

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 735
Judiciary

(Delegate Sophocleus, *et al.*)

Judicial Proceedings

Controlled Dangerous Substances - Schedule III and Schedule IV Narcotic Drugs
- Prescriptions and Refills

This bill provides that a narcotic drug listed as a Schedule III or IV controlled dangerous substance may not be dispensed without a written prescription by an authorized provider. Such a drug may be dispensed by a pharmacist without a written prescription if no more than a 72-hour supply of the drug is dispensed on an oral prescription and the pharmacist dispensing the drug calls the prescribing physician's office within 96 hours to verify the prescription. A prescription for one of these drugs may not be refilled by an oral refill order.

Fiscal Summary

State Effect: Potential minimal increase in expenditures due to the applicable incarceration penalty.

Local Effect: Potential minimal increase in revenues and expenditures due to the applicable monetary and incarceration penalties.

Small Business Effect: The effect of this bill on small business pharmacies and pharmacists would be minimal.

Analysis

Current Law: A person may not dispense a controlled dangerous substance without a written prescription from an authorized provider if the substance is: (1) listed in Schedule II; and (2) a drug limited to prescription use under the Health – General Article. Such a controlled dangerous substance may only be dispensed without a written

prescription by: (1) an authorized provider who is not a pharmacist and who dispenses the controlled dangerous substance directly to an ultimate user; or (2) a pharmacist, if an emergency exists, the pharmacist dispenses the drug under regulations of the Department of Health and Mental Hygiene on an oral prescription that the pharmacist reduces promptly to writing and keeps on file, and federal law authorizes the oral prescription.

A prescription for a controlled dangerous substance listed in Schedule II shall be kept on file in conformity with applicable requirements for records and inventories of these provisions. A person may not refill a prescription for a controlled dangerous substance listed in Schedule II.

An individual who dispenses a Schedule II controlled dangerous substance without a prescription is guilty of a felony and on conviction is subject to a maximum penalty of five years in prison or a \$15,000 fine, or both. A repeat offender must be sentenced to imprisonment for not less than two years. The court may not suspend the mandatory minimum sentence to less than two years.

A Schedule III controlled dangerous substance includes nalorphine and anabolic steroids, stimulants, depressants, narcotic drugs (such as certain amounts of codeine), and certain other drugs. A Schedule IV controlled dangerous substance includes certain substances that have a depressant effect on the nervous system, fenfluramine, and stimulants.

Background: The Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, is the legal foundation of the United States government's fight against the abuse of drugs and other substances. This law is a consolidation of numerous laws regulating the manufacture and distribution of narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and chemicals used in the illicit production of controlled substances.

CSA places all regulated substances under existing federal law into one of five schedules. This placement is based upon the substance's medicinal value, harmfulness, and potential for abuse or addiction. Schedule I is supposed to be reserved for the most dangerous drugs that have no recognized medical use, while Schedule V is the classification used for the least dangerous drugs.

Schedule III drugs are those deemed to have (1) less potential for abuse than Schedules I and II; (2) recognized medical uses; and (3) a moderate to low incidence of physical or psychological dependence. Schedule IV drugs are those deemed to have (1) a low potential for abuse relative to drugs in Schedule III; (2) recognized medical uses; and (3) a low risk of dependence relative to drugs in Schedule III. These are controlled similarly to Schedule III drugs.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's applicable incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is assumed to be minimal.

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 \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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. 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 2006 are estimated to range from \$17 to \$65 per inmate depending upon the 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.

Local Revenues: Revenues could increase minimally as a result of the bill's applicable monetary penalty provision.

Local Expenditures: Expenditures could increase minimally as a result of the bill's applicable 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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2005
mp/jr Revised - House Third Reader - March 29, 2005

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510