

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 889 (Delegate Impallaria, *et al.*)
Judiciary and Health and Government
Operations

Marijuana Laws - Full Disclosure of Legal, Employment, and Health Risks

This bill requires the Office of the Attorney General (OAG) to establish a public notification system and notify the public of certain risks at least 90 days before the implementation of any law that reduces the penalties for or legalizes the use of marijuana.

Fiscal Summary

State Effect: Depending on the breadth and magnitude of the required public notification system, general fund expenditures increase by at least \$250,000 in any year (or the preceding year) in which a bill triggering the notice requirement is implemented. The timing of any such impact depends on when, or if, a separate bill that reduces penalties for or legalizes the use of marijuana passes. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The public notification system must notify the public of risks related to the changes in the law that reduce penalties for or legalize marijuana. The system must include the creation of a website as well as public service announcements for radio, television, newspapers, and billboards. The notice must state that:

- Regardless of the change in Maryland law, a person is still subject to arrest for activity relating to marijuana by the federal government, especially if the activity

occurs on federal property or in federal facilities, such as military bases, federal offices, federal parks, airports, and marine terminals.

- Testing positive for marijuana use can result in job loss, especially if the job requires State licensing such as those in the medical and transportation industries.
- It will still be unlawful for banks and businesses to do business with someone who is receiving proceeds related to marijuana.
- Filing a federal income tax return involving the receipt of proceeds related to marijuana can lead to prosecution for profiting from a federally illegal business, while failure to file an income tax return can also lead to prosecution.
- There are health risks associated with smoking marijuana.

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

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.

In general, a defendant in possession of 10 grams or more 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. Pursuant to Chapters 193 and 194 of 2012, 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 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 61 and 62 of 2013, as of June 1, 2013, an affirmative defense is available to defendants for the possession of

marijuana if the defendant possessed marijuana because the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition.

Pursuant to Chapters 504 and 505 of 2012, 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.

A person who distributes or dispenses marijuana or possesses marijuana in sufficient quantities to reasonably indicate an intent to distribute or dispense marijuana is guilty of a felony and subject to imprisonment for up to five years and/or a \$15,000 maximum fine. Repeat offenders are subject to the same maximum penalties, but face a mandatory minimum sentence of two years. A person who manufactures, distributes, dispenses, or possesses 50 pounds or more of marijuana in the aggregate during a 90-day period is considered a volume dealer and faces a mandatory minimum sentence of five years and a maximum fine of \$100,000.

Background: During the November 2012 elections, voters in Colorado and Washington approved ballot measures to decriminalize marijuana use and possession and create a state-regulated marijuana market. Colorado's Amendment 64 went into effect on January 1, 2014, and allows a person older than age 21 to purchase up to one ounce of marijuana from licensed retailers. Washington's Initiative 502 decriminalizes possession of up to one ounce of marijuana by anyone who is at least age 21, as long as the marijuana was obtained from a licensed retailer. Marijuana or cannabis-infused goods are also authorized within certain parameters.

The U.S. Department of Justice (DOJ) announced in August 2013 that it would not intervene in Colorado and Washington's implementation of Amendment 64 and Initiative 502, and, according to media reports, in February 2014 the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve "legitimate marijuana businesses." Although the federal government appears to have relaxed its position on the implementation on marijuana laws, marijuana remains a controlled dangerous substance under federal law, and residents of Colorado and Washington are not immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against Colorado and Washington at some point in the future.

States are not obligated to enforce federal marijuana laws, and the federal government cannot require Colorado or Washington to recriminalize conduct that has been decriminalized.

State Fiscal Effect: Should a bill reducing the penalties for or legalizing the use of marijuana pass, general fund expenditures increase by at least \$250,000 in the fiscal year that the bill passes or in the preceding year, depending on the other bill's effective date. OAG did not provide a specific estimate but advises that, based on similar recent public notice systems, such a system likely costs at least \$250,000 for a very basic public notice system in newspapers, on television and radio, and on billboards. Depending on the length and breadth of the system, costs could be significantly higher.

The Department of Legislative Services notes that several bills under consideration in the 2014 legislative session would, if adopted, trigger the public notice provisions of this bill. However, as these bills all have October 1, 2014 effective dates, like this bill, it is unclear how OAG could meet the 90-day pre-implementation deadline set by the bill. Nevertheless, this estimate assumes it is possible to do so.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Department of Legislative Services

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mc/ljm

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