

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader

Senate Bill 860

(Senator Zirkin)

Judicial Proceedings

Health and Government Operations

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Natalie M. LaPrade Medical Cannabis Commission - Immunity - Revocation of  
Release

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This bill expands legal protections for individuals participating in the State's medical cannabis program by establishing that specified individuals are not subject to revocation of mandatory supervision, parole, or probation for the medical use or possession of medical cannabis.

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Fiscal Summary

**State Effect:** The bill clarifies current law and is not anticipated to materially affect State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect local finances or operations

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill establishes that the following persons acting in accordance with the statutory provisions of the State's medical cannabis program are not subject to revocation of mandatory supervision, parole, or probation, for the medical use or possession of medical cannabis: (1) a qualifying patient who is in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower or grower agent; (3) a certifying provider; (4) a caregiver; (5) a dispensary or dispensary agent; (6) a processor or processor agent; (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment; or (8) an authorized third-party vendor.

## **Current Law:**

### *Protections Against Arrest, Prosecution, and Civil or Administrative Penalties*

Current law establishes that any of the following persons acting in accordance with the statutory provisions of Maryland's medical cannabis program are not subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, nor may they be denied any right or privilege, for the medical use or possession of medical cannabis: (1) a qualifying patient who is in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower or grower agent; (3) a certifying provider; (4) a caregiver; (5) a dispensary or dispensary agent; (6) a processor or processor agent; (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment; or (8) an authorized third-party vendor.

### *Probation*

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family. A judge may also order "custodial confinement," which usually refers to home detention or inpatient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment.

### *Release on Mandatory Supervision*

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits, discussed below, and applies only to an inmate in a State correctional facility sentenced to a term of confinement exceeding 18 months. An inmate in a State correctional facility serving a term of 18 months or less and an inmate

in a local detention center may also earn credits, but those inmates are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

Individuals on mandatory supervision are supervised by the Maryland Department of Public Safety and Correctional Services (DPSCS) until the expiration of the term and are subject to the same terms and conditions as inmates released on parole. See the discussion of parole below.

The entire sentence imposed by a trial court often is not actually served in custody before expiration of the sentence because diminution credits that may be awarded to an inmate shorten the time required to be served in custody by the inmate. Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in State correctional facilities and local detention centers are eligible for diminution credits. Credits may be forfeited or restricted due to misbehavior in the institution.

### *Parole*

In general, parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Any violation of a condition of release may result in revocation of parole. A violation is classified as either a “technical” violation that is not a crime (*e.g.*, failure to attend a required meeting or failing to be employed) or a commission of a new crime. If a violation is alleged, the Maryland Parole Commission or DPSCS (if this power is delegated to the department in a particular case) must decide whether to issue a subpoena or a retake warrant for purposes of a parole revocation hearing. A subpoena is requested from the parole commission if the parole agent believes that the offender is not a public safety threat and that the offender will not flee. Otherwise, a parole agent must request a retake warrant, which subjects the individual to arrest, and submit a written report to the commission on the alleged violation.

**Background:** The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The

program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Since February 1, 2018, the commission has received at least 40 subpoenas and patient authorization requests from DPSCS to determine whether certain individuals who have tested positive for cannabis are certified as qualifying patients and whether that provides legal protections to these individuals.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2019  
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