

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 Finance Committee
Senate Budget and Taxation Committee

FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523

RE: Senate Bill 833
Cannabis – Legalization and Regulation

DATE: February 23, 2022
(3/3)

POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 833. In particular, the expungement provisions of this will have a significant fiscal and operational impact on the Judiciary.

There are no criminal court record data fields indicating how much marijuana (“cannabis”) the defendant possessed in cases prior to 2012. From 2012 to 2014, there was a criminal charge for the possession of less than 10 grams of marijuana, for which the court does have statistics. In 2014, cases involving the use and possession of less than 10 grams of marijuana (“cannabis”) were issued on a civil citation in accordance with Criminal Law 5-601.1. After 2014, any criminal charge for the use and possession of marijuana (“cannabis”) that involved an amount over 10 grams was charged as a misdemeanor violation. There are no data fields indicating how much marijuana (“cannabis”) the defendant possessed in these cases, other than it was an amount over 10 grams.

Under this legislation, the only charges eligible for automatic expungement would be those charges that did not exceed the personal amount. Senate Bill 833 is unclear on whether a person charged with possession of cannabis over the personal use amount of 2 ounces but under 10 ounces would be eligible for expungement for possession of cannabis involving the personal use amount, defined in the bill as 2 ounces.

Maryland Electronic Courts (MDEC) has been implemented in 92% of the jurisdictions; however, the bulk of the expungement process still requires the clerks to do manual processing. The average time to complete expungement of an entire case in the District Court or circuit courts has been determined to be 1.5 hours. The average time to complete the more complex process of expunging a single charge from a case with multiple charges, which requires reading through all documents and docket entries, has been determined to be 3 hours for District Court and 5 hours for circuit court due to the size of

case files. Time estimates could increase depending on circumstances such as the complexity of the case, the difficulty in locating files, and the number of custodians. The time to complete the expungement process is not currently available for the appellate courts.

This legislation would drastically increase the number of expungements the Judiciary would be required to perform. The bill is retroactive. For illustrative purposes, just the number of charges that are in an electronic format are indicated in the charts below. Cases with electronic records pre-MDEC would still include a paper file. The numbers below do NOT include charges or cases in paper, that were never entered into any electronic case management system, which would include cases filed before the mid-1980s in most instances.

The following statistics involving the use and possession of marijuana (“cannabis”) have been recorded in the District Courts and the circuit courts from Fiscal Years 1970-2019:

District Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2021: Charges with Electronic Records	Marijuana Possession - Single Charge	Marijuana Possession w/Multiple Charges
Allegany	2,571	7,241
Anne Arundel	8,503	14,030
Baltimore City	63,713	73,874
Baltimore County	9,192	22,093
Calvert	5,089	5,984
Caroline	1,876	2,224
Carroll	2,680	7,242
Cecil	5,332	5,832
Charles	7,680	9,256
Dorchester	3,037	3,597
Frederick	6,825	10,902
Garrett	1,003	3,375
Harford	8,378	8,373
Howard	5,087	11,801
Kent	695	2,396
Montgomery	9,591	26,027
Prince George's	25,479	33,575
Queen Anne's	2,260	4,741
Somerset	1,798	2,050

District Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2021: Charges with Electronic	Marijuana Possession - Single Charge	Marijuana Possession w/Multiple Charges
St. Mary's	3,011	4,463
Talbot	3,647	3,352
Washington	1,968	8,007
Wicomico	3,790	8,771
Worcester	6,707	9,465
Statewide	189,912	288,671

Circuit Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2021: Charges with Electronic Records	Marijuana Possession - Single Charge	Marijuana Possession w/Multiple Charges
Allegany	92	1,512
Anne Arundel	577	4,516
Baltimore City	11577	16,026
Baltimore County	1763	13,583
Calvert	158	1,045
Caroline	86	871
Carroll	84	2,098
Cecil	344	2,509
Charles	406	2,896
Dorchester	60	954
Frederick	668	4,211
Garrett	25	359
Harford	848	4,320
Howard	484	2,695
Kent	62	759
Montgomery	210	1,552
Prince George's	5342	6,446
Queen Anne's	87	952
Somerset	60	658
St. Mary's	195	1,267
Talbot	98	847
Washington	219	3,308
Wicomico	192	3,174
Worcester	377	2,236

Circuit Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2021: Charges with Electronic Records	Marijuana Possession - Single Charge	Marijuana Possession w/Multiple Charges
Statewide	24,014	78,794

