

**MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 32
Cannabis – Legalization and Regulation
DATE: January 21, 2021
(2/16)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 32. Find attached the Fiscal Worksheet representing the impact on the Maryland Judiciary at an initial cost in excess of \$37 million.

cc. Hon. Jazz Lewis
Judicial Council
Legislative Committee
Kelley O'Connor

Department of Legislative Services
2021 Session
Agency Explanation of Impact

Bill number: HB0032

Cross file:

Bill title: Cannabis - Legalization and Regulation (Inclusion, Restoration, and Rehabilitation Act of 2021)

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

Prepared by: Roberta L. Warnken and Jamie L. Walter

Title: Chief Clerk of District Court and Program Director, Research and Analysis

Phone number: 410-260-1235 and 410-260-1725

Email address: Roberta.Warnken@mdcourts.gov and Jamie.Walter@mdcourts.gov

Date: January 14, 2021

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 _____ X _____ 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.

HB 32 defines “Cannabis” as the plant Cannabis Sativa L. and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration greater than 0.3% on a dry weight basis. “Cannabis” does not include hemp as defined in § 14-101 of the Agriculture Article.

This legislation alters listed items of drug paraphernalia found in Criminal Law Article § 5-101 to indicate that restricted paraphernalia is used for or with controlled dangerous substances “other than cannabis,” therefore repealing any criminal charge which involves paraphernalia which is used for/with cannabis. The legislation states that “drug paraphernalia” does not include cannabis accessories as defined in § 23-101 of the Health – General Article.

House Bill 32 defines “personal use amount” in reference to cannabis consumption as:

- i) an amount of cannabis that does not exceed 2 ounces;
- ii) an amount of concentrated cannabis that does not exceed 15 grams;
- iii) an amount of cannabis product containing THC that does not exceed 1500 milligrams;
- iv) six or fewer cannabis plants; or
- v) any additional cannabis produced by the person’s cannabis plants, provided that an amount of cannabis in excess of the amounts listed in items (i) through (iii) and must be possessed in the same secure facility where the plants were cultivated and that is secure from unauthorized access and 15 access by a person who is under the age of 21 years.

This legislation would alter the language found in Criminal Law Article § 5-601 to state that a person may not possess or administer to another a controlled dangerous substance, unless: 1) obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; 2) the controlled dangerous substance is cannabis, the individual is 21 years of age or older, and the amount possessed does not exceed a personal use amount; or 3) the controlled dangerous substance is cannabis and possession is legal under Title 13, Subtitle 33 or Title 23 of the Health – General Article.

This legislation would alter the language relating to civil marijuana possession to state that a first finding of guilt involving the use or possession of less than **the personal use amount of cannabis by an individual under the age of 21** years is a civil offense punishable by a fine not exceeding \$100. A person who is found responsible for a civil offense of possession of cannabis may request, and shall be granted, a penalty of up to 6 hours of community service in lieu of a fine. A second finding of guilt involving the use or possession of less than **the personal use amount of cannabis by an individual under the age of 21 years** is a civil offense punishable by a fine not exceeding \$250. A person who is found responsible for a second civil offense of possession of cannabis may request, and shall be granted, a penalty of up to 16 hours of community service in lieu of a fine. A third or subsequent finding of guilt involving the use or possession of less than **the personal use amount of cannabis by an individual under the age of 21 years** is a civil offense punishable by a fine not exceeding \$500. A person who is found responsible for a third or subsequent civil offense of possession of cannabis may request, and shall be granted, a penalty of up to 32 hours of community service in lieu of a fine. A violation involving a person at least 21 years old using or possessing an amount of cannabis that exceeds the personal use amount but does not exceed double

the personal use amount is a civil offense punishable by a fine not exceeding \$250. A person who is found responsible for a civil offense while in use or possession of no more than double the personal amount of cannabis may request, and shall be granted, a penalty of up to 16 hours of community service in lieu of a fine.

The condition that in addition to a fine, a court shall order a person at least 21 years old who commits a violation of CR § 5-601 to attend a drug education program approved by the Maryland Department of Health, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary, is repealed. Also repealed is the civil offense involving the smoking of marijuana in public.

