

SUPPORT HB 13, 16 and 19

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MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



TO: Chair Luke Clippinger & House Judiciary Committee

FROM: Phil Caroom, MAJR Executive Committee

DATE: January 22, 2019

HB 13 and **HB 16** each offer relief for all-too-common problems facing ex-offenders seeking honest employment: the State overcharges an offense-- including more serious charges (not eligible for expungement)-- then approves a plea to lesser, nonviolent charges.

Unfortunately, Maryland's "unit rule" permanently prohibits expungement of eligible charges if all charges within a unit are not eligible for expungement. This means that acquittals and other favorable dispositions of serious charges are made ineligible for expungement if a conviction of a lesser charge is also contained within a unit.

Worsening the situation, the excess charges—even though a not-guilty or *nol pros* may result—remain online in Maryland's Judiciary Case Search, creating unfair suspicion by employers that may block employment or even job interviews.

Both federal and state studies clearly show that ex-offenders who are employed are much less likely to commit new offenses than those who are unemployed. A 2017 Greater Baltimore Committee report summarizes this research, stating:

the single largest determinant of re-arrest and re-conviction is whether or not a person is able to find a job upon release from prison. The probability of re-conviction for someone who is employed within two months of release and earning \$10 or more per hour is only 8 percent, one-third of the probability of an unemployed ex-offender.

While there are minor tax revenue losses and administrative costs to reinstating this program, legislators should put this in the larger context. Without employment, the ex-offender is approximately twice as likely to return to prison, costing taxpayers \$38,000 per year on average—much more than **HB 13** and **HB 16's** projected costs.

In addition to this cost of incarceration, Maryland should consider the impact on possible victims and on children and communities of the ex-offenders. According to a 2015 Huffington Post report, studies indicate that

Children of felons are seven times more likely to be incarcerated themselves. They are more likely (23 percent vs. 4 percent) to be expelled or suspended from school than other children.

For all these reasons, expungement measures to assist ex-offenders' employment should be understood as important measures to support reduce taxpayer costs, as well as to promote family stability, public safety and crime-prevention. Maryland Alliance for Justice Reform (MAJR) strongly supports **HB13** and **HB 16**; we urge the Committee to give each (or some hybrid of these) a favorable report.

HB 19 also provides an important step forward to assist ex-offenders with expungements in aid of lawful employment. Particularly for nonviolent offenders, there should be no perceived danger in expungement when such individuals have demonstrated their rehabilitation over the course of many years. This principle of rehabilitation was acknowledged with passage of Maryland's 2016 Justice Reinvestment Act (JRA) in 2016.

MAJR recognizes that there could be some differences of opinion and some avoidable court hearings due to the bill's omission of a definition of "nonviolent crime." Judges are capable of exercising discretion such that as the bill would provide: one can ascertain the nonviolent difference between a scratch inadvertently inflicted in a domestic scuffle and a threat of deadly harm during a robbery.

But, if the Committee prefers a more efficient definition, existing law provides a ready solution:

MD Code, Criminal Law, § 4-204 and 14-101 each define "crimes of violence," as do certain other provisions of the State Code. If one of these definitions is selected to be incorporated in HB 19, MAJR urges that the incorporated provision should be 14-101 because: 1) it is the most commonly referenced definition in the Code, and 2) it would be consistent with the definition used in JRA for certificates of rehabilitation.

Another broader definition -- in Criminal Law Art., section 4-401-- definitely should not be selected to designate "violent crimes" excluded from expungement for two reasons: 1) Sec. 4-401 includes "escape"—which, in turn, is defined elsewhere in Maryland law so expansively that it may include the failure to appear for a legally required hearing, even if there are extenuating circumstances; and 2) sec. 4-401 includes theft of every variety. Theft, again elsewhere in Maryland law, may range from the most trivial shoplifting to estranged spouses disputing possession of a family motor vehicle. Violence, as the term is commonly used, is rarely involved in thefts.

If there is anecdotal opposition to this bill by victims organizations, MAJR would point to the words of Father Greg Boyle, the founder of Home Boy Industries - the most successful ex-offender program in the United States, who says **"Nothing stops a bullet like a job."** And employment of nonviolent offenders, aided by expungement, may be the most effective way to ensure the ability to collect restitution from them, even after a parole or probation requirement for this has been fulfilled.¹

For all these reasons, HB 19's expansion of expungement eligibility, assisting ex-offenders' employment also should be understood as a valuable measure to support reduce taxpayer costs, as well as to promote family stability, public safety and crime-prevention. Maryland Alliance for Justice Reform (MAJR) strongly supports **HB19**, along with HB 13 and 16; we urge the Committee to give it, or some amended version, a favorable report.

PLEASE NOTE: This testimony is offered on behalf of MAJR and not the Md. Judiciary.

¹ An offender who is unemployed during parole or probation cannot be compelled to pay with income which he or she doesn't have, and cannot be found in violation of parole or probation for this inability to pay. However, a victim can take a recorded judgment of restitution and can collect from the ex-offender civilly at a later time if and when the ex-offender had regained employment and property that would enable such a payment.