

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1304
Judiciary

(Delegate Jalisi, *et al.*)

Criminal Law - Smoking Marijuana in Public - Penalty

This bill repeals the civil offense for the use or possession of marijuana involving smoking marijuana in a public place and instead establishes smoking marijuana in a public place as a criminal offense. “Public place” has the same meaning as in Title 10 of the Criminal Law Article. A violation is a misdemeanor subject to fine of up to \$100.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues due to the bill’s penalty provision, as discussed below. Expenditures are not materially affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under Title 10 of the Criminal Law Article, “public place” means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose. The definition includes restaurants, shops, and taverns; public buildings, parking lots, streets, and parks; common areas of multidwelling units; hotels and motels; amusement parks, theaters, swimming pools, and sports arenas; educational institutions; places of public worship; bus terminals and railway stations; and other grounds and structures that are part of a public place.

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.

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 years 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.

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

State Revenues: Chapter 4 of 2016 established a civil offense for smoking marijuana in a public place with a fine of up to \$500. The bill repeals this civil offense and instead establishes smoking marijuana in a public place as a misdemeanor with a fine of up to \$100. Chapter 4 of 2016 went into effect on February 20, 2016; therefore, the number of civil violations for smoking marijuana in a public place is unknown at this time. Chapter 4 of 2016 also did not define “public place.” However, this analysis assumes that (1) the civil offense and the bill’s criminal offense have the same scope; (2) the number of violations for the civil offense and for the bill’s criminal offense are comparable; and (3) fines actually assessed for the civil offense are less than the maximum \$500. However, the fines that may be assessed under this bill are likely to aggregate to less than what is likely to accrue under the existing fine that can be as high as \$500. Without more substantive experience, it is not possible to reliably quantify the impact of the proposed fine reduction. As a result, the Department of Legislative Services advises that the revenues accruing to the general fund under this bill have the *potential* to be less than those that are likely to accrue under the existing law and penalty, assuming similar enforcement efforts.

Additional Information

Prior Introductions: None.

Cross File: SB 1036 (Senator Muse) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, National Conference of State Legislatures, U.S. Department of Justice, Department of Legislative Services

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