

**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 692  
Cannabis – Legalization and Regulation  
**DATE:** February 16, 2022  
(3/3)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 692. This legislation legalizes the use and possession of a certain amount of cannabis by an individual who is at least 21 years old; provides for the clearing of criminal records and disposition of certain charges relating to the use and possession of cannabis; establishes a system for the regulation and taxation of the market for the production and sale of cannabis in the State. The legislation takes effect July 1, 2022.

The Judiciary has several concerns with this bill. First, the legislation imposes an unreasonable burden on court clerks to identify and track those charges that are not subject to public inspection and may not be included on the Judiciary's public website. For example, without a request from the defendant, court clerks would be required to catalogue and follow up on cases in which a defendant is charged with a civil citation offense to determine whether one or more of the seven (7) events specified in Crim. Law. §5-601.1 has occurred.

More problematic, the legislation requires that any conviction prior to July 1, 2022 for a violation of Crim. Law §5-601 §5-619 or § 5-620 shall be automatically vacated by the court. The legislation imposes on courts an insurmountable burden to *sua sponte* identify and locate all such cases in which convictions might need to be vacated. If vacated, a new trial may need to be set. If the case is vacated and dismissed, other legislation requiring automatic expungement might be triggered. The cost of implementing this legislation would be staggering.

The Judiciary is particularly concerned about the potentially large burden on courts that could result from the requirement that courts hold new trials in certain circumstances for certain persons, and about the removal by the bill of court discretion to decide between fines and community service for certain offenses. The Judiciary believes it important for

judges to have discretion to craft judgments or sentences based on the particular circumstances of a case.

The bill would require the Judiciary to identify and maintain approved community service providers as track participation compliance for the required community service. The bill is unclear if a defendant who chooses to participate in community service in lieu of a civil penalty fails to complete the ordered amount of community service.

There are also 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 Judiciary has statistics. In 2014, violations 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.

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 10/01/2021, 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.

Finally, this legislation will also have a significant fiscal impact on the Judiciary.

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.

Possession with intent to distribute charges are not separated out by type of controlled substance. Therefore, the court does not have the ability to provide the data related to possession with intent to distribute marijuana (cannabis).

This legislation would require the court to make programming changes to adjust the amount of cannabis that is considered a civil violation, to allow community service in lieu of a civil penalty, and to allow a person who is incarcerated for possession of cannabis to apply for resentencing, vacating convictions and expungement of cannabis related charges. The Judicial Information Systems division estimates that implementing the necessary programming changes will require 2,311.2 hours at an approximate cost of \$283,318.32.

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 92 percent of the jurisdictions; ( 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 the District Court and 5 hours for the 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.

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 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 bill is retroactive and involves any charges involving the use and possession, possession with intent to distribute, and cultivation of marijuana/cannabis 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.

The Judiciary is not able to estimate the number of staff that will be needed because single charges of possession of marijuana are already shielded on CaseSearch and the number of petitions that will be filed to completely expunge those records cannot be predicted. It is also not possible to know how many petitions will be filed before the records are automatically expunged 3 years after their dismissal, nolle prosequi, acquittal, etc. There will still be an increase in petitions filed due to the possession of paraphernalia involving marijuana being repealed and no longer being a crime. The Judiciary does not have the relevant data necessary, and it is therefore not possible at this time to anticipate the need for additional staff due to this legislation. However, due to the expansion of eligible cases, use of civil citations, petitions for reconsideration, and future representation by the Public Defender, it is likely that impact will be substantial.

This legislation will have a significant fiscal and operational impact on the Judiciary. The following table represents the anticipated initial cost of implementation **without taking into account the staffing costs** which cannot be calculated at this time but are anticipated to be significant.

<b>SB 0692 Initial Cost of Implementation</b>	
Case Search 2.0	\$1,140,000.00
Programming, including Reports	\$283,318.32
Brochure	\$6,000
Civil Citation	\$25,000
<b>TOTAL</b>	<b>\$1,454,318.32</b>

cc. Hon. Jill Carter  
Judicial Council  
Legislative Committee  
Kelley O'Connor