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## MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** House Bill 943  
Courts – Expunged Cases and Judicial Actions – Disclosure and Public  
Access  
**DATE:** February 7, 2024  
(3/5)  
**POSITION:** Oppose, as drafted

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The Maryland Judiciary opposes House Bill 943, as drafted. House Bill 943 amends § 10-108 of the Criminal Procedure Article (“CP”) by adding proposed subsection (e) to the statute.

Proposed CP § 10-108(e) would provide: “Nothing in this section shall be construed to prohibit the disclosure of any case record that: (1) contains information that is also contained in an expunged record; (2) is formatted to facilitate research; and (3) contains de-identified case data.” A case record would be subject to proposed CP § 10-108(e) only if the record meets all three requirements set forth in the proposed subsection. *See SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 642 (2018) (The term “and” has a conjunctive meaning.). The term “case record” is not defined for purposes of proposed CP § 10-108(e).

The existing expungement statutes use the term “court record,” which is an official record of a court that the clerk of a court, or other court personnel, keeps about a criminal proceeding or any other proceeding (except a juvenile proceeding) concerning a civil offense or infraction enacted as a substitute for a criminal charge. CP § 10-101(c)(1). The Access Rules, like the bill, use the term “case record,” which is all or any portion of a paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed with, or maintained by the clerk of a court in connection with an action or proceeding, and includes a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record. Md. Rule 16-903(d)(1). But because proposed CP § 10-108(e) would be a statute

and not a provision of the Access Rules, the definition of “case record” in Rule 16-903(d)(1) would not be determinative of the meaning of the same term in proposed CP § 10-108(e).

In any event, the common characteristics of a “court record” (CP § 10-101(c)(1)) and a “case record” (Md. Rule 16-903(d)(1)) are that:

- The documents are filed with the clerk of court.
- The documents are filed in connection with an action or other proceedings.
- The clerk of court keeps or maintains the filed documents.

With these definitions and characteristics in mind, the bill is problematic because it is unclear whether any case record could meet all three requirements set forth in proposed CP § 10-108(e). Through this proposed subsection, the legislature may be attempting to address disclosure of de-aggregated case data, as reflected by the language of the three requirements. Such information, however, would not constitute a “court record” (CP § 10-101(c)(1)) or a “case record” (Md. Rule 16-903(d)(1)) because it is not filed with the clerk of court, it is not filed in connection with an action or other proceedings, and the clerk of court does not keep or maintain tabulated data of the sort in the normal course of business. It may be the case that no “case record” could meet the three requirements set forth in proposed CP § 10-108(e). So, if it is the intent of the legislature to address disclosure of de-aggregated case data, this bill fails to do so.

Further, the Judiciary is concerned with the language on page three that provides that “this title shall be construed in favor of allowing public access to information about the judicial actions of any court of this state.” It is not clear why judicial actions would need to be singled out in this legislation as current law already dictates the presumption of transparency. This provision seems to be creating legislative oversight to judicial records which presents separation of power concerns. In addition, judicial actions is not defined and could be interpreted to include actions outside of court cases such as bench meetings, judicial conferences, personnel issues, etc.

cc. Hon. Elizabeth Embry  
Judicial Council  
Legislative Committee  
Kelley O’Connor