State’s Attorney or a defendant the authority to file a motion to vacate a probation before judgment or judgment of conviction for marijuana possession charges.

SB 860 will help end homelessness by reducing barriers to employment and housing. Criminal records create almost insurmountable barriers to obtaining employment, housing, education, and other critical resources like social safety net programs.<sup>1</sup> At Health Care for the Homeless, we have seen this firsthand – our clients have been denied gainful employment even due to marijuana on their record, causing them into homelessness or to remain homeless. Therefore, the ability to clear a person’s record of marijuana convictions will have a significant impact in providing greater and more expedited housing opportunities for our clients.

The Maryland General Assembly has already recognized the utility of being able to expunge records related to the possession of marijuana when they expanded the law to make the possession of marijuana and eligible for expungement<sup>2</sup> if more than 4 years after the disposition date.<sup>3</sup> Given the barriers criminal records pose to a person’s ability to procure housing and employment, coupled with the acknowledgement by the General Assembly that reform is needed for how we treat marijuana possession in the criminal justice system, it only makes sense to extend this logic and allow for the filing of a motion to vacate for marijuana convictions.

**Health Care for the Homeless strongly supports SB 860 because it reduces barriers to employment and housing – and so is an important measure that will help reduce the incidence of homelessness.** SB 860 rightly recognizes that individuals should not be penalized or stigmatized for charges they received where they have paid their debt to society. As such, we strongly 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 Baltimore County. 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> MD Code Ann., Crim. Proc., § 10-105(a)(12).

<sup>3</sup> MD Code Ann., Crim. Proc., § 10-105(c)(8).

**JOTF\_FAV\_SB860**

Uploaded by: YORK, CARYN

Position: FAV

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

**TESTIMONY IN SUPPORT OF SENATE BILL 860:**

Criminal Procedure - Postconviction Review - Motion to Vacate

**TO:** Chairman. William C. Smith, and Members of the Senate Judicial Proceedings Committee

**FROM:** Caryn York, Chief Executive Officer

**DATE:** March 5, 2020

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates for policies and programs to increase the skills, job opportunities, and incomes of low-wage workers and job seekers in Maryland. JOTF supports Senate Bill 860 as a means to ensure that past charges and probations before judgement (PBJs) no longer deemed criminal does not limit employment or educational opportunities.

In 2014, after years of intense debate, the State of Maryland took a strong stand to decriminalize marijuana. This effectively meant that jail time was off the table for certain amounts of the substance. In January 2019, the State's Attorney for Baltimore City announced that the office would cease prosecutions for possession of marijuana. She also filed motions to vacate convictions (using other types of motions) in approximately 5,000 marijuana possession cases. She cited the social and economic collateral consequences of these convictions and the disproportionate enforcement of marijuana possession laws on minorities as reasons behind her decision.

Section 8-301.1 of the Criminal Procedure Article authorizes a court with jurisdiction over the case, on motion of the State, to vacate a PBJ or conviction when (1) there is newly discovered evidence that could not have been discovered by due diligence in time for a new trial and creates a substantial or significant probability that the result would have been different or (2) the State received new information after the entry of a PBJ or conviction that calls into question the integrity of the PBJ or conviction. The interest of justice and fairness must also justify vacating the PBJ or conviction.

As Mosby addressed, there are still thousands of Maryland residents who have marijuana-related records and something needs to be done to correct past prosecutions that have disrupted the lives of mostly African Americans but have done nothing to stop crime and violence. The injustice is particularly acute as others are now profiting off the medical marijuana business in Maryland and in other states that have legalized the drug for recreational use. Maryland decriminalized possession of up to 10 grams of marijuana in 2014. Why must thousands suffer the consequences of convictions for something we no longer consider a crime?

Senate Bill 860 seeks to address this by allowing those with former PBJs convictions for Marijuana to file a motion to vacate their former sentence as well as any other charges no longer considered a crime by Maryland law. This will wipe the slate clean for a variety of Maryland residents and allow great access to employment opportunities and social benefits. For these reasons, we urge a favorable report.

# **MDJudiciary\_UNF\_SB860**

Uploaded by: Jones, Tyler

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 860  
Criminal Procedure – Postconviction Review – Motion to Vacate  
**DATE:** February 26, 2020  
(3/5)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 860. The offered legislation amends Criminal Procedure Article §8-301.1, which was enacted in the 2019 Legislative Session, which provided a limited remedy to permit the state to move to vacate a probation before judgment or conviction where information received after a criminal case disposition calls into question the integrity of that disposition. The offered legislation would permit the defendant to also make the motion to vacate. The proposed legislation also expands the scope to include offenses that are no longer a crime and certain violations of the marijuana and drug paraphernalia laws.

