

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1137

(Senator Conway)

Judicial Proceedings

Judiciary

Criminal Law - Prohibitions, Prosecutions, and Corrections

This bill (1) increases criminal penalties for specified obstruction of justice crimes and alters criminal offenses related to controlled dangerous substances (CDS) and drug paraphernalia; (2) expands the list of offenses for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications; (3) alters procedures relating to inmate case records and diminution credits; and (4) establishes the Task Force to Study Maryland's Criminal Gang Statutes. **The bill takes effect June 1, 2018. Provisions relating to the task force terminate June 30, 2020.**

Fiscal Summary

State Effect: Potential significant decrease in general fund fine revenues due to fewer cases heard in the District Court. General fund incarceration expenditures increase minimally, while general fund expenditures decrease minimally from reduced CDS sample testing. Any expense reimbursements for task force members and staffing costs are assumed to be minimal and absorbable within existing resources.

Local Effect: Potential significant increase in local fine revenues due to more cases heard in the circuit courts and increased fines. Local incarceration expenditures decrease minimally.

Small Business Effect: None.

Analysis

Bill Summary:

I. Criminal Offense Provisions

Controlled Dangerous Substances

Drug Paraphernalia

The bill modifies the definition of drug paraphernalia and prohibitions against the use or possession of drug paraphernalia to exclude equipment used to test or analyze CDS.

Volume Dealers

The bill adds the following quantities of CDS to the existing prohibition against volume dealing: (1) 28 grams or more of *any mixture containing a detectable amount*, as scientifically measured using representative sampling methodology, of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer; (2) 5 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the U.S. Drug Enforcement Agency (DEA); (3) 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of fentanyl or any structural variation of fentanyl that is scheduled by DEA; (4) 448 grams or more of any mixture containing *a detectable amount, as scientifically measured using representative sampling methodology*, of phencyclidine; and (5) 448 grams or more of *any mixture containing a detectable amount, as scientifically measured using representative sampling methodology*, of methamphetamine. An individual who manufactures, distributes, dispenses, or possesses these quantities of CDS is subject to existing criminal penalties for volume dealers (mandatory minimum sentence of five years imprisonment and up to \$100,000 fine).

Obstruction of Justice

The bill increases the maximum misdemeanor incarceration penalty, from 5 years to 10 years, for various obstruction of justice offenses related to inducing false testimony or inducing the avoidance of a subpoena, retaliating against a victim or witness for giving testimony, and intimidating or corrupting a juror or witness.

II. Procedural Provisions

Interception of Communications – Firearms Crimes

The bill adds the following offenses under the Public Safety Article to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications: § 5-134 (restrictions on sale, rental, or transfer of regulated firearms); § 5-136 (straw purchases); § 5-138 (sale, transfer, or disposal of stolen regulated firearms); § 5-140 (transporting regulated firearm for unlawful sale or trafficking); § 5-141 (knowing participation in straw purchase); and § 5-144 (knowing participation in a violation of Title 5, Subtitle 1 of the Public Safety Article). The bill also adds these offenses to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Corrections – Inmate Case Records

The bill requires the Division of Correction (DOC) to conduct, for each inmate, as soon as feasible after the individual is sentenced to the jurisdiction of DOC, an educational, vocational, and job history interview. DOC must include the educational, vocational, and job history of the inmate and the results of the interview in the case record for the inmate.

Corrections – Diminution Credits

The bill expands the special programs for which an inmate may be awarded diminution credits to include life skills training and antiviolence therapy.

Task Force to Study Maryland’s Criminal Gang Statutes

The bill establishes the Task Force to Study Maryland’s Criminal Gang Statutes, to be staffed by the Governor’s Office of Crime Control and Prevention (GOCCP). The task force is required to study existing State prohibitions on criminal gang-related activity and the efficacy of existing law in being used to obtain criminal convictions against individuals who engage in criminal gang-related activity. The task force must make recommendations regarding changes to State law to better deter, prosecute, and punish criminal gang-related activity and persons convicted of gang-related offenses. The task force must report its findings and recommendations to the Governor and the General Assembly by June 30, 2020. The provisions pertaining to the task force terminate June 30, 2020.

