

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1506
Judiciary

(Delegate Moon)

Cannabis - Personal Use Amount - Legalization

This bill (1) replaces statutory references to marijuana with “cannabis”; (2) legalizes the possession of one ounce or less of cannabis by persons age 21 and older; (3) establishes a civil offense and penalty for the use or possession of more than one ounce and up to two ounces of cannabis by persons age 21 and older; (4) establishes a civil offense and penalties for the use or possession of one ounce or less of cannabis by individuals younger than age 21; (5) repeals a mitigating factor and specified affirmative defenses applicable to marijuana prosecutions; and (6) makes conforming changes. **The bill takes effect January 1, 2023.**

Fiscal Summary

State Effect: Minimal decrease in general fund revenues and significant decrease in special fund revenues beginning in FY 2023 due to the bill’s penalty provisions. General fund expenditures for the Judiciary increase by \$116,600 in FY 2023 only for computer programming. Potential minimal decrease in general fund incarceration expenditures. Special fund expenditures for the Maryland Department of Health (MDH) decrease.

Local Effect: Minimal decrease in local revenues from fines imposed in circuit court cases. Potential minimal decrease in local incarceration expenditures.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Cannabis” means all parts of the plant of the genus *cannabis*; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. The definition includes substances defined as “marijuana” or “hashish” under State law; it does not include (1) hemp, with specified exceptions or (2) fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of another ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.

“Personal use amount of cannabis” means one ounce or less of cannabis.

Use or Possession of Cannabis

Use or possession of the personal use amount of cannabis (one ounce or less) by a person younger than age 21 is a civil offense punishable by a fine of up to \$100 for a first offense, up to \$250 for a second offense, and up to \$500 for a third or subsequent offense.

The bill legalizes the possession of up to one ounce of cannabis by a person age 21 or older. Use or possession of cannabis by a person age 21 or older in an amount that exceeds one ounce but does not exceed two ounces is a civil offense punishable by a fine of up to \$250 and the performance of community service for up to 20 hours.

Education Program and Substance Abuse Assessment Requirements

As a result of the provisions described above, the bill repeals the existing statutory requirement that in addition to a fine, a court must order a person age 21 or older who has been found guilty three or more times of violations relating to the use or possession of marijuana to attend a drug education program approved by MDH, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

Mitigating Factor and Affirmative Defenses

The bill repeals the following provisions relating to a prosecution for the use or possession of marijuana: (1) the mitigating factor of medical necessity; (2) the requirement that the court must dismiss a charge of use or possession of marijuana if the court finds that the

person used or possessed marijuana for medical necessity; (3) the affirmative defense that the defendant used or possessed marijuana because the defendant has a debilitating medical condition; and (4) the affirmative defense that the defendant possessed marijuana because it was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver.

Current Law:

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 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.

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. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by MDH; and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

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.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months (but retained the maximum \$1,000 fine).

Further, pursuant to Chapter 515 of 2016, before imposing a sentence for these offenses, the court is authorized to order MDH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the

defendant is in need of and may benefit from drug treatment. MDH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require MDH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility to facilitate the medically appropriate level of treatment.

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.

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.

Maryland's Medical Cannabis Program

The Natalie M. LaPrade Medical Cannabis Commission administers the State's medical cannabis program, which makes medical cannabis available to qualifying patients and their caregivers legally under State law via written certification. A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is generally defined as 120 grams of usable cannabis.

Background: Authorization for the medicinal and recreational use of marijuana, as well as decriminalization of small amounts of marijuana, has gained momentum across the country. However, possession of marijuana remains illegal at the federal level, although

states are not obligated to enforce federal marijuana laws and the federal government may not require states to recriminalize conduct that has been decriminalized.

State Marijuana Laws

According to the National Conference of State Legislatures, 33 states (including Maryland), the District of Columbia, Guam, and Puerto Rico have comprehensive public medical cannabis programs. Additionally, another 13 states allow for the use of low THC (delta-9-tetrahydrocannabinol), high CBD (cannabidiol) products for medical reasons in limited situations or as a legal defense. Further, 26 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana. As of June 2019, 14 states and territories have approved adult-use cannabis.

