

SUPPORT

SB37– Criminal Procedure-Expungement of Records-Waiting Periods (REDEEM Act of 2023)

Testimony of
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Senate Judiciary Committee

Homeless Persons Representation Project, Inc. (HPRP) is a non-profit legal services organization providing free legal representation to people who are housing insecure on legal issues that will lead to an end to homelessness. HPRP has provided free criminal record expungement services to thousands of low-income Marylanders.

SB37 will provide relief to expungement for vulnerable Marylanders.

The Homeless Persons Representation Project supports SB37. SB37 will reduce the waiting periods for filing to expunge eligible convictions. Shortening waiting periods will allow individuals to realize the benefits of expungement on time-sensitive matters such as access to employment and housing. Under current law, Maryland requires a person to wait for ten or fifteen years after the resolution of all sentence requirements to obtain expungement of limited convictions. These are the most prolonged waiting periods in the United States. According to a recent national survey conducted by the Collateral Consequences Resource Center (CCRC), a near majority of the “44 states that authorize clearing of misdemeanor convictions...have waiting periods of 3 years or less (19 states) and the vast majority have waiting periods of 5 years or less (35 states).”¹ Many states have “shortened waiting periods recognizing the constructive role that record clearance plays in facilitating reentry and rehabilitation[.]”² SB37 brings Maryland in line with other states by reducing wait times for expungement of misdemeanor convictions from the longest in the nation to the current norm of 3 years.

¹ Collateral Consequences Resource Center, *Waiting for Relief: A National Survey of Waiting Periods for Record Clearing*, February 23, 2022, available at <https://ccresourcecenter.org/2022/02/23/waiting-for-relief-a-national-survey-of-waiting-periods-for-record-clearing/>.

² *Id.*

A decade or longer waiting period for expungements is inconsistent with legislative goals of reducing recidivism and increasing economic opportunities.

Recent studies have reconsidered the markers of recidivism. Previously, having a criminal record was the primary factor that lawmakers relied on to assess the risk of recidivism and set post-conviction policies. More recently, researchers have determined that lack of employment, housing, and other economic opportunities are more accurate markers for the risk of recidivism.³ The US Department of Justice noted that the lack of access to resources significantly contributes to recidivism, particularly the diminished access to food, shelter, and healthcare created by unemployment.⁴ The collateral consequences of even a misdemeanor conviction can follow criminal-system-involved persons well past their sentence or incarceration. The resulting criminal record creates barriers to economic and employment opportunities. The existing long waiting periods reinforce these barriers. For example, under current law, an individual convicted of trespass would have to wait a decade to be considered for employment opportunities that could provide food, safe housing, and other economic opportunities for herself and her family. The shortened waiting periods proposed by SB37 will minimize the impact of criminal records and allow criminal-system-involved individuals to participate in their communities fully.

Criminal records disproportionately impact Black and brown communities.

It is well established that the criminal system has disproportionately impacted people of color. Efforts to reform this racial injustice must include addressing the collateral consequences of decades of discriminatory policies, such as the economic barriers created by criminal records. For example, over 60% of employers would “probably not” or “definitely not” consider a job applicant for employment once they become aware that the individual has a criminal record.⁵ According to “employment testing” studies, workers of color with a criminal record are even less likely to be interviewed for a job when compared with similarly situated whites.⁶ The National Institute of Justice reported that having a criminal record reduced the prospect of employment by two-thirds for African Americans. The same studies also showed that Hispanic and Latino Americans suffered similar penalties for a criminal record.⁷ Racial injustice persists, and SB37 is

³ J.J.Prescott and Sonia Starr, “The Power of a Clean Slate,” Regulation, Summer 2020 available at: <https://www.cato.org/regulation/summer-2020/power-clean-slate> (In recent years, however, many states have shortened waiting periods in recognition of the constructive role that record clearance plays in facilitating reentry and rehabilitation, reasoning that individuals “need the most assistance immediately after release from prison or termination of sentence.”)

⁴ LaToshia Butler and Ebonyque Taylor, “A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities,” Dispatch, Vol. 15, Issue 4 (April 2022) available at https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html

⁵ Harry Holzer, Steven Raphael, Michael Stoll, “Perceived Criminality, Criminal Background Checks and the Racial Hiring Practices of Employers,” (April 2005), at page 3.

⁶ Devah Pager, “The Mark of a Criminal Record” 108 AmJ.Soc. 937 (2003)

⁷ Amy L. Solomon, “In Search of a Job: Criminal Records as Barriers to Employment,” June 14, 2012, [nij.ojp.gov: https://nij.ojp.gov/topics/articles/search-job-criminal-records-barriers-employment](https://nij.ojp.gov/topics/articles/search-job-criminal-records-barriers-employment)

one effective step lawmakers can take to address these disparities. The ability to expunge these convictions is a significant step toward equity, but a decade of delayed justice does little to relieve the burden on Black and brown communities. SB37 moves Maryland closer to realizing systemic change.

The reduction of expungement waiting periods will have a positive impact on citizens experiencing homelessness.

The number of Americans caught in the revolving door between homelessness and the criminal system is in the tens of thousands.⁸ Roughly 48,000 people exit jail/prison into homelessness each year.⁹ Formerly incarcerated people are almost ten times more likely to be homeless, and experiencing unsheltered homelessness increases people's interactions with the criminal system. Despite guidance from HUD that criminal record screening can violate the Fair Housing Act¹⁰ and recent HUD research finding "criminal history is not a good predictor of housing success," landlords routinely reject tenant applicants with a criminal record regardless of its content, age, or direct relationship to housing.¹¹ Such practices exclude far more people than necessary to preserve public safety and result in the denial of housing to those with minimal criminal records, including records of minor convictions. Criminal records both cause homelessness and prevent individuals from ending their homelessness. Reducing waiting periods for expungement will increase access to the critical permanent housing resources and employment opportunities needed to end a person's experience of homelessness. The faster criminal records can be expunged; the faster individuals can regain stability and productivity in all areas of life.

HPRP strongly urges the Committee to issue a favorable report on SB37. Please contact Kirsten Gettys Downs (kgettysdowns@hprplaw.org) with questions or for additional information.

⁸ U.S. Interagency Council on Homelessness, Reduce Criminal Justice Involvement, August 15, 2018, available at <https://www.usich.gov/solutions/criminal-justice>.

⁹ Id.

¹⁰ U.S. Department of Housing and Urban Development, Implementation of the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions, June 10, 2022, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>.

¹¹ HUD Office of Policy Development and Research, Tenant Screening with Criminal Background Checks: Predictions and Perceptions are not Causality, May 17, 2022, available at <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.