

APPENDIX

Testimony of Dr. Sarah Lageson
Assistant Professor Rutgers, University-Newark School of Criminal Justice
4 June 2018

Assemblymen and Assemblywomen, thank you for your time today and your work on this extremely important issue.

I am an Assistant Professor at Rutgers University-Newark in the School of Criminal Justice. I want to note that any opinions I express in this testimony are my own and do not represent any official policy or position of the university. I am currently conducting a study of criminal record expungement in New Jersey, funded by the National Institute of Justice. I want to briefly share some of preliminary findings.

Our study follows 100 expungement seekers in New Jersey. We have currently enrolled 71 participants and began the project in June 2017. We monitor the expungement process with legal aid clients and analyze their official criminal records and background checks from third parties for errors and accuracy. We also conduct periodic interviews with each participant to track their progress.

Unfortunately, we see very high rates of attrition, even when the client is being served by a legal aid organization, due to two things: 1) the cost of expungement, and 2) incorrect, dated, and inaccessible records.

To properly fill out an expungement petition, the petitioner must request a copy of their Computerized Criminal History (CCH) through a "personal record request," from the New Jersey State Police. This version of the criminal record includes all arrests and dismissed charges, unlike the copy of the criminal record a prospective employer might see that only includes convictions.

This currently costs \$40.66 and is brokered through a third party called Identogo that provides digital fingerprinting services. Petitioners often cannot, or chose not to, pay this fee. For expungement to be effective and accessible, this fee should be waived.

Participants also drop out of the expungement process when facing the \$75 filing fee, plus the certified mail costs of serving the petition and (if approved) the expungement order to over ten criminal justice agencies. These fees should be waived for an automatic expungement and the petitioner should not be responsible for the cost of certified mailings.

Second, over half of our participants have serious errors on their records that can be nearly impossible to fix. For instance, one participant had his expungement petition denied by a judge for not reporting an arrest from the late 1990's. The arrest did not appear on his CCH and we could not locate it in the court or police records. The arrest was actually violation of a juvenile family court order. But, the version of the client's criminal record obtained by the judge "counted" this as an arrest. It took nearly a year to figure out this data entry error and to resubmit the petition.

We have also encountered many arrests or charges, many from decades ago, that do not have final dispositions recorded in the CCH. An expungement petition will be denied if the petitioner cannot include disposition paperwork from courts. However, this has been impossible for some clients to obtain because courts cannot locate these older records in their files. Automatic expungement will not correct fundamental database errors.

Unresolved criminal records are an issue in other jurisdictions as well. One report has estimated an 80 percent error rate in criminal record databases.¹ The National Employment Law Project (NELP) has estimated that 50 percent of FBI criminal history reports fail to include information on the final disposition of the case.²

The coordinator role you propose is essential. I would highlight several issues to keep in mind. First, the coordinator should interface directly with local police, state police, probation, and courts to access records because each entity has their own system of data management. Expungement is time-consuming and expensive to manage, and the courts may be faced with tens of thousands of potential expungements.

There also needs to be clarity on what "automatic" expungement means. There are no automated data entry processes in the New Jersey criminal justice system. Currently, expungements need to be manually entered within each entity's database. Specifically, a person with an expungement order has to serve the order via certified mail to:

- the Attorney General,
- the Superintendent of State Police Expungement Unit,
- the county prosecutor,
- the magistrate of the municipal court,
- the chief of police where the arrest was made,
- the chief law enforcement officer of any other New Jersey law enforcement agency that participated in the arrest,
- the warden of any institution where the expungement-seeker was incarcerated,
- and if applicable, the state grand jury and county probation.

The coordinator will need to navigate each of these systems directly and independently to ensure compliance with an expungement order, then routinely audit each of these entities. Other states that have legislated "automatic" expungements or record sealing have not put these measures in place and records are not being properly updated. This can create serious issues for the petitioner who can now be accused of lying to a prospective employer, landlord, or criminal justice agency who still sees the arrest or conviction on the internet, in a background check, or in an un-updated governmental database.

The public awareness campaign is commendable and I would urge the committee to target people who were previously ineligible for any form of expungement because of marijuana convictions. If this automatic expungement goes into effect, they should be encouraged to apply for general record expungement should they become eligible under these new guidelines.

Finally, many of our participants believe that a legal expungement will erase that part of their criminal record from third party background checks and from the internet. This is simply not the case. The record of their arrest will remain available even after an expungement. For a truly effective expungement, they will need to directly serve their order to a number of consumer reporting agencies and website operators and independently monitor compliance. This enormous need has yet to be remedied by any expungement law. Thank you for your time today and thank you for your service.

¹ Alan Rosenthal, Emily NaPier, Patricia Warth, and Marsha Weissman. "Boxed Out: Criminal History Screening and College Application Attrition." *Center for Community Alternatives*, March 2015,

² Madeline Neighly and Maurice Emsellem, "Wanted: Accurate FBI Background Checks for Employment. Reward: Good Jobs," National Employment Law Project, July 2013



June 4, 2018

New Jersey CannaBusiness Association
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TO: Chairwoman Quijano, Members of the Assembly Judiciary Committee

The New Jersey CannaBusiness Association proudly supports A3620 (Quijano) which "Provides for expedited expungement of marijuana offenses in the event of decriminalization or legalization; establishes the "Expungement Coordinator Program" for certain marijuana convictions."

As New Jersey nears the inevitable repeal of cannabis prohibition, expungement of obsolete offenses for our residents must be part of the process and made a priority. With all eyes on us, we are responsible for ensuring social justice and common sense in crafting sound public policy. This legislation is a step in the right direction as we establish the industry standard here in New Jersey and set the example for other states to follow.

When someone is arrested for simple possession, their whole world changes and often irreparably. Their chance at going to college, joining the military, or even getting a job can be damaged in an instant. Not only is this legislation fair for those individuals, it will be better for society overall to remove people from the judicial system and back into productive roles in our communities.

While the cannabis industry continues to grow, countless jobs will be created and needing talented individuals to fill these positions. Through the expungement of simple possession of cannabis, the State will be doing a service to our economy while taking the first steps to resolving social justice challenges stemmed from cannabis prohibition.

We applaud Chairwoman Quijano and the sponsors of this bill in making New Jersey a more just place.

