



**Written Testimony of Caroline Cohn,  
Staff Attorney at the National Consumer Law Center**

**In Support of H.B. 1598 / S.B. 979  
An Act providing for easier and greater access to record sealing**

January 16, 2024

Dear Honorable Chairpersons Day and Eldridge, and Members of the Joint Committee on the Judiciary:

My name is Caroline Cohn, and I am a staff attorney at the National Consumer Law Center (NCLC).<sup>1</sup> I write in support of H.B. 1598 / S.B. 979, “An Act providing for easier and greater access to record sealing.”

Today, to rent an apartment or nail down a job, you almost always have to pass a background check. About 94% of employers<sup>2</sup> and 90% of landlords<sup>3</sup> run criminal background checks. Landlords<sup>4</sup> and employers<sup>5</sup> often turn down applicants with a criminal record. As the Consumer Financial Protection Bureau (CFPB) explained in a recent advisory opinion, when criminal record information appears on background-screening reports, “[c]onsumers’ rental housing applications may be denied, or they may end up paying more for such housing.”<sup>6</sup> In other words,

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<sup>1</sup> The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our regular contact with these advocates, we have seen many examples of the damage wrought by criminal-record reporting from every part of the nation. It is from this vantage point that we supply this testimony.

<sup>2</sup> Consumer Fin. Prot. Bureau, *Market Snapshot: Background Screening Reports: Criminal background checks in employment* 4 (Oct. 2019), [https://files.consumerfinance.gov/f/documents/201909\\_cfpb\\_market-snapshot-background-screening\\_report.pdf](https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf).

<sup>3</sup> TransUnion, TransUnion Independent Landlord Survey Insights (updated Aug. 7, 2017), <https://www.mysmartmove.com/blog/landlord-rental-market-survey-insights-infographic>.

<sup>4</sup> Rebecca Vallas & Sharon Dietrich, Ctr. For Am. Progress, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records* 19 (2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

<sup>5</sup> Devah Pager & Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men* 4 (Oct. 2009), <https://www.ojp.gov/pdffiles1/nij/grants/228584.pdf> (conducting a large-scale field experiment and finding that “a criminal record has a significant negative impact on hiring outcomes, even for applicants with otherwise appealing characteristics”—specifically, “a criminal record reduced the likelihood of a callback or job offer by nearly 50 percent”).

<sup>6</sup> Consumer Fin. Prot. Bureau, Advisory Op., 12 C.F.R. Part 1022 (2024), at 5, [https://files.consumerfinance.gov/f/documents/cfpb\\_fair-credi-reporting-background-screening\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fair-credi-reporting-background-screening_2024-01.pdf) (citing Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation’s Housing*, at 1-2, 22 (2023),

criminal records can shut out renters from decent or affordable housing, or even result in homelessness. Likewise, “[c]onsumers’ employment applications may be rejected, they may be passed over for promotions or denied security clearances, and they may lose their jobs.”<sup>7</sup>

Background screening therefore wields significant influence over people’s lives and financial circumstances. People of color—and Black people in particular—are more likely to have a criminal record, largely due to the racial bias that infects every stage of the criminal legal system. The negative consequences of criminal records disproportionately harm<sup>8</sup> these communities.

Recognizing that lingering criminal records are a barrier to housing, jobs, and economic stability and often are not useful predictors of someone’s ability to be a successful tenant<sup>9</sup> or employee,<sup>10</sup> states around the country have adopted record-clearing laws as a way to give people a fresh start. Forty-five states—including Massachusetts—now allow people to expunge, seal, or set aside certain convictions in some circumstances.<sup>11</sup>

Sealing is important because it can properly prevent landlords and employers from using criminal record information that state policymakers have decided should no longer stand in people’s way. And just this month in January 2024, the CFPB affirmed that the federal Fair Credit Reporting Act (FCRA) prohibits sealed records from being included in employment and

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[https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2023.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf) (noting that “renter cost burdens have risen to their highest recorded level, underscoring the worsening affordability challenges facing many renters with lower incomes”); Consumer Fin. Prot. Bureau, *Tenant Background Checks Market* 5 (Nov. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_202211.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_202211.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> Caroline Cohn, et al., Nat’l Consumer L. Ctr., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing* 22 (2022), <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/#page=22>.

