

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 891

(Senator Zirkin)

Judicial Proceedings

Criminal Law - Use and Possession of Marijuana

This bill increases the maximum amount of marijuana that a person may use or possess that is subject to civil penalties from 10 grams to one ounce. The bill establishes that the violation is a code violation and establishes additional procedures for prosecution of civil cases for possession of less than one ounce of marijuana. Additionally, a driver of a motor vehicle may not smoke or otherwise consume marijuana, and an occupant may not smoke marijuana, in a passenger area of a motor vehicle on a highway; a violation of these provisions is a misdemeanor, subject to a maximum fine of \$500.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues due to the bill's expanded fines for possession of marijuana and the fine penalties for smoking or consuming marijuana in a motor vehicle, which are likely offset to a minimal extent by a decrease in general fund revenues from fewer individuals paying criminal fines and the bill's reduced court costs for use or possession of marijuana. Special fund revenues for the Department of Health and Mental Hygiene (DHMH) increase at least minimally as a result of additional individuals receiving civil citations for use or possession of marijuana. General fund expenditures increase by \$196,200 in FY 2017 only for the Judiciary to make one-time programming changes to reflect the bill's shielding requirements. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) decrease minimally due to the repeal of the incarceration penalty for the use or possession of specified amounts of marijuana. Enforcement can be handled with existing resources.

Local Effect: Expenditures decrease minimally due to fewer individuals being committed to local detention facilities for the use or possession of marijuana. Enforcement can likely be handled with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: If a person is issued a citation for use or possession of less than one ounce of marijuana, is at least age 21, and has been previously found guilty at least twice for use or possession of less than one ounce of marijuana, the court must summon the person for trial.

As in existing law, the District Court must establish a schedule for the prepayment of the fine. Under the bill, prepayment of a fine is considered a plea of guilty. If the person does not prepay the fine within the specified timeframe, the court may impose the maximum fine and find the person guilty.

The issuing jurisdiction must forward a copy of the citation and a request for trial to the District Court in the district that has venue.

A person who fails to respond to a summons is governed by specified procedures in the Criminal Procedure Article, which authorize the issuance of a bench warrant for failure to appear and establish a misdemeanor that subjects violators to a fine of up to \$500 and/or imprisonment for up to 90 days.

In any proceeding for a code violation involving the use or possession of less than one ounce of marijuana (1) the State has the burden to prove the defendant guilty by a preponderance of the evidence; (2) the court must ensure that the defendant receives a copy of the charges and that the defendant understands those charges; (3) the defendant is entitled to cross-examine all witnesses who appear against the defendant, to produce evidence or witnesses on behalf of the defendant, and to testify in self-defense; (4) the defendant is entitled to representation by counsel of the defendant's choice and at the defendant's expense; and (5) the defendant may enter a plea of guilty or not guilty, and the verdict of the case must be guilty of a code violation or not guilty of a code violation.

A defendant is liable for the costs of the proceedings in the District Court. The court costs are \$5.

The State's Attorney for any county may prosecute a code violation for possession of less than one ounce of marijuana in the same manner as the prosecution of a violation of the criminal laws of the State. The States Attorney may also enter a *nolle prosequi* or place the case on the stet docket, and exercise authority in the same manner as prescribed by law for violations of the criminal laws of the State.

A citation for use or possession of less than one ounce of marijuana, and the official court record regarding the citation, are not subject to public inspection and may not be included on the Judiciary's public website under specified circumstances.

Current Law:

Marijuana Use and Possession: 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.

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 DHMH 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. An affirmative defense is available to defendants for use or possession of marijuana 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. Additionally, pursuant to Chapter 351 of 2015, as of October 1, 2015, if a court finds that the defendant used or possessed marijuana because of medical necessity, the court must dismiss the charge.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. However, the law also established 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.

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 (MVA). 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.

Additionally, under § 21-903 of the Transportation Article (also referred to as the "open container" law), a driver of a motor vehicle may not consume an alcoholic beverage in a passenger area of a motor vehicle on a highway. This prohibition applies to a motor vehicle that is driven, stopped, standing, or otherwise located on a highway. "Passenger area" means an area that is designed to seat the driver and any passenger while the motor vehicle is in operation or is readily accessible to the driver or passenger while in their seating positions. The definition does not include (1) a locked glove compartment; (2) the trunk of a motor vehicle; or (3) if the motor vehicle does not have a trunk, the area behind the rearmost upright seat or an area that is not normally occupied by the driver or a passenger. A violation is a misdemeanor subject to a fine of up to \$500. However, for certain violations of the Transportation Article, the District Court may set a fine that may be prepaid if the individual does not wish to appear at a court hearing to either contest guilt or enter a guilty plea with an explanation. A driver who consumes an alcoholic beverage in a passenger area of motor vehicle on a highway may prepay a fine of \$530. MVA must assess one point against the driver's license for a violation or three points if the violation contributes to an accident.

