

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 297

(Senators Zirkin and Kittleman)

Judicial Proceedings

Judiciary

Criminal Law - Possession of Marijuana - De Minimis Quantity

This bill alters the possession of less than 10 grams of marijuana from a criminal offense to a civil offense punishable by a maximum fine of \$100.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues to the extent that the decriminalization of this offense increases the number of or amount of fines issued in these cases. Minimal decrease in general fund expenditures for incarcerations in Baltimore City due to the bill's elimination of an incarceration penalty in these cases.

Local Effect: Minimal decrease in local expenditures due to the bill's elimination of an incarceration penalty in these cases. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500. The law went into effect on October 1, 2012.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is

convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

Pursuant to Chapters 504 and 505 of 2012 (SB 422 and HB 261), as of January 1, 2013, a police officer must issue a citation for possession of marijuana if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

State Revenues: General fund revenues may increase significantly to the extent that the bill's decriminalization of *de minimis* possession of marijuana increases the number or amount of fines imposed in these cases.

According to the Judiciary, there were 31,854 possession of marijuana violations in the District Court during fiscal 2012.

However, as previously noted, the possession of less than 10 grams of marijuana became a unique offense on October 1, 2012 (fiscal 2013). Based on information provided by the Judiciary, there were 1,508 violations in the District Court for this offense between October 1, 2012, and February 25, 2013. Of these violations, 280 (18.6%) resulted in fines, with a median fine of \$100 and an average fine of \$198. Most of the fines were \$100 or less.

Should the decriminalization of this offense result in judges opting to impose more fines (or higher fines) as opposed to other alternatives available in these cases, general fund revenues may increase significantly.

State Expenditures: General fund expenditures decrease minimally as a result of the bill's elimination of the incarceration penalty for possession of less than 10 grams of marijuana. 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. Of the 1,508 violations mentioned above, only 111 (7.4%) resulted in the imposition of a jail term, with a median jail term of 75 days and an average jail term of 59.6 days.

The Office of the Public Defender (OPD) advises that the bill's decriminalization of possession of a *de minimis* amount of marijuana will significantly reduce OPD caseloads. However, OPD did not provide data on the number of cases affected by the bill. Given the caseloads and resources of OPD, it is unlikely that the bill has a material effect on OPD expenditures, and it is assumed that any OPD resources spent on these cases will simply be shifted to other OPD cases and duties.

Local Expenditures: Local expenditures decrease minimally as a result of the bill's elimination of the incarceration penalty for possession of less than 10 grams of marijuana. 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 approximately \$60 to \$160 per inmate in recent years.

The State's Attorneys' Association advises that the bill does not have a fiscal impact on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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