

**Department of Legislative Services**  
Maryland General Assembly  
2001 Session

**FISCAL NOTE**

House Bill 27                      (Delegate Boschert)  
Judiciary

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**Controlled Dangerous Substance Crimes - Project Exile**

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This bill alters penalties and bail review provisions governing certain controlled dangerous substance prohibitions.

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**Fiscal Summary**

**State Effect:** Significant increase in general fund expenditures due to the bill's penalty provisions. Any changes in responsibilities for the Judiciary could be handled with existing budgeted resources. Revenues would not be affected.

**Local Effect:** Potential significant increases in expenditures due to the bill's changes in provisions relating to the accessibility of bail. Any changes in responsibilities for the circuit courts or State's Attorneys could be handled with existing budgeted resources. Revenues would also increase due to the bill's mandatory monetary penalty provisions.

**Small Business Effect:** Potential meaningful. The full and actual impact of this bill on the bail bond industry is unknown. However, the bill could meaningfully impact any particular bail bondsman currently engaged in doing significant business with persons allegedly engaged in illegal drug activities.

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**Analysis**

**Bill Summary:** This bill establishes and requires the imposition of specified mandatory minimum sentences for violations of certain controlled dangerous substance offenses. The bill alters the length of specified current law mandatory minimum sentences for similar offenses. The bill also limits the availability of parole for such mandatory

minimum sentences, and requires sentences for these controlled dangerous substance offenses to be imposed consecutive to other sentences.

Specifically, under this bill, penalties for various controlled dangerous substances felony offenses, as first offenses, would be as follows:

- For violations of §286(a) involving specified Schedule I and II drugs, including narcotics -- both a nonsuspendable sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 20 years and a fine of up to \$25,000.
- For violations of §286A involving bringing into the State specified amounts of certain substances -- both a mandatory minimum sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 25 years and a fine of up to \$50,000. A sentence under this provision must be served consecutive to any other sentence. When the substance is marijuana, both a mandatory minimum sentence of two years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than ten years, and a fine of \$10,000. A sentence under this provision must be served consecutive to any other sentence.
- For violation of §286B involving the distribution of a noncontrolled substance represented to be a controlled substance -- both a mandatory minimum sentence of two years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than five years, and a fine of \$15,000. A sentence under this provision must be served consecutive to any other sentence.
- For violations of §286C involving using minors to manufacture, deliver, or distribute -- both a mandatory minimum sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 20 years, and a fine of \$20,000. A sentence under this provision must be served consecutive to any other sentence.
- For violations of §286D involving manufacture, distribution, etc. near schools or on school vehicles -- for a first offense, both a mandatory minimum sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 20 years, and a fine of \$20,000. For a subsequent offense, both a mandatory minimum sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 40 years, and a fine of \$40,000. Sentences under these provisions must be served

consecutive to any other sentence. The bill retains the nonsuspendable and nonparolable features of the current law penalty provisions.

- For violations of §286E involving “use of a minor” -- both a mandatory minimum sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 20 years, and a fine of \$20,000. A sentence under this provision must be served consecutive to any other sentence.

In addition, the bill prohibits a District Court commissioner from releasing pretrial a defendant charged with certain controlled dangerous substances violations. The bill also eliminates the need for there to have been a prior crime of violence to preclude a commissioner from authorizing the pretrial release of a person charged with a crime of violence. The bill adds specified requirements that a commissioner may consider as a condition of any pretrial bail release.

The bill allows the State to appeal from decisions by District Court judges setting the amount and conditions of bail, and to apply to the Court of Special Appeals for leave to appeal from similar orders in the circuit courts.

**Current Law:** Penalties for the various controlled dangerous substances felony offenses covered under this bill are as follows:

- For first time violations of §286(a) involving specified Schedule I and II drugs, including narcotics -- maximum penalties of imprisonment for 20 years and/or a fine of up to \$25,000.
- For violations of §286A involving bringing into the State specified amounts of certain substances -- maximum penalties of imprisonment for 25 years and/or a fine of up to \$50,000. When the substance is marijuana, maximum penalties of imprisonment for ten years and/or a fine of up to \$10,000.
- For violation of §286B involving the distribution of a noncontrolled substance represented to be a controlled substance -- maximum penalties of imprisonment for five years and/or a fine of up to \$15,000.
- For violations of §286C involving using minors to manufacture, deliver, or distribute -- maximum penalties of imprisonment for 20 years and/or a fine of up to \$20,000.
- For violations of §286D involving manufacture, distribution, etc. near schools or on school vehicles -- for a first offense a mandatory minimum nonsuspendable

sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 20 years, and/or a fine of \$20,000. For a subsequent offense, a mandatory minimum nonsuspendable sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than 40 years, and a fine of \$40,000. Sentences under these provisions must be served consecutive to any other sentence.

- For violations of §286E involving “use of a minor” -- maximum penalties of imprisonment for 20 years and/or a fine of up to \$20,000.

