Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 222 (Delegate Dumais, *et al.*)
Judiciary

Criminal Law - Distribution of Heroin or Fentanyl Resulting in Death

This bill creates a crime for the direct or indirect distribution of heroin or fentanyl, the use of which is a contributing cause in the death of another. A violation is a felony with a maximum penalty of 30 years imprisonment. A sentence imposed under the bill must be separate from and consecutive to a sentence for any crime based on the act establishing the violation. The bill establishes a complete immunity defense for a person if evidence of the crime was solely obtained as a result of the person's seeking, assisting, or providing medical assistance.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's penalty provisions. Impact may occur in the near term and may be delayed to future years depending on how sentences are imposed. Enforcement can be handled with existing resources. No effect on revenues.

Local Effect: Enforcement can be handled with existing resources. No effect on revenues.

Small Business Effect: None.

Analysis

Current Law: While the possession, distribution, and manufacturing of heroin or fentanyl may be subject to criminal prosecution, as specified, contributing to the cause of death of another by distribution of heroin or fentanyl is not a specific crime under State law.

Controlled dangerous substances 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. Heroin is a Schedule I drug and fentanyl is a Schedule II drug.

For specified primary crimes involving controlled dangerous substances and paraphernalia, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance;

- manufacture a controlled dangerous substance or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with the intent to use it to produce, sell, or dispense a controlled dangerous substance;

- create, distribute, or possess with the intent to distribute a counterfeit substance;

- manufacture, distribute, or possess equipment designed to render a counterfeit substance;

- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or

- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute the controlled dangerous substance.

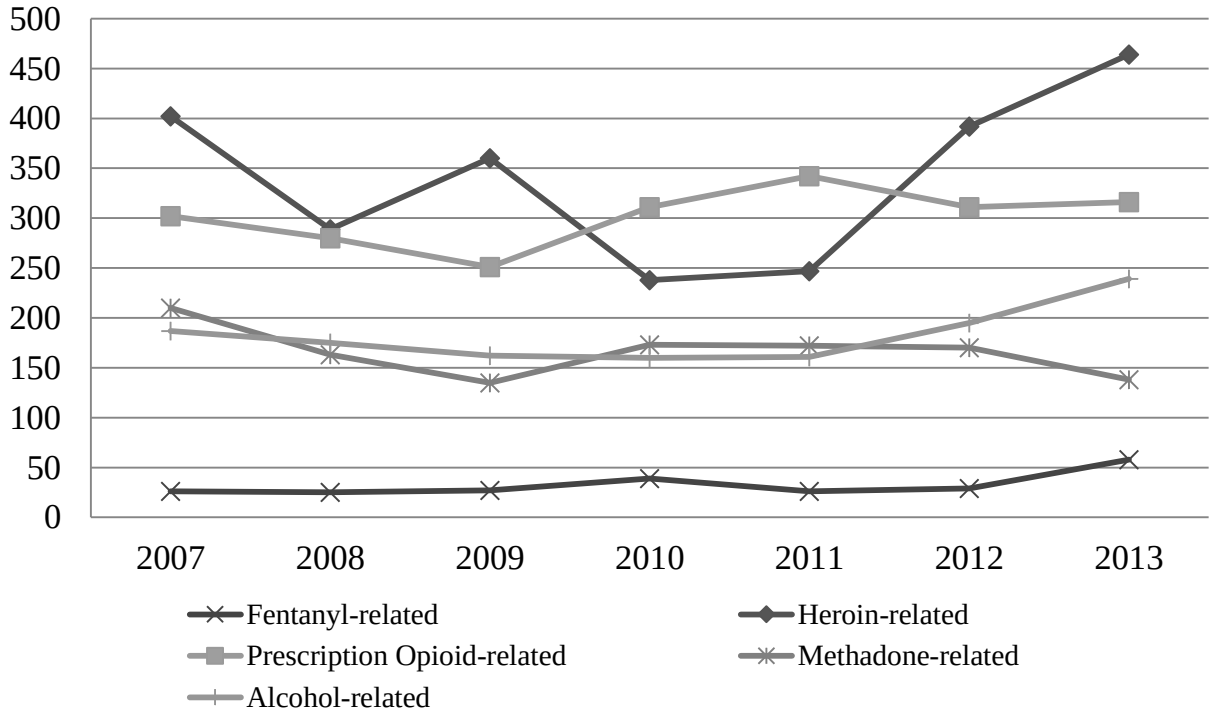
For applicable penalties for these crimes, see the **Appendix**.

Chapter 401 of 2014, the "Good Samaritan Law," established that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for specified violations if the evidence for the criminal prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance. Additionally, a person who experiences a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for certain violations if the evidence for the criminal prosecution was obtained solely as a result of another person's seeking medical assistance. The law also establishes that the act of seeking, providing, or assisting with the provision of medical assistance for

another person may be used as a mitigating factor in a criminal prosecution. The violations covered by Chapter 401 include possession, but not distribution, of a controlled dangerous substance.

Background: The 2013 report of the Department and Health and Mental Hygiene (DHMH) *Drug and Alcohol-Related Intoxication Deaths in Maryland*, indicated that drug- and alcohol-related intoxication deaths in Maryland totaled 858 in 2013, a 7% increase from 2012, and an 88% increase since 2011. Increases in the number of heroin-, fentanyl-, and alcohol-related deaths contributed to the overall increase. Heroin-related deaths increased from 392 in 2012 to 464 in 2013, an 18% increase. The number of fentanyl-related deaths also doubled between 2012 and 2013, increasing from 29 to 58. There has also been a dramatic increase in heroin-related emergency visits in Maryland, and all but a small number were the result of heroin overdoses. **Exhibit 1** shows trends in drug- and alcohol-related intoxication deaths in Maryland from 2007-2013.

