

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1110
Judiciary

(Delegate Dumais, *et al.*)

Controlled Dangerous Substance Crimes - Minimum Penalties - Repeal

This bill repeals mandatory minimum imprisonment sentences for a person convicted of specified felony controlled dangerous substances crimes who has prior convictions for such offenses. The bill also subjects a volume dealer, as defined by amount of certain substances, to a maximum imprisonment term of five years to be in addition to, or instead of, the current maximum fine of \$100,000.

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 10 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 10 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.

A volume dealer, as defined by the amount of certain substances, is subject to a maximum fine of \$100,000; and if the offense involved manufacturing, distributing, possessing with intent to distribute, or dispensing the controlled dangerous substance, the volume dealer is subject to a mandatory minimum nonsuspendable, nonparolable sentence of five years.

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

Background: According to the Maryland Criminal Sentencing Policy Committee, from calendar 2000 through October 2003, Maryland has sentenced 870 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 \$1,440 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.

From calendar 2000 to 2003, on average 217 persons were sentenced each year 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 \$312,480 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... with 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.

The extent to which the bill’s changes relating to persons convicted of the prohibition against volume dealing cannot be reliably quantified. DOC does not have current inmate data on such offenses.

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: HB 581 of 2003, a similar bill, had a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: None.

Information Source(s): Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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mh/jr

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