



AMERICAN CIVIL LIBERTIES UNION

Maine

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TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass – LDs 848, 1550, 1646

An Act to Expunge Certain Nonviolent Drug Crimes

An Act to Authorize the Expungement of Records of Nonviolent Crimes

**An Act to Vacate or Adjust Sentences and Expunge Arrests,
Convictions and Adjudications for Cannabis-related Offenses**

JOINT STANDING COMMITTEE ON JUDICIARY

April 27, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LDs 848, 1550, and 1646 because each bill would free Mainers from the debilitating unintended consequences of criminal records, extending the promise of our constitution to all people in our state.

This is how criminal law was designed to work. The legislature decides that something is a crime and designates consequences for committing the crime. These consequences can include a prison sentence, rehabilitation or mental health services, community service, supervised release, and more. Unfortunately, for as long as there have been criminal laws – but exponentially more in the digital age – these punishments often far outweigh the crime committed. Past convictions can make people ineligible for job opportunities, professional licenses, housing assistance, education, volunteering with their children’s activities, and more. In short, a criminal record has prevented millions across the country, and thousands across Maine, from moving on with their lives, pushing them into second-class status even after they completed their sentences. Keeping people from being able to fully reenter and contribute to their communities also makes it more likely they will become entangled in the legal system again.

LDs 848, 1550, and 1646 would each make important progress on this issue. LD 848 would give people who have been convicted of certain drug crimes the right to petition a court to expunge their record five years after completing their sentence, as long as they have not been convicted or charged of any other crimes in the five years since their sentence ended. LD 1550 would establish the same right, also available upon petition to a court, for people who have been convicted of Class C, D, and E crimes, as long as none of those crimes were sex crimes, crimes against minors or the elderly, or involved domestic violence or other violence. LD 1646 would, among other things, give people who have been convicted of cannabis crimes the right to have their records expunged, and people serving sentences for cannabis-related crimes a right to petition a court for resentencing.

Some members of Maine's legal community have argued that any legislatively established criminal records expungement system would unconstitutionally infringe upon the governor's exclusive power to pardon. The Law Court has not decided this question, coming closest in the 1982 decision of *State v. Hunter*, where the Court ruled that a resentencing statute that allowed deductions of a prison sentence was an unconstitutional encroachment on the governor's commutation power. 447 A.2d 797, 800 (Me. 1982). The words "expungement" or "sealing" or "vacatur" do not even appear in *Hunter*, although some lawyers cite that case to support their contention that legislatively established expungement is unconstitutional. We disagree. Pardons and expungements are fundamentally different. Pardons do not necessarily entail expungements, and expungements never modify sentences. A pardon frees you from serving any remainder of your sentence, or any other penalties attached to the pardoned crime. A pardon is available for any crime, at any point after conviction. In contrast, expungement simply removes records, and perhaps also makes it unlawful to disseminate certain records. Indeed, expungement is simply a more thorough, and a more accelerated, way to do two things the state already does: make certain records confidential pursuant to the Criminal History Records Information Act, 16 M.R.S. §701 *et seq.*, and destroy records under state agency retention schedules.

Every person deserves the chance to start with a clean slate. Each of these three bills would make important progress by increasing the ability of people with convictions to rejoin their families and communities, seek gainful employment, and move forward. We urge you to vote that these three bills *ought to pass*.