

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 579 (Senators Zirkin and Brinkley)
Judicial Proceedings

Criminal Law - Drug Schedules - Marijuana

This bill removes marijuana from the list of Schedule I controlled dangerous substances and adds a material, compound, mixture, or preparation containing marijuana to the list of Schedule II controlled dangerous substances.

Fiscal Summary

State Effect: None. Marijuana will remain illegal regardless of its classification as a Schedule I or Schedule II substance. Thus, the bill is not expected to materially affect State finances.

Local Effect: None. The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedule I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana.

When the substance is marijuana, the maximum criminal penalties for an illegal possession or use violation are one-year imprisonment and/or a \$1,000 fine. A person charged with possession or use of marijuana or related paraphernalia may introduce evidence related to medical necessity and, if the person is convicted and the court finds

there was medical necessity, the maximum punishment is limited to a fine of \$100. Marijuana has been a Schedule I controlled dangerous substance under both State and federal drug prohibitions since 1970. No hallucinogens are listed in statute under Schedule II.

For specified primary crimes involving controlled dangerous substances and paraphernalia, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance;
- manufacture a controlled dangerous substance or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with the intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with the intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions is subject to a mandatory minimum nonsuspendable, nonparolable sentence of two years imprisonment.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A second-time offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator who is convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug and meets certain confinement and conviction prerequisites, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time

offender or conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance is specified other drugs – including PCP, LSD, and MDMA – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A second-time offender or conspirator convicted again of those same primary crimes involving the specified other drugs, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted offender or a conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

A volume dealer, as defined by the amount of specified substances, is subject to a maximum fine of \$100,000 and a mandatory minimum nonsuspendable, nonparolable sentence of five years. (*See* Criminal Law Article §§ 5-602 through 5-605, 5-607 through 5-609, and 5-612.)

Federal policy dictates that a physician who prescribes Schedule I drugs to a patient may lose his or her federal license to prescribe drugs and be prosecuted. In Maryland, an authorized provider may conduct research in the State with a controlled dangerous substance listed in Schedule I if the authorized provider is registered under federal law to conduct research with a Schedule I substance and gives evidence of the registration to the Department of Health and Mental Hygiene.

Background: According to the federal Controlled Substances Act classifying a drug as Schedule I or II requires that specific findings be made. **Exhibit 1** lists the findings that must be made for a drug to be classified as Schedule I or II.

Exhibit 1
Findings for Classification as a Schedule I or II Substance Under the Federal Controlled Substances Act

Schedule I

- The substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Schedule II

- The substance has a high potential for abuse.
- The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
- Abuse of the drug or other substance may lead to severe psychological or physical dependence.

Local Fiscal Effect: Caroline, Howard, and Montgomery counties advise that the bill has no impact on county finances. Prince George's County indicates that the county may incur considerable costs to redraft policy and procedures, training, and employee testing. Legislative Services disagrees with this assessment, since all of these activities, to the extent that they are necessary, can be included in an annual review of internal policies and procedures.

Additional Information

Prior Introductions: None.

Cross File: HB 713 (Delegate Morhaim, *et al.*) - Judiciary.

Information Source(s): Caroline, Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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