

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 88

(Delegate Charkoudian, *et al.*)

Economic Matters

Judicial Proceedings

Criminal Law and Civil Offenses – Classifications

This bill establishes that it is a code violation and a civil offense, rather than a criminal misdemeanor offense, to (1) consume an alcoholic beverage in public under § 6-321 of the Alcoholic Beverages Article or (2) possess an alcoholic beverage in an open container under § 6-322 of the Alcoholic Beverages Article. Violators are issued citations under Criminal Law Article § 10-119 and are subject to a fine of up to \$100, the same monetary penalties for these offenses under existing statute. The penalty provisions for a code violation under § 10-119(h) of the Criminal Law Article do not apply to a person who commits a code violation under §§ 6-321 or 6-322 of the Alcoholic Beverages Article. The bill also establishes a Task Force to Study Crime Classification and Penalties. The Department of Legislative Services (DLS) must provide staff for the task force, and the task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2020. **The bill's provisions related to the task force take effect June 1, 2019, and terminate June 30, 2021.**

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures for the District Court to adjudicate violations under the bill as code violations rather than misdemeanors. Any expense reimbursements for the task force are assumed to be minimal and absorbable within existing budgeted resources. DLS can provide staff for the task force with existing budgeted resources. Since the bill retains the existing monetary penalties, revenues are not affected.

Local Effect: None. Any reduction in local law enforcement workloads as a result of the bill is likely redirected to other responsibilities.

Small Business Effect: None.

Analysis

Bill Summary: The task force must (1) review the penalties for all criminal and civil violations throughout the Maryland Code; (2) study the history and legislative intent of the classification of those criminal and civil violations, including the constitutional implications and collateral consequences that arise as a result of classification; (3) study criminal classifications and penalty schemes in other states and how those classifications and schemes compare to those in the State; and (4) make specified recommendations regarding the existing statutory scheme for criminal and civil violations throughout the Maryland Code.

A member of the task force may not receive compensation, but is entitled to reimbursement for travel expenses.

Current Law: Section 6-321 of the Alcoholic Beverages Article defines “public property” to include property that is (1) a structure, road, parking area, or grounds and (2) located on land owned, leased, or operated by the State, a county, a municipality, or other specified governmental entities.

In general, an individual may not consume an alcoholic beverage (1) on public property; (2) on the mall, adjacent parking area, or other outside area of a shopping center; (3) on an adjacent parking area or other outside area of any other retail establishment; or (4) in a parked vehicle located in any of these areas. An individual may consume an alcoholic beverage on (1) public property if authorized by the governmental entity that has authority over the property or (2) private property of the aforementioned areas if authorized by the owner of the property.

If the owner or operator of a motor home or chartered bus has consented to the consumption of the alcoholic beverages, the prohibition does not apply to passengers in the living quarters of a motor home equipped with a toilet and central heating, or of a chartered bus in transit.

Violators are guilty of a misdemeanor, punishable by a fine of up to \$100.

An individual may not possess an alcoholic beverage in an open container while (1) on the mall, adjacent parking area, or other outside area of a shopping center; (2) on an adjacent parking area or other outside area of any other retail establishment; or (3) in a parked vehicle located in any of these areas. An individual may possess an alcoholic beverage in an open container on private property meeting this description if the individual is authorized by the owner of the establishment.

Violators are guilty of a misdemeanor, punishable by a fine of up to \$100.

In general, in addition to any other law allowing a crime to be charged by citation, a police officer must charge by citation for specified offenses, including any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment. 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 does 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.

Background: Chapter 41 of 2016, which took effect July 1, 2016, created the Alcoholic Beverages Article, and violations under Alcoholic Beverages Article § 6-321 and § 6-322 went into effect at that time. According to the Judiciary, in fiscal 2018, there were 1,041 violations with 166 guilty dispositions of Alcoholic Beverages Article § 6-321(b) and 1,637 violations with 289 guilty dispositions of Alcoholic Beverages Article § 6-322 in the District Court.

Local Fiscal Effect: The cities of Bowie and Takoma Park and Baltimore, Harford, and Montgomery counties advise that the bill has no fiscal or operational impact on their jurisdictions.

Additional Information

Prior Introductions: HB 277 of 2018, a similar bill, was referred to the House Economic Matters Committee and the House Ways and Means Committee but was subsequently withdrawn. HB 380 of 2017, another similar bill, was referred to the House Economic Matters Committee and the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 937, passed the Senate as amended but received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Baltimore, Harford, and Montgomery counties; Maryland-National Capital Park and Planning Commission; Washington Suburban Sanitary Commission; 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; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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