

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

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 88  
Criminal Procedure – Automatic Expungement – Pardoned  
Conviction of Possession of Cannabis  
**DATE:** January 18, 2023  
(2/2)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 88. This legislation adds a section to the Criminal Procedure Article requiring that certain records relating to a conviction of possession of cannabis under § 5-601 of the Criminal Law Article be automatically expunged.

While the Judiciary appreciates the policy aim of the bill, there are logistical issues with its implementation that make its compliance virtually impossible. This bill will have a large fiscal impact on the Judiciary given that it appears to require a search of all of its records, without so much as a triggering mechanism such as a petition for expungement by a party. It is unclear how the Judiciary would be aware of such a pardon. Is the Governor's Office required to alert the Judiciary? Further, the bill does not address the problem of attempting to expunge a cannabis possession conviction when it is one of several charges in a case.

Currently, expungements based on a governor's pardon constitute a very small percentage of the number of expungements processed by the court each year. If the intent is for the Governor to grant pardons to a class of defendants who were convicted of possession of cannabis, rather than on a case-by-case basis under the traditional pardon process, the Judiciary does not have the ability to readily determine the large amount of historical possession of cannabis charges that would now require automatic expungement. Possession of cannabis data indicates that charges for these violations extend back to the founding of the District Court in 1971 and are historically high in number throughout the State during that time. If a large-scale pardon was issued for historical possession of cannabis charges, the number of cases this would impact is estimated to be in the hundreds of thousands if not millions. It is not feasible for the Judiciary to be able to comply with the 60-day requirement to search for, expunge, and send notice to the necessary parties.

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 all jurisdictions except Baltimore City; however, the bulk of the expungement 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. Time estimates could increase depending on circumstances such as the complexity of the case, the difficulty in locating files, and the number of custodians. 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 eligible 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 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 multiple 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 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.

Additional staff and possibly additional courtrooms would be needed to accommodate the increase in judicial workload. It is currently not possible to gather the required data to make a complete estimate of clerical need due to this legislation. However, it could be said that at least 1 new clerk would be needed in each small-medium district and 2

additional clerks would be needed in the larger districts in the District Court. This would result in a total of 17 additional clerks needed in the District Court. As a unified court, the District Court is able to share some resources throughout districts that is not possible at the circuit court level. The anticipated need for additional clerks in the circuit courts is approximately 39. The estimated personnel and operating costs associated with adding 56 new positions would be approximately \$4,570,989.00 in the first full fiscal year (see fiscal note for additional details). This estimate is potentially grossly underestimating the actual need for new positions, however without time to gather any relevant data the Judiciary is unable to make a more specific prediction. There is also the concern of physical space that can both accommodate these new staffing needs as well as store files from Archives in order to comply with the 3-year requirement to store in a secured area prior to obliteration.

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. Revisions to several court help brochures and videos produced by the Judiciary will also require revisions.

If passed, the exact impact that this legislation would have on caseload is difficult to project because we are uncertain of the number of individuals who will request pardons from the Governor for cannabis possession charges, and therefore would be eligible for an automatic expungement under this legislation. If the pardon process is expediated and the court is required to expunge a large number of possession of cannabis cases, this legislation will have a significant fiscal and operational impact on the Judiciary.

Finally, the legislation does not require that the information about the Governor's pardon that is transmitted to the court or clerks' office include any information such as the court's case number. Without pertinent information being assigned to a pardon, complying with the automatic expungement is an unrealistic outcome and it is unclear what the triggering mechanism would be for the court to know of the eligible conviction.

cc. Hon. Jeff Waldstreicher  
Judicial Council  
Legislative Committee  
Kelley O'Connor