

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 364

(Senators Zirkin and Kittleman)

Judicial Proceedings

Judiciary

Criminal Law - Possession of Marijuana - Civil Offense

This bill reclassifies the use or possession of less than 10 grams of marijuana from a criminal offense to a civil offense, subject to a fine ranging from a maximum of \$100 to \$500, depending on the number of violations. The bill establishes requirements for (1) the issuance of citations; (2) the appearance in court if the offender is younger than age 21 or after three or more violations; and (3) the adjudication of the offense in District Court. The bill establishes separate procedures and consequences for an individual younger than age 18 who is charged with this civil offense. A civil penalty collected under the bill must be remitted to the Department of Health and Mental Hygiene (DHMH) to be used to fund drug treatment and education programs. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues and minimal decrease in general fund expenditures due to the bill’s shift from a criminal penalty to a civil offense and the redirection of penalty revenues to DHMH. General fund expenditures increase by approximately \$127,700 in FY 2015 to modify the Judiciary’s Criminal Justice Information System (CJIS) to comply with the bill’s shielding and penalty remittance provisions. Special fund revenues and expenditures increase for DHMH as a result of the redirection of penalty revenues to DHMH for drug treatment and education programs.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	-	-	-	-	-
GF Expenditure	\$127,700	(-)	(-)	(-)	(-)
SF Expenditure	-	-	-	-	-
Net Effect	(\$127,700)	\$0	\$0	\$0	\$0

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal decrease in local revenues and significant decrease in local expenditures due to the bill's shift of the offense from a criminal penalty to a civil offense. Local expenditures may increase minimally, however, to the extent that local health departments (LHDs) provide drug education, assessment, and treatment programs for violators and are not fully reimbursed.

Small Business Effect: None.

Analysis

Bill Summary: A police officer must issue a citation if he/she has probable cause to believe that the offense has or is being committed. An individual younger than age 18 charged with this civil offense is subject to juvenile court procedures and dispositions, including referral to an alcohol or a substance abuse education or rehabilitation program. A police officer authorized to make arrests must issue a citation to a child if the officer has probable cause to believe the child is committing an offense.

A violation of the prohibition on the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial upon issuance of a citation. Additionally, the court must order a person who (1) commits a third or subsequent violation or (2) is younger than age 21 and commits a violation, to attend a DHMH-approved drug education program and refer the person to an assessment for a substance abuse disorder. After the assessment, the court must refer the person to substance abuse treatment, if necessary. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana.

A citation that is issued must be signed by the issuing officer and must contain (1) the name and address of the person charged; (2) the date and time the violation occurred; (3) the location where the violation occurred; (4) the fine that may be imposed; (5) notice stating prepayment of the fine is allowed (unless a person has committed a third or subsequent violation or is younger than age 21); and (6) a notice in boldface type that states the person must either pay the fine in full or request a trial date from the District Court.

A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary.

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in State law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana.

In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012, a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

Pursuant to Chapters 61 and 62 of 2013, as of June 1, 2013, an affirmative defense is available to defendants for the possession of marijuana if the defendant possessed marijuana because the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition.

A police officer must issue a citation for possession of marijuana 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.

According to the Judiciary, in fiscal 2013, there were a total of 19,828 violations involving the use of less than 10 grams of marijuana. Of these, 3,099 violations resulted in fines and/or incarceration from cases heard in the District Court. There were four convictions for this violation in Maryland circuit courts in fiscal 2013.

State Revenues: General fund revenues decrease, potentially significantly, as a result of the bill's reduced monetary penalty provisions from cases heard in the District Court and the redirection of all such penalty revenues to DHMH. The maximum fine for less than 10 grams of marijuana possession is reduced from \$500 to \$100 for a first offense and to \$250 for a second offense. The maximum fine for a trial or subsequent offense remains at \$500 under the bill.

Special fund revenues for DHMH increase as a result of the bill's redirection of penalty revenues (see Additional Comments).

State Expenditures: General fund expenditures for the Judiciary increase minimally due to the implementation of a manual process to track offenders for the purposes of determining the amount of fines and whether an offender must appear in court under the bill's provisions. The Judiciary advises that its case management system has limited functionality for civil citations and is case-based. Thus, the system does not record a defendant's prior violations and the programming cannot be altered to electronically track whether a violation is a defendant's first, second, third, or subsequent offense. Thus, court clerks must manually identify offenders. As a result, expenditures for the Judiciary increase minimally to comply with the requirement to identify repeat offenders, as specified, and hold hearings as required by the bill. The bill does not specify how a police officer issuing a citation will be able to determine whether a person who is older than age 21 must appear in court for a third or subsequent violation. However, this analysis assumes that the Judiciary can develop a system to comply with the bill. Any additional costs for the development of such a system are not factored into this analysis but may be potentially significant.

General fund expenditures for the Judiciary also increase by \$127,735 in fiscal 2015 only. This estimate reflects the one-time cost of modifying CJIS to comply with the bill's shielding requirement and to remit fines to DHMH. The Judiciary advises that significant modifications to its existing system are required for compliance. The Department of Legislative Services concurs with this assessment. The Judiciary advises that its penalty deposit schedule needs to be revisited to reflect the new civil charges created by the bill. The Department of Legislative Services advises that those revisions can be handled with existing resources.

General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services as a result of the bill's elimination of an incarceration penalty in these types of cases, resulting in fewer people being committed to State correctional facilities for convictions in Baltimore City. The District Court advises that in 2013, there were 3,099 violations for possession of less than 10 grams of marijuana that resulted in fines and/or incarceration. 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.

The Office of the Public Defender (OPD) advises that decriminalization of possession of less than 10 grams of marijuana significantly decreases caseloads for the office. However, OPD did not provide data on the number of cases affected by the bill. Given the caseloads and resources of OPD, it is unlikely that the bill has a material effect on OPD expenditures, and it is assumed that any OPD resources spent on these cases are shifted to other OPD cases and duties.

Special fund expenditures increase for DHMH to fund drug treatment and education programs using the revenue it receives from civil penalties as a result of the bill (see Additional Comments).

Local Fiscal Effect: Circuit court revenues decrease minimally due to the elimination of these types of marijuana possession cases from the circuit courts.

Expenditures decrease significantly as a result of the bill's elimination of an incarceration penalty in these types of cases. 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.

A defendant is typically entitled to a jury trial if the defendant is charged with an offense that permits confinement for more than 90 days. Fine revenue from cases heard in the circuit courts go to the appropriate county. According to the Maryland State Commission on Criminal Sentencing Policy, there were four convictions in the circuit courts for this type of possession of marijuana offense in fiscal 2013.

Workloads for local law enforcement agencies may decrease to the extent that the citation process involves less administrative time than an arrest.

The State's Attorneys' Association advises that the bill does not have a fiscal impact on prosecutors.

Many LHDs offer drug education, assessment, and treatment programs. DHMH indicates that most approved programs will likely be offered through LHDs. To the extent that offenders are referred to LHDs that provide approved education, assessment, and treatment programs and are not fully reimbursed through remitted fines, expenditures may increase minimally.

Additional Comments: The bill requires revenues from civil penalties to be directed to DHMH for specified purposes. However, these revenues would otherwise be deposited into the general fund, and the bill does not create a special fund in DHMH. Nevertheless, for purposes of this estimate, these revenues and expenditures are treated as special funds. Even so, it is unclear what would happen to any unexpended funds at the end of a fiscal year.

Additional Information

Prior Introductions: SB 297 of 2013, a similar bill, passed the Senate as amended and received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

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