

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 565  
Judiciary

(Delegates Dumais and Vallario)

Judicial Proceedings

---

**Criminal Law - 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 (CDS) 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.

---

**Fiscal Summary**

**State Effect:** Although the change is largely procedural in nature, general fund revenues decrease minimally from reduced court fees for related cases. General fund expenditures may increase by as much as \$203,800 in FY 2017 for the Judiciary to make one-time programming changes to reflect the bill's shielding requirements. However, the bill may also result in efficiencies for cases heard in the District Court due to the procedural clarifications.

**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.

If a person is issued a citation for use or possession of less than 10 grams of marijuana, is at least age 21, and has been previously found guilty at least twice for use or possession of less than 10 grams of marijuana, the court must summon the person for trial.

As in existing law, the District Court must establish a schedule for the prepayment of the fine. Under the bill, prepayment of a fine is considered a plea of guilty. A person younger than age 21 may not prepay the fine. The bill also specifies requirements for a person to request a trial. If the person does not request a trial or prepay the fine within the specified timeframe, the court may impose the maximum fine and costs against the person and find the person guilty.

The issuing jurisdiction must forward a copy of the citation and a request for trial to the District Court in the district that has 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 the 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 the defendant receives a copy of the charges and that the defendant 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 in self-defense; (5) the defendant is entitled to representation by counsel of the defendant's choice and at the defendant's 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 of the State. 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.

A citation for use or possession of less than 10 grams of marijuana, and the official court record regarding the citation, are not subject to public inspection and may not be included on the Judiciary's public website under specified circumstances.

The bill also changes references from "violation" to "finding of guilt" in existing penalty provisions.

**Current Law:** 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.

**Background:** According to the Judiciary, in fiscal 2015, there were 6,956 criminal violations for possessing or administering a 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 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 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 prepay the fine and does so, no court costs are assessed. In calendar 2015, the Judiciary collected approximately \$45,000 in court costs for cases involving use or possession of less than 10 grams of marijuana.

**State Expenditures:** General fund expenditures may increase significantly in fiscal 2017 only for the Judiciary to implement programming changes to meet the bill's requirements. The bill requires the Judiciary to permanently shield citations under specified circumstances. The Judiciary advises that the cost to make the necessary one-time programming changes may be as much as \$203,760.

The Judiciary also advises that citations need to be recalled and revised to meet the bill's requirements, at an additional cost. However, the Department of Legislative Services advises that the District Court can implement the changes during the annual reprinting of these citations using existing budgeted resources.

---

### **Additional Information**

**Prior Introductions:** HB 495 of 2015, a similar bill as introduced, passed the House as amended and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 28, 2016  
md/kdm

---

Analysis by: Sasika Subramaniam

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