

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 502

(Senator Hollinger, *et al.*)

Judicial Proceedings and Education, Health, and Environmental Affairs

Judiciary

Darrell Putman Compassionate Use Act

This bill allows a person charged with possession or use of marijuana or related paraphernalia to introduce evidence related to medical necessity and, if the person is convicted and the court finds there was medical necessity, limits the maximum punishment to a fine of \$100.

Fiscal Summary

State Effect: The extent to which this bill could alter the outcome of 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. It is assumed, however, that the bill's provisions would not have a significant impact on State operations or finances.

Local Effect: The extent to which this bill could alter the outcome of circuit court trials, and imprisonment in local facilities, for crimes related to the possession and use of marijuana and its paraphernalia that would otherwise occur cannot be reliably predicted. It is assumed that local operations or finances would not be significantly affected.

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 federal 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 five-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: Darrell Putman was a former Army Green Beret and conservative activist, businessman, farmer, and Howard County Farm Bureau director who, in the final months before his death in December 1999, turned to marijuana for medicinal purposes to treat his cancer. In the process, Mr. Putman became an advocate for legalizing marijuana for medicinal use.

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.

The District of Columbia had a medical marijuana use initiative on the ballot in November 1998. The initiative was approved by 69% of the voters. Virginia,

Connecticut, Vermont, and New Hampshire are among the states that have authorized doctors to prescribe marijuana.

All of these laws are now dormant because they conflict with federal law, or are reliant on the federal government to supply the state with marijuana, and federal officials are no longer supplying marijuana to states.

The statutes passed in Alaska, Oregon, Nevada, and Washington exempt patients from criminal penalties when they use marijuana under the supervision of a physician. The laws passed in Alaska and Oregon legalize the possession of specified amounts of medical marijuana to patients enrolled in a state identification program. Patients not enrolled in the program, but who possess marijuana under their doctor's supervision, may raise an affirmative defense of medical necessity against state criminal marijuana charges.

Washington state's medical marijuana law allows patients to possess up to a 60-day supply of marijuana if they have authorization from their physician. The medical marijuana law for the District of Columbia is similar to that of Washington State.

Additional Information

Prior Introductions: HB 1222 of 2002 passed in the House but received an unfavorable report in the Senate Judicial Proceedings Committee. Another similar bill, HB 940 of 2001, had a hearing before the House Judiciary Committee. After a motion from the floor to bring the bill to the floor failed, the bill had no further action taken on it.

Cross File: HB 702 (Delegate Morhaim, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

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