The New Jersey CannaBusiness Association's mission is to promote jobs and growth in a sustainable and responsible cannabis industry. Beginning with the pioneers in the medical cannabis market to the emerging players in the adult-use space, the NJCBA's focus is to guarantee decision makers and regulators understand and respect the needs of the CannaBusiness community. As a growing industry, our community wishes to remain responsible corporate citizens.

www.newjerseycannabusiness.com

June 12, 2018

Kate M. Bell, Legislative Counsel
Marijuana Policy Project



**Testimony in support of A-3620 and
Expungement of Prior Marijuana Offenses
in the Event that New Jersey Legalizes Marijuana**

Dear members of the Assembly Judiciary Committee:

My name is Kate M. Bell, and I am legislative counsel for the Marijuana Policy Project, a national nonprofit organization focused on ending prohibition in the United States. MPP has been working to improve marijuana policy for more than 20 years; as a national organization, we have expertise on the approaches taken by different states. In addition, as a former criminal defense attorney, I have specific experience with the criminal justice system and with the expungement process. Thank you to Chairwoman Quijano for introducing this bill and to the Committee starting the conversation about how to expunge marijuana offenses if New Jersey legalizes marijuana.

On behalf of MPP, I appreciate the opportunity to state our strong support for A-3620. **This bill would dramatically improve the lives of individuals who are burdened with criminal records for marijuana possession.** The racial bias in the enforcement of marijuana laws in New Jersey and the collateral consequences of a conviction were discussed extensively at the hearing, and MPP agrees with testimony heard by the Committee from the NAACP NJ State Conference, the ACLU of New Jersey, and others. I would add that, in addition to being more likely to be arrested and convicted for marijuana possession, the collateral consequences also fall more harshly on New Jersey's African American population. That is because, while I have never seen a background check for a nonprofit job, they are very frequently required to get a job in a "big box" store. In other words, a conviction tends to have the greatest impact in low skill and low wage jobs. Unfortunately, African Americans are overrepresented in those jobs; 54% of African Americans nationwide earn less than \$15 per hour (42% of all workers make this amount or less).¹ In addition, studies have shown that criminal records have a greater effect on the job prospects of African American job applicants than white job applicants² — and one study found that white men with a criminal record were more likely to receive a positive response to their application than black men with no record.³

¹ E.g., Claire Zilman, "Who Makes Less than 15\$ an Hour? An Explainer in 3 Charts," *Fortune*, April 13, 2015 at <http://fortune.com/2015/04/13/who-makes-15-per-hour/>.

² See Devah Pager, "The Mark of a Criminal Record," *Am. J. of Sociology*, Vol. 108, No. 5 (March 2003) (finding that the African American in a matched pair of applicants was less likely to be called back for an interview than the white individual).

³ Justice Center, Council of State Governments, *Researchers Examine Effects of a Criminal Record on Prospects for Employment*, August 20, 2014, at <https://csgjusticecenter.org/reentry/posts/researchers-examine-effects-of-a-criminal-record-on-prospects-for-employment/> (citing a study by researchers at Arizona State University).

I. New Jersey's current expungement process is extraordinarily burdensome and could be streamlined.

During the hearing, the Committee heard about how New Jersey's current expungement process works. It is also explained online by the New Jersey Courts with help from Legal Services of New Jersey — in 34 pages, with seven different document templates, at http://www.nj.gov/corrections/pdf/OTS/FRARA/ParoleHandbook/10557_expunge_kit-11-2012.pdf. The individual has to locate their entire criminal and arrest record, which may include contacting various agencies or getting fingerprinted, fill out and file four forms with the court and pay \$52 in fees and costs, wait for paperwork back from the court, then send copies of those papers to an extremely long list of different agencies — as many as 10 — within five days of receiving them, and then provide proof of such service before or at the hearing in court. Then, if an order is granted, the individual must provide a copy of the order to all of those agencies. A hearing is generally required by law, although according to N.J.S2C:52-11, the court may grant expungement without a hearing if there is no objection and eligibility is clear (or deny it without a hearing if the applicant is clearly not eligible, *see* N.J.S2C:52-12). Best case scenario, if an individual can manage to get through the process themselves, they are spending around \$200, but in reality they probably need a lawyer, who would charge \$1,000 to \$2,000. The individuals who would benefit most from expungement are already low income, and many simply can't get through this process. This was amply demonstrated by the Rutgers study discussed at the hearing — if, out of 71 study participants, they have yet to find an individual who can make it through the entire process, something is wrong with the system.

All of these steps sound more like the process of applying to be a member of the bar than what is required for an application for expungement in other states. It does not have to be this difficult. I will explain, as requested, how the process works in Maryland, where I practiced, as an example, although Maryland's system is certainly not perfect. *See* Maryland Code, Criminal Procedure Article ("Crim. Pro.") §§ 10-101 et seq. Unlike the 34 pages in New Jersey just on the "how" of expungement, the Maryland document is 16 pages of text, and it explains what expungement is and who is and is not eligible, as well as what the different dispositions mean and how to apply.⁴ This is the sum total of the official instructions:

1. Obtain a Petition for Expungement of Records (Acquittal, Dismissal, Probation before Judgment, Nolle Prosequi, Stet, or Not Criminally Responsible Disposition) (CC-DC-CR-072A); Petition for Expungement of Records (Guilty Disposition) (CC-DC-CR-072B); and the General Waiver and Release (CC-DC-CR-078), if necessary, at any District or Circuit Court. (Forms available online at: www.mdcourts.gov)
2. You will need to know the case number, date that you were arrested, summoned, or cited; the law enforcement agency that took the action; the offense with which you were charged; and the date your case was disposed.
3. Complete the forms and file with the clerk. Include an extra copy for the state's attorney and each law enforcement agency named in the petition. You must file in the court in which your case was concluded.

⁴ Maryland Judiciary, *Expungement: Information About Removing Criminal Records from Public Access in Maryland*, at <https://mdcourts.gov/sites/default/files/court-forms/ccdccr072br.pdf>.

4. Pay the nonrefundable filing fee (applicable only to guilty dispositions).⁵

As to number 1, each individual needs to fill out, at most, two forms (as opposed to four): either the petition for expunging convictions or the petition for expunging other dispositions (such as a noll pross/dismissal, a stet (similar to a dismissal though the case can theoretically be reopened), or a probation before judgment), and if less than three years have passed since the date of arrest, a waiver and release of liability for the arresting agency must be included.⁶ The latter is important because, unlike in New Jersey, Maryland will in many cases actually destroy the records instead of simply keeping them secret from the public but continuing to use them against the individual in future criminal cases.

