

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1119  
Judiciary

(Delegate Morhaim, *et al.*)

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Criminal Law - Use or Possession of a Controlled Dangerous Substance - De  
Minimis Quantity

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This bill establishes that the use or possession of a de minimis quantity of specified controlled dangerous substances (CDS) is a civil offense. The bill applies existing law relating to the use or possession of less than 10 grams of marijuana to the use or possession of a de minimis quantity of a CDS and makes conforming changes.

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Fiscal Summary

**State Effect:** General fund revenues and expenditures decrease, potentially significantly, due to the bill's elimination of criminal penalties for possession of specified amounts of CDS. General fund expenditures increase by \$163,200 in FY 2017 only for the Judiciary to make one-time programming changes. Special fund revenues for the Department of Health and Mental Hygiene (DHMH) also increase, due to the District Court remitting collected penalties to DHMH for drug treatment and education programs.

**Local Effect:** Local revenues and expenditures decrease, potentially significantly, due to the bill's elimination of criminal penalties for possession of specified amounts of CDS.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** "De minimis quantity of a controlled dangerous substance" means:

- 10 grams of marijuana;
- 2 grams of cocaine;

- 1 gram of heroin;
- 10 tablets of 3,4-methylenedioxymethamphetamine (MDMA);
- .0015 grams of lysergic acid diethylamide (LSD);
- 1 gram of methadone; or
- 1 gram of amphetamine.

Use or possession of a de minimis quantity of a CDS 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.

The bill makes conforming changes to apply existing requirements for citations for use or possession of less than 10 grams of marijuana to citations for use or possession of a de minimis quantity of a CDS.

**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.

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may also not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to four years and/or a fine of up to \$25,000.

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.

Under § 7-302(g) of the Courts and Judicial Proceedings Article, the District Court must remit penalties collected from civil citations issued under § 5-601(c)(2)(ii) of the Criminal Law Article (use or possession of less than 10 grams of marijuana) to DHMH for drug treatment and education programs.

**Background:** The Judiciary advises that in fiscal 2015, there were approximately 23,691 violations involving the possession of a CDS, other than marijuana, in the District Courts, and approximately 13,038 violations in the circuit courts, of which 6,500 (50%) were in the Baltimore Circuit Court, 1,151 (9%) were in the Prince George's County Circuit Court, and 90 (7%) were in the Montgomery County Circuit Court. The Department of Public Safety and Correctional Services (DPSCS) advises that in fiscal 2015, there were 337 intakes for individuals in which possession of CDS other than marijuana was the "most serious" offense, and that the average sentence for these individuals was 28 months. However, information is unavailable as to the number of violations involving "de minimis" quantities of CDS, as defined in the bill.

**State Revenues:** General fund revenues decrease, potentially significantly, due to the bill's civil citation penalties for possession of specified amounts of CDS for cases heard in the District Court.

Special fund revenues for DHMH increase as a result of the bill's expansion of the civil citation provision for marijuana to include de minimis quantities of CDS. The bill expands the application of § 5-601(c)(2)(ii) of the Criminal Law Article, which currently only applies to use or possession of less than 10 grams of marijuana, to include de minimis

quantities of specified CDS. Therefore, pursuant to § 7-302(g) of the Courts and Judicial Proceedings Article, the District Court must remit the civil citation penalties collected under the bill to DHMH for drug treatment and education programs. The Behavioral Health Administration in DHMH administers the Marijuana Citation Fund. Revenue to the fund totaled \$181,698 in fiscal 2015; the projected revenue for fiscal 2017 is \$275,000.

**State Expenditures:** The bill eliminates criminal penalties for possession of specified amounts of CDS and instead establishes civil citations for offenses. Therefore, the District Court obtains exclusive original jurisdiction over such cases, and the circuit courts no longer have concurrent jurisdiction with the District Court. The Judiciary advises that the bill requires the District Court to “flag” citations for de minimis quantities of CDS in its system (as is currently the practice for use or possession of less than 10 grams of marijuana) and permanently shield these citations from public inspection. The District Court must also remit collected penalties to DHMH. The Judiciary advises that costs to make the required one-time programming changes total \$163,200 in fiscal 2017.

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.

General fund expenditures decrease, potentially significantly, due to fewer people being committed to State correctional facilities and reduced payments to counties for reimbursement of inmate costs. DPSCS advises that the average sentence for 337 individuals in which the possession of CDS other than marijuana was the “most serious” offense was 28 months in fiscal 2015. However, information is unavailable as to the amounts of CDS involved in these violations. *For illustrative purposes only*, if 34 individuals (approximately 10% of the 337 intakes) were issued civil citations instead of criminal penalties, assuming variable inmate costs of \$200 per month excluding health care, State costs could decrease by approximately \$190,400.

**Local Revenues:** Revenues decrease, potentially significantly, as a result of the bill’s civil citation penalties and cases no longer being heard in the circuit courts.

**Local Expenditures:** Expenditures decrease, potentially significantly, as a result of the bill’s elimination of the incarceration penalty for possession of specified amounts of CDS 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. A \$45 per diem State 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. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **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, 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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