

Maine PRISONER ADVOCACY Coalition



Peter M. Lehman, PhD

20 Lawrence Ave
Thomaston, Maine 04861
(207) 542-1496
Peter@GrowInME.com

Testimony in support of LD 1904 to the Committee on the Judiciary May 15, 2023

Senator Carney, Representative Moonen, and distinguished members of the Committee

My name is Peter Lehman and I live in Thomaston. I am a formerly incarcerated citizen, a sociologist and a person in long-term recovery.* I am testifying on behalf of the Maine Prisoner Advocacy Coalition whose goal is to promote restorative practices in order to increase public safety and the health of our community

Members of this Committee are already familiar with many of the issues around making criminal records public and accessible or sealing or expunging them. I believe you are also acutely aware of the huge negative impact that use of criminal records has on former offenders and their families, especially in employment and housing

This morning I want to talk directly as a sociologist/criminologist about the relationship between public safety and public criminal records. What are the public safety implications of making criminal records more accessible and available to use for employment and housing decisions?

The answer is that making criminal records more accessible doesn't make us safer. Let me repeat that. making criminal records more accessible doesn't make us safer. Making them more available does NOT reduce recidivism—the fancy word for re-offending Period

How do I know that? Well, for one thing, jurisdictions that have made them less accessible have not experienced more recidivism. In fact, the evidence is just the opposite—making them less accessible REDUCES criminal behavior.¹

¹ For an excellent recent overview of the literature and research on these issues, see the John Jay College of Criminal Justice report, Beyond the Record. See also a less recent but valuable set of literature reviews and materials from the ACLU, Back To Business. See also, Prescott and Starr, Expungement of Criminal Convictions: An Empirical Study, Harvard Law Review, Vol 133, No 8, pp 2460-555 (June 2020)

* In the interest of honesty and disclosure, a personal background statement is available on request

As another example, countries such as France, and in fact the whole of the European Union, hold records much more confidential than we do. And they have much LESS repeat criminality.

And many of our assumptions and presumptions about people with criminal records turn out to be untrue. Corporations and companies that have taken initiatives to hire MORE people with criminal records report that not only is recidivism reduced but the quality and retention of their workforce has improved. Ask Dave's Killer Bread or Target ²

The bottom line is that making criminal records more and more accessible to the public, including landlords, is NOT an evidence-based practice for making us safer or reducing repeat criminality.

In fact, making records more accessible turns out to be quite effective in producing exactly the opposite result. It **increases** repeat offending.

I am attaching the Federal Department of Housing and Urban Department Guidelines for housing decisions that already already limit use of criminal records. It is important that Maine landlords begin to use them.

This legislation builds on these guidelines. It does not ban the use of criminal records but gives the same sort of guidance as the HUD Guidelines, making it locally visible and providing for local avenues to resolve disputes.

We urge you to support LD 1904.

Thank you for your generous attention.

I'd be happy to try to answer questions.

Expungement of Criminal Convictions: An Empirical Study, Harvard Law Review, Vol. 133, No. 8, pp. 2460-555 (June 2020)

² Those with criminal records who are hired generally make better employees. The Center for American Progress, hardly known for its liberalism, estimates that excluding these people from the workforce costs the economy billions of dollars. Economists estimate that the cost of barring these individuals from the workforce is roughly \$78 to \$87 billion in lost gross domestic product annually. One study found that putting to work just 100 of such individuals in Philadelphia would increase their lifetime earnings by \$55 million, income tax contributions by \$1.9 million, and sales tax contributions by \$770,000. <https://www.americanprogress.org/article/expunging-clearing-criminal-records/>

HUD Guidelines, 2016

In 2016, The United States Department of Housing and Urban Development issued guidance to help housing providers avoid liability for racial discrimination related to the use of conviction records while screening applicants. Below are the main points for landlords or other housing providers to consider:

- Landlords cannot issue blanket bans on anyone with a conviction history.
- Landlords cannot deny housing opportunities on the basis of an arrest record.
- If using background checks, landlords must perform them consistently, rather than using them selectively with some applicants based on stereotypes or fears.
- Landlords must consider applicants on a case-by-case basis, taking into consideration both the nature and the severity of the conviction and how much time has passed. It is essential to make a decision based only on the facts.
- It is legal to deny an applicant housing if a recent conviction poses a clear risk to other tenants or neighbors. However, that decision must stem from credible evidence; it cannot be based on hypotheticals or speculation.
- A denial must also offer evidence that the housing provider or landlord has a legitimate, discrimination free reason for their decision.
- A denial must also show that the landlord's underlying policy differentiates criminal conduct that poses a verifiable risk to property and/or resident safety from criminal conduct that does not.

(John Jay College of Criminal Justice report, Beyond the Record, p 16)