

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 505
Criminal Procedure – Expungement – Convictions
DATE: February 8, 2023
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 505. This legislation authorizes a person to file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State if the person is convicted of: §21-902 of the Transportation Article; §3-202 of the Criminal Law Article, if the crime did not involve domestic violence and the person has no other convictions; §3-403 of the Criminal Law Article; or §3-405 of the Criminal Law Article.

The Judiciary recognizes that setting the scope of expungable offenses is a legislative prerogative, but the decision impacts the Judiciary’s function insofar as possible expungement of more offenses—especially crimes of violence—deprives judges of relevant information that could be used to fashion proper sentences should a defendant incur a subsequent conviction. If expunged, this information would not be available to the sentencing judge. It is hard to understand how the court can make an informed decision without the benefit of access to a defendant’s history of any prior violent offenses. This would rob the courts of the ability to strike the optimal balance between punishment, deterrence and rehabilitation in future sentencing decisions, and public safety may be put at an increased risk as a result.

Moreover, certain offenses included in this bill -- armed carjacking, armed robbery, and first-degree assault – carry enhanced penalties for subsequent offenders. Specifically, pursuant to Criminal Law §14-101 individuals convicted of these “crimes of violence” are subject to increased penalties as second, third, and fourth offenders. It is hard to understand how the Judiciary could fulfill its obligation under this section without access to the prior conviction information. Additionally, if the weapon used during the armed robbery, armed carjacking, or first-degree assault is a firearm, an individual is often also charged with Use of a Firearm in the Commission of Violence. If so convicted, would the court expunge the armed robbery, armed carjacking, or first degree assault conviction but allow the Use of a Firearm in the Commission of that Crime of Violence to remain? How

would the court remove the underlying crime of violence information contained within that charge? It is unclear and logistically impossible.

In addition, there is no ability for the courts to consistently and accurately determine whether a prior crime involved domestic violence, as specified in the bill at Criminal Procedure § 10-110(a)(2)(iv). Various criminal offenses may involve domestic violence and the Judiciary has no way to determine that from the charge itself. Further, the crimes outlined in the bill typically are charged with other crimes that are not eligible for expungement which would make it impossible to expunge from charging documents, indictment, police records and the like.

cc. Hon. C. Anthony Muse
Judicial Council
Legislative Committee
Kelley O'Connor