



Court of Appeals of Maryland
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MARYLAND JUDICIARY
FISCAL YEAR 2023 OPERATING BUDGET
RESPONSE TO DEPARTMENT OF LEGISLATIVE SERVICES ANALYSIS

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SENATE BUDGET & TAXATION COMMITTEE
SENATE PUBLIC SAFETY, TRANSPORTATION, & ENVIRONMENT SUBCOMMITTEE
SENATOR CORY V. MCCRAY
FEBRUARY 28, 2022

JUDICIAL BUDGET REVIEW AND INTRODUCTION

The Judiciary's fiscal year 2023 Budget Submission is \$696 million, which represents approximately 1.4 percent of the State's operating budget. The major components of the budget are as follows: salaries and benefits at 68 percent, contractual services at 12 percent, aid/grants to courts at 9 percent, and fixed costs at 3 percent. The General Fund submission of \$625 million represents a 6.52 percent increase at \$38.2 million over the fiscal year 2022 appropriation. The submission includes funding for personnel-related items, such as employee merits, clerk of court raises, new positions, required salary increases for judges, health insurance, and pension as well as operational increases.

RECOMMENDED ACTIONS

RECOMMENDATION 1

Add the following language:

Provided that \$12,502,610 in general funds made for the purpose of providing judicial compensation enhancements are reduced to bring available funds in line with the recommendations of the Judicial Compensation Commission. The Chief Judge is authorized to allocate this reduction across programs within the Judiciary.

Explanation: This action reduces funds in the fiscal 2023 budget to bring judicial compensation enhancements in line with the Judicial Compensation Commission's recommendations. This includes a \$10,000 salary increase in fiscal 2023 for all judges.

Judiciary Response: The Judiciary concurs with the Department's recommendation.

RECOMMENDATION 2

Adopt the following narrative:

Appointed Attorney Program Costs and Utilization: The committees remain interested in the costs and operations of the Appointed Attorney Program. The committees request a report, to be submitted by October 1, 2022, detailing the fiscal 2022 costs and utilization of the Appointed Attorney Program.

Information Request	Author	Due Date
Appointed Attorney Program costs and utilization	Judiciary	October 1, 2022

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

RECOMMENDATION 3

Adopt the following narrative:

Judgeship Need for Fiscal 2024: The committees remain interested in the judgeship needs at the Judiciary. The committees request a report, to be submitted by December 1, 2022, detailing the fiscal 2024 judgeship needs.

Information Request	Author	Due Date
Judgeship need for fiscal 2024	Judiciary	December 1, 2022

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

RECOMMENDATION 4

Add the following language to the general fund appropriation:

, provided that \$8,250,000 of this appropriation made for the purpose of providing attorneys for required representation at initial appearances before District Court Commissioners consistent with the holding of the Court of Appeals in DeWolfe v. Richmond may be expended only for that purpose. Funds not expended for this restricted purpose may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund.

Explanation: This language restricts the use of \$8.25 million of the Judiciary’s general fund appropriation for the implementation of DeWolfe v. Richmond.

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

RECOMMENDATION 5

Add the following language to the general fund appropriation:

Further provided that \$500,000 of this appropriation made for the purposes of administrative expenses may not be expended until the Judiciary submits a report on annual court performance measures. The report shall be submitted by November 1, 2022, and the budget committees shall

have 45 days from the date of the receipt of the report to review and comment. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

Explanation: This language restricts funds pending the submission of the annual report on Judiciary court performance measures.

Information Request	Author	Due Date
Judiciary report on court performance measures	Judiciary	November 1, 2022

Judiciary Response: The Judiciary concurs with the Department’s recommendation. See the Judiciary’s response to Issue No. 3.

RECOMMENDATION 6

Add the following language to the general fund appropriation:

Further provided that \$6,400,000 in general funds are added to the appropriation for the Maryland Legal Services Corporation within the Administrative Office of the Courts. These funds are to be transferred to the Access to Counsel in Evictions Special Fund for the purpose of funding the Access to Counsel in Evictions program.

