



# **RACIAL EQUITY IMPACT NOTE**

DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session  
SB0088

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

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### **Bill Summary**

This bill requires mandatory expungement of conviction records maintained by the police, courts, and other State and local government entities for specified cannabis violations, provided the Governor fully and unconditionally grants a pardon for these offenses. Effective August 1, 2023, courts with jurisdiction over cannabis offenses must diligently expunge each applicable court record of conviction and charges for cannabis. The central repository and any agency or facility that may have record of the conviction must be notified of this expungement. The bill also specifies various procedures to effectuate expungements and provides a procedure for individuals to file a petition for expungement in cases where one was not properly effectuated under the statute. The automatic expungement applies regardless of incarceration status or subsequent violations.

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### **Racial Equity Impact Statement**

The bill's mandatory expungement provisions would reduce the adverse consequences resulting from cannabis-related court histories as cannabis possession (below specified amounts) is legalized in Maryland. While the bill will positively impact all racial groups affected by previous cannabis-related court records, State level data on cannabis charges and convictions as well as some socioeconomic data suggests that Blacks or African Americans, in particular, would be affected most as they are disproportionately affected by these post-charge impacts.

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## Analysis

This bill requires courts and other agencies to expunge conviction records for specified cannabis violations that have been fully and unconditionally pardoned by the Governor. The bill also establishes procedures for individuals to file a petition for expungement in cases where automatic expungement of qualifying records was not effectuated under the statute. Beginning July 1, 2023, Chapter 45 of 2022 legalizes adult possession of cannabis in amounts of up to 1.5 ounces or just over 42 grams without criminal or civil penalty. Until Chapter 45 goes into effect, possession of any amount greater than 10 grams or 0.35 ounces is a criminal offense punishable by imprisonment for up to six months and/or a fine of up to \$1,000. Individuals charged and/or found guilty under the existing statute have criminal records that may be viewed by the general public; this can make these individuals susceptible to various adverse consequences that result from having a criminal record, despite the offense no longer being considered a crime under the new statute.

### *Collateral Consequences of a Criminal Record*

There are notable collateral consequences to having a criminal record that often exacerbate the challenges of social reintegration following imprisonment. Even individuals convicted of criminal charges that do not face imprisonment may still see significant adverse effects as a result of having a criminal record. The U.S. Commission on Civil Rights describes collateral consequences as “sanctions, restrictions, or disqualifications that stem from a person’s criminal history.” These adverse effects include reduced access to housing, public services, voting, holding public office, employment opportunities, and professional licensure. A 2021 Department of Legislative Services report details the collateral consequences of a conviction that are currently mandated in State law, including voting rights, jury service, firearms, licensing and employment, and alcoholic beverage licenses.

There are many informal detrimental impacts of having a criminal record as well. A 2016 report conducted by the Governor’s Office of Crime Prevention, Youth, and Victim Services (formerly named the Governor’s Office of Crime Control and Prevention) found that connection to a criminal record makes it more difficult for an individual to access employment opportunities with higher incomes due to both qualification obstacles and the stigma attached to having a criminal record. Even with successful deployment of federal programs incentivizing employers to hire individuals with criminal records, employers accommodating of those with criminal convictions are far rarer than those who exclude them, diminishing an impacted individual’s options for work. In addition, the jobs provided by accommodating employers tend to be positions with lower incomes. Underemployment and lower income levels can significantly impact an individual’s access to quality health care and health insurance, affordable housing, and educational resources that would otherwise aid in the individual’s ability to move into a better socioeconomic position.

State level data supports this assessment, especially for Blacks or African Americans. The Department of Public Safety and Correctional Services reports that Blacks or African Americans made up 71% of Maryland’s prison population in fiscal 2022 contrasted with their 29% share of the State’s overall population. As such, the collateral consequences of a criminal record impact Blacks or African Americans significantly more than other racial groups. This disparity is reflected in the Racial Equity Profile for Maryland conducted in 2022 by the University of Baltimore Schaefer Center for Public Policy, which analyzed census and other public data to provide indicators measuring the prevalence of racial and ethnic disparities at the State level. For example,

these indicators show Blacks or African Americans are underrepresented in homeownership and college degree attainment and are overrepresented in the unemployment population.

