

**HB 943 PJC testimony FAVORABLE.pdf**

Uploaded by: Debra Gardner

Position: FAV



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**HB 943 Courts – Expunged Cases and Judicial Actions – Disclosure and Public Access**  
**Hearing before the House Judiciary Committee, March 5, 2024**  
**Position: FAVORABLE**

HB 943 will allow public access to data concerning judicial proceedings regardless of whether the case records have been expunged. It will not allow public access to any personal or individual information from any expunged case records.

This bill is a simple measure with a critical purpose—to allow reliable, accurate data collection from Maryland’s judicial records in criminal proceedings. It is an important step to ensure accountability and transparency in our legal system.

In recent years, Maryland has made many advancements toward equity in our legal system, enacting numerous laws providing for expungement of criminal court records. These laws open doors to employment, housing, education, voting, and other aspects of civil society to individuals denied such access by records of prior criminal proceedings. In many such cases, there were no actual convictions, as a majority of charges brought are dismissed or result in acquittal. Expungement of such records and others that prevent full participation in daily life and opportunity for economic security and independence is essential to an equitable and just society.

The unintended consequence of these improvements in our criminal legal system, however, has been the erasure of accurate and reliable publicly available data on the workings of that system. Data collection, study, and research on our systems of government is critically necessary to our democratic institutions, including our courts. Without access to de-identified and/or aggregated data on the many cases that have been expunged, results of virtually any inquiry will be skewed to the point that no meaningful conclusions can be drawn.

Just a couple of examples make this clear: An attempt to determine the average length of pretrial detention on criminal charges subsequently dismissed over a period of prior years would not include data on all such matters since expunged, including many that were automatically expunged under recent law. It is even possible that no data at all would be available. This would prevent any understanding of how many Marylanders languish in jail while still presumed innocent—and for how long—only to be released weeks or months later with no trial at all. Likewise, determining the true disparate impact of virtually any element of the criminal legal system would be thwarted without access to this large and growing volume of court records.

Expungement is a significant advance toward equity in our legal system. Access to reliable data, including on expunged records (not including any personal information), is essential to sustaining and furthering that equity.

For the foregoing reasons, **the Public Justice Center urges a favorable report on HB 943**. Should you have any questions, please contact Debra Gardner, Legal Director, at 410-625-9409 x228 or [gardnerd@publicjustice.org](mailto:gardnerd@publicjustice.org).

*The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.*

**MDDC Support HB943.pdf**

Uploaded by: Rebecca Snyder

Position: FAV



**Maryland | Delaware | DC Press Association**

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To: House Judiciary Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: March 1, 2023

Re: **HB943 - SUPPORT**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of news media organizations, from large metro dailies like the Washington Post and the Baltimore Sun, to hometown newspapers such as The Annapolis Capital and the Frederick News Post to publications such as The Daily Record, the Baltimore Times, and online-only publications such as MoCo 360 and Baltimore Brew.

The Press Association is pleased to support HB 943, which will clarify that case records may be disclosed to the public if the records contain de-identified data and will be formatted to facilitate research. In recent years, the call to increase expungement of records had created some unintentional consequences. Reporters often look to case records to identify trends and large data sets to better understand and shed light on the justice system and how it impacts Marylanders.

We believe this legislation is an important step forward to will bring more transparency and openness to the justice system.

The Press Association urges a favorable report.



**We believe a strong news media is  
central to a strong and open society.**

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**hb943.pdf**

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Position: UNF

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JUDGE  
BALTIMORE COUNTY  
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HON. RICHARD SANDY  
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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