

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

TESTIMONY IN SUPPORT OF HOUSE BILL 1442:

Criminal Procedure – Expungement of Records – Modifications

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

FROM: Caleb Jasso, Policy Advocate

DATE: March 15th, 2022

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. We support **House Bill 1442** as a means of reducing the impact of incarceration and enhancing employment opportunities for lower-income workers and job seekers throughout the state.

A criminal record can be both the cause and consequence of poverty and has detrimental effects on the employment prospects for the 25% of working-age Marylanders with a record. With this in mind, I would like to briefly list what some other states have been doing in terms of expungements for comparison and, in support of what my colleagues have said here today.

The waiting periods for misdemeanor convictions range from a high of 10 or 15 years in Maryland (depending on the nature of the offense) to 0 years in Mississippi (although only first-time offenses are eligible), with most states falling at the lower end of that range. Of the 44 states that authorize clearing of misdemeanor convictions, a near-majority have waiting periods of 3 years or less (19 states) and the vast majority have waiting periods of 5 years or less (35 states).

The waiting periods for felony convictions range from as high as 10 or 20 years in North Carolina to as low as 0-2 years in California, with most states falling at the lower end of that range. Of the 35 states that authorize clearing of felony convictions, a near-majority have waiting periods of 7 years or less (17 states).

- [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*.
- Mississippi currently has **no waiting period** for expungement of misdemeanors and 5 years for felonies after, [“successful completion of all terms and conditions of the sentence.”](#)
- Texas currently has a waiting period of 0 to 2 years for a misdemeanor after, [“completion of the community supervision”](#) or [“completion of the person's sentence”](#) (both used in statute to include

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[“any term of confinement imposed and payment of all fines, costs, and restitution imposed”](#))” but no expungement for a felony conviction.

- **Arizona** currently has a waiting period of 2 or 3 years for a misdemeanor and 5 or 10 for a felony, both of which are eligible after an individual has [“completed the conditions of probation or sentence and was discharged by the court.”](#)
- **Arkansas** has the same waiting period time range, 0 or 5 years, for both misdemeanors and felonies after, [“Completion of the person’s sentence,” defined to include custody time, monetary obligations, community service, discharge from probation or parole, suspended sentence, training programs that were conditions of supervision, and driving reinstatement requirements and fees.”](#)
- **West Virginia** currently has a waiting period of 1 or 2 years for a misdemeanor conviction, after completion of any sentence of incarceration or completion of any period of supervision, whichever is later in [time](#),” and 5 years for a felony conviction, “after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in [time](#)”

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, 72% of Maryland's prison population is black, the highest in the nation, and one out of three Marylanders returning from incarceration return to Baltimore City. The Department of Justice has [found](#) high rates of recidivism among returning citizens, with half of all returning citizens recidivating within 3 years and 60 percent recidivating within 5 years. 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. This is mainly due to the fact that 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. This leaves many of the 1.5 million Marylanders with a criminal record out in the cold when trying to obtain gainful employment. When securing employment through traditional means becomes untenable, many opt for entrepreneurial ventures, skills training, or both, to stay afloat. A 2015 Manhattan Institute study [revealed](#) that employment, especially within the first six months of release, drastically lowers the likelihood of recidivism for nonviolent offenders.

Unfortunately, Maryland has drastically longer waiting periods for expungement than most other states in the nation. [Maryland Code Ann., Criminal Procedure §10–110](#) states that an individual must wait **10 years** before they are eligible to expunge most *nonviolent* misdemeanor convictions from their record, **15 years** for a common-law battery or 2nd-degree assault conviction, and **15 years** for a non-violent felony. The waiting period kicks in *after* they have completed their entire sentence, parole or probation, drug treatment, *and* any mandatory supervision. In most instances, the waiting periods are *far* longer than the actual sentence, leaving individuals released from incarceration with barriers to education, employment, housing, public assistance, occupational licensing, and much more.

According to a [recently released report](#) from Collateral Consequences Resource Center (CCRC), 42 other states have shorter waiting periods for misdemeanor expungement, including Texas, Alabama, Mississippi, and Utah. With regards to non-violent felonies, Maryland ranks 35th in the nation on expungement waiting periods, far behind Colorado, Arkansas, North Dakota, and Oklahoma. [Maryland Code Ann., Criminal Law §14–101](#) lays out which crimes are considered “crimes of violence” and makes

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it clear that none of them are eligible for expungement. Senate Bill 710's provisions do not affect violent crimes in any way. **House Bill 1442 specifically targets non-violent felonies and misdemeanors** with the express intent of removing barriers to employment. It also clears up some slight legal confusion regarding the ineligibility to expunge invalidated warrants both in Maryland and in other states (i.e. fugitive warrants).

Senate Bill 710 makes several changes to the expungement statutes including:

1. Non-convictions (acquittals, dismissals, nolle pros)
 - a. From 3 years to immediately
2. Probations Before Judgment
 - a. From 3 years to eligible at the completion of Probation
 - i. Not including Traffic Charges - DUI
3. Stets, Not criminally responsible, MJ possession
 - a. From 3 years to 1 year
 - b. Marijuana Possession ([§10-105 a\(12\)](#)) - from 4 years to 1 year
4. Misdemeanors
 - a. From 10 to 3 years
5. Contact Misdemeanors (Common-Law Battery & 2nd Degree Assault)
 - a. From 15 to 5 years
6. Non-Violent Felonies
 - a. From 15 to 5 years

Reducing these waiting periods will 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. The provisions of Senate Bill 710 are well in line with what most other states are doing regardless of their political affiliation. Everyone must work if they expect to support themselves and their families, Maryland law shouldn't be the reason returning citizens are locked out of employment over a decade *after* they have served their time. For these reasons, we urge a favorable report on **House Bill 1442** and are open to discussing the provisions of the bill with the committee members.

For more information, contact:

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