

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 792

(Senator Benson, *et al.*)

Judicial Proceedings

Crimes - Prohibition on Sale of Drug Paraphernalia to a Minor - Local Law

This bill authorizes a county or municipal corporation to adopt a local law prohibiting a person from selling drug paraphernalia to a minor. The local law may contain criminal or civil penalties, not to exceed 90 days imprisonment and/or a \$1,000 fine for a first violation and one year imprisonment and/or a \$5,000 fine for subsequent violations.

A local law adopted under the bill's provisions may authorize the revocation or nonrenewal of a license or permit issued by the county or municipal corporation to a business establishment found to be in violation of the local law.

Fiscal Summary

State Effect: Minimal increase in State revenues and expenditures due to the bill's penalties.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalties.

Small Business Effect: None.

Analysis

Current Law: Unless authorized, a person may not deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used for specified banned purposes, including to introduce a controlled dangerous substance into the human body. A violator is guilty of a misdemeanor and subject to

maximum penalties of a \$500 fine for a first violation and imprisonment for two years and/or a fine of \$2,000 for each subsequent violation. If a person who is at least age 18 violates the prohibition against the sale or manufacture of drug paraphernalia by delivering the paraphernalia to a minor who is at least three years younger, the person is guilty of a separate misdemeanor and subject to maximum penalties of imprisonment for eight years and/or a fine of \$15,000.

If a person age 18 or older is a first-time offender with respect to the “standard” drug paraphernalia prohibition but has a prior conviction for delivering drug paraphernalia to a minor who is at least three years younger, the person is subject to maximum penalties of imprisonment for two years and/or a fine of \$2,000.

Regarding drug paraphernalia related to marijuana, the defendant may introduce and the court must consider as a mitigating factor any evidence of medical necessity. If the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction, the maximum penalty that the court may impose is a \$100 fine.

A person may not knowingly (or with reason to know) advertise to promote the sale or delivery of drug paraphernalia. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$500 fine for a first violation and imprisonment for two years and/or a fine of \$2,000 for each subsequent violation.

State Fiscal Effect: Since the bill allows counties or municipal corporations to enact criminal prohibitions on activity already prohibited under State law under certain circumstances, this fiscal estimate assumes that (1) a prosecutor will only opt to charge a defendant with a violation of the local law if it offers a stiffer penalty than State law prescribes; and (2) counties and municipal corporations that choose to implement a local law will opt for the maximum allowable penalties. A defendant whose actions are prohibited by State and local law can only be charged with a violation of either the State law or the local law.

General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities in Baltimore City. The number of people convicted of this crime due to local laws is expected to be minimal.

Local Fiscal Effect: Revenues increase minimally as a result of the bill’s monetary penalty provisions from cases heard in the circuit courts.

Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: HB 1051 of 2010, a similar bill, passed the House as introduced and passed the Senate with amendments. The two versions of the bill were not reconciled by the end of the 2010 session.

Cross File: HB 1207 (Delegate Wilson) - Rules and Executive Nominations.

Information Source(s): Baltimore City, cities of Frederick and Havre de Grace, Harford and Montgomery counties, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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