

**Department of Legislative Services**

Maryland General Assembly

2003 Session

**FISCAL AND POLICY NOTE**

Senate Bill 377

(Senator Klausmeier)

Judicial Proceedings

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**Crimes - Controlled Dangerous Substances - Repeat Offender Penalties**

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This bill alters certain requirements relating to enhanced penalties for a defendant convicted of specified controlled dangerous substance offenses.

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**Fiscal Summary**

**State Effect:** Potential increase in general fund expenditures due to current law incarceration penalty enhancements being made applicable to more people. Revenues would not be affected.

**Local Effect:** Potential increase in revenues due to current law monetary penalty enhancements being made applicable to more people. Expenditures would not be affected.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** Specifically, the bill: (1) under penalty provisions applicable to convictions for specified narcotic drug crimes and for crimes involving selected Schedule I and Schedule II hallucinogenic substances, includes convictions under drug kingpin provisions and provisions applicable to importing certain controlled dangerous substances as prior convictions for current law enhanced penalty purposes; (2) eliminates the ability of a person convicted of a controlled dangerous substance offense involving a Schedule I or II narcotic to participate in a drug treatment program because of the length of sentence; (3) requires that qualification for enhanced penalties for subsequent offenses

occurs when a person has been sentenced to, rather than has served, at least 180 days, including credit for time served, as a result of the prior conviction; and (4) includes prior convictions of conspiracy to commit the specified controlled dangerous substance violations as qualifying crimes for the enhanced penalties.

In addition, the bill's provisions are applied prospectively only.

**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. A person convicted for a first offense is not prohibited from participating in a certain drug treatment program because of the length of the sentence.

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.

**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 some of the provisions addressed 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 increase minimally as a result of the bill's expanded application of incarceration penalty enhancements due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. However, because DOC does not maintain data on repeat offenders, the number of additional people who might be subject to these enhanced penalties is unknown.

In any case, 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. Excluding medical care, the average variable costs total \$120 per month. 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 a local facility or DOC.

**Local Revenues:** Because repeat offender cases would be tried in the circuit courts, revenues could increase due to more people being subject to enhanced monetary penalties.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 501 (Delegate Aumann, *et al.*) – Judiciary.

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

**Fiscal Note History:** First Reader - February 24, 2003  
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