

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 624 (Senator Gladden)
Judicial Proceedings

Criminal Procedure - Drug-Related Offenses - Repeal of Mandatory Minimum Sentences

This bill repeals specified minimum penalties and increases specified maximum penalties for repeat offenders of specified crimes generally involving the manufacture, sale, and distribution of controlled dangerous substances.

Fiscal Summary

State Effect: Potential decrease in general fund expenditures, beginning in FY 2010, due to the bill's elimination of some mandatory minimum sentencing provisions and reviews of related sentencing. Whether that decrease is significant over time depends on the bill's effect on plea bargaining and sentencing practices, which cannot be accurately predicted at this time. The effect of the elimination of a prohibition against possession of a firearm cannot be readily measured, but the Judiciary would incur some minimal new costs relating to the redesign and printing of some related sentencing forms. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, this bill:

- repeals the minimum 2-year, nonsuspendable, nonparolable sentence applicable to a repeat offender convicted of specified crimes involving controlled dangerous substances;
- repeals a minimum 10-year sentence applicable to a repeat offender (or conspirator) convicted of specified crimes involving narcotic drugs; repeals a prohibition against a court suspending such sentence; repeals 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);
- repeals a minimum 25-year sentence applicable to a third-time offender (or conspirator) convicted of specified crimes involving narcotic drugs; repeals a prohibition against a court suspending such sentence; repeals a prohibition against parole for such a person while serving the minimum sentence; and subjects such a violator to maximum imprisonment for 25 years (while not changing the maximum fine of \$100,000);
- repeals a minimum 40-year sentence applicable to a fourth-time offender (or conspirator) convicted of specified crimes involving narcotic drugs; repeals a prohibition against a court suspending such sentence; repeals 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);
- repeals a minimum 10-year sentence applicable to a second-time offender (or conspirator) convicted of specified crimes involving Schedule I and II hallucinogenic substances; repeals a prohibition against a court suspending such sentence; repeals 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);
- repeals a minimum 25-year sentence applicable to a third-time offender (or conspirator) convicted of specified crimes involving Schedule I and II hallucinogenic substances; repeals a prohibition against a court suspending such sentence; repeals a prohibition against parole for such a person while serving the

minimum sentence; and subjects such a violator to maximum imprisonment for 30 years (while not changing the maximum fine of \$100,000); and

- repeals a minimum 40-year sentence applicable to a fourth-time offender (or conspirator) convicted of specified crimes involving Schedule I and II hallucinogenic substances; repeals a prohibition against a court suspending such sentence; repeals 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).

The bill clarifies that a person convicted of any of the covered offenses is not prohibited from participation in a drug treatment program under § 8-507 of the Health – General Article because of the length of the sentence.

A person who is serving a term of confinement that includes a mandatory minimum sentence imposed on or before September 30, 2007 for a violation of specified primary drug-related offenses is eligible to be granted:

- one hearing before the court to modify or reduce the mandatory minimum sentence as provided in Maryland Rule 4-345 (*Sentencing – Revisory power of court.*), even if the defendant did not timely file a motion for reconsideration or a motion for reconsideration was denied by the court; and
- one sentence review of the mandatory minimum sentence by a review panel as provided in § 8-102 of the Criminal Procedure Article.

The court or the review panel may strike the restriction against parole or reduce the length of the sentence. To be granted such a hearing or sentence review, a person must submit an application to the court or review panel by September 30, 2010.

The bill excludes persons previously convicted of a primary controlled dangerous substance offense (including volume dealers, drug kingpins, and importers) from a prohibition against possession of a regulated firearm.

Current Law: For specified 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.

A second-time offender or conspirator convicted of those same primary crimes involving a Schedule I or Schedule II narcotic drug, if certain confinement and conviction prerequisites are met, 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 MDMA – 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.

A second-time offender or conspirator convicted of those same primary crimes involving the specified other drugs, if certain confinement and conviction prerequisites are met, 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 specified 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.

A second-time offender of one of the covered offenses is not prohibited from participation in a drug treatment program under § 8-507 of the Health – General Article because of the length of the sentence.

Persons previously convicted of a primary controlled dangerous substance offense (including volume dealers, drug kingpins, and importers) are prohibited from possessing a regulated firearm. A violator is subject to a nonparolable, nonsuspendable mandatory minimum sentence of five years.

Under § 8–102 of the Criminal Procedure Article, a person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel.

Under Maryland Rule 4-345, generally, upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected or has been dismissed; and (2) in a circuit court, whether or not an appeal has been filed, a court has revisory power and control over a sentence, except that it may not revise the sentence after five years from the date the sentence was originally imposed and the court may not increase the sentence.

The court may not revise a sentence after five years from the date the sentence originally was imposed on the defendant and may not increase the sentence, except that it may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Maryland Rule 4-345 also requires the State’s Attorney to give notice to each victim and victim’s representative who has filed an official request to be notified that states: (1) that

a motion to modify or reduce a sentence has been filed; (2) that either the motion has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that the victim or victim's representative may attend and testify. The court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present. No hearing may be held on a motion to modify or reduce the sentence until the court has determined that the notice requirement has been met. If the court grants the motion, it must prepare or dictate into the record a statement of the reasons on which the ruling is based.

Background: According to the Maryland Criminal Sentencing Policy Committee, there were 34 convictions in fiscal 2006 for the covered offenses. The commission does not have data on how many of these cases actually resulted in a mandatory minimum sentence. The commission was also unable to estimate how many of the persons convicted in these cases are still incarcerated and who would be eligible for a sentence modification under the bill.

State Expenditures: Because this bill eliminates mandatory minimum sentences and a prohibition of parole while serving that portion of the sentence, while also establishing a 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 \$2,300 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 \$465 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.

For illustrative purposes only, if this bill resulted in a one-year reduction of actual time served for 100 affected inmates, an eventual savings of \$160,800 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 2010, but would not affect the terms of some inmates (sentenced after October 1, 2007) until 2020 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 not have a 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: Various bills have been introduced in recent years to eliminate mandatory minimum sentencing for drug-related repeat offenders, though none were identical to this bill. In 2006, HB 877 received an unfavorable report from the House Judiciary Committee and SB 592 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 992 (Delegate Anderson, *et al.*) – Judiciary.

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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