



TESTIMONY IN SUPPORT OF HOUSE BILL 523

Criminal Procedure – Expungement of Records – Good Cause

TO: Members of the House Judiciary Committee

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

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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 523.

A number of current Maryland laws, in combination, as well as other practical barriers, prevent Marylanders from accessing the expungement opportunities needed to successfully reintegrate into society. First, most charges (~93%) are *not* eligible for expungement, leaving individuals released from incarceration with barriers to education, employment, housing, public assistance, occupational licensing, and much more. Second, the “Unit Rule” prevents the expungement of a charge if the person is not entitled to the expungement of any other charge within the unit.¹ This rule prevents charges that would be otherwise eligible for expungement from actually being expunged. Third, when an individual receives a parole or probation violation, however minor, or receives a subsequent conviction during the waiting period, the original charge becomes permanently barred from expungement even decades later.

House Bill 523 provides the opportunity for relief that can overcome these barriers and bring this determination back to what actually matters most: rehabilitation. It would provide the courts with the authority to grant a petition for expungement at any time on a showing of *good cause*. A good cause provision already exists in Criminal Procedure §10–105 (c9) but only applies to non-convictions. House Bill 523 will expand this important tool for good cause expungement opportunities to include certain misdemeanor and felony convictions.

I. Expanding expungement opportunities through House Bill 523 will reduce the substantial collateral consequences associated with having a criminal record.

A criminal record can be both the cause and consequence of poverty. It has detrimental effects on the employment, housing, and educational prospects for the estimated 25% of working-age

¹ Under current Maryland Criminal Procedure §10–107, charges that arise from the same incident, transaction, or set of facts are considered a ‘unit of charges.’ Under current law, if a person is not entitled to the expungement of one charge or conviction within a unit, the person is not entitled to the expungement of any other charge within the unit.

Marylanders with a criminal record.² Every year, approximately 4,000 Marylanders are released from state prisons and struggle to secure a job, find a place to live and reenter society. These consequences compound. For example, of those who are able to obtain jobs, research indicates that in the first few months, formerly incarcerated people earn just 53% of the median U.S. worker's wage.³

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.⁴

Background checks are being used increasingly for non-criminal justice purposes.⁵ More than 92% of employers perform background checks for job applicants⁶ 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.⁷ Thus, expanding expungement opportunities is vital for the economic viability of returning citizens *after* they have served their full sentence and completed mandatory supervision.

II. House Bill 523 will make our communities safer.

² 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.

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

⁴ Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 Mich. L. Rev. 519, 554 (2020) (“Because a criminal record can substantially limit a person's opportunity to obtain employment, housing, public benefits, and student loans; to qualify for certain professions; and to gain entrance into higher education, having a record has been called ‘a civil death.’”)

⁵ 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%.”)

⁶ 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)..)

⁷ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2528 (2020).

Expanding actual relief for individuals who have demonstrated their rehabilitation to the court 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.⁸ There is no empirical evidence that expungement undermines public safety.⁹ Therefore, any purported safety risks from House Bill 523's opponents are misplaced.

Beyond the absence of a public safety risk, House Bill 523 holds the potential to affirmatively promote public safety and reduce crime. There is ample research that demonstrates the criminogenic effects associated with the collateral consequences of having a criminal record.¹⁰ 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 523.

⁸ *Id.* at 2512–14.

⁹ Sonja B. Starr, "Expungement Reform in Arizona: The Empirical Case for a Clean Slate," 52 *Arizona State Law Journal* 1059, 1076 (2020).

¹⁰ J.J. Prescott & Sonja B. Starr, The Power of a Clean Slate, <https://www.cato.org/regulation/summer-2020/power-clean-slate>.