For number 2, I would note that in Maryland, the information needed (assuming charges were filed) is readily available online in a single location known as Maryland Judiciary Case Search.⁷ No search for records needs to be conducted, as in New Jersey.

In step 3, the forms are filed one time, with the clerk of the court. Although three copies should be given to the clerk, for the prosecutor and police department, unlike in New Jersey, it is the clerk who will ensure that these agencies receive notice, rather than putting the burden on the applicant to notify up to 10 agencies. **This is one of the most important differences between the states and a simple way to streamline the process in New Jersey.**

Finally, step 4 is paying the filing fee (although it is only required where the person was found guilty), which is \$30. In Maryland, a hearing is held only if the prosecution objects, which rarely occurs in my experience when an attorney is involved, since there is no discretion on the part of the court — under current law, the applicant is either eligible for expungement or they are not. That is sometimes true in New Jersey, although there are more instances where there could be factual disputes, such as related to whether “crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time,” and as such are eligible for expungement, as well as determining whether an expungement is in the “public interest.”

Finally, in Maryland, if the applicant is eligible and the expungement is granted, the court notifies the relevant agencies, and the individual simply gets a letter within 60 days of the court’s order informing them that their record has been expunged. **This is the second easy way to improve New Jersey’s expungement process — to stop forcing the applicant to be**

⁵ You can also find a simplified version of these instructions in the court’s brochure, at <https://www.courts.state.md.us/sites/default/files/import/accesstojustice/pdfs/04redexpungementbrochure2015.pdf>.

⁶ The form is a single page; there are different forms for guilty dispositions: <https://www.mdcourts.gov/sites/default/files/court-forms/courtforms/joint/ccdccc072B.pdf/ccdccc072B.pdf>; and for other dispositions: <https://www.mdcourts.gov/sites/default/files/court-forms/courtforms/joint/ccdccc072A.pdf/ccdccc072A.pdf>. There is also, potentially, a one and a half page release: <https://www.mdcourts.gov/sites/default/files/court-forms/courtforms/joint/ccdccc078.pdf/ccdccc078.pdf>. Obviously, if the individual plans to sue the police for misconduct related to the arrest, the records should be preserved, which is why the waiver is required.

⁷ Whether having information this readily available is a good thing for defendants is another question (it’s certainly convenient for attorneys and the press); for the purposes of this testimony, the point is that it is readily available to applicants: <http://casesearch.courts.state.md.us/casesearch/>.

responsible for sending the court's order to all these different agencies. Requiring them to do so within five days is especially burdensome, particularly for an individual who may not have stable housing and able to receive and send mail on a daily basis, especially since they won't know when the order is coming. It would be much easier for the courts to do so, and agencies could waive the notice procedure in the statute and accept notice from the court by electronic mail.

I would respectfully suggest that this Committee consider reforming New Jersey's expungement process to streamline it for everyone, which is something that can be done now, regardless of what changes the legislature decides to make in the state's marijuana laws.

Finally, the issue of people being harmed by their records appearing on the background checks done by private companies, even if it has been expunged, was also broached at the hearing. While the individual does have rights related to this and could request that such companies remove the expunged record from their databases, that puts even more burden on the individual. Obviously, the state may not want to intervene unduly in the decisions of private companies and how much authority it has to regulate online services not located in New Jersey is a complex issue. There is a simple step the state can take, however, without delving into that quagmire. The state could look at forbidding companies competing for New Jersey government contracts from using such private services and instead require that they use information directly from the state or the FBI if they wish to conduct a background check. Or, the state can require that government contractors only use a private background check service if that company certifies that it updates its database regularly and automatically removes any convictions that no longer appear in state records.⁸

II. Individuals should not have to file for expungement for low-level marijuana offenses, and such records should not be usable for any purpose.

Even if New Jersey's expungement process was simplified somewhat, individuals who were convicted of low-level marijuana offenses should not have to bear the time and expense of filing for expungement. Despite Maryland's simpler process, many individuals I have spoken to attempted to file for expungement unsuccessfully prior to seeking assistance. In some cases, unfortunately, it appears that the paperwork does not get processed in a timely manner without an attorney's name attached; in other cases, the person struggled to fill out the form correctly. There have also apparently been some prosecutions of people who requested expungement but filled out the forms incorrectly (which are signed under oath) for perjury, which is not only harmful to the individual but also could have a chilling effect on other applicants. And many people are simply unaware of the opportunity to seek expungement or how it may benefit them to do so.

⁸ See National Employment Law Project, "The 'Wild West' of Employment Background Checks," August 2014 at <http://www.nelp.org/content/uploads/2015/03/Wild-West-Employment-Background-Checks-Reform-Agenda.pdf> (discussing Pennsylvania's groundbreaking law, which provides regular updates for private companies on expunged cases and requires that they be removed from the company's records as a condition of the firm's access to the state's records).

California has the most far-reaching expungement and resentencing law with respect to marijuana, which was part of their 2016 legalization initiative. And yet, despite half a million people having been arrested for marijuana in the last 10 years, in the first year only about 1,500 people applied for relief.⁹ In fact, California is currently considering a bill to require the courts to identify all cases eligible for expungement and resentencing and to automatically reduce or dismiss the conviction if the prosecution does not challenge it.¹⁰ New Jersey's court system can and should hire attorneys to review records and expunge those who are eligible. Otherwise, given the complexity of New Jersey's process and the fact that, even in other states, many who are eligible have not filed, the provision may not provide the help intended.

As a practical matter, this "automatic" expungement may only be possible as far back as the records were computerized. However, as a logical matter, I suggest that records should be expunged without application at least as far back as June 12, 1971 (were the bill to take effect today).¹¹ That is because an individual who turned 65 today would have been 18 on June 12, 1971 (and born on June 12, 1953). When someone turns 65 and reaches retirement age, many of the collateral consequences around finding a job are likely no longer applicable. And prior to them being 18, the case would likely have been juvenile and not criminal. I would note that, while it makes sense to set a date prior to which the court need not go through records to find cases, if an individual wishes to apply for expungement they should be able to do so, no matter how old the conviction. There may also be cases in which the records are not clear, but an applicant believes they are eligible for expungement. In these cases also, the individual should be able to apply. Given that the state has far more resources and legal knowledge than the individual, the burden should be on the state to prove that the applicant is not eligible for expungement in disputed cases.

