

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1234  
Judiciary

(Delegate Swain, *et al.*)

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Criminal Law - Drug Paraphernalia - Penalties

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This bill increases the maximum penalty for a first-time conviction for delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia from a \$500 maximum fine to a \$1,000 maximum fine.

The bill also prohibits a person from delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia (1) in a school vehicle or (2) in, on, or within 1,000 feet of real property owned or leased to an elementary or secondary school or a county board and used for elementary or secondary education, regardless of whether or not school was in session or the real property was being used for nonschool purposes at the time of the offense. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$1,500 maximum fine. A conviction for this new offense may not merge with a conviction for other specified crimes.

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Fiscal Summary

**State Effect:** General fund revenues and expenditures increase minimally due to the bill's penalty provisions.

**Local Effect:** Local expenditures increase minimally due to the bill's incarceration penalty. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Unless authorized under law, a person may not deliver or sell, or manufacture or possess with the intent to deliver or sell, drug paraphernalia, knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or
- inject, ingest, inhale, or otherwise introduce a controlled dangerous substance into the human body.

**Exhibit 1** contains information on penalties for offenses involving the delivery or sale of drug paraphernalia.

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### Exhibit 1 Penalties for Delivery or Sale of Drug Paraphernalia

<u>Violation</u>	<u>Penalty</u>
First-time violation	Misdemeanor \$500 maximum fine
Subsequent violation	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
First-time violation – violator has a prior conviction for delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
Delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to eight years imprisonment and/or a maximum fine of \$15,000
Drug paraphernalia related to marijuana	Misdemeanor Same penalties as above apply, except in cases of medical necessity for which there is a \$100 maximum fine (see below)

Source: Department of Legislative Services

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If the drug paraphernalia is 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.

In a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related 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 (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (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 either using marijuana in a public place or in possession of more than one ounce of marijuana.

A similar affirmative defense is available to a defendant who possessed marijuana or related 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.

With respect to drug-related offenses that occur near school property, a person may not manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance or conspire to commit any of these crimes (1) in a school vehicle or (2) in, on, or within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or county board and used for elementary or secondary education, regardless of whether or not school was in session or the real property was being used for nonschool purposes at the time of the offense.

Violators are guilty of a felony and subject to imprisonment for up to 20 years and/or a \$20,000 maximum fine for a first conviction and imprisonment for at least 5 years and up to 40 years and/or a \$40,000 maximum fine for each subsequent conviction. A sentence imposed for this offense must be consecutive to any other sentence imposed. The five-year mandatory minimum sentence for a subsequent conviction is nonsuspendable and nonparolable.

A conviction for this offense may not merge with a conviction for specified offenses.

**State Fiscal Effect:** General fund revenues and expenditures increase minimally due to the bill's penalty provisions. The penalty under current law for the activity covered by the bill, regardless of the location of the offense, is \$500 for a first-time conviction and

imprisonment for two years and/or a \$2,000 maximum fine for a subsequent conviction. The bill increases the penalty for first-time violations outside of school property to \$1,000 and establishes a penalty of imprisonment for up to two years and/or a \$1,500 maximum fine for offenses that occur on, in, or near school property. This estimate assumes that the penalties imposed for subsequent offenses that occur outside of school property do not outnumber convictions for the other offenses.

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 penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem 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 the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty. 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 the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, SB 870 (Senator Benson - Judicial Proceedings) is not identical.

**Information Source(s):** Caroline, Montgomery, and Prince George's counties; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Commission on Criminal Sentencing Policy; Maryland State Department of Education; Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2014  
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