

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 268
Judiciary

(Delegate Moon, *et al.*)

Criminal Procedure - Expungement - Possession of Marijuana

This bill expands eligibility for expungements to include convictions for possession of marijuana under § 5-601 of the Criminal Law Article before October 1, 2014.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from filing fees in the District Court. Potential significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to comply with the bill's requirements. Minimal increase in special fund revenues for the Maryland State Archives from fees assessed the Judiciary to pull archived files.

Local Effect: Minimal increase in local revenues from filing fees in the circuit courts. Expenditures may increase for local entities to implement the bill's provisions, as discussed below.

Small Business Effect: None.

Analysis

Current Law: In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website

maintained by the Maryland Judiciary. Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties.

Under the Criminal Procedure Article, a person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Individuals convicted of a crime that is no longer a crime or convicted or found not criminally responsible of specified public nuisance crimes are also eligible for expungement of the associated criminal records under certain circumstances.

If two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

A person is not entitled to expungement if (1) the petition is based on the entry of probation before judgment, except a probation before judgment for a crime where the act on which the conviction is based is no longer a crime, and the person within three years of the entry of the probation before judgment has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime or (2) the person is a defendant in a pending criminal proceeding.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Background: **Exhibit 1** features the number of convictions of Criminal Law Article § 5-601 for the possession of marijuana in the District Court from fiscal 2005 through 2015.

Exhibit 1
District Court Convictions for Possession of Marijuana
Fiscal 2005 through 2015

<u>Fiscal Year</u>	<u>Number of Convictions</u>
2005	3,365
2006	3,940
2007	4,204
2008	4,541
2009	4,440
2010	3,961
2011	4,229
2012	3,813
2013	2,664
2014	971
2015	392

Source: Maryland Judiciary

The Judiciary advises that during fiscal 2015, there were 32,726 petitions for expungement filed in the District Court and 2,448 petitions filed in the circuit courts. During fiscal 2014, there were 35,737 petitions for expungement filed in the District Court and 1,646 in the circuit courts. Legislation expanding eligibility for expungements enacted in 2015 took effect on October 1, 2015. According to the District Court, the percentage of petitions filed in the District Court increased by 50.55% during October through December 2015 compared to the number of petitions filed during the same time period in 2014.

In general, the number of expungements received by the Maryland Criminal Justice Information System (CJIS) within DPSCS has steadily increased over the years. CJIS advises that this increase is due to legislation expanding eligibility for expungements (including expungements for individuals arrested and released without being charged) and an increase in the number of occupations and employers requiring background checks. The numbers shown below in **Exhibit 2** do not include expungements for individuals released without being charged with a crime. Those expungements are handled through a fairly automated process and involve significantly less work than other types of expungements.

Exhibit 2
CJIS Expungements
2004-2015

<u>Calendar</u> <u>Year</u>	<u>CJIS</u> <u>Expungements¹</u>
2004	15,769
2005	16,760
2006	20,612
2007	21,772
2008	24,200
2009	25,146
2010	27,199
2011	20,492
2012	30,654
2013	34,207
2014	33,801
2015	36,412

¹Does not include expungements for individuals released without being charged.

Source: Maryland Criminal Justice Information System – Department of Public Safety and Correctional Services

As previously stated, statute authorizes expungement of a conviction if the act on which the conviction is based is no longer a crime. Thus, some individuals convicted of possession of marijuana prior to October 1, 2014, may already be eligible for expungement of their convictions. However, the exact number of individuals already eligible under current statute is not readily available and cannot be determined without reviewing individual case files. Statistics on whether a person possessed less than 10 grams of marijuana are not available prior to 2012, when that quantity distinction became a factor under statute. Pursuant to Chapters 193 and 194 of 2012, a person in possession of less than 10 grams of marijuana was subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500. Prior to 2012, there was no distinction in the criminal penalties assessed based on the amount of marijuana possessed.

State Revenues: General fund revenues may increase significantly from filing fees for expungement petitions in the District Court or appellate courts. The District Court charges a \$30 filing fee for expungement petitions.

The Maryland State Archives has records prior to 1981. The Archives has advised, in similar bills, that per a memorandum of understanding with the Judiciary, it charges the Administrative Office of the Courts \$10 per file pulled. Given the ages of convictions affected by the bill, the Archives may collect fees to pull files as a result of the bill. Thus, special fund revenues for the Maryland State Archives increase minimally from fees to pull archived files.

State Expenditures: General fund expenditures may increase significantly for the Judiciary and DPSCS to comply with the bill's provisions.

Judiciary

The Judiciary advises that it needs 12 clerks to implement the bill's requirements, at a cost of \$550,623 in fiscal 2017 and \$672,194 in fiscal 2018. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed under the bill, which can only be determined with actual experience under the bill.

While initial demand is likely significant and occurs within a compressed time period, it is also probable that the volume and timing of petitions stabilizes over time. Hence, while the Judiciary needs additional personnel to address initial petition volume, the Judiciary may also be able to reevaluate and adjust its personnel needs at a future date to account for this stabilized volume and timing. The cost associated with hiring one clerk is \$39,683 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$48,583 in fiscal 2018.

Given the scope of convictions eligible for expungement under the bill, individuals with older convictions may feel motivated to petition for expungement as a result of the bill. Thus, the Administrative Office of the Courts is likely to incur general fund expenditures to request files from the Archives, as discussed above.

The Judiciary further advises that it reprints brochures and forms on an as-needed basis and incurs increased expenditures of \$9,571 to create and revise expungement and shielding forms and brochures. However, the Department of Legislative Services advises that revising printed materials to reflect changes to statute is a routine function of the Judiciary and can be incorporated into annual revisions of forms and brochures.

DPSCS

General fund expenditures for DPSCS may increase significantly as a result of additional expungement orders generated by the bill. CJIS advises that it needs to hire one additional expungement clerk for every additional 2,500 expungements generated by the bill. The number of additional clerks needed cannot be reliably determined at this time and

depends on the number of expungement orders granted by courts under the bill. Several positions in the expungement unit at CJIS have been frozen or have remained vacant in recent years. The cost associated with hiring one expungement clerk is \$41,750 in fiscal 2017, which reflects the bill's October 1, 2016 effective date, and \$51,319 in fiscal 2018. CJIS does not charge a fee for expungements.

Local Revenues: Local revenues from expungement petition filing fees may increase significantly. The circuit courts charge a \$30 filing fee for expungement petitions.

Local Expenditures: Local expenditures may increase for local jurisdictions to comply with the bill's requirements. The extent of the increase varies by jurisdiction but could be significant in some jurisdictions. For instance, the Montgomery County Police Department advises that it needs one additional employee, at an annual cost of \$67,872 per year, to handle the anticipated additional workload under the bill.

The State's Attorneys' Association advises that the bill has no effect on prosecutors.

Additional Comments: The Department of State Police advises that as a result of the bill, its licensing division may not be able to determine if an applicant for a handgun qualification license (HQL) is a habitual drug user. Habitual drug use is a disqualifying factor for determining if an applicant qualifies for a HQL or qualifies to purchase a weapon.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Juvenile Services, Department of Public Safety and Correctional Services, Department of State Police, Maryland State Archives, State's Attorneys' Association, Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2016
min/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510