

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

Senate Bill 517

(Senator Zirkin)

Judicial Proceedings

Judiciary

Criminal Law - Use and Possession of Marijuana and Drug Paraphernalia

This bill establishes that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500. The bill also repeals the criminal prohibition on possession of marijuana-related paraphernalia, eliminates any penalty, and makes conforming changes.

Fiscal Summary

State Effect: Significant decrease in general fund revenues due to the bill's repeal of criminal penalties for possession of marijuana-related paraphernalia, partially offset by a potential minimal increase in general fund revenues from the bill's creation of a civil penalty for penalty smoking marijuana in public. Potential significant decrease in general fund expenditures due to repeal of criminal penalties for possession of marijuana-related paraphernalia.

Local Effect: Minimal decrease in local revenues and significant decrease in local expenditures due to the bill's repeal of criminal penalties for possession of marijuana-related paraphernalia. Enforcement of the civil offense created by the bill can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law:

Use or Possession of Marijuana

Controlled dangerous substances (CDS) 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 CDS, 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 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 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. 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).

Use or Possession of Paraphernalia

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.

Affirmative Defense for Use or Possession of Marijuana or Related Paraphernalia

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.

Driving While Impaired

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

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the Motor Vehicle Administration. A person convicted of driving while impaired by a CDS 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: According to the National Conference of State Legislatures, in 2014, voters in Alaska, the District of Columbia, and Oregon joined Colorado and Washington by legalizing limited amounts of marijuana for adult recreational use. Alaska's Measure 2 authorizes the legalization, taxation, and regulation of marijuana for individuals 21 years

of age or older. Oregon's Measure 91 allows for the possession, licensing, taxation, and regulation of marijuana by adults, while maintaining medical marijuana laws. Voters in the District of Columbia approved Initiative 71 to make it lawful for individuals 21 years of age or older to possess marijuana, but Congressional proposals to limit or repeal the initiative are under consideration.

Although possession of marijuana remains illegal at the federal level, the U.S. Department of Justice (DOJ) announced in August 2013 that it would focus on eight enforcement priorities when enforcing marijuana provisions of the Controlled Dangerous Substances Act. The guidelines also state that, although the department expects states with legalization laws like Washington and Colorado to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. Further, in 2014, the U.S. Congress passed a federal spending measure that contained provisions to effectively terminate federal enforcement against legal *medical* marijuana operations by prohibiting federal spending on actions that impede state *medical* marijuana laws.

In February 2014, the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve "legitimate marijuana businesses." The February 2014 guidelines reiterated that the provisions of money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. Further, the guidelines state that financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under these provisions. However, the guidelines also establish that prosecutors should apply the eight enforcement priorities listed in the August 2013 guidance document when deciding which cases to prosecute. Thus, although the federal government appears to have relaxed its position on the implementation of marijuana laws, marijuana remains a CDS under federal law, and residents of states that have legalized marijuana are not immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against Colorado and Washington at some point in the future.

States are not obligated to enforce federal marijuana laws, and the federal government may not require states to recriminalize conduct that has been decriminalized.

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. Thus, it is not possible to provide a reliable estimate of the number of paraphernalia violations that could fall under the bill's provisions.

The Administrative Office of the Courts reports that there were 14,605 violations of the prohibition against possession or use of marijuana in the District Court in 2014. In addition, from October 1, 2012 to September 30, 2014 (during the time when this was a unique criminal offense), there were 23,548 charges for possessing less than 10 grams of marijuana, and 3,979 convictions from cases heard in the District Court.

State Revenues: General fund revenues decrease significantly as a result of the bill's elimination of monetary penalties for possession of paraphernalia related to marijuana from cases heard in the District Court.

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 and whether an individual is delivering drug paraphernalia to a minor. Under the bill, the use or possession with intent to use or distribute drug paraphernalia involving the use or possession of marijuana is no longer a crime and the repeal of any fines significantly reduces general fund revenues.

Any decrease in general fund revenues due to the repeal of fine penalties for possession of marijuana-related paraphernalia may be partially offset by a potential minimal increase in general fund revenues due to fines for the civil offense of smoking marijuana in a public place.

State Expenditures: General fund expenditures decrease, potentially significantly, for DPSCS as a result of the bill's decriminalization of the possession of paraphernalia related to marijuana and the elimination of an incarceration penalty in these types of 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 marijuana involving the use or possession 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.

Local Fiscal Effect: Circuit court revenues decrease minimally due to the elimination of fines from paraphernalia use cases in the circuit courts.

Local expenditures decrease significantly as a result of the bill's elimination of incarceration penalties due to the decriminalization of the use or possession with intent to use or distribute drug paraphernalia involving the use or possession of marijuana. 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.

Additional Comments: For purposes of this fiscal and policy note, it is assumed that the new civil offense and penalty including smoking marijuana in a public place are *in addition* to other applicable violations and penalties.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Cities of Bowie and Takoma Park, Baltimore City, Howard 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, Maryland Department of Transportation, Department of Legislative Services

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