

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 606
Judiciary

(Delegate Anderson, *et al.*)

Criminal Law - Marijuana - Use or Possession of Small Amount

This bill classifies the use or possession of less than 28.5 grams (approximately 1 ounce) of marijuana as a civil offense, subject to a fine of up to \$100. A police officer authorized to make arrests or a forest or park warden must issue a citation if he/she has probable cause to believe that the offense has or is being committed. The bill contains requirements for the contents of the civil citation that must be issued in these cases, as well as procedural requirements for the adjudication of the offense in the District Court. An individual younger than age 18 charged with this civil offense is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation. Current criminal penalties still apply to the use or possession of 28.5 grams or more of marijuana.

Fiscal Summary

State Effect: Decrease in general fund revenues for the Judiciary from District Court fines and court costs under the bill. Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services due to fewer incarcerations in Baltimore City.

Local Effect: Local expenditures for detention facilities decrease due to the elimination of an incarceration penalty under the bill. Circuit court revenues and expenditures decrease due to a reduction in the number of cases and fines.

Small Business Effect: None.

Analysis

Current Law: The use or possession of marijuana is a misdemeanor, with maximum criminal penalties of one-year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine.

Background: In 2010, California enacted legislation making the use or possession of 28.5 grams or less of marijuana a civil infraction punishable by a fine of up to \$100.

According to the *2009 Uniform Crime Report*, there were 23,602 arrests in the state for possession of marijuana. The report does not distinguish the arrests by the amount of marijuana possessed.

State Revenues: General fund revenues decrease as a result of reduced court costs and monetary penalties under the bill. The amount of the revenue decrease cannot be reliably determined at this time. The District Court currently charges \$22.50 in court costs, compared to \$5 under the bill. The maximum fine for marijuana possession under current law is \$1,000, compared to \$100 under the bill.

State Expenditures: General fund expenditures decrease minimally due to fewer incarcerations in Baltimore City. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Judiciary advises that the bill is not likely to have a significant fiscal or operational impact since it shifts the classification of these cases from misdemeanors to citations. Regardless of the classification, the District Court will still handle these cases. However, given the collateral consequences of a criminal conviction compared to a civil offense/citation, citation cases may not be litigated as heavily as misdemeanor cases and may consume less court time. To the extent that this is the case, District Court workloads may decrease.

Local Fiscal Effect: Local expenditures for detention facilities decrease due to the elimination of an incarceration penalty in these types of cases. Circuit court revenues and expenditures decrease minimally due to the elimination of these types of marijuana possession cases from the circuit courts.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

A defendant is typically entitled to a jury trial if the defendant is charged with an offense that permits confinement for more than 90 days. Fine revenue from cases heard in the circuit courts go to the appropriate county. According to the Maryland State Commission on Criminal Sentencing Policy, there were 385 convictions in the circuit courts for possession of marijuana in fiscal 2010. It is unclear how many of these cases involved less than 28.5 grams of marijuana.

Workloads for local law enforcement agencies may decrease to the extent that the citation process involves less administrative time than an arrest.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Howard, Montgomery, and Prince George's counties; Commission on Criminal Sentencing Policy; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; University System of Maryland; Department of Legislative Services

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mc/kdm

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