A deadline should be set for compliance with the law by the courts and prosecutors. Given the practical considerations, that could be two years from the effective date of the statute. At that time, if someone believed they were eligible under this provision but their record has not been expunged without application, they would be able to apply. There should also be a provision to permit individuals to apply for expungement prior to the deadline if they wish to do so, as some people may have a compelling reason not to wait, such as a license or job they are unable to apply for until the expungement is granted.

Certainly the courts will need funding to hire people to review records and to streamline their systems. New Jersey is expected to bring in around \$300 million per year in revenues from legal

⁹ Stateline, "In these states, past marijuana crimes can go away," *Huffington Post*, Nov. 20, 2017 at https://www.huffingtonpost.com/entry/in-these-states-past-marijuana-crimes-can-go-away_us_5a12e8e8e4b023121e0e94e3.

¹⁰ See Assembly Bill 1793, available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793.

¹¹ Maryland deals with old (pre-1975) records by stating that the custodian of records shall conduct a reasonable search upon request, but need not expunge records that cannot be found after such a search. Crim. Pro. § 10-102. I would argue that, if the records exist in the individual's FBI background check, the court should enter an order of expungement if requested; obviously the state does not have an interest in maintaining the record, so it should not continue to negatively impact the applicant.

cannabis sales once the proposed 25% tax rate is implemented,¹² although that is probably a low estimate since most states that have launched adult-use markets have significantly exceeded revenue predictions, at least once the program gets up and running. In addition, the justice system will see significant cost savings, because based on the experience of other states, the arrests for marijuana offenses can be expected to drop approximately 93% after legalization.¹³ There is no reason that some of these funds should not be allocated towards helping people overcome the burden of their prior convictions, especially when that burden was not equitably distributed.

In addition to not requiring individuals to file, there are a number of other changes I would recommend to New Jersey's expungement law related to the expungement without application of low-level marijuana offenses. For these offenses that occurred prior to legalization, it should make no difference if the applicant has been convicted of other offenses that will remain on their records. The expungement is based not only on a general desire to let individuals move on with their lives after a period of time has passed since they committed an offense, but also on basic fairness, since what they did is no longer considered a crime (or is far less serious), and the state has recognized that cannabis generally belongs under a regulatory regime, not in the criminal justice system.

The phrase "low-level offenses" should include not only marijuana possession under N.J.S.2C:35-10, but also N.J.S.2C:36-2 or N.J.S.2C:36-3 related to marijuana paraphernalia; or N.J.S.2C:35-5 b(12). The latter is the fourth-degree offense of distributing or possessing with the intent to distribute small quantities of marijuana (one ounce or less). This offense is often going to be sharing cannabis with friends or purchasing cannabis to divvy up amongst a group of friends, which many lay people do not understand as "distribution," and the total quantity would be legal to possess in any state that regulates marijuana. This offense is already eligible for expungement under New Jersey law, so this change would amount mostly to a shortening of the waiting period rather than a change in who is ultimately eligible.

Similarly, the provisions in N.J.2C:52-14e, which states that a person cannot file for expungement if they have already received an expungement, and in N.J.2C:52-31, which essentially does not allow expungement for individuals who have received drug treatment in lieu of punishment (treatment which, in many marijuana cases, they likely did not need), should not apply to expungements under this provision. Nor is there a good reason to refuse expungement in these cases where the person was charged with another offense at the same time. Although a suggestion was made at the hearing to the contrary, there is already a method in place to redact portions of a record when someone is granted an expungement. N.J.2C:52-16 provides that, in a case with multiple co-defendants where only one is being granted expungement, "the original [record] shall remain in the agency's general files with the petitioner's name and other personal

¹² See New Jersey Policy Perspective and NJUMR Report, "Marijuana Legalization & Taxation: Positive Revenue Implications for New Jersey," May 2016, at https://www.njumr.org/files/1214/6409/3531/2016_05_24_MJRevenue.pdf.

¹³ After legalization, arrests for marijuana offenses, unsurprisingly, drop dramatically. For example, low-level marijuana cases brought to court in Washington dropped 98% between 2011 and 2015. In Colorado, the decrease was 81% between 2012 and 2015. In Oregon, marijuana arrests plummeted 96% from 2013 to 2016, while in Alaska the drop was 93%. See Drug Policy Alliance, *From Prohibition to Progress: A status report on marijuana legalization*, January 2018 (all of this data is coming from state governments).

identifiers obliterated and deleted.” A similar procedure could be implemented where one applicant is eligible for expungement of one marijuana offense but those charges were part of a case that included other charges; references to the marijuana possession charge could be removed. While of course if someone actually looked at the physical record, they could likely guess that it was a marijuana offense that was redacted, since most record searches are electronic that would be unlikely to have much practical impact.

Finally, New Jersey’s expungement process is different from that of some other states and more akin to “sealing,” because the records are not destroyed but rather accessible to the courts and parole and probation for sentencing, setting bail, and other limited purposes. Because the basis for the expungement of these low-level marijuana offenses is that they are no longer, and should never have been, a crime, these records should be excluded from use for any purpose. Thus N.J.2C52-16 through 52-23.1 would not be applicable.

An alternative to requiring the courts to review cases that has been in the news recently is to allow prosecutors to take action themselves. A number of prosecutors’ offices in major cities where expungement is available for marijuana convictions have pro-actively reviewed cases and brought them to the court for expungement or resentencing, including in Seattle, Portland, San Diego, and San Francisco.¹⁴ These prosecutors have gone above and beyond state law that permits expungements and ensured that individuals do not have to file applications under state law. There is already precedent in the New Jersey statutes for a prosecutor moving for expungement on behalf of an individual and, if they do not do so, the individual being able to file a simple application with no fee. *See* N.J.S.2C:52-6(6) (related to veterans participating in a diversion program). The problem with this approach, however, is that there would likely be a dramatic lack of uniformity in different prosecutors’ approaches, with many convictions being expunged in some areas and few in others, depending on how the prosecutor feels about marijuana policy reform. This is unfair to the applicants, and a uniform, statewide requirement for the courts to expunge cases is therefore preferable.