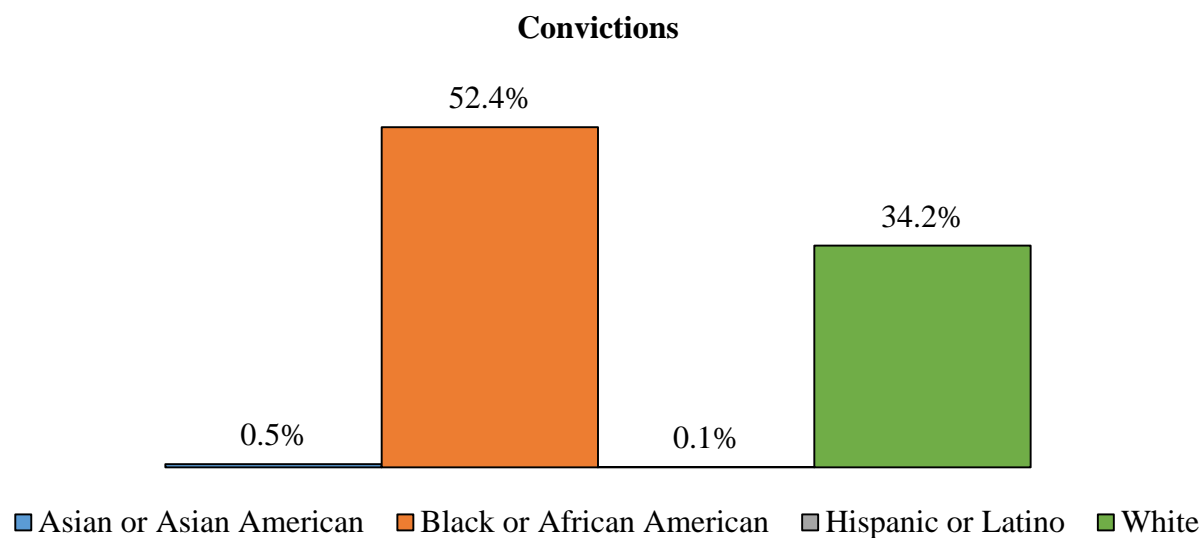
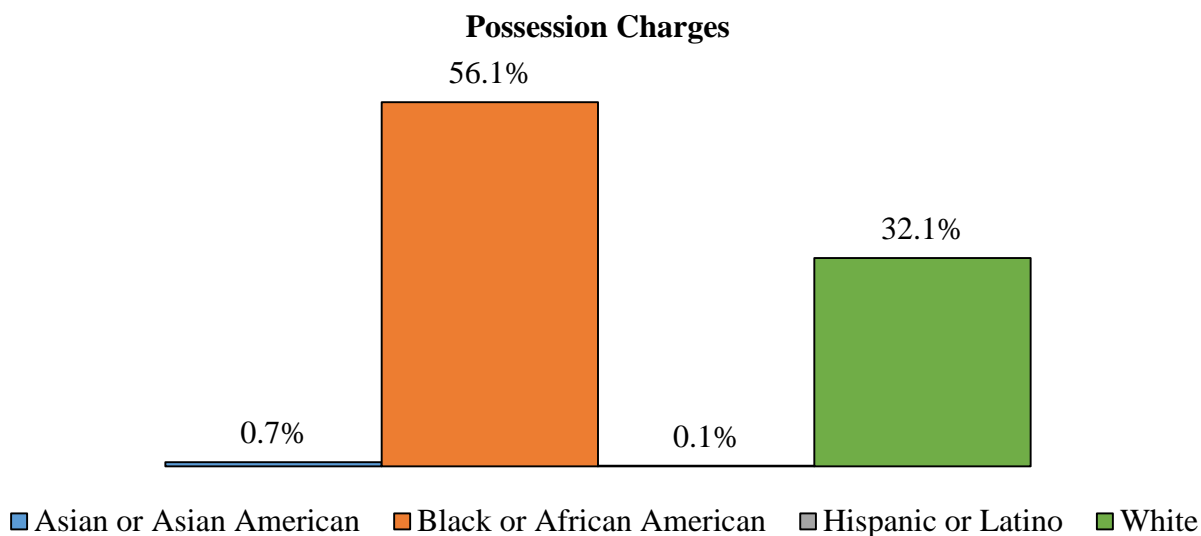
### *Racial Disparities in Cannabis Use, Charges, and Convictions*

Despite national data showing that Blacks' or African Americans' lifetime use of marijuana is less than their white counterparts, charges and convictions for possession of marijuana show racial disparities. The most recent comprehensive data available on marijuana usage is an annual survey conducted by the Substance Abuse and Mental Health Services Administration. The 2021 survey shows that, at the national level, white adults are more likely to use marijuana during their lifetimes than individuals of any other race, with the exception of American Indians and Alaska Natives and those who identify as two or more races.

The Administrative Office of the Courts (AOC) provided data from 2020 detailing cannabis possession charges and convictions from all counties excluding Baltimore City and Prince George's County. Despite the incomplete dataset, as shown in **Exhibit 1**, cannabis possession charge and conviction data illustrates a significant disparity between races charged with cannabis-related crimes. Of the total 12,430 cannabis-related charges in 2020, 6,973 (56%) of those charges were for Blacks or African Americans. Of the total cannabis-related charges, about 2,863, or 23%, led to convictions, with Blacks or African Americans accounting for over 52% of those convictions. Based on their share of the State's population, Blacks or African Americans were nearly 3 times more likely to be charged with a cannabis-related crime and were 2.5 times more likely to be found guilty of a cannabis-related violation than whites.

