

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 710
Criminal Procedure – Expungement of Records - Modifications
DATE: March 2, 2022
(3/8)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 710. This proposed legislation provides that a petition for expungement of arrest warrants and fugitive warrants is authorized under Criminal Procedure § 10-105(a) if the arrest warrant or fugitive warrant is invalidated.

The bill also amends CP § 10-105(c) to authorize a petition to be filed **immediately after a disposition** of an acquittal, nolle prosequi, or dismissal, eliminating a filing of a waiver and release form and the current 3-year waiting period.

It should be noted that the court is not able to determine if all court-ordered conditions of the probation or stet have been satisfied. That determination is made by other criminal justice agencies. Further, this bill presents public safety concerns as it is possible someone would be eligible to file for an expungement as soon as he or she was released from a correctional facility.

In addition, this bill will have a significant fiscal impact on the Judiciary. In the past three (3) fiscal years, the following number of petitions for expungement were filed in the District Court and the circuit courts:

	District Court	Circuit Court
Fiscal Year 2019	74,508	10,951
Fiscal Year 2020	55,105	8,642
Fiscal Year 2021	39,061	5,940

**FY2020 and FY2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.*

The Maryland Judiciary is currently in the process of implementing a single Judiciary-wide integrated case management system that will be used by all the courts in the

Judiciary. Maryland Electronic Courts (MDEC), which has been implemented in 92% of the jurisdictions; however, the bulk of the process still requires the clerks to do manual processing. The average time to complete expungement of an entire case in the District Court or circuit courts has been determined to be 1.5 hours. The average time to complete the more complex process of expunging a single charge from a case with multiple charges, which requires reading through all documents and docket entries, has been determined to be 3 hours for District Court and 5 hours for circuit court due to the size of case files. Time estimates could increase depending on circumstances such as the complexity of the case, the difficulty in locating files, and the number of custodians. The time to complete the expungement process is not currently available for the appellate courts.

The expungement process is a long, labor-intensive, and expensive process involving the determination of eligibility; the use of multiple NCR forms; postage costs for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants, defendant's attorneys; copying expenses; holding periods for pending expungements, physical redaction, and storage costs for the expunged records for three years. Court records that need to be redacted include all official records maintained by the clerk or other personnel pertaining to any criminal action or proceeding for expungement, including indices, docket entries, charging documents, pleadings, orders, memoranda, assignment schedules, disposition sheets, transcriptions of proceedings, electronic recordings, orders, judgments, exhibits, and decrees. Some circuit courts do not have indexes of old cases. Searching for marijuana charges would involve manually going through docket books and microfilm to review each case to determine if a charge exists. In cases where there are multiple charges in a case but only one charge needs to be expunged, clerks would need to read through all aspects of the court record to properly redact references to the expungable charge. The appellate court process would be similar to the circuit court process, with a significant number of paper records needing to be researched. In addition, the bill does not cover the removal of "published" opinions of a court. The expungement process includes sending the order to all custodians of the record, instructing them to expunge any related records in their custody and to return the Certificate of Compliance to the court. The names of every agency that may have records related to the case in their possession are not always apparent, which would require the clerk to review the entire case file to ensure all custodians receive the expungement order. For example, a court commissioner can be a custodian of a record if the defendant applies for Public Defender eligibility determination. With respect to case records that have been transferred to the Maryland State Archives for permanent storage, unless the legislation specifically directs the Archives to redact the expunged information and return the Certificate of Compliance to the court, there is no guarantee the expungement has been completed.

The Judiciary maintains it is not able to effectively expunge one charge in a unit. There is no functionality currently within CaseSearch to remove records at the charge level without displaying a space for a missing charge(s). When a person is charged with multiple offenses, the charges are numbered and reported to the Criminal Justice Information System (CJIS) in the order presented on the charging document. For

instance, there are three charges, and charge 2 is expunged, the system will still reflect charges 1 and 3. They are not and cannot be renumbered because the case information reported to CJIS must align with the same charge numbers initially reported. A missing numbered charge may raise questions and red flags, thereby, nullifying the purpose of the expungement.

