

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1458

(Delegate Oaks, *et al.*)

Judiciary

Maryland Compassionate Use Act

This bill provides that it is a defense to the crime of possessing, administering, obtaining, or attempting to obtain a controlled dangerous substance that the defendant has been diagnosed with a “terminal or debilitating medical condition” and the use of medical marijuana may alleviate the defendant’s condition or symptoms. The same defense is applied to procuring or attempting to procure a controlled dangerous substance, or using or possessing with the intent to use drug paraphernalia.

Fiscal Summary

State Effect: Although this bill would lead to fewer prosecutions for possession or use of marijuana, because Chapter 442 of 2003 already provides for a court finding of medical necessity with a maximum punishment of a \$100 fine, this bill is not expected to significantly affect State operations or finances. Any decrease in fine revenue to the District Court is not expected to be significant.

Local Effect: Although this bill would lead to fewer prosecutions for possession or use of marijuana, because Chapter 442 of 2003 already provides for a court finding of medical necessity with a maximum punishment of a \$100 fine, this bill is not expected to significantly affect the operations or finances of local government.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the provisions of Chapter 442 of 2003 which 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.

A “physician” may not be subjected to arrest, criminal prosecution, or disciplinary action by the State Board of Physicians, or be denied any right or privilege for counseling patients on the medical use of marijuana.

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.

Chapter 442 of 2003 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.

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.

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.

The U.S. Drug Enforcement Administration (DEA) continues to oppose state medical marijuana enactments. According to the DEA, "marijuana is a highly addictive drug and has no medical value."

Additional Information

Prior Introductions: None.

Cross File: SB 816 (Senator Gladden) – Judicial Proceedings.

Information Source(s): Judiciary (District Court), Office of the Public Defender, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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