



Testimony for the Senate Judicial Proceedings Committee
March 14, 2018

**SB 1212 Criminal Procedure - Expungement - Expansion (Maryland Record
Expungement Designed to Enhance Employment (REDEEM) Act of 2018)**

FAVORABLE with AMENDMENTS

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The ACLU of Maryland urges a favorable report on SB 1212, which would require the automatic expungement of records associated with specified types of dispositions and expand eligibility for expungement for felonies that are not crimes of violence or crimes carrying a maximum penalty of imprisonment for three years.

Studies show that employment opportunities can reduce recidivism rates.¹ Yet, for far too many Marylanders, a criminal record—regardless of how minor the offense, can be a bar to opportunities for success. The collateral consequences reach far beyond employment—a criminal record may compromise one’s eligibility for tuition assistance and stable housing. Moreover, these collateral consequences are particularly stark for communities of color.

Criminal records exclude individuals from employment, educational opportunities, public benefits, and stable housing

The existence of a criminal record can and does create a barrier to employment for many Marylanders. More than 80 percent of U.S. employers perform criminal background checks on prospective employees.² Under current regulations, a misdemeanor conviction in Maryland may result in the denial, suspension, or revocation of myriad business licenses, including: a barber license,³ a cosmetology license,⁴ an electrician license,⁵ professional engineer license,⁶ a landscape architect license,⁷ an interior designer certificate,⁸ and countless others.

Criminal convictions also serve to exclude persons from educational opportunities. A recent study found that a majority (66%) of colleges collect criminal justice

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¹ See for example Nally, Lockwood, Taiping, and Knutson, *The Post-Release Employment and Recidivism Among Different Types of Offenders With A Different Level of Education: A 5-Year Follow-Up Study in Indiana* (noting that recidivist offenders were likely to be unemployed or under-educated)

² Burke, M.E., 2004 *Reference and Background Checking Survey Report: A Study by the Society for Human Resource Management, Alexandria, Va.: Society for Human Resource Management*, 2006.

³ Md. Business Occupations and Professions, Code Ann. § 4-314

⁴ Md. Business Occupations and Professions, Code Ann. § 5-314

⁵ Md. Business Occupations and Professions, Code Ann. § 6-316.

⁶ Md. Business Occupations and Professions, Code Ann. § 14-317.

⁷ Md. Business Occupations and Professions, Code Ann. § 9-310.

⁸ Md. Business Occupations and Professions, Code Ann. § 8-310.

information as part of the admissions process.⁹

A criminal conviction also hinders an individual's access to stable housing and a range of public benefits. Even a misdemeanor conviction record may bar individuals from residing at certain homes,¹⁰ and exclude individuals from low-income utility payment plans¹¹ as well as food stamps.¹²

SB 1212 will allow individuals with certain criminal convictions to access a broader range of services and opportunities, including but not limited to, employment, schooling, public benefits, and housing, and thereby contribute productively to the state's economy. By increasing access to this broad range of services, SB 1212 can reasonably be expected to generate greater socioeconomic stability and productivity in Maryland's communities.

Criminal convictions disparately disadvantage individuals, families, and communities of color

The over-criminalization of communities of color – due in large part to the 'war on drugs'—has produced the startling result that one in three Black men born today can expect to go to prison in their lifetime, compared with one in six Latino men, and one in seventeen White men.¹³ In addition to facing higher imprisonment rates, racial minorities, once arrested, are more likely to be convicted, and once convicted, are more likely to face longer sentences than their White counterparts.¹⁴

With higher conviction rates, persons of color necessarily bear the brunt of collateral consequences stemming from criminal convictions. Exclusion from the job market, stable housing, and countless other crucial services perpetuates the cycle of imprisonment plaguing communities of color—without gainful employment and stable housing, individuals are forced to return to livelihoods of criminality.

We respectfully propose three amendments to ensure that persons who need to retain their record, including non-citizens, are able to do so.

First, at the time of the disposition, the Court should give all defendants the following notification: "Persons who are not citizens of the United States are advised against expunging their criminal record without first consulting an immigration attorney."

Second, we recommend uncodified language requiring the Education Committee of

⁹ Center for Community Alternatives—Innovative Solutions for Justice, *The Use of Criminal Records in College Admissions, Reconsidered* (available at <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>).

¹⁰ *See for example*, COMAR 35.04.01.04.

¹¹ COMAR 20.31.01.08.

¹² Md. Human Services Code Ann. § 5-601.

¹³ Saki Knafo, 1 In 3 Black Males Will Go To Prison In Their Lifetime, Report Warns (HUFFINGTON POST, Oct. 4, 2013).

¹⁴ *Id.*

the Judicial Council to ensure that all relevant Judicial employees are apprised of defendants' rights to waive the automatic nature of the expungement and the consequences that unintended expungement may have for some defendants. Judicial employees shall be given proper guidance in the implementation of this right, including the administration of notices to the defendant.

Third, at the time of the expungement, the clerk of the criminal court where the case was filed should provide the defendant with a certified copy of the court file and the disposition form.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 1212 with the aforementioned amendments.