

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 902 (Senator Young)
Judicial Proceedings

Criminal Law - Veterans - Medical Marijuana

This bill extends the right to assert an affirmative defense in a prosecution for the use or possession of marijuana to (1) a defendant who did so because the defendant has posttraumatic stress disorder (PTSD), if that condition has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship and meets other specified requirements and (2) a “qualified veteran patient.” The bill retains the stipulation that the affirmative defense may not be used if the defendant (qualified veteran patient or otherwise) was using marijuana in a public place or was in possession of more than one ounce of marijuana. Even so, the bill *requires* the court to dismiss a use or possession of marijuana charge against a person who is a qualified veteran patient.

In addition, the bill establishes specified legal protections (as well as limits on those protections) for qualified veteran patients for the medical use of marijuana (for specified debilitating medical conditions, including PTSD) and for physicians who certify qualified veteran patients. The bill also provides a statutory form for physicians to use in their written certification of a qualified veteran patient.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues and expenditures due to the bill’s provisions that limit prosecutions for the use or possession of marijuana.

Local Effect: Minimal decrease in revenues and expenditures due to the bill’s provisions that limit prosecutions for the use or possession of marijuana.

Small Business Effect: None.

Analysis

Bill Summary:

Qualified Veteran Patients and Written Certifications

“Qualified veteran patient” means a person who is (1) a veteran and (2) a State resident who suffers from a debilitating medical condition (including PTSD) and possesses a written certification issued to the patient by a physician with whom the patient has a bona fide physician-patient relationship.

A “written certification” is a document, signed and dated by a physician, stating that in the physician’s professional opinion a patient is likely to receive therapeutic or palliative benefit from the use of marijuana to treat or alleviate the patient’s medical condition. The written certification is valid for one year and must be in (at least substantially) the statutory form specified in the bill. Moreover, a written certification is valid only if provided in the course of a bona fide physician-patient relationship after the physician has completed a full assessment of the qualified veteran patient’s medical history.

Legal Protections and Limitations

A qualified veteran patient is not subject to arrest, citation, prosecution, or civil or administrative penalty – and may not be denied a right or privilege – for the medical use of marijuana. Furthermore, the possession of a written certification may not be the basis for a finding of probable cause to search an individual (or the individual’s property) or otherwise subject the individual (or the individual’s property) to inspection by a governmental unit. Marijuana, property, or interest in property that is possessed, owned, or used in connection with the medical use of marijuana by a qualified veteran patient as allowed under the bill (or acts incidental to the possession, ownership, or use) may not be seized or forfeited on the basis of the use or possession of marijuana.

For the purposes of medical care (including organ transplants), a qualified veteran patient’s use of marijuana in accordance with the bill is the equivalent of the authorized use of any other medication used at the direction of a physician and does not constitute the use of an illicit substance or otherwise disqualify a qualified veteran patient from needed medical care. Even so, the bill does not require a public or private health insurer to reimburse an individual for the costs associated with the medical use of marijuana.

If a person is otherwise entitled to custody of (or visitation or parenting time with) a minor, the person may not – solely for conduct allowed under the bill – be denied that right or be presumed guilty of neglect or child endangerment. In addition, an individual is not subject

to arrest or prosecution solely for being in the presence or vicinity of the medical use of marijuana by a qualified veteran patient as allowed under the bill.

A physician is not subject to arrest, prosecution, or civil or administrative penalty (including disciplinary action by an occupational or professional licensing board) – and may not be denied a right or privilege – solely for providing a written certification or for otherwise stating that, in the physician’s professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana. However, the bill may not be construed to prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient’s medical condition.

Finally, however, the bill neither authorizes an individual to engage in, nor prevents the imposition of penalties for, (1) performing a task under the influence of marijuana when doing so would constitute negligence or professional malpractice; (2) operating, navigating, or controlling a motor vehicle, aircraft, or boat while under the influence of marijuana; or (3) smoking marijuana in a public place, in a motor vehicle, or on private property (that is either rented from a landlord or an attached dwelling *and* subject to specified policies prohibiting the smoking of marijuana on the property).

Current Law/Background:

Criminal Law Provisions Related to 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. The use or possession of a CDS other than marijuana is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

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.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. 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.

However, in a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana 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; (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. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was in possession of more than one ounce of marijuana.

A "bona fide physician-patient relationship" is a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition. A "debilitating medical condition" is a chronic or debilitating disease or medical condition (or the treatment of a chronic or debilitating disease or medical condition) that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician-patient relationship: (1) cachexia or wasting syndrome; (2) severe or chronic pain; (3) severe nausea; (4) seizures; (5) severe and persistent muscle spasms; or (6) any other condition that is severe and resistant to conventional medicine.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant who cannot meet the affirmative defense standard for a not guilty verdict may introduce and the court must consider as a mitigating factor (with regard to penalties on conviction) any evidence of medical necessity. Pursuant to Chapter 351 of 2015, if a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

Medical Cannabis Commission

Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 further modified the State's medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries and the registration of their agents. The program also establishes a framework to certify physicians and qualified patients, including veterans, (and their

caregivers) to provide qualified patients with medical cannabis legally under State law via written certification. Specifically, a qualified patient who has been provided with a written certification from a certifying physician in accordance with a bona fide physician-patient relationship may obtain a 30-day supply of medical cannabis. Medical cannabis is defined in regulation as any product containing usable cannabis or medical cannabis finished product. A 30-day supply is defined as 120 grams of usable cannabis, unless a qualified patient's certifying physician determines that this amount is inadequate to meet the medical needs of the patient. Regulations establish PTSD as one of several debilitating medical conditions.

State Revenues: General fund revenues decrease minimally as a result of fewer cases heard in the District Court as a result of the bill's establishment of an affirmative defense for qualified veteran patients and expansion of debilitating medical conditions to encompass PTSD in a prosecution for the use or possession of one ounce or less of marijuana. Moreover, for any quantity of marijuana, the bill appears to require the court to dismiss a charge for the use or possession of marijuana if the court finds the person is a qualified veteran patient.

State Expenditures: General fund expenditures decrease minimally as a result of the bill's establishment of an affirmative defense for qualified veteran patients and expansion of debilitating medical conditions to encompass PTSD in a prosecution for the use or possession of one ounce or less of marijuana. Likewise, for any quantity of marijuana, the bill appears to require the court to dismiss a charge for the use or possession of marijuana if the court finds the person is a qualified veteran patient. Thus, fewer people may be committed to State correctional facilities, and payments to counties for reimbursement of inmate costs may decrease. The bill's impact on the number of people convicted of the use or possession of marijuana is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues decrease minimally as a result of fewer cases heard in the circuit courts as a result of the bill's establishment of an affirmative defense for qualified veteran patients and expansion of debilitating medical conditions to encompass PTSD in a prosecution for the use or possession of one ounce or less of marijuana. Likewise, for any quantity of marijuana, the bill appears to require the court to dismiss a charge for the use or possession of marijuana if the court finds the person is a qualified veteran patient.

Local Expenditures: Expenditures decrease minimally as a result of fewer people being incarcerated for the use or possession of marijuana. The bill establishes an affirmative defense for qualified veteran patients and expands the use of an affirmative defense for

PTSD as a debilitating medical condition in a prosecution for the use or possession of one ounce or less of marijuana. Likewise, for any quantity of marijuana, the bill appears to require the court to dismiss a charge for the use or possession of marijuana if the court finds the person is a qualified veteran patient.

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: HB 1452 (Delegate Vogt, *et al.*) - Health and Government Operations and Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Veterans Affairs, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2016
min/ljm

Analysis by: Kathleen P. Kennedy

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