This legislation states that making the possession of cannabis a civil offense for individuals under the age of 21 years and the provisions of Title 23 of the Health – General Article making the possession of cannabis legal for individuals 21 years of age or older may not be construed to affect the laws relating to operating a vehicle or vessel while under the influence of or while impaired by a controlled dangerous substance.

Under § 5-601.1 of the Criminal Law Article, a police officer shall issue a citation to a person who the police officer has probable cause to believe has committed a violation of § 5-601 involving the use or possession of **an amount of cannabis not exceeding double the personal use amount.**

The civil citation issued by law enforcement will be modified under House Bill 32 to include the following:

- 1) the name, address, and date of birth of the person charged;
- 2) the date and time that the violation occurred;
- 3) the location at which the violation occurred;
- 4) the fine **or amount of community service** that may be imposed;
- 5) a notice stating that prepayment of the fine is allowed
- 6) a notice in boldface type that states that the person shall pay the full amount of the preset fine, **request community service in lieu of the fine**, or request a trial date at the date, time, and place established by the District Court by writ or trial notice.

If a citation for a violation of § 5-601 involving the use or possession of an amount of cannabis not exceeding double the personal use amount is issued to a person under the age of 21 years, the court shall summon the person for trial. The condition that if the court finds that a person at least 21 years old who has been issued a citation for the use and/or possession of less than 10g marijuana has at least twice previously been found guilty of the same violation, the court shall summon the person for trial, is repealed.

Under this legislation, the Chief Judge of the District Court shall establish a schedule for the prepayment of the fine and procedures for individuals to request and be granted community service in lieu of a fine.

House Bill 32 establishes, under CR § 5-601.2 that a person may not smoke cannabis in a public place. A person who smokes cannabis in a public place is guilty of a civil offense punishable by a fine not exceeding \$50. A person who is found responsible for a civil offense of smoking cannabis

in public may request, and shall be granted, a penalty of up to 5 hours of community service in lieu of a fine. A police officer shall issue a citation to a person who the police officer has probable cause to believe has committed a violation of smoking cannabis in a public place. A violation is a civil offense and is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction. The citation issued shall be uniform throughout the state and shall be prescribed by the District Court. The Chief Judge of the District Court shall establish a schedule for the prepayment of the fine and procedures for individuals to request and be granted community service in lieu of a fine. Prepayment of a fine or acceptance of community service shall be considered a plea of guilty to a code violation. A person who is cited for a violation of CR § 5-601.2, who is under the age of 21 may not prepay the fine and must be summoned to trial. The defendant is liable for the costs of the proceedings in the District Court. The court costs in a code violation case in which costs are imposed are \$5. A citation for a violation of CR § 5-601.2 and the official record of a court regarding the citation are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary if:

- 1) the defendant has prepaid the fine or performed the community service;
- 2) the defendant has pled guilty to or been found guilty of the code violation and has fully paid the fine or performed the community service and costs imposed for the violation;
- 3) the defendant has received a probation before judgment and has fully paid the fine or performed the community service and completed any terms imposed by the court;
- 4) the case has been removed from the stet docket after the defendant fully paid the fine and completed any terms imposed by the court;
- 5) the state has entered a nolle prosequi;
- 6) the defendant has been found not guilty of the charge; or
- 7) the charge has been dismissed.

House Bill 32 creates Criminal Law Article § 5-601.3 which states that a person may not cultivate cannabis plants in a location where the plants are subject to public view, including a view from another private property, without the use of binoculars, aircraft, or other optical aids. A person who cultivates cannabis shall take reasonable precautions to ensure the plants are secure from unauthorized access and access by a person under the age of 21 years. Cannabis cultivation may occur only on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property. A person who violates this section is guilty of a civil offense punishable by a fine not exceeding \$750. A person who is found responsible for a civil offense under this section may request, and shall be granted, a penalty of up to 50 hours of community service in lieu of a fine.

