

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 456

(Senators Zirkin and Raskin)

Judicial Proceedings

Judiciary

Criminal Law - Marijuana and Drug Paraphernalia - Medical Necessity

This bill requires the court to dismiss a criminal charge, in a prosecution for possession of marijuana or for possession of paraphernalia related to marijuana, if the court finds that a person used or possessed marijuana or marijuana paraphernalia because of medical necessity.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to the bill's repeal of the \$100 maximum fine and the requirement that the court dismiss a criminal charge if a court finds that a person used or possessed marijuana or paraphernalia because of medical necessity. Expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

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 or related paraphernalia if the defendant possessed marijuana or paraphernalia because the defendant was a caregiver and the marijuana or paraphernalia was intended for medical use by an individual with a debilitating medical condition. If the court finds that a person used or possessed marijuana because of medical necessity, on conviction the maximum penalty that the court may impose is a fine not exceeding \$100.

Chapter 403 of 2013 established, and Chapter 256 of 2014 expanded, the Natalie M. LaPrade Medical Marijuana Commission and Fund to implement and administer a medical marijuana program in Maryland. The program allows for licensing and registration of participating academic medical centers, growers, dispensaries, and grower- and dispenser-agents. The program establishes a framework to certify physicians and qualifying patients to provide qualifying patients with medical marijuana legally under State law. The commission proposed regulations in late 2014, but the program is not yet operational. Although medical marijuana may be ready for distribution by the end of fiscal 2016, it is more likely that medical marijuana will be available for patients the following year.

Background: According to the National Conference of State Legislatures, 23 states, the District of Columbia, and Guam now allow for comprehensive public medical marijuana

and cannabis programs. Further, recently approved efforts in 11 states allow for the use of “low THC, high cannabidiol (or CBD)” products for medical reasons in limited situations or as a legal defense.

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), Office of the Public Defender, National Conference of State Legislatures, Department of Legislative Services

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