

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 394 (Senator Zirkin)
Judicial Proceedings

Possession of Marijuana - Maximum Penalties

This bill alters the use or possession of marijuana from a crime to a civil offense that is punishable by a maximum fine of \$100. The bill also repeals provisions of law relating to the use or possession of marijuana because of medical necessity.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from fines imposed in District Court cases. Minimal decrease in general fund expenditures for incarcerations due to the bill's elimination of incarceration penalties in these cases.

Local Effect: Minimal reduction in local expenditures due to the bill's elimination of incarceration penalties in these cases.

Small Business Effect: None.

Analysis

Current Law: In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500. The law went into effect on October 1, 2012.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is

convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

Pursuant to Chapters 504 and 505 of 2012 (SB 422 and HB 261), as of January 1, 2013, a police officer must issue a citation for use or possession of marijuana 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.

Background: The Maryland State Commission on Criminal Sentencing Policy advises that there were 342 convictions for use or possession of marijuana in the State's circuits courts during fiscal 2012. During fiscal 2012, the District County handled 454 cases for violations of the prohibition on the use or possession of marijuana.

State Revenues: General fund revenues decrease due to the bill's reduction of the maximum fines for the use or possession of marijuana. The magnitude of this decrease depends on (1) the extent to which individuals in these cases are assessed fines under current law and (2) the amounts of the fines imposed under current law. Although the magnitude of the decrease in general fund revenues cannot be reliably estimated at this time, it is expected to be minimal.

State Expenditures: General fund expenditures decrease minimally as a result of the bill's elimination of incarceration penalties for the use or possession of marijuana and the issuance of a "payable" citation in lieu of an arrest or the "must appear" citation currently issued in some of these cases. This estimate assumes that citations for which an individual is not subject to incarceration can be prepaid and do not require a court appearance.

The Office of the Public Defender (OPD) advises that the bill's decriminalization of the use or possession amount of marijuana could significantly reduce OPD caseloads.

However, OPD did not provide data on the number of cases affected by the bill. Given the caseloads and resources of OPD, it is unlikely that the bill has a material effect on OPD expenditures, and it is assumed that any OPD resources spent on these cases are simply shifted to other OPD cases and duties.

Local Expenditures: Local expenditures decrease minimally as a result of the bill's elimination of the incarceration penalty for possession of less than 10 grams of marijuana. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

The State's Attorneys' Association advises that the bill does not have a fiscal impact on prosecutors.

Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties advise that the bill does not have a fiscal impact on their jurisdictions. Baltimore County advises that the bill may result in a minimal decrease in incarceration costs and notes that individuals charged with possession of marijuana often face additional charges.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland State Commission on Criminal Sentencing Policy; Office of the Public Defender; State's Attorneys' Association; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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