

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 997
Criminal Procedure – Restorative Justice Program
DATE: February 16, 2022
(2/22)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes House Bill 997, as drafted. House Bill 997 establishes the Restorative Justice Program within the Victim Services Unit of the Governor’s Office of Crime Prevention, Youth, and Victim Services, establishing the position of Restorative Justice Legal Specialist, the Restorative Justice Program Revolving Fund, and the Maryland Restorative Justice Council.

There are a few sections within the bill that are a matter of concern due to the conflict with established laws and with the Maryland Rules. Some of the provisions within the bill impose on the separation of powers. In § 11-1203(B)(5) of the bill, it mandates the Restorative Justice Legal Specialist to create a confidential file in MDEC containing the names of the assigned facilitator or facilitating organization, the victim, and the offender for purposes of the Restorative Justice Program. In addition, in §11-1204(E) of the bill, it gives the Restorative Justice Legal Specialist the responsibility to manage the program within MDEC. MDEC is the case management system of the State Judicial Branch. Pursuant to Rule 20-103(a), the State Court Administrator is responsible for the administration of the MDEC system and shall implement the procedures established by the Rules in this Title. The provisions in this bill would provide a member of the Executive Branch with authority for creating and managing files within a system of the Judicial Branch. It is not clear why it would not instead provide that the Judiciary would consider filings from the Specialist as confidential rather than allowing access to the Judiciary’s case management system which is inappropriate.

The Judiciary is also concerned with the language on page 8 beginning at line 19 that gives the assigned facilitator or facilitator organization access to all materials in a case file. Some of the materials in the case file may be confidential, shielded, or sealed. A sealed document, for example, may only be viewed in accordance with the sealing order.

In addition, this bill requires that the fund consist of revenue distributed to the fund from restitution payments by an offender. However, this provision would violate Criminal Procedure §§ 11-603 and 11-606(a). The statutes show that restitution is intended to compensate individuals or entities for losses suffered as a result of a crime. Payment to support the Restorative Justice Program Revolving Fund do not fall within that scope.

Lastly, the Judiciary believes more clarity is needed at Criminal Procedure § 11-1205(f) to explain both (1) how restitution payments would end up going into the new Restorative Justice Fund rather than to the victim, either directly or through the Department of Parole & Probation, and (2) what “other money from any other source” could be accepted by the Fund (i.e., grant funding, donations, or other third-party funding).

cc. Hon. Debra Davis
Judicial Council
Legislative Committee
Kelley O'Connor