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**Exhibit 1**  
**Cannabis Possession Charges and Convictions**  
**2020**



Note: Data from courts in Baltimore City and Prince George’s County are not included.

Source: Administrative Office of the Courts

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Data were not available to analyze levels of disproportionality and disparity related to ethnicity and other racial groups. It is anticipated that additional statewide conviction data will be made available in the near future to allow for further analysis.

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## Conclusion

While the exact magnitude of the impacts of the bill cannot be accurately estimated, data suggests there is correlation between having a criminal record and greater difficulty in upward socioeconomic mobility. Considering the potential negative impacts of the cannabis-related criminal charges and convictions covered by the bill, mandatory expungement would likely reduce the negative impacts suggested by State level socioeconomic data. To the extent that the bill results in successful expungement of these records, it would eliminate certain obstacles faced by individuals with cannabis-related criminal records – particularly Black or African American individuals – as this group is disproportionately affected by the collateral consequences of having a criminal record.

### *Data Limitations*

The AOC data used in this analysis does not include information from courts in Baltimore City and Prince George’s County. These two jurisdictions hold the largest Black or African American populations in the State. While this omission does not invalidate this analysis, it is a limitation that speaks to the barriers in assessing racial inequities. Despite this data limitation, the analysis in this note illustrates significant racial disparities relating to cannabis possession laws. Considering the persistent trends of racial disparity for Blacks or African Americans in the available State and national data, it can be inferred that including data from the omitted jurisdictions would likely illustrate an even larger disparity in the Maryland criminal justice system.

### *Methodologies, Assumptions, and Uncertainties*

Although some reports use disparity and disproportionality interchangeably, this racial equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the same racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population.

Relevant to racial and ethnic labels and classification, the data analysis in this note follows the standards on race and ethnicity set by the U.S. Office of Management and Budget in 1997. These standards serve as a template to guide how the Racial Equity Impact Note function collects and presents data comparisons.

It is important to note that these racial and ethnic data comparisons should be made with caution, taking into account that the racial and ethnic classification system used by State agencies may differ from the U.S. Census. Additionally, individuals who identify as Hispanic or Latino may racially identify with the “some other race” category. According to the 2020 census, the “some other race” category mostly includes individuals who wrote in a Hispanic origin or nationality as their race.

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level.

Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

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**Information Sources:** University of Baltimore Schaefer Center for Public Policy; Department of Public Safety and Correctional Services; Governor's Office of Crime Control, Youth, and Victim Services; U.S. Commission on Civil Rights; Department of Legislative Services

**Analysis by:** Dr. Mikaela Zimmerman

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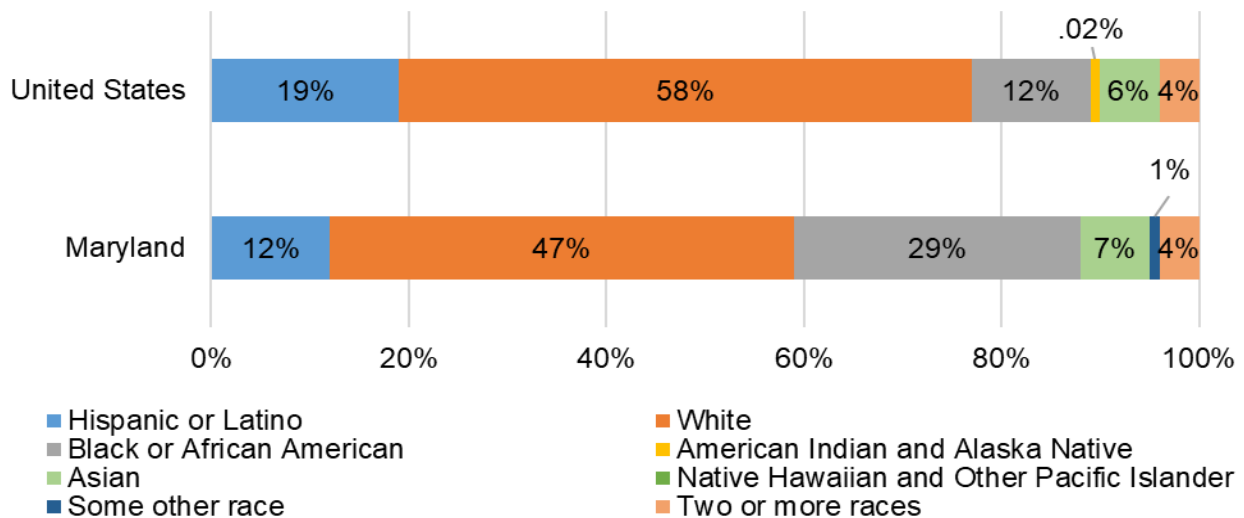
## Appendix – Maryland Demographics

### *Race and Ethnicity of the Maryland Population*

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

**Exhibit 1**  
**U.S. and Maryland Population by Race and Ethnicity**  
**2020**



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.