

Department of Legislative Services
2020 Session
Agency Explanation of Impact

Bill number: HB0083

Cross file:

Bill title: Criminal Procedure - Automatic Expungement - Possession of Marijuana

Agency: Judiciary (Administrative Office of the Courts) - (jdy / 292)

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To assist our department in preparing a fiscal and policy note for this proposed legislation, please provide detailed responses to the questions below.

If you have additional information that cannot be included in either this Word document or the provided Excel file, please send that information **in a separate email** to fnotes@mlis.state.md.us with the bill number included in the document and the email subject line.

1. Will this legislation have a fiscal and/or operational impact on your agency?

YES NO _____

If yes, please proceed to question #2 on page 2.

If no, please briefly indicate **why** below and then proceed to question #6 on page 4.

2. General Operational/Fiscal Impact on Your Agency – Please describe the operational and/or fiscal impact of the proposed legislation on your agency.

House Bill 83 establishes a timeline for expungement of all cases where possession of marijuana was charged. The bill requires all court records and police records relating to any disposition of a charge of possession of marijuana under § 5–601 of the Criminal Law Article entered before October 1, 2020, where possession of marijuana is the only charge in the case to be automatically expunged on or before October 1, 2022. All court records and police records relating to any disposition of a charge of possession of marijuana under § 5–601 of the Criminal Law Article entered before October 1, 2020, 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, shall be automatically expunged on or before October 1, 2028.

With regard to any disposition of a charge of possession of marijuana under § 5–601 of the Criminal Law Article entered on or after October 1, 2020, (1) the court with jurisdiction over the case shall initiate efforts to automatically expunge all court records and police records relating to the charge 4 years after disposition of the charge; and (2) expungement of court records and police records relating to the charge shall be completed on or before 4 years and 90 days after disposition.

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), which has been implemented in 87% of the jurisdictions (the largest courts – Baltimore City, Montgomery and Prince George’s counties have future implementation dates), 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. 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.

District Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2019: Charges with Electronic Records		
	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
Allegany	2,558	7,147
Anne Arundel	8,199	13,534
Baltimore City	63,698	73,816
Baltimore County	9,020	21,174
Calvert	5,007	5,916
Caroline	1,823	2,163
Carroll	2,678	7,208
Cecil	5,286	5,748
Charles	7,653	9,202
Dorchester	3,004	3,549
Frederick	6,725	10,765
Garrett	997	3,361
Harford	8,315	8,195
Howard	5,047	11,698
Kent	683	2,361
Montgomery	9,436	25,841
Prince George's	24,934	32,362
Queen Anne's	2,207	4,650
Somerset	1,769	2,012
St. Mary's	2,941	4,428
Talbot	3,612	3,292
Washington	1,938	7,939
Wicomico	3,739	8,621
Worcester	6,631	9,334
Statewide	187,900	284,316

**Circuit Court Charges for Possession of Marijuana by County
FISCAL YEARS 1970-2019: Charges with Electronic Records**

	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
Allegany	88	1,443
Anne Arundel	571	4,230
Baltimore City	11,576	16,022
Baltimore County	1,756	12,813
Calvert	158	1,025
Caroline	80	837
Carroll	83	2,072
Cecil	342	2,438
Charles	404	2,844
Dorchester	59	937
Frederick	660	4,093
Garrett	25	354
Harford	844	4,132
Howard	483	2,683
Kent	62	737
Montgomery	208	1,524
Prince George's	5,266	6,119
Queen Anne's	78	903
Somerset	60	645
St. Mary's	195	1,243
Talbot	96	817
Washington	217	3,258
Wicomico	192	3,059
Worcester	376	2,183
Statewide	23,879	76,411

Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2019: Charges with Electronic Records	Charges for Possession of Marijuana (By Year) Fiscal Years 1970 through 2019: Charges with Electronic Records
DISTRICT COURT	CIRCUIT COURT