Exhibit 1
Unintentional Intoxication Deaths in Maryland
2007-2013



Source: Department of Health and Mental Hygiene

Heroin is a Schedule I opioid that quickly converts to morphine when it enters the body through either an injection, inhalation, or smoking. The purity of heroin varies greatly because it is cut with additives such as caffeine, sugar, chemicals, or other drugs, like fentanyl. Since late 2013, there has been a sharp rise in the number of fentanyl-related deaths. The majority of fentanyl-related deaths in 2013 have been attributed to nonpharmaceutical powdered fentanyl that was mixed with heroin. Fentanyl is a Schedule II narcotic pain reliever used to manage moderate to severe chronic pain and is significantly more potent than heroin. Between January and September 2014, there were 141 fentanyl-related deaths in Maryland, an average of almost 16 deaths per month compared with an average of 2 per month between 2007 and 2012.

In light of this alarming trend, there are several major statewide efforts underway to reduce heroin- and fentanyl-related overdoses. The Overdose Response Program, established in DHMH by Chapter 299 of 2013, is intended to expand access to Naloxone, a life-saving medication that can safely and effectively reverse overdoses related to heroin and pharmaceutical opioids, by training and certifying individuals to administer Naloxone. Chapter 299 allows family members, friends, and associates of opoid users to legally obtain a prescription for Naloxone in their own names. There is also statewide effort to train first responders to administer Naloxone. In 2013, all counties and Baltimore City submitted local overdose prevention plans at the request of DHMH. Chapter 650 of 2014 authorized the establishment of local fatality review teams to promote cooperation and coordination among agencies, develop plans, and recommend changes to prevent drug overdose deaths.

On June 27, 2014, Governor O'Malley issued Executive Order 01.01.2014.11, which created the Overdose Prevention Council to advise and assist agencies in a coordinated, statewide effort to reduce overdoses. Maryland StateStat was tasked with calculating progress toward the goal of reducing overdose deaths by 20% by the end of 2015. DHMH also launched an aggressive public awareness campaign in June 2014 to encourage Maryland residents to fight against opioid overdoses.

The Department of State Police is augmenting enforcement against the drug trade crimes by addressing inter-jurisdictional and cross border distribution. The Prescription Drug Monitoring Program, established by Chapter 166 of 2011, and fully launched in December 2013, aims to reduce prescription drug misuse by creating a secure database of all Schedule II-V controlled dangerous substances prescribed and dispensed in Maryland.

State Expenditures: General fund expenditures may increase significantly as a result of the bill's incarceration penalty due to a potentially significant number of people being committed to State correctional facilities for longer periods of time. The increase in expenditures is dependent on the sentence for the underlying crime that establishes the violation under the bill. The bill requires that the sentence imposed for the crime created by the bill be separate from and consecutive to the sentence for the underlying crime.

Sentences that could be imposed for an underlying drug-related crime range from 2 years to 40 years imprisonment. Also, others who are not sentenced for an underlying crime could be prosecuted for violating the provisions of this bill and receive a sentence. As a result, the bill may have an immediate fiscal impact and a delayed fiscal impact, depending on when the separate and consecutive sentence required by the bill is imposed.

This analysis is based on the following information and assumptions:

- In 2013, there were 522 heroin- and fentanyl-related deaths in Maryland, and in 2014, between January and September, there were 569.
- Between January and September of 2014, there were 141 fentanyl-related deaths in Maryland. This was an increase of 83 from 2013.
- Presumably, for most, if not all of these deaths, there is a person guilty of distributing heroin or fentanyl and he or she could be sentenced under the bill's penalty provisions.
- Given the significant increase in the number of heroin- and fentanyl-related deaths, and the fact that the bill establishes a new crime for which there is no close comparison in terms of impact, it is not possible to accurately estimate the number of convictions nor the length of time served under the bill's penalty provisions. However, due to the high number of heroin- and fentanyl-related deaths in Maryland in 2013 and 2014, a potentially significant number of individuals may be subject to the bill's penalty provision, thus increasing general fund expenditures by a potentially significant amount.

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 $3,100 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 State inmate (including variable health care costs) is about $770 per month. Excluding all health care, the average variable costs total $200 per month.

Additional Information

Prior Introductions: None.

Cross File: SB 303 (Senator Lee, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Maryland State

Commission on Criminal Sentencing Policy, State's Attorneys' Association, Anne Arundel County, *Capital Gazette*, Department of Legislative Services

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min/kdm

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Appendix
Penalties for Distribution of Controlled Dangerous Substances (CDS) and Related Offenses

Offense	Current Penalty
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)	
First-time Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	Maximum penalty of 5 years imprisonment and/or $15,000 fine
Repeat Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	2-year mandatory minimum sentence Maximum penalty of 5 years imprisonment and/or $15,000 fine
CDS (Schedule I or II Narcotic Drug)	
First-time Offender – Schedule I or II narcotic drug	Maximum penalty of 20 years imprisonment and/or $25,000 fine
Second-time Offender – Schedule I or II narcotic drug	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to $100,000
Third-time Offender – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to $100,000
Fourth-time Offender – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to $100,000
CDS (Specified Drugs)	
First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or a fine of up to $20,000
Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to $100,000
Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to $100,000
Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to $100,000

Note: All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable.

Source: Department of Legislative Services