

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 88

(Senators Waldstreicher and Carter)

Judicial Proceedings

Criminal Procedure - Automatic Expungement - Pardoned Conviction of Possession of Cannabis (Pardons for Simple Possession of Cannabis Act of 2023)

This emergency bill requires the automatic expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State relating to a conviction of possession of cannabis under § 5-601 of the Criminal Law Article that has been fully and unconditionally pardoned by the Governor. The bill prescribes timelines and a deadline for the processing of these expungements, contains requirements for the storage of records, specifies that certain factors do not prohibit the expungement of record of a person who otherwise qualifies for automatic expungement under the bill, and specifies procedures for when an expungement required under the bill is not effectuated as required. A person who is entitled to automatic expungement under the bill's provisions may not be required to pay any fee or costs in connection with the expungement.

Fiscal Summary

State Effect: Significant increase in general fund expenditures in FY 2023 and 2024 for State agencies to comply with the bill's requirements, as discussed below. Minimal decrease in general fund revenues from filing fees.

Local Effect: Local expenditures increase for affected entities to comply with the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Timeline for Expungements

On or before 60 days after the Governor's full and unconditional pardon of a conviction of possession of cannabis under § 5-601 of the Criminal Law Article becomes effective, or August 1, 2023, whichever is later, the court with jurisdiction must (1) search diligently for and expunge each court record about the conviction and the underlying charge and (2) send notice of expungement to the Central Repository, each booking facility or law enforcement unit that the court believes may have an applicable police record, and the person entitled to expungement. Within 60 days after receipt of the court's notice the entity must search diligently for and expunge each applicable police and court record and send written notification of compliance with the order to the person entitled to expungement.

Storage of Records

A police or court record expunged under the bill may not be expunged by obliteration until three years after the conviction. During this three-year period, the records must be removed to a separate secure area to which persons who do not have legitimate reason for access are denied access. For purposes of this provision, a legitimate reason for accessing the records includes using the records for purposes of proceedings relating to the underlying arrest or charge.

Factors That Do Not Prohibit Expungement

The following factors regarding a person's pardoned possession of cannabis conviction do not prohibit an automatic expungement of the person's records: the date of the person's sentence; the date of the person's release from incarceration; the date the person was discharged from parole; or the date the person was discharged from probation. There is also not a prohibition if the person is currently incarcerated.

Procedures When Eligible Automatic Expungements Are Not Processed

If an automatic expungement is not effectuated as required under the bill, the person entitled to the automatic expungement may file a petition for expungement of the possession of cannabis conviction under § 10-105(a)(12) of the Criminal Procedure Article.

Current Law:

Section 10-112 of the Criminal Procedure Article requires the Department of Public Safety and Correctional Services (DPSCS), on or before July 1, 2024, to remove all references to a case from the Central Repository if possession of cannabis under § 5-601 of the Criminal Law Article was the only charge in the case, and the charge was issued before July 1, 2023.

Other than § 10-112 “expungements,” an expungement of a court or police 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; or
- 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.

Section 10-105 of the Criminal Procedure Article authorizes a person who was convicted of possession of cannabis under § 5-601 of the Criminal Law Article to file a petition to have records related to the conviction expunged after satisfactory completion of the sentence, including probation, that was imposed for the conviction. If a person was convicted of only one criminal act that is not a crime of violence and was granted a full and unconditional pardon by the Governor, the person may file a petition for expungement no later than 10 years after the pardon was signed. If the person is a defendant in a pending criminal proceeding, the person is not entitled to expungement.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article, arise from the same incident, transaction, or set of facts, they are considered to be a unit. A charge for a minor traffic violation or possession of cannabis under § 5-601 of the Criminal Law Article that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the 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 or conviction in the unit.

Maryland’s expungement process for removing an eligible record takes a minimum of 90 days. If a State’s Attorney or victim, as applicable, objects, the court must hold a hearing on the petition. If an objection is not filed within 30 days, as specified, the court must pass an order requiring the expungement of all police and court records concerning the charges. After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

State Revenues: General fund revenues decrease minimally from filing fees for expungement petitions. The courts currently charge a \$30 filing fee for petitions to expunge a guilty disposition (conviction), but fee waivers for financial hardship are available.

State Expenditures: General fund expenditures increase significantly in fiscal 2023 and 2024 for State entities to comply with the bill's requirements, as discussed below.

