

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 416
Judiciary

(Delegate Cardin, *et al.*)

Judicial Proceedings

Criminal Procedure - Limited Immunity - Alcohol- or Drug-Related Medical Emergencies

This bill establishes that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for specified violations if the evidence for the criminal prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance. In addition, a person who experiences a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for certain violations if the evidence for the criminal prosecution was obtained solely as a result of another person's seeking medical assistance. The bill also makes conforming changes to an existing statute to establish that the act of seeking, providing, or assisting with the provision of medical assistance for another person who is experiencing a medical emergency after ingesting or using alcohol or drugs may be used as a mitigating factor in a criminal prosecution.

The violations covered by the bill include possession of a controlled dangerous substance, drug paraphernalia offenses, underage possession of alcohol, obtaining alcohol for underage consumption, and furnishing alcohol for or allowing underage consumption of alcohol.

Fiscal Summary

State Effect: None. Although the bill's provisions could potentially result in fewer cases, it is not expected to significantly impact the Judiciary or the Department of Public Safety and Correctional Services.

Local Effect: None. Although the bill's provisions could potentially result in fewer cases, it is not expected to significantly impact the circuit courts, State's Attorney's offices, or local detention centers.

Small Business Effect: None.

Analysis

Current Law: Chapter 714 of 2009 established that the act of seeking medical assistance for a person who is experiencing a medical emergency after ingesting alcohol or drugs may be used as a mitigating factor in a criminal prosecution.

Use or Possession of a Controlled Dangerous Substance: The use or possession of a controlled dangerous substance other than marijuana is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

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 due to a debilitating medical condition or if the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition.

Drug Paraphernalia Offenses: 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.

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

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.

An affirmative defense is available to defendants for use or possession of marijuana-related paraphernalia due to a debilitating medical condition or if the defendant was a caregiver and the marijuana was intended for medical use by an individual with a 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-related paraphernalia was intended for medical use by an individual with a debilitating medical condition.

Underage Possession of Alcohol: In general, an individual younger than age 21 may not consume an alcoholic beverage, possess an alcoholic beverage, or have an alcoholic beverage under the individual's charge or control. Such an individual may not be detained on suspicion of, or charged with a violation of, the prohibition against consumption of an alcoholic beverage unless the individual is observed possessing an alcoholic beverage. The prohibition does not apply if an adult furnishes the alcoholic beverage or allows possession or consumption, the individual and the adult are members of the same immediate family, and the beverage is furnished and consumed within the private residence or residence curtilage of the adult. The prohibition also does not apply if the individual consumes the alcoholic beverage while participating in a religious ceremony. A violation is a code violation and civil offense subject to citation and punishable by a maximum fine of \$500 for a first offense, and \$1,000 for subsequent violations.

Obtaining Alcoholic Beverages for Underage Consumption: A person may not obtain, or attempt to obtain, an alcoholic beverage from an alcoholic beverages licensee for consumption by another person who the individual obtaining or attempting to obtain the beverage knows is younger than age 21.

Other than an alcoholic beverages licensee or an employee of a licensee, an adult who violates the prohibition on obtaining alcoholic beverages is guilty of a misdemeanor and subject to a maximum fine of \$2,500 for a first offense or a maximum fine of \$5,000 for a second or subsequent offense. A minor who violates this prohibition must be issued a citation for a code violation, punishable by a maximum fine of \$500 for a first violation or \$1,000 for a subsequent violation.

Furnishing for or Allowing Underage Consumption: A person may not furnish an alcoholic beverage to an individual if (1) the person furnishing the alcoholic beverage knows that the individual is younger than age 21 and (2) the alcoholic beverage is furnished for the purpose of consumption by the individual younger than age 21.

An adult may not knowingly and willfully allow an individual younger than age 21 to possess or consume an alcoholic beverage at a residence, or within the curtilage of a residence that the adult owns or leases and in which the adult resides. These prohibitions do not apply if the individual and the adult are participants in a religious ceremony or are members of the same immediate family and the beverage is furnished and consumed within a private residence or within the curtilage of the residence.

Other than an alcoholic beverages licensee or an employee of a licensee, an adult who violates the prohibitions on furnishing alcoholic beverages is guilty of a misdemeanor and subject to a maximum fine of \$2,500 for a first offense or a maximum fine of \$5,000 for a second or subsequent offense. A minor who violates this prohibition must be issued a citation for a code violation, punishable by a maximum fine of \$2,500 for a first violation or \$5,000 for a subsequent violation.

Background: According to the Network for Public Health Law, as of January 1, 2014, 14 states and the District of Columbia have “Good Samaritan” laws to encourage individuals to summon aid in the event of an overdose. **Exhibit 2** features common characteristics of these statutes.

Exhibit 2
Common Characteristics of Good Samaritan Statutes

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|---|---|
| Samaritan Must Act in Good Faith | California, Colorado, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Vermont, Washington, and the District of Columbia |
| No Charge – Possession of Controlled Substance | California, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington, and the District of Columbia |
| No Prosecution – Possession of Controlled Substance | California, Colorado, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Vermont, Washington, and the District of Columbia |
| No Charge – Controlled Substance Paraphernalia | California, Connecticut, Delaware, New Jersey, New York, Rhode Island, and the District of Columbia |
| No Prosecution – Controlled Substance Paraphernalia | California, Colorado, Connecticut, Delaware, New Jersey, New York, North Carolina, Rhode Island, and the District of Columbia |
| Protection from Other Crimes | California, Colorado, Delaware, New Jersey, New York, North Carolina, Rhode Island, Vermont, and the District of Columbia |
| Reporting Specified as a Mitigating Factor | Illinois, New Mexico, New York, Rhode Island, Vermont, Washington, and the District of Columbia |

Source: Network for Public Health Law

Additional Information

Prior Introductions: HB 1390 of 2008, a similar bill, passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, U.S. Office of National Drug Control Policy, The Network for Public Health Law, Department of Legislative Services

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Analysis by: Amy A. Devadas

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