

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 877  
Judiciary

(Delegate Kelley, *et al.*)

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**Judicial Discretion - Controlled Dangerous Substance Crimes - Minimum Penalties - Repeal**

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

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in general fund expenditures, beginning in FY 2009, due to the bill's repeal of mandatory minimum sentencing, prohibitions against suspended sentences, and prohibitions against parole for some repeat offenders. Whether that decrease could be 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.

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**Analysis**

**Bill Summary:** Specifically, this bill:

- repeals a prohibition against a court suspending a sentence for certain crimes by a repeat offender involving Schedule I and II hallucinogenic substances, and eliminates a prohibition against parole for such a person while serving the minimum sentence;

- repeals a prohibition against a court suspending a minimum 25-year sentence applicable to a third time offender convicted of certain crimes involving Schedule I and II hallucinogenic substances, and repeals a prohibition against parole for such a person while serving the minimum sentence; and
- repeals a prohibition against a court suspending a minimum 40-year sentence applicable to a fourth time offender convicted of certain crimes involving Schedule I and II hallucinogenic substances, and repeals a prohibition against parole for such a person while serving the minimum sentence.

**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 was specified other Schedule I and II hallucinogenic substances – including PCP, LSD, and MDMD (known as Ecstasy) – 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, sentencing guidelines worksheets submitted in January – November of 2005 show only two cases with mandatory minimum sentences for the crimes affected by this bill. The commission advises that mandatory minimum sentences are more often applied for offenses involving narcotics.

**State Expenditures:** 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 but 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 \$1,974 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 \$341 per month. Excluding medical care, average variable costs total \$134 per month. Accordingly, this bill could allow for a cost savings of approximately \$1,608 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.

The Office of the Public Defender advises that this bill should not have a fiscal impact on its caseloads or operations. 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:** The provisions of this bill were included among the provisions of SB 673 and HB 280 of 2005. SB 673 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 280 had a hearing before the House Judiciary Committee and was withdrawn.

**Cross File:** Although not identified as a cross file, SB 592 is identical.

**Information Source(s):** 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

**Fiscal Note History:** First Reader - March 14, 2006  
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