



February 2, 2023

SB 37

Testimony from Olivia Naugle, senior policy analyst, MPP, favorable with amendments

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Senate Judicial Proceedings Committee:

My name is Olivia Naugle, and I am the senior policy analyst for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP has been working to improve cannabis policy for 27 years.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization. This includes removing the life-altering stigma of a criminal conviction for cannabis.

Maryland had the highest percent of voters ever cast their votes to legalize cannabis — over 67%. It should also have the strongest law when it comes to reparative justice, release, and expungement.

MPP would like to offer the follow amendments to the REDEEM Act (SB 37) and urge a favorable report.

The REDEEM Act would reduce the wait to petition for expungement from 15 to 5 years for cannabis sales and most other felonies. It would also leave the current wait time for PWID unchanged — three years after one’s entire sentence is completed. Having a criminal record for a few years can derail lives by making it very difficult to get housing and employment.

We recommend a state-initiated process for both expungement *and re-sentencing* for all pre-legalization cannabis convictions, with no wait times. Currently, resentencing is only available for possession offenses. We believe Marylanders should not be incarcerated, burdened by probation and fines, or be stigmatized for life for PWID or sales of a product that is now legal.

There should be a presumption in favor of re-sentencing those with pre-legalization cannabis convictions to any already-completed sentence. Individuals should also be able to petition for resentencing and expungement while they wait for the state-initiated process.

Another option would be to allow individuals to *petition* for resentencing and expungement for pre-legalization PWID, sales, and other cannabis offenses with no wait. This is an inferior approach because those who have the least resources are also the least likely to be able to avail themselves of petition-based expungement. We’ve included sample language for both approaches.

Thank you for your time and attention to this important issue. If you have any questions, please feel free to reach out.

Sincerely,
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**Suggested Language To Add to the REDEEM Act:
Automatic Expungement and Re-Sentencing for Cannabis Offenses**

MD Code, Criminal Procedure, § 10-110

...

(c)(1) Except as **OTHERWISE** provided in [paragraphs (2), (3), and (4) of] this subsection, a petition for expungement under this section may not be filed earlier than [10]3 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

...

[(4)] (5) A petition for expungement of a conviction of possession with intent to distribute cannabis under § 5-602 of the Criminal Law Article may [~~not~~] be filed **at any time** [~~earlier than 3 years~~] after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(6) A petition for expungement for distribution of cannabis under § 5-602 of the Criminal Law Article for alleged conduct occurring prior to July 1, 2023 may be filed at any time after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(7) Expungements of cannabis arrests, convictions, and civil adjudications pursuant to this section shall be granted notwithstanding the existence of outstanding court-imposed or court-related fees, fines, costs, assessments, or charges.

MD Code, Criminal Procedure, § 10-111, revise as follows:

(a) The Maryland Judiciary Case Search may not in any way refer to the existence of a criminal case in which:

- (1) possession of cannabis under § 5-601 of the Criminal Law Article is the only charge in the case; and
- (2) the charge was disposed of before July 1, 2023.

(b) The Maryland Judiciary Case Search may not in any way refer to the existence of a criminal case in which:

(1) possession of cannabis under § 5-601 of the Criminal Law Article, distributing cannabis under § 5-602 of Criminal Law Article, and/or possession with intent to

distribute cannabis under § 5-602 of Criminal Law Article are the only charges in the case;

(2) the person has satisfied the sentence or sentences imposed, including parole, probation, or mandatory supervision; and

(3) the charges were filed of before July 1, 2023.

MD Code, Criminal Procedure, § 10-112, revise as follows:

(a) In this section, “expunge” means to remove all references to a specified criminal case from the Central Repository.

(b) On or before July 1, 2024, the Department of Public Safety and Correctional Services shall expunge all cases in which:

(1) possession of cannabis under § 5-601 of the Criminal Law Article is the only charge in the case; and

(2) the charge was issued before July 1, 2023.

(c) On or before January 1, 2025, the Department of Public Safety and Correctional Services shall expunge all cases in which:

(1) possession of cannabis under § 5-601 of the Criminal Law Article, distributing cannabis under § 5-602 of Criminal Law Article, and/or possession with intent to distribute cannabis under § 5-602 of Criminal Law Article are the only charges in the case;

(2) the person has satisfied the sentence or sentences imposed, including parole, probation, or mandatory supervision; and

(3) the charges were filed of before July 1, 2023.

NEW SECTION. Article – Criminal Procedure 10–105.4.

(a) As used in this section, “cannabis-related offense” means any of the following:

(1) any offense involving cannabis or paraphernalia intended for cannabis; and

(2) any other offense that would not have been an offense were it not for the illegality of cannabis.

(b) No later than 90 days after the effective date of this act, the Department of Public Safety and Correctional Services shall conduct a search to determine all individuals serving a period of incarceration or supervision for a cannabis-related offense and notify the court in which each person was convicted.

(c) Any person who was convicted of cannabis-related offense that occurred prior to July 1, 2023 who has not completed the sentence may, at any time, petition the court in which the person was convicted for re-sentencing.

