

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 612
Judiciary

(Delegate Marriott)

Controlled Dangerous Substance Crimes - Drug Treatment

This bill establishes that a person convicted of possessing or administering a controlled dangerous substance or of manufacturing, distributing, possessing with intent to distribute, or dispensing a controlled dangerous substance must receive probation if the person, at the time of the arrest that leads to the conviction, tests positive for one controlled dangerous substance involved in the crime. The bill also requires that participation in and completion of an inpatient, residential, or outpatient drug treatment program must be a condition of such a probation.

The bill provides that a court may not impose imprisonment as an additional condition of probation in such cases. The Division of Parole and Probation may petition the court to revoke such a probation if the drug treatment provider provides notification that the person is unamenable to treatment.

The bill's provisions do not apply to a person sentenced as a "volume dealer."

Fiscal Summary

State Effect: Potential significant increases in drug treatment costs and decreases in incarceration costs beginning in FY 2003. Under one set of assumptions, general fund expenditures could increase by at least \$15 million annually.

Local Effect: Potential significant decreases in incarceration costs and increases in costs for police agencies making drug-related arrests.

Small Business Effect: None.

Analysis

Current Law: Maryland’s prohibition against “possessing or administering controlled dangerous substance” provides that a person may not: (1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; or (2) obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance by:

- fraud, deceit, misrepresentation, or subterfuge;
- the counterfeiting or alteration of a prescription or a written order;
- the concealment of a material fact;
- the use of a false name or address;
- falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or
- making, issuing, or presenting a false or counterfeit prescription or written order.

Information that is communicated to a physician in an effort to obtain a controlled dangerous substance in violation of this section is not a privileged communication. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$25,000 and/or imprisonment for four years. When the controlled dangerous substance is marijuana, the maximum penalties are a fine of \$1,000 and/or imprisonment for one year.

Maryland’s prohibition against “manufacturing, distributing, possession with intent to distribute, or dispensing controlled dangerous substance” provides that a person may not: (1) manufacture, distribute, or dispense a controlled dangerous substance; or (2) possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to manufacture, distribute, or dispense a controlled dangerous substance. A violator is guilty of a felony and subject to maximum penalties of a fine of \$15,000 and/or imprisonment for five years. A repeat offender is subject to a mandatory minimum, nonsuspendable, nonparolable sentence of two years.

For some controlled dangerous substances (e.g., heroin, cocaine, LSD, and PCP) a conviction subjects a person to imprisonment for 20 years and/or a fine of either \$20,000 or \$25,000, depending on the substance. For these substances, there are mandatory minimum sentences of 10 years (second offender), 25 years (third offender), and 40 years (fourth or subsequent offender). In addition, this offense involving certain large quantities of specified controlled dangerous substances subjects a person to a mandatory minimum sentence of five years. Under the bill, a person who is convicted of an offense

involving these large quantities is not subject to the mandatory probation requirements of the bill and would therefore be sentenced to the mandatory prison term.

Background: Several states have recently begun to look at mandatory alternatives to incarceration for offenders with underlying drug dependencies. California's Proposition 36 took into effect in July 2001 and imposes treatment rather than imprisonment for first- and many second-time drug possession offenses. The conviction is then automatically removed from the person's record after he or she completes treatment. It is expected that as many as 36,000 offenders in California will be diverted from prison annually. The legislative analyst's office estimates that the program could save the state between \$200 million and \$250 million annually.

California counties, however, must quickly expand drug treatment programs, including building new treatment facilities instead of prisons.

Arizona established a similar program four years ago because of a citizen initiative. People convicted of drug possession have their sentences suspended, are placed on probation, and assigned to a drug treatment or education program. Those who violate probation may be ordered by the court to participate in intensified drug treatment, community service, intensive probation, home arrest, or any other sanction short of incarceration. An analysis by the Arizona Administrative Office of the Courts showed the program was getting people off drugs and saving the state money. In fiscal 1998, the state saved \$5 million in prison costs while spending \$2.1 million on substance abuse treatment. The report said that the drug treatment and education funds were adequate to meet the increased demand for services under the diversion program, and the majority of offenders were completing treatment and passing drug tests.

However, it is noted that three wealthy philanthropists largely funded the California and Arizona initiatives. It is anticipated that Ohio, Michigan, and Florida likely will vote in 2002 on statewide ballot proposals similar to the Arizona and California programs. The Nevada legislature will begin a pilot program in which 150 prisoners will be released 6 months early on the condition that they participate in a court-supervised treatment program for at least a year. The Nebraska legislature is considering a measure to grant probation with treatment for minor drug offenses.

In Utah, drug offenders make up 22% of the prisoners and with the state spending about \$23,000 per year to house an inmate, a commission is slated to examine less expensive options, including day reporting centers, court-supervised treatment programs or electronic monitoring.

