

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 393
Judiciary

(Delegate Valentino-Smith, *et al.*)

Crimes - Use or Possession of Marijuana in a Motor Vehicle - Prohibition

This bill creates a crime for the use, consumption, or possession of marijuana in the “passenger area” of a motor vehicle. A violation is a misdemeanor with a maximum penalty of imprisonment for one year and/or a fine of \$1,000. A “passenger area” means an area designed to seat the driver and any passenger while the vehicle is in operation or an area that is readily accessible to the individuals in the vehicle while in their seating positions. A “passenger area” does *not* include a locked glove compartment, the trunk, or the area behind the rearmost upright seat not normally occupied by the driver or passenger of a motor vehicle if a motor vehicle does not have a trunk.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

Local Effect: Minimal increase in expenditures due to the bill’s penalty provision.

Small Business Effect: None.

Analysis

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.

Possession of Marijuana – Generally

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 Chapter 158 of 2014, 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 drug education program approved by the Department of Health and Mental Hygiene 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.

A citation 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. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana and for related paraphernalia violations (including for use or possession of less than 10 grams). 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.

Attempting to Drive or Driving a Motor Vehicle While Impaired by a Controlled Dangerous Substance

Under § 21-902 of the Transportation Article, a person may not drive or attempt to drive any vehicle while impaired by a controlled dangerous substance. A person may not commit this offense while transporting a minor.

With a conviction for a drug-related driving offense involving a controlled dangerous substance, a violator is subject to a range of penalties involving fines and imprisonment. A person convicted of this offense receives 12 points on his or her driver's license from the Motor Vehicle Administration. A person convicted of driving while impaired by a

controlled dangerous substance is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory drug abuse assessment. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participation in a certified or court-approved drug treatment program.

If an offender is transporting a minor at the time of the drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: Chapter 158 of 2014 reduced possession of less than 10 grams of marijuana from a criminal offense to a civil offense. However, Chapter 158 of 2014 contained no specific provisions regarding possession of marijuana in a motor vehicle. During a January 2015 briefing before the Senate Judicial Proceedings Committee, law enforcement representatives cited existing criminal paraphernalia laws as the only legal restriction that authorizes officers to effectively investigate the use or possession of marijuana in public areas or in vehicles. The bill is intended to address this concern.

State Fiscal Effect: According to the Judiciary, there were 14,605 violations involving the possession of a controlled dangerous substance involving marijuana in the District Court in fiscal 2014. In addition, there were 2,058 violations between October 1, 2014, and December 31, 2014, of civil violations involving the possession of marijuana less than 10 grams. However, the Judiciary does not maintain data regarding the number of violations that occur in the passenger area of a motor vehicle. Thus, it is not possible to reliably estimate the number of violations that are subject to the bill's penalty provisions. However, the number of people convicted of this proposed crime is expected to be minimal.

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 for convictions in Baltimore City.

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.

Local Expenditures: Expenditures increase 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. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, 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, Maryland Department of Transportation, Department of Legislative Services

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