

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 372
Judiciary

(Delegate Moon)

Judicial Proceedings

Criminal Law - Drug Paraphernalia for Administration - Decriminalization

This bill makes several changes to statutory provisions related to “controlled paraphernalia” and alters penalties for offenses involving controlled paraphernalia and drug paraphernalia.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues and expenditures due to the bill’s alteration of the application of existing penalty provisions and the reduction of specified penalties.

Local Effect: Minimal decrease in local revenues and expenditures due to the bill’s alteration of the application of existing penalty provisions and the reduction of specified penalties.

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 controlled paraphernalia to include controlled paraphernalia for purposes of manufacturing, distributing, or dispensing (rather than administering) a CDS.

The bill also specifies that the prohibitions on drug paraphernalia do 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. The bill also repeals the penalty for controlled paraphernalia related to the use or possession of marijuana.

Subsequent offender penalties for violation of the prohibitions against the use or possession of drug paraphernalia and 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 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 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, which 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. However, if the violation involves the use or possession of marijuana, violators are subject to 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 in specified monetary penalties from cases heard in the District Court.

State Expenditures: General fund expenditures decrease minimally as a result of the bill's reduction in specified incarceration penalties due to fewer people being committed to State correctional facilities, shorter incarcerations for persons sentenced in Baltimore City, and decreased payments to counties for reimbursement of inmate costs. In addition, the bill may have an operational impact on the Maryland Department of Health (MDH), as discussed below.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,900 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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 advises 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 decrease minimally as a result of the bill's altered application of existing monetary penalties and reduction in specified monetary penalties from cases heard in the circuit courts.

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 2020:

- 3 individuals were sentenced to four total counts of a subsequent offense of use or possession with intent to use drug paraphernalia under § 5-619 of the Criminal Law Article; and
- 11 individuals were sentenced to 11 total counts of possession or distribution of controlled paraphernalia under § 5-620 of the Criminal Law Article.

Local Expenditures: Expenditures decrease minimally to the extent that the bill's provisions result in an overall reduction in the number of individuals sentenced to local detention facilities and/or the overall amount of time individuals spend in local detention facilities. The bill's penalty provisions likely result in the shifting of some individuals from State correctional facilities to local facilities. However, the bill also alters offense provisions in a manner that will reduce the number of individuals sentenced for paraphernalia offenses. Data is not readily available on the number of individuals sentenced to local facilities for paraphernalia offenses altered by the bill and the sentences imposed. Nonetheless, this estimate assumes that the bill's overall impact is a reduction in local incarceration expenditures.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 720 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 704, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: SB 420 (Senator Carter) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary
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(Administrative Office of the Courts); Maryland Department of Health; Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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