In New York, two competing proposals would reduce mandatory sentences and include treatment alternatives for nonviolent drug offenders. Governor George Pataki's proposal

would reduce mandatory sentences for the most serious nonviolent drug offenses from 15 years to life down to 10 years to life, while the Assembly Democrats want to give judges the discretion to select from a sentencing range of 5 to 25 years, not life. This reform is estimated to save as much as \$100 million, growing to \$160 million annually.

In New Mexico in 2001, the legislature passed a package that shifts the emphasis in drug cases from law enforcement to public health. The new law provides an additional \$9.8 million in the first year of a three-year program to expand drug treatment services.

Also in 2001, U.S. Senator Barbara Boxer (CA) recently introduced S 160 (Drug Abuse Treatment on Demand Assistance Act) that would provide grants to any state that has a drug treatment program as an alternative to incarceration. The measure would provide matching funds to such states and would double federal treatment spending from \$3 billion annually to \$6 billion. In all, it is estimated that states are spending about \$20 billion annually to fight illegal drug use.

State Fiscal Effect: It is difficult to ascertain or predict how many offenders could be affected under the provisions of this bill. According to the most recent *Uniform Crime Report*, there were 42,919 drug-related arrests in the State in 1999. Baltimore City experienced the greatest share of those arrests with 17,837 occurring in the city.

Of the Division of Correction's (DOC) annual intake of about 12,000 persons, approximately 5,000 are there as a result of a drug-related offense. However, because drug violation categories for intake purposes are not clearly defined, DOC is unable to precisely quantify the number of offenders who would be affected by this bill. In addition, an unknown number of persons receive jail sentences annually for terms of less than one year to 18 months, and serve those sentences at local detention facilities. It is also unknown how many persons annually receive suspended sentences, probation before judgment, or probation after judgment for the offenses covered under the bill.

The Department of Health and Mental Hygiene (DHMH) advises that the cost of inpatient drug treatment is about \$13,500 per bed, annually. For purposes of illustration, if half (2,500) of the current DOC intake for drug-related offenses were to test positive for a controlled dangerous substance and receive probation under the bill, the following annual fiscal impacts would occur:

- with a potential need for as many as ten additional special program coordinators to arrange treatment program entry for 2,500 persons, DHMH personnel costs could increase by about \$540,000, annually;
- two-thirds of the treatment intake, or 1,666 persons, would require in-patient treatment at an annual cost of about \$22,491,000, which will be borne by DHMH;

- assuming a client/agent ratio of 110 to 1, the Division of Parole and Probation could need an additional 22 agents at an annual cost of about \$836,000; and
- assuming annual variable inmate costs of \$3,600, inmate costs for DOC would decline by \$9 million, annually.

Accordingly, without knowing how many persons now receiving probation for the covered offense would require treatment referrals under the bill, and without knowing how many persons are annually sent to local detention facilities for the covered offenses, and if intake assumptions used in the illustration above remain relatively constant, this bill could increase State expenditures by at least \$15 million annually. It is also noted that the cost reductions for DOC may only be temporary depending on the success of treatment and recidivist rates for individual offenders after treatment.

Local Fiscal Effect: The bill predicates a court's decision to order probation in lieu of imprisonment for specified misdemeanor and felony drug-related offenses on the results of a drug test administered at the time of arrest, although the police are not required under the bill to administer such tests. Taking drug test samples at arrest is not now a common practice or procedure of police agencies. Absent a requirement in the bill for police to administer drug tests at the time of arrest, it is assumed that police agencies would not change current arrest procedures unless ordered by the courts.

Accordingly, it is unclear as to whether this bill would lead to mandatory drug tests at the time of arrest for the specified drug offenses covered under the bill. In any event, if police agencies were to begin taking test samples at arrest, it is assumed that such a practice would generally involve the taking of urine samples. The cost of administering a standard urine-based drug test is about \$5 per test. It should be noted that some substances are not amenable to testing with urine samples, and would require more expensive blood samples and analyses.

Drug test costs would be incurred in all jurisdictions in the State, but will be incurred with the greatest frequency in Baltimore City, which accounted for 17,837 of the drug-related arrests in 1999. Accordingly, assuming that drug arrests remain relatively constant (not an assumption that necessarily should be made), Baltimore City's costs associated with drug-related arrests would increase by about \$89,000. These costs do not include any related storage or chain-of-custody costs that may emerge.

Prince George's County reports that, if the courts were to order testing, the police would likely take the sample at the time of arrest/booking, and save the analysis to be done only after conviction in order for the bill's provisions to be implemented. The county believes that, since the cost of a urine sample is small, the drawing of the sample could be accommodated at central booking with existing resources. However, actual urine or

blood analysis for a variety of substances could involve additional costs and may have to be contracted out to private firms.

Depending on the costs associated with analysis and assuming that referral and treatment costs would be borne by DHMH, this bill could significantly reduce local correctional costs. However, such a cost reduction may only be temporary depending on the success of treatment and recidivist rates for individual offenders after treatment.

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), Prince George's County, Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510