This legislation repeals the misdemeanor violation found in Criminal Law Article § 5-620 which states that a person who obtains, possesses or distributes controlled paraphernalia involving the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 21 or both. The bill then creates two new sections of the Criminal Law Article (§ 5-629 and § 5-630) which state:

§ 5-629: a person may not manufacture or sell cannabis accessories that violate health and safety regulations adopted by the alcohol and tobacco commission under Title 23 of the Health – General Article. A person who violates this section is guilty of a civil offense (1st violation) and on conviction is subject to a fine not exceeding \$1,000. For a second or

subsequent violation, is guilty of a misdemeanor and is subject to imprisonment not exceeding 180 days or a fine not exceeding \$5,000 or both.

§ 5-630: the offenses and penalties in this subtitle do not apply to activities related to cannabis or cannabis accessories that are legal under Title 13, Subtitle 33 of the Health – General Article, or Title 23 of the Health – General Article.

Under this bill, a person may not knowingly and willfully make misrepresentation or false statements as to their age to any person licensed to sell alcoholic beverages or cannabis and may not attempt to obtain by purchase or otherwise if under the age of 21. These prohibitions do not apply to an individual under the age of 21 who is allowed to possess cannabis and cannabis accessories under Title 13, Subtitle of the Health – General Article.

House Bill 32 establishes that all court records and police records relating to any disposition of a charge of possession of cannabis under § 5–601 of the Criminal Law Article **involving a quantity of cannabis that did not exceed the personal use amount entered before October 1, 2022, where possession of cannabis is the only charge in the case shall 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 **involving a quantity of cannabis that did not exceed the personal use amount entered before October 1, 2022, 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, 2023.** With regard to any disposition of a charge of possession of cannabis under CR § 5–601 involving a quantity of cannabis that did not exceed the personal use amount 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 1 year after disposition of the charge; 2) expungement of court records and police records relating to the charge shall be completed on or before 1 year and 90 days after disposition.

House Bill 32 further states under newly created § 10-105.2 of the Criminal Procedure Article that all charges pending on October 1, 2021, for possession or cultivation of a personal use amount of cannabis by a person who is 21 years of age or older shall be dismissed. A person incarcerated or under supervision on or after October 1, 2021, for an offense involving the possession or cultivation of a personal use amount of cannabis may present an application for release to the court that sentenced the person. The court shall grant the petition and vacate the conviction. If the person is not serving a concurrent or consecutive sentence for another offense, the person shall be released from incarceration or supervision. A person incarcerated or under supervision on October 1, 2021, for an offense involving the possession, cultivation, processing, or sale of cannabis may present an application for resentencing to the court that sentenced the person regardless of whether the person has previously filed a petition for resentencing. The court shall consider the individual circumstances of each case and shall reduce the applicant’s sentence if the court finds that doing so would be in the interests of justice, in light of the elimination and reduction in penalties associated with cannabis-related conduct and past racial disparities in the enforcement of cannabis laws. The sentence of the applicant may not be increased. A person previously convicted of an offense involving the possession, cultivation, processing, or sale of cannabis not listed in

CP § 10–105.1 who is not incarcerated or under supervision at the time of the petition may present an application for expungement to the court. The court shall consider the individual circumstances of a case and shall expunge the applicant’s record if the court finds that doing so would be in the interests of justice, in light of the elimination and reduction in penalties associated with cannabis–related conduct and past racial disparities in the enforcement of cannabis laws. Any individual petitioning for release or resentencing is eligible for representation by the Office of the Public Defender. On and after January 1, 2023, any individual petitioning for expungement under subsection (d) of CP § 10-105.2 is eligible for representation by the Office of the Public Defender. In a proceeding brought under this section, the State’s Attorney shall receive notice and may be heard. In a factual dispute within a proceeding under this section, the prosecution shall bear the burden of proof by a preponderance of the evidence. If the State’s Attorney does not request to be heard, the court shall make all factual determinations based on a preponderance of the evidence. Funds shall be allocated by the Commission from the Cannabis Regulation Fund to cover the cost to the Office of the Public Defender, State’s Attorney’s Offices, and Courts, as part of the cost of administering Title 23 of the Health – General Article. If a noncitizen requests in writing to the clerk’s office records related to an offense listed for immigration purposes, those records shall be provided if available, or a statement shall be provided that no records can be found, within 30 days after the request.

