

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 128

(Senator Zirkin)

Judicial Proceedings

Judiciary

Criminal Law – Possession With Intent to Distribute Marijuana – Presumption

This bill establishes a presumption that a quantity of marijuana that is equal to or less than the quantity for which possession is subject to a charge by citation is not a sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense the marijuana. The State may rebut the presumption by showing evidence of an intent to sell marijuana.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures, as discussed below. Revenues are not affected.

Local Effect: Potential minimal decrease in revenues and expenditures, as discussed below.

Small Business Effect: None.

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. 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.

Under Maryland law, a person may not (1) distribute or dispense a CDS or (2) possess a CDS *in sufficient quantity reasonably to indicate under all circumstances* an intent to distribute or dispense a CDS.

For additional information on crimes involving the distribution of CDS, please refer to the **Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses**.

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, under § 5-601.1 of the Criminal Law Article, 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; 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.

Background: In fiscal 2017, the Maryland State Commission on Criminal Sentencing Policy reported that 712 individuals were sentenced in the circuit courts for distribution of marijuana.

The Judiciary advises that in fiscal 2017, there were 11,521 civil citations and 7,504 guilty dispositions involving the possession of less than 10 grams of marijuana. Additionally, in fiscal 2017, there were 5,192 violations and 168 guilty dispositions in the District Court and 2,289 violations and 303 guilty dispositions in the circuit courts involving the possession of 10 grams or more of marijuana.

Authorization for the medicinal and recreational use of marijuana, as well as decriminalization of small amounts of marijuana, has gained momentum across the country. However, possession of marijuana remains illegal at the federal level, although 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 Marijuana Laws

According to the National Conference of State Legislatures, 29 states (including Maryland), the District of Columbia, Guam, and Puerto Rico have comprehensive public medical cannabis programs. Additionally, another 17 states allow for the use of low THC

(delta-9-tetrahydrocannabinol), high CBD (cannabidiol) products for medical reasons in limited situations or as a legal defense. Further, 22 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana.

As of January 2018, nine states (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Washington, and Vermont) and the District of Columbia have legalized the recreational use of marijuana. Four of these states (California, Massachusetts, Maine, and Nevada) passed ballot initiatives to legalize recreational use in the November 2016 election. In January 2018, Vermont became the first state to legalize recreational use of marijuana through the legislature (rather than through ballot initiative).

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.

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.

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 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.

State Expenditures: General fund expenditures may decrease minimally as a result of fewer people being committed to State correctional facilities for possession with intent to

distribute marijuana. The extent of any impact depends on several factors, including law enforcement and prosecutorial discretion, but is expected to be minimal.

Local Fiscal Effect: Revenues may decrease minimally as a result of fewer cases heard in the circuit courts for possession with intent to distribute marijuana. Expenditures may also decrease minimally as a result of fewer people being committed to local correctional facilities. Again, the extent of any impact depends on several factors, including law enforcement and prosecutorial discretion, but is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Caroline, Howard, Montgomery, and Prince George’s counties; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; National Conference of State Legislatures; Department of Legislative Services

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Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Under Title 5, Subtitle 6 of the Criminal Law Article, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance (CDS);
- manufacture a CDS or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a CDS with the intent to use it to produce, sell, or dispense a CDS;
- create, distribute, or possess with the intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering CDS or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a CDS with the intent to distribute the CDS.

Exhibit 1 shows the applicable sentences for these crimes.

Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”) repealed mandatory minimum penalties applicable to a repeat drug offender (or conspirator) convicted of distribution of CDS and related offenses and established new maximum penalties. The changes took effect October 1, 2017.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Offense	Current Penalty ^{1,2}
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)³	
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug & Specified Drugs)⁴	
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS = controlled dangerous substance

¹Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. Under Chapter 515 of 2016, effective October 1, 2017, this authorization is made applicable only when the person has also been previously convicted of a crime of violence. Additionally, a person serving a term of confinement that includes a mandatory minimum sentence, imposed on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of CDS may apply to the court for a modification or reduction of the mandatory minimum sentence, regardless of whether the defendant filed a timely motion for reconsideration or if a motion for reconsideration was denied by the court (the court is authorized to depart from the specified mandatory minimum sentences).

²Chapter 569 of 2017 prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. In addition to any other penalty imposed, a person is subject to imprisonment for up to 10 years. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

³*E.g.*, marijuana

⁴*E.g.*, cocaine and heroin

Source: Department of Legislative Services