

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

Hon. Joseph M. Getty  
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 1342  
Cannabis – Legalization and Regulation  
**DATE:** March 2, 2022  
(3/8)  
**POSITION:** Oppose

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The Maryland Judiciary opposes House Bill 1342. This legislation legalizes the use and possession of cannabis by an individual who is at least 21 years old; provides for expungement of records, dismissal of charges, and commutation of sentences in certain cases involving cannabis-related charges; provides for a system of regulation of the sale of cannabis by the Maryland Department of Health and local jurisdictions; and provides for the taxation of the sale of cannabis in the State. This legislation is effective October 1, 2022.

This bill may create confusion at Criminal Law Article § 5-601.2(n)(1)-(2) where it says that, for certain code violations, “the State has the burden to prove the guilt of the defendant by a preponderance of the evidence” but then also says that “the court shall apply the evidentiary standards as prescribed by law or rule for the trial of a criminal case[.]” The normal evidentiary standard in criminal cases is “beyond a reasonable doubt” not “preponderance of the evidence.” Further, at § 5-601.2(q) the bill says that a person issued a citation who is under the age of 18 “shall be subject to the procedures and disposition provided in Title 3, Subtitle 8A of the Courts Article.” Title 3, Subtitle 3A of the Courts Article concerns juvenile causes which are within the jurisdiction of the circuit court. The citations under this bill would be heard by the District Court, and it is inappropriate to have the District Court effectively hearing juvenile cases under this bill.

The legislation also requires that certain convictions prior to October 1, 2022 for possession cannabis shall be automatically expunged by the court. This includes convictions which were part of a unit of prosecution involving any other offense. As with previous bills that proposed automatic expungement, the Judiciary reiterates its concerns.

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. The expungement process includes sending the order to all custodians of the record, instructing them to expunge any related records in their custody and to return the Certificate of Compliance to the court. The names of every agency that may have records related to the case in their possession are not always apparent, which would require the clerk to review the entire case file to ensure all custodians receive the expungement order. For example, a court commissioner can be a custodian of a record if the defendant applies for Public Defender eligibility determination. With respect to case records that have been transferred to the Maryland State Archives for permanent storage, unless the legislation specifically directs the Archives to redact the expunged information and return the Certificate of Compliance to the court, there is no guarantee the expungement has been completed.

The bill is retroactive and includes 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, in the possession of the State Archives, and classified as historical records. The court would have to request the case files from the Maryland State Archives so that they can be reviewed and eligibility for expungement determined. 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 can be located. The case file may be on microfilm or may be located at the 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. 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 transferred older records (approximately 1986 and older) to the State Archives, others have maintained all their court records on-site or in warehouses. In addition, some court files are on microfilm or microfiche, making it virtually impossible to expunge a case or a charge within a case from that media. 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 1342 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, 2024. This type of expungement is called a partial expungement.

The Judiciary maintains 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 five case management systems that process criminal information to remove any reference to the existence of specific charges 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 and cannot be implemented until all District and Circuit Courts are fully implemented and functional on MDEC.**

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

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

In order for the court to sentence a person with community service for civil violations of possession of cannabis, the Judicial Information Systems division estimates that implementing the necessary programming changes will require 220.8 hours at an approximate cost of \$26,798.88.

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 \$133,759.08.

**Clerk Need in Fiscal Years 2023 to 2024 to Expunge Existing/Historical Charges for Possession of Marijuana with Electronic Records**

	<b>Single Charge</b>	<b>Single Charge</b>		<b>Multiple Charges</b>	<b>Multiple Charges</b>
	<b>DC</b>	<b>CC</b>		<b>DC</b>	<b>CC</b>
No. of Electronic Cases	189,898	24,014		288,671	78,794
Hours to Complete Expungement Process	1.5	1.5		3	5
No. of Cases x Time to Complete the Process	284,847	36,021		866,013	393,970
No. of Clerks Needed*	236	30		123	134
*Number of clerks needed accounts for the time allotted in the bill to complete expungement at 1 years 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: 359**

**Circuit Court: 164**

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 2023**

	<b>Single Charge</b>	<b>Single Charge</b>		<b>Multiple Charges</b>	<b>Multiple Charges</b>
	<b>DC</b>	<b>CC</b>		<b>DC</b>	<b>CC</b>
No. of Cases*	11,248	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 and FY 2021 data not used due to vast differences in charge data as a result of the COVID-19 shutdowns.					

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 **\$40,294,586.00**. 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 HB1342 is estimated to be approximately **\$ 41.6 million**. That total includes the above mentioned 585 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.

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

<b>HB1342 Initial Cost of Implementation</b>	
Case Search 2.0	\$1,140,000.00
Clerks (1 <sup>st</sup> Full Year)	\$40,294,586.00
Programming, including Reports	\$160,557.96
Brochure	\$6,000.00
Civil Citation	\$25,000.00
<b>TOTAL</b>	<b>\$41,626,144.96</b>

cc. Hon. Gabriel Acevero  
Judicial Council  
Legislative Committee  
Kelley O’Connor