

Testimony of the Human Trafficking Prevention Project

BILL NO: House Bill 644
TITLE: Criminal Procedure – Expungement of Records – Good Cause
COMMITTEE: Judiciary
HEARING DATE: February 23, 2023
POSITION: SUPPORT

House Bill 664 would allow a court to grant a petition for expungement of the convictions listed in Maryland Criminal Procedure Article §10-110 at any time for good cause. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it will allow Marylanders to petition for expedited criminal record relief when an appropriate case presents itself, and will allow individuals, including survivors of human trafficking, to access opportunities to better their lives.

Maryland has drastically longer expungement waiting periods than most other states in the nation, which creates major obstacles for any Marylander hoping to petition for relief,¹ including criminalized survivors of trafficking. Longer waiting periods have historically reflected the belief that individuals should only be eligible for expungement after successfully showcasing their rehabilitation through a period of crime-free behavior.² However, many states have since shortened waiting periods in recognition of the inverse, which is that record clearing actually plays a constructive role in facilitating the crime-free rehabilitation most expungement statutes require,³ and that lengthy waiting periods may actually contribute to recidivism rather than discourage it.⁴

In an effort to mitigate the harm of these lengthy waiting periods, Maryland has a “good cause” provision built into §10-105(c)(9) of the Criminal Procedure Article, which courts have interpreted as “granting [them] the discretion to relieve a petitioner of the time requirement” set forth within the statute.⁵ Maryland’s case law is consistent with the General Assembly’s stated intent for passage of the good cause amendment in 1988, which is “to provide the court with some discretion to grant an earlier expungement in appropriate cases.”⁶ However, this provision applies only to the section of Maryland’s expungement law allowing for the expungement of non-convictions. HB 664 would extend the availability of this ameliorative provision to expungements filed under MD Criminal Procedure §10-110, which applies primarily to convictions for minor misdemeanors.⁷

It is important to note that criminal records are both a predictor and the result of exposure to human trafficking, and, as a result, accessing relief under Maryland’s expungement law is crucial to the ability of survivors to heal. Data obtained from a national survey of both sex and labor trafficking survivors shows 91% of survivors reporting having been arrested at some point in their lives, with over 50% of those survivors stating that every single arrest

¹ Margaret Love & David Schlusell, *Waiting for Relief, A National Survey of Waiting Periods for Record Clearing*, Collateral Consequences Resource Center, 1-5 (2022) (showing 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).

² Brian M. Murray, *Retributive Expungement*, 169 U. Pa. L. Rev. 665, 683 (2021), https://www.pennlawreview.com/wp-content/uploads/2021/05/Murray_Final.pdf.

³ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harvard L. Rev. 2460, 2479 (2020), <https://harvardlawreview.org/2020/06/expungement-of-criminal-convictions-an-empirical-study/>.

⁴ *Research on Recidivism and Employment*, Nat’l Inst. Of Justice, <http://www.nij.gov/topics/corrections/reentry/pages/employment.aspx>.

⁵ *In re Expungement Petition of Meagan H.*, No. 1397, Sept. term, 2021, 2022 WL 3153968, at *5 (Md. Ct. Spec. App. Aug 8 2022).

⁶ *Id.* at 4 (quoting *Stoddard v. State*, 396 Md. 653, 664 (2006)).

⁷ Michael Dresser, *Hogan Signs Bill to Overhaul Maryland Criminal Justice System* (May 19, 2016) (Describing the 2016 passage of the Justice Reinvestment Act which expanded the list of convictions that may be expunged from an individual’s record to include “misdemeanors related to theft and drug possession, a change which was intended “to make it easier for former offenders to qualify for jobs, housing and education.”)

on their record was a direct result of their trafficking experience. Of the 24.6% of respondents who reported they had cleared or begun to clear their records, all reported it was a long and painful process.

After escaping a trafficking experience, survivors commonly express wanting to leave their experiences behind them and the need to provide a better lie for themselves.⁸ This often involves finding a safe place to live, accessing programs that provide mental health services, and developing improved life skills.⁹ However, the economic stability provided by access to employment is of crucial importance to survivors.¹⁰ Given that employers routinely conduct criminal background checks on job candidates¹¹ and that the job market has trended towards requiring professional licenses, especially when the job includes providing assistance to vulnerable populations like nursing,¹² it is essential that any state-based remedy allow for the broadest possible relief, rather than impose additional hurdles that prevent survivors from moving forward with their lives.

With the expanded access to the good cause expungement provision provided in HB 664, human trafficking survivors can petition the court to expedite the start of their new lives. For these reasons, the Human Trafficking Prevention Project supports House Bill 664, and respectfully urges a favorable report.

For more information, please contact:
Jessica Emerson, LMSW, Esq.
Director, Human Trafficking Prevention Project
jemerson@ubalt.edu

⁸ Jeanette Hussemann, et al., *Bending Towards Justice: Perceptions of Justice among Human Trafficking Survivors*, U.S. Department of Justice Office of Justice Programs (Apr. 2018), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/bending-towards-justice-perceptions-justice-among-human-trafficking>, (noting that survivors perceived justice as intimately related to their sense of autonomy, self-efficacy, and empowerment).

⁹ Rajaram, *supra* note 5 at 194.

¹⁰ Rajaram, *supra* note 5 at 195.

¹¹ Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, Brennan Center for Justice (Jun. 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment> (reporting that, as of 2018, 80 percent of employers conduct background screening on candidates for full-time positions).

¹² *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. Commission on Civil Rights 1, 49 (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> (citing that about 30 percent of U.S. workers now need licenses, which is a five-fold increase since the 1950's); *see also, FAQs Criminal History Record Checks*, Maryland Board of Nursing (last visited Jan. 31, 2023), <https://mbon.maryland.gov/Documents/FAQs%20CHRC%2012.16.pdf> (noting that Maryland requires criminal history checks for all RN, LPN, and CNA applicants).