

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 227
Judiciary

(Delegate Menes, *et al.*)

Crimes - Controlled Dangerous Substances - Repeal of Minimum Penalties for
Nonviolent Offenses

This bill repeals mandatory minimum imprisonment sentences for persons convicted of specified felony controlled dangerous substances crimes who have prior convictions for such offenses.

Fiscal Summary

State Effect: Potential significant decrease in general fund expenditures due to the bill's elimination of some mandatory minimum sentencing provisions. Revenues would not be affected.

Local Effect: Potential significant increase in local expenditures due to the bill's elimination of some mandatory minimum sentencing provisions. Revenues would not be affected.

Small Business Effect: None.

Analysis

Current Law: For certain primary crimes involving controlled dangerous substances and paraphernalia covered by this bill, a person may not:

- manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance;

- manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with intent to distribute a controlled dangerous substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance; or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions must be sentenced to imprisonment for two years, which term is nonsuspendable and nonparolable.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of ten years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

Under certain circumstances, a repeat offender or conspirator convicted of those same primary crimes involving a Schedule I or Schedule II narcotic drug is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted offender or a conspirator with three or more separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance was specified other drugs – including PCP, LSD, and MDMD – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of ten years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

Under certain circumstances, a repeat offender or conspirator convicted of those same primary crimes involving the specified other drugs is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A

convicted offender or a conspirator with three or more separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

This bill eliminates all of the above cited mandatory minimum sentencing provisions.

Background: According to the Maryland Criminal Sentencing Policy Committee, from calendar 2000 through April 2002, Maryland has sentenced 754 persons to mandatory minimum sentences under provisions eliminated by this bill. As of December 2002, of the 24,267 inmates in the custody of the Department of Public Safety and Correctional Services, 8,004 were convicted of drug-related crimes without a concurrent conviction of a crime of violence. Although this represents approximately 33% of the total incarcerated population, most are not minor drug users and almost none are first-time, simple drug possession offenders. It is not known how many of these inmates are serving, or have served, mandatory minimum sentences affected by this bill.

State Expenditures: General fund expenditures could decrease as a result of the bill's repeal of certain mandatory minimum sentencing provisions due to some people being committed to Division of Correction (DOC) facilities for shorter periods of time and more being committed to local detention facilities. The actual number of convicted persons (prospectively) this may affect, or the effect on their actual sentences served, is unknown.

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 to eliminate 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. Excluding medical care, average variable costs total \$120 per month. Accordingly, this bill could allow for a cost savings of approximately \$1,460 per year per inmate, but only to the extent that fewer mandatory minimum sentences imposed would result in less time served by any given inmate convicted of these drug-related offenses.

In fiscal 2000 and 2001, there was an average of 353 persons sentenced to mandatory minimum sentences for the drug-related offenses covered under this bill. For illustrative purposes only, if this bill resulted in a one-year reduction of actual time served for each such inmate, an eventual savings of \$515,380 would accrue for DOC. Given the number of persons now serving sentences for drug-related offenses, over time, the provisions of this bill would tend to lead to more significant reductions in State correctional costs, but only to the extent that sentencing patterns for other offenses are not altered.

The Office of the Public Defender advises that this bill could also lead to significant cost savings for its operations, but that the magnitude of such savings cannot be quantified. Such a savings would accrue because “mandatory sentences reduce opportunities and incentives to resolve cases early through plea bargaining . . . (w)ith increased opportunities to resolve cases early and place clients in drug treatment, increases in felony drug cases will slow or caseloads may decrease.” However, because criminal justice practices vary by jurisdiction, the magnitude of any such savings cannot be reliably measured.

Local Expenditures: Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. Persons serving a sentence of between one year and 18 months may be sentenced to local detention facilities. The elimination of the current two-year mandatory minimum sentence for certain offenses could change sentencing patterns so that more persons are sentenced to local detention facilities. The magnitude of such an effect cannot be reliably measured at this time. It may or may not be significant in any one jurisdiction, depending on conviction rates and correctional facility capacities.

Additional Information

Prior Introductions: In 2001, a bill (HB 562) to repeal mandatory minimum sentences for specified nonviolent drug-related offenses received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction), Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2003
ncs/cer Revised - Updated Information - February 11, 2003

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