

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1423
Judiciary

(Delegate Impallaria)

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 likely 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 legalizes 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; and
- there are health risks associated with smoking marijuana.

Current Law: Controlled dangerous substances (CDS) 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.

No distinction is made in State law regarding the illegal possession of any CDS, 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 commits a third or subsequent violation or is younger than age 21 and commits any 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. An affirmative defense is available to defendants for use or possession of marijuana 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. Additionally, pursuant to Chapter 351 of 2015, as of October 1, 2015, if a court finds that the defendant

used or possessed marijuana because of medical necessity, the court must dismiss the charge.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. However, the law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

Background: According to the National Conference of State Legislatures, 20 states and the District of Columbia have decriminalized small amounts of marijuana. Additionally, in 2014, voters in Alaska, the District of Columbia, and Oregon joined Colorado and Washington by legalizing limited amounts of marijuana for adult recreational use. Alaska's Measure 2 authorizes the legalization, taxation, and regulation of marijuana for individuals age 21 or older. Oregon's Measure 91 allows for the possession, licensing, taxation, and regulation of marijuana by adults while maintaining medical marijuana laws. Voters in the District of Columbia approved Initiative 71 to make it lawful for individuals age 21 or older to possess marijuana, but congressional proposals to limit or repeal the initiative are under consideration.

Federal Law: Although possession of marijuana remains illegal at the federal level, the U.S. Department of Justice (DOJ) announced in August 2013 that it would focus on eight enforcement priorities when enforcing marijuana provisions of the Controlled Dangerous Substances Act. The guidelines also state that, although the department expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. Further, in 2014 and 2015, the U.S. Congress passed federal spending measures that contained provisions to effectively terminate federal enforcement against legal *medical* marijuana operations by prohibiting federal spending on actions that impede state *medical* marijuana laws.

In February 2014, the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve "legitimate marijuana businesses." The February 2014 guidelines reiterated that the provisions of money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. Further, the guidelines state that financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under these provisions. However, the guidelines also establish that prosecutors should apply the eight enforcement priorities listed in the August 2013 guidance document when deciding which cases to prosecute. Thus, although the federal government appears to have relaxed its position on the enforcement of marijuana laws, marijuana remains a CDS under federal law, and residents of states that have legalized marijuana are not

immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against states that have legalized marijuana at some point in the future.

States are not obligated to enforce federal marijuana laws, and the federal government may not require states 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 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 at least three bills under consideration in the 2016 legislative session would, if adopted, trigger the public notice provisions of this bill. However, two of these other bills have an October 1, 2016 effective date, like this bill; therefore, 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: HB 433 of 2015 received a hearing in the House Judiciary Committee, but no further action was taken. HB 889 of 2014 also received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General, National Conference of State Legislatures, U.S. Department of Justice, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2016
kb/ljm

Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510