Year	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges	Year	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	2469	1991	149	28
1992	1,169	3715	1992	159	43
1993	1,597	5288	1993	134	64
1994	2,216	6154	1994	200	76
1995	2,604	7776	1995	226	299
1996	3,011	8654	1996	241	425
1997	3,749	9443	1997	277	509
1998	4,410	9998	1998	434	779
1999	4,473	10366	1999	575	752
2000	5,023	11963	2000	847	1370
2001	4,864	11676	2001	908	2350
2002	5,482	11104	2002	1158	2695
2003	4,767	10546	2003	943	3100
2004	5,157	11518	2004	1057	3808
2005	5,869	11934	2005	1313	4316
2006	7,106	13078	2006	1392	4528
2007	6,705	13408	2007	1365	4807
2008	8,464	14884	2008	1413	4967
2009	8,177	14808	2009	1645	4875
2010	8,201	14232	2010	1541	4695
2011	8,253	14875	2011	1713	4803
2012	9,143	15321	2012	1876	5150
2013	11,251	13950	2013	1321	5304
2014	13,317	17005	2014	548	5366
2015	8,464	6610	2015	231	3003
2016	9,827	3398	2016	135	1901
2017	9,479	3258	2017	142	1904
2018	11,941	3720	2018	179	2140
2019	12,323	3120	2019	198	1791
Total	187,900	284,316	Total	23,879	76,411

In cases filed prior to MDEC implementation, the expungement process of those non-electronic records is handled manually and 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 for the possession of marijuana under Criminal Law Article § 5-601 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. Locating old cases can take up a significant amount of clerk time. If a case is not in the 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 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.

HB0083 requires the court to expunge charges of possession of marijuana 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, 2028. This type of expungement is called a partial expungement. Currently charges in a "unit" cannot be expunged. (CP § 10-107)

The Judiciary maintains we are not able to effectively expunge one charge in a unit. There is no functionality currently within CaseSearch to remove records at the charge level. 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, if 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 six 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 in 2022. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million.**

The court will have to create an additional processes and reports to ensure the records are expunged in the required time periods required by this legislation.

Programming costs are estimated to be:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	326	\$100.00	\$32,600.00
Programming	606	\$125.00	\$75,750.00
Testing	290	\$110.00	\$31,900.00
Project Management	244.4	\$110.00	\$26,884.00
TOTAL	1466.4		\$167,134.00

Other expenditures include the printing and restocking of new carbonized forms and brochures, website revisions, postage for mailing petitions and orders to State's Attorneys, law enforcement agencies, defendants and their attorneys, storage for expunged records, and copying. To revise and restock the Expungement Brochure (CC-DC-CR-072BR) will be approximately \$6,000.00.

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.

As indicated below, the initial cost to implement HB 83 is estimated to be approximately **\$13,036,835** million. That total includes 185 judicial clerks. It is anticipated that as many as 30 additional judicial clerks will need to be hired in 2024 to fully implement the bill and to process ongoing expungements of marijuana charges. The cost for the 30 additional clerks and the associated operating cost will be an additional cost to the Judiciary. The approximate cost of full implementation of this legislation is \$109,734,095. 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.

Clerk Need in Fiscal Years 2021 to 2028 to Expunge Existing Charges for Possession of Marijuana with Electronic Records

	Single Charge	Single Charge		Multiple Charges	Multiple Charges
	DC	CC		DC	CC
No. of Electronic Cases	187,900	23,879		284,316	76,411
Hours to Complete Expungement Process	1.5	1.5		3	5
No. of Cases x Time to Complete the Process	281,850	35,819		852,948	382,055
No. of Clerks Needed*	117	15		18	35

*Number of clerks needed accounts for the time allotted in the bill to complete expungement at two years for single charge cases and seven 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: 135

Circuit Court: 50

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

Additional Clerk Need for Possession of Marijuana Starting in Fiscal Year 2023

	Single Charge	Single Charge		Multiple Charges	Multiple Charges
	DC	CC		DC	CC
No. of Cases*	11,247	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

