

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 763
Collection and Publication of Criminal Case and Prosecutorial
Information
DATE: February 23, 2022
(3/1)
POSITION: Oppose

The Judiciary opposes Senate Bill 763. The offered legislation adds Subtitle 5, State's Attorney's Data Collection, to Title 15 of the Criminal Procedure Article. The bill requires that the Administrative Office of the Courts (AOC), in cooperation with each State's Attorney, collect and disclose certain information for each case prosecuted.

Unlike the other policies to which the Judiciary is subject and which do not impose on judicial functions, the proposed legislation would impose on the Judiciary's day-to-day functioning and therefore it runs afoul of the separation of powers. In acknowledging the limited powers of the legislative branch to impose authority on the judicial branch, the Court of Appeals in *Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 699 (1981) stated:

There can be no doubt, however, that the deferential respect accorded the legislative branch by the judicial must neither undermine nor dilute the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function, an aspect of which, as we have seen, is the supervision of practicing attorneys. Nonetheless, the flexibility that inheres in the separation of powers doctrine allows for some limited exertion of legislative authority. As a consequence of this elasticity, we have recognized, first, that the General Assembly may act pursuant to its police or other legitimate power to aid the courts in the performance of their judicial functions[.]

By requiring the Judiciary to perform essentially data entry on behalf of the State's Attorney (SAO), an executive function, the legislature exceeds its permissible "limited exertion of legislative authority . . . to aid the courts in the performance of their judicial function." Instead, the proposed legislation "dilutes the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function."

The administration of justice requires that the Judiciary be able to function without performing duties outside of the Judiciary's prescribed scope.

In addition, the required data collection in this bill would create a tremendous operational and fiscal impact on courtroom operations – an administrative function – by requiring court staff to coordinate the collection of the information requested at each stage of a criminal proceeding. This will require additional staffing and require the development of a new database and/or web based platform all of which are under the administrative purview of the Chief Judge, the State Court Administrator, and the Clerks of Court. This also could impact the speed of trials and other criminal proceedings by requiring court staff to coordinate the collection of each of the 44 data fields.

There could also be concern about *ex parte* communication between the court and the State's Attorney. The level of interaction and collaboration required would open the door for too much communication between the Court and the State's Attorney alone. For example, data field 18 asks for whether diversion was offered and the judicial position on diversion. The judge's position on diversion may not be distillable into a data field and could potentially rely on a judge and State's Attorney having to "share notes" on what was intended to be stated on the record, which could be different from a defense attorney's interpretation. This could then require a defense attorney to be looped in on certain areas of data entry to ensure accuracy of the records.

The bill, as written, also requires that the records be maintained for 10 years. It in no way addresses how the above records would be handled where the underlying charges are expunged before 10 years.

Finally, this bill will have a significant fiscal impact on the Judiciary. Much of the information and data required by the bill to be collected is not collected by or readily available to the Judiciary in a way that it can be extracted to meet the bill's requirements. As this bill appears to apply to all criminal actions, including traffic cases, hundreds of thousands, if not millions of cases would be affected each year and the manual effort would be extensive and require thousands of hours of clerk time. Many data fields included in the bill are non-existent in the MDEC case management system thereby requiring the development of a web based database where the State's Attorney's enter the information and send to the Administrative Office of the Courts.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O'Connor