

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1209  
Judiciary

(Delegate Cardin)

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**Criminal Law - Drug Paraphernalia - Penalties**

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This bill reduces penalties for offenses involving drug paraphernalia and controlled paraphernalia.

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**Fiscal Summary**

**State Effect:** State finances are not materially affected, as discussed below.

**Local Effect:** Local finances are not materially affected, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** Subsequent offender penalties for a violation of the prohibitions against the use or possession of drug paraphernalia and the delivery or sale of drug paraphernalia are reduced from imprisonment for up to two years and/or a \$2,000 maximum fine to imprisonment for up to one year and/or a \$1,000 maximum fine.

The bill also reduces penalties related to controlled paraphernalia from imprisonment for up to four years and/or a \$25,000 maximum fine for all violations to (1) a \$500 maximum fine for a first violation and (2) imprisonment for up to one year and/or a \$1,000 maximum fine for a second or subsequent violation.

## **Current Law:**

### *Use or Possession of Drug Paraphernalia*

Unless authorized under law, a person may not use or possess with intent to use drug paraphernalia to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance (CDS); or
- inject, ingest, inhale, or otherwise introduce a CDS into the human body.

Chapter 4 of 2016 repealed the criminal prohibition on use or possession of marijuana-related drug paraphernalia.

### *Delivery or Sale of Drug Paraphernalia*

Unless authorized under law, a person may not deliver or sell, or manufacture or possess with the intent to deliver or sell, drug paraphernalia, knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a CDS; or
- inject, ingest, inhale, or otherwise introduce a CDS into the human body.

**Exhibit 1** contains information on penalties for offenses involving both the use or possession and the delivery or sale of drug paraphernalia.

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**Exhibit 1**  
**Penalties for Use or Possession and Delivery or Sale of Drug Paraphernalia**

<u><b>Violation</b></u>	<u><b>Penalty</b></u>
First-time violation (use, possession, delivery, or sale)	Misdemeanor \$500 maximum fine
Subsequent violation (use, possession, delivery, or sale)	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
First-time violation (use, possession, delivery, or sale) – violator has a prior conviction for delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
Delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to eight years imprisonment and/or a maximum fine of \$15,000

Source: Department of Legislative Services

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*Controlled Paraphernalia*

“Controlled paraphernalia” means (1) a hypodermic syringe, needle, or any other object or combination of objects adapted to administer a CDS by hypodermic injections; (2) a gelatin capsule, glassine envelope, or other container suitable for packaging individual quantities of a CDS; or (3) lactose, quinine, mannite, mannitol, dextrose, sucrose, procaine hydrochloride, or any other substance suitable as a diluent or adulterant.

In general, a person may not obtain or attempt to obtain controlled paraphernalia by:

- fraud, deceit, misrepresentation, or subterfuge;
- counterfeiting a prescription or a written order;
- concealing a material fact or the use of a false name or address;

- falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider;
- making or issuing a false or counterfeit prescription or written order; or
- possessing or distributing controlled paraphernalia under circumstances that reasonably indicate an intention to use the controlled paraphernalia for purposes of illegally administering a CDS.

Evidence of circumstances that reasonably indicate an intent to use controlled paraphernalia to manufacture, administer, distribute, or dispense a CDS unlawfully include the close proximity of the controlled paraphernalia to an adulterant, diluent, or equipment commonly used to illegally manufacture, administer, distribute, or dispense a CDS, including a scale, a sieve, a strainer, a measuring spoon, staples, a stapler, a glassine envelope, a gelatin capsule, procaine hydrochloride, mannitol, lactose, quinine, and a CDS.

Violators are guilty of a misdemeanor and on conviction are subject to a maximum penalty of four years imprisonment and/or a \$25,000 fine.

Chapter 26 of 2022 repealed the penalty for controlled paraphernalia involving the use or possession of marijuana for which there was a maximum penalty of one year imprisonment and/or a \$1,000 fine.

**State Revenues:** **Exhibit 2** displays the number of violations and guilty dispositions for offenses altered by the bill. Over the last two years, there were only two guilty dispositions in the District Court for these offenses. Thus, general fund revenues are not materially affected as a result of the bill's reduction of specified monetary penalties from cases heard in the District Court.

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**Exhibit 2**  
**Violations and Guilty Dispositions for**  
**Drug Paraphernalia (§ 5-619) and Controlled Paraphernalia (§ 5-620)**

	<u>Fiscal 2022</u>		<u>Fiscal 2023</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<b>District Court Offenses</b>				
<i>Criminal Law, § 5-619 (c)</i>	43	0	76	1
<i>Criminal Law, § 5-619 (d)</i>	56	1	35	0
<i>Criminal Law, § 5-620</i>	3	0	19	0
<b>Circuit Court Offenses</b>				
<i>Criminal Law, § 5-619 (c)</i>	18	1	17	1
<i>Criminal Law, § 5-619 (d)</i>	14	0	10	0
<i>Criminal Law, § 5-620</i>	1	0	28	0

Source: Maryland Judiciary; Department of Legislative Services

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**State Expenditures:** General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) are not materially affected. DPSCS reports that during fiscal 2023, the Division of Correction received two inmates for an offense related to CDS paraphernalia, and the Division of Parole and Probation opened cases for 91 individuals that had a possession of CDS paraphernalia offense.

The Office of the Public Defender (OPD) advises that the bill results in reduced caseloads for the office. (OPD provides legal representation in criminal cases where incarceration is a possibility; the bill establishes a fine only penalty for a first violation of § 5-620.) The Department of Legislative Services advises that given current OPD caseloads and resources, it is assumed that any reduction in OPD caseloads generated by the bill is redirected to other cases.

**Local Revenues:** Revenues for circuit courts are not materially affected due to the low number of cases that are distributed across multiple jurisdictions in the State. According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy received the following information for sentences in the State’s circuit courts during fiscal 2023:

- six individuals were sentenced for seven counts of a subsequent offense of use or possession with intent to use drug paraphernalia under § 5-619 of the Criminal Law Article;
- six individuals were sentenced for seven counts of a subsequent offense of delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia under § 5-619 of the Criminal Law Article; and
- one individual was sentenced for one count of possession or distribution of controlled paraphernalia under § 5-620 of the Criminal Law Article.

**Local Expenditures:** Given the low number of overall convictions for offenses altered by the bill, local incarceration expenditures are not materially affected.

The bill's alteration of the penalty for § 5-620 to a fine only offense for a first violation may have an operational effect on local law enforcement as the offense must be charged by criminal citation. However, any time savings from issuing criminal citations (rather than making an arrest) is likely redirected to other duties.

**Additional Comments:** Although the General Assembly passed similar legislation in the 2021 session (Senate Bill 420), the Governor vetoed the bill.

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### Additional Information

**Recent Prior Introductions:** Legislation with similar provisions has been introduced within the last three years. See HB 173 and SB 762 of 2023; HB 481 and SB 509 of 2022; and HB 372 and SB 420 of 2021.

**Designated Cross File:** None.

**Information Source(s):** Baltimore, Charles, and Garrett counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2024  
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