



**TESTIMONY IN SUPPORT OF HOUSE BILL 73**

**Criminal Procedure – Expungement – Completion of Sentence**

**TO:** Members of the House Judiciary Committee

**FROM:** Center for Criminal Justice Reform, University of Baltimore School of Law

**DATE:** March 1, 2024

The University of Baltimore School of Law’s Center for Criminal Justice Reform (“the Center”) is dedicated to supporting community-driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. The Center supports House Bill 73.

- I. House Bill 73 will correct the current interpretation of Maryland law, which permanently excludes otherwise eligible citizens from having offenses expunged when individuals seeking expungement violated probation in any manner.**

In 2022, the Court of Special Appeals ruled in *In re Expungement Petition of Abhishek I.* that any probation violation<sup>1</sup> means a conviction is *indefinitely* ineligible for expungement. The court found that a violation, regardless of its nature, means that the individual has not satisfactorily completed his sentence. Due to this ruling, Marylanders with decades-old misdemeanors have no access to expungements, impacting their ability to secure employment, housing, education, occupational licensing, and financing. Since this ruling, the Maryland General Assembly passed the REDEEM Act, which cuts the criminal record expungement waiting time in half for many offenses, allowing millions of Marylanders to seek relief sooner, only to discover that they are still barred due to the Abhishek ruling.

House Bill 73 seeks to resolve this challenge by altering the expungement criteria to be accessible at “**the time when a sentence has expired**, including any period of probation, parole, or mandatory supervision,” removing the term “satisfies” and “satisfactorily” from the expungement statutes. This means that once a person has served the entire sentence *and* finished the additional 5-10-year waiting period, they will be eligible for expungement *if* the charge is eligible. The State’s Attorney’s Office and the victim where relevant still retain the right to object to the expungement in accordance with Criminal Procedure §10–110 f(1), leaving the courts to make the final decision as to whether or not the expungement is in the interest of justice as opposed to a blanket ban on all violations. This is a rational and balanced approach to ensuring that the

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<sup>1</sup> The individual seeking expungement in this case had previously violated his probation terms by possessing cannabis, a substance that, since legalization, has brought \$700 million to the state in just one year.

estimated 25% of working-age Marylanders with a record<sup>2</sup> can receive the expungements necessary to allow them to meaningfully reacclimate into society.

## **II. Expanding expungement through House Bill 73 will reduce the substantial collateral consequences associated with having a criminal record.**

The impact of an arrest or conviction record on individuals, families and communities is staggering, including the extensive list of collateral consequences that can follow a justice-involved individual for years, well after a case or period of incarceration concludes. These impacts span numerous areas central to a person’s ability to survive and thrive, impeding access to stable housing, education, healthcare, voting, occupational licensing, rights related to the parent-child relationship and more. These consequences compound. For example, of those who are able to access jobs, research indicates that in the first few months, formerly incarcerated people earn just 53% of the median U.S. worker’s wage.<sup>3</sup>

Background checks are being used increasingly for non-criminal justice purposes.<sup>4</sup> More than 92% of employers perform background checks for job applicants<sup>5</sup> and deny employment to many returning citizens based on a criminal record. If a potential employer, institution of higher education, department of licensure, or housing provider obtains a fingerprint background check, a person’s full record (including non-convictions) within a unit would become available to them. Most individuals seeking background checks cannot accurately distinguish between a conviction and a non-conviction—let alone understand the circumstances that led to a “guilty” verdict in the first place. Unsurprisingly, expungement recipients exhibit much better employment outcomes.<sup>6</sup> Thus, expanding expungement opportunities is vital for the economic viability of returning citizens *after* they have served their full sentence and completed mandatory supervision.

## **III. House Bill 73 will make our communities safer.**

Expanding actual relief for individuals who are already eligible for expungement does not pose a public safety risk; to the contrary, it will promote public safety. An empirical analysis of Michigan’s expungement practices found that recipients of expungement posed a lower crime risk than the general population of Michigan as a whole, suggesting there is at least a strong correlation between expungement and lower recidivism.<sup>7</sup> There is no empirical evidence that expungement

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<sup>2</sup> Bureau of Justice Statistics, U.S. Department of Justice, Survey of State Criminal History Information Systems, 2012, 26 [https://drive.google.com/file/d/1hUGVpwIl6Z\\_GN4KOK6gV1eNkiyYbjbJI/view](https://drive.google.com/file/d/1hUGVpwIl6Z_GN4KOK6gV1eNkiyYbjbJI/view).

<sup>3</sup> *New Data on formerly Incarcerated People’s employment reveal labor market injustices*. Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

<sup>4</sup> Becki Goggins, *New Blog Series Takes Closer Look at Findings of SEARCH/BJIS Survey of State Criminal History Information Systems, 2016*, SEARCH (Mar. 29, 2018) (From 2006 to 2016, “the number of fingerprints processed for noncriminal justice purposes increased by 89.6% . . . while the number processed for criminal justice purposes actually decreased by 6.6%.”)

<sup>5</sup> Society for Human Resource Management, *Conducting Background Investigations and Reference Checks*, [https://www.shrm.org/topics-tools/tools/toolkits/conducting-background-investigations-reference-checks#:~:text=A%20survey%20by%20SHRM%20found,cycle%20\(see%20chart%20below\)..](https://www.shrm.org/topics-tools/tools/toolkits/conducting-background-investigations-reference-checks#:~:text=A%20survey%20by%20SHRM%20found,cycle%20(see%20chart%20below)..)

<sup>6</sup> J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2528 (2020).

<sup>7</sup> *Id.* at 2512–14.

undermines public safety.<sup>8</sup> Therefore, any purported safety risks from House Bill 73's opponents are misplaced.

Beyond the absence of a public safety risk, House Bill 73 holds the potential to promote public safety and reduce crime. There is ample research that demonstrates the criminogenic effects associated with the collateral consequences having a criminal record.<sup>9</sup> It follows that alleviating the burden of these collateral consequences would reduce illegal behavior among expungement recipients and promote the human dignity and meaningful societal participation that help any of us succeed.

The Center fully supports this important bill as part of a broader set of efforts to remove barriers to employment, education, housing, and more for Marylanders with criminal records who have paid their debt to society. For these reasons, we respectfully urge a favorable report on House Bill 73.

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<sup>8</sup> Sonja B. Starr, "Expungement Reform in Arizona: The Empirical Case for a Clean Slate," 52 Arizona State Law Journal 1059, 1076 (2020).

<sup>9</sup> J.J. Prescott & Sonja B. Starr, The Power of a Clean Slate, <https://www.cato.org/regulation/summer-2020/power-clean-slate>.