

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 173
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

Drug Paraphernalia for Administration - Decriminalization

This bill alters statutory provisions related to (1) controlled paraphernalia; (2) the prohibition against using or possessing with the intent to use drug paraphernalia; (3) the prohibition against delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia; and (4) penalties for offenses involving controlled paraphernalia and drug paraphernalia.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to the bill’s alteration of the application of existing penalty provisions and the reduction of specified penalties. Expenditures are not materially affected, as discussed below. Potential operational effect on the Maryland Department of Health (MDH), as discussed below.

Local Effect: Potential minimal decrease in local expenditures due to the bill’s alteration of the application of existing penalty provisions and the reduction of specified penalties. Local revenues are not materially affected, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Definition of Controlled Paraphernalia, Elements of Prohibition on Controlled Paraphernalia, Prohibitions on Drug Paraphernalia, etc.

The bill alters the definition of controlled paraphernalia to remove a hypodermic syringe, needle, or any other object or combination of objects adapted to administer a controlled

dangerous substance (CDS) by hypodermic injection. Accordingly, the bill alters an element of the criminal prohibition against possession or distribution of controlled paraphernalia to include possession or distribution of controlled paraphernalia for purposes of manufacturing, distributing, or dispensing (rather than administering) a CDS.

The bill also specifies that the prohibition on the use of or possession with the intent to use drug paraphernalia and the delivery or sale, or manufacture or possession with the intent to deliver or sell, drug paraphernalia, does not apply if the paraphernalia will be used to inject, ingest, inhale, or otherwise introduce into the human body a CDS.

Finally, the bill removes a measuring spoon as an item commonly used to illegally manufacture, distribute, or dispense a CDS for purposes of establishing an unlawful intent to use controlled paraphernalia to engage in these activities.

Penalties

The bill reduces penalties related to controlled paraphernalia from a maximum penalty of four years imprisonment and/or a \$25,000 fine to a maximum penalty of one year imprisonment and/or a \$1,000 fine.

Subsequent offender penalties for violation of the prohibitions against the use or possession of drug paraphernalia and the delivery or sale of drug paraphernalia are reduced from a maximum penalty of two years imprisonment and/or \$2,000 fine to a maximum penalty of one year imprisonment and/or \$1,000 fine.

Current Law:

Use or Possession of Drug 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 2016 repealed the criminal prohibition on use or possession of marijuana-related drug paraphernalia.

Delivery or Sale of Drug 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

“Controlled paraphernalia” means (1) a hypodermic syringe, needle, or any other object or combination of objects adapted to administer a CDS by hypodermic injections; (2) a gelatin capsule, glassine envelope, or other container suitable for packaging individual quantities of a CDS; or (3) lactose, quinine, mannite, mannitol, dextrose, sucrose, procaine hydrochloride, or any other substance suitable as a diluent or adulterant.

In general, a person may not 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;
- making or issuing a false or counterfeit prescription or written order; or
- possessing or distributing controlled paraphernalia under circumstances that 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 a 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 a maximum penalty of four years imprisonment and/or a \$25,000 fine.

Chapter 26 of 2022 repealed the penalty for controlled paraphernalia involving the use or possession of marijuana, for which there was a maximum penalty of one year imprisonment and/or a \$1,000 fine.

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

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) are not materially affected. DPSCS reports that during fiscal 2022, the Division of Correction received no inmates for an offense related to

CDS paraphernalia, and the Division of Parole and Probation opened cases for 105 individuals that had a CDS paraphernalia offense.

The bill may have an operational impact on MDH. Pursuant to Chapter 348 of 2016, an opioid-associated disease prevention and outreach program, if established, must provide for substance use outreach, education, and linkage to treatment services to participants, including distribution and collection of hypodermic needles and syringes. Program staff members, volunteers, and participants may not be arrested, charged, or prosecuted for possessing or distributing controlled paraphernalia or drug paraphernalia whenever that possession or distribution is in direct relation to the program. MDH has previously advised for a similar bill in a prior legislative session that the bill's changes may slightly alter operational procedures for the Prevention and Health Promotion Administration related to the program, including the need to (1) communicate changes to law enforcement to prevent unnecessary arrests; (2) communicate changes to all licensed pharmacists; and (3) alter existing training programs to reflect the bill's changes.

The Office of the Public Defender (OPD) advises that the bill results in reduced caseloads for the office. The Department of Legislative Services advises that given current OPD caseloads and resources, it is assumed that any reduction in OPD caseloads generated by the bill is redirected to other cases.

Local Revenues: Revenues for circuit courts are not materially affected due to the low number of cases that are distributed across multiple jurisdictions in the State. 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 2022:

- one individual was sentenced for one count of a subsequent offense of use or possession with intent to use drug paraphernalia under § 5-619 of the Criminal Law Article;
- two individuals were sentenced for two counts of a subsequent offense of delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia under § 5-619 of the Criminal Law Article; and
- 14 individuals were sentenced to 14 total counts of possession or distribution of controlled paraphernalia under § 5-620 of the Criminal Law Article.

Additional Comments: Although the General Assembly passed similar legislation in the 2021 session (Senate Bill 420), the Governor vetoed the bill.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 481 and SB 509 of 2022, HB 372 and SB 420 of 2021, and HB 720 and SB 704 of 2020.

Designated Cross File: SB 762 (Senator Carter) - Judicial Proceedings.

Information Source(s): Harford, Montgomery, and Talbot counties; 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 Legislative Services

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