District Court commissioners perform, among other functions, bail review hearings and may authorize the pretrial release of defendants except for those charged with a crime of violence when there was a previous conviction of a crime of violence, even if the prior conviction occurred out of State.

The State is not currently authorized to appeal from bail review decisions in the District Court or the circuit courts.

**Background:** There are two versions of mandatory minimum sentence structures under Maryland law. The first employs mandatory minimum sentences as punishment for a first offense. Examples of this version law include: (1) wearing, carrying, and transporting a handgun in relation to a drug trafficking offense; and (2) use of a handgun in the commission of a felony or a crime of violence. Under this version of mandatory minimum sentencing, a judge imposes a mandatory minimum sentence without the necessity of finding that the defendant has committed certain prior offenses.

The other mandatory minimum sentencing structure uses the imposition of mandatory minimums as subsequent offender penalties. Examples of this in Maryland law include: (1) unlawful manufacture or distribution of controlled dangerous substances; and (2) crimes of violence.

**State Expenditures:** There are several inherent difficulties in assessing any potential fiscal impact arising from this bill: (1) the discretion of prosecutors to actually bring charges for specific statutory offenses will determine largely, and perhaps differently by jurisdiction, the extent to which the bill’s new penalty structure for controlled dangerous offenses has State and local fiscal impact; (2) felony and misdemeanor sentencing patterns beyond the bill’s mandatory minimums are unknown; (3) intake and incarceration data from the Division of Correction does not directly correlate with specific controlled dangerous substance violations; and (4) the extent to which the State may contest bail determinations in State or local courts is unknown.

General fund expenditures could increase significantly as a result of the bill's incarceration penalty due to more people being committed to DOC facilities for significantly longer periods of time. This bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility will be necessary. Based on a cost of approximately \$119,700 per bed, the cost of building a new medium security 1,300-bed prison facility is currently estimated at \$155.6 million.

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. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$288 per month. *For illustrative purposes*, under the bill's mandatory minimum sentencing provisions applicable to possession with intent to distribute illegal drugs, the average sentence imposed has been 51 months. The average time served for this offense has been about 36 months. Accordingly, under this bill with a mandatory minimum sentence of 60 months that must be served consecutive to any other sentence, and with parole not being available during that period of the sentence, it can be assumed that a typical sentence for possession with intent to distribute would increase by at least 24 months.

In fiscal 2000 DOC had an intake of 2,331 persons for possession with intent to distribute illegal drugs. Thus, assuming full inmate costs of \$1,700 per month, State costs could increase by \$40,800 for each person imprisoned under the bill, and by \$95,104,800 for all 2,331 persons. Such an increase in costs would not be felt until after fiscal 2007. However, this does not count the extent to which a greater number of pretrial detentions (due to the bill's changes relating to bail releases) would serve to mitigate these costs via sentence reductions for time served which could be applied to the overall postconviction sentence, including the mandatory minimum portion.

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 2002 are estimated to range from \$9 to \$52 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 (BCDC), a State-operated facility, is used primarily for pretrial detentions. Expenditures for BCDC could increase significantly as a result of the bill's changes relating to bail and bail review for drug offenses. The magnitude of such increases cannot be reliably quantified, but they may be expected to strain BCDC's current capacity for pretrial detentions. Per diem costs for BCDC for fiscal 2002 are estimated at \$52.

The bill could also provide for some minimal temporary savings for the Division of Parole and Probation. The estimated number of all intakes for the Division of Parole and Probation for fiscal 2002 is 55,000. For purposes of illustration, in fiscal 2000 the division had an intake of 4,062 for the offenses of distribution of controlled dangerous substances as well as possession with intent to distribute. A reduction in intakes of 4,062 persons represents a decrease of less than 7.4%. Such a decrease is not expected to have a measurable effect on the agency's operations and finances. In any case, the convicted persons not immediately remanded to the Division of Parole and Probation are presumed to eventually represent new intakes for the agency after the mandatory minimum sentence is served. It is noted that the agency's fiscal 2002 budget request includes funds to hire an additional 67 agents and 11 field supervisors as part of a continuing caseload reduction initiative.

**Local Revenues:** Revenues could increase significantly as a result of the bill's monetary penalty provisions since these cases would be heard in the circuit courts and the imposition of a fine would no longer be an optional portion of sentences.

**Local Expenditures:** Expenditures could increase significantly as a result of the bill's changes relating to bail and bail review for drug offenses. The magnitude of such increases cannot be reliably quantified, but they would be expected to strain current capacities for pretrial detentions.

The effect of denying bail for persons arrested for the specified crimes on or after October 1, 2001, will be immediate. For persons historically released pretrial, the effect may only be from the time of bail denial by a court commissioner until judicial review and release. For those instances where the State successfully contests a bail release of a person historically released pretrial, the effect would be more significant.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), Office of the Public Defender, Office of the State's Attorneys Coordinator, Department of Legislative Services

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