III. Individuals should be able to apply for expungement (or resentencing) for other types of marijuana offenses.

In addition to expunging marijuana possession offenses, other, more serious offenses should also be eligible for expungement or, if the individual is still incarcerated, resentencing. This could be done under a more or less standard expungement procedure, but with access to counsel. Because these types of expungements would be discretionary with the court, access to counsel is important to ensure that the applicant can present their best case at the hearing. As discussed in the bill hearing, there are a number of ways to achieve this. While the interest among witnesses in providing pro bono help is admirable, we suggest a combination of pro bono work for individuals who are not technically indigent but have difficulty affording an attorney and attorneys from either legal services or the public defender for indigent individuals. Again, funds to provide counsel should be set aside from the tax revenue from legal marijuana sales. Most of

¹⁴ *E.g.* Katie Zezima, “Cities, states work to clear marijuana convictions, calling it a states’ rights issue,” *Washington Post*, Feb. 1, 2018.

these funds would only be needed for the first few years as these cases worked their way through the system.

No greater sentence could be imposed, only a reduction or no change, and the court would consider any objection from the state and determine what is in the public interest, as it does now with expungement applications. In these cases, the issue is not that the conduct is no longer criminal, as it would remain a crime for individuals who are not licensed to cultivate and sell cannabis. Instead, it is that society has determined that the conduct is less serious an offense than previously believed and recognized the unfairness of the racial disparity in enforcement. In this way, it is analogous to the reduction in the sentencing disparity between crack and powder cocaine at the federal level, which was made retroactive, and those defendants were resentenced as a matter of fairness and equity.

Obviously, this system will give the courts a great deal of discretion in terms of who gets expungement and how much of a sentence reduction is received for individuals currently in jail. Unfortunately, any time that courts are given discretion, unconscious bias can creep in¹⁵ and that, combined with other factors such as the socioeconomic status of the applicants, can result in racial disparities in outcomes. While that is certainly not a reason not to give people the opportunity to seek expungement and resentencing, it is worth noting and perhaps endeavoring to correct for through judicial training,¹⁶ as has been recommended by both the ABA and New Jersey's Supreme Court Committee on Minority Concerns.¹⁷

IV. Draft language

The following is draft language, which is a revision of the expungement provision included in the prior legalization bill, S830. This language creates a separate system rather than amending the expungement statute itself.

22. (New section) Expungement and resentencing.

a. Notwithstanding any other provision of law, any person convicted of: marijuana possession as defined in paragraph (4) of subsection a. of N.J.S.2C:35-10; N.J.S.2C:36-2 or N.J.S.2C:36-3 related to marijuana paraphernalia; or N.J.S.2C:35-5 b(12) shall, following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), shall have their record expunged by operation of law.

(1) Any individual whose record is expunged under this provision who was convicted on or after the effective date of P.L. , c. (C.) (pending

¹⁵ See Terry Carter, "Implicit bias is a Challenge Even for Judges," *ABA Journal*, Aug. 5, 2016, available at http://www.abajournal.com/news/article/implicit_bias_is_a_challenge_even_for_judges

¹⁶ See Jeffrey J. Rachlinski & Sheri Lynn Johnson, "Does Unconscious Racial Bias Affect Trial Judges," *Notre Dame L. R.*, Vol. 84, No. 3 (2009) (which found that judges have similar implicit biases to the general population, but seemed to be able to compensate for such biases when they were aware of them and attempted to do so).

¹⁷ See *New Jersey Supreme Court Committee on Minority Affairs: 2015-2017 Report*, at <https://www.judiciary.state.nj.us/courts/assets/supreme/reports/2017/minority.pdf>.

before the Legislature as this bill), 1971, shall have their record expunged by the court no later than two years from the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), and notice of such expungement shall be sent to the individual's last known address.

(2) An individual who believes he is eligible for expungement under this section who has not received such notice within two years of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), or who was convicted prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), 1971, may apply for expungement, which shall be granted if the court finds the individual qualifies under this section.

(i) Should the individual's application be granted, no fees or court costs may be assessed.

b. Any person incarcerated or under supervision at the time of the enactment of P.L. , c. (C.) (pending before the Legislature as this bill) for any offense involving the possession, cultivation, processing, or sale of marijuana not listed in section a. may present an application for resentencing to the Court which sentenced them. The court shall consider the individual circumstances of each case, and shall reduce the applicant's sentence if it finds that doing so would be in the interests of justice, in light of the reduction in many penalties associated with marijuana-related conduct. The sentence shall not be increased at such a proceeding under any circumstances.

c. Any person previously convicted of any offense involving the possession, cultivation, processing, or sale of marijuana not listed in section a. who is not incarcerated or under supervision at the time of the enactment of P.L. , c. (C.) (pending before the Legislature as this bill) may present an application for expungement to the Court which sentenced the person. The court shall consider the individual circumstances of each case, and shall expunge the applicant's record if it finds that doing so would be in the interests of justice, in light of the reduction in many penalties associated with marijuana-related conduct. If the court believes that it would be in the interests of justice to grant the expungement, but only if the applicant remains in compliance with the law for an additional period of time, the court may hold the proceeding open and set a second hearing date, at which time the court will grant or deny the expungement. The amount of time between the first and second hearing is at the court's discretion, but the court shall grant the

expungement at the second hearing if the individual has not been convicted of any other crime or disorderly persons offense.

d. In any proceedings brought under sections a(2), b. or c.:

(1) Indigent individuals are eligible for the services of the public defender to assist them if they cannot afford the assistance of counsel.

(2) The prosecution shall receive notice and the right to be heard.

(3) In any factual dispute, the prosecution shall bear the burden of proof by clear and convincing evidence.

g. The Department of the Treasury shall establish procedures for the collection of all taxes levied.

