

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 334
Judiciary

(Delegates Valentino-Smith and B. Wilson)

Criminal Law - Marijuana Consumption in Public Place - Prohibition

This bill prohibits a person from smoking or otherwise consuming marijuana in a “public place” or in a vehicle that is on a “highway,” in a parking lot, or otherwise in an area accessible to the public. The bill also prohibits a person from being impaired due to smoking or otherwise consuming marijuana and endangering the safety of the person, another person, or property. The bill defines “smoke” as to inhale, ingest, or otherwise introduce marijuana into the human body or to hold or carry a lighted roll of paper or other lighted smoking equipment filled with marijuana. A person who violates the bill’s provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to 60 days and/or a fine of up to \$500.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues due to the bill’s monetary penalty provision. Minimal increase in general fund expenditures due to the bill’s incarceration penalty provision. Enforcement can be handled with existing resources.

Local Effect: Minimal increase in expenditures due to the bill’s incarceration penalty provision. Enforcement can likely be handled with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: “Highway” has the same meaning as in Title 8 of the Transportation Article. “Public place” has the same meaning as in Title 10 of the Criminal Law Article.

Current Law: Under Title 8 of the Transportation Article, “highway” includes rights of way, shoulders, bridges, tunnels, overpasses, underpasses, and any other structures forming an integral part of a street, road, or highway.

Under Title 10 of the Criminal Law Article, “public place” means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose. The definition includes restaurants, shops, and taverns; public buildings, parking lots, streets, and parks; common areas of multidwelling units; hotels and motels; amusement parks, theaters, swimming pools, and sports arenas; educational institutions; places of public worship; bus terminals and railway stations; and other grounds and structures that are part of a public place.

Marijuana Use and Possession: 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 (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. 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.

Driving While Impaired: Under § 21-902 of the Transportation Article a person may not drive or attempt to drive any vehicle while impaired by a CDS. A person may not commit this offense while transporting a minor.

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the Motor Vehicle Administration. A person convicted of driving while impaired by a CDS is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory drug abuse assessment. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participation in a certified or court-approved drug treatment program.

If an offender is transporting a minor at the time of the drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

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 years 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 21 years of age or older to possess marijuana, but congressional proposals to limit or repeal the initiative are under consideration.

Colorado and Washington's recreational marijuana laws establish five nanograms of tetrahydrocannabinol per milliliter of blood as the standard for driving under the influence of marijuana. Oregon, Alaska, and the District of Columbia have not specified an amount that establishes driving while impaired by marijuana, but existing laws regarding impaired driving still apply. Smoking or consuming marijuana in public places remains illegal in all

of these jurisdictions. The bill is modeled after the District of Columbia's law regarding the consumption of marijuana in a public space and marijuana-induced impairment and adopts the law's penalties and definition of "smoke" (D.C. Code § 48-911.01).

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.

According to the Judiciary, in fiscal 2015, there were 6,956 criminal violations for possessing or administering a CDS involving marijuana and 75 criminal violations for possessing or distributing controlled paraphernalia under circumstances that indicated an intention to use the paraphernalia to illegally administer CDS involving marijuana. Additionally, in calendar 2015, there were 10,345 civil citations for possession of less than 10 grams of marijuana.

State Revenues: General fund revenues may increase significantly as a result of the bill's monetary penalty provision from cases heard in the District Court.

The bill criminalizes smoking marijuana in a public place and criminalizes smoking in a vehicle on a highway or in a parking lot or other publicly accessible area. Additionally, the bill's definition of "smoke" may encompass the possession of marijuana paraphernalia.

This analysis assumes that most violations involving smoking marijuana in a public place or vehicle involve less than 10 grams of marijuana, and that fines actually assessed are less than the maximum \$500 established under the bill. Under current law, a first offense for the use or possession of less than 10 grams of marijuana carries a maximum civil fine of \$100. In calendar 2015, there were 10,345 civil citations for possession of less than 10 grams of marijuana. *For illustrative purposes only*, if 50% of these violations involve smoking in a public place or vehicle, and a \$100 fine is imposed for each violation, general fund revenues increase by at least \$517,250.

General fund revenues may also increase due to the bill's prohibition against impairment due to smoking or consuming marijuana and that endangers the safety of a person or property. The number of anticipated violations for this offense cannot be determined at this time, due to unavailability of data.

State Expenditures: It is unclear to what extent the bill increases the number of arrests and convictions for the use or possession of marijuana. The Judiciary advises that it is unable to estimate the number of additional case filings received under the bill, but that it does not anticipate a significant fiscal or operational impact on the District Court. The Department of State Police advises that enforcement can be handled with existing resources.

However, general fund expenditures likely increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City. The number of people incarcerated for this proposed crime is expected to be minimal.

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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. 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.

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 Public Safety and Correctional Services, Department of State Police, Maryland Department of Transportation, U. S. Department of Justice, www.Colorado.gov, Colorado Department of Transportation, Washington State Liquor and Cannabis Board, Alaska Department of Health and Social Services, Metropolitan Police Department of the District of Columbia, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2016
min/kdm

Analysis by: Sasika Subramaniam

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