Explanation: This action funds to the fiscal 2023 Judiciary appropriation for the purpose of funding the Access to Counsel in Evictions program in accordance with Chapter 746 of 2021. These funds are added to the Administrative Office of the Courts budget and should be transferred to the Access to Counsel in Evictions Special Fund, which is administrated by the Maryland Legal Services Corporation.

Judiciary Response: The MLSC’s response is attached, and they will respond following the Judiciary’s testimony. (Appendix A).

RECOMMENDATION 7

Adopt the following narrative:

Access to Counsel in Evictions Quarterly Reports: The committees are interested in the operations of the Access to Counsel in Evictions program administered by the Maryland Legal Services Corporation (MLSC). The committees request quarterly reports, the first to be submitted October 15, 2022, detailing the planned fiscal 2023 budget for the Access to Counsel in Evictions program. Subsequent reports should include an update on the implementation of the program.

The first quarterly report should include:

- the fiscal 2023 budget for the Access to Counsel in Evictions program; and
- the pay structure for attorneys participating in the program.

The subsequent quarterly reports should include:

- the number of cases represented by attorneys in the program;
- the amount of funds paid to attorneys per case; and
- the geographic distribution of cases.

Information Request	Author	Due Date
Access to Counsel in Evictions quarterly reports	MLSC	October 15, 2022 January 15, 2023 April 15, 2023 July 15, 2023

Judiciary Response: The MLSC’s response is attached, and they will respond following the Judiciary’s testimony. (Appendix A).

RECOMMENDATION 8

Add the following language to the general fund appropriation:

, provided that \$619,341 in general funds are reduced to eliminate excess funds for circuit court clerk salary increases. The Chief Judge is authorized to allocate this reduction across the Judiciary.

Explanation: This action reduces funds in the fiscal 2023 budget to bring circuit court clerk salary increases in line with the fiscal note for SB 74 or HB 519 of 2022.

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

RECOMMENDATION 9

Add the following language to the general fund appropriation:

Further provided that \$719,389 of this appropriation made for the purpose of circuit court clerks salary increases is contingent on enactment of SB Bill 74 or HB 519 of 2022, which provides an increase in the maximum salaries for circuit court clerks.

Explanation: This action makes \$719,389 in funding for circuit court clerk salary increases contingent on the passage of SB 74 or HB 519.

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

RECOMMENDATION 10

Adopt the following narrative:

Judiciary Status Report on Major Information Technology Development: The committees remain interested in the Judiciary’s Major Information Technology Development Projects (MITDP). The committees request a report, to be submitted by December 15, 2022, detailing MITDPs being undertaken by the Judiciary.

Information Request	Author	Due Date
Judiciary status report on MITDPs	Judiciary	December 15, 2022

Judiciary Response: The Judiciary concurs with the Department’s recommendation.

BUDGET ISSUES

ISSUE 1 – MARYLAND LEGAL SERVICES CORPORATION

MLSC currently provides some eviction prevention legal service funding through its existing grant program. However, qualifications to receive funding through these grants are different than those established through the Access to Counsel in Evictions program. For example, a low-bono service model is currently used by some of the grantees in which an individual pays a dramatically reduced rate for legal assistance rather than either free legal aid or market rate services. The grantees who operate on this business model might not be eligible to receive funding through the Access to Counsel in Evictions program. MLSC plans to use its \$3 million in RELIEF Act funding for existing eviction prevention grants in fiscal 2022 and 2023. In addition to providing grants for services that would not be covered in the Access to Counsel in Evictions program, MLSC states that it plans to use RELIEF Act funds to provide eviction legal aid in jurisdictions within the State that will not be prioritized in the implementation of Chapter 746.

MLSC should comment on its planned use of RELIEF Act funds and how the services funded will differ from services provided by the Access to Counsel in Evictions program.

Judiciary Response: The MLSC’s response is attached, and they will respond following the Judiciary’s testimony. (Appendix A).