District Court: Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2021: Charges with Electronic Records	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges	Circuit Court: Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2021: Charges with Electronic Records	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
1970	0	0	1970	0	0
1971	0	0	1971	0	1
1972	0	0	1972	0	2
1973	0	0	1973	0	1
1974	0	0	1974	0	0
1975	0	0	1975	1	1
1976	0	0	1976	1	0
1977	0	2	1977	0	0
1978	0	0	1978	0	0
1979	0	0	1979	0	1
1980	0	0	1980	0	2
1981	0	0	1981	1	3
1982	0	0	1982	0	0
1983	0	0	1983	0	0
1984	0	1	1984	1	10
1985	0	1	1985	2	3
1986	1	1	1986	0	3
1987	1	0	1987	755	214
1988	1	2	1988	236	138
1989	2	8	1989	286	124
1990	11	30	1990	276	60
1991	842	2,469	1991	149	28
1992	1,169	3,715	1992	159	43
1993	1,597	5,288	1993	134	64
1994	2,216	6,154	1994	200	76
1995	2,604	7,776	1995	226	299
1996	3,011	8,654	1996	241	425

District Court: Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2021: Charges with Electronic Records	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges	Circuit Court: Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2021: Charges with Electronic Records	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
1997	3,749	9,443	1997	277	509
1998	4,410	9,998	1998	434	779
1999	4,473	10,366	1999	575	752
2000	5,023	11,963	2000	847	1,370
2001	4,864	11,676	2001	908	2,350
2002	5,482	11,104	2002	1,158	2,695
2003	4,767	10,546	2003	943	3,100
2004	5,157	11,518	2004	1,057	3,808
2005	5,869	11,934	2005	1,313	4,316
2006	7,106	13,078	2006	1,392	4,528
2007	6,705	13,408	2007	1,365	4,807
2008	8,464	14,884	2008	1,413	4,967
2009	8,177	14,808	2009	1,645	4,875
2010	8,201	14,232	2010	1,541	4,695
2011	8,253	14,875	2011	1,713	4,803
2012	9,143	15,321	2012	1,876	5,150
2013	11,251	13,950	2013	1,321	5,304
2014	13,317	17,005	2014	548	5,366
2015	8,464	6,610	2015	231	3,003
2016	9,827	3,398	2016	135	1,901
2017	9,479	3,258	2017	142	1,904
2018	11,941	3,720	2018	179	2,140
2019	12,323	3,120	2019	198	1,791
2020	1,084	2,262	2020	34	978
2021	914	2,093	2021	101	1,405
Total	189,898	288,671	Total	24,014	78,794

The expungement process is a long, labor-intensive, and expensive process involving the determination of eligibility; the use of multiple NCR forms; postage costs for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants, defendant's attorneys; copying expenses; holding periods for pending expungements, physical redaction, and storage costs for the expunged records for three years. Court records that need to be redacted include all official records maintained by the clerk or other personnel pertaining to any criminal action or proceeding for expungement,

including indices, docket entries, charging documents, pleadings, orders, memoranda, assignment schedules, disposition sheets, transcriptions of proceedings, electronic recordings, orders, judgments, exhibits, and decrees. Some circuit courts do not have indexes of old cases. Searching for marijuana charges would involve manually going through docket books and microfilm to review each case to determine if a charge exists. In cases where there are multiple charges in a case but only one charge needs to be expunged, clerks would need to read through all aspects of the court record to properly redact references to the expungable charge. The appellate court process would be similar to the circuit court process, with a significant number of paper records needing to be researched. In addition, the bill does not cover the removal of “published” opinions of a court. Part of the expungement process for paper and electronic files is identifying all the custodians of the records that must expunge their files and then respond to the court with a Certificate of Compliance. Not all custodians are readily apparent by looking in a computer. Court commissioners can be a custodian of a record when a defendant applies for Public Defender eligibility determination. The entire file needs to be checked.

The bill is retroactive and involves any charges involving the use and possession marijuana in an amount that is considered less than personal use filed in the District Court since it was established in 1971, as well as charges filed in the circuit court going back even further. All District Court records prior to 1981 are archived and having to retrieve them would be burdensome for the Judiciary and the State Archives.. If a case is not in the electronic case management system, it is sometimes difficult to locate or obtain a case number. Some old cases are referenced in index books, if there is an index, that clerks can look through to locate a case. If a case number is located, clerks can look through warehouse listings to see if the box that houses that case file may be located. The case file may be on microfilm or may be located at the Maryland State Archives. Sometimes it takes several tries to find the correct case file location. The process varies for the circuit courts. Some courts have no index of cases with paper records, or the index does not indicate the charges. Unless the legislation specifically directs the Archives to redact the expunged information, courts would have to retrieve files from storage and manually review *every* criminal case to determine if there were any marijuana possession (less than a personal amount) charges. Even in cases with the lead charges listed, subsequent charges or violations of probation would not be listed in the index, necessitating a thorough review of all criminal cases. While some circuit courts have older records (approximately 1986 and older) with State Archives, others have maintained all their court records on-site or in warehouses. In addition to the paper files, many older circuit court files are on microfilm or microfiche with no obvious way to expunge a case or charge within a case. In courts where the paper record was lost due to flood or fire, the microfilm may be the only record remaining of cases for a given timeframe.

