

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 280

(Delegate Kelley, *et al.*)

Judiciary

Controlled Dangerous Substance Crimes - Minimum Penalties - Repeal

This bill repeals specified minimum penalties and increases specified maximum penalties for repeat offenders of certain primary crimes involving controlled dangerous substances.

Fiscal Summary

State Effect: Potential decrease in general fund expenditures, beginning in FY 2008, due to the bill's elimination of some mandatory minimum sentencing provisions. Whether that decrease is significant over time depends on the effect of this bill on plea bargaining practices and sentencing practices which cannot be accurately predicted at this time. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, this bill:

- eliminates the minimum 2-year sentence applicable to a repeat offender convicted of certain primary crimes involving controlled dangerous substances and subjects such a violator to maximum penalties of imprisonment for 10 years and/or a fine of \$25,000;
- eliminates a minimum 10-year sentence applicable to a second time offender convicted of certain crimes involving narcotic drugs, eliminates a prohibition

against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to imprisonment for 20 years (while not changing the maximum fine of \$100,000);

- eliminates a minimum 25-year sentence applicable to a third time offender convicted of certain crimes involving narcotic drugs, eliminates a prohibition against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to maximum imprisonment for 35 years (while not changing the maximum fine of \$100,000);
- eliminates a minimum 40-year sentence applicable to a fourth time offender convicted of certain crimes involving narcotic drugs, eliminates a prohibition against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to maximum imprisonment for 40 years (while not changing the maximum fine of \$100,000);
- eliminates a minimum 10-year sentence applicable to a second time offender convicted of certain crimes involving Schedule I and II hallucinogenic substances, eliminates a prohibition against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to maximum imprisonment for 20 years (while not changing the maximum fine of \$100,000);
- eliminates a minimum 25-year sentence applicable to a third time offender convicted of certain crimes involving Schedule I and II hallucinogenic substances, eliminates a prohibition against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to maximum imprisonment for 35 years (while not changing the maximum fine of \$100,000); and
- eliminates a minimum 40-year sentence applicable to a fourth time offender convicted of certain crimes involving Schedule I and II hallucinogenic substances, eliminates a prohibition against a court suspending such sentence, eliminates a prohibition against parole for such a person while serving the minimum sentence, and subjects such a violator to maximum imprisonment for 40 years (while not changing the maximum fine of \$100,000).

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.

Background: According to the Maryland Criminal Sentencing Policy Committee, from fiscal 2000 through 2005, Maryland has sentenced 969 persons to mandatory minimum sentences under provisions eliminated by this bill.

State Expenditures: Because this bill eliminates mandatory minimum sentences and a prohibition of parole while serving that portion of the sentence, while also increasing the maximum allowable sentences for those same offenses, the effect of the bill on actual sentencing practices (and plea bargaining) is unknown. In addition, because the offenders affected by this bill are repeat offenders, it is unlikely they would be released on parole any sooner than under current law. Because offenders typically serve 50% of a nonviolent sentence, it is unlikely that this bill would result in a longer sentence being served.

In any event, general fund expenditures for incarceration costs could decrease due to some people being committed to Division of Correction (DOC) facilities for shorter periods of time. 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 \$310 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 through 2005, on average 162 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 \$233,280 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 bill's impact on correctional costs for DOC could begin as early as fiscal 2008, but would not affect the terms of some inmates (sentenced after October 1, 2005) until 2018 or beyond.

The Office of the Public Defender advises that this bill should not have a fiscal impact on its caseloads or operations. The State's Attorneys' Association advises that this bill would have no fiscal impact on prosecutions. The Commission on Criminal Sentencing Policy advises that alterations to the classifications of offenses within its databases could be accommodated with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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