

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 855
Judiciary

(Delegate Moon)

Criminal Law - Cannabis Limits

This bill amends the definitions of “civil use amount” and “personal use amount” to mean *one or more* of the types and amounts of cannabis or cannabis-related items listed for each of those terms in existing statutory provisions addressing the use or possession of cannabis. **The bill generally takes effect July 1, 2023. Section 2 of the bill takes effect contingent upon Section 4 of Chapter 26 of 2022 taking effect. (Section 4 of Chapter 26 is set to take effect July 1, 2023.) If Section 2 of the bill takes effect, Section 1 terminates.**

Fiscal Summary

State Effect: *Under one set of assumptions*, general fund revenues for the Judiciary decrease minimally and special fund revenues for the Maryland Department of Health (MDH) increase minimally, as discussed below. Potential minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS). Special fund expenditures and general fund expenditures increase minimally for MDH.

Local Effect: Potential minimal decrease in local incarceration expenditures, as discussed below. Revenues are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Controlled Dangerous Substances – Cannabis

Under current law, 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. Cannabis (also known as 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 cannabis.

Among other things, Chapter 26 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.

Possession of Cannabis

Pursuant to Chapter 26 and the passage of the associated constitutional amendment, as of January 1, 2023, statute distinguishes between a “personal use amount” and a “civil use amount” of cannabis. Beginning January 1, 2023, “personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; or (3) cannabis products containing up to 750 milligrams of delta-9-THC. Beginning July 1, 2023, “personal use amount” is defined as (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-THC; or (4) up to two cannabis plants.

Beginning January 1, 2023, “civil use amount” is defined as (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

Under the bill, the “personal use amount” and “civil use amount” of cannabis specifically include *one or more* of the types and amounts of cannabis or cannabis-related items specified for those terms, as described above.

Pursuant to Chapter 26, an individual at least age 21 may possess the personal use amount of cannabis as of July 1, 2023. **Exhibit 1** shows the penalties related to cannabis possession from January 1, 2023, through June 30, 2023, and the penalties that take effect July 1, 2023.

Exhibit 1
Civil and Criminal Penalties for Possession of Cannabis under Current Law
Effective January 1, 2023, through June 30, 2023, and Effective July 1, 2023

<u>Offense</u>	<u>Offense Type</u>	<u>Maximum Penalty Effective January 1 through June 30, 2023</u>	<u>Maximum Penalty Effective July 1, 2023</u>
Possession of the personal use amount	Civil	\$100 fine*	\$100 fine for individual younger than age 21*
Possession of the civil use amount	Civil	\$250 fine*	\$250 fine*
Possession of more than the civil use amount	Criminal misdemeanor	Six months imprisonment and/or \$1,000 fine	Six months imprisonment and/or \$1,000 fine

*With respect to a person younger than age 21, the court may (1) order the person to attend a drug education program approved by the Maryland Department of Health; (2) refer the person to an assessment for substance abuse disorder; and (3) refer the person to substance abuse treatment, if necessary.

Source: Department of Legislative Services

State Fiscal Effect: The personal use amount and civil use amount definitions refer to particular quantities of cannabis and cannabis-related items. There is a linear relationship between the quantities of identical types of cannabis/cannabis items in these definitions. However, there is no specified link between the different types of cannabis items. Thus, it is unclear at this time how enforcement would operate if a person were to possess a combination of items contained within an individual definition (*i.e.*, personal use amount

or civil use amount). Information is not readily available on how enforcement has been handled under this situation pursuant to the statute that took effect January 1, 2023.

Under one interpretation of current law, a person in possession of more than one type of cannabis in quantities permitted under one definition would face criminal charges for possession of cannabis. Based on that interpretation, the bill's changes authorize a person to possess more cannabis under the personal use and civil use amounts. To the extent that is the case, general fund revenues from criminal fines imposed in the District Court decrease minimally and special fund revenues increase minimally for the Marijuana Citation Fund within MDH from civil citation fines. General fund expenditures for DPSCS may decrease minimally due to fewer incarcerations in Baltimore City. Special fund expenditures from the Marijuana Citation Fund increase minimally for drug education and treatment for individuals younger than age 21, and general fund expenditures for MDH increase minimally for substance use disorder assessments for individuals younger than age 21.

This analysis does not address situations in which a person possesses a combination of cannabis/cannabis-related items under the personal use amount definition and the civil use amount definition.

Local Fiscal Effect: Local expenditures may decrease minimally due to fewer incarcerations for cannabis possession. Because possession of cannabis cases are primarily heard in the District Court, local revenues are not materially affected.

Small Business Effect: Small business dispensaries may benefit to the extent that individuals are authorized to possess more cannabis and ultimately purchase additional quantities and types of cannabis in the adult use market as a result of the bill.

Additional Information

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

Designated Cross File: None.

Information Source(s): Baltimore, Charles, and Garrett counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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