The Department of Housing and Community Development has indicated that it will provide the fund with \$5.4 million in fiscal 2023. In addition to those funds, MLSC retains \$2.2 million in Deutsche Bank settlement funds that it plans to use in fiscal 2022 to 2024 to support Access to Counsel in Evictions program infrastructure. A total of \$6.4 million in additional funds would be needed to fully fund Year 1 of the program.

DLS recommends adding \$6.4 million in general funds to the Judiciary appropriation for MLSC to fully fund the Access to Counsel in Evictions Program.

Judiciary Response: The MLSC’s response is attached, and they will respond following the Judiciary’s testimony. (Appendix A).

*The full implementation, according to MLSC, will require roughly \$30.0 million annually. **Exhibit 17** shows the breakdown between the different categories of funding for full implementation, with 93% of the funding going to legal services.*

DLS recommends adopting committee narrative requesting MLSC submit quarterly reports on the status of the Access to Counsel in Evictions program.

Judiciary Response: The MLSC's response is attached, and they will respond following the Judiciary's testimony. (Appendix A).

**ISSUE 2 – JUDICIARY DATA AVAILABILITY AND RELIABILITY CONCERNS
EMERGE AMID IMPLEMENTATION OF RACIAL EQUITY IMPACT NOTES
PROGRAM**

The Judiciary has indicated that it is not able to provide raw deidentified data that includes demographic information for the defendant in each court case. The Judiciary states that demographic data relating to cases originates from the documents that are submitted to the court in criminal, juvenile delinquency, and domestic violence matters. This data comes from law enforcement or complainants who provide information that is based upon the understanding of the defendant. The Judiciary does not always verify the data that is collected by law enforcement or complainants. This is particularly true for demographic data. This introduces the significant possibility for errors into the data collection process for these cases. Additionally, demographic data is not captured for cases involving civil matters. The Judiciary systems and procedures for data collection are complex and not unified which makes it difficult to produce standardized data sets for analysis.

The Judiciary should comment on steps that can be taken to verify and track demographic data for defendants in the courts necessary to implement the Racial Equity Impact Notes program.

Judiciary Response: Functionality within the MDEC system provides for the capturing of demographic data, including race and ethnicity. Commissioners verify demographic information for individuals who have been arrested for purposes of correct identification. However, demographic information has never been collected for civil cases. Additionally, demographic information, including race and ethnicity, is not captured in certain legacy case management systems. Other than for those individuals presented to a Commissioner, demographic information may or may not be provided to the court. For example, demographic information in criminal or civil citations may or may not be provided by law enforcement and criminal informations and indictments prepared by the State's Attorney typically do not include this information. In instances where individuals choose to pay citations or settle civil matters prior to a court appearance, there may not be an opportunity for the court to collect or validate data. Because demographic information is provided by the filer of criminal charges, usually law enforcement, it may not be accurate if it was based on perception and not self-identification. Additionally, ethnicity is not currently a required element when filing criminal charges, so data in this specific area is extremely limited.

Verification of demographic information presents unique challenges to the Judiciary. Once the identity of the defendant is confirmed by a Commissioner, it may give the appearance of bias for a judge to inquire further as to the race or ethnicity of an individual in a court hearing. For

example, when determining whether to accept a guilty plea to a crime, a judge informs the defendant of the possible immigration issues associated with pleading guilty. The judge does this in every case but does not inquire as to the race or ethnicity of the defendant. Asking such a question could result in the appearance of impropriety which is ethically impermissible.

Based on the aforementioned, while the Judiciary would not be in the position to verify this information, the Judiciary will make available any data that is currently collected and will review business processes to determine if additional data collection is possible. To facilitate this effort in criminal and juvenile matters, justice partners should be encouraged to provide the court with demographic data with the case filing.

