

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1

(Delegate Clippinger)

Judiciary

Finance

Constitutional Amendment - Cannabis - Adult Use and Possession

This proposed constitutional amendment, if approved by the voters at the next general election to be held in November 2022, authorizes an individual at least age 21 to use and possess cannabis in the State beginning July 1, 2023, subject to the requirement that the General Assembly pass legislation regarding the use, distribution, possession, regulation, and taxation of cannabis.

Fiscal Summary

State Effect: The proposed constitutional amendment does not directly affect governmental finances or operations; however, if the constitutional amendment is approved at referendum, the required legislation regarding the use, distribution, possession, regulation, and taxation of cannabis will have a significant impact on State revenues and expenditures. The FY 2023 budget includes \$5.5 million in general funds and restricts \$46.5 million in general funds contingent on the enactment of House Bill 837 *and* the ratification of a constitutional amendment authorizing adult use and possession of cannabis, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Criminal Law Provisions Related to the Use or Possession of Marijuana

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. Marijuana is listed on Schedule I. 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.

Possession of *10 grams or more* of marijuana is a misdemeanor, punishable by imprisonment for up to six months imprisonment and/or a fine of up to \$1,000.

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 the individual 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-related drug 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.

In a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a *bona fide* physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual

with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was assisting the person for whom the defendant is a caregiver in using marijuana in a public place or was in possession of more than one ounce of marijuana.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant may introduce, and the court must consider as a mitigating factor, any evidence of medical necessity. If a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

Natalie M. LaPrade Medical Cannabis Commission

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. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Status of Medical Cannabis Implementation

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2021, the commission had issued 19 final grower licenses, 20 final processor licenses, and 95 final dispensary licenses. In addition, there are three licensed independent testing laboratories. The commission maintains a list of licensees on its [website](#). Also, at the close of calendar 2021, there were 148,129 certified patients, 12,939 caregivers, and 1,511 certifying providers. The commission additionally reports a preliminary total of \$564.8 million in retail sales at cannabis dispensaries in the State for calendar 2021.

Additional Comments: Separate legislation under consideration (House Bill 837) satisfies some of the contingencies in this proposed constitutional amendment, and certain provisions in that bill are also contingent on the approval of this proposed constitutional

amendment by the voters. Other legislation has also been introduced that would satisfy the contingencies in this proposed constitutional amendment.

The fiscal 2023 budget restricts \$46.5 million of the general fund appropriation for the Revenue Stabilization Account for the following purposes, contingent on the enactment of House Bill 837 and the ratification of a constitutional amendment authorizing adult use and possession of cannabis:

- \$40.0 million for the Department of Commerce for the Cannabis Business Assistance Fund (established in House Bill 837);
- \$5.0 million to the Maryland Department of Health for the Cannabis Public Health Fund (established in House Bill 837); and
- \$1.5 million for the Department of Public Safety and Correctional Services to fund enhancements to the Criminal Justice Information System necessary for compliance with changes to statutory expungement provisions in House Bill 837.

Funds not used for the restricted purposes may not be transferred by budget amendment or otherwise to any other purpose and must revert to the general fund.

Further, the fiscal 2023 budget includes \$5.5 million in general funds for the Judiciary, as follows, contingent on the enactment of House Bill 837 and the ratification of a constitutional amendment authorizing adult use and possession of cannabis:

- \$3.0 million in general funds and 41.0 regular positions for the District Court to provide resources for the expedient implementation of statutory changes to expungement laws resulting from the enactment of House Bill 837 and the ratification of the constitutional amendment; and
- \$2.5 million in general funds for the Maryland Legal Services Corporation (MLSC) to provide resources to help MLSC educate individuals on changes to cannabis and expungement laws and support other expungement efforts.

The fiscal 2023 budget also includes, contingent on the enactment of House Bill 837, \$250,000 in general funds for the Department of Legislative Services to conduct a disparity study in order to better understand the barriers to entering the cannabis market.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Caroline, Howard, and Prince George's counties; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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