

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 280
Judiciary

(Delegate Davis, *et al.*)

Criminal Law - Cannabis-Related Offenses - Civil Penalties

This bill generally decriminalizes and alters penalties for specified cannabis-related offenses. The bill also authorizes performance of specified hours of community service in lieu of fines for certain offenses. **The bill takes effect October 1, 2023, contingent upon Section 4 of Chapter 26 of 2022 taking effect. (Section 4 of Chapter 26 is set to take effect July 1, 2023.)**

Fiscal Summary

State Effect: General fund expenditures increase by \$36,400 in FY 2024 only for programming changes. General fund revenues are not anticipated to be materially affected, as discussed below. Special fund revenues for the Maryland Department of Health (MDH) increase minimally from monetary penalties imposed under the bill.

Local Effect: Local revenues decrease minimally from fines imposed in circuit court cannabis criminal cases. Local incarceration expenditures may decrease minimally from offenses decriminalized under the bill.

Small Business Effect: None.

Analysis

Bill Summary:

Possession and Use of Cannabis

The bill repeals the definition of, references to, and the civil penalty provisions for the “civil use amount” of cannabis (including repeal of the criminal penalty for possessing

more than the civil use amount of cannabis) and establishes specified civil penalties involving the use and possession of more than the personal use amount of cannabis by individuals at least age 21 and possession of cannabis for individuals who are underage (at least age 18 but younger than age 21). **Exhibit 1** contains the specified penalties for each of these offenses. The offenses listed below must be charged by citation. An underage individual must be summoned for trial while an individual at least age 21 may request a trial, prepay the fine, or request community service. In addition to a fine, a court may order an underage individual who is found guilty of possession of cannabis to attend a drug education program approved by MDH, refer the person to an assessment for substance use disorder, and refer the person to substance use treatment, if necessary. (Under current law, this authorization applies to a personal use amount or civil use amount of cannabis civil offense involving an underage individual.)

Exhibit 1
Civil Penalties for Possession of Cannabis under the Bill

<u>Offense</u>	<u>Offense Type</u>	<u>Maximum Penalty</u>
Possession of the personal use amount by an underage individual	Civil	\$100 fine*
Possession of more than the personal use amount by an individual at least age 21	Civil	\$250 fine or 75 hours of community service**
Possession of more than the personal use amount by an underage individual	Civil	\$250 fine or 75 hours of community service**

*Unchanged by the bill.

**A person may request, and the court must grant, community service in lieu of the fine. Chapter 26 of 2022 does not address community service in lieu of a fine.

Source: Department of Legislative Services

Cannabis Cultivation: The bill converts the criminal offense of cultivating cannabis in violation of Criminal Law Article § 5-601.2 (currently a misdemeanor punishable by imprisonment for up to three years and/or a maximum fine of \$5,000) to a civil offense punishable by a maximum fine of \$5,000. This offense must be charged by citation. An underage individual must be summoned for trial while an individual at least age 21 may request a trial or prepay the fine.

Decriminalization of Other Cannabis Offenses: The bill converts the following criminal offenses from a misdemeanor punishable by imprisonment for up to three years and/or a \$5,000 maximum fine to a civil offense punishable by a maximum fine of \$5,000 or up to

500 hours of community service: (1) possession with the intent to distribute cannabis under § 5-602(b)(1) of the Criminal Law Article and (2) cultivating cannabis, growing cannabis, or possessing manufacturing equipment with an intent to distribute cannabis under § 5-603(b) of the Criminal Law Article. An underage individual must be summoned for trial while an individual at least age 21 may request a trial, request community service, or prepay the fine. If a person requests community service, the court must grant it.

Current Law:

Controlled Dangerous Substances – Cannabis

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 referendum, as of January 1, 2023, statute distinguishes between a “personal use amount” and a “civil use amount” of cannabis. **Exhibit 2** shows a comparison of what is included under the definitions of each of these terms.

Exhibit 2
Comparison of “Personal Use Amount” and “Civil Use Amount” Definitions

Personal Use Amount

- up to 1.5 ounces of usable cannabis
- up to 12 grams of concentrated cannabis
- cannabis products containing up to 750 milligrams of delta-9-THC
- (as of July 1, 2023) up to two cannabis plants

Civil Use Amount

- more than 1.5 ounces but not more than 2.5 ounces of usable cannabis
- more than 12 grams but not more than 20 grams of concentrated cannabis
- cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC

Note: Effective July 1, 2023, personal use amount also includes up to two cannabis plants. Cannabis plants are not included in the definition of civil use amount; thus, cultivating any number of plants from January 1, 2023, to June 30, 2023, and more than two plants as of July 1, 2023, is a criminal misdemeanor with a maximum penalty of imprisonment for three years and/or a \$5,000 fine

Source: Department of Legislative Services

Effective July 1, 2023, an individual at least age 21 may possess the personal use amount of cannabis. **Exhibit 3** 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 3
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 MDH; (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

Possession with the Intent to Distribute Cannabis and Adult Sharing of Cannabis: As of January 1, 2023, a person may not possess cannabis in sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense cannabis. However, possession of the personal use amount of cannabis or the civil use amount of cannabis without other evidence of an intent to distribute or dispense does not constitute a violation of this prohibition. A police officer must charge a violation of this provision by citation, as specified. A person who violates this provision is guilty of a misdemeanor and subject to a maximum penalty of imprisonment for three years and/or a \$5,000 fine.

