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FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 379
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

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. A petition for expungement based on a conviction for possession of marijuana under § 5-601 of the Criminal Law Article may not be filed within five years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later. The bill also clarifies that expungement provisions under Chapter 515 of 2016 (the Justice Reinvestment Act) apply to a conviction of a misdemeanor violation of § 5-601 of the Criminal Law Article that *does not* involve the use or possession of marijuana.

The provisions of the bill that amend Chapter 515 of 2016 take effect on the date that specified provisions of that Act take effect (currently October 1, 2017).

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. Potential minimal increase in special fund revenues for the Maryland State Archives (MSA) from fees assessed the Judiciary to retrieve 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 (six months effective October 1, 2017) 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.

Chapter 515 of 2016, also known as the Justice Reinvestment Act, expanded eligibility for expungements by authorizing individuals convicted of specified misdemeanors contained in a list of approximately 100 offenses (including possession of a controlled dangerous substance) to file petitions for expungements. Effective October 1, 2017, a person may file a petition listing relevant facts for expungement of a police, court, or other record if the person is convicted of specified misdemeanors. In general, a petition for expungement may not be filed earlier than 10 years after the person satisfied the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. For specified crimes, a minimum waiting period of 15 years is required. If the person is convicted of a new crime during the waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible. A person is not eligible for expungement if the person is a defendant in a pending criminal proceeding or if one conviction in a unit of convictions is not eligible for expungement. In general, a person must file a petition for expungement in the court in which the proceeding began. However, Chapter 515 specifies procedures for situations involving transfers to another court or the juvenile court. In addition, the law specifies procedural requirements regarding objections to a petition, hearings, and appeals.

Background: Exhibit 1 features the most recent data from the Maryland Judiciary on the number of violations (charges filed) and convictions under § 5-601 of the Criminal Law Article for the possession of marijuana in the District Court from fiscal 2007 through 2016.

Exhibit 1
Violations and Convictions for Possession of Marijuana
Fiscal 2007 through 2016

<u>Fiscal Year</u>	<u>District Court Violations</u>	<u>District Court Convictions</u>	<u>Circuit Court Violations</u>	<u>Circuit Court Convictions</u>
2007	24,069	3,936	5,022	1,369
2008	27,911	4,377	5,536	1,532
2009	27,694	3,908	5,929	1,434
2010	27,538	3,664	5,623	1,535
2011	28,335	3,786	6,015	1,971
2012	29,938	3,506	6,739	1,859
2013	20,320	1,821	5,960	1,542
2014	14,450	548	4,544	809
2015	7,698	749	2,519	441
2016	5,444	189	1,944	350

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.

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
2004-2016

<u>Calendar Year</u>	<u>CJIS 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
2016	41,854

CJIS: Criminal Justice Information System

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

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

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 based on a disposition other than acquittal.

According to the Judiciary, the District Court collected \$748,326.50 in filing fees for petitions for expungement between September 1, 2015, and September 1, 2016.

The extent of the bill's impact depends on the number of individuals who are eligible for expungement of their convictions for possession of marijuana as a result of this bill who (1) are not eligible for expungement under current law and (2) will not be eligible for expungement of the same convictions on October 1, 2017, as a result of provisions in the Justice Reinvestment Act (Chapter 515 of 2016). The exact magnitude of this population cannot be reliably determined at this time.

Chapter 515 of 2016 expanded eligibility for expungements by authorizing individuals convicted of specified misdemeanors contained in a list of approximately 100 offenses (including possession of a controlled dangerous substance) to file petitions for expungements. However, Chapter 515 imposes a 10- or 15-year waiting period following satisfaction of the sentence or sentences imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision. If a person is convicted of a new crime during the applicable waiting period, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement. The bill imposes a 5-year waiting period and does not disqualify individuals from petitioning for expungement of a conviction for possession of marijuana under § 5-601 of the Criminal Law Article based on a subsequent conviction. Thus, the bill expands the pool of individuals eligible for expungement.