ISSUE 3 – 2021 COURT PERFORMANCE MEASURES REPORT

This data is essential to understanding if all Marylanders can have access to justice within a reasonable timeframe and evaluating the impact of the recent pandemic on court operations. For its response, the Judiciary submitted a letter instead of a report. Due to the ongoing COVID-19 pandemic, former Chief Judge Mary Ellen Barbera issued administrative orders suspending case time standards in trial courts. The Judiciary indicates that due to the suspension of the case time standards, there are no standards against which to measure trial court performance for fiscal 2020. As such, the Judiciary cited the suspension of the standards as the reason that it could not submit the requested report. However, this report is essential for the General Assembly to understand the work of the courts and evaluate if Marylanders are receiving their right to access justice within a reasonable timeframe. When asked for more basic case processing time data not compared to standards, the Judiciary was still unable or unwilling to provide that data.

DLS recommends adopting budget bill language restricting \$500,000 in general funds pending the submission of the fiscal 2022 annual Court Performance Measures report.

Judiciary Response: The Judiciary concurs with the Department’s recommendation and respectfully requests an extension of the deadline for this report to January 1, 2023, in an effort to provide more current data.

In keeping with its mission to provide fair, efficient, and effective justice for all, the Judiciary remained committed during fiscal years 2020 and 2021 to processing matters in a timely manner while also safeguarding the health of all those with business before the courts.

Throughout the COVID-19 emergency, all Maryland District and circuit courts remained open, under restricted operations, to provide the essential functions necessary to address emergency and urgent matters. Due to the limitations on types and volume of matters capable of being addressed, and consistent with protecting public health during the Judiciary’s phased resumption of operations, former Chief Judge Barbera issued administrative orders suspending case time standards in the trial courts during the COVID-19 health emergency.

Pursuant to the February 2, 2021, *First Amended Administrative Order on Case Time Standards and Related Reports for Fiscal Years 2020 and 2021 in Light of the COVID-19 Emergency*, the Maryland Judiciary’s case time standards were suspended in the trial courts for fiscal years 2020

and 2021. With case processing time standards suspended, there are no standards against which to measure trial court performance for fiscal years 2020 and 2021.

The Judiciary will move forward with the analysis of fiscal year 2022 data at year end. The Judiciary respectfully requests that the legislature provide an extension for dissemination of this information to January 1, 2023, and to make January 1 the future due date for this report.

COMMENTS REQUESTED

COMMENT 1 – DISTRICT COURT

*Similar to prior years, landlord/tenant cases and traffics cases make up the two largest case types in the District Courts, as shown in **Exhibit 3**. In fiscal 2021, landlord/tenant cases made up 31% of District Court cases compared to 37% the prior year. Alternatively, traffic cases accounted for 33% of cases in fiscal 2021 versus just 28% in fiscal 2020.*

The Judiciary should comment on the extent to which COVID-19 pandemic is the cause of the decline across all District Court case types or whether other factors are influencing this decline. Specifically, the Judiciary should address the decline in landlord/tenant cases and whether an increase in these cases is expected in fiscal 2022.

Judiciary Response: The Judiciary believes that the pandemic is the major contributing factor to the decline in filings for all case types, except domestic violence filings which increased. The decrease in traffic and criminal case filings appear to be related to policing decisions outside of the Judiciary’s control. The decrease in civil case filings may be attributed in part to delays in processing new case filings in non-MDEC counties and the courts’ focus on criminal matters during the periods of restricted operations.

With respect to failure-to-pay-rent case filings, the Judiciary believes that the pandemic, federal legislative enactments (CARES Act and the CDC Agency Order), Governor Hogan’s Order regarding evictions, and the distribution of federal rental relief monies are the most significant factors in the decline in filings and resulting evictions. From July 2021 to December 2021, failure-to-pay-rent case filings totaled 166,117. Prior to the pandemic, for the comparable period in 2019, from July 2019 to December 2019, failure to pay rent case filings totaled 344,704. There is a similar pattern in evictions. Throughout the pandemic, the Court accepted failure-to-pay-rent case filings. As the pandemic ebbed and flowed, the scheduling of failure-to-pay-rent dockets likewise increased or decreased. During the period of December 27, 2021 to March 6, 2022, failure-to-pay-rent dockets were not conducted as the Court was forced to return to restricted operations due to the spike in cases caused by the Omicron variant of COVID-19.

