

# MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



## ***Focus Group: Collateral Consequences and Maryland's Criminal Justice System***

### **Participants:**

*in person:*

- *Shannon Murphy, Deputy Chief of Programs and Services at Montgomery County Department of Correction and Rehabilitation (Pre-release and Reentry Services Division)*
- *Jennifer Masslieno, Senior Program Director for Volunteers of America – Chesapeake Reentry Center*
- *Sonji Roach, Accountability Specialist, Volunteers of America - Chesapeake Reentry Center*
- *Phil Caroom (Facilitator), MAJR Coordinating Council*
- *Barbara Thomas, Recorder*

*by phone conference:*

- *Steve Leitess, Esq.- Uniform Laws Commission(ULC) - Md. Commissioner*
- *Brian Lewis, Esq.- ULC Legislative Counsel*
- *Margaret Love, Esq. – Collateral Consequences Resource Center (CCRC), UCCCA Enactment Committee*

1. NOTICE OF COLLATERAL CONSEQUENCES. **Status quo:** Marylanders brought to criminal court currently are provided only very limited advice as to “collateral consequences.” Legally, a defendant must be advised of the possible maximum sentence a judge may impose, possible immigration consequences, and possible violations if already on probation. E.g., *Miller v. State*, 435 Md. 174 (2014). However, defense attorneys have no duty to provide information about other collateral consequences, unless such information is readily “available.” *Id.*, citing *Padilla v. Ky.*, 559 U.S. 356, at 370 (2010).

**Recommendation:** The national Uniform Law Commission (ULC) offers model legislation to make collateral consequences information available, then to require and assist defense attorneys more fully to advise clients of collateral consequences before each trial or guilty plea. Another national organization, the Collateral Consequences Resource Center (CCRC), at no cost, will offer the State of Maryland ample assistance in compiling the comprehensive inventory and website called for by the ULC as to all Maryland collateral consequences imposed by statutes and regulations via experienced legal staff and technology available under a federal grant. Maryland’s Attorney General, at comparatively minor expense, could work with the CCRC to promptly make this list of collateral consequences available.

2. DISCRETIONARY COLLATERAL CONSEQUENCES. **Status quo:** Currently, Marylanders convicted of even minor crimes may lose their jobs, their eligibility for educational benefits, their eligibility for

public housing, and more. Particularly, loss of employment may prevent a defendant from paying restitution, child support, taxes, rent, and other obligations.

**Recommendation:** Additional ULC model legislation would permit a defendant, at the time of a sentencing or parole hearing, to request an exception to one or more particular collateral consequences, for example, to continue holding a license needed for employment. The judge or parole commissioner also could consider information presented by the victim and prosecutor to decide whether the exception would conflict with public safety or other community concerns. Absent a bar mandated by statute, a conviction should be considered a basis for disqualification only if the underlying circumstances or the elements of the offense are substantially related to the benefit or opportunity involved. (This legislation would extend the state policy already approved in MD Code, Criminal Procedure, § 1-209, to other areas in addition to licensing and would permit some hearings to be held before courts and Parole Commission, rather than administrative agencies.)

3. **AUTOMATIC SHIELDING FOR DISMISSED CHARGES. Status quo:** Currently, our Courts' website, Maryland Judiciary Case Search, lists all criminal charges ever filed against Maryland residents since 1991 *whether or not resolved by acquittal, PBJ, nol pros, or other dismissal*. Except for minor traffic charges, there is no statute, rule or regulation for expiration and removal of old charges, ever, unless a Marylander files individually for expungement. By comparison, evidence *even of a prior conviction* may not be offered to attack a person's credibility in any Maryland court trial if it is more than 15 years old. Maryland Rule 5-609.

**Recommendation:** Case Search programming, with existing Judicial Information Systems (JIS) personnel, should be altered to automatically shield—i.e., remove from public view—charges resolved by acquittal, PBJ, nol pros, or other dismissal. (Similar programming has been used for many years for minor traffic charges over 3 years old.) While such records would remain available for law enforcement and personnel background investigations, this change would prevent damage to Marylanders' reputations and job opportunities by uninformed and casual users.

4. **EARNING A CHANCE TO SHIELD OR EXPUNGE. Status quo:** Currently, records of state convictions never may be expunged or shielded unless they are on a limited list of misdemeanors or unless a Governor grants a pardon. This remains true, even if a Marylander has been crime-free for many, many years.

**Recommendation:** Maryland should permit shielding for all convictions, except for serious violent crimes and registered sex offenders, for defendants who successfully complete their sentences, remain crime-free, and become respected citizens after sufficient time—perhaps 7 years<sup>1</sup>. Full expungement should be possible under these circumstances after a greater time, subject to a court's discretion, perhaps 15 years<sup>2</sup>.

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<sup>1</sup> By comparison, until modern times, Maryland courts followed the common law presumption that an individual had died if he did not return to his accustomed home after 7 years. E.g., Haynes v. Metropolitan Life Ins. Co., 262 Md. 255, 277 A.2d 251 (1971). By statute, proof now may be offered in less than seven years.

<sup>2</sup> As discussed in item 3 above, Maryland Rule 5-609 excludes any trial evidence of most convictions after 15 years passage.