Criminal Law

Cannabis Legalization Reform

The General Assembly has passed sweeping cannabis reform legislation over the past two legislative sessions. This paper includes an overview of criminal justice cannabis reforms, an update on the implementation of various statutory requirements, and a discussion of potential issues.

Overview of Criminal Justice Cannabis Legislation

Adult-use Cannabis

The consequences of cannabis possession vary by the amount possessed, with statute specifically referring to the "personal use amount" and the "civil use amount." The "personal use amount" is defined as (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-tetrahydrocannabinol (delta-9-THC); or (4) up to two cannabis plants. The "civil use amount" is defined as (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams of delta-9-THC but not more than 1,250 milligrams of delta-9-THC.

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional referendum, as of July 1, 2023, a person who is at least age 21 may legally possess the defined personal use amount of cannabis. Possession of the personal use amount of cannabis by a person who is younger than age 21 is a civil offense, and violators are subject to a maximum fine of $100. Possession of the civil use amount of cannabis (regardless of age) is a civil offense subject to a maximum fine of $250. A person who possesses more than the civil use amount of cannabis is guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a $1,000 maximum fine.

A person who is at least age 21 may cultivate up to two cannabis plants in accordance with statutory requirements. However, no more than two cannabis plants may be cultivated at a single residence even if two or more persons age 21 or older reside at that same residence. A person younger than age 21 may not cultivate cannabis. A person who violates these provisions is guilty of a misdemeanor and subject to a penalty of imprisonment for up to three years and/or a $5,000 maximum fine.

Smoking Cannabis in Public

Following legislation enacted in 2022 and 2023, the penalty for the civil offense of smoking cannabis in a public place was eventually reduced from a maximum fine of $500 to a maximum fine of $50 for a first finding of guilt and $150 for a second or subsequent finding of guilt. Cannabis

and hemp were also incorporated into the Clean Indoor Air Act, which prohibits the smoking of cannabis in specified public indoor areas.

Cannabis and Motor Vehicles

Smoking Cannabis in a Motor Vehicle

Chapter 26 of 2022 expressly prohibits the occupant of a motor vehicle from smoking cannabis in the passenger area of a motor vehicle on a highway. A violation of this prohibition is a civil offense subject to a maximum fine of $25. The driver of a motor vehicle may not smoke or consume cannabis in the passenger area of a motor vehicle on a highway. A violation of this prohibition is a misdemeanor subject to a maximum fine of $500. The prepayment penalty established by the District Court is $530, and the Motor Vehicle Administration (MVA) must assess one point against a violator's license. If, however, the violation contributes to an accident, the prepayment penalty is $570, and MVA must assess three points against the violator's license.

Driving While Impaired

One component of the debate over cannabis reform is the effect of increased cannabis consumption on impaired driving and road safety. Related issues include complications in detecting cannabis for purposes of impaired driving enforcement, the ability of police to meet additional enforcement demands, and Drug Recognition Expert resources. Unlike alcohol, there are no reliable breath tests or clear concentration levels for cannabis-impaired driving. Given the recency of Maryland's cannabis reforms, data is not available regarding changes in impaired driving frequency and patterns in the State. According to research published in 2022 by the National Highway Traffic Safety Administration (NHTSA), approximately 25% of drivers presenting to a trauma center following a traffic accident tested positive for cannabis. However, NHTSA cautions that this data should not be used to imply impairment or increased risk associated with drug presence.

The legislative actions on cannabis reform have not altered the existing prohibitions under the Transportation Article, including (1) driving while impaired by a drug, any combination of drugs, or any combination of drugs and alcohol (violators are subject to a imprisonment for up to two months and/or a maximum fine of $500 for a first offense) or (2) driving while impaired by a controlled dangerous substance (violators are subject to imprisonment for up to one year and/or a maximum fine of $1,000). Higher maximum penalties may be imposed for a person who commits either violation while transporting a minor or has certain prior convictions.

