

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

## **SUPPORT SB710/HB1442: THE MARYLAND REDEEM ACT OF 2022**

### ***Reduce the Waiting Periods for Criminal Record Expungement***

#### **THE CHALLENGE**

- According to the National Employment Law Project (NELP), one in three US adults have a criminal record that will surface in a routine background check. In Maryland, it is estimated that 1.5 million residents, nearly 25% of the state's population, have a criminal record.
- Criminal records can serve as both the cause and consequence of poverty. The ability to secure stable employment is crucial to the successful reentry of those individuals who have experienced incarceration. Unfortunately, a criminal record can serve as an insurmountable barrier to securing gainful employment and other critical resources, even if the record did not result in a conviction.
- One of the primary drivers of high recidivism rates is the inability of returning citizens to find a job: up to **60 percent of formerly incarcerated persons remain unemployed one year** after their release.
- More than 70% of employers perform background checks on all of their job applicants and deny employment to many returning citizens on the basis of a record. A past criminal conviction of any sort reduces job offers by half.

#### **CURRENT EXPUNGEMENT POLICY**

- Charges that did **not** result in a guilty conviction are eligible for expungement:
  - Three (3) years after your case is decided. You may file for expungement earlier if you also sign a general release and waiver of all legal claims.
  - Probations Before Judgment (PBJs) are eligible for expungement three (3) years after the completion of probation.
  - Additionally, under current Maryland law, charges that arise from the same incident, transaction, or set of facts are considered a 'unit of charges'. Therefore, if a person is not entitled to the expungement of one charge or conviction within a unit, the person is not entitled to expungement of **any other charge within the unit.**
- Charges that **did** result in a guilty conviction are eligible for expungement:
  - Nuisance crime(s) are eligible three (3) years after a guilty conviction or the satisfactory completion of the sentence, including probation.
  - Under the Maryland Second Chance Act, certain crimes can be shielded from public view, but **only one** petition can be filed in a lifetime.
  - Under the Justice Reinvestment Act, certain crimes are eligible ten (10) years after a guilty conviction or the satisfactory completion of the sentence, including probation.
  - In Oct 2018, three felonies are now eligible for expungement – possession w/ intent to distribute, burglary, and theft.
- Other States:
  - [Maryland ranks 42nd on waiting period length](#) for misdemeanor expungement and 35th on expungement waiting periods for non-violent felonies. We are far behind Mississippi, West Virginia, Colorado, North Dakota and more.
  - [Missouri reduced misdemeanor waiting periods](#) from 10 to *one* year. They also reduced most felony convictions (which is much broader than the REDEEM Act) from 20 years down to three.
  - [New Jersey reduced its waiting periods](#) for single felonies to 5 years and misdemeanors down to 3 years.
  - [Oregon has reduced their toughest misdemeanors down](#) to 3 years *from the date of conviction* and Class C felonies down to 5 *from the date of conviction*.

#### **THE SOLUTION: PASS THE REDEEM ACT**

- Reduce the expungement waiting periods of non-convictions, PBJs, and stets to within **one year** after the disposition.
- Allow misdemeanors and **nonviolent** felony convictions to be eligible for expungement within **three (3) and (5) years**, respectively, *after the completion of the sentence*, possible drug treatment, **and** any mandatory supervision, including parole and probation.
- Grant access to **Record Expungement Designed to Enhance the Employability** for the 1.5 million **Marylanders (REDEEM)** who are shut out of the workforce due to a criminal record.

**For more information, contact:**

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## GLOSSARY OF TERMS: RESTRICTING PUBLIC ACCESS TO CRIMINAL RECORDS

### **Criminal Record Expungement**

According to Maryland Code, Criminal Procedure, §10-101:

- (d) “Expunge” means to remove information from public inspection in accordance with this subtitle.
- (e) “Expungement” with respect to a court record or a police record means removal from public inspection:
  - (1) by obliteration;
  - (2) by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access

### **Criminal Record Shielding (applicable only under Maryland Second Chance Act of 2015)**

According to Maryland Code, Criminal Procedure, §10-301:

- (e) “Shield” means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public.

According to Maryland Code, Criminal Procedure, §10-302:

- (b) A shielded record shall remain fully accessible by:
  - (1) criminal justice units for legitimate criminal justice purposes;
  - (2) prospective or current employers or government licensing agencies that are subject to a statutory or regulatory requirement or authorization to inquire into the criminal background of an applicant or employee for purposes of carrying out that requirement or authorization;
  - (3) a person that is authorized or required to inquire into an individual’s criminal background under § 5-561(b), (c), (d), (e), (f), or (g) of the Family Law Article;
  - (4) the person who is the subject of the shielded record and that person’s attorney;
  - (5) health occupations boards established under the Health Occupations Article;
  - (6) the Natalie M. LaPrade Medical Cannabis Commission established under Title 13, Subtitle 33 of the Health – General Article;
  - (7) a person that uses volunteers who care for or supervise children;
  - (8) a person that attests under the penalty of perjury that the person employs or seeks to employ an individual to care for or supervise a minor or vulnerable adult, as defined in § 3-604 of the Criminal Law Article; and
  - (9) a person who is accessing a shielded record on behalf of and with written authorization from a person or governmental entity described in items (1) through (8) of this subsection.

### **Vacature**

According to Maryland Code, Criminal Procedure, §8-301.1, Maryland law provides for the vacature of a probation before judgment or conviction if:

- (1) (i) there is newly discovered evidence that:
  - 1. could not have been discovered by due diligence in time to move for a new trial under Maryland Rule 4-331(c); and
  - 2. creates a substantial or significant probability that the result would have been different; or
- (ii) the State’s Attorney received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction; and
- (2) the interest of justice and fairness justifies vacating the probation before judgment or conviction.

*NOTE: When a conviction has been vacated, it is then eligible for criminal record expungement or shielding. Vacating a conviction is not the same as record expungement or shielding.*