Last year's legislation (Chapter 702) provided the State's Attorney an avenue to seek to vacate a probation before judgment or conviction where newly discovered evidence creates a substantial or significant probability that the result would have been different, or where the State's Attorney receives information that calls into question the integrity of the conviction or probation before judgment. The Fiscal and Policy Note that accompanied that legislation noted the multiple avenues for relief already available to a defendant seeking to challenge a criminal case disposition, to include (1) an appeal; (2) a motion for new trial; (3) a petition for writ of actual innocence; (4) a postconviction petition; or (5) a petition for writ of error coram nobis. Thus, the original legislation was drafted to enable the State to seek to set aside a criminal case disposition under limited circumstances where public integrity warranted extraordinary relief.

The current legislation is unnecessary as numerous avenues already exist to permit a defendant to challenge a criminal case disposition. Each of those remedies has a timeline and safeguards in place. The proposed legislation has no limitations. The bill also states on page four that the defendant has the burden of proof on a motion filed by the defendant but does not state what he or she has the burden of proving and on what grounds.

cc. Hon. Charles Sydnor  
Judicial Council  
Legislative Committee  
Kelley O'Connor

# **SHELLENBERGER\_UNF\_SB860**

Uploaded by: Shellenberger, Scott

Position: UNF



Bill Number: SB860  
Scott D. Shellenberger, State's Attorney for Baltimore County  
Opposed

**WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,**  
**STATE'S ATTORNEY FOR BALTIMORE COUNTY, IN**  
**OPPOSITION TO SENATE BILL 860,**  
**CRIMINAL PROCEDURE**  
**POSTCONVICTION REVIEW**  
**MOTION TO VACATE**

I write in opposition of Senate Bill 860. Senate Bill 860 is written to amend a new law, CP §8-301.1 that just went into effect five months ago. The entire concept upon which CP§8-301.1 is based was to give the State a vehicle by which it could correct wrongs committed by situations like the Gun Trace Task Force.

This Bill would add the use of the statute to the innumerable opportunities the defendant already has to seek relief after a conviction. The statute was designed to permit the State one opportunity to correct an inappropriate conviction, not to add a fourteenth option with unlimited opportunities to refile to a defendant.

Senate Bill 860 goes well beyond the original intent of CP §8-301. CP §8-301 was designed to right prior wrongs. Senate Bill 860 also is an attempt to get rid of the marijuana convictions before the State-wide commission studying this complex issue has written its report.

The commission is charged with reviewing and making recommendations on all issues related to marijuana including possible expungement of records. We should wait for that report and a comprehensive approach.

What is more nowhere has it been contemplated that possession with intent to distribute marijuana will no longer be a crime. Even in states which have legalized marijuana it is only State authorized retailers who can distribute marijuana. To be able to wipe out a criminal conviction for distribution when the conviction came during a time the substance was illegal goes way too far.

I urge an unfavorable report on Senate Bill 860.

# **AttorneyGeneral\_UNFAV\_SB860**

Uploaded by: Williams, Carrie

Position: UNF



State of Maryland  
Office of the Attorney General

March 5, 2020

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings  
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Opposition to SB 860

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The Attorney General urges the Judicial Proceedings Committee to report unfavorably on Senate Bill 860. Senate Bill 860 would allow every defendant that has ever been convicted of (or received a probation before judgment for) possession of marijuana, possession with intent to distribute marijuana, or possession of marijuana-related paraphernalia to petition the court to vacate his or her conviction or probation before judgment. To be entitled to a hearing, a defendant need only file a written motion alleging that vacating the conviction or PBJ is in the "interest of justice." If the motion is denied, the bill gives every defendant the right to an appeal. If the motion is granted, the State has the right to appeal.

Additionally, this bill would allow any defendant ever convicted of any crime to move to vacate the conviction if he or she alleges newly discovered evidence that would have changed the result. Unlike Criminal Procedure Article, Section 8-301, this bill does not limit its applicability to charges filed in the circuit court and does not differentiate between convictions after a trial and guilty pleas. Here too, both the State and the defendant have an automatic right to appeal. There is no limit on the number of motions a defendant can file.

Every appeal from every motion to vacate filed in the Circuit Court will be handled by the Criminal Appeals Division of the Office of the Attorney General. Given the number of eligible defendants, the Criminal Appeals Division estimates it would require no less than four full-time attorneys to handle the appeals from these motions.

The Attorney General's Office cannot handle the appellate workload this bill would create with its current resources. The Attorney General urges an unfavorable report for SB 860.

cc: Members of the Committee