There are no 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 CR 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. HB 32 is unclear on whether a person charged with possession of cannabis over the personal use amount of 2 ounces but under 4 ounces would be eligible expungement for possession of cannabis involving the personal use amount, defined in the bill as 2 ounces.

The Judiciary may be unable to verify historical criminal cases, prior to 2014, involving the use and possession of an amount of marijuana/cannabis that did not exceed the personal use amount, because charges were not recorded by the amount in possession. From 2014 to October 10, 2021, the Judiciary may be unable to expunge criminal charges for the possession of more than 10 grams to under 2 ounces of marijuana/cannabis because charges are not recorded by the amount in possession. A manual review of each case with a charge of possession of marijuana would need to be undertaken to determine if the charge contained an indication of the amount of marijuana involved and if so, was it eligible for expungement.

Civil violations of 5-601 are charged on a civil citation in accordance with CR § 5-601.1 which states: a citation for a violation of § 5–601 involving the use or possession of less than 10 grams of marijuana and the official record of a court regarding the citation are not subject to public

inspection and may not be included on the public website maintained by the Maryland Judiciary if: 1) the defendant has prepaid the fine; 2) the defendant has pled guilty to or been found guilty of the Code violation and has fully paid the fine and costs imposed for the violation; 3) the defendant has received a probation before judgment and has fully paid the fine and completed any terms imposed by the court; 4) the case has been removed from the stet docket after the defendant fully paid the fine and completed any terms imposed by the court; 5) the State has entered a nolle prosequi; 6) the defendant has been found not guilty of the charge; or 7) the charge has been dismissed. HB32 would not only require the Judiciary to shield these civil violations but expunge the court records within 1 year and 90 days of the 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.

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 1970-2020: Charges with Electronic Records		
	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
Allegany	2,566	7,193
Anne Arundel	8,331	13,746
Baltimore City	63,707	73,842
Baltimore County	9,121	21,699

Calvert	5,044	5,946
Caroline	1,851	2,186
Carroll	2,679	7,226
Cecil	5,314	5,786
Charles	7,662	9,221
Dorchester	3,015	3,573
Frederick	6,781	10,851
Garrett	1001	3,370
Harford	8,346	8,264
Howard	5,071	11,761
Kent	691	2,378
Montgomery	9,553	25,981
Prince George's	25,294	33,029
Queen Anne's	2,222	4,681
Somerset	1,779	2,024
St. Mary's	2,966	4,444
Talbot	3,624	3,327
Washington	1,958	7,976
Wicomico	3,757	8,696
Worcester	6,665	9,378
Statewide	188,998	286,578

Circuit Court Charges for Possession of Marijuana by County FISCAL YEARS 1970-2020: Charges with Electronic Records		
	Marijuana Possession Single Charge	Marijuana Possession w/ Multiple Charges
Allegany	91	1,469
Anne Arundel	574	4,344
Baltimore City	11,577	16,022
Baltimore County	1,761	13,179
Calvert	158	1,034
Caroline	83	843
Carroll	84	2,082
Cecil	343	2,462
Charles	406	2,857
Dorchester	60	943
Frederick	666	4,157
Garrett	25	357
Harford	846	4,203

Howard	484	2,684
Kent	62	749
Montgomery	209	1,547
Prince George's	5,266	6,263
Queen Anne's	78	914
Somerset	60	647
St. Mary's	195	1,250
Talbot	98	825
Washington	219	3,279
Wicomico	192	3,082
Worcester	376	2,197
Statewide	23,913	77,389

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
2020	1,084	2262	2020	34	978
Total	188,988	286,578	Total	23,913	77,389

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. Locating old cases can take up a significant amount of clerk time. 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.