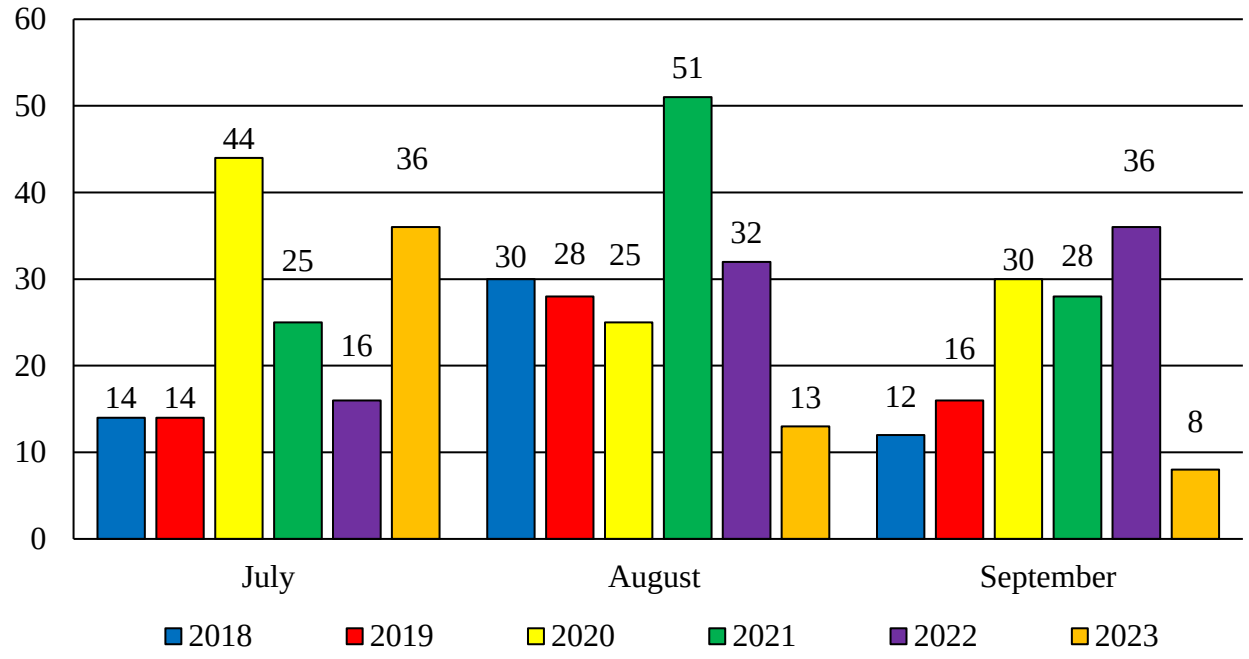
Searches and Seizures

Chapter 802 of 2023 prohibits a law enforcement officer from initiating a stop or a search of a person, motor vehicle, or vessel based solely on the (1) odor of burnt or unburnt cannabis; (2) possession (or suspicion of possession) of cannabis that does not exceed the personal use amount; or (3) the presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute. If a law enforcement officer is investigating a person solely for driving or

attempting to drive a motor vehicle or vessel while impaired by or under the influence of cannabis, the law enforcement officer may search only the area of a motor vehicle or vessel that is (1) readily accessible to the driver or operator of the motor vehicle or vessel or (2) reasonably likely to contain evidence relevant to the condition of the driver or operator of the motor vehicle or vessel. Evidence discovered or obtained in violation of these provisions, including evidence discovered or obtained by consent, is not admissible in a trial, hearing, or other proceeding.

The Department of State Police (DSP) reports that cannabis is the substance most commonly associated with violent crime. While DSP did not see a decrease in July when Chapter 802 took effect, the Field Operations Bureau (FOB) within DSP noted a marked decline in the number of gun seizures occurring in August and September when compared to the same months in prior years. **Exhibit 1** shows gun seizure data for FOB for 2018 through 2023 in the months of July through September.

Exhibit 1
Department of State Police – Field Operations Bureau
Gun Seizure Data Comparisons
July to September – 2018 through 2023



Source: Department of State Police; Department of Legislative Services

Cannabis-related Expungements and References to Cannabis Cases

Chapter 26 of 2022 prohibits the Maryland Judiciary Case Search from referencing the existence of any criminal case in which possession of cannabis is the only charge in the case and the charge was disposed of before July 1, 2023. Chapter 26 also shortened the waiting periods to file a petition to expunge specified cannabis convictions. Under the legislation, a person who is convicted of possession of cannabis under § 5-601 of the Criminal Law Article may file a petition for expungement of the conviction after the satisfactory completion of the sentence including probation. A person who is convicted of possession with the intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article may file a petition for expungement of the conviction three years after the satisfaction of any sentence imposed for the conviction for which expungement is requested. Finally, as a result of Chapter 26, the "unit rule," which states that if a person is not entitled to expungement of one charge or conviction in a unit (two or more charges arising from the same incident, transaction, or set of facts), the person is not entitled to expungement of any other charge or conviction in the unit, does not apply to possession of cannabis under § 5-601 of the Criminal Law Article. The Judiciary advises that these provisions have been fully implemented but notes that there has not been an increase in cannabis-related expungement requests.

Chapter 26 also requires that, by July 1, 2024, the Department of Public Safety and Correctional Services (DPSCS) must remove all references to cases in which the possession of cannabis is the only charge in the case from the Central Repository if the charge was issued prior to July 1, 2023. As of June 30, 2023, DPSCS advises it has identified 125,887 cases that potentially meet this criteria across the State. As of October 2023, DPSCS further advises that pilot testing of a cohort of cases in Baltimore City (both District and circuit court) is anticipated to occur on November 30, 2023, with statewide implementation to follow successful completion of the pilot testing.

Although previously introduced, no legislation has been enacted requiring automatic expungement of cannabis-related convictions. The Judiciary has repeatedly advised that the process for effectuating automatic expungements for cases related to simple possession of cannabis would be an enormous undertaking requiring significant additional resources. However, the exact number of additional personnel needed depends on a variety of factors, such as the timeframe within which the Judiciary must complete the automatic expungements, whether the automatic expungements include full and partial expungements, and the overall number of cases included for automatic expungement. The Judiciary advises that the level of effort required to effectuate a partial expungement (*i.e.*, expungements for cases where there is a cannabis conviction and other charges or convictions not eligible for expungement) is significantly higher than that for a full expungement.

For reference, between 1970 and 2022, the number of cannabis convictions in cases where cannabis was the only charge (*i.e.*, eligible for full expungement) is estimated by the Judiciary to be 25,393 in the District Court and 11,825 in the circuit courts. During that same timeframe, the number of cannabis convictions in cases where there are other charges or convictions (*i.e.*, eligible

for partial expungement of a cannabis conviction only) is estimated to be 40,132 in the District Court and 59,864 in the circuit courts.