

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 980
Judiciary

(Delegate Young, *et al.*)

Judicial Proceedings

Criminal Procedure - Probation, Parole, and Pretrial Release Violations -
Cannabis Use

This bill prohibits a court or the Maryland Parole Commission (MPC) from revoking a defendant’s pretrial release or finding that a defendant has violated probation or parole based solely on the use of cannabis or a positive test for cannabis unless the court or MPC, at the time of ordering pretrial release, probation, or parole, makes a specific finding that the defendant’s use of cannabis could create a danger to the defendant or others and includes as a condition of the pretrial release, probation, or parole that the defendant may not use cannabis. “Cannabis” has the meaning stated in § 5-101 of the Criminal Law Article.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances. The Department of Public Safety and Correctional Services (DPSCS) can implement the bill with existing budgeted resources.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Cannabis Use

Among other things, Chapter 26 of 2022 renamed marijuana as “cannabis” in statute and defined cannabis as the plant *Cannabis sativa L.* and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (delta-9-THC) concentration greater than 0.3% on a dry weight basis. “Cannabis” does not include hemp as defined in § 14-101 of the Agriculture Article.

Pursuant to Chapter 26 and the passage of the associated constitutional referendum, as of January 1, 2023, statute distinguishes between a “personal use amount” and a “civil use amount” of cannabis. **Exhibit 1** shows a comparison of what is included under the definitions of each of these terms.

Exhibit 1 Comparison of “Personal Use Amount” and “Civil Use Amount” Definitions

<u>Personal Use Amount</u>	<u>Civil Use Amount</u>
• up to 1.5 ounces of usable cannabis	• more than 1.5 ounces but not more than 2.5 ounces of usable cannabis
• up to 12 grams of concentrated cannabis	• more than 12 grams but not more than 20 grams of concentrated cannabis
• cannabis products containing up to 750 milligrams of delta-9-THC	• cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC
• (as of July 1, 2023) up to two cannabis plants	

THC: tetrahydrocannabinol

Note: Effective July 1, 2023, “personal use amount” also includes up to two cannabis plants. Cannabis plants are not included in the definition of the civil use amount of cannabis; thus, cultivating any number of plants from January 1, 2023, to June 30, 2023, and more than two plants as of July 1, 2023, is a criminal misdemeanor with a maximum penalty of imprisonment for three years and/or a \$5,000 fine.

Source: Department of Legislative Services

As of July 1, 2023, (1) a person at least age 21 may possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

Pretrial Release

Pursuant to Maryland Rule 4-216.1, if a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond without special conditions, the judicial officer must impose the least onerous condition(s) of release to reasonably ensure the defendant's appearance in court and the safety of specified individuals and the community. The following conditions of release are required for all defendants: (1) the defendant will not engage in any criminal conduct while on pretrial release; and (2) the defendant will appear in court when required to do so.

Except as prohibited under § 5-101 or § 5-202 of the Criminal Procedure Article (no personal recognizance for specified defendants and individuals ineligible for pretrial release by a District Court commissioner), unless the judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the appearance of the defendant or safety of victims, witnesses, other persons, or the community, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without special conditions. If the judicial officer makes such a finding, the judicial officer must state the basis for it on the record.

Additional conditions should be imposed on pretrial release only if they are needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. Preference should be given to additional conditions without financial terms. Maryland Rule 4-216.1(d) specifies several types of special conditions of release that may be imposed on a defendant, including refraining from use of alcohol, narcotics, or controlled dangerous substances and any other lawful condition that will help ensure the appearance of the defendant or safety of specified individuals or the community.

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Probation

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or refrain from contacting or harassing the victim of the crime and the victim's family. Probation may either be probation before judgment or probation following judgment.

Parole

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order. MPC has jurisdiction regarding parole for eligible inmates sentenced to State correctional facilities and local detention centers. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review.

Violations of Probation or Parole

If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose.

If a parolee is alleged to have violated a condition of parole, a hearing will be held before one commissioner. The parolee is entitled to be represented by counsel. If the commissioner finds from the evidence that the parolee has violated a condition of parole, the commissioner may take any action that the commissioner considers appropriate, including revoking parole, setting a future hearing date for consideration for reparole, and sending the parolee back to the correctional facility, or continuing parole with or without modification of conditions.

Pursuant to Chapter 515 of 2016, commonly referred to as the Justice Reinvestment Act, DPSCS established a program of "graduated sanctions" in response to technical violations of conditions of parole or probation supervision. The Division of Parole and Probation (DPP) must provide notice to the court and MPC regarding a technical violation

and any graduated sanctions imposed as a result. “Technical violation” means a violation of a condition of probation, parole, or mandatory supervision that does not involve (1) an arrest or a summons issued by a District Court commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) absconding.

The court and MPC may impose the following maximum sentences for a revocation of parole or probation due to a “technical violation” (1) for a first violation, not more than 15 days; (2) for a second violation, not more than 30 days; and (3) for a third violation, not more than 45 days. However, the court and MPC may depart from the limits if adhering to the limits would create a risk to public safety or to a victim or witness. For nontechnical violations, the court or MPC may impose any portion of the remaining suspended sentence when revoking an individual’s parole or probation.

If an order of parole is revoked for a fourth or subsequent technical violation or a violation that is not a technical violation, the commissioner may require the inmate to serve any unserved portion of the sentence originally imposed.

If the parole commissioner finds that adhering to one of these 15-, 30-, or 45-day limits would create a risk to public safety, a victim, or a witness, the commissioner may impose a longer period of imprisonment up to the time remaining on the original sentence or commit the parolee to the Maryland Department of Health for drug or alcohol treatment.

The violator may seek judicial review of a decision to revoke parole in a circuit court within 30 days of receiving the commission’s written decision. The circuit court must decide the case on the record made before the commission.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History:
km/jkb

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