HB 180

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 180 (Delegate Glenn, *et al.*)
Judiciary Judicial Proceedings

Medical Marijuana - Caregiver - Affirmative Defense

This bill establishes that it is an affirmative defense, in a prosecution for the possession of marijuana or related paraphernalia, that the defendant possessed marijuana or paraphernalia because the defendant was a caregiver and the marijuana or paraphernalia was intended for medical use by an individual with a debilitating medical condition. The bill specifies that the affirmative defense may not be used if the defendant was using (or assisting in the use of) marijuana in a public place or was in possession of more than one ounce of marijuana. In addition, the bill specifies that a defendant may assert the affirmative defense only if the defendant (1) notifies the State's Attorney of the defendant's intention to assert the affirmative defense and (2) provides the State's Attorney with all documentation, in accordance with specified rules of discovery, in support of the affirmative defense.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues and expenditures due to the bill's establishment of an affirmative defense for caregivers in a prosecution for the possession of marijuana or related paraphernalia.

Local Effect: Minimal decrease in expenditures due to the bill's establishment of an affirmative defense for caregivers in a prosecution for the possession of marijuana or related paraphernalia.

Small Business Effect: None.

Analysis

Bill Summary: A "caregiver" is an individual who is designated by a patient with a debilitating medical condition to provide the patient with physical or medical assistance (including assistance with the medical use of marijuana). A caregiver (1) must be a State resident who is at least age 21; (2) must be an immediate family member, spouse, or domestic partner of the patient; (3) may not have been convicted of a crime of violence, a crime of moral turpitude, or a violation of a State or federal controlled dangerous substances law; (4) must have been designated by the patient, in a writing that has been placed in the patient's medical record prior to arrest, as the patient's only designated caregiver; and (5) may not serve as a caregiver for any other patient.

Current Law: In a prosecution for the use or possession of marijuana or for the use or possession of drug paraphernalia related to marijuana, it is an affirmative defense that the defendant used or possessed the marijuana or marijuana paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. The affirmative defense may not be used if the defendant was using marijuana in a public place or was in possession of more than one ounce of marijuana.

A "bona fide physician-patient relationship" is a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition. A "debilitating medical condition" is a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician-patient relationship: (1) cachexia or wasting syndrome; (2) severe or chronic pain; (3) severe nausea; (4) seizures; (5) severe and persistent muscle spasms; or (6) any other condition that is severe and resistant to conventional medicine.

Medical necessity may be used not only as an affirmative defense, but also as a mitigating factor, in a prosecution for the possession or use of marijuana or related paraphernalia. Thus, a defendant who cannot meet the affirmative defense standard for a not guilty verdict may still have medical necessity considered by the court with regard to penalties on conviction. If a court finds that a defendant used or possessed marijuana or related paraphernalia because of medical necessity, the maximum penalty that the court can impose is a fine of up to $100.

If a court does not find that there was medical necessity, a violator of prohibitions against simple possession or use of marijuana is guilty of a misdemeanor and subject to fines of up to $1,000 and/or imprisonment for up to one year. A violator of prohibitions against use or possession with intent to use drug paraphernalia is guilty of a misdemeanor and subject to fines of up to $500; for each subsequent violation, a violator is subject to fines of up to $2,000 and/or imprisonment for up to two years.

The State Board of Physicians may not reprimand, place on probation, or suspend or revoke a license of a licensee for providing a patient with a written statement, medical records, or testimony that, in the licensee's professional opinion, the patient is likely to receive therapeutic or palliative relief from marijuana.

Background: In 1996, California became the first state to allow the medical use of marijuana. Since then, 15 other states (as well as the District of Columbia) have enacted similar laws. States with medical marijuana laws generally have some form of patient registry and provide protection from arrest for possession of up to a certain amount of marijuana for medical use. Maryland is an exception; although State law allows for medical necessity as an affirmative defense, it does not provide a means for patients to actually obtain marijuana.

Marijuana is classified as a Schedule I controlled substance at the federal level, making distribution a federal offense. In October 2009, the Obama Administration sent a memorandum advising federal prosecutors that it is not an efficient use of resources to prosecute individuals who use marijuana for medical purposes in accordance with state laws. In June 2011, however, the Obama Administration sent another memorandum advising that, while this view of the efficient use of resources had not changed, persons who are in the business of cultivating, selling, or distributing marijuana (and those who knowingly facilitate such activities) are in violation of federal law and are subject to federal enforcement action.

Chapter 215 of 2011 (SB 308) required the Secretary of Health and Mental Hygiene to convene a workgroup to develop a model program for facilitating patient access to marijuana for medical purposes. The Secretary was required to report, by December 1, 2011, on the workgroup's findings, including draft legislation that would establish a program to provide access to marijuana in the State for medical purposes. Due to a lack of consensus, the workgroup ultimately submitted two separate plans for consideration by the General Assembly: one that was based on an investigational use model and another that more closely resembled the traditional medical marijuana program model that is used in other states. While both plans were considered during the 2012 session, neither bill passed.

State Revenues: General fund revenues decrease minimally due to fewer cases heard in the District Court as a result of the bill's establishment of an affirmative defense for caregivers in a prosecution for the possession of marijuana or related paraphernalia.

State Expenditures: General fund expenditures decrease minimally due to fewer people being committed to State correctional facilities for convictions in Baltimore City. The bill's impact on the number of people convicted of the possession of marijuana or related paraphernalia is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures decrease minimally as a result of fewer people being incarcerated for the possession of marijuana or related paraphernalia. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately $60 to $160 per inmate in recent years.

Additional Information

Prior Introductions: HB 15 of 2012, as amended, passed the House, but no further action was taken.

Cross File: SB 580 (Senator Raskin) – Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

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