

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 183
Judiciary

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

Judicial Proceedings

Vehicle Laws - Smoking Marijuana in Vehicles - Prohibition

This bill prohibits (1) a driver of a motor vehicle from smoking or otherwise consuming marijuana in a passenger area of a motor vehicle on a highway and (2) an occupant of a motor vehicle from smoking marijuana in a passenger area of a motor vehicle on a highway. The offense is a misdemeanor and the existing penalty of a maximum fine of \$500 applies to the new offense created by the bill.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues due to the application of an existing penalty to the bill's provisions for those cases heard in the District Court. Expenditures are not materially affected; enforcement can be handled with existing resources.

Local Effect: Enforcement can likely be handled with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

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 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. 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: General fund revenues may increase significantly as a result of the application of an existing monetary penalty to the bill’s provisions from cases heard in the District Court.

The bill adds 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 percent 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.

State Expenditures: It is unclear to what extent the bill increases the number of arrests and convictions for the use or possession of marijuana. The Judiciary advises that it is unable to estimate the number of additional case filings received under the bill but that it does not anticipate a significant fiscal or operational impact on the District Court. The Department of State Police advises that enforcement can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), 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, Department of Legislative Services

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Analysis by: Sasika Subramaniam

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