

Maryland General Assembly
Senate Judicial Proceedings Committee, 2023 Session
Testimony in Support (favorable) to HB 854
“Criminal Procedure – Expungement of Records – Revisions”
Written testimony submitted on 27 February, 2023

To the Chair, members and staff of the 2023 House Judiciary Committee,

Thank you for taking time to read my testimony **in support** of HB 0854, “Criminal Procedure – Expungement of Records – Revisions”. I have a favorable opinion about this bill, and I am supportive of it. For background, I am a Maryland resident and I reside in Montgomery County. Here are many reasons why I think this bill should be advanced out of the House Judiciary committee.

The current relevant laws in place DO NOT comply with the Bruen decision where expungements are concerned. Under current laws, in some cases if a person’s record has been expunged the “expunged” information can still be used against the person when she applies for an HQL or wear & carry permit, or when purchasing regulated firearms, as well as when purchasing a non-regulated firearm. These laws violate the 2nd Amendment and the prescriptions of the recent U.S. Supreme Court Bruen decision because they are counter to the plain text meaning of the Second Amendment to the U.S. Constitution. The existing expungement law referenced here is analogous to regulations and laws from the 20th century, not the era of the country’s founding. It is outside the analogs and norms of all known and referenced historical regulations from the era of the nation’s founding. There are no founding era historical analogs to the existing regulation. The existing law matches the historical tradition of the 20th century instead of the era of the country’s founding.

However, the Maryland Declaration of Rights recognizes the U.S. Constitution Bill of Rights as the Supreme Law of the Land. This bill does not conflict with the 2nd Amendment and the prescriptions of the recent U.S. Supreme Court Bruen decision because the bill is in keeping with the plain text meaning of the Second Amendment to the U.S. Constitution. The proposed law is analogous to regulations and laws from the 18th century, including the era of the country’s founding. It is within the analogs and norms of all known and referenced historical regulations from the era of the nation’s founding. There are founding era historical analogs to the bill’s proposed regulations. The bill matches the historical tradition of the 18th century and the era of the country’s founding. Therefore, on its face the proposed law is in keeping with the Constitution and the Maryland Declaration of Rights, as well as the requirements from hundreds of years of judicial precedent including the Bruen decision.

It is also in compliance with the Maryland Declaration of Rights, including Articles:

2 – Which recognizes that the US Constitution is the Supreme Law of the State, including the 2nd Amendment.

6 – That requires Maryland’s Senators and Delegates to be accountable for their conduct as Trustees of the Public. Because the bill meets the requirement of the Declaration and Bill of Rights, and because the Committee members have been informed and know the Act is in compliance with the Declaration and Bill of Rights, should the bill be made law the Public trust will be upheld by the Committee members and other General Assembly members.

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16 – That sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter. This proposed law is not sanguinary. It is the opposite. It enables expungement for specific crimes in order to ensure that the person’s right to keep and bear arms is not illegally or unconstitutionally quashed.

19 – That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land. This law will ensure that people who are entitled to remedy via expungement receive this remedy.

24 – Which prohibits unconstitutional and illegal loss of liberties, property, personal destruction, etc. If the bill is not enacted people that should have expungements but don’t have them will instead be unconstitutionally and illegally deprived of liberty, property and in some cases personal destruction.

25 – That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law. This proposed law in in keeping with the exact requirements of this Article.

This bill should be passed with great haste out of committee. This law will help the State to ensure that the rights of its law-abiding citizens are respected and protected. It is in keeping with lawful governance and rule of law and it complies with the requirements of Supreme Court precedent and jurisprudence. It also restores trust in the Maryland’s elected Trustees. It will help reduce violent crime and protect the most vulnerable people among us, especially women, minorities, people of color and low-income residents who are most often exposed to criminal violence. When this law is passed people from these segments of our society will be able to legally exercise the right to bear arms for self-defense outside the home.

PLEASE PASS THIS LEGISLATION WITH ALL DUE HASTE. Thank you for your consideration.

Frank Clary

03 March 2023