

SUPPORT

SB17– Criminal Procedure-Expungement of Records-Good Cause

Testimony of
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Thursday, February 2, 2023
Senate Judiciary Committee

Homeless Persons Representation Project, Inc. (HPRP) is a non-profit legal services organization providing free legal representation to people who are housing insecure 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.

SB17 will provide access to expungement for vulnerable Marylanders.

The Homeless Persons Representation Project (HPRP) supports SB17. SB17 allows individuals to realize the benefits of expungement after a showing of good cause. Currently, there is no provision to avoid the ten- or fifteen-year waiting period to obtain expungement of limited convictions –no matter the need or circumstances. For example, under current law, an individual convicted of trespass would have to wait a decade to be considered for employment opportunities that could provide food, safe housing, and other economic opportunities for herself and her family. It is well established that having a criminal record creates barriers to economic and employment opportunities. The existing long waiting periods reinforce these barriers. The “good cause” exception proposed by SB17 will reduce the impact of criminal records and allow criminal-system-involved individuals to participate in their communities fully.

A “good cause” exception to the long expungement waiting periods is in the interest of justice.

In this era of spotlighting wrongful convictions, there have been efforts to exonerate people charged in serious high-profile cases. However, these initiatives are not generally available for eligible misdemeanor convictions under Section 10-110. According to the report, *Race and Wrongful Convictions in the United States 2022*, “misdemeanor convictions outnumber felonies by at least four to one but account for less than two percent of non-drug exonerations. Only a tiny fraction of innocent defendants who are convicted of misdemeanors or nonviolent felonies are ever exonerated.”¹ The National

¹ *Race and Wrongful Convictions in the United States 2022* Samuel R. Gross, Senior Editor, srgross@umich.edu Maurice Possley, Senior Researcher Ken Otterbourg, Researcher Klara Stephens, Research Fellow Jessica Weinstock Paredes, Research Fellow Barbara O’Brien, National Registry Of Exonerations, September 2022 available at <https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf>

Registry also recognizes “Group Exonerations” as the exoneration of individuals convicted of crimes due to a pattern of law enforcement misconduct. The Baltimore Gun Trace Task Force group has at least 759 exonerees in the National Registry.² The 2020 report of the Maryland Commission to Restore Trust in Policing noted the impact a conviction (whether wrongful or valid) can have on the life of the convicted. The report stated, “The dismissal of pending criminal charges or a criminal conviction against an individual is no trivial matter. Each criminal case involves a human being charged as a defendant, and the criminal process significantly impacts that defendant, his/her family, the defendant’s ability to work, the victims of the alleged crime, and the victim’s family.”³ SB17 provides an avenue for the courts to remedy the injustice of invalid convictions for misdemeanors and certain enumerated nonviolent felonies.

Criminal records disproportionately impact Black and brown communities.

It is well established that the criminal system has disproportionately impacted people of color. According to a report by the National Registry of Exonerations, “Black people are more likely to be stopped, searched, arrested and prosecuted in routine drug possession cases;... Black people are also the main targets in a shocking series of scandals in which police officers systematically framed innocent defendants for drug crimes that never occurred.”⁴ Efforts to change this systemic injustice must include addressing the collateral consequences of decades of discriminatory policies, such as the economic barriers created by criminal records. For example, over 60% of employers would “probably not” or “definitely not” consider a job applicant for employment once they become aware that the individual has a criminal record.⁵ According to “employment testing” studies, workers of color with a criminal record are even less likely to be interviewed for a job when compared with similarly situated whites.⁶ The National Institute of Justice reported that having a criminal record reduced the prospect of employment by two-thirds for African Americans. The same studies also showed that Hispanic and Latino Americans suffered similar penalties for a criminal record. The ability to expunge these convictions is a significant step toward equity, but a decade of delayed justice does little to relieve the burden on Black and brown communities. SB17 moves Maryland closer to realizing systemic transformation.

² National Registry of Exonerations – Group Registry, available at <https://exonerations.newkirkcenter.uci.edu/groups/group-exonerations>

³ Commission to Restore Trust in Policing, Commission Report, December 2020 available at: https://exonerations.newkirkcenter.uci.edu/groups/sites/default/files/2021-01/Final_Report_on_Restoring_in_Baltimore_Police.pdf

⁴ Race and Wrongful Convictions....

⁵ Harry Holzer, Steven Raphael, Michael Stoll, “Perceived Criminality, Criminal Background Checks and the Racial Hiring Practices of Employers,” (April 2005), at page 3.

⁶ Devah Pager, “The Mark of a Criminal Record” 108 AmJ.Soc. 937 (2003)

The “good cause” exception will positively impact citizens experiencing homelessness.

The number of Americans caught in the revolving door between homelessness, and the criminal system is in the tens of thousands.⁷ Formerly incarcerated people are almost ten times more likely to be homeless, and experiencing unsheltered homelessness increases people’s interactions with the criminal system. Despite guidance from HUD that criminal record screening can violate the Fair Housing Act⁸ and recent HUD research finding “criminal history is not a good predictor of housing success,” landlords routinely reject tenant applicants with a criminal record regardless of its content, age, or direct relationship to housing.⁹ Such practices exclude far more people than necessary to preserve public safety and result in the denial of housing to those with minimal criminal records, including records of minor convictions. Criminal records both cause homelessness and prevent individuals from ending their homelessness. The “good cause” exception will provide those at risk of homelessness access to the critical permanent housing resources and employment opportunities needed to end a person’s experience of homelessness.

HPRP strongly urges the Committee to issue a favorable report on SB17. Please contact Kirsten Gettys Downs (kgettysdowns@hprplaw.org) with questions or for additional information.

⁷ U.S. Interagency Council on Homelessness, Reduce Criminal Justice Involvement, August 15, 2018, available at <https://www.usich.gov/solutions/criminal-justice>.

⁸ U.S. Department of Housing and Urban Development, Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions, June 10, 2022, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>.

⁹ HUD Office of Policy Development and Research, Tenant Screening with Criminal Background Checks: Predictions and Perceptions are not Causality, May 17, 2022, available at <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.