No tax established by this section shall be levied upon marijuana intended for sale at medical marijuana centers pursuant to the "New Jersey Compassionate Use Medical Marijuana Act," P.L.2009, c.307 (C.24:6I-1 et seq.).

h. The tax revenue shall be collected by the Director of the Division of Taxation and shall be deposited by the Director of the Division of Taxation into the nonlapsing fund established pursuant to section 38 of P.L., c. (C.) (pending before the Legislature as this bill), and distributed as follows:

(i) during the first year the tax is collected one percent shall be allocated to the local governmental entity in which the marijuana establishment is located; during year two, two percent shall be allocated to the local governmental entity in which the marijuana establishment is located; and in year three and each subsequent year thereafter, three percent shall be allocated to the local governmental entity in which the marijuana establishment is located;

(ii) during the first three years after tax revenue begins being collected, the revenue shall first be allocated to the public defender, the prosecutor, and the courts as necessary to carry out the provisions of section 25, Expungement.

I hope this information is helpful to the committee as you move forward to tackle this important issue, and I am happy to answer any additional questions you may have. Thank you very much for your time.

Kate M. Bell
Legislative Counsel, Marijuana Policy Project
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Fostering Social Justice and Equity While Regulating Marijuana

The Marijuana Policy Project is the largest organization devoted to ending marijuana prohibition in the United States, and we are eager to lend our expertise to New Jersey, including lessons learned in other states that have adopted this sensible policy. While marijuana use rates are similar across races, blacks are three times more likely than whites to be arrested for marijuana possession. This stark disparity is not only a reason to end marijuana prohibition, but also to ensure legalization addresses the harms prohibition has inflicted. MPP led the drafting and campaign committee for Massachusetts' groundbreaking initiative, which has resulted in a robust social equity program.

Here are some of the provisions that can foster social justice and equity when legalizing and regulating marijuana:

Criminal Justice Provisions

- Possession limits should be clear and address various types of products so people don't exceed the limits accidentally.
- Ensure racial disparities in arrests aren't perpetuated with unnecessary criminal penalties:
 - People under the age of 21 who possess up to one ounce of cannabis unlawfully should receive community service, a fine, and/or drug education, not a criminal record.
 - Public consumption should be a civil — not criminal — offense.
 - The law should allow adults to share cannabis with other adults. Sharing is common practice among cannabis (and alcohol) consumers. Currently, sharing cannabis is a serious offense.
 - The bill should allow adults to securely cultivate a limited amount of cannabis. Eight of 10 adult use jurisdictions allow all adults to cultivate cannabis, and the other two allow it in under some circumstances.
 - The penalty for exceeding the limits should be modest to avoid inadvertent violations resulting in harsh penalties. For example, a first offense for possessing double the possession limit should be limited to a civil infraction.
- Provide that parole and probation may not be revoked for possession or use of marijuana, including testing positive. Judges could still require drug treatment or abstinence as conditions of probation (as they can for alcohol) in specific cases where there are indications of problematic use that warrant it.
- In order to address past disparities, and as a matter of basic fairness, the bill should include the mandatory expungement of low-level marijuana offenses, as well as resentencing or discretionary expungement for all prior marijuana offenses.
 - Ideally, expungement would be automatic, in the sense that individuals would not have to apply; at the very least it should be a simple process.
 - Some of the tax revenue should go towards ensuring that indigent individuals can obtain counsel, as well as funding for the court system to process the requests.

Ensuring Legalization Does Not Leave Behind Renters and Residents of Public Housing

- Residents of federally subsidized housing are not allowed to use cannabis, and — depending on what the law provides for — many tenants may be forbidden from doing so as well. New Jersey should allow regulated locations to have on-site consumption to ensure these individuals are not shut out.
- The bill should not allow landlords to prohibit marijuana possession or non-smoked cannabis consumption in rented residences.
 - Without these provisions, New Jersey will have legalization that primarily benefits homeowners.

Funding Communities Impacted By the Drug War

- New Jersey should allocate some of the marijuana excise tax revenue to benefit individuals and communities that have been harmed by the drug war.
- Massachusetts' law provides that some of the funding will be appropriated for programming for "restorative justice, jail diversion, workforce development, industry specific technical assistance, and mentoring services for economically-disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses ..."
 - Some of the funds could also be used to train ex-offenders and people who live in low-income communities to work in the cannabis industry, such as Hood Incubator.

Ensuring Licenses Are Issued Equitably

- We recommend including language that allows some flexibility for the regulatory authority to determine the best approach to promote equity in licensing, with input from affected communities. For example, Massachusetts' law provides that the regulatory commission's regulations must include: "procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities."
 - After a series of meetings to engage the public, the commission developed a robust Economic Empowerment Priority Review and Social Equity Program.
 - This priority review means the state is starting its marijuana licensing by granting licenses to economic empowerment applicants — companies that benefit or are led by select communities that have had higher rates of drug arrests.
 - The social equity program will provide training and technical assistance for applicants and licensees who reside in an area with disproportionate drug arrests, or who have themselves have a drug conviction. Assistance can include industry best practices, creating business plans, assistance raising capital, and accounting and legal forecasting.
- After a possible head start for equity applicants, we recommend a free market approach, rather than having the regulator pick "winners and losers."
 - If there is a desire to limit the number of licenses, consider a qualified lottery rather than a "merit-based" system. "Merit-based" systems tend to benefit those with large amounts of resources, and frequently result in litigation and delay.
 - If there must be a "merit-based" system, consider additional measures to ensure that those who have borne the brunt of prohibition have an opportunity to participate in the new industry, but do so in a way that is consistent with constitutional requirements, which requires looking at "race neutral" means.
- It is important that capital requirements are reasonable, that there are opportunities for small businesses, and that the law does not exclude people for life due to past drug offenses.

June 4, 2018

To:
Senate Judiciary Committee

From:
Colleen Begley
30 Spruce Court
Moorestown, NJ 08057

To Whom It May Concern,

Thank you for considering public testimony on the matter of Cannabis record expungement. If you believe this to be an issue of social justice then begin to treat it as such, not solely a new way to generate tax revenue. Simply expunging records of those convicted of marijuana possession falls drastically short.

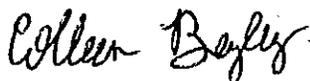
I have spent my entire adult life in the NJ criminal court systems for Cannabis related charges. I am 37 years old. That is over half my life. I have done 2 State prison bids in EMCF. I have been on probation, parole and ISP. All of these charges were related to Cannabis. However, my record is not entirely Cannabis convictions. I have also been convicted of 2nd degree eluding, 3rd degree tampering with evidence and an unleashed dog complaint. I want you to understand each of these, including the unleashed dog incident, were related directly to Cannabis prohibition. My parents are basically ashamed of me. They consider me a criminal.

