

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 356

(Senator Serafini, *et al.*)

Judicial Proceedings

Possession of Medical Cannabis - Local Correctional Facilities and Home
Detention Program - 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 do not prevent the imposition of any civil, criminal, or other penalties for, possessing marijuana or cannabis on the grounds of a local correctional facility or while an offender is in a home detention program.

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.

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.

Further, there is no immunity for a person who violates medical cannabis statute from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances (CDS), dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

Correctional Services

A "local correctional facility" is a correctional facility that is operated by one or more counties or a municipality. 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.

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 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.

Home Detention Programs

The Director of the Division of Parole and Probation, or the director's designee, with the approval of the Secretary of Public Safety and Correctional Services, is authorized to establish a home detention program under which an offender may live in an approved private dwelling. Offenders in the program must be supervised by electronic devices and direct contact by employees of the Division of Parole and Probation. An inmate is not eligible for the home detention program if a violation of a condition of parole or mandatory supervision is based on the commission of a crime of violence.

While in the program, an offender must remain in the approved dwelling except to go (1) with the director's approval, to the offender's job, to a medical or mental health treatment facility, or offices of the Department of Public Safety and Correctional Services; (2) as required by legitimate medical or other emergencies; or (3) as otherwise allowed and directed by the director. While participating in the program, an offender is responsible for the offender's living expenses, including those for food, clothing, medical care, shelter, and utilities.

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; 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

Although cannabis remains on the list of Schedule I drugs, the federal government has been enforcing cannabis/marijuana provisions primarily pursuant to (1) guidelines issued by the U.S. Department of Justice (DOJ) and (2) appropriations riders passed by the U.S. Congress in every year since 2014 that prevent DOJ from using any of its funding to prevent states from “implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

DOJ published the “[Ogden Memorandum](#)” in October 2009, which deprioritized using federal law enforcement resources against state medical marijuana programs. In August 2013, DOJ published the “[Cole Memorandum](#),” which announced that it would focus on eight enforcement priorities when enforcing marijuana provisions of the federal Controlled Dangerous Substances Act. The guidelines also state that, although DOJ 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, former Attorney General Jefferson B. Sessions III announced that previous guidance regarding federal marijuana prosecutions was rescinded, effective immediately. Current Attorney General William Barr has pledged to not go after marijuana companies that comply with state laws, but there has been no official DOJ guidance since the 2018 memorandum rescinding prior guidance.

Additional Information

Prior Introductions: SB 86 of 2019 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 505, received a hearing in the House Health and Government Operations Committee, but no further action was taken. SB 714 of 2018, a similar bill, passed the Senate as amended and received an unfavorable report from the House Health and Government Operations Committee. Its cross file, HB 1218, which applied only to Washington County, received a hearing in the House Health and Government Operations Committee, but no further action was taken on the bill.

Designated Cross File: HB 813 (Delegates Wivell and McKay) - Health and Government Operations.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Department of Health; Department of Public Safety and Correctional Services; U.S. Department of Justice; University of Maryland Francis King Carey School of Law; Department of Legislative Services

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