The Judiciary has collaborated with the Maryland Department of Housing and Community Development to coordinate the distribution of rental relief funds. The Judiciary’s Court Help Centers have been the central hub of rental assistance information, providing more than 33,000 instances of service to those seeking advice regarding housing-related services. Eighty percent

(80%) of those seeking rental advice from the Court Help Centers reported making less than \$50,000 per year. Most courthouses have lawyer-of-the-day programs, and rental relief fund information and websites have been prominently displayed in courthouses to advise the public of this information.

The Judiciary believes that failure-to-pay-rent case filings will slowly increase in fiscal 2023 although it is dependent on the continuation of rental relief monies, pending legislation increasing the amount of filing fees, the start of the Access to Counsel in Evictions program by MLSC, and any surge in COVID-19.

COMMENT 2 – PRETRIAL HOME DETENTION SPENDING

The fiscal 2022 working appropriation includes \$5.0 million in federal American Rescue Plan Act funds for pretrial home detention. These funds are for the implementation of Chapter 597 of 2021, which exempted certain defendants placed in private home detention for pretrial release from paying the monitoring fee if the defendant qualifies as indigent. The Judiciary has received invoices totaling \$375,000 for this program. These invoices have either been paid or are currently being process for payment. Based on the existing use of the program, the Judiciary estimates that the full fiscal 2022 cost of the program will be \$750,000.

The Judiciary should comment on the implementation of the pretrial home detention program, including the outreach efforts and collaboration with executive agencies to ensure that available funds are utilized to the greatest extent possible.

Judiciary Response: This legislation was originally unfunded when it was passed in 2021. The initiative was later funded with money received from the American Rescue Plan and given to the Judiciary to manage. It is unclear why, without consultation with the Judiciary, the Judiciary was selected to administer the program. This occurred after the effective date of the legislation.

Imposing obligations on the Judiciary that are not adjudicatory functions and requiring the Judiciary to administer the state's payment of private pretrial home detention monitoring fees is inappropriate as the Judiciary is not the proper governmental branch to administer such a program. Overseeing the payment program is a task better suited to the executive branch's expertise in administering laws and programs.

The Judicial branch does not have the staff or other means available to determine whether defendants approved for home detention monitoring are being monitored. This capability is critical to ensure compliance by Private Home Detention Monitoring Agencies (PHDMAs) with the terms of a payment program and to prevent fraud.

The Judiciary developed a business process that ensured invoices and payments were in compliance with the bill. Multiple meetings and training sessions were conducted during the development and implementation of the program. This program has required almost daily interaction with the courts and the private companies through phone calls, meetings, and emails. The PHDMAs continue to struggle to provide the required documentation and appropriate invoices for payment.

The Judiciary has no regulatory authority over PHDMAs, and such authority is important to ensuring that PHDMAs abide by a new state payment program. Title 20 of the Business Occupations and Professions Article assigns regulatory authority over PHDMAs to the Department of Public Safety and Correctional Services (DPSCS). While DPSCS has enacted COMAR regulations, these apply only to the licensing requirements and do not establish a regulatory structure to ensure that the PHDMAs provide the required services or notify the court in a timely manner of any violations of the indigent individual. There are numerous examples of delayed or incomplete notifications of violations to the court. Regulations or legislation should be enacted to ensure enforcement of timely reporting and other requirements for which no sanctions currently exist.

There is no collaboration with executive agencies as this program involves private companies that provide home detention monitoring. In addition, House Bill 316 created a Workgroup on Home Detention Monitoring to study and make recommendations regarding the costs and availability of public and private pretrial home detention monitoring. The Judiciary is not part of the workgroup and to our knowledge the workgroup has not been formed or met. The workgroup should address the management shortfalls in the current private home monitoring industry and make a recommendation regarding the proper executive branch department to oversee the program before any other considerations are implemented.

Finally, this program sunsets on August 15 resulting in no further funding for this initiative. There is no funding allowance in the Judiciary's fiscal year 2023 budget.