It has been impossible for me to secure a professional career in a legal industry making a living wage. NJ is now trying to legitimize the industry I work in without even giving me an opportunity to continue working in it. I don't have \$1 million in the bank to try to attain a State contract. Realistically, I think I currently have around \$1000. I've spent nearly \$100,000 in legal fees over the course of my adult life arguing about cannabis laws in New Jersey courts. I pay court imposed fines & probation supervision fees to this day. Not only would I like my record expunged but in the interest of social justice I request reciprocity & legitimacy. In fact, I think everyone who has been affected by cannabis prohibition deserves a reciprocity. You know how much weed you have taken from each of us over the years. Since the rate of \$400 an ounce is available to medical patients in the state of New Jersey I request full reciprocity for all the "evidence", or medicine (as I call it), based on this current market value in the NJMMP.

Furthermore, I respectfully request legitimacy and opportunity for those who have been impacted by harsh laws that destroyed countless families and communities. I'm going to teach some, and maybe all of you, a new meaning of a common word today. "Trap". This is a term in underground drug culture. Its basic meaning is "to sell illegal drugs or referring to a place where illegal drugs are sold". On a deeper level it refers to a trap or cycle that exists in our society. This is where the social justice issue intersects. "Trap" refers to the cycle of selling drugs and hustling to survive. Expunging some records as you hand this huge industry off exclusively to more old rich white men isn't social justice. My suggestion is to consider a path for NJ to legalize the "trap economy". It will quickly strengthen local economies that have been most effected by prohibition. Understand the underground economy is still "Big Marijuana" not these multi-state contract holders hiring lobbyists to try to control this issue for you.

Please try to grasp the complexity of this issue. Please do not let people like me fall through the cracks as you undertake the reformation of Cannabis laws in NJ. I have spent my entire adult life dedicated to these issues. I am 37 years old and a pregnant medical marijuana patient on probation for Cannabis distribution with yet another open case for Marijuana possession in NJ. I fear for the safety and security of my unborn child still today. Please fix this broken system on a real level not superficially. Expungement is the tip of the iceberg.

Respectfully,



Colleen Begley

June 4, 2018

Honorable Chairwoman and Members of the Assembly Judiciary Committee,

Re: bill A3620

I would like to start by thanking the sponsors of this bill, including my representative Assemblywoman Sumter, for their leadership in taking some crucial measures in seeking some justice in the very hypocritical war on cannabis.

I myself am a victim of prohibition as I was turned down for a job at Godiva Chocolatier preparing chocolates for sales and at TKL Research as an appointment setter in 2016 for a cannabis misdemeanor from 2013. Both jobs expressed great interest in hiring me until they received my background check. A mother of two, with one in college and I couldn't get a job selling chocolates because of possession of a substance shown to be safer than alcohol.

Expungement of cannabis misdemeanors seems like the least we can do in the event of legalization. We may not be able to restore lives lost or families destroyed by the many sanctions of cannabis prohibition, like prison time served, fines paid, jobs lost, property lost, rights violated, and ability to acquire assistance, insurance, loans, or licenses, but we can help some in a state with one of the highest arrest rates for cannabis. I would like a cease to all cannabis prosecutions immediately and release of those imprisoned or on probation/parole or the Drug Court program for cannabis.

That's why I feel although this is a step in the right direction, it does not go far enough based on the legalization/decriminalization bills at hand. I feel cannabis legalization in New Jersey would be greatly irresponsible without restoring the right for one to cultivate their own personal cannabis or allow for small cannabis collectives. Cannabis legalization seeks to make lawful consumers out of citizens that have been previously financially incapacitated through prohibition. Many people cultivate or sell cannabis now because they otherwise could not afford to buy it. Continuing to persecute these citizens for these 'felonies', which home cultivation is legal in all states that have legalized cannabis, except Washington State, which has legal home cultivation for medical patients, in a legalization model cannot be considered legalization for social justice, which the governor and advocates are requesting. The right to grow one's own cannabis is the best way to ensure equity. Legalization cannot just be for industry or revenue, it has to be for the people and real rehabilitation to lives most affected by cannabis prohibition. Cannabis felons need access to jobs too.

We are victims of prohibition. A law based on lies. A law people can not and have not respected due to it's unjustness and hypocritical nature. Laws that sought to pervert and withhold a plant that was given to us for healing as is being seen by our growing patient population. Cannabis should be used in good spirit to have a positive effect on society, therefore I believe cannabis legalization for revenue only serves to corrupt that good spirit effect. Cannabis is an herbal medicine that Dr. Sanjay Gupta demonstrates may be a solution to the opioid crisis and it's quite possible we would not be in this crisis situation had we not made cannabis last resort medicine in New Jersey. This is the backwards thinking that should be turned forward.

We need to free/pardon Jon Peditto (and felons like him), who is serving 8 years in the New Jersey prison system for growing 17 plants. This is someone the medical cannabis community could use to help support the many people registering as patients right now. There are many complaints of monopolistic and corporate cannabis in New Jersey and patients still suffer with little recourse. Many

patients cannot afford the fees to maintain medical recommendation, travel to the sparse dispensaries in the state, or the meds themselves, and still suffer with little recourse. Many people, patients want small batch personalized, local medicine and the therapeutic experience of gardening their own medicine. These are rights given to patients in every other state that has legalized cannabis to ensure a truly compassionate medical program. And as far as decriminalization goes, looking at epic proportion (and epic racially disproportionate) cannabis arrests in New Jersey, that were more of a danger to a person's life than cannabis itself, that is something the state should have done already. Please stop arrests, free the prisoners, release those on Drug Court which is a dangerous program with judges playing doctors, and discontinue prosecution and fines for cannabis. Please help truly rehabilitate lives harmed by prohibition by offering a legalization the people can get behind in good spirit.

Thank you very much for your time and consideration.