In general, a person otherwise eligible for expungement of his/her convictions under Chapter 515 would have had to have completed his/her sentence(s) by October 1, 2007, in order to petition for expungement of a specified misdemeanor convictions on October 1, 2017, the effective date of Chapter 515. The five-year waiting period under the bill applies to sentences completed by October 1, 2012. *For illustrative purposes only*, based on the figures in Exhibit 1, there were 21,062 convictions for possession of marijuana in the District Court from fiscal 2008 through 2013.

As previously stated, statute currently authorizes expungement of a conviction if the act on which the conviction is based is no longer a crime. Therefore, some individuals convicted of possession of marijuana prior to October 1, 2014 (the date on which the possession of less than 10 grams of marijuana became a civil offense rather than a criminal offense) 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. *For illustrative purposes only*, between October 1, 2012 (the effective date of Chapters 193 and 194 of 2012), and September 30, 2014 (the day before Chapter 158 of 2014 took effect), there were 23,548 charges for possessing less than 10 grams of marijuana in the District Court. There were 3,979 **convictions** for this offense in the District Court during that same time period.

Furthermore, individuals convicted of possession of marijuana prior to October 1, 2012, who, based on the facts of their cases, were in possession of less than 10 grams of marijuana, may face difficulties in obtaining expungements of their convictions under current statute if information on the quantity of marijuana they possessed is not readily available in their case files. According to the Judiciary, any cases where the file has been stripped due to the Judiciary's retention policy no longer have the statement of charges included to see if the amount of marijuana involved is mentioned and only contain the docket sheet where the judge recorded the disposition. While these individuals are technically eligible under current statute, and some may be eligible under Chapter 515 (depending on the ages of their convictions and the presence of disqualifying subsequent convictions), the bill may allow a portion of this population to actually obtain expungements.

MSA has records prior to 1981. Per a memorandum of understanding with the Judiciary, MSA charges the Administrative Office of the Courts (AOC) \$10 per file retrieved, with a maximum charge of \$150,000 per year. Given the ages of convictions affected by the bill, MSA may collect fees to retrieve files as a result of the bill. Thus, special fund revenues for MSA may increase minimally from fees to retrieve 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 eight clerks for the circuit courts and four clerks for the District Court to implement the bill's requirements, at a cost of \$602,795 in fiscal 2018 and \$748,725 in fiscal 2019. However, the actual need for personnel depends on the volume, timing, and geographical distribution of petitions filed solely as a result of the bill, which can only be determined with actual experience under the bill. The District Court further advises that its need for four additional expungement clerks is based on (1) the 26,484 guilty dispositions for possession of marijuana in the District Court between

fiscal 2007 and 2016; (2) the 2.5 hours of time estimated to process an expungement; (3) the 2,040 hours a clerk works in a year; and (4) the assumption that this workload is distributed over multiple years.

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 \$50,234 in fiscal 2018, which reflects the bill's October 1, 2017 effective date, and \$62,394 in fiscal 2019.

Should individuals with older convictions petition for expungement as a result of the bill, AOC incurs general fund expenditures to request files from MSA, as discussed above.

In addition, the Judiciary's cash register and financial system requires reprogramming at a cost of \$12,600 in fiscal 2018.

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.

Department of Public Safety and Correctional Services

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 \$43,728 in fiscal 2018, which reflects the bill's October 1, 2017 effective date, and \$53,784 in fiscal 2019. CJIS does not charge a fee for expungements.

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

According to the Judiciary, the circuit courts collected \$105,337.50 in expungement fees from all petitions in fiscal 2016.

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 \$69,067 per year, to handle the anticipated additional workload under the bill.

The State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown at this time.

Additional Information

Prior Introductions: HB 268 of 2016, a similar bill, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

Cross File: Although SB 949 (Senators Smith and Madaleno - Judicial Proceedings) is designated as a cross file, it is not identical.

Information Source(s): Baltimore City; Caroline, Montgomery, and Prince George's counties; cities of Bowie and Takoma Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

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