

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 495
 Judiciary

(Delegate Dumais)

Judicial Proceedings

Criminal Law - Drug Paraphernalia Possession of Less Than 10 Grams of Marijuana - Code Violation

This bill clarifies that a person who violates the prohibition against possessing a controlled dangerous substance involving marijuana in the amount of 10 grams or more is guilty of the misdemeanor of possession of marijuana and establishes additional procedures for prosecution of civil cases for possession of less than 10 grams of marijuana. The bill also applies, contingent on the passage of House Bill 105 of 2015, the new procedures for prosecution of possession of less than 10 grams of marijuana to the prosecution of the use or possession with intent to use or distribute drug or controlled paraphernalia (hereinafter referred to as “paraphernalia”) involving the use or possession of less than 10 grams of marijuana.

Fiscal Summary

State Effect: General fund expenditures increase by up to \$115,200 in FY 2016 only to modify the Judiciary’s Criminal Justice Information System (CJIS) to comply with the bill’s shielding provisions, contingent on the passage of House Bill 105. Costs to modify CJIS are likely lower, but only marginally so, if the contingency is not met. The bill may also result in efficiencies for cases heard in the District Court due to the procedural clarifications. General fund revenues decrease minimally from reduced court fees for cases involving the use or possession of less than 10 grams of marijuana. If the bill’s contingency is met, the cumulative impact from reduced court fees may be larger, but is still anticipated to be minimal.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$115,200	\$0	\$0	\$0	\$0
Net Effect	(\$115,200)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Minimal, although the bill may result in efficiencies or reduced litigation costs.

Analysis

Bill Summary: A court that orders a person to a drug education program or substance abuse assessment or treatment may hold the case sub *curia* (as a matter of law), pending receipt of proof of completion of the program, assessment, or treatment, subject to discretionary modification of sentence or sanctions for enforcement purposes.

If a defendant, other than a defendant younger than age 21, or a defendant who has been found guilty at least twice previously, does not prepay the fine within 30 days, the court must schedule the case for trial and summon the defendant to appear. If the defendant fails to appear in response to this summons, the court must impose the maximum fine against the defendant.

If a defendant who is younger than age 21, or who has been found guilty at least twice previously, fails to respond to a summons, a bench warrant may be issued for his/her arrest, and he/she is guilty of a misdemeanor and subject to a maximum of 90 days imprisonment and/or a \$500 fine.

The issuing jurisdiction must forward a copy of the citation and a request for trial to the District Court in the district having venue.

In any proceeding for a code violation involving the use or possession of less than 10 grams of marijuana (1) the State has the burden to prove a defendant guilty by a preponderance of the evidence; (2) the court must apply the evidentiary standards as prescribed by law for the trial of a criminal case; (3) the court must ensure that a defendant receives a copy of the charges against him/her and he/she understands those charges; (4) the defendant is entitled to cross-examine all witnesses who appear against the defendant, to produce evidence or witnesses on behalf of the defendant, and to testify on the defendant's own behalf, if he/she chooses to do so; (5) the defendant is entitled to representation by counsel of the defendant's choice at his/her expense; and (6) the defendant may enter a plea of guilty or not guilty, and the verdict of the case must be guilty of a code violation, not guilty of a code violation, or probation before judgment.

A defendant is liable for the costs of the proceedings in the District Court. The court costs are \$5.

The State's Attorney for any county may prosecute a code violation for possession of less than 10 grams of marijuana in the same manner as the prosecution of a violation of the criminal laws Maryland. The States Attorney may also enter a *nolle prosequi* or place the case on the stet docket, and exercise authority in the same manner as prescribed by law for violations of the criminal laws of the State.

The bill specifies that a citation involving the use or possession of less than 10 grams of marijuana and the official court record of the citation are not subject to public inspection and may not be included in the Maryland Judiciary's website *if* (1) the defendant pled guilty or was found guilty of the charge and fully paid the imposed fine and costs; (2) the defendant was not found guilty of the charge; or (3) the charge was dismissed.

The bill changes references from "violation" to "finding of guilt" in existing penalty provisions. The bill also specifies that a citation issued for a violation involving the use or possession of less than 10 grams of marijuana must contain the name, address, and *date of birth* of the person charged.

The bill also applies the procedures for prosecution of possession of less than 10 grams of marijuana that are established under the bill to the prosecution of the use or possession with intent to use or distribute paraphernalia involving the use or possession of less than 10 grams of marijuana. However, the paraphernalia-related provisions of the bill are contingent on the passage of House Bill 105 of 2015.

House Bill 105 reclassifies the use or possession with intent to use or distribute paraphernalia involving the use or possession of less than 10 grams of marijuana from a criminal offense to a civil offense. Under the bill, violators are subject to the range of fines and penalties established under law for the use or possession of less than 10 grams of marijuana, including separate procedures and consequences for an individual younger than age 18 who is charged with the civil offense. Under House Bill 105, existing criminal penalties continue to apply to the use or possession with intent to use or distribute drug or controlled paraphernalia involving the use or possession of 10 grams or more of 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 State 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 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 Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial upon issuance of a citation. Additionally, the court must order a person who (1) commits a third or subsequent violation or (2) is younger than age 21 and commits a violation, to attend a drug education program approved by the Department of Health and Mental Hygiene and refer the person to an assessment for a substance abuse disorder. After the assessment, the court must refer the person to substance abuse treatment, if necessary.

A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana and for related paraphernalia violations (including for use or possession of less than 10 grams). 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.

Background: According to the Judiciary, from October 1, 2012, to September 30, 2014 (during the time when this was a unique criminal offense), there were 23,548 charges for possessing less than 10 grams of marijuana, and 3,979 convictions from cases heard in the District Court.

State Revenues: General fund revenues decrease minimally from reduced court costs for violations for possession of less than 10 grams of marijuana, which are reduced from \$22.50 to \$5 under the bill. The Judiciary advises that from October 1, 2014, to January 31, 2015, there were approximately 38 court cases with fees assessed, resulting in revenues of \$855. The Judiciary advises that for cases under the Criminal Law Article, court costs are only assessed when the defendant appears in court. Thus, if a defendant is authorized to pay the fine and does so, no court costs are assessed.

If the bill's contingency is met, the cumulative reduction in general fund revenues from reduced court fees may be larger. The Administrative Office of the Courts advises that there were more than 30,000 violations of controlled dangerous substance prohibitions relating to drug and controlled paraphernalia in 2014. It is unknown how many of these paraphernalia violations involved marijuana and how many of the violations and

convictions, if any, relate to the possession of less than 10 grams of marijuana. Further, under the provisions of House Bill 105, a defendant is authorized to prepay the fine, thus avoiding court costs altogether. However, the Department of Legislative Services advises that the overall impact of the reduction in general fund revenues is likely minimal.

State Expenditures: General fund expenditures for the Judiciary increase by \$115,194 in fiscal 2016 only, contingent on the passage of House Bill 105. This estimate reflects the one-time cost to modify CJIS to comply with the bill's shielding requirement for cases involving the use or possession of less than 10 grams of marijuana, and the contingent portion of the bill involving the use or possession with intent to use or distribute paraphernalia involving the use or possession of less than 10 grams of marijuana.

If the bill's contingency is not met, costs to modify CJIS to comply with the bill's shielding requirement are likely lower. Although the Judiciary was unable to provide a specific estimate of the bill's costs if the bill's contingency is not met, expenditures are likely only marginally less.

The Judiciary also advises that penalty deposit schedules must be revised under the bill. However, the Department of Legislative Services advises that the District Court can implement this change during the annual reprinting of these citations using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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