

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 105
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Law - Drug Paraphernalia and Marijuana - Penalties

This bill reclassifies the use or possession with intent to use or distribute drug or controlled paraphernalia involving the use or possession of less than 10 grams of marijuana from a criminal offense to a civil offense. Violators are 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 has committed 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. The bill also creates a new misdemeanor for smoking marijuana on specified property. Existing criminal penalties continue to apply the use or possession with intent to use or distribute drug or controlled paraphernalia involving 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. The decrease in general fund revenues is partially offset by a minimal increase in general fund revenues due to fines from the new criminal offense. Enforcement of the new misdemeanor provision can be handled with existing resources. General fund expenditures increase by \$38,500 in FY 2016 only to modify the Judiciary's Criminal Justice Information System (CJIS) to comply with the bills 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 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	-	-	-	-	-
GF Expenditure	\$38,500	(-)	(-)	(-)	(-)
SF Expenditure	-	-	-	-	-
Net Effect	(\$38,500)	\$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 potential 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. Enforcement of the new misdemeanor provision can be handled with existing resources.

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 a substance abuse education or rehabilitation program. A police officer who is authorized to make arrests must issue a citation to an individual younger than age 18 if the officer has probable cause to believe the child is committing an offense.

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 the use or possession with intent to use or distribute paraphernalia involving 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.

The bill also establishes a prohibition against smoking marijuana on specified property (unless authorized by the governmental entity that has jurisdiction over the property). The prohibition is applicable (1) to public property; (2) to the mall, adjacent parking area, or

other outside area of a privately owned retail establishment (including a shopping center) where the general public is invited to conduct business; (3) on an adjacent parking area or other outside area of any other retail establishment; or (4) in a parked vehicle located on any of the places identified in the bill. A violation of this prohibition is a misdemeanor and punishable by a fine of up to \$100.

Current Law: Unless authorized under law, a person may not (1) obtain or attempt to obtain paraphernalia through specified means, including fraud and deceit or (2) possess or distribute controlled paraphernalia under circumstances which reasonably indicate an intention to use the controlled dangerous paraphernalia for purposes of illegally administering a controlled dangerous substance (CDS). A person who violates these prohibitions with respect to the use and possession of marijuana is subject to imprisonment for up to one year and/or a \$1,000 maximum fine.

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 CDS; or
- inject, ingest, inhale, or otherwise introduce a CDS 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.

In a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the 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 drug paraphernalia because the defendant was a caregiver and the marijuana or paraphernalia was intended for medical use by an individual with a debilitating medical condition.

Background: Chapter 158 of 2014 reclassified the possession of less than 10 grams of marijuana from a criminal offense to a civil offense. However, Chapter 158 did not address paraphernalia related to the use or possession of less than 10 grams of marijuana. This bill is intended to bring the use or possession with intent to use or distribute paraphernalia involving the use or possession of less than 10 grams of marijuana into alignment with the penalties established for violations under Chapter 158. This “gap” has been cited in news reports as a source of confusion for citizens and law enforcement alike because individuals who may have benefitted from the decriminalization of less than 10 grams of marijuana are still subject to criminal penalties for the related paraphernalia charges. However, at a January 2015 briefing before the Senate Judicial Proceedings Committee, law enforcement representatives cited the criminal paraphernalia laws as the only legal restriction that authorizes officers to effectively prohibit the use or possession of marijuana in public areas.

The Department of Public Safety and Correctional Services (DPSCS) reports that in fiscal 2014, 14 offenders were sentenced to DPSCS correctional facilities with at least one conviction for possession of narcotic paraphernalia. However, this data does not distinguish for convictions for paraphernalia violations related to marijuana possession versus other drug possession. This data also only applies to DPSCS correctional facilities, not local facilities. Of the 14 convictions, 7 involved more serious penalties with an average sentence of 47.8 months (almost 4 years). The Administrative Office of the Courts reports that in fiscal 2014, there were 29,089 violations of CDS prohibitions against drug paraphernalia, and 2,129 violations of CDS prohibitions against controlled paraphernalia. However, these violations are not specific to paraphernalia violations involving marijuana. Neither DPSCS nor the Judiciary are able to identify which of these violations and convictions, if any, relate to the possession of less than 10 grams of marijuana. Thus, it is not possible to provide a reliable estimate of the number of violations that could fall under the bill’s provisions.

State Revenues: General fund revenues *decrease, potentially significantly*, as a result of the bill’s reduced monetary penalty provisions from drug and controlled paraphernalia cases heard in the District Court and the redirection of all such penalty revenues to DHMH. Under current law, fines for the use or possession with intent to use or distribute drug or controlled paraphernalia range from \$500 to \$15,000, depending on the number of violations, whether an individual is delivering drug paraphernalia to a minor, and whether

the charge is for drug or controlled paraphernalia. Under the bill, the use or possession with intent to use or distribute drug or controlled paraphernalia involving the use or possession of less than 10 grams of marijuana is limited to \$100 for a first offense and to \$250 for a second offense. The maximum fine for a trial or subsequent offense under the bill is \$500.

General fund revenues *increase minimally* from fine revenue from the bill's new misdemeanor prohibition against smoking marijuana on specified property, which may partially offset the loss in general fund revenues described above. However, any increase in fine revenue from the new misdemeanor prohibition is anticipated to be minimal.

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 by \$38,472 in fiscal 2016 only. This estimate reflects the one-time cost to modify CJIS to comply with the bill's shielding requirement and to remit fines to DHMH. In addition to those costs, the Judiciary advises that the penalty deposit schedule needs revision due to the bill. However, the Department of Legislative Services advises that the District Court can implement this change during annual reprinting of the schedule using existing budgeted resources.

General fund expenditures decrease minimally for DPSCS as a result of the bill's elimination of an incarceration penalty in drug and controlled paraphernalia cases, resulting in fewer people being committed to State correctional facilities and 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.

The decriminalization of the use or possession with intent to use or distribute drug or controlled paraphernalia involving the use or possession of less than 10 grams of marijuana likely decreases caseloads for the Office of the Public Defender (OPD). However, 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. In addition, this decrease in caseloads may be partially offset by the creation of a new misdemeanor for smoking marijuana on specified property.

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 paraphernalia use or 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.

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 it cannot determine the bill's effect on prosecutors.

Many LHDs offer drug education, assessment, and treatment programs. 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: None.

Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Maryland Association of Counties, Department of State Police; Department of Public Safety and Correctional Services; State's Attorney's Association; Department of Legislative Services

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