

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 307
Judiciary

(Delegate Moon, *et al.*)

Criminal Law - Possession of Controlled Dangerous Substance - Penalties

This bill repeals and replaces the maximum criminal penalties for the possession or administration of a controlled dangerous substance (CDS) with the maximum criminal penalties for the possession or use of marijuana, and makes a series of conforming changes. Under the bill, a violation is a misdemeanor subject to imprisonment for up to one year and/or a fine of up to \$1,000.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues and expenditures as a result of the bill's reduced penalty provision. Any increase in the District Court's caseload can be handled with existing resources. Enforcement can also be handled with existing resources.

Local Effect: Potential significant decrease in revenues as a result of the bill's reduced penalty provision. Potential significant increase in expenditures as a result of more people being committed to local detention facilities. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: 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.

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may also not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to four years and/or a fine of up to \$25,000.

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.

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 Chapter 158 of 2014, 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. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial upon issuance of a citation. Additionally, the court must order a person who (1) commits a third or subsequent violation or (2) is younger than age 21 and commits a violation to attend a drug education program approved by the Department of Health and Mental Hygiene and refer the person to an assessment for a substance abuse disorder. After the assessment, the court must refer the person to substance abuse treatment, if necessary.

A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana. An affirmative defense is available to defendants for use or possession of marijuana due to a debilitating medical condition. Pursuant to Chapters 61 and 62 of 2013, as of June 1, 2013, an affirmative defense is available to defendants for the possession of marijuana if the defendant possessed marijuana because the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition. Additionally, pursuant to Chapter 351 of 2015, as of October 1, 2015, if a court finds that the defendant used or possessed marijuana because of medical necessity, the court must dismiss the charge.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. However, 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.

Background: The Judiciary advises that in fiscal 2015, there were approximately 23,691 violations involving the possession of a CDS, other than marijuana, in the District Courts, and approximately 13,038 violations in the circuit courts, of which 6,500 (50%) were in the Baltimore Circuit Court, 1,151 (9%) were in the Prince George's County Circuit Court, and 90 (7%) were in the Montgomery County Circuit Court. The Department of Public Safety and Correctional Services (DPSCS) advises that in fiscal 2015, there were 337 intakes for individuals in which possession of CDS other than marijuana was the "most serious" offense, and that the average sentence for these individuals was 28 months.

State Revenues: General fund revenues decrease, potentially significantly, due to the bill's reduced monetary penalty provision. *For illustrative purposes only*, if 16 individuals (approximately 5% of the 337 intakes received by DPSCS for possession of CDS other than marijuana as the "most serious" offense) paid the bill's maximum \$1,000 fine instead of the current maximum \$25,000 fine, and all 16 cases were heard in the District Court, general fund revenues decrease by approximately \$384,000.

State Expenditures: The Judiciary advises that due to the bill's reduced penalty for possession of CDS, the District Court would obtain exclusive original jurisdiction over all possession of CDS cases and the circuit courts would no longer have concurrent jurisdiction with the District Court. However, the Judiciary advises that any increase in the District Court's caseload does not have a significant fiscal or operational impact on the Judiciary.

General fund expenditures decrease, potentially significantly, as a result of the bill's reduced incarceration penalty due to fewer people being committed to State correctional facilities and for shorter periods of time and reduced payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Under the bill's incarceration penalty, individuals may serve a *maximum* of one year of imprisonment. DPSCS advises that the average sentence for 337 individuals in which the possession of CDS other than marijuana was the "most serious" offense was 28 months in fiscal 2015. DPSCS additionally notes that under the bill, only individuals sentenced in Baltimore City would be incarcerated at a State facility (the State-operated Baltimore Pretrial Complex), and that other individuals would be sentenced to local detention facilities. *For illustrative purposes only*, if all 337 individuals received the bill's maximum one year imprisonment instead of the current average of 28 months, and only 84 individuals (approximately 25%) were incarcerated at the Baltimore Pretrial Complex, assuming variable inmate costs of \$200 per month excluding health care, State costs could decrease by approximately \$1,685,600.

Local Revenues: Revenues decrease, potentially significantly, as a result of the bill's reduced monetary penalty provision and cases no longer being heard in the circuit courts.

Local Expenditures: Expenditures increase, potentially significantly, as a result of the bill's reduced incarceration penalty and more individuals being committed to local detention facilities. 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.

Additional Information

Prior Introductions: HB 1258 of 2015 was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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