(d) The court in which the person was convicted shall notify the State’s Attorney of the underlying offense that it is considering resentencing the individual. The State’s Attorney may object within 14 days of receiving notice and may request a hearing. If the State’s Attorney does

not object within 14 days, the court shall re-sentence the person to the portion of the sentence the individual has already completed.

(e) If the State's Attorney timely objects, the court shall hold a hearing.

(f) There shall be a presumption that re-sentencing the individual to the sentence served would be in the interests of justice due to the legalization of cannabis for adults and the unequal enforcement of cannabis laws.

(g) The court shall grant the petition and re-sentence the individual to time served, or any sentence they have already completed, unless the State's Attorney has proven that:

(1) The offense is not eligible for re-sentencing under this section because it was not a cannabis-related offense that occurred prior to July 1, 2023;

(2) Re-sentencing would not be in the interests of justice; or

(3) Re-sentencing would be in the interests of justice, but that the appropriate sentence is something other than the portion of the sentence the individual has already completed.

(h) The court may find that re-sentencing is in the interests of justice, but that a complete reduction in the sentence is not in the interests of justice. In those instances, the court shall re-sentence the individual to the lowest sentence that is in the interests of justice, in light of legalization of cannabis and disparities in arrests and sentencing.

(i) If the person is not serving a concurrent or consecutive sentence for another crime, a person resentenced to time, or any other sentence served, shall be released from incarceration, supervision, or parole.

(j) A court may not increase any aspect of a sentence in response to a re-sentencing re-consideration filed pursuant this section.

(k) No fee shall be charged for filing a petition under this section.

(l) The Office of the Public Defender shall provide representation with no charge to any person who files a petition pursuant to this section.

(m) The Office of the Public Defender shall provide representation with no charge to any person who the State's Attorney objects to re-sentencing pursuant to this section.

(n) An individual is not required to provide indigence to receive representation pursuant to this section.

**Alternative Language To Add to the REDEEM Act:
Petition-Based Expungement and Re-Sentencing for Cannabis Offenses**

MD Code, Criminal Procedure, § 10-110

(c)(1) Except as **OTHERWISE** provided in [paragraphs (2), (3), and (4) of] this subsection, a petition for expungement under this section may not be filed earlier than [10]3 years after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

...

[[4]] (5) A petition for expungement of a conviction of possession with intent to distribute cannabis under § 5-602 of the Criminal Law Article may [~~not~~] be filed **at any time** [~~earlier than 3 years~~] after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(6) A petition for expungement for distribution of cannabis under § 5-602 of the Criminal Law Article for alleged conduct occurring prior to July 1, 2023 may be filed at any time after the person satisfies the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

(7) Expungements of cannabis arrests, convictions, and civil adjudications pursuant to this section shall be granted notwithstanding the existence of outstanding court-imposed or court-related fees, fines, costs, assessments, or charges.

NEW SECTION. Article – Criminal Procedure 10–105.4.

(a) As used in this section, “cannabis-related offense” means any of the following:

- (1) any offense involving cannabis or paraphernalia intended for cannabis; and
- (2) any other offense that would not have been an offense were it not for the illegality of cannabis.

(b) Any person who was convicted of cannabis-related offense that occurred prior to July 1, 2023 who has not completed the sentence may, at any time, petition the court in which the person was convicted for re-sentencing.

(c) The court in which the person was convicted shall notify the State’s Attorney of the underlying offense that it is considering resentencing the individual. The State’s Attorney may object within 14 days of receiving notice and may request a hearing. If the State’s Attorney does not object within 14 days, the court shall re-sentence the person to the portion of the sentence the individual has already completed.

(d) If the State’s Attorney timely objects, the court shall hold a hearing.

(e) There shall be a presumption that re-sentencing the individual to the sentence served would be in the interests of justice due to the legalization of cannabis for adults and the unequal enforcement of cannabis laws.

(f) The court shall grant the petition and re-sentence the individual to time served, or any sentence they have already completed, unless the State's Attorney has proven that:

(1) The offense is not eligible for re-sentencing under this section because it was not a cannabis-related offense that occurred prior to July 1, 2023;

(2) Re-sentencing would not be in the interests of justice; or

(3) Re-sentencing would be in the interests of justice, but that the appropriate sentence is something other than the portion of the sentence the individual has already completed.

(g) The court may find that re-sentencing is in the interests of justice, but that a complete reduction in the sentence is not in the interests of justice. In those instances, the court shall re-sentence the individual to the lowest sentence that is in the interests of justice, in light of legalization of cannabis and disparities in arrests and sentencing.

(h) If the person is not serving a concurrent or consecutive sentence for another crime, a person resentenced to time, or any other sentence served, shall be released from incarceration, supervision, or parole.

(i) A court may not increase any aspect of a sentence in response to a re-sentencing re-consideration filed pursuant this section.

(j) No fee shall be charged for filing a petition under this section.

(k) The Office of the Public Defender shall provide representation with no charge to any person who files a petition pursuant to this section.

(l) An individual is not required to provide indigence to receive representation pursuant to this section.