Current Law:

I. Criminal Offense Provisions

Controlled Dangerous Substances

Drug paraphernalia

“Drug paraphernalia” means equipment, a product, or material that is used, intended for use, or designed for use, in (1) planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing CDS in violation of specified provisions of the Criminal Law Article; or (2) injecting, ingesting, inhaling, or otherwise introducing into the human body CDS in violation of specified provisions of the Criminal Law Article.

Volume Dealers

A person may not manufacture, distribute, dispense, or possess the following quantities of CDS:

- 50 pounds or more of marijuana;
- 448 grams or more of cocaine;
- 448 grams or more of any mixture containing a detectable amount of cocaine;
- 448 grams or more of any cocaine base (also known as “crack”);
- 28 grams or more of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer;
- any mixture containing 28 grams or more of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer;
- 1,000 dosage units or more of lysergic acid diethylamide (LSD);
- any mixture containing the equivalent of 1,000 dosage units of LSD;
- 16 ounces or more of phencyclidine (PCP) in liquid form;
- 448 grams or more of any mixture containing PCP;
- 448 grams or more of methamphetamine; or
- any mixture containing 448 grams or more of methamphetamine.

To determine the quantity of CDS involved in individual acts of manufacturing, distributing, dispensing, or possessing CDS, the acts may be aggregated if each act occurred within a 90-day period. Violators are subject to imprisonment for a minimum of five years and a fine of up to \$100,000.

No part of the mandatory minimum sentence may be suspended nor is a person eligible for parole during the mandatory minimum sentence.

Possession and Distribution of Controlled Dangerous Substances (Smaller Quantities)

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) altered the criminal penalties associated with the possession, administration, obtainment, and procurement of a CDS and related offenses. Effective October 1, 2017, a person who violates these provisions is subject to the following penalties: (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; and (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. The authorization to double penalties for repeat offenders applies only when the person has also been previously convicted of a crime of violence.

Additionally, Chapter 515 reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months (but retained the maximum fine of up to \$1,000).

Further, pursuant to Chapter 515, before imposing a sentence for these offenses, the court is authorized to order the Maryland Department of Health (MDH), or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. MDH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require MDH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order DOC within the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility to facilitate the medically appropriate level of treatment.

For information on crimes involving the distribution of CDS, please refer to **Appendix 1 – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses.**

Obstruction of Justice

Inducing False Testimony/Avoidance of Subpoena: A person may not harm another, threaten to harm another, or damage or destroy property with the intent to (1) influence a victim or witness to testify falsely or withhold testimony or (2) induce a victim or witness to avoid the service of a subpoena or summons to testify, to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned, or not to

report the existence of facts relating to a crime or delinquent act. A person is also prohibited from soliciting another person to engage in these activities.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a \$5,000 maximum fine. However, if the testimony, subpoena, official proceeding, or report involving the victim or witness described above relates to a felonious violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances) or the commission of a “crime of violence” as defined in § 14-101 of the Criminal Law Article, or a conspiracy or solicitation to commit such a crime, a violator is guilty of a felony, punishable by imprisonment for up to 20 years. A sentence imposed for these retaliatory crimes may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the retaliation violation.

Retaliating Against a Victim or Witness: A person may not intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against (1) a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act; (2) a juror for any reason relating to the performance of the juror’s official duties in a pending or completed case in a court of the State or the United States; or (3) an officer of the court of the State or the United States for any reason relating to the performance of the officer’s official duties in a pending or completed case. A person is also prohibited from soliciting another person to engage in these activities.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a \$5,000 maximum fine. However, if the official proceeding or report described above relates to a felonious violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances) or the commission of a “crime of violence” as defined in § 14-101 of the Criminal Law Article, or a conspiracy or solicitation to commit such a crime, a violator is guilty of a felony, punishable by imprisonment for up to 20 years. A sentence imposed for these retaliatory crimes may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the retaliation violation.

