

Department of Legislative Services  
Maryland General Assembly  
2000 Session

**FISCAL NOTE**

Senate Bill 345 (Senator Jimeno)

Judicial Proceedings

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**Criminal Procedure - Enhanced Sentences - Controlled Dangerous Substances**

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This bill allows for conjunctive sentencing for controlled dangerous substance offenses so that enhanced sentences for second or subsequent offenses may be imposed.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's provision to allow additional enhanced penalties.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's provision to allow additional enhanced penalties.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Second and subsequent criminal violations of controlled dangerous substance provisions subject persons to double the maximum penalty for the particular offense. Offenses covered under these provisions include misdemeanors and felonies with current law maximum monetary penalties ranging from \$500 to \$50,000 and maximum incarceration penalties ranging from one year to 25 years.

Article 27, Section 286 provides for mandatory minimum sentencing for controlled dangerous violations. However, under Article 27, Section 293 (b)(3), any person convicted of a controlled dangerous substances offense that is a second or subsequent offense is subject to imprisonment that is twice the length authorized, twice the fine authorized, or both.

**Background:** This bill is in response to a Court of Appeals ruling in *Gardner v. State*, 344 Md. 642 (1997), in which the court held that the intent of the General Assembly regarding the application of these statutes in enhancing a single count of a violation is ambiguous. This

bill clarifies that intent by clearly applying the enhanced penalty under the Article 27, Section 293(b)(3) to any controlled dangerous substance offense that does not provide for a mandatory minimum sentence (Article 27, Section 286).

In *Gardner*, and in reversing a related Court of Special Appeals opinion, the Court of Appeals held that a single count may not be enhanced under both sections of Article 27. The court concluded that the intent of the General Assembly concerning the application of both provisions to enhance the penalties of a single count, or charge (e.g. “possession with intent to distribute”) is ambiguous. In *Gardner*, the defendant’s sentence for a subsequent offense was “enhanced” to 25 years in prison, with a mandatory minimum of ten years. Section 286 “enhanced” the sentence by requiring a mandatory minimum of ten years and Section 293 further “enhanced” the sentence by doubling the maximum imprisonment the defendant could have received on the charge.

**State Revenues:** General fund revenues could increase minimally as a result of the applicable enhanced monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** General fund expenditures could increase minimally as a result of the applicable enhanced incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. While it is unknown how often, and for which offenses, these enhanced penalties might be sought or meted out, the number of people actually subjected to doubled penalties is expected to be minimal.

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$260 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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 2001 are estimated to range from \$11 to \$54 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.

**Local Revenues:** Revenues could increase minimally as a result of the applicable enhanced monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the applicable

enhanced incarceration penalties. 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 \$22 to \$83 per inmate in fiscal 2001.

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### **Additional Information**

**Prior Introductions:** In 1999, a similar bill (HB 420) was passed by the House and passed by the Senate with amendments. The House took no further action. An identical bill (SB 611) passed the Senate, passed the House with amendments, but had no further action taken after being referred to conference.

**Cross File:** None.

**Information Source(s):** Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2000  
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