

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 248

(Senator Kelley, *et al.*)

Judicial Proceedings

Criminal Procedure - Charging Procedures and Documents - Citation

This bill limits the circumstances under which a police officer *must* charge by citation for specified misdemeanor or local ordinance violations that have an imprisonment penalty of up to 90 days. The bill also expands the offenses for which a police officer *may* charge by citation. In addition, the bill alters the criteria which must be met before an officer can charge a defendant by citation.

Fiscal Summary

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

Local Effect: Potential minimal decrease in local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A police officer is not required to charge a defendant by citation unless the eligible misdemeanor or local ordinance also does not involve serious injury or an immediate health risk. The offenses for which an officer may charge by citation are expanded to include possession of a controlled dangerous substance (CDS) other than marijuana. The criteria which must be met before an officer may charge by citation are altered to allow for the issuance of a citation even if a defendant is subject to arrest for another criminal charge arising out of the same circumstances, but is not subject to arrest

for another alleged misdemeanor involving serious injury or immediate health risk, an alleged felony arising out of the same incident, or an open warrant, as specified.

Current Law: A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal. A police officer may also charge by citation, as specified, for (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000.

A police officer may charge a defendant by citation *only* if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

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.

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.

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. Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) altered the criminal penalties associated with the possession, administration, obtainment, and procurement of a CDS and related offenses. Effective October 1, 2017, a person who violates these provisions is subject to the following penalties: (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. The authorization to double penalties for repeat offenders applies only when the person has also been previously convicted of a crime of violence. Additionally, Chapter 515 reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to 6 months.

Background: The Judiciary has previously advised that in fiscal 2016, there were approximately 15,051 violations involving the possession of less than 10 grams of marijuana. Additionally, according to the Judiciary, there were 23,713 violations for possession of CDS other than marijuana in the District Court in fiscal 2016; there were 11,154 violations for possession of CDS other than marijuana in the circuit courts in fiscal 2016.

State Expenditures: General fund expenditures may decrease minimally for the Department of Public Safety and Correctional Services to the extent that the bill reduces the number of arrestees detained pretrial in the Baltimore Pretrial Complex.

General fund expenditures may also decrease minimally for the Judiciary, the Department of State Police (DSP), and the Office of the Public Defender (OPD) to the extent that the bill reduces the number of District Court commissioner initial appearances by arrestees, the number of arrests, and the number of bail reviews necessary. This decrease may be offset in part by similar costs incurred should the cited defendants fail to appear in court. However, any savings experienced by the Judiciary, DSP, and OPD are likely to be shifted to other functions within those agencies.

Although there were approximately 147,194 total initial appearances as a result of warrant and bench warrant arrests for all misdemeanors and felony charges in fiscal 2016 (the latest information readily available), data is not available on the number of individuals represented by these cases who were charged with additional offenses that are not eligible for citations or were otherwise ineligible to receive a citation.

Local Expenditures: Montgomery County and the cities of Bowie and Takoma Park, advise that the bill does not have a fiscal impact on their jurisdictions. Prince George's

County advises that the bill could result in a slight decrease in the number of pretrial detentions; however, unless the population decrease is enough to reduce overtime expenditures, there is no fiscal impact. Likewise, in other jurisdictions, the bill may result in a minimal decrease in local expenditures to the extent the bill reduces the number of arrestees detained pretrial in local detention facilities.

Additional Information

Prior Introductions: HB 408 of 2017 passed in the House with amendments but received no further action from the Senate Judicial Proceedings Committee. Its cross file, SB 477, received a hearing in the Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 323 (Delegate Dumais) - Judiciary.

Information Source(s): Montgomery and Prince George's counties; cities of Bowie and Takoma Park; 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 State Police; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510