Senate Bill 833 requires the court to expunge charges of possession of marijuana in an amount that is considered less than personal use, where the defendant was also charged with one or more other crimes in the same case, regardless of the disposition of the other charge or charges on or before October 1, 2024. This type of expungement is called a partial expungement.

The Judiciary maintains that it is not able to effectively expunge one charge in a unit. There is no functionality currently within CaseSearch to remove records at the charge level without displaying a space for a missing charge(s). When a person is charged with multiple offenses, the charges are numbered and reported to the Criminal Justice Information System (CJIS) in the order presented on the charging document. For instance, there are three charges, and charge 2 is expunged, the system will still reflect charges 1 and 3. They are not and cannot be renumbered because the case information reported to CJIS must align with the same charge numbers initially reported. A missing numbered charge may raise questions and red flags, thereby, nullifying the purpose of the expungement.

The clerk would need to review the file, page by page to remove any information pertaining to the expunged charge. Charge information is repeated throughout the case many times and the charging document outlines what the alleged events are that occurred. There may not be a clear way to obliterate all information in a charging document related to a specific charge.

In addition, there is currently no functionality to build programmatic relationships between CaseSearch and the five case management systems that process criminal information to remove any reference to the existence of specific charges that may exist in any of the various components within those systems as required by the proposed legislation. As explained in the current and prior legislative sessions, the Judiciary anticipates that the implementation of CaseSearch Version 2 will provide the needed functionality to enable the removal of case information at a more granular level such as individual charges and will parallel the final rollout of MDEC. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million.**

In order for the court to sentence a person with community service for civil violations of possession of cannabis and smoking in public if they request community service in lieu of a fine, the Judicial Information Systems division estimates that implementing the necessary programming changes will require 220.8 hours at an approximate cost of \$26,798.88.

Programming costs for the portion of this bill that details the court's responsibility to expunge current and historical cases involving the use and possession of cannabis are estimated to require 1,096.8 hours at an approximate cost of \$133,759.08.

Finally, the multi-part process involving the dismissal of current charges, the release of current defendants who are incarcerated, and the expungement of charges involving the possession or cultivation of a personal use amount of cannabis by a person who is 21 years of age or older is estimated to require 495.6 hours at an approximate cost of \$60,125.76. In total, it is estimated to require 1,813.2 hours at an approximate cost of \$220,683.72 to accomplish the programming required for the courts to meet the requirements of this legislation.

Costs will increase in direct relation to the higher number of expungements. Clerical positions will be necessary due to the expansive amount of charges that would become eligible and the retroactive nature of this bill.

Clerk Need in Fiscal Years 2023 to 2024 to Expunge Existing/Historical Charges for Possession of Marijuana with Electronic Records

	Single Charge	Single Charge		Multiple Charges	Multiple Charges
	DC	CC		DC	CC
No. of Electronic Cases	189,898	24,014		288,671	78,794
Hours to Complete Expungement Process	1.5	1.5		3	5
No. of Cases x Time to Complete the Process	284,847	36,021		866,013	393,970
No. of Clerks Needed*	236	30		123	134
*Number of clerks needed accounts for the time allotted in the bill to complete expungement at 1 years for single charge cases and 2 years for multiple charge cases.					

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

District Court: 359

Circuit Court: 164

Please note that the above numbers do not account for cases that are still in paper.

Additional Clerk Need for Current and Incoming Possession of Marijuana Charges Starting in Fiscal Year 2023

	Single Charge	Single Charge		Multiple Charges	Multiple Charges
	DC	CC		DC	CC
No. of Cases*	11,248	173		3,366	1,945
Hours to Complete Expungement Process	1.5	1.5		3	5
No. of Cases x Time to Complete the Process	16,870.5	259.5		10,098	9,725
No. of Clerks Needed	14	-		8	8
* Number of cases is based on the three-year average filings for Fiscal Years 2017-2019 * FY2020 and FY 2021 data not used due to vast differences in charge data as a result of the COVID-19 shutdowns.					

The total number of new clerks needed to accomplish the expungement of current and incoming cases is:

District Court: 22

Circuit Court: 8

The cost for the estimated additional personnel and operating costs in the first full fiscal year is **\$40,294,586.00**. The number of clerks needed is in direct relation to the lack of time available to complete the required expungements of historical cases as well as handling the automatic expungement of current and incoming cases involving the use and possession of cannabis.

The initial cost to implement Senate Bill 833 is estimated to be approximately **\$41,686,270** million. That total includes the above mentioned 585 judicial clerks. The aforementioned costs do not include expungement of charges that were never entered in any of the Judiciary's case management systems, which is indeterminable at this time.

This bill will have a significant fiscal and operational impact on the Judiciary.

cc. Hon. Brian Feldman
Judicial Council
Legislative Committee
Kelley O'Connor