

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1043

(Delegate Valentino-Smith, *et al.*)

Judiciary

Judicial Proceedings

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Vehicle Laws - Smoking Marijuana in Vehicles - Prohibition

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This bill prohibits (1) a driver of a motor vehicle from smoking or otherwise consuming marijuana in a passenger area of a motor vehicle on a highway and (2) an occupant of a motor vehicle from smoking marijuana in a passenger area of a motor vehicle on a highway. The offense is a misdemeanor and the existing penalty of a maximum fine of \$500 applies to the new offense created by the bill.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund revenues beginning in FY 2018 due to the application of an existing penalty to the bill's offense of smoking marijuana in a vehicle for those cases heard in the District Court. Enforcement can be handled with existing resources.

**Local Effect:** The bill is not expected to materially affect local government operations or finances, as enforcement can be handled with existing resources.

**Small Business Effect:** None.

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Analysis

**Current Law:**

*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 10 grams or more 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. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by the Department of Health and Mental Hygiene (DHMH); and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. 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.

However, in a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was in possession of more than one ounce of marijuana.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant who cannot meet the affirmative defense standard for a not guilty verdict may introduce and the court must consider as a mitigating factor (with regard to penalties on conviction) any evidence of medical necessity. Pursuant to Chapter 351 of 2015, if a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

## *Justice Reinvestment Act – Changes Effective October 1, 2017*

Effective October 1, 2017, Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”) reduces the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months.

Further, before imposing a sentence for this offense, the court is authorized to order DHMH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. DHMH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant’s sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require DHMH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within DPSCS or a local correctional facility to facilitate the medically appropriate level of treatment.

### *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 under the Transportation Article, 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 (MVA). A person convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or 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 – depending on whether it is a first or subsequent offense. A repeat conviction or convictions within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as specified, as well as a mandatory alcohol or drug abuse assessment.

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.

Additionally, under § 21-903 of the Transportation Article (also referred to as the “open container” law), a driver of a motor vehicle may not consume an alcoholic beverage in a passenger area of a motor vehicle on a highway. This prohibition applies to a motor vehicle that is driven, stopped, standing, or otherwise located on a highway. “Passenger area” means an area that is designed to seat the driver and any passenger while the motor vehicle

is in operation or is readily accessible to the driver or passenger while in their seating positions. The definition does not include (1) a locked glove compartment; (2) the trunk of a motor vehicle; or (3) if the motor vehicle does not have a trunk, the area behind the rearmost upright seat or an area that is not normally occupied by the driver or a passenger. A violation is a misdemeanor subject to a fine of up to \$500. However, for certain violations of the Transportation Article, the District Court may set a fine that may be prepaid if the individual does not wish to appear at a court hearing to either contest guilt or enter a guilty plea with an explanation. A driver who consumes an alcoholic beverage in a passenger area of motor vehicle on a highway may prepay a fine of \$530. MVA must assess one point against the driver's license for a violation or three points if the violation contributes to an accident.

**Background:** The Judiciary advises that in fiscal 2016, there were approximately 15,051 violations and 9,394 guilty dispositions involving the possession of less than 10 grams of marijuana. Additionally, in fiscal 2016, there were 5,444 violations and 189 convictions in the District Court and 1,944 violations and 350 convictions in the circuit courts for possession of 10 grams or more of marijuana.

According to the National Conference of State Legislatures (NCSL), 21 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana. Prior to the November 2016 election, recreational use was legal in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia. In the November 2016 election, ballot initiatives to legalize recreational use passed in California, Massachusetts, Maine, and Nevada.

Additionally, NCSL reports that Colorado, Montana, and Washington specify that a tetrahydrocannabinol concentration of a driver's blood more than 5 nanograms per milliliter of blood is *per se* "driving under the influence" of drugs. Nevada and Ohio specify a threshold of 2 nanograms of illegal substances per milliliter of blood as the *per se* standard for driving under the influence of drugs. Other states that have *per se* laws for driving under the influence of drugs do not set a specific threshold for marijuana.

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 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.

Additionally, the above-mentioned federal policies were adopted under a previous administration and are subject to change under the new administration.

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 Revenues:** General fund revenues may increase significantly as a result of the application of an existing monetary penalty to the bill’s provisions relating to smoking marijuana in a vehicle from cases heard in the District Court.

The bill adds smoking marijuana to the existing open container law regarding alcoholic beverages. This analysis assumes that the number of violations for smoking marijuana in the passenger area of a motor vehicle is less than the number of violations for consuming alcohol in a passenger area of a motor vehicle, and that the District Court sets a comparable prepayment fine for violations involving marijuana. According to the District Court, in fiscal 2016, there were 1,272 citations for consuming an alcoholic beverage in the passenger area of a motor vehicle (this data excludes certain jurisdictions, due to the way the District Court captured data in fiscal 2016). *For illustrative purposes only*, if 50% of these violations involve smoking marijuana, and these individuals choose to prepay a \$530 fine, general fund revenues increase by at least \$252,810 in fiscal 2018, accounting for the bill’s October 1, 2017 effective date, and by at least \$337,080 annually thereafter for this offense.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; National Conference of State Legislatures; Department of Legislative Services

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