

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 445
Judiciary

(Delegate Dumais)

Judicial Proceedings

Criminal Procedure - Charging Procedures - Citations

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. The bill also requires the Maryland Police Training and Standards Commission (MPTSC), in consultation with the Anne Arundel County Police Academy, to develop and maintain a uniform statewide training and certification curriculum that includes role-playing exercises to ensure the use of best practices in the issuance of citations in lieu of arrest. Finally, the bill makes conforming changes to statutory provisions pertaining to an application to the Governor for extradition of a person charged with a crime by citation in Maryland.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures, as discussed below. MPTSC can meet the bill's training requirements with existing budgeted resources. Revenues are not affected.

Local Effect: Potential minimal impact on local expenditures, as discussed below. Anne Arundel County can handle the bill's training requirements with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Required Citations

Under the bill, a police officer is *not* required to charge a defendant by citation for a misdemeanor or local ordinance that carries a penalty of imprisonment for 90 days or less if the misdemeanor or violation involves serious injury or an immediate health risk. Statute does not currently contain an exception for serious injury/immediate health risk. The bill retains the current statutory exceptions for specified offenses.

Expansion of Permissible Citations

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 that 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. However, the defendant must not be subject to arrest for an alleged misdemeanor involving serious injury or immediate health risk or an alleged felony arising out of the same incident, or subject to arrest based on an outstanding warrant, as specified.

Extradition

With respect to the return of a person charged by citation with a crime in Maryland, two certified copies of the citation, stating the crime with which the accused is charged, must accompany the written application for requisition that must be submitted to the Governor.

Current Law:

Citations

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; (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 with a value of at least \$100 but less than \$1,500.

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 penalties for possession of CDS, regardless of the schedule the substance 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 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. With certain exceptions, violators are guilty of a misdemeanor and 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; and (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.

Extradition

Extradition is a process where one state (the asylum state) surrenders to another state (the demanding state) an individual accused or convicted of an offense outside the territory of

the asylum state and within the territorial jurisdiction of the demanding state. Requisitions are the formal request by the Governor of Maryland to the Governor of another state for the return an individual accused or convicted of a crime in Maryland.

When the return to Maryland of a person charged with a crime in Maryland is required, the appropriate State's Attorney must present to the Governor a written application for a requisition for the return of the person charged. Similar provisions exist for the return of a person who was convicted of a crime in Maryland and has escaped confinement or broken the terms of bail, probation, or parole.

The application must contain specified information regarding the person and the circumstances involved and a specified certification by the State's Attorney. The written application must be verified by affidavit, be executed in duplicate, and be accompanied by two certified copies of the returned indictment; the information and affidavit filed; the complaint made to the judge or District Court commissioner, stating the charged crime; or the judgment of conviction or the sentence. The applicant may attach supplemental materials, as specified.

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. MPTSC can meet the bill's requirements with existing budgeted resources, as discussed below.

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.

According to the Judiciary, there were approximately 130,396 total initial appearances as a result of warrant and bench warrant arrests for all misdemeanors and felony charges in fiscal 2019; approximately 35,000 violations were filed in the trial courts under § 5-601 of the Criminal Law Article (all CDS) during that same time. However, data is not available on the number of additional citations that may be issued as a result of the bill.

MPTSC already has a training and certification curriculum that meets the bill's requirements. However, MPTSC advises that the commission requires one additional employee, at an estimated cost of \$70,100 in fiscal 2022 and increasing to \$91,300 by fiscal 2026, to maintain the curriculum by conducting ongoing research and revising training materials and programs. The Department of Legislative Services acknowledges

MPTSC's ongoing responsibilities under the bill but advises that those responsibilities do not require an additional full-time employee.

Local Expenditures: Harford, Montgomery, and Wicomico counties advise that the bill does not have a fiscal impact on their jurisdictions. However, in some 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.

Anne Arundel County advises that given MPTSC's existing curriculum, county expenditures are not affected. Talbot County advises that county expenditures increase by \$18,000 annually *if* virtual training is noncompliant with the bill's requirements.

Additional Information

Prior Introductions: The bill generally reflects a combination of previously introduced legislation. The bill's citation provisions reflect similar bills from past sessions. HB 261 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 333, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Similar legislation was also introduced in 2017, 2018, and 2019. With respect to the training provisions, HB 479 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 479, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Identical legislation was also introduced in 2019.

Designated Cross File: SB 671 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Anne Arundel, Harford, Montgomery, Talbot, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Secretary of State; Department of Legislative Services

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