



TESTIMONY IN SUPPORT OF SENATE BILL 525

Good Cause Expungement

TO: Members of the Judicial Proceedings 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 Senate Bill 525.**

A number of legal obstacles prevent Marylanders from accessing the expungement opportunities needed to successfully reintegrate into society. First, many charges 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 eligible for expungement from actually being expunged. Another frequent barrier is the subsequent conviction statute, which bars expungement if a new charge is filed during the waiting period, no matter how minor that charge may be.

Senate Bill 525 authorizes a person to file a petition for expungement of any misdemeanor or felony conviction after the completion of the sentence, parole, probation, and any other form of mandatory treatment associated with the conviction, and an additional waiting period of five years for misdemeanors and seven years for felony convictions. A court may, but is not required to, grant a petition for expungement under the bill on a showing of good cause as defined in the bill.

A good cause provision already exists in Criminal Procedure §10–105 (c)(9) but only applies to non-convictions.² Senate Bill 525 will expand good cause expungement opportunities to include certain misdemeanor and felony convictions, allowing for the court’s consideration of the nature of the crime, the person’s history and characters, successful rehabilitation of the individual, risk to public safety, and impact of that conviction on the person’s ability to secure employment, education, housing, economic stability and more.

¹ See Md. Code Ann., Crim. Proc. § 10-107(b)(1).

² See Md. Code Ann., Crim. Proc. § 10-105(c)(9) (applicable to cases that were dismissed, acquitted, nolle prosequi, or resulted in probation before judgment).

I. Expanding expungement opportunities through Senate Bill 525 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 Marylanders with a criminal record.³ Every year, approximately 3500 Marylanders are released from state prisons and struggle to secure a job, find a place to live and reenter society.⁴ 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.⁵

The impact of an arrest or conviction record on individuals, families and communities is staggering, and an extraordinary number of collateral consequences 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.⁶

Background checks are being used increasingly for non-criminal justice purposes.⁷ More than 92% of employers perform background checks for job applicants⁸ 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 unit⁹ is 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 the charge and conviction in the first place.

³ Bureau of Justice Statistics, U.S. Department of Justice, Survey of State Criminal History Information Systems, 2012, 26 https://drive.google.com/file/d/1hUGVpw1l6Z_GN4KOK6gV1eNkiyYbjbJI/view.

⁴ Maryland Department of Public Safety and Correctional Services, *Local Releases from State Custody: Historical Releases by Home County*, available at https://dpscs.maryland.gov/community_releases/DPSCS-Community-Releases.shtml.

⁵ New Data on formerly Incarcerated People's employment reveal labor market injustices. Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

⁶ 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.’”)

⁷ 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%.”)

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#:~:ext=A%20survey%20by%20SHRM%20found.cycle%20\(see%20chart%20below\)](https://www.shrm.org/topics-tools/tools/toolkits/conducting-background-investigations-reference-checks#:~:ext=A%20survey%20by%20SHRM%20found.cycle%20(see%20chart%20below))

⁹ Under current Maryland law [Criminal Procedure §10–107](#), charges that arise from the same incident, transaction, or set of facts are considered a ‘unit of charges’. 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.

Unsurprisingly, expungement recipients exhibit much better employment outcomes.¹⁰ 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. The mitigation of collateral consequences does not pose a public safety risk and instead will likely result in public health and safety benefits.

Expanding relief for individuals who have demonstrated their rehabilitation 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.¹¹ There is no empirical evidence that expungement undermines public safety.¹²

Beyond the absence of a public safety risk, Senate Bill 525 has 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.¹³ It follows that alleviating the burden of these collateral consequences would reduce illegal behavior among expungement recipients and promote the human dignity and meaningful society participation that help people 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 Senate Bill 525**.

¹⁰ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2528 (2020).

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>.