

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 11
Criminal Procedure – Partial Expungement
DATE: January 11, 2024
(2/1)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 11. The legislation proposes to remove the current prohibition on partial expungements found in Criminal Procedure Article § 10-107, commonly referred to as the “unit rule” and permits a person to file a petition for partial expungement when two or more charges arise from the same incident, transaction, or set of facts, and not all of them are eligible for expungement for a police or court record. If the partial expungement of a charge is impracticable due to its inclusion in the statement of charges, the court must order that the official record of the court not be included on the Judiciary’s public website, within records submitted to the Central Repository, and may authorize the State or a political subdivision to maintain the written record without change and limit inspection to a criminal justice unit for legitimate criminal justice purposes.

This bill is unnecessary. HB1336/20, codified at MD Code, Criminal Procedure, § 10-401, already prescribes that the Maryland Judiciary Case Search may not in any way refer to the existence of records of a charge in a case with electronic records if the charge resulted in: (1) acquittal; (2) dismissal; or (3) *nolle prosequi*, except *nolle prosequi* with the requirement of drug or alcohol treatment.

In addition, this bill is unworkable and would create a large fiscal impact on the Judiciary. As noted by the Judiciary in its comments to HB 589 introduced during the 2020 session, this legislation would exponentially increase the number of charges that would be eligible and has the potential to result in a tremendous number of petitions for expungement. If this bill passes, tens of thousands of charges that historically have not qualified for expungement – because there was a conviction or because the charge was one of a unit of charges and all do not qualify for expungement – would now qualify for expungement. The bill appears to be retroactive and could include any charge since the District Court was established in 1971, as well as circuit court expungements going back even further.

While the bill recognizes that in many cases the narrative in the statement of charges will contain information about both the conviction and the charges eligible for partial expungement making partial expungement extremely difficult and labor intensive, the proposed action outlined in the bill to remove references to the case from the court's website and records that are submitted to CJIS raise significant concerns. This may result in the shielding of, or not transmitting to CJIS, convictions that otherwise are part of the official judicial record and should be matter of public record. For example, an individual may be convicted of first degree murder but acquitted of theft. If the narrative in the statement of charges is so intertwined so as to make redaction impossible, which is likely in many cases, the bill requires the case, including the murder conviction, to be shielded and not reported to CJIS. This directly contradicts the concepts of openness and transparency of court records.

That subsection also requires that the charges that are not eligible for expungement, the court shall order that the official record of the court regarding the charges eligible for expungement may not be included on the public website maintained by the Maryland Judiciary. The legislation is vague in that it does not adequately define the phrase "court's website." Eligible charges would be "shielded" on the Judiciary's website and not completely "expunged" from all records. The bill only mentions the shielding on the Judiciary's website' however, the Judiciary also maintains public kiosks in the courthouses where the public can access the same case information that can be requested from a court clerk.

Finally, the shielding aspect of the bill creates issues for post-conviction proceedings—there is no way to parse a post-conviction file between expunged and not expunged material, and expungement deprives a judge of information needed for a holistic understanding of a case.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor