

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 6
Judiciary

(Delegate K. Young)

**Criminal Law - Improper Prescription of Controlled Dangerous Substance
Resulting in Death**

This bill increases criminal penalties for an authorized provider of controlled dangerous substances (CDS) if (1) the authorized provider prescribes, administers, distributes, or dispenses CDS to a person in nonconformity with the Maryland Controlled Dangerous Substances Act (MCDSA) and the standards of the authorized provider's profession and (2) the use or ingestion of the CDS is a contributing cause of the person's death. Under the bill's provisions, an authorized provider is guilty of a felony and, on conviction, is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$100,000.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to the shift in cases from the District Court to the circuit courts, as discussed below. Minimal increase in general fund expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: 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. For

information on primary crimes (other than possession) involving CDS, please refer to the **Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances.**

Under MCDSA, “authorized provider” means (1) a person licensed, registered, or otherwise allowed to administer, distribute, dispense, or conduct research on CDS in the State in the course of professional practice or research or (2) a pharmacy, laboratory, hospital, or other institution licensed, registered, or otherwise allowed to administer, distribute, dispense, or conduct research on CDS in the State in the course of professional practice or research. “Authorized provider” includes a scientific investigator; an individual authorized by the State to practice medicine, dentistry, or veterinary medicine; and a licensed animal control facility.

An authorized provider may not prescribe, administer, manufacture, distribute, dispense, or possess CDS, drug paraphernalia, or controlled paraphernalia except (1) in the course of regular professional duties and (2) in conformity with MCDSA and the standards of the authorized provider’s profession. An authorized provider who knowingly or intentionally violates these provisions is guilty of a misdemeanor and, on conviction, is subject to maximum penalties of imprisonment for two years and/or a fine of \$100,000. All other violations are subject to a civil penalty of up to \$50,000.

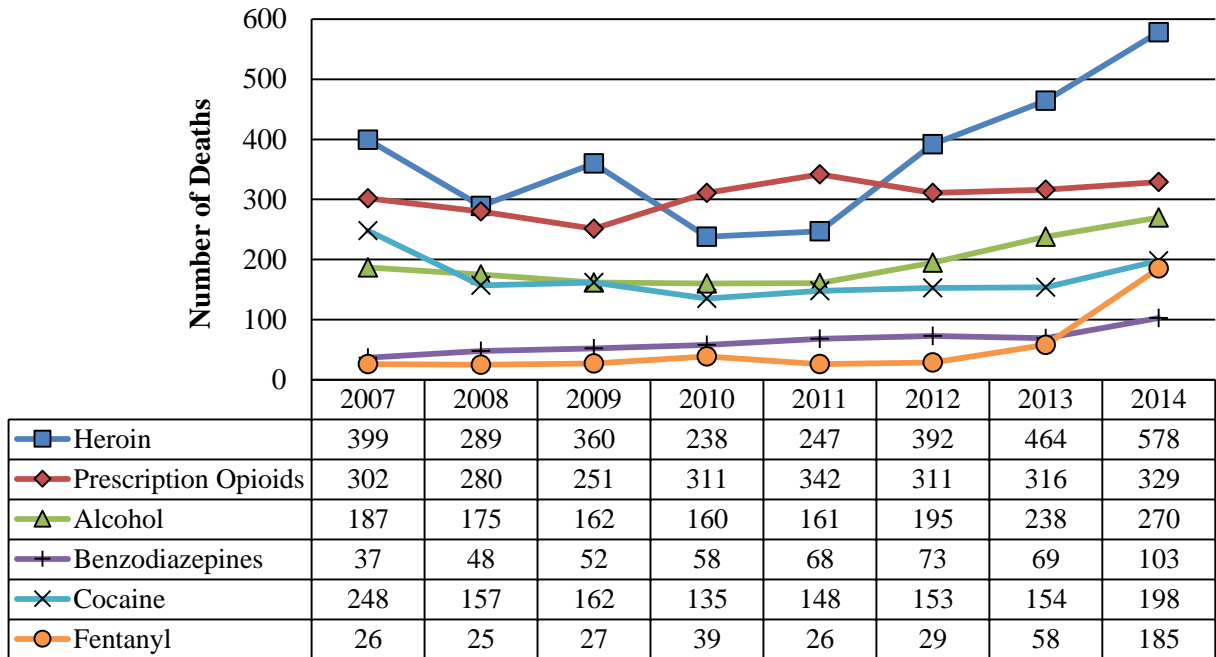
Background: The Department of Health and Mental Hygiene’s (DHMH) May 2015 report, titled *Drug and Alcohol-Related Intoxication Deaths in Maryland*, indicated that drug- and alcohol-related intoxication deaths in the State totaled 1,039 in 2014, a 21% increase since 2013 and a 60% increase since 2010. Of all of the intoxication deaths that occurred, 887 deaths (86%) were opioid related, including deaths related to heroin, prescription opioids, and nonpharmaceutical fentanyl. Opioid-related deaths increased by 76% between 2010 and 2014. The overall number of prescription opioid-related deaths has remained relatively stable in recent years but has been increasing among certain demographics. Prescription opioids include buprenorphine, codeine, methadone, morphine, oxycodone, and prescribed fentanyl.

Additionally, the number of benzodiazepine-related deaths increased from 69 in 2013 to 103 in 2014 – an almost 50% increase; nearly 60% of these deaths occurred in combination with prescription opioids. Benzodiazepines are a class of depressants that includes drugs such as alprazolam, clonazepam, and diazepam.

Preliminary data from DHMH shows that the number of intoxication deaths continued to increase in 2015, with 889 deaths from January through September 2015, compared to 767 deaths during the same period in 2014 (a 16% increase).

Exhibit 1 shows trends in drug- and alcohol-related intoxication deaths in Maryland from 2007 to 2014.

Exhibit 1
Drug- and Alcohol-related Intoxication Deaths by Selected Substances
2007-2014



Source: Department of Health and Mental Hygiene

DHMH’s Division of Drug Control (DDC) enforces CDS regulations. Authorized providers must register with DDC and the federal Drug Enforcement Administration in order to administer, prescribe, or dispense CDS. DDC registers approximately 32,000 practitioners and establishments in the State.

According to the U.S. Department of Justice, in July 2014, a federal grand jury indicted a Maryland physician on charges of distribution of controlled substances and distribution of controlled substances resulting in death. The indictment alleged that the physician prescribed oxycodone, methadone, morphine, alprazolam, and other CDS to patients outside the usual course of professional practice and without a legitimate medical purpose, and that the physician’s pain management practice was actually a “pill mill” where individuals paid a fee to obtain CDS prescriptions without having to demonstrate any medical need. The indictment further alleged that one patient died as a result of using improperly prescribed methadone.

Furthermore, in May 2015, a federal grand jury indicted 16 individuals from Maryland and Virginia for allegedly operating pain management clinics as pill mills and recruiting

“runners” and “distributors” for the operation. According to the indictments, “runners” would visit the clinics with fictitious medical complaints to obtain prescriptions, fill the prescriptions, and give the prescribed substances to distributors; the distributors then sold the substances for profit.

According to the Department of Public Safety and Correctional Services (DPSCS), in fiscal 2015, there were 10 offenders whose “most serious” offense may correspond with the offense addressed under the bill. The average sentence for these offenders was 48 months. However, DPSCS notes that there are multiple CDS offenses that could also apply to these offenders and that it is unlikely any of these offenders solely committed the offense addressed under the bill, because the existing offense carries a maximum sentence of two years.

State Fiscal Effect: The Judiciary advises that because the conduct prohibited under the bill is already proscribed, and the bill is only enhancing criminal penalties in certain situations, there is no fiscal or operational impact on the courts.

However, it should be noted that under the bill, authorized providers may be subject to a felony, rather than a misdemeanor or civil penalty, if the improperly prescribed or distributed substance is a contributing cause of the person’s death. In general, civil cases and misdemeanors are filed in the District Court and felonies are filed in the circuit courts. The District Court shares concurrent jurisdiction with circuit courts for misdemeanors in which the penalty may be confinement for three years or more or a fine of \$2,500 or more; therefore, cases involving an authorized provider’s *knowing or intentional* improper prescription or distribution of CDS may be filed in circuit courts under existing statute. However, it is assumed that the bill still shifts an unknown number of cases from the District Court to the circuit courts. As a result of this shift, general fund revenues decrease by a minimal amount; general fund expenditures are not expected to be materially affected by the shift.

The Office of the Public Defender (OPD) advises that because the bill creates a new criminal law, the bill increases the number of cases OPD must handle. However, given that the bill’s offense is already proscribed in statute, it is unlikely that the bill has a significant impact on OPD workloads.

The Maryland State Commission on Criminal Sentencing Policy advises that sentencing guidelines must be revised to conform to the bill’s provisions but that these revisions can be handled with existing resources.

General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to people being committed to State correctional facilities for longer periods of time

and, if applicable, increased payments to counties for reimbursement of inmate costs. The number of people subject to the expanded penalty in the bill is expected to be minimal.

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 \$3,300 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.

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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in 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.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers, Governor's Office of Crime Control and Prevention, Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, U.S. Department of Justice, Department of Legislative Services

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min/kdm

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Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances

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.

Exhibit 1 contains the applicable sentences for these crimes.

Exhibit 1
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
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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
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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
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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
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Third-time Offender – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000
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CDS (Specified Drugs)

First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or a fine of up to \$20,000
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Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000
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Note: All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable. Pursuant to Chapter 490 of 2015, a court may depart from the listed mandatory minimum sentences under specified circumstances.

Source: Department of Legislative Services