Federal Guidance

Although cannabis remains on the list of Schedule I drugs, the federal government has been enforcing cannabis/marijuana provisions primarily pursuant to (1) guidelines issued by the U.S. Department of Justice (DOJ) and (2) appropriations riders passed by the U.S. Congress in every year since 2014 that prevent DOJ from using any of its funding to prevent states from “implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

DOJ published the “[Ogden Memorandum](#)” in October 2009, which deprioritized using federal law enforcement resources against state medical marijuana programs. In August 2013, DOJ published the “[Cole Memorandum](#),” which announced that it would focus on eight enforcement priorities when enforcing marijuana provisions of the federal Controlled Substances Act. The guidelines also state that, although DOJ 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. On January 4, 2018, in a [memorandum](#) to all U.S. attorneys, former Attorney General Jefferson B. Sessions III announced that previous guidance regarding federal marijuana prosecutions was rescinded, effective immediately. Current Attorney General William Barr has pledged to not go after marijuana companies that comply with state laws, but there has been no official DOJ guidance since the 2018 memorandum rescinding prior guidance.

Maryland Statistics

The Judiciary advises that in fiscal 2019, there were 17,009 civil citations (11,004 guilty dispositions) filed in the District Court for the possession of *less than* 10 grams of marijuana. In fiscal 2019, there were a total of 5,306 violations of possession of *10 grams or more* of marijuana (264 guilty dispositions) in the District Court and an additional 2,657 violations of possession of *10 grams or more* of marijuana (841 guilty dispositions)

in the circuit courts. Other than statutory offense thresholds, data is not available on the quantities of marijuana involved in these cases.

In fiscal 2019, the Division of Parole and Probation received 375 people on supervision for possession of marijuana. According to DPSCS, the Division of Correction received four inmates for possession of marijuana during fiscal 2019. Each of the inmates had other more serious offenses.

State Revenues: General fund and special fund revenues decrease from fines imposed in the District Court decrease as a result of the bill's provisions. This estimate assumes that (1) the *use* of the personal amount of cannabis by a person age 21 or older is legalized under the bill and (2) repealing the mitigating factor and affirmative defenses relating to medical conditions in prosecutions for the use or possession of marijuana does not materially affect State finances.

Currently, use or possession of 10 grams or more of marijuana is a misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000. Fines imposed in the District Court under this provision are deposited into the general fund. Thus, general fund revenues decrease minimally from fines imposed in the District Court as a result of (1) the bill's legalization of the use or possession of at least 10 grams and up to one ounce (28 grams) of cannabis by a person age 21 or older; (2) decriminalization of the use and possession of at least 10 grams and up to one ounce of cannabis by a person younger than age 21; and (3) the bill's reduction of the monetary penalty applicable to the use or possession of more than one ounce but no more than two ounces of cannabis by a person age 21 or older.

Special fund revenues to the Marijuana Citation Fund within MDH decrease significantly. The bill limits the application of existing civil penalties for use and possession of less than 10 grams of marijuana to possession of *one ounce* (28 grams) or less of cannabis by a person *younger than age 21*. Assuming that elimination of civil fines for persons age 21 or older has a greater effect than increasing the threshold for cannabis to one ounce (28 grams), the bill results in a reduction of civil fines collected in the District Court. Fines collected in the District Court from marijuana civil citations are remitted to the Marijuana Citation Fund, which is administered by the Behavioral Health Administration of MDH. The fund is used for drug treatment and education programs. Revenue to the fund totaled \$546,559 in fiscal 2019.

The Judiciary advises that the bill may result in an initial increase in petitions for expungement, since individuals who would eventually be eligible to file a petition for expungement of a conviction for possession of marijuana (subject to a waiting period) would be eligible to file a petition to expunge a conviction of a crime based on an act that is no longer a crime (does not have a waiting period). However, any general fund revenues

from filing fees for these petitions is not expected to materially affect State finances. The District Court charges a \$30 filing fee for petitions to expunge a conviction.

State Expenditures: General fund expenditures for the Judiciary increase by \$116,573 in fiscal 2023 for one-time computer reprogramming changes to implement the bill's requirements in anticipation of the bill's January 1, 2023 effective date. The Judiciary also advises that citations need to be recalled and revised to meet the bill's requirements at an additional cost of approximately \$40,000. However, the Department of Legislative Services advises that the District Court can implement the changes during routine reprinting of these citations using existing budgeted resources.

Although not quantified, special fund expenditures for MDH from the Marijuana Citation Fund decrease as fewer individuals will be required to attend drug education and treatment programs approved by MDH.

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

Any reduction in caseloads for the Judiciary and the Office of the Public Defender under the bill will likely result in a redirection of resources to other cases and functions.

Local Fiscal Effect: Local revenues from fines imposed in the circuit courts decrease minimally as a result of the bill's provisions. Local incarceration expenditures may decrease minimally. While the bill may reduce workloads for State's Attorneys, any resources currently dedicated to cases eliminated under the bill will likely be redirected to other cases.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Department of Transportation; National

Conference of State Legislatures; U.S. Department of Justice; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2020
rh/aad

Analysis by: Hillary J. Cleckler

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