

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 408  
Judiciary

(Delegates Dumais and Morhaim)

Judicial Proceedings

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**Criminal Procedure - Charging Procedures and Documents - Citation**

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This bill limits the circumstances under which a police officer is required to charge by citation for a misdemeanor or local ordinance violation for which the maximum penalty is imprisonment for up to 90 days to when the misdemeanor or local ordinance violation does not involve serious injury or an immediate health risk. The bill also expands the categories of offenses for which a police officer may charge by citation to include possession of a controlled dangerous substance (CDS) other than marijuana. The bill also expands the circumstances under which a police officer may charge a defendant by citation to allow for issuance of a citation even if a defendant is subject to arrest for another criminal charge arising out of the same circumstances but is not subject to arrest for another alleged misdemeanor involving serious injury or immediate health risk, an alleged felony arising out of the same incident, or an open warrant, as specified.

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in expenditures if the bill reduces pretrial detentions in Baltimore City. It is anticipated that any decrease in expenditures and any efficiencies experienced by the District Court, the Department of State Police (DSP), or the Office of the Public Defender (OPD) as a result of the bill are shifted to other functions.

**Local Effect:** Potential minimal decrease in local expenditures for pretrial detentions. It is anticipated that any decrease in local expenditures and any efficiencies experienced by local law enforcement and local detention departments from fewer arrests and pretrial detentions are shifted to other functions.

**Small Business Effect:** Potential minimal impact on small business bail bondsmen if the bill alters the number of defendants held on bond.

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## Analysis

**Current Law:** A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal. A police officer may also charge by citation, as specified, for (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000.

A police officer may charge a defendant by citation *only* if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

*Theft:* Beginning October 1, 2017, a person convicted of theft of property or services with a value of at least \$100 but less than \$1,500, is guilty of a misdemeanor and is subject to, for a first conviction, imprisonment for up to 6 months and/or a fine of up to \$500, and for a second or subsequent conviction, imprisonment for up to 1 year and/or a fine of up to \$500. However, the maximum penalty for the misdemeanor offense of theft of services or property valued at less than \$100 remains at 90 days imprisonment and/or a fine of \$500.

*Malicious Destruction of Property:* A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. A violator causing damage of less than \$1,000 to the property is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 60 days and/or a fine of \$500.

*Sale of Alcoholic Beverages to an Underage Drinker or Intoxicated Person:* An alcoholic beverages licensee or an employee of the licensee (licensee/employee) is prohibited from

furnishing alcoholic beverages (1) to a person younger than age 21 or (2) to any person who is visibly under the influence of any alcoholic beverage. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a maximum fine of \$1,000. Additional jurisdiction-specific penalties may apply.

*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 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.

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may also not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to four years and/or a fine of up to \$25,000. Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) altered the criminal penalties associated with the possession, administration, obtainment, and procurement of a CDS and related offenses. Effective October 1, 2017, a person who violates these provisions is subject to the following penalties: (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. The authorization to double penalties for repeat offenders applies only when the person has also been previously convicted of a crime of violence. Additionally, Chapter 515 reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to 6 months.

**Background:** The Judiciary advises that in fiscal 2016, there were approximately 15,051 violations involving the possession of less than 10 grams of marijuana. Additionally, according to the Judiciary, there were 23,713 violations for possession of CDS other than marijuana in the District Court in fiscal 2016; there were 11,154 violations for possession of CDS other than marijuana in the circuit courts in fiscal 2016.

**State Expenditures:** General fund expenditures may decrease minimally for the Department of Public Safety and Correctional Services to the extent that the bill reduces the number of arrestees detained pretrial in the Baltimore Pretrial Complex.

General fund expenditures may also decrease minimally for the Judiciary, DSP, and OPD to the extent that the bill reduces the number of District Court commissioner initial appearances by arrestees, the number of arrests, and the number of bail reviews necessary. This decrease may be offset in part by similar costs incurred should the cited defendants fail to appear in court. However, any savings experienced by the Judiciary, DSP, and OPD are likely to be shifted to other functions within those agencies.

Although there were approximately 147,194 total initial appearances as a result of warrant and bench warrant arrests for all misdemeanors and felony charges in fiscal 2016, data is not available on the number of individuals represented by these cases who were charged with additional offenses that are not eligible for citations or were otherwise ineligible to receive a citation.

**Local Expenditures:** Carroll, Montgomery and St. Mary's counties, the City of Salisbury, and the Town of Leonardtown advise that the bill does not have a fiscal impact on their jurisdictions. The City of Westminster advises that although it does not have exact data on the number of citations that are issued in lieu of arrests as a result of the bill, the bill does have the potential to reduce the number of hours city officers spend at the county's detention center for processing an arrest (estimated at 30 minutes per arrest). In addition, the bill may result in a minimal decrease in local expenditures to the extent the bill reduces the number of arrestees detained pretrial in local detention facilities.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 477 (Senator Kelley, *et al.*) - Judicial Proceedings.

**Information Source(s):** Carroll, Montgomery, and St. Mary's counties; cities of Salisbury and Westminster; towns of Bel Air and Leonardtown; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2017  
mm/kdm Third Reader - March 28, 2017  
Revised - Amendment(s) - March 28, 2017

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