

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 797
Judiciary

(Delegate Lopez, *et al.*)

Criminal Law – Money Laundering

This bill generally repeals § 5-623 of the Criminal Law Article (proceeds of drug crime) and recodifies it under the new Money Laundering Subtitle. The bill further prohibits money laundering related to (1) a drug crime involving fentanyl and proceeds up to \$10,000 and (2) a “crime” (generally meaning a nondrug crime) involving proceeds exceeding \$10,000. The bill establishes penalties for these new offenses. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Minimal increase in general fund expenditures and potential minimal increase in general fund revenues due to the bill’s penalty provisions, as discussed below. The bill is not anticipated to materially alter the workloads of the Office of the Public Defender or the Judiciary.

Local Effect: Minimal increase in revenues and expenditures due to the bill’s penalty provisions. The bill is not anticipated to materially alter the workloads of State’s Attorney’s Offices or the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, a person is prohibited from engaging in the following transactions with the intent to promote a drug crime or with the intent to conceal or disguise the nature, location, source, ownership, or control of proceeds of a drug crime:

- receiving or acquiring proceeds knowing that the proceeds are derived from a drug crime;
- engaging in a financial transaction involving proceeds knowing that the proceeds are derived from a drug crime;
- giving, selling, transferring, trading, investing, concealing, transporting, or maintaining an interest in proceeds knowing that the proceeds are derived from a drug crime;
- directing, promoting, planning, organizing, initiating, financing, managing, supervising, or facilitating the transportation or transfer of proceeds knowing that the proceeds are derived from a drug crime; or
- conducting a financial transaction involving proceeds knowing that the proceeds are derived from a drug crime.

The prohibition does not apply to a financial transaction necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights. Each financial transaction is a separate violation.

The bill recodifies this language under the new Money Laundering Subtitle. The bill also prohibits a person from engaging in the above transactions with the specified intent as it relates to a "crime" (meaning an act that is a crime, other than a drug crime, as specified). Under those provisions, the acts described above contain references to "derived from a crime" (rather than derived from a drug crime).

Under current law, a violator is guilty of a felony and on conviction is subject to a maximum penalty of (1) for a first offense, 5 years imprisonment and/or the greater of \$250,000 fine or twice the value of the proceeds involved in the financial transaction or (2) for a second or subsequent offense, 10 years imprisonment and/or the greater of a \$500,000 fine or five times the value of the proceeds involved in the financial transaction.

The bill retains this penalty provision as it relates to a drug crime involving proceeds exceeding \$10,000 (which is the prohibition under existing statute). The bill establishes additional new penalties related to a (1) drug crime involving fentanyl and proceeds up to \$10,000 and (2) a "crime" (a nondrug crime) involving proceeds exceeding \$10,000.

A person who violates the prohibition against money laundering related to a drug crime involving fentanyl (or an analogue of fentanyl) and proceeds with a value up to \$10,000 is guilty of a misdemeanor and on conviction is subject to a maximum penalty of two years imprisonment and/or a \$20,000 fine.

A person who violates the prohibition against money laundering related to a crime involving proceeds with a value exceeding \$10,000 is guilty of a felony and on conviction is subject to a maximum penalty of (1) for a first offense, two years imprisonment and/or the greater of a \$20,000 fine or twice the value of the proceeds involved in the financial transaction and (2) for a second or subsequent offense, five years imprisonment and/or the greater of a \$500,000 fine or five times the value of the proceeds involved in the financial transaction. Each financial transaction is considered a separate violation.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court involving the misdemeanor money laundering offense established under the bill (fentanyl, up to \$10,000 in proceeds). The Judiciary advises that during fiscal 2023 there were 21 violations filed in the circuit courts and zero convictions for the offense of § 5-623 of the Criminal Law Article (proceeds of drug crime).

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of costs for incarcerated individuals. The number of people convicted under 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 incarcerated individual, including overhead, is estimated at \$5,110 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.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions 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. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per incarcerated individual in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, and Garrett counties; Office of the Attorney General (Securities Division); 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

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