

MARYLAND JUDICIAL CONFERENCE
OFFICE OF GOVERNMENT RELATIONS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne Pelz
410-260-1523
RE: House Bill 837
Cannabis Reform
DATE: February 9, 2022
(2/14)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes House Bill 837, as drafted. In Section 3 (effective 01/01/2023-06/30/2023, pending the result of the passage of HB 1 as a constitutional amendment) of House Bill 837, all references to *marijuana* are changed to *cannabis* and the bill alters the amount of marijuana that is considered a civil offense under Criminal Law Article § 5-601. The bill removes first, second, and third violations as the measure by which the civil penalty is increased and instead bases the civil penalty on the amount of cannabis in possession.

Although the Judiciary has no position on the intent of this legislation, implementation would be problematic. First, the bill if enacted would cause an unnecessary burden on court dockets by requiring, at Criminal Law § 10-105.3(b), a resentencing hearing for every person incarcerated for cannabis possession under Criminal Law § 5–601. The Judiciary does not know the number of such individuals currently incarcerated on these offenses, but Section § 10-105.3(b) in the bill requires that such persons be “resentence[d] to time served.” It is unclear why the court would need to conduct a resentencing hearing when the legislation mandates the new sentence (without any probation.) If that is the intent, a resentencing hearing is unnecessary. Further, the Judiciary is opposed to section § 10-105.3(b) which removes judicial discretion in sentencing decisions.

This bill would also have a significant fiscal impact on the Judiciary at a cost of over \$3,000,000. House Bill 837 lessens the time required for filing a petition for expungement as well as alters the “unit rule” in Criminal Law 10-107 to include two or more charges **other than** minor traffic or possession of cannabis that arise from the same incident, transaction or set of facts. A charge for a minor traffic violation or possession of cannabis under Criminal Law § 5–601 that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit.

The bill also mandates that the Maryland Judiciary Case Search not refer, in any way, to the existence of a criminal case in which possession of cannabis under Criminal Law § 5-601 is the only charge if the case was disposed of before July 1, 2023.

The change to the “unit rule” envisioned by this bill presents the same issues that the Judiciary has explained before regarding partial expungement. This is significantly different than the minor traffic exception to the “unit rule” because minor traffic citations are each their own case whereas criminal charges for possession are a charge in a case that may, and often does, involve numerous other charges. As a result, the expungement requirement in this bill, much like other bills that have required partial expungement, will require a significant manual process by the clerks.

The Maryland Judiciary is currently in the process of implementing a single Judiciary-wide integrated case management system that will be used by all the courts in the Judiciary. Maryland Electronic Courts (MDEC) allows courts to collect, store, and process records electronically. The new system is “paper-on-demand,” that is, paper records can be generated when specifically requested. MDEC has reduced some processing time, as well as the storage expenses associated with the expungement process; however, the bulk of the process still requires the clerks to do manual processing. Cases with electronic records pre-MDEC would still include a paper file. In counties where MDEC has not yet been fully implemented, 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.

The Judiciary does not have numbers for cases where a person was not eligible for an expungement because a marijuana charge was part of a unit. Assuming this bill applies retrospectively, the number of cases that would be eligible for expungement increases dramatically in 2023 because those cases would be eligible for expungement. The Judiciary is also not able to determine the number of cases for possession with the intent to distribute marijuana specifically because the possession with intent to distribute charge is used for all drugs except narcotics. A significant increase in petitions can also be expected for the eligible charges with reduced waiting times.

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. Unless the legislation specifically directs the Maryland State Archives (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 charges involving marijuana/cannabis. 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 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.

Given the lack of data, the precise number of additional clerical positions required to implement this legislation is difficult to determine at this time, a minimum of 12 new positions are estimated in the District Court (one for each District), another 29 positions are estimated to be needed in the Circuit Courts (one for each county, except for Anne Arundel, Baltimore, Montgomery, and Prince George’s counties and Baltimore City, where at least two clerks are estimated to be needed) for a total of 41 new positions. This will result in approximately \$2,824,067 in additional personnel costs in the first full fiscal year.

This legislation will require the court to make programming changes to allow for the extension of shielding on Case Search, to alter the timelines for petitions for expungements, to adjust the amount of cannabis that is considered a civil violation and to allow a person who is incarcerated for possession of cannabis to apply for resentencing. The Judicial Information Systems division estimates that implementing the necessary programming changes will require 1932 hours at an approximate cost of \$231,228.40.

The following violations involving the criminal and civil possession of marijuana were recorded in the District Court and the circuit courts in fiscal years 2020 and 2021:

	District Court FY 20	District Court FY 21	Circuit Court FY 20	Circuit Court FY 21
CR § 5-601 – Possession of more than 10g of marijuana	3,285	3,064	891	1,263
Civil Citations – Possession of less than 10g of marijuana	11,606	10,645		

* Please note that FY20 and FY21 numbers are impacted by the COVID-19 pandemic and may not be an accurate reflection of a true year of data.

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

HB0837 Initial Minimum Cost of Implementation	
Clerks (1 st Full Year)	\$2,824,067.00
Programming, including Reports	\$231,228.40
Brochure	\$6,000.00
Civil Citation	\$25,000.00
TOTAL	\$3,086,295.40

cc. Hon. Luke Clippinger
Judicial Council
Legislative Committee
Kelley O'Connor