

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 138
Criminal Procedure – Expungement - Expansion
DATE: January 12, 2022
(2/1)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 138. The proposed legislation requires, for a charge disposed of on or after October 1, 2018, that any police record, court record, or other record maintained by the State or a political subdivision of the State relating to the charging of a crime, or civil offense under § 5-601(c)(2)(II) of the Criminal Law Article, including a must-appear violation of the Transportation Article, shall be expunged three (3) years after a disposition of the charge if no charge in the case resulted in a disposition other than: 1) acquittal; 2) dismissal; 3) not guilty; 4) nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment; 5) probation before judgment if all court ordered conditions of the probation before judgment disposition have been satisfied; or 6) stet, if all court-order conditions of the stet disposition have been satisfied.

Courts and clerk's offices lack a programmatic mechanism or system for complying with the requirements of this legislation which will require courts and clerk's offices to manually review historical case files to determine which charges are required to be expunged. This process will be even more labor intensive in non-MDEC jurisdictions and those jurisdictions which only recently adopted MDEC. The court will have to create additional processes and reports to ensure the records are expunged in the time period required by this legislation.

By notifying each defendant of the defendant's right to expungement under Criminal Procedure § 10-105, the requirement that the court provide a General Waiver and Release with the notification, and the requirement of expunging cases disposed as of October 1, 2018, the court anticipates that there will be an increase in the number of petitions for expungement, prior to the 3-year automatic process (or expungement without the need to file a petition). 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.

Programming also will be necessary to send the required notices after verification by the clerks. The Judicial Information Systems division is unable to provide a complete breakdown of programming costs at this time but estimates the overall range will be between \$500,000 to \$575,000. This legislation also inappropriately puts the onus on court clerks to make a determination whether all conditions of probation or a stet have been met.

The typical process for expungement takes approximately 1.5 hours for a clerk in the District Court and the circuit courts to complete. While the court does not currently have a business process in place for these automatic expungements, it is estimated that the process may take less time. Using the data provided above for the number of cases which would qualify for automatic expungement under this amended legislation, and an assumption that the process may take .25 hours to complete.

Using Fiscal Year 2019 data the Judiciary estimates the following:

| | DC | CC |
|--|-----------|-----------|
| No. of Eligible Cases | 400,106 | 14,270 |
| Hours to Complete Automatic Expungement Process | .25 | .25 |
| No. of Cases x Time to Complete the Process | 100,026.5 | 3,567.5 |
| No. of Clerks Needed* | 83 | 3 |
| *Number of clerks needed calculated by: the number of cases multiplied by the time to complete the process (.25) divided by the amount of time available for the clerks to complete the expungement. | | |

The total number of new clerks needed to accomplish the existing expungements for cases in an electronic format is:

District Court: 83

Circuit Court: 3

The 86 positions will result in **\$5,877,202** in additional personnel and operating costs the first full fiscal year. The number of clerks estimated to be needed increases from the estimate provided during the 2021 legislative session due to the increased disposition types and the legislation now applying to cases disposed as of October 2018.

SB 201, Ch. 680 from the 2021 legislative session, stated that the applicable records would start “beginning October 1, 2021.” As written, the court shall expunge the record three years from the date of disposition. No disposed charge has reached the three-year mark and therefore expungements of those records have not yet begun. Senate Bill 138 pushes the start date for eligible dispositions back to October 1, 2018. Therefore, if passed with an effective date of October 1, 2022, there will be two years’ worth of eligible disposed cases (2018-2019) that would require an almost immediate expungement.

The above estimate does not take into account the anticipated increase in petitions for expungement that are anticipated.

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.

| SB 138 Initial Cost of Implementation | |
|--|----------------------------------|
| Clerks (1 st Full Year) | \$5,877,202 |
| Programming, including Reports | \$500,000 – \$575,000 |
| Forms and Brochure | \$6,000 |
| TOTAL | \$6,383,202 – \$6,458,202 |

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

It should also 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, the proposed changes made to Criminal Procedure § 10-105.1 conflict slightly with existing law found in Criminal Procedure § 10-105 which allows a person to file a petition for expungement when their case is disposed of with a Probation Before Judgment (PBJ), unless the person is charged with a violation of § 21-902 of the Transportation Article or Title 2, Subtitle 5 or § 3-211 of the Criminal Law Article. Senate Bill 138 makes no conforming changes to conditions found in Criminal Procedure § 10-105, which may lead to conflicting procedures regarding the expungement of cases disposed of with a disposition of PBJ.

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