The clerk would need to review the file, page by page to remove any information pertaining to the expunged charge. Charge information is repeated throughout the case many times and the charging document outlines what the alleged events are that occurred. There may not be a clear way to obliterate all information in a charging document related to a specific charge. In addition, there is currently no functionality to build programmatic relationships between CaseSearch and the five case management systems that process criminal information to remove any reference to the existence of specific charges in any of the various components within those systems as required by the proposed legislation. As explained in the current and prior legislative sessions, the Judiciary anticipates that the implementation of CaseSearch Version 2 will provide the needed functionality to enable the removal of case information at a more granular level such as individual charges and will parallel the final rollout of MDEC. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million and cannot be implemented until all District and Circuit Courts are fully implemented and functional on MDEC.**

This bill has the potential to cause an overwhelming initial impact for the court. The removal of the 3-year waiting period for acquittal, nolle prosequi, and dismissal dispositions, and the addition of invalidated warrants, **all** misdemeanor and **certain** felony convictions would result in an increase in petitions from anyone who was not previously eligible from the conception of District Court (1971) and farther back for the circuit courts. Expungement clinics, educational workshops, and other self-help resources have heightened individuals' awareness of the new expungement laws and have contributed to the ongoing increase in petitions. A further increase to the trial courts' caseloads, and the additional hearings that will be necessary if there is an objection to a petition for expungement would result in additional clerical and court time will cause costs rise due to the increase in the number of expungements. Additional clerks will be needed to complete the workload created by this bill.

The following data illustrates the past three fiscal years cases which contain a single misdemeanor violation, cases which contain multiple charges but only misdemeanors, and cases which contain multiple charges and contain both misdemeanors and felonies. The provided data excludes any crimes of violence listed under CR § 14-101, crimes which require a defendant to register on the sex offender registry under Title 11, Subtitle 7 of the Criminal Procedure Article, hate crimes listed under Title 10, Subtitle 3 of the Criminal Law Article, and crimes of animal cruelty listed under Title 10 Subtitle 6 of the Criminal Law Article.

The Judiciary has included data which includes warrants dismissed, quashed, and/or recalled by a judge prior to being served. The use of the term "invalidated" was used extensively in years past but is no longer common practice. The common practice is for

the judge to review the outstanding warrant. If the warrant is for a violation of probation, the judge will determine if it should remain active. If the warrant is for a failure to appear bench warrant or an arrest warrant, copies will be sent to the State’s Attorney Office to determine if the warrant should remain active or for consideration to nolle prosequi the case. This fiscal note assumes that SB 710 and the term “invalidated warrant” does not apply to bench warrants.

District Court Statistics – Fiscal Year 2019-2021*

Fiscal Year	Number of cases with misdemeanor charge (with exclusions)**	Number of cases with at least one felony charge (with exclusions)**	Totals:
2019	87,826	14,492	102,318
2020	67,956	11,841	79,797
2021	65,746	12,147	77,893

**FY2020 and FY2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data. **excludes charges for crimes of violence, animal cruelty, hate crimes, and charges that result in registering as a sex offender.*

Circuit Courts Statistics – Fiscal Year 2019-2021:

Fiscal Year	Number of cases with misdemeanor charge (with exclusions)**	Number of cases with at least one felony charge (with exclusions)**	Totals:
2019	16,244	11,016	27,260
2020	12,148	7,680	19,828
2021	7,486	6,217	13,703

**FY2020 and FY2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data. **excludes cases with charges for crimes of violence, animal cruelty, hate crimes, and charges that result in registering as a sex offender.*

For illustrative purposes, using the data from FY 2019, which is the last year not impacted by the COVID-19 pandemic, if 70% of the defendants who would be eligible to file for an expungement actually file, a minimum of 89 new positions would be needed in the District Court; another 24 new positions would be needed in the circuit courts to handle the increased workload. The total of 113 new positions will result in approximately \$7,783,398 in additional personnel costs and other operational expenses in the first full fiscal year.

	District Court	Circuit Court
Average Number of Eligible Cases for Expungement:	102,318	27,260
Average Number of Eligible Cases* 70%(.70)	71,623	19,082
Hours to Complete Expungement	1.5	1.5
70% of Eligible Cases * Hours to Complete	107434.5	28,623
Hours to Complete Expungement of Eligible Cases/Hours Available	89.13	23.87
Number of Clerks Needed	89	24

The estimated cost to implement the programming changes will require 1,190.4 hours at an approximate cost of \$145,064.64.

Due to the new categories of eligible records, related time periods, records handling, and courtroom procedures, extensive changes to procedures will be required in addition to judicial and clerical training and retraining.

SB0710 Initial Cost of Implementation	
Case Search 2.0	\$1,140,000.00
Clerks (1 st Full Year)	\$7,783,398.00
Programming, including Reports	\$145,064.64
Brochure/Forms	\$6,000.00
TOTAL	\$9,074,462.64

This bill will have a significant fiscal and operational impact on the Judiciary.

cc. Hon. Obie Patterson
Judicial Council
Legislative Committee
Kelley O'Connor