Effective July 1, 2023, the prohibition against distributing, dispensing, or possessing with the intent to distribute a CDS does not prohibit adult sharing of the personal use amount of cannabis. A civil or criminal penalty may not be imposed for “adult sharing” (generally defined as the transfer of cannabis between persons who are at least age 21 without remuneration) of the personal use amount of cannabis.

Cultivating Cannabis: Between January 1, 2023, and June 30, 2023, an individual is prohibited from cultivating cannabis. Effective July 1, 2023, a person at least age 21 may cultivate up to two cannabis plants. However, no more than two cannabis plants may be cultivated at a single residence where two or more people at least age 21 reside. A person who cultivates cannabis must (1) cultivate cannabis in a location outside of public view; (2) take reasonable precautions, as specified, to ensure the plants are secure from unauthorized access and access by an underage person; and (3) only cultivate cannabis on property the cultivator lawfully possesses or with the consent of the property's lawful possessor. An underage person may not cultivate cannabis. A person who violates these provisions is guilty of a misdemeanor and subject to a maximum penalty of imprisonment for three years and/or a \$5,000 fine.

Debilitating Medical Conditions and Medical Necessity: In a prosecution for the use or possession of cannabis, it is an affirmative defense that the defendant used or possessed the cannabis because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a *bona fide* physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) cannabis is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. Likewise, in a prosecution for the possession of cannabis, it is an affirmative defense that the defendant possessed cannabis because the cannabis was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using cannabis in a public place or was assisting the person for whom the defendant is a caregiver in using cannabis in a public place or was in possession of more than one ounce of cannabis.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of cannabis. A defendant may introduce, and the court must consider as a mitigating factor, any evidence of medical necessity. If a court finds that the use or possession of cannabis was due to medical necessity, the court *must dismiss* the charge.

State Fiscal Effect: General fund expenditures for the Judiciary increase by approximately \$36,400 in fiscal 2024 only for programming changes. The bill is not expected to materially affect general fund revenues, as discussed below. Special fund revenues for MDH increase minimally from monetary penalties imposed under the bill. The assumptions used in this estimate are as follows:

- violations for possession of more than the personal use amount of cannabis do not occur frequently under the bill and existing statute;

- individuals found guilty of a possession of cannabis civil offense are much more likely to pay a fine than perform community service;
- incarceration penalties are not frequently imposed for possession of cannabis violations; and
- if individuals are incarcerated under existing statute for the remaining offenses decriminalized under the bill, their incarceration is due to additional offenses of which they were convicted, not the cannabis offense.

State Revenues

Overall, the bill is not expected to materially affect general fund revenues. General fund revenues *decrease minimally* from (1) the bill's alteration of the possession of cannabis statute under § 5-601 of the Criminal Law Article to impose civil penalties for acts currently subject to criminal penalties and (2) opportunities for individuals to request community service in lieu of a fine for various cannabis-related offenses.

The Maryland State Commission on Criminal Sentencing Policy reports that there were 392 individuals sentenced to 399 total counts of cannabis-related violations of § 5-602 through § 5-606 of the Criminal Law Article in the State's circuit courts during fiscal 2022. Under the bill, most of these cannabis-related violations would shift to fine only civil offenses within the sole jurisdiction of the District Court. Thus, general fund revenues *increase minimally* from the above cases shifting to the District Court, but any increase is partially offset from individuals requesting community service in lieu of a fine.

Special fund revenues for MDH increase minimally due to monetary penalties under § 5-601 of the Criminal Law Article shifting from criminal fines to civil fines remitted to the Marijuana Citation Fund. Civil penalties imposed for possession of cannabis under § 5-601 of the Criminal Law Article are currently remitted to the Marijuana Citation Fund for drug education and treatment programs. Criminal penalties in the District Court are remitted to the general fund.

State Expenditures

Judiciary: General fund expenditures for the Judiciary increase by \$36,393 in fiscal 2024 only for programming changes required to alter the cannabis civil citation docket to implement the bill's provisions related to performing community service in lieu of a fine for specified cannabis offenses.

The Judiciary also advises that citations need to be recalled, revised, and restocked at a cost of approximately \$25,000. However, the Department of Legislative Services advises that the District Court can implement the changes during routine reprinting of the citations using existing budgeted resources.

Maryland Department of Health: As noted above, this estimate assumes that violations for possession of more than the personal use amount of cannabis do not occur frequently under the bill and existing statute. Therefore, the bill is not expected to materially affect referrals to MDH drug education and treatment programs and corresponding expenditures from the Marijuana Citation Fund.

Department of Public Safety and Correctional Services: The bill is not expected to materially affect expenditures for the Department of Public Safety and Correctional Services (DPSCS). DPSCS advises that as of December 2022, 53 inmates in the Division of Correction had one or more cannabis offenses; all of the inmates had additional offenses that were more severe. As of December 2022, 365 offenders under supervision by the Division of Parole and Probation had one or more cannabis offenses; 128 of these offenders only had a cannabis offense.

Office of the Public Defender: While the bill's provisions reduce caseloads for the Office of the Public Defender, this estimate assumes that any resources currently dedicated to cases eliminated under the bill are retained and redirected to existing caseloads.

Local Revenues: Local fine revenues decrease minimally from fines imposed in circuit court cannabis cases. The bill shifts cases for criminal offenses currently within the jurisdiction of the circuit courts and the District Court to civil offenses within the sole jurisdiction of the District Court.

Local Expenditures: Local incarceration expenditures may decrease minimally from offenses decriminalized under the bill.

While the bill reduces caseloads for State's Attorneys' offices, this estimate assumes that any corresponding resources are retained and redirected to other cases.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 73 (Senator Carter) - Judicial Proceedings.

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

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