



TESTIMONY IN SUPPORT OF HOUSE BILL 545

Criminal Procedure - Automated Expungement – The Clean Slate Act

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.

House Bill 545, the Clean Slate Act, will automate the sealing process and shield from public view eligible misdemeanor records after seven years have passed and will shield non-conviction and arrest records after three years have passed. House Bill 545 will ensure people are no longer defined by their criminal records, have the opportunity to contribute to their communities, and get a fair chance to work, seek an education, and achieve their full potential.

The Center urges a favorable report on House Bill 545 for three reasons. First, House Bill 545 will afford actual automatic sealing relief to the significant portion of the expungement-eligible population that does not currently obtain relief for a broad variety of reasons. Second, House Bill 545 will reduce the collateral consequences associated with having a criminal record and provide much-needed support to Maryland’s economy as a result. Third, House Bill 545 does not pose a public safety risk and instead will promote public safety.

I. Automated record-sealing is necessary because of the documented low uptake rates for petition-based expungement processes.

The research shows that relying solely on petition-based expungement mechanisms results in an uptake gap whereby a large portion of people eligible for expungement do not receive relief. Low uptake rates prevent the broad public policy benefits of expungement from being fully realized. One national analysis concerning the expungement of conviction records found estimated uptake rates across states ranged from 0.2% to 11%.¹ That study found that there were 300,000 to 2 million people in each of the states examined with convictions that were eligible for expungement who did not receive those expungements.² Another study focused on Michigan concluded that only 6.5% of eligible individuals received expungements in that state within the

¹ Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 Mich. L. Rev. 519, 556-58 (2020).

² *Id.*

first five years of being eligible.³ Such low uptake rates are particularly troubling given that the majority of people who receive expungements do so in the first five years after becoming eligible. Accordingly, the study in Michigan projected a *lifetime* expungement uptake rate of less than 12% of those who were not sentenced to a period of incarceration and an even lower lifetime expungement uptake rate for those who were sentenced to incarceration.⁴

Removing the administrative burden from those eligible for expungement will reduce the expungement uptake gap. Automating record-sealing through House Bill 545 can avoid the need for applicant awareness and wherewithal to determine eligibility and apply for relief, mitigating the daunting barriers associated with navigating the bureaucratic and judicial processes. At the same time, House Bill 545 will mitigate harms and promote public safety as discussed further below.

II. Expanding record-sealing through House Bill 545 will reduce collateral consequences associated with having a criminal record.

A criminal record can be both the cause and consequence of poverty and has detrimental effects on the employment, housing, and educational prospects for the estimated 25% of working-age Marylanders with a criminal record.⁵ 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. Currently, an estimated 1 million adults in Maryland have a criminal record, or 1 out of every 4 ½ people, and 407,000 of those adults could receive complete record sealing from this legislation.⁶

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.⁷ More than 92% of employers perform background checks for⁸ and deny employment to many returning citizens based on a criminal record. Unsurprisingly, expungement recipients exhibit much better employment.⁹ Thus, automating the sealing of

³ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2466 (2020).

⁴ *Id.* at 2493.

⁵ Bureau of Justice Statistics, U.S. Department of Justice, Survey of State Criminal History Information Systems, 2012, 26 https://drive.google.com/file/d/1hUGVpwII6Z_GN4KOK6gV1eNkiyYbjbJI/view.

⁶ CSI State Data Fact Sheet: Maryland; The Clean Slate Initiative; <https://www.cleanslateinitiative.org/state-data-factsheet-maryland>.

⁷ Chien, *supra* note 1, 554 (“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.’”)

⁸ 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).)

⁹ Prescott & Starr, *supra* note 3, at 2528.

criminal record is vital for the economic viability of returning citizens *after* they have served their full sentence and completed mandatory supervision.

Each year, Maryland loses an estimated 1.5 billion in taxable income due to barriers created by clearable convictions.¹⁰ This number does not account for the economic loss suffered by those with non-conviction records. At a time of dire budget deficit and fiscal strain, this legislation would be a powerful step in the right direction for the state's economy as well as those too often excluded from it.

III. The mitigation of collateral consequences does not pose a public safety risk and instead will likely result in public health and safety benefits.

Expanding actual relief for individuals who are already eligible does not pose a public safety risk. 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 a strong correlation between expungement and lower recidivism.¹¹ There is no empirical evidence that expungement undermines public safety.¹² Therefore, purported safety risks from House Bill 545's opponents are misplaced.

Beyond the absence of a public safety risk, House Bill 545 is likely to promote public safety. There is ample research that demonstrates the criminogenic effects associated with the collateral consequences of having a criminal record.¹³ It follows that alleviating the burden of these collateral consequences would reduce illegal behavior among expungement recipients.

By automating components of the record-sealing process, House Bill 545 addresses gaps and challenges in the current expungement landscape. 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 545.

¹⁰ Chien, Colleen, Alyssa Aguilar, Navid Shaghghi, Varun Guharathi, Rohit Rathish, Matthew Stubenberg, Christopher Sweeney. "The Maryland Second Chance Expungement Gap", Paper Prisons Initiative. Note: estimates are based on a 5% sample of individuals with criminal histories between 2000-2020 drawn from Maryland Electronic Courts (MDEC) as well as district and circuit courts.

¹¹ *Id.* at 2512-14.

¹² Sonja B. Starr, "Expungement Reform in Arizona: The Empirical Case for a Clean Slate," 52 Arizona State Law Journal 1059, 1076 (2020).

¹³ J.J. Prescott & Sonja B. Starr, The Power of a Clean Slate, <https://www.cato.org/regulation/summer-2020/power-clean-slate>.