Intimidating or Corrupting a Juror or Witness: A person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the United States in the performance of the person’s official duties. A person is also prohibited from soliciting another person from engaging in these activities. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 5 years and/or a \$5,000 maximum fine. However, if the prohibited act is taken in connection with a proceeding involving a felonious violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances) or the commission of a “crime of violence” as defined in § 14-101 of the Criminal Law Article, or a conspiracy or solicitation to commit such a crime, a violator is guilty of a felony, punishable by imprisonment for up to 20 years. A

sentence imposed for this offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

II. Procedural Provisions

Interception of Communications

Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of specified crimes.

Wiretapping is also authorized if a person has created a barricade situation and there is probable cause to believe a hostage or hostages may be involved.

The exception applies so long as the investigative or law enforcement interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes. However, no application or order is required if the interception is lawful under the general wiretap provisions.

Corrections – Inmate Case Records

Promptly after an inmate is sentenced to the jurisdiction of DOC, DOC must assemble an adequate case record for the inmate that includes (1) a description, photograph, and family history of the inmate; (2) any previous record of the inmate; (3) a summary of the facts of

each case for which the inmate is serving a sentence; (4) the results of a specified risk and needs assessment of the inmate; and (5) the results of a specified physical, mental, and educational examination of the inmate.

DOC must conduct a risk and needs assessment and a physical, mental, and educational examination of an inmate as soon as feasible after the individual is sentenced to the jurisdiction of DOC. Based on the information assembled for an inmate's case record, DOC must classify an inmate and develop a case plan to guide an inmate's rehabilitation while under the custody of DOC. The case plan developed must include:

- programming and treatment recommendations based on the results of the risk and needs assessment conducted;
- required conduct in accordance with the rules and policies of DOC; and
- a plan for the payment of restitution, not to supersede any payment plan established by the court, if restitution has been ordered.

The managing official of each correctional facility must maintain, as a part of an inmate's case record (1) an adequate record of the conduct, effort, and progress of the inmate during confinement and (2) a record of the character of any offense committed by the inmate and the nature and amount of punishment inflicted.

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs, as follows:

- *For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.

- *For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence under § 14-101 or distribution of CDS. Good conduct credits are awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.
- *For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence under § 14-101, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

Background: **Exhibit 1** contains information from the Judiciary on the number of violations in the District Court and the circuit courts during fiscal 2017 for several of the offenses affected by the bill's provisions. A violation is a charge filed in the court; it is not a conviction, and one person may be associated with more than one violation.

Exhibit 1
Violations Filed in the District Court and the Circuit Courts
Fiscal 2017

| Offense | District Court Violations | Circuit Court Violations |
|---|------------------------------|-----------------------------|
| Criminal Law Article § 5-612 (Controlled Dangerous Substances – Volume Dealer) | 187 | 181 |
| Criminal Law Article, § 9-302 (Inducing False Testimony/Avoidance of Subpoena – misdemeanor) | 34 | 37 |
| Criminal Law Article, § 9-302 (Inducing False Testimony/Avoidance of Subpoena – felony) | 15 | 22 |
| Criminal Law Article, § 9-303 (Retaliation for Testimony – misdemeanor) | 84 | 40 |
| Criminal Law Article, § 9-303 (Retaliation for Testimony – felony) | 39 | 26 |
| Criminal Law Article, § 9-305 (Intimidating or Corrupting a Juror, etc. – misdemeanor) | 42 | 69 |
| Criminal Law Article, § 9-305 (Intimidating or Corrupting a Juror, etc. – felony) | 8 | 74 |

Source: Maryland Judiciary; Department of Legislative Services

State Fiscal Effect: Although the bill takes effect June 1, 2018, State finances are not expected to be materially affected in fiscal 2018. General fund revenues may decrease significantly, beginning in fiscal 2019, due to fewer cases heard in the District Court. Overall general fund expenditures for DPSCS increase minimally in the long-term, depending on the cumulative effect of the bill’s penalty provisions, as discussed below. General fund expenditures for the Department of State Police (DSP) likely decrease

minimally due to reduced CDS sample testing. The procedural elements of the bill are not expected to materially affect State finances.

State Revenues: General fund revenues may decrease significantly from fines imposed in the District Court in CDS cases. The bill prohibits the distribution *and* possession of (1) 5 grams or more of fentanyl; (2) 28 grams or more of any mixture containing a detectable amount of fentanyl; and (3) 448 grams or more of any mixture containing a detectable amount of either phencyclidine or methamphetamine. A violation results in a mandatory minimum of five years imprisonment and a fine of up to \$100,000.

Under current law, distribution of fentanyl, phencyclidine, or methamphetamine is subject to criminal penalties applicable to the distribution of a Schedule I or II narcotic drug (*see* Appendix 1). Thus, maximum fines range from \$15,000 to \$25,000, depending on whether the offense is a first or subsequent offense. Under current law, possession of CDS (including fentanyl) is a misdemeanor with a maximum fine of \$5,000.

Under the bill, an individual who possesses 5 grams or more of fentanyl; 448 grams or more of any mixture containing a *detectable amount* of either phencyclidine or methamphetamine; or 28 grams or more of any mixture containing a detectable amount of fentanyl is subject to at least five years imprisonment and a maximum fine of \$100,000, rather than the less stringent misdemeanor penalties. As such, offenders charged with this crime under the bill are subject to the jurisdiction of the circuit court rather than the District Court.

According to DPSCS, there were 276 intakes for the possession of CDS in fiscal 2017. However, it is unknown how many of these offenses involved the bill's specified amounts of fentanyl. *For illustrative purposes only*, if 10% of these offenses involved the bill's specified amounts of fentanyl, general fund revenues could decrease by as much as \$138,000. This assumes that (1) all of these cases were brought in the District Court; (2) all of these cases were for first-time offenses; and (3) the maximum fine of \$5,000 was imposed for each case. Thus, general fund revenues decrease, potentially significantly, due to fewer cases being heard in the District Court for the possession of specified amounts of fentanyl.

State Expenditures

Department of Public Safety and Correctional Services

General fund incarceration expenditures for DPSCS increase minimally to the extent the bill's wiretap provisions lead to more convictions and if individuals convicted of possession of specified amounts of fentanyl or specified obstruction of justice offenses face increased penalties under the bill. However, long-term cumulative expenditures for

DPSCS may be offset by a minimal decrease in expenditures as a result of the bill's expanded eligibility for diminution credits.

Listed below are illustrations of some of the potential effects of the bill's penalty provisions, based on information provided by DPSCS and the Judiciary.

Under the bill, a person who possesses or distributes specified amounts of fentanyl is subject to a mandatory minimum of 5 years imprisonment. According to DPSCS, in fiscal 2017, the average sentence for possession with intent to distribute CDS was 63.7 months (5.3 years); the average sentence for distribution of CDS was 83.2 months (6.9 years). Additionally, there were 276 intakes of possession of CDS with an average sentence of 25.4 months (2.1 years). However, it is unknown how many of these cases involved distribution or possession of the bill's specified amounts of fentanyl, phencyclidine, or methamphetamine. Further, the average sentence imposed for possession of CDS likely decreases beginning in fiscal 2018, given the new penalty structure under Chapter 515 of 2016 (which was effective October 1, 2017).

Shifting the jurisdiction of these cases from the District Court to the circuit courts means that some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Therefore, general fund expenditures for DPSCS increase minimally due to more people being committed to State correctional facilities for longer periods of time.

DOC reports that during fiscal 2017, it conducted intake on six inmates sentenced for the misdemeanor obstruction of justice offenses affected by the bill. Only one of the inmates received the maximum sentence of five years, and only one of the sentences is to be served consecutively. DOC did not provide information on sentences imposed on the other five inmates. Due to a lack of information regarding the average sentence, the timing of any impact on incarceration expenditures for the impacted cohort is unknown.

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 \$3,800 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 inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates 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.

Department of State Police

The bill also specifies that a person may not manufacture, distribute, dispense, or possess 28 grams or more of any mixture containing a detectable amount of morphine or opium. DSP advises that this alteration conforms the standards of testing for mixtures containing heroin with those for mixtures containing cocaine for purposes of volume dealer prosecutions. Thus, under the bill, crime laboratories must only test for the “presence,” rather than for “purity,” of heroin in CDS mixtures to reach the required 28 grams threshold for volume dealing. Thus, fewer tests must be conducted. DSP advises that the cost of testing is \$56.61 per sample. In addition, DSP advises that reducing the number of required tests may also reduce associated instrument and personnel costs. The extent of any savings under the bill depends on the quantity of drug samples in need of testing at any given time. Therefore, the Department of Legislative Services advises that general fund expenditures for DSP likely decrease minimally beginning in fiscal 2019.

Judiciary

The Judiciary advises that any increase in the workload for the courts as a result of the bill’s provisions would result in additional clerical and court time necessary for the processing and trial of cases. However, the Judiciary advises that it is not anticipated that the numbers will have a significant fiscal or operational impact on the trial courts.

Local Revenues: Local fine revenues increase, potentially significantly, due to more cases for possession of specified quantities of fentanyl being heard in the circuit courts, as well as higher maximum fines for the distribution of specified quantities of fentanyl.

Local Expenditures: Expenditures decrease minimally due to fewer people being sentenced to local incarceration facilities as a result of the bill’s volume dealer provisions. 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 \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 291 (Delegate Queen, *et al.*) - Judiciary.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

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

Appendix 1 – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Under Title 5, Subtitle 6 of the Criminal Law Article, a person may not:

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

Exhibit 1 shows the applicable sentences for these crimes.

Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”) repealed mandatory minimum penalties applicable to a repeat drug offender (or conspirator) convicted of distribution of CDS and related offenses and established new maximum penalties. The changes took effect October 1, 2017.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

| Offense | Current Penalty ^{1,2} |
|---|---|
| CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)³ | |
| First-time Offender | Maximum penalty of 5 years imprisonment and/or \$15,000 fine |
| Repeat Offender | Maximum penalty of 5 years imprisonment and/or \$15,000 fine |
| CDS (Schedule I or II Narcotic Drug & Specified Drugs)⁴ | |
| First-time Offender | Maximum penalty of 20 years imprisonment and/or \$15,000 fine |
| Second-time Offender | Maximum penalty of 20 years imprisonment and/or \$15,000 fine |
| Third-time Offender | Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence) |
| Fourth-time Offender | Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence) |

CDS: controlled dangerous substance

¹Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. Under Chapter 515 of 2016, effective October 1, 2017, this authorization is made applicable only when the person has also been previously convicted of a crime of violence. Additionally, a person serving a term of confinement that includes a mandatory minimum sentence, imposed on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of CDS may apply to the court for a modification or reduction of the mandatory minimum sentence, regardless of whether the defendant filed a timely motion for reconsideration or if a motion for reconsideration was denied by the court (the court is authorized to depart from the specified mandatory minimum sentences).

²Chapter 569 of 2017 prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. In addition to any other penalty imposed, a person is subject to imprisonment for up to 10 years. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

³*E.g.*, marijuana

⁴*E.g.*, cocaine and heroin

Source: Department of Legislative Services