Although the bill's fiscal impact is dependent on actions taken by the Governor, for purposes of this fiscal and policy note it is assumed that:

- the Governor will issue a full and unconditional large scale pardon of all individuals convicted of possession of cannabis under § 5-601 of the Criminal Law Article rather than the current process of issuing pardons on a case-by-case basis;
- affected entities can meet the bill's timelines and deadlines but the Judiciary will need until August 1, 2023, and other entities will require an additional 60 calendar days from that date to comply with the bill;
- affected entities can find and employ temporary personnel to assist with implementation of the bill in a timely manner;
- the Judiciary will send notifications on a rolling basis;
- personnel employed by State entities to assist with implementation of the bill are employed for six months (April 1, 2023, until October 1, 2023); and
- final obliteration of records placed in storage can be incorporated into existing procedures and personnel.

Judiciary

Personnel-related general fund expenditures increase significantly for the Judiciary in fiscal 2023 and 2024. General fund expenditures increase by \$77,510 in fiscal 2023 only for computer reprogramming. Additional expenditures for postage and storage may also be incurred.

The Judiciary advises that it does not have the ability to readily determine the large amount of historical possession of cannabis cases that would 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. The Judiciary further advises that given the potential number of cases involved, it is infeasible for the Judiciary to be able to comply with the 60-day requirement to search for, expunge, and send notice to all of the necessary parties.

Regardless, the Judiciary advises that it requires *at least* 56 clerks for the District Court and the circuit courts. The costs associated with employing 56 contractual clerks for

six months (see assumptions above) are \$1.1 million in fiscal 2023 and \$701,300 in fiscal 2024, which includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Additional personnel may be needed, with corresponding increases in expenditures, depending on the volume of cases affected; the amount of labor required to search for records, process expungements, and send notifications; and the rigors of meeting the bill’s timelines and deadlines.

Exhibit 1 features data from the Maryland Judiciary on the number of violations (charges) and convictions under § 5-601 of the Criminal Law Article for the possession of cannabis in the District Court and the circuit courts from fiscal 2007 through 2016.

Exhibit 1
Convictions for Possession of Cannabis
Fiscal 2007-2016

<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
Total	213,397	26,484	26,484	12,842

Note: Chapter 158 of 2014, which went into effect on October 1, 2014, reclassified the use or possession of less than 10 grams of cannabis from a criminal offense to a civil offense.

Source: Maryland Judiciary

Exhibit 2 contains information on the number of overall petitions for expungement filed (not exclusive to possession of cannabis dispositions) in the trial courts in fiscal 2019 through 2021 under §§ 10-105 and 10-110.

Exhibit 2
Petitions for Expungement
Fiscal 2019-2021

	<u>District Court</u>	<u>Circuit Courts</u>
Fiscal 2019	74,508	10,951
Fiscal 2020*	55,105	8,642
Fiscal 2021*	39,061	5,940

*Fiscal 2020 and 2021 numbers are impacted by the COVID-19 pandemic and are not an accurate depiction of a typical year of data.

Source: Maryland Judiciary

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase, perhaps significantly, for contractual personnel to assist with compliance. DPSCS advises generally that the Criminal Justice Information System (CJIS) requires one additional administrative employee for every 2,500 additional orders for expungement it receives. However, the Department of Legislative Services notes that CJIS has been routinely accommodating workloads beyond the 2,500-caseload standard. 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. *For illustrative purpose only*, the cost associated with hiring one contractual administrative employee for a six-month period is approximately \$21,400 in fiscal 2023 and \$14,050 in fiscal 2024.

Department of State Police

The Department of State Police (DSP) advises that the bill involves thousands of cases dating back several years, with records that are located in multiple locations. According to DSP, compliance with the bill requires several additional personnel for a brief amount of time, with additional costs for storage, paper supplies, and postage. Because its workload depends on the number of expungement orders/notifications received by the courts, DSP is unable to determine the number of additional personnel needed.

Maryland State Archives

General fund expenditures for contractual personnel may increase for the Maryland State Archives (MSA) to retrieve older records for agencies affected by the bill. MSA is the custodian of older records and has historically advised that based on its experience, each time the parameters for cases eligible for expungement have been expanded, the number of expungement orders MSA receives increases significantly. A modest increase in expungements would not create a fiscal impact, however a significant increase in expungements would require operational adjustments to staff allocations to absorb the workload and may have a fiscal impact by requiring additional, temporary staff resources.

Additional Agencies

The Maryland Transit Administration Police reports that although it is unable to estimate the number of expungements that may be required, if the bill involves a significant number of records, expungement of the identified agency records would require dedicated staff hours and possibly additional personnel. The Maryland Transportation Authority reports that any changes in policies or procedures resulting from the bill could be addressed using current resources.

The Department of General Services and the Department of Natural Resources can comply with the bill using existing budgeted resources.

Local Expenditures: Local expenditures increase for police departments and other local entities to process expungements under the bill. The extent of any additional resources required cannot be reliably predicted at this time but depends on the volume of expungement orders received by the courts and the existing capacity and resources of affected entities.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Montgomery County; State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2023
km/jkb

Analysis by: Amy A. Devadas

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