HB 32 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, 2023. This type of expungement is called a partial expungement. Currently charges in a “unit” cannot be expunged. (CP § 10-107)

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 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. **The CaseSearch rebuild is estimated to cost at a minimum \$1.14 million.**

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

This legislation will require several levels of programming costs to meet the requirement of the bill.

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 department estimates that implementing the necessary programming changes will require 220.00 hours at an approximate cost of \$25,308.00, with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	46	\$110.00	\$5,060.00
Programming	68	\$125.00	\$8,500.00
Testing	70	\$110.00	\$7,700.00
Project Management	36.8	\$110.00	\$4,048.00
TOTAL	220.8		\$25,308.00

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 \$126,348.00 with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	283	\$110.00	\$31,130.00
Programming	380	\$125.00	\$47,500.00
Testing	251	\$110.00	\$27,610.00
Project Management	182.8	\$110.00	\$20,108.00
TOTAL	1,096.8		\$126,348.00

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 \$56,796.00 with the following breakdown:

	<u>Hours</u>	<u>Cost</u>	<u>Total</u>
Analysis	130	\$110.00	\$14,300.00
Programming	152	\$125.00	\$19,000.00
Testing	131	\$110.00	\$14,410.00
Project Management	82.6	\$110.00	\$9,086.00
TOTAL	495.6		\$56,796.00

In total, it is estimated to require 1,813.2 hours and an approximate cost of \$208,452.00 to accomplish the programming required for the courts to meet the requirements of this legislation.

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. The District Court Civil Citation (DC-028) will have to be revised and current citations will need to be recalled and replaced with the new version for every law enforcement officer that issues civil citations. The cost to recall and restock the citation will be approximately \$25,000. In fact, the Civil Citation was revised in 2017 due to revisions to comply with HB 185, Ch. 773, Department of Health and Mental Hygiene – Distribution of Tobacco Products to Minors – Prohibition and Enforcement and in 2016 due to HB 565, Ch. 514, Criminal Law - Possession of Less Than 10 Grams of Marijuana - Code Violation. The District Court does not revise/print the Civil Citation on an annual basis; but rather only when required. This is an additional cost to the Judiciary.

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 2022 to 2023 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	188,988	23,913		286,578	77,389
Hours to Complete Expungement Process	1.5	1.5		3	5
No. of Cases x Time to Complete the Process	283,476	35,819		859,734	386,945
No. of Clerks Needed*	235	30		122	131
*Number of clerks needed accounts for the time allotted in the bill to complete expungement at 1 year 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: 357
Circuit Court: 161

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 2022

	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 * FY2020 data not used due to vast differences in data based on COVID-19 shutdown.					

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 **\$36,390,339.00** (See spreadsheet). 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.

As indicated below, the initial cost to implement HB 32 is estimated to be approximately **\$37,769,791** million. That total includes the above mentioned 546 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.

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.

This legislation will likely result in a decrease in criminal cases and an increase in civil violations but the exact impact on Judiciary caseload is indeterminable since the Judiciary does not have any data from which to make these projections. The requirements regarding the expungement of specified cases is particularly burdensome for the Judiciary and will involve the

search and manual review of old records. A large portion of those records are no longer available due to retention policies and the court will still be required to expunge them.

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

HB 32 Initial Cost of Implementation	
Case Search 2.0	1,140,000
Clerks (1 st Full Year)	36,390,339
Programming, including Reports	208,452
Brochure	6,000
Civil Citation	25,000
TOTAL	\$37,769,791

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.)

See No. 2 above.

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 above and attached worksheets

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.

This legislation will impact the Maryland State Police, law enforcement agencies, the Department of Health, the Department of Public Safety and Correctional Services, the State’s Attorney’s Office, and the Office of the Public Defender. Additionally, any state tax and regulatory authorities will want to review this bill to determine its impact for them.

Local tax and relevant regulatory authorities will want to review this bill to determine its impact for their offices.

Law Enforcement agencies will need to purchase the revised Civil Citation books, at a cost of \$2 per book.

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

Local tax and relevant regulatory authorities will want to review this bill to determine its impact for their offices.

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.

Small businesses authorized to embark in this area will be regulated and taxed if the bill is passed.