

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1494
Judiciary

(Delegate McDermott, *et al.*)

Criminal Procedure - Misdemeanors - Citations

This bill alters a provision of law *requiring* a police officer to charge by citation for any misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is 90 days or less, with specified exceptions, so as to *authorize* a police officer to charge by citation for any misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is two years or less, with specified exceptions.

The bill also makes conforming changes.

Fiscal Summary

State Effect: Potential minimal impact on the District Court and State law enforcement operations. To the extent that the issuance of citations in lieu of custodial arrests eventually becomes a more common or standard practice, initial bail review hearings by court commissioners may decrease significantly. Such a potential effect cannot be reliably estimated without any actual experience under the bill.

Local Effect: Potential minimal impact on local law enforcement operations to the extent that local citations are issued; however, local finances should not be materially affected.

Small Business Effect: None.

Analysis

Current Law: The term “citation” means a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime. It does not include an indictment, information, or statement of charges. If the

officer issues a citation, he or she may (1) do so in lieu of making an arrest or (2) make an arrest, fingerprint and photograph the defendant, then issue a citation in lieu of continued custody and appearance before a District Court Commissioner.

A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal.

A police officer may charge a defendant by citation only if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Each time a law enforcement officer issues a citation, the officer must report the following information/data on the Maryland Uniform Citation Form in the format developed pursuant to Chapter 504 of 2012 by the Police Training Commission and the Governor's Office of Crime Control and Prevention (GOCCP), in consultation with the Administrative Office of the Courts:

- the date, location, and time of the issuance of the citation;
- the offense charged;
- the offender's gender;
- the offender's date of birth;
- the state and, if available, the county of residence of the offender; and
- the offender's race or ethnicity.

The Act's reporting requirements terminate August 31, 2018. Among other things, Chapter 504 also requires development of a model policy against the issuance of a citation based on race that a law enforcement agency can use in developing its own policy.

Background: The Judiciary's Administrative Office of the Courts advises that in calendar 2013 there were 19,987 criminal citations issued, an increase from 10,792 in calendar 2012.

In a report to the State Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of Public Defender, submitted by GOCCP in August 2013, GOCCP discussed the use of citations for certain misdemeanor defenses in Maryland and other states. According to GOCCP, as of August 2013, a total of 25 states (including Maryland) have enacted legislation that either mandates or authorizes the issuance of criminal citations for certain misdemeanor offenses. Nine states, including Maryland, require the issuance of a criminal citation for specified offenses if all the conditions for such issuance are met. The other 16 states authorize the issuance of citations, so in those states, police officers have the discretion to decide, for specified criminal offenses, whether to issue a citation in lieu of arrest or continued custody. The qualifying crimes for which a citation could be issued or must be issued did not vary a great deal among the states. Similar to Maryland, qualifying offenses include local ordinance violations, misdemeanors which carry no penalty of imprisonment and misdemeanors with a penalty of 90 days imprisonment or less. GOCCP also reports that the conditions that must exist before an officer is authorized or required to issue a citation were also relatively universal among the 25 states. These conditions include:

- positive identification of the offender;
- a belief by the officer that the defendant will comply with the citation;
- the offender is compliant with orders of the officer;
- no threat to public safety being posed by the offender; and
- no other charges against the offender for other violations that arose during the same incident.

State/Local Fiscal Effect: The inherent difficulty in assessing the State and local fiscal and/or operational impact under this bill stems from the bill's provision that citations *may* be issued at the discretion of a police officer in the State as long as the misdemeanor or local ordinance violation does not carry a maximum penalty of more than two years. The Department of Legislative Services advises that the extent to which citations are used under the bill may largely depend on policy decisions by law enforcement agencies around the State, varying by jurisdiction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Department of Natural Resources, Department of General Services, Comptroller's Office, Judiciary (Administrative Office of the Courts), Montgomery County, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2014
ncs/kdm

Analysis by: Matthew B. Jackson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510