

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 879
Judiciary

(Delegate Mizeur, *et al.*)

Maryland Marijuana Decriminalization Act

This bill reclassifies the use or possession of one ounce or less of marijuana from a criminal offense to a civil offense subject to a fine of up to \$100. The bill establishes notification and drug education provisions for offenders younger than age 21 and minors. The bill repeals the provisions of law related to the affirmative defense of medical necessity for defendants charged with the use or possession of marijuana.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues and expenditures due to the bill's shift of the offense from a criminal penalty to a civil offense. The Department of Health and Mental Hygiene (DHMH) can comply with the bill with existing resources.

Local Effect: Minimal decrease in local revenues and significant reduction in local expenditures due to the bill's shift of the offense from criminal to civil.

Small Business Effect: None.

Analysis

Bill Summary: An offender of the bill's provisions who is younger than age 21 may be ordered to attend a drug education program approved by DHMH. If an offender is a minor, the minor's parents or guardians must be notified of the offense. Existing criminal penalties continue to apply to the use or possession of more than one ounce of marijuana.

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.

Background: According to the District Court, in 2013, there were 14,981 violations for possession of marijuana (10 grams or more), of which 926 resulted in fines and/or incarceration. There were 19,828 violations involving the use of less than 10 grams of marijuana in the District Court in 2013, of which 3,099 resulted in fines and/or incarceration. There were four convictions for use or possession of less than 10 grams of marijuana in the circuit courts.

State Revenues: General fund revenues may decrease significantly as a result of the bill's reduced monetary penalty provisions from cases heard in the District Court. Under the bill, the maximum fine for possession of between 10 grams and one ounce of marijuana is reduced from \$1,000 to \$100. Possession of less than 10 grams of marijuana is reduced from \$500 to \$100 under the bill.

State Expenditures: General fund expenditures decrease, potentially significantly, as a result of the bill's elimination of an incarceration penalty in these types of cases thus 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, and 926 convictions for possession of 10 grams or more of marijuana that resulted in fines and/or incarceration.

Generally, persons service 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 Department of Public Safety and Correctional Services (DPSCS) advises that the bill significantly reduces the number of individuals processed at the Central Booking and Intake Facility, and those incarcerated in the Baltimore City Detention Center. The daily operational cost to keep a detainee in the Central Booking and Intake Facility is \$153.76, and in the Baltimore City Detention Center is \$81.29. DPSCS did not provide data on the number of cases likely affected by the bill. The Department of Legislative Services (DLS) advises that any efficiencies realized by DPSCS are likely redirected to other responsibilities.

The Office of the Public Defender (OPD) advises that decriminalization of possession of one ounce or less of marijuana significantly decreases caseloads for the office. However, OPD did not provide data on the number of cases likely 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 this estimate assumes that any OPD resources spent on these cases are shifted to other OPD cases and duties.

Local Fiscal Effect: Circuit court revenues decrease minimally due to the elimination of marijuana possession cases of one ounce or less 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 possession of less than 10 grams of marijuana in fiscal 2013. However, the commission was unable to advise on the number of circuit court cases involving one ounce or less of marijuana because current law does not specify the quantity of marijuana involved when it is more than 10 grams.

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 is not able to determine the impact of the bill on prosecutors. However, DLS advises that workload savings that accrue to prosecutors are likely to be shifted to other caseloads and duties.

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): 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, Department of Public Safety and Correctional Services, State's Attorneys' Association, Montgomery County, Department of Legislative Services

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