



**Testimony for the Senate Judicial Proceedings Committee
March 4, 2020**

SB 921 Courts -- Jury Service – Disqualification

FAVORABLE

TONI HOLNESS
PUBLIC POLICY DIRECTOR

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland urges a favorable report on SB 921, which would expand eligibility for jury service in Maryland by repealing the current law which disqualifies persons from serving on juries simply because they had ever been sentenced for an offense punishable by one year imprisonment or are facing charges for an offense that is punishable by at least one year imprisonment. Under SB 921, the only persons disqualified from jury service would be those who are currently serving a sentence for a felony conviction.

An individual's civic duty to be called for and serve on a jury is one the ACLU of Maryland considers of grave importance and correspondingly, the right to a trial by a jury of one's peers is fundamental to our system of justice. As the Supreme Court of the United States recognized in *Strauder v. West Virginia*,¹ a jury must be drawn from a group "composed of the peers or equals [of the defendant]; that is, of his neighbors, fellows, associates, persons having the same legal status in society as he holds."²

Jury disqualification based on pending charges undermines the presumption of innocence

As this body knows, persons facing criminal charges enjoy a presumption of innocence. The current law undermines that presumption by disqualifying persons from serving on juries simply because they may be currently facing charges for an offense punishable by at least one year imprisonment.

The current law is likely to be racially and geographically disparate

In Maryland, African Americans make up only 30% of the general population, but over 70% of the incarcerated population. Moreover, we know that some communities—communities of color and poor communities—are over-policed and face greater entanglement with the criminal legal system. The disparate rate of jury disqualification of African Americans and residents of over-policed neighborhoods undermines the fundamental notion of a jury of one's peers

¹ 100 U.S. 303 (1880).

² MD. CODE ANN., CTS. & JUD. PRO. § 8-104 (2017).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

when for some Marylanders, many of their peers are ineligible to serve as jurors.

There are many non-serious offenses punishable by a year imprisonment which should not disqualify potential jurors

Unfortunately, there are many minor offenses punishable by a one year prison term in current law. There is no logical basis to exclude persons convicted of these offenses from serving on juries. Consider, for example possession of counterfeit items, which is a misdemeanor punishable by 3 years imprisonment (Criminal Law, §8-601(c)(2)); disorderly conduct in a cemetery, also a misdemeanor punishable by 2 years imprisonment (Criminal Law, §10-404(c)); or unlawful capture of over \$20,000 worth of striped bass Natural Resources, §4-1201(d)(2), a misdemeanor punishable by 2 years imprisonment. These examples demonstrate that there are many criminal penalties that have no nexus to jury disqualification.

SB 921 would begin to align Maryland's law on jury service with the law on voter eligibility

In 2007, this body revised the Maryland voter eligibility law to remove consideration of prior convictions or the nature of the offense. As a result, any person convicted of a felony would be re-enfranchised upon completion of their sentence or supervision.³ The Fiscal and Policy Note accompanying the 2007 legislation noted that in 2006, about 8,678 persons were released from the Department of Corrections after serving a sentence for a felony. In 2015, with the passage of HB 980, disenfranchisement laws were further limited to the period during which a person convicted of a felony is incarcerated. In other words, persons under supervision would no longer be disenfranchised.⁴ Governor Hogan vetoed the bill, but his veto was overridden in 2016. The legislation re-enfranchised over 40,000 Marylanders.⁵

The spirit of the voter re-enfranchisement effort is at play in SB 921 and demonstrates an understanding that entanglement in the criminal legal system should not exclude Marylanders from the core democratic functions of society.

For these reasons, we urge a favorable report on SB 921.

³ HB 273, Md. Gen. Ass. (2003).

⁴ HB 980, Md. Gen. Ass. (2015).

⁵ Matt Ford, *Restoring Voting Rights for Felons in Maryland*, The Atlantic (February 9, 2016), available at <https://www.theatlantic.com/politics/archive/2016/02/maryland-felon-voting/462000/>