Background: According to the National Conference of State Legislatures, 20 states and the District of Columbia have decriminalized small amounts of marijuana. Additionally, 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 age 21 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.

Colorado and Washington's recreational marijuana laws establish five nanograms of tetrahydrocannabinol per milliliter of blood as the standard for driving under the influence of marijuana. Oregon, Alaska, and the District of Columbia have not specified an amount that establishes driving while impaired by marijuana, but existing laws regarding impaired driving still apply.

Federal Law: 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 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 and 2015, the U.S. Congress passed federal spending measures 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 enforcement 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 states that have legalized marijuana 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.

According to the Judiciary, in fiscal 2015, there were 6,956 criminal violations for possessing or administering a CDS involving marijuana and 75 criminal violations for possessing or distributing controlled paraphernalia under circumstances that indicated an intention to use the paraphernalia to illegally administer a CDS involving marijuana.

Additionally, in calendar 2015, there were 10,345 civil citations for possession of less than 10 grams of marijuana.

State Revenues: The bill reduces court costs for violations for possession of less than ounce of marijuana, from \$22.50 to \$5. The Judiciary advises that for cases under the Criminal Law Article, court costs are only assessed when the defendant appears in court. Thus, if a defendant is authorized to prepay the fine and does so, no court costs are assessed. In calendar 2015, the Judiciary collected approximately \$45,000 in court costs for cases involving use or possession of less than 10 grams of marijuana. Therefore, general fund revenues decrease minimally.

General fund revenues also decrease minimally due to fewer individuals receiving criminal violations for the use or possession of marijuana, to the extent criminal violations involve more than 10 grams but less than 28 grams of marijuana.

However, the bill also adds a misdemeanor offense for smoking or consumption of marijuana to the existing open container law regarding alcoholic beverages. This analysis assumes that the number of violations for smoking or consuming marijuana in the passenger area of a motor vehicle is less than the number of violations for consuming alcohol in a passenger area of a motor vehicle, and that the District Court sets a comparable prepayment fine for violations involving marijuana. The Judiciary advises that in 2015, there were 1,775 citations for consuming an alcoholic beverage in the passenger area of a motor vehicle. *For illustrative purposes only*, if 50% of these violations involve smoking or consuming marijuana and these individuals choose to prepay a \$530 fine, general fund revenues increase by at least \$470,375 for this offense.

The bill increases the maximum amount of marijuana that a person may use or possess that is subject to civil citations. Therefore, special fund revenues for DHMH increase at least minimally due to more individuals receiving civil citations as a result of the bill. Pursuant to § 7-302(g) of the Courts and Judicial Proceedings Article, the District Court must remit the civil citation penalties collected for the use or possession of marijuana to DHMH for drug treatment and education programs. The Behavioral Health Administration in DHMH administers the Marijuana Citation Fund. Revenue to the fund totaled \$181,698 in fiscal 2015; the projected revenue for fiscal 2017 is \$275,000.

State Expenditures: General fund expenditures increase by \$196,170 in fiscal 2017 only for the Judiciary to implement programming changes to meet the bill's requirements. The bill requires the Judiciary to permanently shield citations under specified circumstances.

The Judiciary also advises that citations need to be recalled and revised to meet the bill's requirements, at an additional cost. However, the Department of Legislative Services advises that the District Court can implement the changes during the annual reprinting of these citations using existing budgeted resources.

General fund expenditures for DPSCS decrease minimally as a result of the bill's repeal of an incarceration penalty for the use or possession of marijuana, to the extent criminal violations involve more than 10 grams but less than 28 grams of marijuana, due to fewer 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures decrease minimally due to fewer individuals being committed to local detention facilities for the use or possession of marijuana, to the extent criminal violations involve more than 10 grams but less than 28 grams of marijuana. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. 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), Office of the Public Defender, State's Attorneys' Association, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of State Police, Maryland Department of Transportation, U.S. Department of Justice, www.Colorado.gov, Colorado Department of Transportation, Washington State Liquor and Cannabis Board, Alaska Department of Health and Social Services, Metropolitan Police Department of the District of Columbia, National Conference of State Legislatures, Department of Legislative Services

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md/kdm

Analysis by: Sasika Subramaniam

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