

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1218 (Delegate Wivell)

Health and Government Operations and
Judiciary

**Washington County - Possession of Medical Cannabis in Correctional Facilities -
Prohibition**

This bill clarifies that statutory provisions related to Maryland's medical cannabis program cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, possessing marijuana or cannabis on the grounds of a correctional facility located in Washington County.

Fiscal Summary

State Effect: None. The bill clarifies existing practice.

Local Effect: None. The bill largely clarifies existing practice.

Small Business Effect: None.

Analysis

Current Law/Background:

Maryland's Medical Cannabis Program

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a

framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

Maryland’s medical cannabis program statute cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

- undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
- operating, navigating, or being in control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or
- smoking marijuana or cannabis in any public place, in a motor vehicle, or on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises.

Relevant Correctional Services Law

A “correctional facility” is a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime. Three State correctional facilities, the Roxbury Correctional Institution, the Maryland Correctional Institution – Hagerstown, and the Maryland Correctional Training Center, are located in Washington County.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility, which also falls under the definition of “correctional facility.” The sheriff of a county is responsible for keeping each person in custody safe until the person is discharged. The managing official of a local correctional facility is responsible for providing inmates with food, board, and any article of comfort considered necessary by an attending physician. Inmates are responsible for reimbursing the county for medical expenses and for providing any information related to specified health insurance coverage. Although inmates are eligible for medical care and treatment while incarcerated, prescriptions that are obtained prior to incarceration are not necessarily given to an inmate while incarcerated.

A person is prohibited from knowingly possessing contraband (any item, material, or substance not authorized for inmate possession by the managing official or that is brought into the correctional facility in a manner prohibited by the managing official) in a place of confinement. Additionally, a person who is detained or confined in a place of confinement may not knowingly possess or receive a controlled dangerous substance (CDS). A person

who possesses CDS in confinement is guilty of a misdemeanor and is subject to imprisonment for up to three years and/or a fine up to \$1,000.

Criminal Law Provisions Related to Marijuana

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. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. 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.

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 Maryland Department of Health (MDH); 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.

Federal Guidance

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.

On January 4, 2018, in a memorandum to all U.S. Attorneys, Attorney General Jefferson B. Sessions III announced that the aforementioned guidance regarding federal marijuana prosecutions was rescinded, effective immediately. Citing the U.S. Congress' determination (through the Controlled Substances Act) that marijuana "is a dangerous drug and that marijuana activity is a serious crime," the memorandum declared previous DOJ guidance specific to marijuana enforcement "unnecessary" and instead instructed

prosecutors to follow the principles that govern all federal prosecutions, including “federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community,” when deciding which cases to prosecute.

Additional Information

Prior Introductions: None.

Cross File: SB 714 (Washington County Senators) - Finance.

Information Source(s): Washington County; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2018
md/jc

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