<sup>9</sup> See Cael Warren, Wilder Found., *Success in Housing: How Much Does Criminal Background Matter?* ii, 19–22 (2019) (in a study of more than 10,500 households living in 4 nonprofit housing providers, (1) finding that out of 15 broad categories of offense, conviction records for 11 have no statistically significant consequences for housing outcomes; and even within the 4 remaining categories, a misdemeanor conviction has no statistically significant predictive effect after 2 years, and a felony has no statistically significant predictive effect after 5; and (2) stating “the study results overall tend to overstate the magnitude and significance of the impact of criminal background on housing outcomes,” in part because the researchers were unable to control for a number of factors (emphasis in original)); see also Tex Pasley et al., Shriver Ctr. On Poverty L., *Screened Out: How Tenant Screening Reports Deprive Tenants of Equal Access to Housing* (2020); Rebecca Vallas & Sharon Dietrich, Ctr. For Am. Progress, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records* 19 (2014).

<sup>10</sup> Caroline Cohn et al., Stanford Ctr. on the Legal Pro. & Stanford Crim. Just. Ctr., *Unlocking the Bar: Expanding Access to the Legal Profession for People with Criminal Records in California* 5 (2019); see also *id.* at 20 & n.49–50 (discussing (1) a Charles Koch Institute survey in which a majority of managers and human resources professionals rated the quality of their workers with criminal records as equal to or better than the quality of those without a record; and (2) a study of people with a felony record who served in the U.S. military that found these individuals were promoted more quickly and to higher ranks than others, and were no more likely than people without records to be discharged for negative reasons).

<sup>11</sup> Collateral Consequences Res. Ctr., *50-State Comparison: Expungement, Sealing & Other Record Relief, “Authority for Expunging, Sealing, or Setting Aside Convictions”* (updated Oct. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

tenant screening reports.<sup>12</sup> Sealing therefore may also provide consumers with powerful remedies under the FCRA, if a background-screening company nonetheless does report the record to a landlord or employer.

The bill under consideration would require the Commissioner of Probation to automatically seal criminal and juvenile records after the applicable waiting periods without the filing of a petition. Automatic sealing is essential for ensuring that the benefits of sealing accrue more efficiently and to wider swath of the Commonwealth—including those from vulnerable populations. Indeed, the petition process can be particularly difficult to navigate for people in crisis or those struggling with lack of income or housing, as well as those with limited English language proficiency, disabilities, reading issues, or barriers to information about their eligibility for sealing or opportunities to avail themselves of the current law.<sup>13</sup>

We urge Massachusetts to join the growing number of states have taken the important next step of adopting automatic record sealing, including California, Colorado, Connecticut, Delaware, Michigan, Minnesota, New Jersey, New York, Oklahoma, Pennsylvania, Utah, Virginia.<sup>14</sup> This bill would be a significant step toward ensuring fairer and more equitable access to employment, housing, and other opportunities for Massachusetts residents.

I thank you for considering this important legislation and ask that you vote H.B. 1598 / S.B. 979 favorably out of committee.

Sincerely,

Caroline Cohn  
Staff Attorney  
National Consumer Law Center

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<sup>12</sup> As the CFPB affirmed in a recent advisory opinion, background reports should not contain records that have “been expunged, sealed, or otherwise legally restricted from public access,” and consumer reporting agency violates 15 U.S.C. § 1681e(b) if it fails to follow reasonable procedures to prevent such records from appearing in consumers’ reports. *See supra*, note 6, at 7.

<sup>13</sup> *See, e.g.*, J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harv. L. Rev. 2460 (2020), <https://repository.law.umich.edu/articles/2165/> (showing that gaps in peoples’ knowledge about sealing hold many eligible individuals back from sealing and getting jobs).

<sup>14</sup> Collateral Consequences Res. Ctr., 50-State Comparison: Expungement, Sealing & Other Record Relief, “Automatic Record Clearing” (updated Nov. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>.