

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 704

(Senator Carter, *et al.*)

Judicial Proceedings

Criminal Law - Drug Paraphernalia for Administration - Decriminalization

This bill specifies that the prohibitions on drug paraphernalia do not apply if the paraphernalia will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance (CDS). The bill also repeals the prohibition on possessing or distributing controlled paraphernalia under circumstances, which reasonably indicate an intention to use the controlled paraphernalia for purposes of illegally administering a CDS. The bill removes a measuring spoon as an item commonly use to illegally manufacture, administer, distribute, or dispense a CDS for purposes of establishing an unlawful intent.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to the bill's alteration of the application of existing penalty provisions. The bill is not expected to materially affect State expenditures.

Local Effect: The bill is not anticipated to materially impact local government finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Use or Possession of Paraphernalia

Unless authorized under law, a person may not use or possess with intent to use drug paraphernalia to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a CDS; or
- inject, ingest, inhale, or otherwise introduce a CDS into the human body.

Chapter 4 of 2017 repealed the criminal prohibition on use or possession of marijuana-related drug paraphernalia.

Delivery or Sale of Paraphernalia

Unless authorized under law, a person may not deliver or sell, or manufacture or possess with the intent to deliver or sell, drug paraphernalia, knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a CDS; or
- inject, ingest, inhale, or otherwise introduce a CDS into the human body.

Exhibit 1 contains information on penalties for offenses involving both the use or possession and the delivery or sale of drug paraphernalia.

Exhibit 1
Penalties for Use or Possession and Delivery or Sale of Drug Paraphernalia

| <u>Violation</u> | <u>Penalty</u> |
|---|---|
| First-time violation (use, possession, delivery, or sale) | Misdemeanor \$500 maximum fine |
| Subsequent violation (use, possession, delivery, or sale) | Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000 |
| First-time violation (use, possession, delivery, or sale) – violator has a prior conviction for delivery of drug paraphernalia by an adult to a minor who is at least three years younger | Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000 |
| Delivery of drug paraphernalia by an adult to a minor who is at least three years younger | Misdemeanor Up to eight years imprisonment and/or a maximum fine of \$15,000 |

Source: Department of Legislative Services

Controlled Paraphernalia

In general, a person may not (1) obtain or attempt to obtain controlled paraphernalia by

- fraud, deceit, misrepresentation, or subterfuge;
- counterfeiting a prescription or a written order;
- concealing a material fact or the use of a false name or address;
- falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or
- making or issuing a false or counterfeit prescription or written order; or

(2) possess or distribute controlled paraphernalia under circumstances, which reasonably indicate an intention to use the controlled paraphernalia for purposes of illegally administering a CDS.

Evidence of circumstances that reasonably indicate an intent to use controlled paraphernalia to manufacture, administer, distribute, or dispense a CDS unlawfully include the close proximity of the controlled paraphernalia to an adulterant, diluent, or equipment commonly used to illegally manufacture, administer, distribute, or dispense CDS, including a scale, a sieve, a strainer, a measuring spoon, staples, a stapler, a glassine envelope, a gelatin capsule, procaine hydrochloride, mannitol, lactose, quinine, and a CDS.

Violators are guilty of a misdemeanor and on conviction are subject to imprisonment for up to four years and/or a \$25,000 maximum fine. However, if the violation involves the use or possession of marijuana, violators are subject to imprisonment for up to one year and/or a \$1,000 maximum fine.

Background: According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy received the following information for sentences in the State's circuit courts during fiscal 2019:

- two individuals were sentenced to two total counts of a subsequent offense of use or possession with intent to use drug paraphernalia under § 5-619 of the Criminal Law Article; and
- 16 individuals were sentenced to 17 total counts of possession or distribution of controlled paraphernalia under § 5-620 of the Criminal Law Article.

The Division of Correction advises that in fiscal 2019, it received 11 inmates under the applicable Criminal Justice Information System (CJIS) codes for offenses affected by the bill. Every one of these inmates had other offenses. The Division of Parole and Probation advises that it received 143 cases under CJIS codes related to the bill.

State Revenues: General fund revenues decrease minimally as a result of the bill's altered application of existing monetary penalties from cases heard in the District Court.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 720 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Garrett, Howard, and Montgomery counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; 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; Department of State Police; Department of Legislative Services

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Analysis by: Hillary J. Cleckler

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