

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 665
Judiciary

(Delegate Moon)

Constitutional Amendment - Marijuana - Right to Use, Possess, and Cultivate

This proposed constitutional amendment, if approved by the voters at the next general election, establishes an individual's right under State law to use, possess, and cultivate marijuana if the individual is at least age 21. The purchase or sale of marijuana may be regulated as necessary to ensure health and safety and taxed to the extent the tax revenues are used for specified purposes. An employer is not required to allow or accommodate the use, possession, or cultivation of marijuana by an employee or in a workplace. The constitutional right does not apply to laws relating to driving under the influence of marijuana and does not prohibit a person from prohibiting or regulating the use, possession, or cultivation of marijuana in or on property that the person owns, occupies, or controls.

Fiscal Summary

State Effect: Significant decrease in general fund revenues and expenditures due to the nullification of civil and criminal penalties for the use, possession, or cultivation of marijuana. Special fund revenues for the Department of Health and Mental Hygiene (DHMH) also decrease significantly due to the District Court no longer remitting collected penalties from marijuana civil citations to DHMH for drug treatment and education programs.

Local Effect: Significant decrease in revenues and expenditures due to the nullification of civil and criminal penalties for the use, possession, or cultivation of marijuana.

Small Business Effect: Potential meaningful for small businesses that are licensed growers, processors, or dispensers under the State's medical cannabis program.

Analysis

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 (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 DHMH 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.

Medical Marijuana: Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 further modified the State's medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries and the registration of their agents.

The program also establishes a framework to certify physicians and qualifying patients (and their caregivers) to provide qualifying patients with medical cannabis legally under State law via written certification.

The commission promulgated regulations in September 2015, and the certifying physician registration form required by regulation is available online. Certifying physicians must provide a license number and a CDS registration number to complete the form. The commission advises that, as of January 2016, there are 85 registered certifying physicians. The commission opened applications for grower, processor, and dispensary licenses in September 2015 and received 146 grower license, 124 processor license, and 811 dispensary license applications by the deadline. The commission's [website](#) advises that it anticipates issuing stage one approvals for grower and processor applicants by summer 2016.

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.

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 Fiscal Effect: The rights established under the proposed constitutional amendment render all existing penalties, both civil and criminal, regarding the use, possession, or cultivation of marijuana null and void. Therefore, general fund revenues and expenditures decrease significantly as a result of the nullification of the penalties for the following offenses:

- use or possession of 10 grams or more of marijuana (misdemeanor subject to imprisonment for up to one year and/or a fine of up to \$1,000);
- manufacture, distribution, dispensing, or possession of 50 pounds or more of marijuana (enhanced penalty with mandatory minimum imprisonment of up to 5 years and a fine of up to \$100,000);
- conspiracy by a drug kingpin to manufacture, distribute, dispense, transport in, or bring into the State 50 pounds or more of marijuana (felony with imprisonment of between 20 years and 40 years and/or a fine of up to \$1 million);
- importation of 45 kilograms or more of marijuana (felony subject to imprisonment of up to 25 years and/or a fine of up to \$50,000); and
- importation of between 5 kilograms and 45 kilograms of marijuana (felony subject to imprisonment of up to 10 years and/or a fine of up to \$10,000).

General fund expenditures decrease significantly as a result of nullification of the bill's incarceration penalties due to fewer people being committed to State correctional facilities and reduced payments to counties for reimbursement of inmate costs.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 per month. This bill alone, however, reduces the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system and State general fund expenditures for this assistance to local governments is reduced significantly under the proposed constitutional amendment. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Special fund revenues for DHMH decrease significantly due to the District Court no longer remitting collected penalties from civil citations for use or possession of less than 10 grams of marijuana to DHMH for drug treatment and education programs. The penalties for this offense range from \$100 to \$500. In fiscal 2017, the projected revenue from these civil penalties for DHMH's Marijuana Citation Fund is \$275,000.

The Judiciary 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.

The proposed constitutional amendment also authorizes the State to regulate the sale and purchase of marijuana, including taxation if tax revenues are used for specified purposes. Therefore, to the extent the Comptroller exercises this authority, the proposed constitutional amendment may also result in new special fund revenues and expenditures in order to distribute tax revenues for the authorized purposes, which include (1) education for public schools; (2) public school construction and capital improvement; (3) substance

abuse treatment and prevention; (4) recidivism reduction and reentry services; and (5) mental health services.

State costs of printing ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). However, it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Revenues: Local revenues decrease significantly due to the nullification of civil and criminal penalties for the use, possession, or cultivation of marijuana for those cases heard in the circuit courts.

Local Expenditures: Expenditures decrease significantly as a result of the bill's elimination of the incarceration penalty for the use or possession of more than 10 grams of marijuana and fewer individuals being committed to local detention facilities. 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.

Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Small Business Effect: The proposed constitutional amendment establishes an individual right to use, possess, and *cultivate* marijuana. Therefore, revenues may decrease significantly for small businesses that are licensed growers, dispensers, or processors under the State's medical cannabis program, to the extent individuals choose not to obtain marijuana through the program. However, any fiscal impact may not occur until fiscal 2018, depending on when the program becomes fully operational. On the other hand, the proposed constitutional amendment could create additional business opportunities for other entities that seek to cultivate and sell marijuana.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, 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 Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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