

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 441
Judiciary

(Delegate Davis)

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.

Fiscal Summary

State Effect: General fund expenditures increase by \$36,400 in FY 2025 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:

Cannabis Reform

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State following the enactment of Chapter 26 of 2022 and the passage of the associated constitutional amendment by (1) creating the Maryland Cannabis Administration (MCA) as an independent unit of State government that is responsible for the regulation of medical and adult-use cannabis; (2) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it the Alcohol, Tobacco, and Cannabis Commission (ATCC); (3) developing a licensing framework for the regulated sale of cannabis; (4) requiring all existing medical cannabis licensees to convert to adult-use cannabis businesses; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; and (6) creating the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program in OSE. The sale of adult-use cannabis began on July 1, 2023.

Adult-use Cannabis

Pursuant to Chapter 26 and the passage of the associated constitutional amendment, a person at least age 21 may use and possess the personal use amount of cannabis. Possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis by anyone are subject to civil penalties. Possession of more than the civil use amount of cannabis by anyone is subject to a criminal penalty of imprisonment for up to six months and/or a \$1,000 maximum fine.

“Personal use amount” means (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-tetrahydrocannabinol (THC); or (4) up to 2 cannabis plants. “Civil use amount” means (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.

Selling Cannabis without a License: A person may not sell or distribute a product intended for human consumption or inhalation that contains more than 0.5 milligrams of THC or

2.5 milligrams of THC per package unless the person is a cannabis licensee and the product complies with specified standards, or, even if licensed, sell or distribute the specified THC products to an individual younger than age 21. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$5,000 fine.

Selling Artificial Cannabis: A person may not sell or distribute a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$10,000 fine.

Possession with the Intent to Distribute 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 imprisonment for up to three years and/or a \$5,000 maximum fine.

As of July 1, 2023, the prohibition against distributing, dispensing, or possessing with the intent to distribute a controlled dangerous substance 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. “Adult sharing” does not include instances in which (1) cannabis is given away contemporaneously with another reciprocal transaction between the same parties; (2) a gift of cannabis is offered or advertised in conjunction with an offer for the sale of goods or services; or (3) a gift of cannabis is contingent on a separate reciprocal transaction for goods or services.

Cultivating Cannabis: As of 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 imprisonment for up to three years and/or a \$5,000 maximum fine.

State Fiscal Effect: General fund expenditures for the Judiciary increase by approximately \$36,362 in fiscal 2025 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 424 individuals sentenced to 429 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 2023. 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 \$36,362 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 during fiscal 2023, the Division of Correction received five individuals with one or more cannabis offenses.

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.

Alcohol, Tobacco, and Cannabis Commission: While ATCC does not enforce the general provisions of the Criminal Law Article that are decriminalized under the bill, misdemeanor offenses for the unlicensed sale of cannabis and the sale of artificial cannabis exist under the Alcoholic Beverages and Cannabis Article, which ATCC enforces. However, ATCC is unable to determine at this time whether the bill shifts responsibility over the offenses affected by the bill from local law enforcement to ATCC. Any increase in enforcement is not expected to be significant enough to necessitate additional staff. To the extent that current staffing levels prove insufficient, ATCC can request additional resources through the annual budget process.

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

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 280 and SB 73 of 2023.

Designated Cross File: SB 619 (Senator Carter) - Judicial Proceedings.

Information Source(s): Baltimore and Montgomery counties; City of Havre de Grace; Alcohol, Tobacco, and Cannabis Commission; Maryland Cannabis Administration; 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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Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510