MLSC

MARYLAND LEGAL SERVICES CORPORATION

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FY23 Judiciary Budget Analysis

Maryland Legal Services Corporation Comment

Access to Counsel in Evictions Program

Contact: Deb Seltzer, Executive Director, dseltzer@mlsc.org, 410-576-9494 x1009

Maryland Legal Services Corporation is a legislatively created nonprofit organization with a mission to ensure low-income Marylanders have access to stable, efficient and effective civil legal assistance through the distribution of funds to nonprofit legal services organizations. The Maryland General Assembly recognized the importance of civil legal services in rent court by passing the Access to Counsel in Evictions Program during the 2021 session. The General Assembly named MLSC as the administrator of this important program. When funded, the Program will provide legal representation as well as related tenant outreach and education, ensuring low-income tenants facing loss of housing know their rights and have an advocate to guide them through the court process.

RELIEF Act Funding

As the administrator of the Access to Counsel in Evictions Program, MLSC looks forward to building on our previous eviction prevention grants to ensure the Program proceeds effectively and efficiently once funding is provided. We have funded eviction prevention legal services for many years, both through our general operating grants and more recently through targeted special project grants. In 2021, the Maryland General Assembly directed \$3 million for eviction prevention legal services to MLSC via the RELIEF Act. At the start of FY22, MLSC awarded approximately \$2.1 million of those funds to eight nonprofit legal services organizations, who are currently providing services across the state.

MLSC plans to deploy the remaining RELIEF Act funds in FY23 once we know the total amount and sources of funding available for the Access to Counsel in Evictions program. We hope to use the RELIEF Act funds to cover any resulting gaps when Access to Counsel is funded. For example, the Access to Counsel statute requires MLSC to prioritize implementation in jurisdictions that have provided their own resources toward eviction prevention legal services. While that prioritization occurs, we want to make sure eviction prevention legal services in other areas continue uninterrupted to the extent feasible with available funding, even if not yet formally part of the Access to Counsel program. There are also certain case types or service models either not eligible or not practical for Access to Counsel funding, but that could be covered by RELIEF Act funds, such as affirmative rent escrow cases.

Access to Counsel in Evictions Appropriations

MLSC enthusiastically agrees with the DLS recommendation that a \$6.4 million appropriation be added to fully fund the initial implementation of the Access to Counsel in Evictions program. The Access to Counsel in Evictions Task Force recently recommended in its first report that an appropriation would be the best method of funding the Program. While occasional other funding sources, such as the \$5.4 million in emergency rental assistance funding to be provided by the Department of Housing and Community Development for FY23, may be appropriate and available, an ongoing appropriation would lend necessary stability to the Program. An

appropriation would especially boost the tenant outreach and education portion of the Program, as we are not sure yet whether that is an allowable use of the DHCD funding.

Access to Counsel in Evictions Reporting

Finally, MLSC is happy to provide quarterly reports on the status of the Access to Counsel in Evictions Program. However, we wish to bring to the Committee's attention two points related to reporting:

- Under the Access to Counsel in Evictions statute, MLSC is required to submit an annual report to the Governor and General Assembly by August 31 of each year. This report will include information on case data and outcome metrics. If acceptable, we request that the Committee accept this annual report, to be submitted no later than August 31, 2023, as the fourth quarter report, which would avoid duplicative reporting and allow MLSC and our grantee legal services providers adequate time to close out the fiscal year.
- MLSC will certainly provide budgetary information in the quarterly reports. While we can calculate averages, we wish to emphasize that MLSC does not generally award grants on a cost-per-case basis. We recognize that individual case expenses vary widely, based on factors like the complexity of the case, the service model of individual providers (ex. the use of pro bono attorneys), the geographic location, the need for supplemental services (ex. translators) and more. While we welcome pro bono involvement in the Program, we anticipate the bulk of the legal services to be provided by staff attorneys employed by MLSC's nonprofit grantees. Therefore, the pay structure for attorneys will vary according to their internal policies.