

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 418
Judiciary

(Delegate Benson)

Crimes - Prohibition of Sale of Kits, Pipes, Cigarette Rolling Papers, and Cigar Leaf Wrappers - County Ordinances

This bill authorizes the legislative body of a county to enact an ordinance on local law that prohibits a person from selling cocaine freebase kits, glass or ceramic tubes of a specified size, cigarette rolling papers, and cigar leaf wrappers. A county may impose criminal or civil penalties for a violation of the ordinance or law that do not exceed 180 days imprisonment and/or a \$1,000 fine for a first offense, and two years imprisonment and/or a \$5,000 fine for each subsequent offense.

The bill also establishes that, under a county ordinance, a commercial retail establishment may sell cigarette rolling papers and cigar leaf wrappers if the establishment derives at least 25% of its total annual revenues from the sale of tobacco products and sells loose tobacco for self-rolled cigarettes or cigars. A commercial wholesale establishment may sell these items to these retail establishments.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures to the extent that a local ordinance is enacted.

Local Effect: Potential minimal increase in local revenues and expenditures to the extent that a local ordinance is enacted.

Small Business Effect: Minimal.

Analysis

Current Law: Unless authorized, a person may not deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used for specified banned purposes, including to introduce a controlled dangerous substance into the human body. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$500 fine for a first violation and imprisonment for two years and/or a fine of \$2,000 for each subsequent violation. If the person is a first-time offender who is age 18 or older with a prior conviction for delivering drug paraphernalia to a minor who is at least three years younger, the person is subject to maximum penalties of imprisonment for two years and/or a fine of \$2,000. (*See Criminal Law Article, § 5-619.*)

Regarding drug paraphernalia related to marijuana, the defendant may introduce and the court must consider as a mitigating factor any evidence of medical necessity. If the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction, the maximum penalty that the court may impose is a \$100 fine.

If a person who is at least age 18 violates the prohibition against the sale or manufacture of drug paraphernalia by delivering the paraphernalia to a minor who is at least three years younger, the person is guilty of a separate misdemeanor and subject to maximum penalties of imprisonment for eight years and/or a fine of \$15,000.

A person may not knowingly (or with reason to know) advertise to promote the sale or delivery of drug paraphernalia. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$500 fine for a first violation and imprisonment for two years and/or a fine of \$2,000 for each subsequent violation. Also, the distribution of “tobacco paraphernalia” to a minor is prohibited. Penalties for prohibited distributions of tobacco products apply. (*See Criminal Law Article, §§ 10-101 and 10-107.*)

A person who distributes tobacco products for commercial purposes, including a person licensed under the Business Regulation Article, may not distribute to a minor a tobacco product, a cigarette rolling paper, or a coupon redeemable for a tobacco product. A person other than a commercial distributor may not purchase for or sell a tobacco product to a minor or distribute cigarette rolling papers to a minor.

These prohibitions do not apply to the distribution of a tobacco product to a minor who is acting solely as the agent of the minor’s employer if the employer distributes tobacco products for commercial purposes.

A violator is guilty of a misdemeanor and subject to the following penalties:

- \$300 for a first offense;
- \$1,000 for a second offense occurring within two years after the first offense; and
- \$3,000 for each subsequent violation occurring within two years after the preceding offense.

In a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification that positively identified the purchaser or recipient as at least 18 years of age.

The prohibitions do not apply to the distribution of a coupon that is redeemable for a tobacco product, if the coupon is: (1) contained in a newspaper, magazine, or other type of publication in which the coupon is incidental to the primary purpose of the publication; or (2) sent through the mail.

State Revenues: Upon the enactment of a county ordinance, general fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: Upon the enactment of a county ordinance, general fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these offenses, if deemed offenses by a county, is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate

depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Upon the enactment of a county ordinance, revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Upon the enactment of a county ordinance, expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: HB 1317 of 2008 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Carroll and Harford counties, Judiciary (Maryland District Court), Department of Public Safety and Correctional Services, Department of Legislative Services

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