

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 504
Judiciary

(Delegates Dembrow and Murphy)

Crimes - Medical Use of Marijuana - Affirmative Defense

This bill allows individuals who are prosecuted for possession of marijuana and claim medical necessity to assert an affirmative defense that the possession is medically necessary due to a medical condition. The bill allows individuals who assert this affirmative defense to introduce evidence, including expert testimony, on the issue of the person's medical condition and the medical necessity for using marijuana.

Fiscal Summary

State Effect: Minimal. The extent to which this bill could obviate State law enforcement arrests, District Court trials, and imprisonment in Division of Correction facilities for crimes related to the possession and use of marijuana and its paraphernalia that would otherwise occur cannot be reliably predicted. However, since most marijuana use is not believed to be due to medical problems and even the use and anticipated use of such a defense would involve a showing of an actual medical necessity, governmental costs associated with law enforcement, the Judiciary, the Public Defender, or correctional facilities are not expected to be significantly affected.

Local Effect: Minimal -- see above.

Small Business Effect: None.

Analysis

Current Law: Marijuana has been a Schedule I controlled dangerous substance under both State and federal drug prohibitions since 1970. Generally, Schedule I drugs 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. With the exception of marijuana, there is no distinction made in the law between illegal possession of any controlled dangerous substance regardless of which schedule it is on.

Violators of prohibitions against simple possession or use of marijuana are subject to maximum misdemeanor penalties of a fine of \$1,000 and/or imprisonment for one year. Violations of provisions relating to the manufacture, sale, or distribution of Schedule I drugs are subject to more severe penalties.

However, it is also important to note that felony prohibitions against the manufacture, sale, or distribution of a Schedule II narcotic drug such as cocaine subject a violator to maximum imprisonment of 20 years, while the same offense if involving marijuana subjects the violator to a maximum 5-year term.

An oral form of marijuana's principal active ingredient, delta-9-tetrahydrocannabinol (THC), called dronabinol, is approved as a treatment for nausea and vomiting related to cancer chemotherapy. Dronabinol also is used to stimulate the appetite of AIDS patients.

It is a violation of federal law to medically prescribe marijuana. Federal policy dictates that a physician who prescribes marijuana or other Schedule I drugs to a patient may lose his or her federal license to prescribe drugs and be prosecuted.

An affirmative defense, in pleading, is matter asserted by a defendant that, assuming the complaint to be true, constitutes a defense to it. In criminal cases, affirmative defenses include insanity, intoxication, self-defense, automatism, coercion, alibi, and duress.

Background: In all, 23 states have some current statute relating to the medical use of marijuana. However, there are only nine states that currently have active state medical marijuana programs and laws: Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington. Since 1999, Alaska patients not enrolled in the state registry for medical marijuana use are no longer able to argue the affirmative defense of medical necessity if they are arrested on marijuana charges. In Oregon, patients must have been diagnosed by their physicians at least 12 months prior to an arrest in order to present the affirmative defense.

The District of Columbia had a medical marijuana use initiative on the ballot in November, 1998, but a Congressional amendment on the appropriations bill for the District kept the results of the vote from being counted or announced by the Board of Elections until recently. A federal judge ordered the results to be counted, certified, and released. The initiative was approved by 69% of the voters.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the State's Attorneys' Coordinator, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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