

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 406

(Senators Gile and Attar)

Judicial Proceedings

Criminal Law - Drug Trafficking Crime - Definition

This bill alters the definition of “drug trafficking crime” under § 5-621 of the Criminal Law Article (use of a weapon in a drug trafficking crime) to include a misdemeanor or a conspiracy to commit a misdemeanor in violation of § 5-602(b)(1) (possession with intent to distribute cannabis) or § 5-603(b) (cultivating or growing cannabis) of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) due to the expanded application of existing incarceration penalties, as discussed below. The Judiciary and the Office of the Public Defender (OPD) can likely handle any increase in their workloads with existing budgeted resources. Revenues are not affected.

Local Effect: Potential minimal decrease in local expenditures to the extent the bill shifts incarcerated individuals from local detention facilities to State correctional facilities. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Under § 5-621 of the Criminal Law Article, “drug trafficking crime” means a felony or a conspiracy to commit a felony involving the possession, distribution, manufacture, or importation of a controlled dangerous substance, as specified.

Section 5-621 of the Criminal Law Article – Use of a Weapon in a Drug Trafficking Crime

During and in relation to a drug trafficking crime, a person may not (1) possess a firearm under sufficient circumstances to constitute a nexus to the drug trafficking crime or (2) use, wear, carry, or transport a firearm. Violators are guilty of a felony and, in addition to the sentence provided for the drug trafficking crime, are subject to:

- for a first violation, imprisonment for up to 20 years with a mandatory minimum, nonsuspendable sentence of 5 years; and
- for each subsequent violation, imprisonment for up to 20 years with a mandatory minimum, nonsuspendable sentence of 10 years.

Except for an incarcerated individual at the Patuxent Institution, the entire sentence is nonparolable. A sentence imposed for a subsequent violation of § 5-621 must be consecutive to and not concurrent with any other sentence imposed by virtue of the commission of the drug trafficking crime.

Sections 5-602(b)(1) and 5-603(b) of the Criminal Law Article

Under § 5-602(b)(1), a person may not possess cannabis in a sufficient quantity that reasonably indicates under the 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. Additionally, this prohibition does not apply to adult sharing of the personal use amount of cannabis (generally defined as the transfer of cannabis between persons who are at least age 21 without remuneration).

Under § 5-603(b), a person is prohibited from cultivating or growing cannabis or manufacturing a cannabis product, or manufacturing, distributing, or possessing equipment or other specified items that is adapted to produce cannabis or a cannabis product under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense cannabis or a cannabis product.

A person who violates § 5-602(b)(1) or § 5-603(b) is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a maximum fine of \$5,000.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of incarceration penalties. The bill is not expected to materially affect the workloads of the Judiciary or OPD.

Relevant Offense Data

Exhibit 1 contains information for fiscal 2025 on the number of violations (charges) filed and guilty dispositions (convictions) in the District Court and circuit courts for offenses under § 5-602(b)(1) and § 5-603(b) of the Criminal Law Article. According to the Judiciary, there is no way to determine how many of these offenses also involved firearms.

Exhibit 1
Violations and Guilty Dispositions – Fiscal 2025
Sections 5-602(b)(1) and 5-603(b) of the Criminal Law Article

<u>Criminal Law Article Offenses</u>	<u>District Court</u>		<u>Circuit Courts</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
Section 5-602(b)(1)	554	10	335	63
Section 5-603(b)	17	0	12	1

¹ A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

Source: Maryland Judiciary

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase minimally due to more people being committed to State correctional facilities for longer periods of time. It is anticipated that the number of additional convictions under § 5-621 of the Criminal Law Article resulting from the bill is minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,838 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 incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local

detention center between 12 and 18 months; and (3) incarcerated individuals 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.

Office of the Public Defender

OPD advises that the bill increases its workload in existing cases and requires one additional assistant public defender statewide. The Department of Legislative Services advises that while the bill may result in increased effort for OPD in a small number of cases where an existing OPD misdemeanor client faces an additional felony charge arising from the same alleged conduct, OPD can likely absorb any additional workload with existing budgeted resources.

Local Expenditures: Local expenditures may decrease minimally due to individuals shifting from local detention facilities to State correctional facilities. 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 \$140 to \$350 per incarcerated individual in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1202 of 2025.

Designated Cross File: HB 171 (Delegates Valentine and Simmons) - Judiciary.

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

Fiscal Note History: First Reader - February 2, 2026
sj/aad

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