CRIMINAL RECORD EXPUNGEMENT:

RECENT UPDATES AND WHAT STILL NEEDS TO CHANGE

CHRIS SWEENEY

WORKFORCE DEVELOPMENT PROJECT COORDINATOR

MARYLAND VOLUNTEER LAWYERS SERVICE

INTRODUCTION

Movement to improve expungement access in recent years

Previously, one conviction blocked all expungements

Non-convictions became eligible in 2015

Limited convictions became eligible in 2018

Many cases remain ineligible, including misdemeanors

Still a lot of room for improvement

LIVING WITH A CRIMINAL RECORD

Collateral consequences

- Employment
- Housing
- Childcare

Long waiting periods

- Lingering effects

Social and psychological detriment

- Research indicates social stigma and psychological consequences

HOW EXPUNGEMENT CURRENTLY WORKS

NON-CONVICTIONS

- Cases resulting in no guilty finding are almost always eligible
- Many no waiting period, some 3 year wait

CONVICTIONS

- 3-15 year waiting period
  - Most offenses 10-15 years
- Subsequent conviction rule
  - Eligible case restarts the clock
  - Ineligible case permanently blocks
- Many offenses omitted from list of eligibility

PROBLEMS WITH THE CURRENT LAW

- **Convictions for many minor offenses remain ineligible**
  - Many traffic offenses are ineligible and block more serious charges
  - Example: Malicious burning of property is eligible, malicious destruction of property is not
  - Many commonly charged (or “overcharged”) offenses such as unauthorized motor vehicle use or resisting arrest are ineligible
- **Waiting periods can stack up to 30 years or more**
  - No opportunity to move forward in life
- **Unjust outcomes**
  - Example: John is convicted of 1st degree burglary in 1995 and again in 2005. John can expunge both cases as early as 2020. James is convicted of 1st degree burglary in 1995 and is convicted of driving without a license in 2009. He can never expunge either case.

PROPOSED CHANGES

- Waiting periods
  - Misdemeanor waiting periods down to 3 years
  - Most felony waiting periods down to 5 years
  - Exceptions for particularly egregious acts
- Expansion of eligibility
  - Change eligible conviction list to “all misdemeanors” except a very few
  - Include all or most non-violent felonies
- Inclusion of Department of Natural Resources and other administrative violations
  - At legislative hearing, a Senator spoke about a constituent who could not attend his son’s field trip because of a fishing violation

TAKING THINGS FURTHER

- **Removal of all traffic offenses from subsequent conviction rule**
  - Non-moving violations (e.g. revoked license for unpaid fines) = criminalization of poverty, and are not a public safety issue
- **Partial expungement**
  - Currently cannot expunge an individual charge from a case, even if you were found not guilty
- **3rd degree assault**
  - Maryland only has 1st and 2nd degree assault, making the window of potential acts that could be 2nd degree assault extremely wide
  - Leads to overcharging
- **3rd-party databases**
  - Private companies that scrape publicly available court records are unaffected by expungement
  - Can courts make private companies delete their data?
- **Increase in automatic expungement**

CONCLUSION

- Criminal records are punishing people years, even decades after they have served their time
- There is a societal cost to not letting people expunge records
  - More financial instability
  - More housing instability