The total number of new clerks needed to accomplish the new expungements starting in year four is:

District Court: 22

Circuit Court: 8

The Administrative Office of the Courts is in the process of analyzing clerk workload and the amount of time required to effectively and efficiently process the same, which will result in the development of a sound methodology by which to determine clerk need, similar to how

judgeship need is determined. The estimated number of clerks needed to perform expungements indicated above was derived from that preliminary analysis, using the number of hours clerks have available to perform their duties and responsibilities. The time a clerk has available to perform their duties accounts for weekends, holidays, leave, judicial support, training, and general office work.

The District Court can share some resources since it is a unified court system; however, circuit courts would need at least one person in each circuit since resources cannot be shared between the circuits. This will result in **\$11,723,701** in additional personnel costs in the first full fiscal year. (See spreadsheet).

The Judiciary is currently researching redaction software. There may be additional costs if a decision is made to purchase the software to assist the clerks with the time-consuming searching and redaction of records or case information within the records. Cost estimates are not available at this time.

HB0083 Initial Cost of Implementation	
Case Search 2.0	1,140,000
Clerks (1 st Full Year)	11,723,701
Programming, including Reports	167,134
Brochure	6,000
Redaction Software	TBD
TOTAL	\$13,036,835

If passed, this legislation would have a significant fiscal and a significant operational impact on the Judiciary.

- 3. Impact on Revenues** – Please estimate any increase or decrease in revenues (general, special, federal, or other funds) in each of the next five fiscal years. Enter the estimated amounts in the *Revenues* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause revenue increases/decreases to begin in later years.
 - Please explain the cause(s) of the revenue increase(s)/decrease(s), any assumptions and/or calculations used, and any variations if the revenue impact(s) are not constant.
 - If federal funds are affected, please describe how (*e.g.*, loss of funds for noncompliance, availability of new funds, etc.)

Prior to the bill being passed, any expungement of a guilty disposition for these charges would have cost \$30. Revenues will decrease for any expungement of a guilty disposition that will now be automatic under this bill.

- 4. Impact on Expenditures** – Please estimate the increase or decrease in expenditures in each of the next five fiscal years using the *Expenditures* worksheet in the provided Excel file and describe in the space below.
- Please be aware of delayed effective dates or other factors that may cause expenditure increases/decreases to begin in later years.
 - Please explain the need for the number and type of personnel (both permanent and contractual), including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type of employee will be; and (3) why existing personnel cannot absorb the additional work.
 - Please describe the items included under “Other Operating Expenses” and explain any assumptions or calculations used in your estimates.
 - Please specify the fund type (general, federal, special, or other) or combination of fund types of the expenditure increases and/or decreases.

See No. 2.

- 5. Anticipated in Proposed Operating/Capital Budget?** – Have funds been included in your agency’s proposed operating or capital budget in anticipation of this legislation? Or has your agency submitted a request for funding in a supplemental budget? If so, please indicate specific amount(s) budgeted and budget code(s).

No.

- 6. Other Information** – Please provide any other information that may be helpful in determining the fiscal effect of this legislation, even if the bill does not directly affect your agency.

The Criminal Justice Information System (CJIS) should be contacted as well as law enforcement agencies, parole and probation, agencies that supervise community service, Md. Archives, and other custodians of records.

- 7. Effect on Local Governments** – Will local government operations or finances (revenues or expenditures) be affected by this legislation? If yes, please describe how.

Any local law enforcement agency may be a custodian of the record.

- 8. Effect on Small Businesses** – Will existing small businesses be affected (either positively or negatively) by this legislation and/or will the legislation encourage or discourage new small business opportunities? If so, please describe.

State law defines a small business as a corporation, partnership, sole proprietorship, or other business entity, including affiliates that: (1) is independently owned and operated; (2) is not dominant in its field; and (3) employs 50 or fewer full-time employees.

N/A