Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 24 (Delegate Hutchins)
Judiciary

Sentencing - Marijuana Possession - Medical Necessity

This bill allows a defendant, in the sentencing phase of a case involving possession of marijuana, to introduce evidence of medical necessity; the bill requires the court to consider such evidence as a mitigating factor.

Fiscal Summary

State Effect: None. The change is procedural in nature and would not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and would not directly affect governmental finances.

Small Business Effect: None.

Analysis

Current Law: Marijuana has been classified as a schedule I controlled dangerous substance under both State and federal drug prohibitions since 1970. Schedule I substances cannot be prescribed by physicians. They are considered to have the highest potential for abuse, and offenses involving these drugs are generally treated as more serious than those involving substances on the other four schedules. However, violators of prohibitions against simple possession or use of marijuana are subject to maximum misdemeanor penalties of a $1,000 fine and/or one year imprisonment. Violations of provisions relating to the manufacture, sale, or distribution of schedule I drugs are subject to more severe penalties.

House Bill 181 (Chapter 110) of 2000 added synthetic dronabinol to the list of controlled dangerous substances under schedule III. Synthetic dronabinol contains delta-9-tetrahydrocannabinol (THC), which is believed to be the principal active ingredient in marijuana. It is used to treat nausea and vomiting associated with cancer chemotherapy. It is also used to stimulate the appetite of AIDS patients. Schedule III substances must have well-documented and approved medical uses in the United States, and a lesser potential for abuse and dependence than schedule I and II substances. Unlike schedule I drugs (including marijuana), schedule III drugs can be lawfully prescribed by physicians. In 1999, the Drug Enforcement Agency transferred synthetic dronabinol from schedule II to schedule III on the federal scale.

Background: As recently as May 2001, the U.S. Supreme Court has held that there is no medical necessity exception to the federal Controlled Substances Act's prohibition against manufacturing and distributing marijuana. *U.S. v. Oakland Cannabis Buyers' Cooperative & Jones*, 532 U.S. 483, 121 S. Ct. 1711 (2001). In that case, the Oakland Cannabis Buyers' Cooperative (OCBC) was distributing marijuana to patients that had physician-approved need for marijuana for medical purposes. The OCBC was acting under a California law that created a medical exception to the state's prohibition against possession and cultivation of marijuana. The United States sought to enjoin the OCBC and its director from distributing the marijuana on the basis that they were violating federal law. The OCBC claimed that the common law necessity defense applied to its actions because it was distributing the marijuana for medically necessary reasons. The Supreme Court rejected this claim; it reasoned that the fact that marijuana is classified as a schedule I drug -- having "no currently accepted medical use" by that classification -- demonstrated that medical necessity was not contemplated by the legislature as a defense. *Id.*

According to the National Conference of State Legislatures (NCSL), notwithstanding conflicts with federal law, nearly half of the states have existing statutes authorizing the use of marijuana for certain medical purposes. Arizona and California were the first states to pass marijuana use laws in 1996. Virginia, Connecticut, Vermont, and New Hampshire are among the states that have authorized doctors to prescribe marijuana. The statutes passed in Alaska, Oregon, Nevada, and Washington exempt patients from criminal penalties when they use limited amounts of marijuana under the supervision of a physician. The District of Columbia has a medical marijuana law that is similar to that of Washington State. Colorado passed legislation in 2001 to permit medical use of marijuana for certain conditions.

State research on the compassionate use of marijuana began initially with federal backing in the 1970s. Until the early 1990s, the National Institute on Drug Abuse was the primary source for marijuana. Coinciding with anti-drug campaigns of that time, the institute withdrew as the only legal supplier of marijuana. State research efforts subsequently became dormant.

The "Medical Use of Marijuana Act" (House Resolution 912), introduced in the 106th Session of Congress, would have moved marijuana from a schedule I to a schedule II controlled dangerous substance under federal law, allowing physicians to prescribe the drug for medical uses "in a State in which marijuana may be prescribed or recommended by a physician for medical use under applicable State law." HR 912 was assigned to the Subcommittee on Health and Environment of the House Commerce Committee in March 1999 and was never reported out of subcommittee.

Bills have been introduced in the last two sessions to allow individuals with specified ailments to possess marijuana and related paraphernalia for medical use and to allow physicians to advise patients about medical use of marijuana. In the 2001 session, HB 940 and its cross-file, SB 705, were introduced for this purpose. HB 940 was referred to the Judiciary Committee and set for a hearing; however, a motion to bring it to the floor was rejected. SB 705 received an unfavorable report from the Judicial Proceedings Committee. In the 2000 session, HB 308 and HB 1340 (possession for medical use only) were each introduced for this purpose, and each received an unfavorable report from the Judiciary Committee.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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