

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1051

(Delegate Benson, *et al.*)

Judiciary

Judicial Proceedings

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Crimes - Prohibition on Sale of Drug Paraphernalia to a Minor - Local Law

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This bill authorizes a county or municipal corporation to adopt an ordinance or local law prohibiting a person from selling drug paraphernalia to any person younger than the age of 18. The local law or ordinance may contain criminal or civil penalties, not to exceed 180 days imprisonment and/or a \$1,000 fine for a first violation and two years imprisonment and/or a \$5,000 fine for subsequent violations.

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Fiscal Summary

**State Effect:** Potential minimal increase in State revenues and expenditures due to the bill's penalties.

**Local Effect:** Potential minimal increase in local revenues and expenditures due to the bill's penalties.

**Small Business Effect:** None.

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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 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.

If a person age 18 or older is a first-time offender with respect to the “standard” drug paraphernalia prohibition but has 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.

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.

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.

**State Fiscal Effect:** Since the bill allows counties or municipal corporations to enact criminal prohibitions on activity already prohibited under State law under certain circumstances, this fiscal estimate assumes that (1) a prosecutor will only opt to charge a defendant with a violation of the local law or ordinance if it offers a stiffer penalty than State law prescribes; and (2) counties and municipal corporations that choose to implement a local law or ordinance will opt for the maximum allowable penalties. A defendant whose actions are prohibited by State and local law or ordinance can only be charged with a violation of either the State law or the local law or ordinance.

**State Revenues:** General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this crime due to local laws or ordinances 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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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:** Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Charles, Frederick, Montgomery, and Somerset counties; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Office of the Attorney General; Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2010  
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