Jo Anne Zito
Coalition for Medical Marijuana of New Jersey



HISPANIC BAR ASSOCIATION OF NEW JERSEY

Established in 1980

June 4, 2018

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TRUSTEE-AT-LARGE (VLC)

ARLENE QUIRONES PEREZ
IMMEDIATE PAST PRESIDENT

VIA EMAIL

Assemblywoman Annette Quijano
Assembly Judiciary Committee

Re: Marijuana Expungement Legislation

Dear Assemblywoman Quijano and Assembly Judiciary Committee:

On behalf of the Hispanic Bar Association of New Jersey, please accept the following statement. Criminal convictions for marijuana can have life-long consequences, affecting the opportunity for those convicted to be eligible for public housing, employment opportunities and financial aid. "The War on Marijuana Has a Latino Data Problem," AMERICAN CIVIL LIBERTIES UNION, www.aclu.org/blog/mass-incarceration/war-marijuana-has-latino-data-problem (last visited June 3, 2018). It can also impact child custody determinations and immigration status. *Id.* The disparity in marijuana enforcement makes it more likely for minorities, including Latinos, to live with the life-long impact of having a criminal record for possession and/or use of marijuana, despite legislation legalizing or decriminalizing possession and use of marijuana. The expungement provisions under Bill A-3620 provide an important step for many in New Jersey to continue to serve as productive citizens of the State without having the effects of a conviction for marijuana, and are especially important given the legislation legalizing or decriminalizing possession and use of marijuana at the state level. The Hispanic Bar Association of New Jersey supports change to expungement legislation, and encourages these discussions to continue.

Sincerely,

Hector D. Ruiz
President, Hispanic Bar Association of New Jersey

cc: Julia A. Lopez, Esq. (via email)
President-Elect, Hispanic Bar Association of New Jersey

Jaclyn Medina, Esq. (via email)
Vice-President of Northern Region President, Hispanic Bar Association of New Jersey

Albertina Webb, Esq. (via email)
Vice-President of Southern Region President, Hispanic Bar Association of New Jersey

Hello, my name is Gale Bonker and I live in Byram Township, New Jersey. I'm advocating that all New Jersey lawmakers support legalizing, taxing, and regulating marijuana for adults, and that we provide automatic, retroactive expungements for all non-violent marijuana-related charges.

This issue has been important to me for a long time, but it became even more personal when I was arrested for marijuana possession, despite being a responsible consumer. A friend and I were driving home when we were pulled over for a broken headlight. The police then interrogated, searched, handcuffed, and arrested us, even though we were just trying to get home safely by having a sober designated driver, a practice that has been drilled into our heads since before we could even legally drink. Since then, I've suffered from severe anxiety, post-traumatic stress, and financial hardship.

Nonetheless, my story is not unique. New Jersey makes over 25,000 marijuana possession arrests per year. Like thousands of others with similar stories, I was denied my dignity and made to feel like a criminal for something that nine other states, including two I used to live in (Massachusetts and California), have already legalized. Despite my setback, I must move forward, and implore that our lawmakers will come through for myself and others and legalize the responsible adult use of cannabis in New Jersey and expunge records of whose the War on Drugs has tainted. I want to ensure that no one else in our state finds themselves in the dehumanizing situation my friend and I were in, especially those whom our criminal justice system disproportionately affects, such as people of color, immigrants, and low-income people, and to make sure that those of us who have had these horrifying experiences receive forgiveness.

I am disgusted by the fact that my Black peers, who are arrested three times more often than my white peers, often also face harsher sentences and higher fines than my white peers. Additionally, some of us who do not have ample income are put in extreme financial hardship due to the thousands of dollars that an arrest, and then a potential expungement, can cost. Others of us are at risk of losing public housing, educational financial aid, jobs, immigrant statuses, and more, all for being in possession of a plant that has been proven to have significant medical benefits, and is much safer than other completely legal substances such as tobacco and alcohol.

We should treat expungements like amnesty for all non-violent marijuana-related acts that were previously considered crimes. If someone has a violent charge associated with their marijuana-related conviction, they would be evaluated throughout the criminal justice system for their violent charges separately from their marijuana-related charges anyway. We should be asking ourselves, "If cannabis was legal during the time this person was charged, would they have been breaking the law or acting in any immoral way?"

Most of us, including myself, agree that we should expunge charges for possession. We should also be expunging charges for distribution and intent to distribute because before legalization passes, these people had no way to do these business transactions legally. Therefore, if we are going to make the sale and distribution of cannabis legal, it should also be made legal retroactively. Since the War on Drugs and marijuana-related convictions has disproportionately affected people of color and low-income people, we would therefore be disproportionately excluding a whole community of people from participating legally in the cannabis market, which would continue to fuel the illegal market that we are trying so hard to squash through legalization. This is especially important since there has been talk of giving out a certain number of dispensary licenses to people of color and women to promote diversity in the marketplace.

Clearly, marijuana prohibition has failed in New Jersey. It's time to move away from our failed approach, tax and regulate marijuana like alcohol for adults, build a safe and controlled system, and forgive past offenses. S830, S3195, A1348, A1557, and A3581 are a great start, and cannabis legalization should go forward with a system that is fair, profitable, and advances social and racial justice.

In conclusion, legalization must include measures to heal the harm caused by injustice by:

- Providing for automatic and retroactive expungements of criminal records due to marijuana-related convictions. Otherwise, an expungement costs hundreds of dollars and requires a long, complicated process.
- Providing meaningful ways for New Jersey's entrepreneurs and small business owners to participate in the legal market, with an emphasis on the inclusion of business owners of color.
- Providing concrete measures that ensure reinvestment in low-income communities and communities of color that have disproportionately been the targets of the War on Drugs.
- Allow for home grow to ensure accessibility of cannabis to all New Jersey citizens regardless of ability, income or residency.
- Use the projected \$300 million in annual tax revenues for education, drug treatment and prevention, and justice reinvestment, such as re-entry and job training programs.

Please support legalizing, taxing, and regulating marijuana like alcohol for adults, and expunging the records of those previously convicted for marijuana-related charges. Thank you for your attention to this very important issue, and for allowing me to testify today.

vote no momday on aa3620

jeanpublic1@gmail.com

Sent: Sunday, June 3, 2018 3:15 PM

To: OLSaideAJU

the law is the law, when these people did marijuana it was the law. there is no reason at all for expungement. when people violate the law, it should be a public record and it should remain as a public record of those who do not honor the law. it is a serious matter, not just one that you can wipe off. some legislators seem to be far too willing to forget about crimes. that allows more crimes to be committed. crimes are serious business and this should not be approved. vote no on this bill.