

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
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 589
Criminal Procedure - Partial Expungement
DATE: February 5, 2020
(2/19)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 589. Find attached, the Fiscal Note representing the impact on the Maryland Judiciary.

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

Department of Legislative Services
2020 Session
Agency Explanation of Impact

Bill number: SB0589

Cross file:

Bill title: Criminal Procedure - Partial Expungement

Agency: Judiciary (Administrative Office of the Courts) - (jdy / 292)

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Date: February 6, 2020

To assist our department in preparing a fiscal and policy note for this proposed legislation, please provide detailed responses to the questions below.

If you have additional information that cannot be included in either this Word document or the provided Excel file, please send that information **in a separate email** to fnotes@mlis.state.md.us **with the bill number included in the document and the email subject line.**

1. Will this legislation have a fiscal and/or operational impact on your agency?

YES NO

If yes, please proceed to question #2 on page 2.

If no, please briefly indicate **why** below and then proceed to question #6 on page 4.

2. General Operational/Fiscal Impact on Your Agency – Please describe the operational and/or fiscal impact of the proposed legislation on your agency.

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.

Although it is difficult to estimate the number of additional petitions for expungement the Judiciary would receive, the Judiciary believes 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. All District Court records prior to 1981 are archived and having to retrieve them would be burdensome for both the Judiciary and the State Archives. The process varies for the circuit courts. While some circuit courts have older records (approximately 1986 and older) with State Archives, others have maintained all their court records on-site or in warehouses. In addition to the paper files, many older circuit court files are on microfilm or microfiche with no obvious way to expunge a case or charge within a case. In courts where the paper record was lost due to flood or fire, the microfilm may be the only record remaining of cases for a given timeframe.

For illustrative purposes, over the past five fiscal years (2015-2019), the following number of cases were filed with multiple charges in the District Court and the circuit courts:

	2015	2016	2017	2018	2019
District Court	63,115	62,764	62,081	59,754	60,518
Circuit Courts	39,820	39,263	36,085	34,643	32,862

This legislation creates separate tracks for case records that can and cannot be redacted. Based on the legislation as written, there are two possible paths for implementation and two different outcomes for petitioners.

For case files that can be redacted to remove a charge reference, the eligible charge(s) under this bill would be completely “expunged” from court records and the Criminal Justice Information System (CJIS). 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.

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 the alleged events that occurred. There may not be a clear way to obliterate all information in a charging document related to a specific charge.

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 estimated to be 3 hours for District Court and 5 hours for circuit court due to the size of case files. The Administrative Office of the Courts is in the process of analyzing clerk workload and the amount of time required to effectively and efficiently process the same, which will result in the development of a sound methodology by which to determine clerk need, like how judgeship need is determined. The estimated number of clerks needed to perform expungements indicated above was derived from that preliminary analysis, using the number of hours clerks have available to perform their duties and responsibilities. The time a clerk has available to perform their duties accounts for weekends, holidays, leave, judicial support, training, and general office work.

Additional staff will be necessary in the District Court and circuit courts to accomplish the increase in workload and be prepared for the initial increase in filings as the public becomes aware they would now be able to expunge one or more charges that previously stopped them from having their case expunged.

Using a five-year average of eligible cases as the baseline and given the average time of 3 hours in the District Court and 5 hours in the circuit courts to process an expungement from beginning to end, it is estimated that an additional 110 clerks will be needed in the District Court and 109 clerks in the circuit courts at a cost of \$14,205,192 in the first full fiscal year.

To be able to expunge a charge or charges that are eligible for expungement from a unit of criminal charges that are not expungable, the Judicial Information Systems department estimates that implementing the necessary programming changes will require 1392 hours at an approximate cost of \$155,300.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	418	\$100.00	\$41,800.00
Programming	424	\$125.00	\$53,000.00
Testing	318	\$110.00	\$34,980.00
Project Management	232	\$110.00	\$25,520.00
TOTAL	1392		\$155,300.00

The bill includes a different track for records where redaction is impracticable. Case files that cannot be successfully redacted to remove references to the eligible charge will be removed from the court's website and records that are submitted to CJIS. Special handling will be necessary to limit inspection of the case file to criminal justice units for legitimate criminal

justice purposes only. Law enforcement will have to motion the court for access. Processing these motions will involve additional clerical and judge time to determine if the access is for a legitimate criminal justice purpose.

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. Attorneys and other parties who are registered in MDEC also have docket-level remote access to all cases in MDEC, as well as access to documents in their case(s). If charges are removed from the kiosks, documents would also have to be shielded, otherwise, the charge would be removed but the documents in a case would still be available to view.

To be able to remove a charges or charges in a unit of criminal charges from CaseSearch only or put security on the case so it is not viewable on CaseSearch or a public kiosk, the Judicial Information Systems department estimates that implementing the necessary programming changes will require 468 hours at an approximate cost of \$52,560.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	138	\$100.00	\$13,800.00
Programming	164	\$125.00	\$20,500.00
Testing	88	\$110.00	\$9,680.00
Project Management	78	\$110.00	\$8,580.00
TOTAL	468		\$52,560.00

Please note this level of effort includes the removal of charges from the public kiosks as it is unclear whether this is required by the bill.

Clerks will still have to process petitions, notify CJIS and state or political subdivisions that the written record can be maintained without change and of the requirement to limit inspection of the written record to a criminal justice unit for legitimate criminal justice purposes. The processing of motions to inspect will require more clerical and judicial time.

