



## Maryland State's Attorneys' Association

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**DATE:** February 20, 2024

**BILL NUMBER:** HB 788

**POSITION:** Oppose

The Maryland State's Attorneys' Association (MSAA) opposes HB 788.

While the intent behind HB 788 is laudable – permitting returning citizens who have paid their debt to society an opportunity to compete on equal footing for employment – and one that MSAA agrees increases public safety, as returning citizens are less likely to recidivate when they are afforded meaningful employment opportunities and feel like they belong to and are valued by their communities, HB 788 goes too far.

In essence, HB 788 adds individuals with prior criminal convictions to the list of protected classes in MD. CODE ANN., STATE GOV'T § 20-601 *et seq.*, and prohibits employers from discriminating against a returning citizen unless their criminal record constitutes a bona fide occupational qualification. What HB 788 loses sight of is that, in many circumstances, employers ought to take an applicant's criminal record into consideration, even in circumstances where an applicant's prior involvement with the criminal justice system, *vel non*, falls short of a "bona fide occupational qualification" as that term is currently interpreted in state and federal courts.

Nothing prohibits employers from hiring a returning citizen, but preventing employers from considering their prior criminal conduct would have severe and unintended consequences. If HB 788 is enacted, hiring managers would be allowed to consider if an applicant was fired from a previous job because they were routinely late to work, but not if that applicant was fired for stealing from their previous job. HB 788 could act to preclude State's Attorneys from considering whether an applicant was previously convicted of perjury or obstruction of justice, and police chiefs from considering whether an applicant was previously convicted of using excessive force, all at the risk of being dragged into costly litigation.

Maryland's expungement provisions already provide an adequate balance – one that affords returning citizens an opportunity to remove certain criminal convictions from their records while recognizing that expungement of convictions shouldn't occur instantly and that some convictions are inappropriate to expunge ever. HB 788 renders our expungement laws nugatory, and MSAA urges this Committee to issue an unfavorable report.