

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 548
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Substance Abuse - Diversion

This bill alters the penalty for a first offense of possessing, administering to another, obtaining, or attempting to obtain a controlled dangerous substance, requiring the court to stay the entering of judgment and place the defendant on probation, contingent on completion of a drug treatment program.

The bill takes effect October 1, 2008.

Fiscal Summary

State Effect: Possible increase in general fund expenditures due to increased workload for the Division of Parole and Probation (DPP). Possible decrease in general fund expenditures resulting from fewer incarcerations of first-time drug offenders. The net fiscal effect of this bill is uncertain, but is not expected to be significant.

Local Effect: Possible decrease in local expenditures resulting from fewer incarcerations of first-time drug offenders. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2007.

Small Business Effect: None.

Analysis

Bill Summary: This bill alters the penalty for possessing, administering to another, obtaining, or attempting to obtain a controlled dangerous substance under § 5-601 of the Criminal Law Article. When a defendant pleads guilty or *nolo contendere* or is found guilty of such a violation, the court is required to stay the entering of judgment and place the defendant on probation.

If a person who violated this section has been placed on probation under this section or has been convicted of a crime in another state or the United States that would be a crime under this section if committed in this State, that person is guilty of a misdemeanor subject to:

- imprisonment not exceeding one year and/or a fine not exceeding \$1,000, if the violation of this section involves the use or possession of marijuana; or
- imprisonment not exceeding four years, and/or a fine not exceeding \$25,000, if the violation of this section involves the use or possession of a controlled substance other than marijuana.

As a condition of probation, the court shall require the defendant to participate in and complete a drug treatment or education program approved by the Department of Health and Mental Hygiene (DHMH), and a program approved by the court that consists of vocational training, family counseling, literacy training, or community service. The court may not impose incarceration as an additional condition of probation, but may require a defendant to contribute to the cost of placement in a drug treatment program. A defendant who fails to meet the conditions of probation is guilty of a misdemeanor subject to imprisonment not exceeding four years and/or a fine not exceeding \$25,000.

Current Law: Possession or administration to another, obtaining or attempting to obtain, or procuring or attempting to procure the administration of a controlled dangerous substance subjects a violator to maximum penalties of imprisonment for four years and/or a fine of \$25,000. If the violation involves the use or possession of marijuana, the maximum penalties are imprisonment for one year and/or a fine of \$1,000.

Background: Arrests in Maryland for drug possession have increased from 37,100 in 2001 to 39,900 in 2005. California, Arizona, and the District of Columbia, have enacted legislation imposing treatment rather than imprisonment for first- and many second-time drug possession offenses.

State Fiscal Effect:

Division of Correction (DOC): General fund expenditures could decrease minimally as a result of the bill's incarceration penalties due to fewer people being committed to DOC facilities and decreased payments to counties for reimbursement of inmate costs. The Maryland State Commission on Criminal Sentencing Policy advises that among the 780 first-time drug offenders sentenced in the circuit courts within the past two years. Fourteen percent received some period of incarceration averaging less than six months. It is expected that the percentage of first-time drug offenders sentenced to incarceration by the District Court is similar or lower. Because most first-time drug offenders do not receive incarceration, and the period of incarceration for those that do is generally short, any decrease in DOC expenditures is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,262 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Division of Parole and Probation: This bill could result in increased expenditures by DPP by increasing the number of drug offenders under their supervision. The division's average expenditure to supervise an offender per year is approximately \$1,533. However, the division advises that it already supervises most first-time drug offenders. Thus, the division may be able to handle any additional workload with existing resources. If its increase in workload is unexpectedly high, the division could require new staff. The cost to hire a new probation agent is \$56,775 on an annualized basis.

Department of Health and Mental Hygiene: DHMH advises that it could handle the treatment provisions in this bill with existing resources.

Judiciary (Administrative Office of the Court): The Judiciary advises that it could handle the procedural changes made by this bill with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Drug Policy Alliance, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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