

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 64
Judiciary

(Delegates Bromwell and Cardin)

**Criminal Law - Forgery of Controlled Dangerous Substance Prescriptions or
Written Orders - Penalty**

This bill makes it a felony to obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance, by counterfeiting or altering a prescription or a written order from an authorized health provider. Applicable maximum penalties are imprisonment for ten years or a \$1,000 fine for each forgery, or both.

The bill clarifies that applicable penalties for this offense are not altered if the violation involves the use or possession of marijuana. The bill also provides that the District Court has concurrent jurisdiction with the circuit court in cases involving obtaining or procuring a controlled dangerous substance by counterfeiting or altering a prescription or written order.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

Current Law: It is unlawful for any person to possess or administer to another any controlled dangerous substance unless it was obtained pursuant to a prescription or order from an authorized provider acting in the course of professional practice. It is also unlawful to obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of any controlled dangerous substance through (1) fraud, deceit, or subterfuge; (2) counterfeiting or alteration of a prescription; (3) concealment of material facts; (4) the use of false identifying information; (5) misrepresentation; or (6) making, issuing, or presenting a false or counterfeit prescription or written order. Information provided to a physician is not privileged communication if the purpose is to try to unlawfully obtain a controlled dangerous substance.

Upon conviction, a person is guilty of a misdemeanor and may be sentenced to a term of imprisonment not exceeding four years, a fine not exceeding \$25,000, or both. However, a person whose violation involved the use or possession of marijuana is subject to imprisonment for up to one year, a fine not to exceed \$1,000, or both.

Background: According to the Office of the Attorney General, the acquisition of controlled dangerous substances through prescription fraud or forgery has been encountered in cases involving Medicaid fraud. Fraudulent or forged prescriptions are written for drugs such as percocet, oxycontin, percodan, valium, and other pain killers and depressants. Pain killers are the type of drug most subject to fraud, according to the Maryland Field Office of the Drug Enforcement Administration. The attainment of oxycontin by fraudulent means has been particularly serious in Maryland and along the entire east coast. Part of the reason is that heroin users seek oxycontin. They can get the drug more cheaply and reportedly can get a better "high" with oxycontin than they can with heroin. Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's counties have active drug diversion investigation units that devote resources to prescription forgery.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the proposed enhanced penalties in the bill is expected to be minimal. DOC advises that in fiscal 2002, three people were incarcerated in DOC facilities for counterfeit crimes. The Division of Parole and Probation processed 58 people who were convicted for forging prescriptions

and 89 people who were convicted of obtaining prescriptions through fraudulent means during the same period.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 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 2004 are estimated to range from \$14 to \$59 per inmate, depending upon 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.

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 either a local facility or DOC.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's proposed enhanced incarceration penalty. 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 \$28 to \$84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: This bill was introduced as SB 45 in the 2002 session. It was passed by the Senate and was not reported out of the House Judiciary Committee.

Cross File: SB 49 (Senator DeGrange, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services; Office of the Attorney General, Medicaid Fraud Unit; Maryland Field Office, U.S. Drug Enforcement Administration; Substance Abuse and Mental Health Administration, U.S. Department of Health and Human Services; Department of Legislative Services

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