Although not as labor intensive, the shielding of court records will also require additional staff in the District Court and the circuit courts. The time estimated to complete the shielding of a charge(s) is 1.5 hours for District and circuit courts. The District Court can share some resources since it is a unified court system; however, circuit courts would need at least one person in each circuit since resources cannot be shared between the circuits. Based on the cases that would be eligible in the last 5 years alone, with an estimated yearly workload, and the 1.5 hours to complete the shielding of charges, 88 additional clerks (55 for District Court and 33 for circuit court) will be needed at a cost of **\$5,708,022** in the first full fiscal year. (See spreadsheet 2 of 2.)

NOTE: Resources in the circuit courts are not shared within a circuit.

In either scenario, there is currently no functionality to build programmatic relationships between CaseSearch and the six case management systems that process criminal information to remove

any reference to the existence of specific charges that may exist 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.**

The Judiciary maintains we are 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 CJIS in the order presented on the charging document. For instance, if 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.

In Fiscal Year 2019, there were approximately 74,508 expungement petitions filed in the District Court and approximately 10,951 petitions filed in the circuit courts. Any increase in the court's caseload and the additional hearings and motions that may be necessary will result in additional clerical and court time. Costs will increase in direct relation to the higher number of expungements.

The Judiciary is currently researching redaction software. There may be additional costs if a decision is made to purchase the software to assist the clerks with the time-consuming searching and redaction of records or case information within the records. Cost estimates are not available at this time.

Other expenditures include the printing and restocking of new carbonized forms and brochures, website revisions, postage for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants and their attorneys, storage for expunged records, and copying. To revise and restock the Expungement Brochure (CC-DC-CR-072BR) will be approximately \$6,000.00. Clerks will need additional training to distinguish the multiple tracks, eligibility of charges, and the requirements of any special processing.

SB0589 Initial Cost of Implementation		
	EXPUNGEMENT	SHIELDING
Programming Costs	\$155,300	\$52,560
Operational Costs and Additional Staff (1st Full Year)	\$14,205,192	\$5,708,022
Brochure	\$6,000	\$6,000
Case Search 2.0	\$1,140,000	\$1,140,000
TOTALS:	\$ 15,506,492	\$ 6,906,582

If passed, this legislation would have a significant fiscal and operational impact on the Judiciary.

3. Impact on Revenues – Please estimate any increase or decrease in revenues (general, special, federal, or other funds) in each of the next five fiscal years. Enter the estimated amounts in the *Revenues* worksheet in the provided Excel file and describe in the space below.

- Please be aware of delayed effective dates or other factors that may cause revenue increases/decreases to begin in later years.
- Please explain the cause(s) of the revenue increase(s)/decrease(s), any assumptions and/or calculations used, and any variations if the revenue impact(s) are not constant.
- If federal funds are affected, please describe how (*e.g.*, loss of funds for noncompliance, availability of new funds, etc.)

The proposed legislation, when implemented, will result in an increase in fees collected related to petitions for expungement. The Judiciary’s filing fee for petitions for expungement is \$30 for guilty dispositions. There is no filing fee for cases resulting in acquittal, dismissal, probation before judgment (PBJ), nolle prosequi, stet, or not criminally responsible dispositions. Revenues will depend on the dispositions of the cases to be expunged.

4. Impact on Expenditures – Please estimate the increase or decrease in expenditures in each of the next five fiscal years using the *Expenditures* worksheet in the provided Excel file and describe in the space below.

- Please be aware of delayed effective dates or other factors that may cause expenditure increases/decreases to begin in later years.
- Please explain the need for the number and type of personnel (both permanent and contractual), including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type of employee will be; and (3) why existing personnel cannot absorb the additional work.
- Please describe the items included under “Other Operating Expenses” and explain any assumptions or calculations used in your estimates.
- Please specify the fund type (general, federal, special, or other) or combination of fund types of the expenditure increases and/or decreases.

Please see answer to No. 2 and attached fiscal worksheet.

5. Anticipated in Proposed Operating/Capital Budget? – Have funds been included in your agency’s proposed operating or capital budget in anticipation of this legislation? Or has your agency submitted a request for funding in a supplemental budget? If so, please indicate specific amount(s) budgeted and budget code(s).

No.

6. Other Information – Please provide any other information that may be helpful in determining the fiscal effect of this legislation, even if the bill does not directly affect your agency.

The Criminal Justice Information System (CJIS) should be contacted as well as law enforcement agencies, parole and probation, agencies that supervise community service, Maryland Archives, and other custodians of records.

This legislation will impact the State’s Attorneys, the Office of the Public Defender, the Maryland Department of Public Safety and Correctional Services, and law enforcement agencies.

Attorneys representing their clients will be impacted by the lack of remote access to information under this bill.

Additionally, there are potential costs related to litigation by persons or entities who might contend that this legislation intrudes on their constitutional and common law right to access courts records.

7. Effect on Local Governments – Will local government operations or finances (revenues or expenditures) be affected by this legislation? If yes, please describe how.

This legislation may impact local law enforcement agencies.

8. Effect on Small Businesses – Will existing small businesses be affected (either positively or negatively) by this legislation and/or will the legislation encourage or discourage new small business opportunities? If so, please describe.

State law defines a small business as a corporation, partnership, sole proprietorship, or other business entity, including affiliates that: (1) is independently owned and operated; (2) is not dominant in its field; and (3) employs 50 or fewer full-time employees.

Any business or attorney’s office that has created or purchased expungement process software to assist the public with the filing of petitions for expungement will have costs to update their software.